

Staff Report



To	Committee of the Whole
Service Area	Public Services
Date	Tuesday, October 1, 2024
Subject	Residential Security Cameras By-law Review

Recommendation

1. That staff be directed to create optional guidelines for proper use of residential security cameras.
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Executive Summary

Purpose of Report

The purpose of the report is to present the findings of the residential security cameras by-law review that City staff conducted as part of the standard by-law review process to ensure that the current by-laws meet the needs of the residents of Guelph. Based on the findings from these reviews, staff may make recommendations for change to existing by-laws or develop new ones.

Key Findings

- Municipalities have the authority to pass a by-law restricting the use of residential security cameras, and other municipalities have done so.
- A by-law regulating residential security cameras would have to balance competing Charter rights – the public's right to privacy with the homeowner's right to security.
- This type of by-law is relatively new in Ontario and the law is not yet established. A residential security camera by-law could be subject to a legal challenge under the Charter.
- Creating a guideline rather than a by-law could achieve the objectives and avoid legal risk.

Strategic Plan Alignment

A residential security cameras by-law review would align with Guelph's strategic goal of supporting community well-being by investigating what the City can do to address concerns with residential security cameras.

Future Guelph Theme

People and Economy

Future Guelph Objectives

People and Economy: Support community well-being

Financial Implications

This review was conducted within the existing Operations Department budget. If Council passes the recommendations, work will be completed by existing resources; therefore, there will be no additional operational costs.

Report

As per the Canadian Charter of Rights and Freedoms (the "Charter"), the right to privacy is a fundamental right that protects an individual's reasonable expectation of privacy. Notably, this right primarily aims to safeguard individuals rather than specific locations. The scope of this right is vast and includes protecting personal space, territory, and information. It guarantees that individuals have control over their personal information, and no one can access it without their consent or a judicial order. The right to privacy protects individuals from unwarranted intrusion into their personal lives.

Regarding residential properties, individuals can expect only to be recorded in areas visible from public roads or neighbouring properties. Only the interior of a resident's property cannot be filmed. However, backyards with fences are a grey area in the law and have faced court challenges. Guelph residents can enforce privacy violations through a civil suit or police action.

Currently, the Guelph Police have a program called "SCANinGuelph Security Camera Registry", which encourages private landowners with cameras to share location details with police to aid in possible crime investigations. The police do not have access to the feed, only the location data, and they will ask the landowners to turn over footage of interest voluntarily.

According to a recent survey by the National Crime Prevention Council, 80 per cent of burglars said they would be deterred from committing a crime if they knew that a home was equipped with a security camera system. Additionally, a University of North Carolina study found that 74 per cent of convicted burglars said that the presence of a home security camera would make them think twice before attempting a burglary. There is evidence that home cameras benefit the homeowner by providing a visible deterrent, aiding in investigating a possible crime on the property, and providing peace of mind to the homeowner.

It's important to acknowledge that more than 1.4 million smart cameras were purchased in North America in 2020. Market experts anticipate this market will grow by 20.3 per cent by 2030. Home cameras are becoming increasingly ubiquitous in our daily lives.

Legal Implications

Although a municipality possess the authority to pass a by-law restricting the use of residential security cameras – often referred to as a Fortification By-law – such a by-law would have the difficult task of balancing competing rights under the Charter; specifically, the public's right to privacy with the homeowner's right to security. Thus, a by-law regulating residential security cameras could be subject to a legal challenge under the Charter.

Further, any restrictions that impair the right to security would have to be as minimal as possible and permit reasonable security measures. For example, a by-

law that broadly banned any security cameras would likely be unjustifiably disproportionate to the by-law's objective and likely be declared to be in breach of the Charter.

In other municipalities, these by-laws usually only restrict residents from installing security cameras that capture public spaces or other residents' private property. However, the field of view captured by a given camera may not be readily apparent or may be adjustable. This creates an additional complication with respect to enforcement as officers may need to gain access to the residence and view the footage being captured before determining if the by-law was breached.

A search of the available Court decisions on this issue has revealed only one case in Ontario where a by-law on this issue was challenged, *Oshawa (City) v Lee* ("Lee"). Here, the residential property owner had installed eleven security cameras on his property to deter vandalism, trespass, and harassment. The Bylaw Enforcement Officer was granted a search warrant and by viewing the footage determined that the surveillance extended beyond the perimeter of the owner's property and included views of the public street and his neighbours' yards. As a result, he was charged under the City's Fortification By-law.

The homeowner challenged the by-law's validity, but the Court upheld it, ruling that the by-law "strikes a reasonable balance between public and private interests by affording its residents the right to monitor for theft or other criminal activity on their own respective properties, while serving the public interest of privacy and peaceful enjoyment by residents on [nearby properties]".

Given that there is currently a lack of case law on this issue, guidance on how to achieve the appropriate balancing of the Charter rights at issue is not yet clearly established. Creating a guideline on the proper use of residential security cameras rather than a by-law would avoid the issue of a challenge under the Charter.

If direction is given to put a by-law in place, care should be taken to minimally restrict the use of residential security cameras—as occurred in *Lee*—so that they do not capture images or audio from public spaces or other resident's private property.

Financial Implications

This review was conducted within the existing Operations Department budget. If the recommendations are passed by Council, work will be completed by existing resources; therefore, there will be no additional operational costs.

Consultations and Engagement

If the by-law is approved as proposed, Operations staff will work internally with the team in Community Engagement to determine the appropriate level and method of public engagement.

Recommendations

Staff recommend that Council direct staff to create optional guidelines for proper use of Residential Security Cameras.

Staff recommend against regulating home surveillance cameras, as by-law compliance officers do not have the right to demand access to private dwellings to monitor the footage captured. If a homeowner does show Bylaw Compliance Officers what the camera captures, the angle could easily be adjusted at any time.

Both the cities of Barrie and London have also decided to not regulate residential security cameras due to these same concerns.

Attachments

None

Departmental Approval

None

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