



## MEMO / NOTE DE SERVICE

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To / Destinataire	Mayor and City Council	File/N° de fichier:
From / Expéditeur	Dan Chenier General Manager / directeur général Recreation, Cultural and Facility Services Direction générale des loisirs, de la culture et des installations	
Subject / Objet	<b>Fossil Fuel Advertisement Review- Motion No. FCSC 2024-12-05 moved by Councillor Menard</b>	Date: May 22 , 2025

The purpose of this memo is to provide a response to Councillor Menard's motion ([No. FCSC 2024-12-05](#)) for City staff to review options around fossil fuel advocacy advertising.

### Background

On April 4, 2024, City Council approved a new Advertising Using City Assets and Programs Policy including an amending motion that staff consider changes to the new Policy by considering the following:

- options around fossil fuel advocacy advertising,
- alignment of City policies,
- reputational risks, and
- legal implications.

### Response

City staff have reviewed the City's Advertising Using City Assets and Programs Policy, noting its requirement to comply with federal and provincial laws including the Canadian Charter of Rights and Freedoms as well as the Canadian Code of Advertising Standards, administered by Ad Standards (formerly Advertising Standards Canada).

New provisions under the Federal *Competition Act*, RSC 1985 targeting misleading environmental benefit claims (greenwashing) came into effect following Council's approval of the City's Advertising Using City Assets and Programs Policy. Advertisements may contravene provisions of the *Competition Act* where misrepresentations are made related to protecting or restoring the environment or mitigating the environmental, social and ecological causes or effects of climate change. As a result, advertisers will now have the burden of proving that any environmental benefit claims are based on adequate and proper testing or can be substantiated. In addition, commencing June 20, 2025, any person, including advocacy groups, are expected to have the ability to seek leave

to bring a deceptive advertising proceeding before the Competition Tribunal which may result in significant penalties on a corporation of up to the greater of \$10 million (\$15 million for subsequent orders) or three times the benefit gained from the misrepresentation. If the benefit can't be determined, penalties may include three percent of worldwide gross revenues.

At this time, the Competition Bureau has made available draft guidelines respecting the greenwashing amendments prescribed within Part VII.1 of the Federal *Competition Act*. The draft guidelines include the example of how a business claim to be “net-zero by 2050” would necessarily need to be substantiated with internationally recognized methodology and a concrete plan to mitigate greenhouse gas emissions.

While the greenwashing provisions restrict certain types of claims that may be made in fossil fuel advertising, they do not prohibit fossil fuel advertising. Since the enactment of these new greenwashing advertising restrictions in the Federal *Competition Act*, a constitutional legal challenge to these new provisions prohibiting greenwashing advertisements was filed in December 2024 by the Alberta Enterprise Group and the Independent Contractors Business Association before the Court of King's Bench of Alberta. Staff are continuing to monitor the developments including updates to the draft guidelines that were published by the Competition Bureau and future decisions of the Competition Bureau and Courts.

## **OPTIONS**

The options considered which will be implemented by staff around fossil fuel advocacy advertising, include that the General Manager, RCFS and City sponsorship and advertising staff:

- 1) Update the City's Advertising Using City Assets and Programs Policy to clarify the requirement under the policy that advertisements comply with the new greenwashing provisions with the Federal *Competition Act* and guidelines published by the Competition Bureau and that the City will decline any advertisements that do not appear to meet these requirements.
- 2) Add, for greater clarity, to the responsibilities of the Partnership Manager, Corporate Advertising, Sponsorship and Donation, or Delegate under the City's Advertising Using City Assets and Programs Policy, the role of conducting pre-screening of advertisements for compliance with greenwashing provisions, in consultation with the City's legal services department.
- 3) Provide information on the City's website regarding complaint mechanisms including those prescribed under the *Competition Act* and Ad Standards together with information about relevant laws and standards including the greenwashing provisions and guidelines under the *Competition Act*.
- 4) Consult with Transit Services staff that oversee the OC Transpo Advertising Policy on alignment of advertising screening and decision-making respecting greenwashing in City advertisements.

At this time, staff do not recommend proceeding with updates to the City's Advertising Policy to prohibit fossil fuel advertising or severely restrict advertising. Unlike the Federal regulations restricting advertising of tobacco, there are no Federal laws that prohibit or severely restrict fossil fuel advertising. As any prohibitions or significant restriction on fossil fuel advocacy advertising would constitute a limit on the right to freedom of expression under section 2(b) of the Charter, a reviewing

Court would consider whether the limit is reasonable in a free and democratic society under the section 1 analysis of the Charter. The test for the purposes of section 1 considers whether the decision (i) has a pressing and substantive objective (i.e., sufficiently important to justify limiting a Charter right); (ii) considers proportionality; is rationally connected to its objective; minimally impairs the right to freedom of expression; and the benefits of the infringements must outweigh its consequences. These considerations are currently before the Courts with regards to the prescribed limits imposed by the Federal *Competition Act* on environmental claims and greenwashing.

Staff are not aware of any municipalities in Canada that have a prohibition on all fossil fuel advocacy advertising. Rather, municipalities, such as Toronto and Montreal have continued to require compliance with the greenwashing provisions of the *Competition Act*. Staff will continue to monitor the court challenge respecting these restrictions and will provide updates in the event of any impact on the City's Advertising Policy respecting greenwashing.

### **Staff Recommendation**

As described above, staff recommend that the City Advertising policies include further information on the prescribed requirements that have been recently added to the *Competition Act* referencing environmental claims or greenwashing advertisements. The City's policies currently require that all advertising content comply with federal and provincial statutes, and applicable standards set out by the Canadian Code of Advertising Standards. Further specificity will be included regarding the new requirements respecting environmental claims and any Guidelines issued by the Competition Bureau as well as complaint mechanisms.

Any advocacy advertisements that are submitted to and accepted by the City that are subsequently subject to a complaint from the public received by the City, will be addressed in first instance directly with the advertiser. In the event that the parties are unable to resolve the complaint, the City will provide the complainant with further information regarding complaint mechanisms before Ad Standards as well as under the *Competition Act*.

The Canadian Code of Advertising Standards are administered by Ad Standards, a not-for-profit self-regulatory organization for the Canadian advertising industry. Ad Standards would review any misleading advertisement claims associated with goods, services or entities on a case-by-case basis under Clause 1 (Accuracy and Clarity) of the Canadian Code of Advertising Standards. Complaints regarding advertisement content are reviewed and escalated by Ad Standards to the Federal Competition Bureau if necessary. It is recommended that the City address concerns about ads through these processes.

The importance of making use of these existing complaints processes was reinforced by the Ontario Divisional Court decision in *CHP v. City of Hamilton*. At issue in that case was a decision by Hamilton City Council requiring the removal of advertisements placed in Hamilton-area bus shelters in 2016 by the Christian Heritage Party of Canada (CHP) in relation to transgender washrooms. In its decision, the Divisional Court reaffirmed that the Charter applies to municipal decision-making processes regarding the contents of advertisements. Therefore, any decision by the municipality to remove the advertisements required consideration of Charter issues, as well as observance of the principles of procedural fairness and natural justice (e.g. adequate notice, no bias, fairness etc.).

In overturning Hamilton City Council's decision to require removal of the advertisements in question, the Divisional Court concluded that the City had denied procedural fairness and natural justice to CHP by denying the organization an opportunity to respond to the concerns raised regarding the

advertisements. As well, in 2009, the Supreme Court of Canada in *Greater Vancouver Transportation Authority v. Canadian Federation of Students – British Columbia Component* had noted that “limits on advertising are contextual” and the Canadian Code of Advertising Standards “...could be used as a guide to establish reasonable limits, including limits on discriminatory content or on ads which incite or condone violence or other unlawful behaviour.”

Staff have consulted with OC Transpo and will seek to align processes including complaint resolution mechanisms to ensure procedural fairness and consistency. In this regard, when an ad is accepted, and a subsequent complaint is received, staff will follow up with the advertiser to address any required compliance with applicable laws. Staff will also encourage anyone expressing concern about any advertisement or its placement to pursue a complaint with Ad Standards and will clarify on the City website that complaints about advertisement content can be directed to the advertiser, the [Competition Bureau](#), and submitted to [Ad Standards](#).

The above information speaks to the policy approach when the City or its third-party advertising contractor receives an advertising proposal. The City makes advertising space available on municipal assets primarily through third party advertising contractors including Pattison Outdoor Advertising, Branded Cities and Creative Outdoor Advertising and others. City Departments focus on soliciting advertising opportunities that are appropriate to the audience being targeted by the City asset being used. This approach is reflected in directives to staff and third-party agents that market and sell City advertising.

Any advocacy advertisements that are submitted to and accepted by the City or its contracted vendors will continue to transparently indicate in a prominent manner the source organization that is paying for the advertising to avoid the perception of City endorsement. The Sponsorship and Advertising Branch will also provide support and guidance to other City departments and will continue to liaise with OC Transpo to align processes with respect to the review of advertisements and complaint resolution mechanisms.

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cc.