



INFORMATION REPORT

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	January 16, 2019
SUBJECT/REPORT NO:	Fortification and Protective Elements of Land By-law (PED19022) (City Wide) (Outstanding Business List Item)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Kim Coombs (905) 546-2424 Ext.1318
SUBMITTED BY:	Ken Leendertse Director, Licensing and By-law Services Planning and Economic Development Department
SIGNATURE:	

Council Direction:

At its meeting of February 14, 2018 Council approved General Issues Committee Report 18-004 Item f(i) directing Municipal Law Enforcement staff to work, in collaboration with the City's Freedom of Information staff and Hamilton Police Services, to review the current CCTV By-law (Fortification and Protective Elements of Land By-law) to assess the feasibility of amending the By-law to permit the use of CCTV footage from cameras, located on private properties that face from the property to the public roadway, to assist in policing and public safety, and report back to the General Issues Committee.

Information:

The City of Hamilton Fortification and Protective Elements of Land By-law 10-122 (Fortification By-law) was created and is enforced by the Building Division. This By-law was originally created to prevent fortification of buildings from Outlaw Motorcycle gangs and to ensure the safety of emergency personnel including police.

The Information and Privacy Commissioner of Ontario's letter dated February 13, 2018, does not recommend that the City permit the use of private video surveillance cameras for the purpose of collecting personal information to aid law enforcement as it undermines the privacy rights under *Municipal Freedom of Information and Protection of Privacy Act, R.S.O. 1990* (MFIPPA).

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

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Consultation was held with Hamilton Police Services and the following City staff; Ron Sabo, Deputy City Solicitor; Marco Visentini, Solicitor; Lisa Barroso, Manager, Records and Freedom of Information; and John Lane, Manager, Building Inspections.

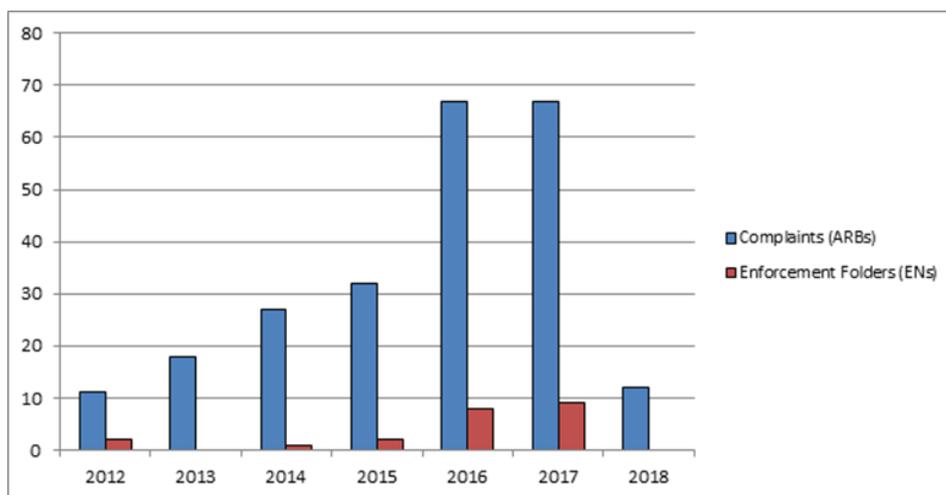
In an email addressed to the Director of Licensing and By-law Services dated April 18, 2018, the Hamilton Police Service position on this recommendation is as follows and quoted from the email:

"As the Chief stated in his Budget Presentation to Council on January 25, 2018, the Hamilton Police Service has worked with the Information and Privacy Commissioner of Ontario (IPC) in the past when setting up the CCTV Project in the City of Hamilton. While the Chief understands the importance of digital evidence in the investigation and prosecution of offences, he is also mindful that law enforcement interests must be balanced against privacy interests. The Chief has reviewed the correspondence from Mr. Brian Beamish, Commissioner, dated February 13, 2018, in respect of this issue. In that letter, Mr. Beamish stated that, in his view, "any attempt by the city to permit or encourage the use of private video surveillance cameras, for the purpose of collecting personal information to aid in law enforcement, would undermine privacy rights under *MFIPPA*". The Hamilton Police Service takes the position that any amendment to By-Law 10-122 (*By-law To Prohibit and Regulate Fortification and Protective Elements of Land*) must be done in consultation with the Information and Privacy Commissioner of Ontario.

The Hamilton Police Service strives to respect the reasonable expectation of privacy of the citizens of Hamilton and, when required for the purposes of investigation, will continue to seek prior judicial authorization or, when appropriate, consent, to obtain evidence in pursuit of our duty to investigate offences".

The Hamilton Police Service currently has the required tools to obtain additional evidence if needed through judicial authorization, and are not seeking further resources to obtain this evidence.

Building Division statistics from January, 2012 to February, 2018 indicate there were 234 complaints, 22 Orders issued and no charges laid.



The Fortification By-law resolves neighbourhood complaints. It protects private property and ensures the safety and privacy of property owners. During this time period only four exemptions were granted. The purpose of an exemption may include, but not limited to, the protection of the public during a police investigation or ongoing policing matters.

Through consultation with all stakeholders, it is recommended that no amendments be made to the existing City of Hamilton Fortification By-law.

As this Report addresses the feasibility of amending the CCTV By-law (Fortification By-law) to permit the use of footage from cameras located on private property it is appropriate to be identified as complete and removed from the General Issues Committee Outstanding Business List.

Appendices and Schedules Attached

N/A

KL:KC:st