
TO: GENERAL COMMITTEE

SUBJECT: DOMESTIC VIDEO SURVEILLANCE SYSTEMS AND DRONES

WARD: ALL

PREPARED BY AND KEY CONTACT: D. MCALPINE, GENERAL MANAGER OF COMMUNITY AND CORPORATE SERVICES, EXT. 4421

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GENERAL MANAGER APPROVAL: D. MCALPINE, GENERAL MANAGER OF COMMUNITY AND CORPORATE SERVICES

CHIEF ADMINISTRATIVE OFFICER APPROVAL: M. PROWSE, CHIEF ADMINISTRATIVE OFFICER

RECOMMENDED MOTION

1. That Staff Report CCS001-18 concerning Domestic Video Surveillance Systems and Drones, be received for information purposes.
2. That a communications campaign be conducted utilizing existing resources and tools to educate the public regarding appropriate use of video surveillance and drones.

PURPOSE & BACKGROUND

Report Overview

3. The purpose of this Staff Report is to provide information regarding the investigation into the implementation of a by-law to regulate home security video surveillance systems/domestic closed-circuit television surveillance (CCTV) and drones with cameras. The request for the information related to concerns regarding homeowner video surveillance that appeared to extend beyond the perimeter of their own property and into a neighbour's property, with the neighbour expressing concerns for their family's privacy.
4. The report identifies that while a number of municipalities have Fortification of Land By-laws that include provisions related to excessive protective devices such as video surveillance, the by-laws were not originally implemented to address homeowner disputes, are challenging to enforce effectively for these types of disputes and administering the by-laws often require significant staff time.
5. This report also identifies that there are existing circumstances where use of these devices are already regulated and enforced by Police, Transport Canada, and the Information and Privacy Commissioner. Depending on the specific circumstances in which video surveillance and drones are utilized, the person operating them may be subject to Criminal Code charges, Transport Canada charges, Privacy Commissioner investigations and/or civil litigation.

Background

6. On June 19, 2017, City Council adopted motion 17-G-175 as follows:

“INVESTIGATION - POTENTIAL BY-LAW REGULATING HOME SECURITY VIDEO SURVEILLANCE SYSTEMS

That staff in the Legislative and Court Services and Legal Services Departments investigate the feasibility of implementing a potential by-law to regulate home security video surveillance systems/domestic closed-circuit television surveillance and drones with cameras and report back to General Committee.”

Criminal Code of Canada Offences, Privacy Issues

7. Visual recordings, depending on the specific circumstances under which they were taken, may constitute voyeurism (Section 162), criminal harassment (Section 264) and/or intimidation (Section 423), all Criminal Code of Canada offences. Criminal Code offences are enforced by the Police. Specific definitions apply to these offences and only in these limited circumstances would a person be charged for these offenses.
8. If a person is surreptitiously making a visual recording of a person for sexual purposes, it can be considered voyeurism. If a person compels another person to abstain from doing anything that he/she has a lawful right to do, by watching the place where the person resides, works, or carries on business, etc. it may be considered intimidation. Similarly, causing another person to fear for their safety or the safety of anyone known to them by watching their dwelling or where they reside, work, carry on business, etc. may be considered criminal harassment and is often referred to as stalking.
9. Theoretically, the operator of a video surveillance camera or drone taking pictures or videos of someone without the person’s consent could be subject to a claim for breach of privacy. The question would be whether the conduct in question was “highly offensive” to a “reasonable person”. Video surveillance and drone operators are also potentially liable for other breaches of privacy, such as the theft of personal information. Complaints regarding these matters would be addressed by Federal Privacy Commissioner and/or civil litigation.
10. In addition, drone operators could be liable for property damage arising from negligent conduct, including damage to aircraft. The typical means of addressing property damage is through civil litigation.

ANALYSIS

11. Staff contacted a number of municipalities with respect to by-laws regulating domestic video surveillance/home security and drones. Staff also met with representatives of Barrie Police Service to discuss regulation and enforcement related to video surveillance equipment and drones.
12. Over the last five years, Enforcement staff have received very few enquiries with respect to concerns related to domestic video surveillance or drones. A portion of the enquiries related to questions concerning what regulations applied to video surveillance or drones. Staff can recall less than half a dozen enquiries in the last five years where the individual contacting staff alleged that the use of domestic video surveillance and/or drones may have constituted voyeurism, criminal harassment, intimidation, breach of privacy or property damage. As the City doesn’t currently regulate domestic video surveillance or drones, complaints that appeared to relate to a Criminal Code matter were referred to the Barrie Police Service.

13. A representative from Barrie Police Service indicated that in the last two years, a total of seven complaints had been received related to security cameras or drones. Two complaints had been received related to alleged harassment/invasion of privacy associated with security cameras. Five complaints had been received related to the inappropriate use of drones, one of which related to the drone presenting an alleged traffic hazard and the four remaining matters related to neighbourhood or domestic disputes involving harassment/invasion of privacy.

Video Surveillance

14. Staff were unable to locate any municipalities within Ontario with by-laws solely related to regulating home security video surveillance/domestic closed circuit television surveillance systems. However, a number of municipalities currently have Fortification of Land By-laws, which were typically enacted to provide the authority for law enforcement officials to address the excessive fortification of properties that was often associated with gang or organized criminal activities.
15. Many of these by-laws include provisions that restrict or prohibit excessive protective devices or elements. In some cases, the definitions of excessive protective devices include references to devices that may restrict, hinder or deny access to or from land (electrified fencing, doors, windows, or hidden traps) or perimeter warning devices, such as video surveillance equipment. In these cases, the intent of the by-law provisions was to provide broad public safety by identifying certain video surveillance actions as excessive where the surveillance might be used by criminals to provide advance warning of Police or other emergency/enforcement attendance at the property.
16. Copies of Fortification of Land by-laws were obtained from Hamilton, London, Burlington, Vaughan, Newmarket, Town of Minto, Township of Smith-Ennismore-Lakefield, Township of Puslinch, Township of Uxbridge, Oshawa, and Windsor. Staff contacted a number of municipal representatives to discuss their individual Fortification of Land By-laws, to determine the rationale for the municipality's specific by-law provisions, enforcement practices and details related to any charges laid under the by-law.
17. The specific provisions and enforcement activities varied from municipality to municipality. In some cases, the specific definition used within a Fortification of Land By-law related to excessive protective devices did not allow for the municipality to address homeowner disputes. However, in other cases, excessive protective elements were defined in a manner that allowed for enforcement of homeowner disputes. In these cases, the definition of excessive protective elements included visual surveillance equipment capable of permitting viewing or listening and designed or operated to listen or view persons or land beyond the perimeter of the land actually owned.
18. Under these circumstances, both Police and municipal law enforcement resources could be utilized to address these neighbourhood disputes based on the definitions and provisions in the by-law and/or the Criminal Code of Canada.
19. Upon receipt of a complaint, the municipal law enforcement approach taken was as follows:
 - The Officer would attend the subject property and check for a camera from the street;
 - If a camera was present and appeared to be pointed beyond the perimeter of the land, the Officer would knock on the door to speak with the homeowner or resident present;
 - The Officer informed the resident/homeowner of the by-law requirements;
 - If provided entry into the home (as Municipal Law Enforcement Officers do not have an automatic right of entry into a dwelling unit), the Officer requested to see the computer screen;

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- If permission was granted, the Officer checked the computer screen to determine if the camera view extended beyond the perimeter of the land (and to what extent) at the time of inspection;
 - The Officer requested permission to take images of the screen to document his/her investigation or as evidence;
 - If the camera was operational and it was clear that the camera view was directed in a manner that was specifically beyond the perimeter of the property (versus a direction that was reasonably required to protect the property from theft or other criminal activity and only included a portion of a neighbour's lands), the Officer re-informed the resident/homeowner of the by-law requirements and requested compliance (and took further images of camera screen if compliance was achieved).
20. While many homeowners complied with the by-law requirements upon being informed of them or after an inspection, the representatives of the other municipalities noted challenges related to obtaining permission to enter homes and view video surveillance screens.
21. They identified particular challenges with property owners who would not allow for a re-inspection to ensure compliance had been maintained. They noted that homeowners may have provided permission for an initial inspection and appeared at the time to comply with the by-law by moving the direction of view of the camera. Subsequently, they received complaints from the neighbours alleging that the homeowners had moved the camera back to a direction to once again view beyond the perimeter of the property. They advised that in many of these cases the homeowner with the camera would deny entry into the home for a second inspection. In order to proceed any further, the Officer would need sufficient evidence to apply for and obtain a search warrant from the judiciary. Most had not attempted to obtain search warrants as the evidence that they were able to obtain from the exterior would not likely be deemed sufficient by the judiciary.
22. The municipal representatives also identified challenges associated with "dummy" cameras as they could not inform complainants that the camera was not actual viewing or recording and could only advise that "no violation was found", which led to questions and concerns regarding whether the Officer had in fact attended to the complaint.
23. At least two of the municipalities included provisions in their by-laws to allow for applications for an exemption to the by-law requirements related to video surveillance. These exemptions were specifically included as an option to address neighbours who had disputes with each other that had extended to alleged property damage or other criminal actions. An exemption could be granted if a previous Police report had been filed related to damage to the property and the purpose of the surveillance was to prevent and/or document further damages to the property, upon Police concurrence.
24. Staff were able to find one instance where charges had been laid under a Fortification of Land by-law related to "excessive protective elements to land" for video surveillance. In this case, the homeowner had 11 cameras affixed to their house, fence, and a television tower, as well as a number of signs posted around the property advising of the video surveillance and potential actions that would be undertaken against individuals who violated the homeowner's view of the boundaries of the property. The homeowners had denied entry into the home on several occasions. The Officer was able to obtain a search warrant given the placement and number of cameras and nature of the signage. After obtaining entry, the Officer was able to document that the video surveillance from the 11 cameras had views well beyond the property of the homeowners and the use of the cameras went well beyond "reasonable protection" that would not offend the by-law. The defendants challenged the by-law charge(s), the validity of the by-law and the search of the property.

25. The charges laid in November of 2013 (after complaints and an investigation initiated in June of 2013), were upheld by the Court when it issued its decision in October of 2015, due in large part to the numerous video surveillance cameras and the excessiveness of the views well beyond the perimeter of the homeowner's property.
26. In another case, the general validity of a Fortification of Land by-law was challenged by owners/representatives of a property known to be a clubhouse for a motorcycle club. The by-law was subsequently upheld. The rest of the municipal contacts advised that they had not laid a charge under their by-law.
27. Most of the municipalities' representatives identified that their by-laws were challenging to enforce effectively and that the investigation of complaints under the by-law required a significant amount of staff time, with no opportunity for cost recovery as charges were not able to be laid.

Drones/Unmanned Aerial Vehicles

28. Staff were unable to locate any municipalities with municipal by-laws regulating the use of drones or unmanned aerial vehicles (UAVs) for all property within the municipality. At least one municipality has a by-law banning the use of motor-driven model airplanes in municipal parks and facilities, without authorization by City officials but the municipal officials were of the opinion that it could not be utilized for drones. Another municipality had a by-law that prohibited the use of drones over municipal property, without the consent of the municipality.
29. In March of 2017, Transport Canada established rules for recreational drone users in an Interim Order Respecting the Use of Model Aircraft. The rules were updated in July of 2017.
30. If a drone is used for recreational purposes and it weighs less than 35 kg (77.2 pounds), a person is not currently required to obtain special permission from Transport Canada to fly the drone. However, if an individual is flying a drone weighing over 250 g (0.0055 pounds) and under 35 kg, the individual is subject to a number of rules related to the operation of the drone or model aircraft. These rules require drones to be flown:
 - Within 90 metres (300 feet) above the ground or lower;
 - At least 30 metres (100 feet) away from vehicles, vessels, and the public (if the drone weighs more than 250 g: up to 1 kg (2.2 pounds));
 - At least 75 metres (approximately 250 feet) away from vehicles, vessels, and the public (if your drone weighs more than 1 kg up to 35 kg;
 - At least 5.5 kilometres (3.42 miles) from aerodromes (any airport, seaplane base, or areas where aircraft take-off and land);
 - At least 1.8 kilometres (1.12 miles) away from heliports or aerodromes used exclusively by helicopters;
 - At least 9 kilometres (5.6 miles) away from a natural hazard or disaster area;
 - Away from areas where it could interfere with police or first responders;
 - During the day and not in clouds;
 - Within the operator's sight at all times;
 - Within 500 metres (1640 feet) of the operator or closer; and
 - Only if clearly marked with the owner/operator's name, address and telephone number.
31. If a person flies a drone where they are not allowed or don't following the rules, the person could face fines of up to \$3,000.

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32. The operator/owner is exempt from the rules in the Interim Order, if the drone is operated at an event organized by the Model Aeronautics Association of Canada (MAAC) or at airfields administered by the MAAC or an MAAC Club.
33. Based on the Transport Canada regulations, the flying of many drones is generally prohibited for recreational users in a significant portion of the City (e.g., within 1.8 kilometres/1.12 miles of the hospital or within 5.5 kilometres/3.42 miles of the Barrie Springwater Airpark) in addition to the restrictions related to proximity to vehicles, vessels, and the public.
34. If a person flying a drone was in violation of these rules, Transport Canada could be contacted to address the enforcement issues or a formal complaint could be made to the federal Privacy Commissioner's office. Drone operators who improperly use these devices could be subject to criminal charges, statutory fines and expensive civil litigation if their drones are not used responsibly.
35. The regulation of drones is relatively recent in Canada and is expected to continue to evolve as concerns related to the safety of aircraft and the public as well as privacy concerns are presented.
36. Generally, a municipality does not have the authority to impose stricter standards than those imposed by the Provincial or Federal government. As a result, the City would likely be deemed to be exceeding its authority if it enacted and attempted to enforce stricter regulation of drones through the creation of a municipal by-law.
37. A municipality could create a by-law that merely mimicked the Transport Canada regulations if the by-law was intended to protect public safety. While enacting such a by-law would allow for the municipality as well as Transport Canada to enforce the same regulations, there are significant challenges associated with enforcing such by-laws for any enforcement agency. Barrie Police Service representatives identified challenges including :
- Knowing who is flying the drone, since the operator may well be out of sight, and the machine doesn't have a licence plate and may not have the required identifying features (such as the requirements included in Transport Canada regulations for owner/operator name, address and telephone number);
 - Locating and obtaining access to the machine to determine whether it has a camera;
 - Obtaining access to any associated computers/devices to determine what images may have collected;
 - Ensuring that the images are not deleted prior to evidence being collected if a violation occurred; and
 - Proving that personal information was collected with the camera, privacy was breached or that the conduct related to the drone use was either criminal or highly offensive to a reasonable person.
38. If the municipality chose to implement a by-law to regulate either video surveillance or drones, or both, resources to administer and enforce the by-law would be required for it to be effective. The enactment of a by-law preventing certain actions in and of itself does not guarantee compliance. It requires enforcement, particularly in cases where individuals do not feel that their actions should be regulated.
39. Existing enforcement resources are not anticipated to be adequate to address this type of by-law. Based on existing resources and the information from other jurisdictions, it is anticipated that the equivalent of at least one additional part time employee would be required to address complaints made under this type of by-law. As the volume of complaints and amount of compliance on first attendance at properties varied between the municipalities consulted, more than one part time equivalent employee may be necessitated.

40. Based on the experience of other municipalities and the insights provided by Barrie Police, it is unlikely that there would be any cost recovery for the additional staff resources required. Enforcement of this type by-law would require an increase to the Enforcement Services budget.

Communications Campaign – Appropriate Use of Domestic Video Surveillance and Drones

41. Many consumers may not be aware of the potential for criminal code offences, privacy complaints or civil litigation associated with inappropriate use of domestic video surveillance and drones. The Surveillance Camera Commissioner in the United Kingdom published a guiding document entitled Domestic CCTV: using CCTV systems on your property that includes items to consider if a person is considering installing or has already installed closed circuit television surveillance (<https://www.gov.uk/government/publications/domestic-cctv-using-cctv-systems-on-your-property/domestic-cctv-using-cctv-systems-on-your-property>). Transport Canada provides information regarding the use of drones.
42. Staff are recommending a communications campaign be undertaken to educate consumers of drones and home security systems regarding privacy concerns and the appropriate use of home security systems and drones. Existing tools such as the City website, social media, Barrie Digest (eNews) and the This Week in Barrie (TWIB) page in the Barrie Advance would be used for this campaign.

ENVIRONMENTAL MATTERS

43. There are no environmental matters related to the recommendation to receive the report for information purposes.

ALTERNATIVES

44. The following alternatives are available for consideration by General Committee:

Alternative #1

General Committee could request that a by-law be presented to regulate home security systems and provide the necessary additional resources to address the administration and enforcement of such a by-law.

Although this alternative is available it is not recommended. As discussed in the Staff Report, there are existing enforcement options or civil action available to individuals if criminal activities, privacy breaches or property damage are in fact occurring. If concerns relate to criminal or civil matters, there are two systems already in place: police and civil litigation, which are more effective and efficient at handling these concerns. The municipalities consulted identified that their Fortification of Land by-laws were challenging to enforce effectively. Investigation of complaints under the by-law required a significant amount of staff time in many municipalities. Additional staff resources would be required to address this type of by-law, which would require an increase to the Enforcement Services budget.

Alternative #2

General Committee could request that a by-law be presented to regulate drones mimicking the current Federal regulations and provide the necessary additional resources to address the administration and enforcement of such a by-law.

Although this alternative is available it is not recommended. There are existing enforcement options or civil action available to individuals if criminal activities, privacy breaches or property damage are in fact occurring. If concerns relate to criminal or civil matters, there are two systems already in place: police and civil litigation, which are more effective and efficient at handling these concerns. Municipal regulations cannot supersede Provincial or Federal regulations and it is expected that the Federal regulations will continue to evolve. There still would be significant challenges in enforcement of the by-law and it may require significant staff time. Additional staff resources would be required to address this type of by-law, which would require an increase to the Enforcement Services budget.

Alternative #3

General Committee could decide that a communications campaign regarding appropriate use of video surveillance and drones is unnecessary.

This is a viable option as a relatively small number of enquiries have been received related to the use of these devices. The proposed communications campaign would utilize existing tools and resources, and as a result staff believe that it may be of assistance in proactively addressing issues where consumers may not be aware of the concerns.

FINANCIAL

45. There are no financial implications associated with the recommendation to receive the report for information purposes and undertake a communications campaign utilizing existing tools and resources.
46. Should General Committee wish to proceed with implementing a by-law to regulate video surveillance and/or drones, at least one additional part-time Municipal Law Enforcement would be required.

LINKAGE TO 2014-2018 STRATEGIC PLAN

47. The recommendation(s) included in this Staff Report is not directly related to the goals identified in the 2014-2018 Strategic Plan.