

A simple lock can make a difference when it comes to your property rights, Councillors contend

By Brock Weir

When it comes to your property rights, a simple padlock can, apparently, make a world of difference, according to some concerned members of Council.

Sitting at the Committee level last week, some Council members questioned the fairness of a series of new protocols up for Council's final approval this week which spells out a series of changes to what constitutes the 'power of entry' for local bylaw officers when responding to complaints or concerns.

Changes have been in the works since the early spring when Council tasked staff with coming back with a new notification process to property owners when their properties might be entered as well as protocols for when properties might be accessed if a property owner is absent or, in the end, refuses entry to a bylaw officer.

'Power of Entry provisions are intended to provide municipalities with the necessary tools to carry out inspections ensuring public health and safety,' said Techa van Leeuwen, Aurora's Director of Corporate Services. 'Power of entry provisions enable municipal officials to monitor and inspect property for compliance with municipal bylaws, licensing requirements, standards, directions and orders while, at the same time, respecting privacy rights at home. This is accomplished by enabling officials to enter upon a person's property without the need for consent or a warrant unless the place being entered is a 'room or place actually being used as a dwelling.'

'Power of entry into dwelling units is considerably more restrictive. In general, the consent of the occupier is required for an officer/inspector to gain entry into a dwelling unit. It should be noted that the consent of the occupier does not require the consent of the property owner. This is intended to provide occupiers with the ability to ensure their living conditions meet regulatory standards. If consent of the occupier to enter the dwelling unit is not obtained, a warrant must be obtained, unless the presence of immediate danger exists such that entry is necessary to terminate the danger.'

According to Ms. van Leeuwen, Aurora's Bylaw Department receives 'hundreds of valid property related complaints each year' and is 'very successful in achieving cooperative compliance.' In 2016, the department received 524 complaints, 393 of which were deemed valid, and 389 of which were resolved cooperatively. The previous year brought in 423 complaints, 334 of which were deemed valid, with a 99 per cent rate of cooperative resolution.

The most notable change up for Council's final ratification this week is a new process for notifying property owners their properties might be accessed. The current process is described as 'informal' involving a door hanger indicating the nature of the visit and does not require official notification to the occupant.

'A formal notification process and protocol' would involve a letter left at the door giving the occupant 24 hours notice the bylaw department would be accessing the property.

'[The letter] would be left at their door in the hopes that they will contact us so we can have a conversation to explain the reasons why we want access,' said Ms. van Leeuwen.

The concerns came, however, when discussion turned last week to what happens if the occupant declines access. In one noted hypothetical, if bylaw officers head to the rear of a house and find a locked gate, they would not proceed into the yard.

'Is a locked gate locked with a padlock, or is that just a gate with a door?' asked Councillor Jeff Thom. 'Is the lock closed, or is locked actually locked?'

'Locked is locked,' replied Ms. van Leeuwen. 'Often pool enclosures have self-closing devices. I would not consider that locked.' Some Councillors, however, had other ideas.

'It is interesting that full property rights are granted to people with a lock on their property and people without can have someone enter their property,' contended Councillor Thom. 'I just think it is an interesting distinction. People put up fences to not only keep pets in, but keep other people out as well. I think there might be a lot of people with fences who will be putting locks on their gates. To me, a gate is a gate. It is a barrier.'

A similar view was offered by Councillor Tom Mrakas.

'We all appreciate access needs to be granted when there are risks to other residents and to the environment, health, and public safety risks, but if the complaint is overgrown grass or if it is a minor complaint, it doesn't say anywhere what happens if the occupant of the dwelling says no,' said Councillor Mrakas.

'It is interesting that if you put a lock on your gate you have more rights than if you don't put a lock on your gate. Overall, I am

somewhat pleased at least that we have taken this step to develop some of these and have a better process moving forward.?