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CITY OF KELOWNA

MEMORANDUM

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**Date:** June 3, 2009  
**File No.:** 2210-20  
**To:** City Manager  
**From:** City Clerk  
**Subject:** Regulation of the Sale of Graffiti Tools

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**RECOMMENDATION:**

THAT Council direct staff not to proceed with drafting a bylaw regulating the sale of graffiti tools for the reasons outlined in the report of the City Clerk dated June 3, 2009.

AND THAT Council authorize the Mayor to write to the provincial government encouraging an amendment to the *Community Charter* that would provide municipalities the ability to regulate the sale of graffiti tools.

**BACKGROUND:**

During the Monday, May 25<sup>th</sup>, 2009 Regular Council Meeting, after a presentation from Superintendent McKinnon, OIC Kelowna Detachment, Council adopted the following resolution:

THAT Council direct staff to report back to Council on whether the City can adopt a bylaw regulating or prohibiting the sale of graffiti tools;

AND THAT Council authorize the Mayor to write a letter to the Premier indicating Council's concern regarding the lack of regulation regarding the sale of graffiti tools.

Staff has looked into whether the City can use its business regulations powers to provide that businesses may only sell specific items such as spray paint and indelible markers ("graffiti tools") to persons who:

- (a) produce identification; and
- (b) are adults; and/or
- (c) have their names added to a list of purchasers.

The City Solicitor has responded that in their opinion, a bylaw requiring a list of such purchasers for the purposes of aiding police investigation is beyond the authority of the City, and that prohibiting the sale of graffiti tools to minors for the purposes of reducing vandalism, while within the City's business regulation powers, would nevertheless unjustifiably infringe rights guaranteed under the *Charter of Rights and Freedoms*. Staff agrees with the City Solicitor's opinion.

Reference to this opinion was included in the report and presentation to Council by the Director, Civic Operations, during the March 23, 2009 afternoon Council meeting.



**LEGAL/STATUTORY AUTHORITY:**

*Community Charter*

*Charter of Rights and Freedoms, Part I of the Constitution Act, 1982.*

Considerations that were not applicable to this report:

**INTERNAL CIRCULATION TO  
LEGAL/STATUTORY PROCEDURAL REQUIREMENTS  
EXISTING POLICY  
FINANCIAL/BUDGETARY CONSIDERATIONS  
PERSONNEL IMPLICATIONS  
TECHNICAL REQUIREMENTS  
EXTERNAL AGENCY/PUBLIC COMMENTS  
COMMUNICATIONS CONSIDERATIONS  
ALTERNATE RECOMMENDATION**

Submitted by:

  
S. Fleming, City Clerk

Approved for Inclusion:



R. Mayne, Director, Corporate Services

cc: General Manager, Corporate Sustainability  
OIC, RCMP Kelowna Detachment

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**BACKGROUND:**

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ALTERNATE RECOMMENDATION**

Submitted by:

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*S. Fleming, City Clerk*

Approved for Inclusion:

*R. Mayne, Director Corporate Services*

cc: General Manager, Corporate Sustainability  
OIC, RCMP Kelowna Detachment