

February 13th, 2009

BY E-MAIL: dmousse@toronto.ca

WITHOUT PREJUDICE

Mr. Dan Mousseau
Sign By-law Project
City Hall, Floor 5 West
100 Queen Street West
Toronto, ON M5H 2N2

Dear Dan,

**Re: Out-of-Home Marketing Association of Canada (“OMAC”)
Follow-Up Submissions re: Harmonized Sign By-law Project**

Introduction

OMAC is pleased to provide this follow-up submission on behalf of its member companies, including Astral Media Outdoor, CBS Outdoor Canada, Outdoor Broadcast Network, Pattison Outdoor and Titan Outdoor Canada. As indicated in our previous letter, these companies represent over 90% of the outdoor advertising inventory in the amalgamated City of Toronto and have a direct interest in the outcome of the City's harmonized sign by-law consultation process.

The City's project team has encouraged OMAC to provide specific comments and suggestions for possible incorporation into a draft of the harmonized sign by-law. OMAC is continuing to work on specific details of OMAC's ideas and suggestions. What follows is a summary of suggestions canvassed from OMAC's member companies. Further details, including suggested text, will be forthcoming as OMAC continues to meet and discuss how best to improve and harmonize sign regulation in the City of Toronto.

In reviewing this and other public submissions, OMAC asks that the project team keep in mind that the goal of this process is to arrive at a new “harmonized” by-law – not to implement widespread prohibitions against sign types that have been in use in the City of Toronto for decades. OMAC compliments the project team staff for being receptive to the industry's feedback, but further asks that staff keep in mind that the current regime of sign regulation is not working because it does not properly address the twin objectives of public aesthetics and safety in a manner that is consistent, logical and respectful of the meaningful role out-of-home advertising plays in the economy of Toronto. The industry acknowledges that new regulations are needed, but these regulations should not effect new prohibitions that go beyond the twin objectives noted above.

OMAC members have been present at each public consultation and have taken the concerns expressed by the public into consideration when preparing its formal submissions. We will continue to work to address concerns as they are brought to light. However, we do ask that the industry's concerns be given equal consideration so that the end product represents the most efficient and effective form of sign regulation permitted under the City's powers.

OMAC further asks that the project team be cognizant of the current economic climate when determining its new sign regulations. Commercial advertising represents the link between producers and consumers. This is why commercial expression is a protected right under the *Charter*. Economic recovery, in part, depends on the continued ability of producers and commercial enterprises to reach their intended audiences. Moreover, the out-of-home advertising industry itself employs thousands of residents, both directly and through spin-offs. While the need to protect the public aesthetic is real, we ask that such protection be tempered with the realization that draconian policies will have a negative impact on our industry (and the clients we represent) at a time when such impacts are multiplied. Be sure that Toronto's harmonized sign by-law does not result in unintended economic consequences.

The suggestions that follow should be seen as supplementary to the "global recommendations" outlined in OMAC's previous letter. These recommendations included: the separation of sign permits from building permits, the creation of sign districts, the establishment of a clear variance hearing process, enhancements to the identification and enforcement sections of the by-law, the creation of a dedicated sign division and various other section-specific recommendations regarding applicability, legal non-conforming status, application requirements and sign characteristics. OMAC continues to be available to discuss its prior organizational and administrative recommendations in detail directly with the City's project team.

Sign Size

OMAC canvassed its member companies operating in various Canadian markets and determined that the standard copy size for most forms of outdoor advertising is 10 x 20. The industry's feedback is that the effectiveness of outdoor advertising would be significantly impacted if there was a reduction in the standard size of signs. Reducing the square footage of a sign to less than 10 x 20 would directly affect an out-of-home advertiser's ability to do business. This point is made clear in a letter to Mr. Mousseau dated February 10, 2009, from the Association of Canadian Advertisers. Arbitrary size restrictions will reduce interest in outdoor advertising as a potential medium for various marketers and ad agencies who rely on consistency in the planning of a campaign. Accordingly, OMAC recommends that the project team adopt 10 x 20 as its standard copy size for wall, roof, ground and other standard forms of outdoor advertising across all areas where outdoor signage is to be permitted.

The outdoor advertising media mix is not limited to classic format signage; rather, it is a blend of various dimensions, formats, and locations. Wall signs currently exist under the fragmented bylaws as a number of items: murals, wall signs, fascia signs, and sometimes even as projecting signs. On numerous occasions, the City's project team has indicated

that the distinction of a painted mural would be extinguished in the harmonized bylaw. Wall signs with a similar composition to the classic ground and roof signs are very standard in a maximum 15 x 30 format. As this type of media is often incorporated into the large façade of a building and below the height restrictions it is appropriate in locations where mid-scale signage is permissible.

Taking direction from the recommendations for wall and fascia signs for first party or identification, the maximum area allocated for third party signage should not be based on a percentage of the existing façade. Accurate measurements, applications and enforcement of such restrictions would be cumbersome and susceptible to interpretation.

For Toronto's urban core and major corridors, OMAC supports a maximum size for large-format wall signs of 100 square meters with a maximum height of 22.5 meters. For over a decade, this format of commercial messaging has been possible in the City of Toronto. Proper regulation, including district-specific separation minimums, can ensure this sign type can continue to exist without unreasonable proliferation.

The recommendation is to incorporate appropriate permissions and restrictions for large-format wall signs in specific districts into the harmonized sign bylaw. The harmonized by-law should also indicate that larger area signs may be permitted, subject to a site-specific variance attained in accordance with the new variance approval process.

Digital Signage

The industry foresees the use of digital signage to increase rapidly over the next 10 years. As it should be a goal of the harmonized by-law to be technology and substrate neutral, thus eliminating the necessity of future revisions to the by-law, OMAC recommends that the use of digital images/copy be specifically included as part of the definition of various sign types such as wall, ground, pedestal and roof signs. For example, if a wall sign of a particular height and size is permitted at a particular location, such permit should allow the advertiser to use paint, vinyl, poster or digital LED to display advertising copy without the need for additional permissions or a new permit.

However, the industry does understand that the City may have concerns with respect to how video signage is deployed in the public sphere. There will understandably be locations where video signage will not be appropriate. In these situations, area-specific restrictions can be imposed to ensure that wall, roof, pedestal and ground signs erected in that restricted location cannot employ electronic display.

In addition, the project team needs to be aware that the industry envisions two distinct types of digital signage: (1) static images on an electronic display that are pre-programmed to change in consistent intervals; and (2) full motion video electronic display.

Static images shown on electronic displays are a modern version of the current mechanical tri-vision sign or scrolling copy used in the City's bus shelters. The overall visual impact is quite minimal and the ability to display real-time public service messages, control illumination levels, control rate of copy change and address the timeliness of campaigns is quite favourable. These signs also come with a significant number of environmental benefits, including low energy consumption and the reduction of material-

related waste. These signs (along with full motion signs) may in the future be powered by renewable energy sources and are appropriate in busy commercial and tourist areas. In fact, OMAC members are actively and independently seeking out environmentally responsible products as part of their corporate mandates and initiatives.

“Full motion” should be defined in the new by-law as an electronic image that displays movement within a two second timeframe. The location of these “full motion” electronic signs would be dependent upon permissions prescribed within individual “sign districts” and could be prohibited in specified locations where the City considers them to be detrimental to public aesthetics or safety. The industry would content itself with the by-law’s variance process in terms of deciding whether additional full motion video signage is appropriate at site-specific locations outside districts where it is permitted.

Finally, with respect to the illumination of digital signage, OMAC recommends that the City adopt a district-by-district approach to the hours in which digital signage may be illuminated. The industry is also willing to conform to prescribed illumination standards, so long as such standards are for purposes of environmental conservation and are applied consistently as between all types of signage (i.e. first and third party).

Roof Signs

OMAC has been informed by members of the project team that the harmonized by-law may not provide as-of-right opportunities for new roof signs. OMAC requests that the project team reconsider this proposal.

Under the present by-law, there are a number of restrictions applicable to ground signs, particularly in the commercial zones of the former City of Toronto. This overly-restrictive regulation of ground and wall signs forces the industry to focus on the installation of roof signs, often by relying on permits that were issued many decades ago.

OMAC recognizes that reasonable restrictions on the location, size and height of roof signs are appropriate. However, a prohibition on new roof signs will force industry members to continue to rely on old permits as well as pressuring for new ground, wall and other types of signs. So long as roof signs are spaced appropriately and designed sensitively to their context, the City’s concerns with respect to roof signs should be addressed.

Sunset Clause

OMAC has also been informed that the project team is considering the inclusion of a sunset or permit renewal clause in the harmonized by-law. OMAC feels strongly that the inclusion of such provision is neither appropriate nor in accordance with the City’s authority to regulate advertising devices under the *City of Toronto Act, 2006*.

A sign permit provides for the continuous use of a location to erect lawful signage. That permission remains until such time as it is “materially altered” or until changes to the subject property make the erection of a sign incompatible or without value. The acquisition and maintenance of a permission to erect a sign requires a substantial investment on the part of both the landlord and the out-of-home advertiser. Such

investments are jeopardized under a regime that could require the removal of a sign where a permit renewal is denied.

Further, as the project team is aware, subsection 110(1) of the *City of Toronto Act, 2006*, specifically provides for the “grandfathering” of signs through successive sign by-law regimes. The imposition of a sunset clause would preclude the grandfathering rights a permit holder enjoys, once granted. Consequently, such a clause would not accord with either the City’s powers under the *City of Toronto Act, 2006* or the scheme of municipal legislation with respect to the regulation of signs.

Separation Distance

The purpose behind the imposition of minimum separation distance requirements is the elimination of proliferation. However, whether signs are “proliferating” is a context-specific question. What matters is whether the “proliferating” signs are apparent to the average person.

Currently, the separation distance requirements employed by the City are both linear and radial. They apply regardless of the sign type, but only to third-party signs. They also operate regardless of the legality of the sign.

OMAC proposes that minimum separation distance be a measurement that is employed linearly and not radially. A lineal measurement ensures that the average person walking down a street will not be bombarded with signage. Such person would not be aware of signage erected 60 metres away in a perpendicular direction. Yet under the City’s current regime, which applies a radial measurement, the erection of signs is restricted in places where such signage could not be visible to the same person.

A linear separation of 60 metres between third-party signage is an acceptable measurement to the industry, as it ensures that third-party signage is on average deployed on the basis of 1 third-party sign per block.

OMAC further asks that the project team consider whether reduced separation distances may be appropriate in areas such as the Entertainment District, Financial District, Theatre District and extending to the urban core bordered by Bathurst St., Bloor St., Parliament St., and Lakeshore Blvd. In exchange for additional permissions in these prime advertising areas, OMAC members can accept additional restrictions (through more onerous separation requirements) in other areas of the City.

Also, many OMAC members have been informed by City staff that separation distance must be determined from any “sign”, whether such sign is legal or not. This is not a valid interpretation of a municipal by-law as it punishes a permit applicant for the actions of rogue operators. The harmonized by-law should specify that separation distance measurements are to be from “lawfully erected signs”.

Lastly, while OMAC can accept a minimum separation distance from R zones, such separation distance should be relaxed where it is an MCR zone or where the proposed sign is invisible to the residential area. This would occur where, for example, a sign is erected on a wall that faces the opposite direction from the residential area.

Variance Process

As outlined in OMAC's previous submission, the harmonized sign by-law needs to provide a clear process for seeking variances from the by-law's restrictions on a site-specific basis. The industry can accept a higher level of regulation through the new by-law so long as there is a fair and objective method for seeking variances for requested signage.

The current process provides no right of appeal or review from the decision of Community Council. Further, there are no prescribed requirements or "tests" by which Community Council is to assess individual variance applications. Often the process gets hijacked by interest groups caring more about injuring the out-of-home advertiser than the impact of the proposed sign.

A first step towards a fair hearing process for proposed variances is the issuance of notice, which OMAC submits can be achieved by posting notice at the location of the proposed sign (not unlike what is currently done for *Planning Act* applications). These posted signs will alert the public to the permit application and are more appropriate than circulated notice as those who see the posted notice are most likely to be impacted by the proposed sign. Notice can also be circulated to the ward councillor, who can alert constituents through his or her web page or newsletter if they choose to do so.

Once notice is effected, the hearing of the proposed variance should follow a process set out in the harmonized sign-by-law. The applicant should have an opportunity to present its variance request to the administrative body (be it a Committee of Council or a Community Council). Objectors to the variance can then be allowed to come forward. The applicant should then be allowed to respond to the objectors' comments and answer any questions the administrative body may have.

The administrative body should then deliberate on the variance request. For contentious variances, the administrative body should be allowed to reserve its decision and issue it later. The decision making process, itself, should be centred on a series of tests outlined in the sign by-law. In this manner, the process would mirror a minor variance application under section 45 of the *Planning Act*. The nature of these tests could take into account official plan policies, the context of the area, the contribution the proposed sign would make to the public aesthetic, whether any safety issues arise and whether the variance is minor when compared to the regulations normally applicable in the subject sign district.

The administrative body should render a decision providing brief reasons why the proposed variance did or did not meet the required tests. If either the applicant or an objector appearing before the administrative body is dissatisfied with the body's decision, such decision should be capable of being appealed to a governing Committee of Council (for example, Planning & Growth Management Committee). The Committee could review the reasons of the administrative body, hear brief submissions from the appellant (either orally or in writing) and render a decision that is final and binding, which decision could entail sending the matter back to the administrative body with comments or instructions. In this way, the selected Committee of Council retains appellant-style jurisdiction over sign variances, while providing sign applicants with potential relief where the process before the administrative body has been flawed in some way.

Overall, the variance process needs to be fair, open, transparent, accessible and capable of being exercised in an informed and administrative manner. OMAC believes that with a process akin to what is outlined above, the City's regulation of signs will be properly respectful of the sign applicant's right to free expression as enshrined in the *Charter*.

Legal Non-Conforming

Supplemental to OMAC's previous submissions regarding legal non-conforming signs, we acknowledge the City's interest in ensuring that old signage based on old permits do not become relics that detract from the public aesthetic. It should not be a goal (or effect) of the new harmonized by-law to perpetuate obsolescence in sign displays or features.

To address this issue, OMAC suggests that the project team consider adding to the City's ability to consider sign variances to include variances to legal non-conforming signs. Such consideration would be akin to subsection 45(2) of the *Planning Act* wherein the Committee of Adjustment is empowered to permit changes to a legal non-conforming use. An administrative body in the City of Toronto dealing with signs should be empowered to permit the display faces of an old roof or wall sign (for example) to be changed to a form that is more consistent with modern signage without the fear of losing the right to erect signage at that location. The City can control such changes on a site-specific basis through the variance process outlined above.

Conclusion

We trust this follow-up submission provides the project team with additional information and direction with respect to the industry's position on the harmonized sign by-law. We anticipate providing the project team with additional information in the form of proposed by-law text after the interim report has been brought before Council.

Please note that, going forward, OMAC requests that the City provide it with notice of any and all harmonized sign by-law related matters going to Committee or Council. OMAC also kindly requests that the project team provide OMAC with at least 30 days' notice of the draft by-law going before Committee or Council for consideration and/or approval.

As always, we remain available to speak directly with the project team at your convenience.

Yours very truly,

Rosanne Caron
President
OMAC