

Date: March 31, 2022

To: Chair and Members of General Committee

From: Geoff Wright, P.Eng, MBA, Commissioner of
Transportation and Works

Originator's files:

Meeting date:
April 27, 2022

Subject

Residential Video Surveillance Cameras

Recommendation

1. That the report from the Commissioner of Transportation and Works, dated March 31, 2022 entitled "Residential Video Surveillance Cameras" be approved.
2. That Fortification By-law 511-04, be repealed and replaced, as outlined in the report from the Commissioner of Transportation and Works, dated March 31, 2022 entitled "Residential Video Surveillance Cameras".

Executive Summary

- In response to home video surveillance issues that could not be adequately addressed through the existing Fortification By-law, Enforcement received direction to review the By-law.
- Staff conducted a jurisdictional scan of Fortification By-laws and regulations in nine comparable municipalities.
- Staff recommend amending the definition of excessive protective elements in the By-law in order to allow for more effective enforcement. The proposed By-law amendments will allow staff to respond to complaints about video surveillance on neighbouring properties.
- These amendments, along with an enhanced enforcement response, will address privacy concerns raised by residents. Staff are also recommending process changes in order to track the extent of the issue.

Background

Technological advances have resulted in an increase in the use of home video surveillance cameras. In 2019 and 2020, Enforcement received Councillor inquiries regarding home video surveillance privacy concerns that could not be adequately addressed through the existing Fortification By-law. Given the ubiquitous nature of home video surveillance cameras, there is a need to update the By-law to reflect the current landscape of home surveillance and allow for more effective enforcement.

Present Status

Video surveillance is addressed in the City's Fortification By-law 0511-2004, which was last updated in 2004. Section 3(2) of the By-law states that "no person shall apply, cause to be applied, or permit the application of, Excessive Protective Elements". Excessive Protective Elements includes visual surveillance equipment as defined in section 2(8) (iii) as:

"means devices, objects, material components, or any contrivance **designed to unduly control, hinder, restrict or prohibit** lawful access to or from and includes but are not limited to the application of visual surveillance equipment, including video cameras, 'night vision' systems, or electronic listening devices **capable of permitting** either stationary or scanned viewing or listening, by an operator or viewer or listener of that equipment, beyond the perimeter of the land actually owned, leased or rented by the occupant, which is prohibited under section 3 of the by-law". [Emphasis added]

In order to establish that a person is using an Excessive Protective Element such as video surveillance on their property, Compliance Licensing Enforcement (CLE) Municipal Law Enforcement Officers (MLEOs) must establish that the device is both designed to control access and is capable of permitting either stationary or scanned viewing or listening beyond the perimeter of the land.

Currently complaints about video surveillance are only accepted by 311 if the surveillance cameras are being used to restrict lawful access to law enforcement officers or emergency services. Since 2019, 29 complaints of this nature have been investigated by CLE, though many were later found to be in compliance with the existing By-law requirements.

However, if the caller indicates that their issue is with a neighbouring property owner directing camera(s) towards their property, then the call is not accepted by 311. The resident is informed that their issue is a civil matter or possibly a criminal matter and is re-directed to Peel Regional Police. Therefore, the extent of potential video surveillance violations is unknown.

Comments

Jurisdictional Scan:

Staff examined Fortification By-laws and regulations in nine comparable municipalities (Appendix 1). Markham, Oakville and Toronto do not address video surveillance complaints and currently do not have by-laws that regulate video surveillance. However, Toronto is in the process of assessing the feasibility of prohibiting or restricting surveillance cameras.

Of the jurisdictions that have By-laws, enforcement varies. Brampton does not accept complaints about CCTV cameras on private property. Only Burlington, Hamilton and Vaughan conduct onsite investigations in response to complaints. Burlington's By-law allows for homeowners to make reasonable efforts to protect their homes provided that they use commercially available security devices that do not meet the definition of excessive protective elements.

In Hamilton and Vaughan, MLEOs conduct progressive enforcement and may request access to live footage or screen shots of surveillance cameras. If the camera is capturing a view outside of their property, they educate the resident on the By-law and ask them to adjust the field of view. If the resident refuses to provide evidence of compliance, then MLEOs may proceed with obtaining a search warrant or laying a charge through the By-law. Additionally, in some jurisdictions, such as London, complaints are directed to police and not responded to by City staff.

In all jurisdictions with a fortification by-law, charges are a Part Three charge with the penalties specified in accordance with the *Provincial Offences Act, R.S.O. 1990*. Although there is limited and varied enforcement, there is a trend towards responding to this emerging issue.

Fortification By-law Amendments:

Currently, MLEOs need to establish a manufacturer's intent in that the device was "designed to unduly control, hinder, restrict or prohibit lawful access" to or from the property in order to lay a charge under the By-law for Excessive Protective Elements (such as surveillance cameras), making it very difficult for Enforcement to lay a charge. In addition, MLEOs need to establish that the device is capable of recording which would require admission from the owner or access to the device.

To assist with enforcement on an ongoing basis, staff recommend amending the definition of "Excessive Protective Elements" in the By-law by removing the requirement to establish the intent behind an Excessive Protective Element and also lowering the threshold to devices that appear capable of permitting viewing or listening beyond the perimeter of the land. This will remove the requirement for the City to establish and prove the manufacturer's intent and the capability of residential security camera applications and other Excessive Protective Elements in order to lay a charge.

This change will allow staff to take and adequately respond to complaints about cameras on properties that may capture activity on an adjacent property. However, it will not affect any stationary device (no pan tilt zoom) on the front wall of the property or any cameras that appear to be recording images solely within the land such as those devices designed to provide the homeowner with the identity of a person entering on to their property (e.g. doorbell cameras).

In addition, staff are recommending the following housekeeping amendments:

- The introduction of a minimum set fine of \$500 through the *Provincial Offences Act* for contraventions of the By-law to help ensure compliance.
- Explicitly setting out the enforcement powers as permitted by Section 436 of the Municipal Act, such as the ability to require the production of documents and the ability to inspect and remove documents.
- Making the Director of Enforcement the administrator of the By-law instead of the Chief Building Officer, since the by-law is enforced by Enforcement MLEOs.
- Permitting the Director of Enforcement the ability to grant exemptions instead of requiring that the decision be made by Council; but including a requirement that the Director consult with the affected Ward Councillor before making a decision.
- Adding a requirement to the exemption process to allow the Director of Enforcement to request additional information or documents.

Process Changes:

Citizen Contact Centre (311) staff will expand complaint intake to include complaints about cameras on neighbouring properties. To facilitate better data collection, staff will implement a new service request code to better track complaints and outcomes.

Enforcement Response:

The proposed by-law amendments will enhance staff's ability to respond to complaints, resulting in an increased number of surveillance related complaints being processed, investigated and resolved by the City. CLE will take a progressive enforcement approach. MLEOs will collect evidence to ascertain whether the field of view extends beyond the owner's property, including, if deemed necessary, requesting the subject of the complaint provide screenshots of the field of view of their surveillance device.

Where a property owner refuses to supply evidence of compliance and other physical evidence is present which indicates a contravention of the By-law is taking place, the Officer will proceed with a Part Three charge through the *Provincial Offences Act*. This is a charge that must be brought before a Justice of the Peace for resolution. Any resulting fines are set by the Justice and collected by the province. In instances where a MLEO believes that criminal activity may be taking place at the property, the matter will be referred to Peel Regional Police.

Financial Impact

There are no financial impacts resulting from the recommendations of this report.

Conclusion

In response to Council direction, staff reviewed the Fortification By-law and have provided recommendations for amendments that will support increased enforcement. The proposed by-law amendments will provide clarity, while the recommended process changes will allow staff to track the extent of the issue. This along with the proposed enhanced enforcement response, will address privacy concerns raised by residents.

Attachments

Appendix 1: Jurisdictional Scan



Geoff Wright, P.Eng, MBA, Commissioner of Transportation and Works

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