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TO/DEST. Co-ordinator, Transportation Committee

FROM/EXP. Director, Mobility Services Division
 Environment and Transportation Department

SUBJECT/OBJET **NEWSPAPER VENDING BOXES**

DEPARTMENTAL RECOMMENDATION

That the Transportation Committee recommend Council approve the amendments to Part 2.10 of the Regional Regulatory Code, as specified in the body of this report, to allow the placement and operation of “non-traditional” newspaper vending boxes on Regional roads.

BACKGROUND

The Department has received requests from publishers of non-traditional newspapers for permission to occupy space on the Region’s road allowance and to have the same privileges that are extended to traditional newspapers. Examples of the publications being discussed are **Renters News** and **Auto Mart**, although there are other similar publications in circulation.

DISCUSSION

The Region has considered similar requests in the past and refused them on the basis that they were not newspapers. However, some relatively recent court decisions on similar issues suggest that the Region’s current regulations may be discriminating against this type of publication.

The City of Toronto Legal Department, when faced with this issue, prepared a position paper that thoroughly explores the issue and the alternatives. Because Departmental and Legal staff agree with the assessment, it is summarised here to explain the matter from a legal perspective.

Until recently, it was widely held that a municipality had the authority, if it so chose, to prohibit the placement of newspaper vending boxes on its road allowance. However, this opinion was given prior to the now famous Supreme Court of Canada “poster” case (the RAMSDEN case) and staff believe that this is no longer the case. Newspaper vending boxes could only be prohibited totally if there was some compelling safety reason for doing so.

Unlike many provisions of the Municipal Act which set out specific jurisdiction for a municipality to prohibit or regulate the activity contemplated, the jurisdiction to regulate newspaper vending boxes does not come from specific authority in the Municipal Act. Rather, the municipality relies on several general provisions of the Act dealing with granting permission to persons to place or install objects of any sort on the sidewalk or highway upon conditions set by the municipality, with prohibiting or regulating the obstruction or encumbering of highways, and for regulating retail sales within the highway. Newspaper vending boxes are included within these powers.

Once a municipality chooses to allow the sale of publications from vending boxes on the road allowance, there are considerable legal constraints on the extent to which the municipality can regulate those vending boxes.

What Publications are Acceptable?

Can a municipality draw a distinction between publications which have as their major purpose the dissemination of current news, and publications which may have as their major purpose the advertising of goods and services?

In attempting to do so, a municipality puts itself in an almost untenable position. One publication may be refused permission because it appears in large measure not to be concerned with the dissemination of current news, but rather concerned with advertising goods and/or services of some description, while another publication may be given permission because, while containing as much or more advertising than the first publication, it also contains a greater percentage of daily or weekly news.

If the municipality draws a distinction on such grounds, the first problem to be faced is who within the municipality is going to examine the applications from the viewpoint as to what is or is not a current news publication. This assumes that Council, while making the final decision as to what publications can or cannot be placed in boxes within the road allowance, will base its decision upon the recommendation of staff. Since the Environment and Transportation Commissioner deals with newspaper vending box applications as part of his normal duties, it is apparent that if Council concludes that part of its decision as to what publications get permission to place boxes on the street is going to be based on the contents of the publications, it will fall to the Commissioner at first instance to examine the publications and make an appropriate recommendation to Council.

This puts the Commissioner in a difficult situation because while he would not be delegated the power to make the final decision, he would nevertheless be required to make a recommendation to Council based, in part, on subjective rather than objective criteria. Even if Council supplied the Commissioner with some criteria by which to examine the publications, such criteria could never hope to be sufficiently particular to enable the Commissioner to

examine all publications and applications in an entirely objective manner, since any criteria established by Council which

deal with the content of what is published, must by their nature, have considerable variation due to the variety of the form of publications available in the municipality.

The whole issue of examining the content of publications in granting permission is not recommended. Decisions would inevitably lead to litigation in cases where some publications are granted permission and others not, based at least in part on the form or content of the publications. What may be “news” or of current interest to one person, may not be “news” or of interest to another person. While some topics covered in some publications may deal with reporting and analysis of current world, national, or local events, other publications deal largely or exclusively with what would be termed opinion on various subjects which are not daily news, such as aspects of the entertainment industry. Other publications, while possibly containing some news-like or current event columns, are nothing more than thinly disguised compilations of advertisements for various goods and services or real estate.

The only aspect of content with which a municipality should concern itself is a requirement in the terms and conditions of the written agreement to be entered into by publishers who place boxes on the street, that there will be no breach of any Criminal Code provisions which deal with publications, and indemnification of the municipality in the event that a publication does breach the Criminal Code.

In conclusion, it is recommended that Council not set any criteria which relates to the content, form or frequency of publication. The criteria should be based only on the physical construction and maintenance standards and proposed location of the boxes.

REGIONAL REGULATORY CODE

It will be necessary to amend the Regional Regulatory Code to permit the placing of the new boxes on Regional roads.

To reflect the fact that there will be publications distributed from boxes on the road allowance that are not what are traditionally thought of as newspapers, it is recommended that for legislative purposes the vending boxes be referred to as “Publication Distribution Boxes” in future.

It will be necessary to amend the definition of a “newspaper vending box” to reflect the new terminology as described above, remove from the definition any reference to a daily or weekly publication, and remove the requirement to deposit coins in a slot to access the publication. The deletion of the requirement to deposit coins in a slot is required because the new publications are distributed free of charge. However, staff believe that there is a need to maintain a door on the box to prevent vandals throwing the box contents on the roadway and to ensure that the box does not become a garbage receptacle.

It is therefore recommended that the following amendments to Part 2.10 of the Regional Regulatory Code be made:

1. The heading immediately preceding Section 2.10.18 be deleted and replaced with the following heading: PUBLICATION DISTRIBUTION BOX.
2. Section 2.10.18 be deleted and replaced with the following definition:

DEFINITION

In Article Two, “box” means an unattended publication distribution box that disburses printed, written, photographic or other published material.

3. Section 2.10.20 be deleted and replaced with the following section:

PERMIT REQUIRED

No person shall locate a box on any highway for the purpose of distributing or selling publications without first obtaining a permit to do so.

4. Paragraphs 2.10.22(2)(b)(i) and (ii) be deleted and replaced with the following paragraphs:
 - (i) the name of the publication being offered:
 - (ii) the publisher’s name; and
5. Subsections 2.10.22(1), (2) and (3) be renumbered as subsections 2.10.22(2), (3) and (4) respectively.
6. The following new subsection (1) be added to Section 2.10.22:
 - (1) The permit holder shall ensure that each compartment of the box is equipped with a self-closing door.

FINANCIAL IMPLICATIONS

It is difficult to estimate the financial implications without knowing the potential number of new boxes that will be placed on the road allowance. The annual permit fee per box is \$53.00; therefore, for every additional 100 new boxes there will be \$5,300 of new revenue. It is not anticipated that there will be significant new administrative costs for staff because of the current system of issuing annual permits and the excellent experience to date with the publishing companies in complying with the box placement regulations. Staff will work closely with the new permit holders initially to ensure that they are thoroughly familiar with the regulations.

PARTICIPATION

Public participation was not conducted on this issue because it is staff's opinion that if the regulations are not relaxed to allow non-traditional publications on the road allowance, the Corporation may be open to a challenge.

*Approved by
D. Brousseau*

SEM/EM