



CITY OF ST. ALBERT ADMINISTRATIVE BACKGROUNDER

TITLE: OPT-IN FLYERS

PURPOSE OF REPORT

On September 30, 2019 Councillor Joly provided notice in accordance with Section 23 of Procedure Bylaw 3/2018 of her intention to make the proposed motion below.

In order for Council to debate the motion, it must be formally moved.

PROPOSED MOTION(S):

That by <DATE>, Administration provide a report, including recommendations, that explores the possibility of requiring that marketing flyers delivered within St. Albert are an opt-in rather than an opt-out service, similar to email subscriptions, and that the issue is presented to the EAC for review and/or comment prior to being presented to Council.

ALIGNMENT TO PRIORITIES IN COUNCIL'S STRATEGIC PLAN

Strategic Priority #6: Environmental Stewardship: Explore innovative environmental and conservation opportunities.

6.1 Enhance waste minimization strategies with emphasis on reduce and reuse activities. (From Corporate Business Plan 2019-2021)

ALIGNMENT TO LEVELS OF SERVICE DELIVERY

N/A

ALIGNMENT TO COUNCIL DIRECTION OR MANDATORY STATUTORY PROVISION

N/A

BACKGROUND:

Administration has reviewed the above proposed motion and can offer the following information:

1. Canadian Anti-Spam Legislation (CASL) regulates the distribution of electronic-based commercial advertisements (requiring an “opt-in” from subscribers, as referenced in the motion). Companies that distribute electronic-based commercial advertisements are responsible for keeping track of when and how people opted-in to receive their messages. These regulations do not apply to print advertisements.
2. Administration is not aware of any Municipalities in Canada that regulate the distribution of flyers by an “Opt-In” program. Some municipalities – such as Halifax and Calgary – have regulated the distribution of flyers through bylaws that forbid the distribution of flyers when a resident has posted a sign on their property noting their intent to not receive flyers; these are not “opt-in” regulations, but rather municipal legislation/enforcement of existing practices/norms used by residents who do not wish to receive flyers. Halifax’s bylaw is included in this report as Attachment “A.”
3. According to the 2018 St. Albert Census, there are approximately 26,083 residential dwellings in St. Albert, all of which have the potential to receive commercial advertisements in the form of paper-based flyers – additionally, the City also has upwards of ~1,400 commercial units that can also receive flyers;
4. There are three major businesses who regularly distribute marketing flyers within St. Albert as part of their business model.
 - a. Postmedia Network Inc. (Edmonton Journal, Flyer Force, Edmonton Sun etc.);
 - b. Great West Newspapers Limited Partnership (St. Albert Gazette);
 - c. Canada Post.
5. Some flyers are inserted into and delivered as part of newspaper distribution, both subscribed and unsubscribed.
6. Other small businesses/organizations may deliver print advertisements to residential dwellings on an infrequent basis, such as small snow-removal businesses advertising services prior to the first snowfall, or a local youth sports-team advertising a fundraising event;
7. Postal service is granted exclusively to the federal government, under the division of powers stemming from the original BNA Act of 1867 (specifically s. 91).
8. The City of St. Albert has never imposed legislation regulating the delivery of print material to residential dwellings.

Administration can provide the following recommendations:

1. Should Council support the motion, Administration would have to determine the most appropriate legislative mechanism to accomplish the intent of the motion – this could take the form of amendments to an existing bylaw like the Community Standards Bylaw, or through a new bylaw with the sole purpose of regulating flyers;

2. Legal advice has been received from the City Solicitor regarding constitutional right infringement (e.g., the right to freedom of expression) opt-in flyer regulation may cause and whether it will legally pass the test for an exception;
3. With the federal government having legal jurisdiction over “postal service”, it is doubtful whether any municipal bylaw would be effective to constrain Canada Post from delivering flyers. This has the potential to create a monopoly for Canada Post, allowing them to still deliver flyers without consent while all other companies would be bound by the bylaw and need to get consent. Administration would need to determine whether this would leave the City open to legal action from other companies.
4. Administration has concerns regarding the impact these regulations would cause to businesses/organizations whose revenues depend on the ability to distribute printed materials, and would thus be negatively affected by a reduced ability to distribute these materials. The business community may also view such regulations as unwelcome regulatory overreach and interference on behalf of the City. As such, should Council support the motion, stakeholder identification and engagement/consultation with these businesses would be necessary;
 - a. Administration would also need to determine if any businesses/organizations/institutions would require an exemption, similar to existing exemptions in the City of Halifax’s bylaw regarding the distribution of flyers;
5. Regulations would need to carefully define what constitutes as a “flyer,” “delivery of a flyer,” and a “person receiving the flyer” to ensure there is clarity as to what is and what is not being regulated including whether the ban applies to flyers distributed as part of unsubscribed newspaper distribution;
6. If the onus for flyer opt-in is the responsibility of the City, administration would have to research and determine the best mechanism for appropriate monitoring/enforcement.
7. If the onus for flyer opt-in is put on the individual businesses that supply this service, a legal review would be necessary to ensure that it is within the City’s legal jurisdiction.
8. A public engagement campaign would need to be undertaken by Administration to inform residents about the new regulations, how they may opt-in to receive flyers, and how they may report related regulatory offenses.

As an alternative, Council may amend the motion to direct Administration to regulate the distribution of flyers through an opt-out service, similar to how the Cities of Halifax and Calgary have regulated flyer distribution.

On November 28th 2019, Administration presented this issue to the Environmental Advisory Committee; the feedback received from the committee is included as Attachment “B.”

Report Date: February 3, 2020
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