



April 12, 2011

Mayor Gregor Robertson,
Members of City Council
City of Vancouver
453 West 12th Avenue
Vancouver, BC V5Y 1V4

Dear Mayor Robertson and Members of Council,

Re: Structures for Public Expression on City Streets - Recommendations

I write on behalf of the Vancouver Public Space Network (VPSN) to present our organization's recommended changes to the draft amendments for the Street and Traffic Bylaw. We were registered to speak on the April 7 Planning & Environment Committee meeting and intend to speak on April 19. We are submitting these remarks in advance of this time as we feel that they may offer some constructive assistance to City staff.

We begin by noting that when it comes to regulating the freedom of expression governments have a duty to use the tiniest and least infringing measures that are possible. Only measures carefully tailored to allow the widest ambit of expression will be considered constitutionally acceptable by the courts; courts have made this clear over and over again. So this notion - that we must aspire to the least regulation possible to achieve the City's aim of safety and access - is what must inform this entire legislative exercise.

The VPSN is opposed to the proposed changes to the Street and Traffic bylaw (outlined in Recommendation A of the staff report on Structures for Public Expression). We are pleased that the Mayor has reaffirmed that Vancouver is a "free speech zone"; however we are concerned that the suggested amendments to the Bylaw will actually run counter to that sentiment.

Part of what makes a city lively and desirable as a place to live is its spontaneity. The most exciting cities always have a sense of the unexpected about them, often flowing from political and artistic expression in public spaces. This bylaw would mean a curtailing or elimination of impromptu street art interventions, petition stands, leafletting, flashmobbing, and many more interesting and surprising contributions to the public realm by Vancouver residents. And this is on top of what would amount, effectively, to a prohibition on many other kinds of public *political* activity. The City is justified in its concerns around ensuring sidewalks are not unduly obstructed. It is similarly justified in regulating around matters of safety. However, the proposed bylaw amendments, as currently articulated, represent a significant over-reach as far as appropriate regulation is concerned.

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Our concerns around this report are primarily directed to:

- The ambiguity of the legal definitions
- Permit considerations that attempt to limit the duration and location of political expression
- Fees, deposits and application related constraints

and the impact that these items will have on ensuring a healthy, vibrant and diverse public realm.

We understand from the discussion at the April 7 meeting that the City is proceeding under some time constraint to get these amendments in place. We would encourage the City to seek an extension from the Court of Appeal to allow for additional time to resolve outstanding issues on the bylaw wording. Failing that, we do not believe that any significant difficulty will befall the city if section 71 of current bylaw lapses, and our confidence in this comes from the paucity of enforcement evidenced over the preceding years. In either case, "rapid fire" lawmaking on a matter of this importance is highly problematic, and will create more challenges than it solves.

We understand that contemplating this matter and attempting to resolve the issues created by the Court of Appeal decision has not been easy. It is with this in mind that we respectfully submit the following proposals for your consideration:

1. **Maintain the distinction between commercial and non-commercial structures objects, substances or things:**
 - a. Continue to prohibit all commercial structures, objects, substances or things that are used on City streets, unless allowed through the proper permitting process. (This will properly constrain a range of land-use and transportation considerations and accord with the City's Sign Bylaw (6510), Street Distribution of Publications Bylaw (9350) and License Bylaw (4450), as well as other components of the existing Street and Traffic Bylaw.)
 - b. Continue to affirm the existence of a 'non-commercial structure, object, substance or thing' as proposed (71B).
 - c. Develop a legal definition that will allow you to distinguish between small structures used for non-commercial expression (tables, chairs, banners, red tents) and large structures (full-size booths). Consider the dimensional parameters contained in 71B (3) (k) through (o) as a starting point for further consultation.
2. **Change the permitting requirements outlined in 71B (1) and (2) to reflect different sized structures:**
 - a. For small structures - eliminate outright the requirement for permitting - 71B (1), as well as 71B (2) (a) required plans and specifications; (b) required traffic management plans; (c) \$1000 security deposit; (d) release and indemnity; and, (e) non-refundable \$200 permit fee. (This will allow someone getting signatures on a petition, handing out leaflets from a chair, etc. to avoid requiring an onerous permitting process. It will also legitimate a lot of activity that takes place already.)
 - b. For large structures - maintain the permitting requirement outlined in 71B (1) but make it less onerous by eliminating 71 B (2) (b) the required traffic

management plans; (c) the \$1000 security deposit; and (e) non-refundable \$200 permit fee. (i.e. maintain 71 (2) (a) requirement for plans and specifications; and (d) executed full release and indemnity.

3. **Maintain 71B (3a-e) - ensure non-commercial structures do not unduly impede the use of public space.** In particular, affirm that all small and large non-commercial structures should not unduly (a) obstruct pedestrian or vehicular traffic; (b) interfere with utilities; (c) and (d) interfere with the use of street furniture or other structures; (e) or interfere with City works. Here, "unduly" should be defined in a way that is consistent with the allowances that the City makes for siting bus shelters, food carts, a-frame signs, newspaper boxes, etc. (i.e. non-commercial messaging should be allowed reasonable placement within or adjacent to sidewalk space, but should not block pedestrians). Recall that where free expression is concerned, some inconvenience may be "due". Where structures do unduly impede public space ensure that the first line of response by the City is a verbal warning.
4. **Locational considerations - safety at street side.** Ensure that large and small structures are placed in a safe location, and are structurally sound. Maintain requirements around curb-to-structure distance - 71B (3) (j). Maintain the requirement for setbacks from building entrances, bus stops, street intersections, etc. - sections 71B (3) (h) and (i) - but consider reducing the minimum setback from five metres to three meters. Maintain requirements around sound construction, safe repair and emergencies - 71B (3) (q), 71B (4) (c) and 71D - thus ensuring that political expression is done in safe fashion.
5. **Locational considerations - zoning.** Eliminate 71B (3) (g) and related Schedule F, which effectively eliminates non-commercial communication in residential zoned areas. Opportunities for non-commercial expression should be available in all zones in the city. Difficulties arising as a result of such activity, which we believe will be infrequent, can be dealt equitably with through other means under the law.
6. **Duration of structure/Term of permit.** Eliminate 71B (3) (b), 71B (4) (a), and Section 71C (a) through (d). These sections place undue limitations on political expression, requiring that permit holders only be allowed one permit at a time, each for a maximum of 30 days and further require that each permit holder only receive a maximum of six 30 day permits a year. Finally, these provisions require that structures be dismantled between 8pm and 8 am.
7. **Additional Items.** Section 71B (5) contains a number of restrictions around the use of electronic signs, gas lighting, barbecues, etc. We note that in some instances, it may be possible to use extension cords that draw power from an adjacent building, or from a small battery, or similarly to use battery operated signs (such as mini reader boards). We suggest eliminating 71B (5) (a) and (71B (5) (c) from this section. The point here is to be safe, and to not have cords on the ground where they could be a tripping hazard - but this can be specified in the bylaw without eliminating the use of these items all together.

We would add that we support the submissions made by the BC Civil Liberties Association during their presentation on April 7. While our above suggestions differ in the details from theirs, we approach this issue in the same spirit.

Thank you, Mayor Robertson and Members of Council, for the opportunity to present input on these issues. If the VPSN could be of any further assistance on these issues, please do not hesitate to contact me at your convenience.

Yours truly,

A handwritten signature in black ink, appearing to read 'Adam Vasilevich', with a long, sweeping flourish extending to the right.

Adam Vasilevich
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Vancouver Public Space Network

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