TO: Bert Meunier, Chief Administrative Officer
FROM: Terry Willing, Acting Commissioner, Planning & Development Services
PREPARED BY: Kim Leonard, Acting Manager, Building & Licensing
DATE OF MEETING: June 1, 2004
SUBJECT: AMENDMENT TO BY-LAW NO. 2958 TO CLARIFY THE DEFINITION AND PERMITTED POSITIONING OF “SANDWICH-BOARD” SIGNS

RECOMMENDATION TO COUNCIL:

THAT Council amend By-Law No. 2958 “A By-Law To Provide for the Prohibition and Regulation of Signs and Other Advertising Devices in the City of Kingston” to add to the end of the paragraph in section 1 subsection (z), being a definition of Sandwich Board Sign, a new sentence as follows:

“Without limiting the generality of the above, this definition shall include signs commonly referred to as A-frame and menu boards.”

AND FURTHER that Council amend By-law No. 2958 to delete Section 19 Subsection (d) to be replaced with the following new subsections:

(d) “A maximum of one sandwich board sign is permitted for any one business or use.
(e) Location

(1) Sandwich board signs shall be located on the same lot as the business or use to which the sign is accessory. Where it is impossible to locate the sign entirely on the same lot as the business or use, the sign may be placed on the City sidewalk which abuts the lot where the business is located provided that:
(2) the sign is placed as close as possible to the face of the building where the business is located; and
(3) a minimum unobstructed sidewalk with of 1.5 meters can be maintained;
(4) Sandwich board signs shall be removed at the close of business hours.”
AND FURTHER that Council amend By-law No. 2958 to delete section 20 subsection 15 to be replaced with the following new section:

"Sandwich board signs for businesses located within the special regulation area as defined in this by-law shall be located, in accordance with the provisions of Section 19, subsection (e), paragraphs (1) and (2) and (3) of this By-Law. However where there is a red brick area of sidewalk directly in front of the lot where the business is located in the special regulation area then the Chief Building Official or their designate may allow for the placement of the sandwich board sign on the red bricked area directly in front of the business to which the sign is accessory."

ORIGIN/PURPOSE:

In January of 2003 a Justice of the Superior Court of Justice, sitting in Kingston, heard an Application commenced by a local downtown business for interpretation of the City of Kingston Sign By-law (No. 2958 enacted in 1992). The Superior Court Justice ruled in March of 2003 that Section 19(d) of By-law No. 2958 was ambiguous and uncertain and did not provide enforcement officers and sign owners with sufficient detail. In his written decision the Superior Court Justice declared the offending Section of By-law 2958 to be "invalid". Following the Court's ruling City Staff reviewed By-law 2958 and have recommended the above amendments. These amendments will assist sign owners and enforcement staff and will ensure that such signs will not interfere with safe pedestrian traffic on City owned sidewalks.

OPTIONS/DISCUSSION:

On December 13, 2002 a notice of application to the Ontario Superior Court of Justice was received by the Building & Licensing Department. The application was issued under rule 14.05 of the rules of civil procedure and the application was made to the Superior Court of Justice to provide an interpretation of Section 19 (d) of By-Law No. 2958 (1992) of the City of Kingston; and in particular, whether a sandwich board sign advertising a business must be located immediately in front of the business being advertised.

This action was the result of a conviction that was received by the applicant in the Provincial Court for illegal placement of an "A" frame sign. As a result of this conviction the applicant challenged the wording of the by-law at the Superior Court level.

In the Superior Court Judge's final analysis he noted that no definition was found in the by-law explaining what is meant by the words, "the building" or "the sidewalk", or any connection between two, he also noted that section 19 (d) (2) did not assist as the words "widened area of sidewalk" were not defined nor located in reference to Section 19 (d) (1) which he also noted was ambiguous in itself.

By-Law 2958 section 1 subsection (z) states that "Sandwich-Board Sign" shall mean and include any sign not permanently attached to or affixed into the ground, to a building or structure, which is hinged or otherwise attached at the top enabling the two sign faces to be extended into an inverted v-shape so as to support the said sign in an upright position, on its side or in any other manner. By including "Without limiting the generality of the above, this definition shall include signs commonly referred to as A-frame, T-frame and menu boards" in this definition it allows for a clearer understanding of the types of sandwich-board signs that would be included in this definition.
It is proposed that section 19 subsection (d) be replaced and that subsections (e) (1), (2), (3) and (4) be added to more clearly define the placement of signs.

Section (d) subsections (1), (2) and (3) currently defines the Location of signs as: (d) Location.

(1) Sandwich board signs shall be located in such a manner so as to provide clear and free pedestrian movement at all times; and, except as provided in paragraph (2) hereof, shall be placed in a position whereby they abut the building adjacent to the sidewalk.
(2) Where there is a widened area of sidewalk, sandwich board signs shall be placed as close to the curb as possible.
(3) Sandwich board signs shall be removed at the close of business hours.

It is proposed that section (d) (1), (2) and (3) be replaced by subsection (d) and (e) (1), (2), (3) and (4) and that the wording be changed to read:

(d) A maximum of one sandwich board sign is permitted for any one business or use.

(e) Location.
(1) Sandwich board signs shall be located on the same lot as the business or use to which the sign is accessory. Where it is impossible to locate the sign entirely on the same lot as the business or use, the sign may be placed on the City sidewalk which abut the lot where the business is located provided that:
(2) the sign is placed as close as possible to the face of the building where the business is located; and
(3) a minimum unobstructed sidewalk width of 1.5 metres can be maintained;
(4) Sandwich board signs shall be removed at the close of business hours.

It is also proposed that section 20 subsection (15) be replaced.

Section 20 subsection 15 currently defines the special regulation area of sandwich board signs as:

15. Sandwich board signs shall be located, where possible, on the red brick areas of sidewalks (where these have been installed). Should placing of a sign on the red brick area not be possible, the sign in question may be located otherwise in accordance with the provisions of Section 19, subsection (d), paragraphs (1) and (2) of this By-Law.

It is proposed that the wording in section 20 subsection 15 be replaced with:

15. Sandwich board signs for businesses located within the special regulation area as defined in this by-law shall be located, in accordance with the provisions of Section 19, subsection (e), paragraphs (1) and (2) and (3) of this By-Law. However where there is a red brick area of sidewalk directly in front of the lot where the business is located in the special regulation area then the Chief Building Official or their designate may allow for the placement of the sandwich board sign on the red bricked area directly in front of the business to which the sign is accessory.

While the Superior Court Judge recognized the concerns of Council for the safety of pedestrians as well striking a balance for business advertising he did not feel that the by-law itself was clear enough when indicating permitted sign placement.
The recommended amendments to the by-law do not introduce any new regulations. The recommendations do however provide clarification for both sign owners and enforcement staff.

EXISTING POLICY/BY-LAW:
Council approval is required for this amendment to by-law 2958.

LINK TO THE STRATEGIC PLAN:
There are no links to the Strategic Plan for this report.

FINANCIAL CONSIDERATIONS:
There are no financial considerations for this report.

CONTACTS:
Mark McLaughlin Associate Legal Counsel, 546-4291 ext. 1365

DEPARTMENTS/OTHERS CONSULTED AND AFFECTED:
Legal Services (Mark McLaughlin)

NOTICE PROVISIONS:
Notice has been given of Council's intention to amend By-law 2958 in compliance with the requirements of the Municipal Act.

APPENDICES:

Terry Willing
Acting Commissioner of Planning & Development Services

Bert Meunier
Chief Administrative Officer