

New rules could allow bylaw officers to enter properties without search warrant

By Brock Weir

Municipal bylaw officers could enter onto private property without a search warrant, following the passage of new rules by Council this week.

Sitting at the Committee level last Tuesday, local lawmakers approved a revised Private Property Protocol that will remove the requirement to obtain a search warrant for investigative purposes, replacing this rule with a new notification process for property owners.

Bylaw officers characterize the process to obtain search warrants to conduct investigations as a "cumbersome and resourcefully strenuous process" and backed this claim with a number of examples, including one related to a dangerous dog incident this past spring.

Recently, Animal Services Officers conducted a search warrant to seize a dangerous dog in relation to a charge under the Dog Owners Liability Act," said Alexander Wray, Manager of Bylaw Services for the Town of Aurora, in his report to Council. "The process to obtain the warrant began in March 2019 and required multiple site visits, emails, telephone conversations and meetings with Regional prosecutors. Once the determination was made that a search warrant was the appropriate course of action, the investigating officer spent approximately five working days compiling all evidence, appendices and information to present to a Justice of the Peace for approval. After waiting for approximately three hours for the Justice of the Peace to review the evidence and information, the officer was granted permission to execute the warrant two days later.

In order to execute the warrant to the requirements outlined, the Officer required the assistance of four York Regional Police officers, one veterinarian, one locksmith and two bylaw officers. During this time, staff resources were reallocated to ensure coverage and service standards were continued to be met. Additionally, staff encountered a cost of approximately \$1,000 to execute the warrant to pay for the services of the veterinarian and locksmith."

The report notes that Power of Entry provisions do not infringe upon a person's rights under the Canadian Charter of Rights and Freedoms as "provisions found in the various legislation and in municipal bylaws have been held by the courts to be reasonable in that the legislation and bylaws state that entry onto the property is to be done at any reasonable time and in a reasonable manner."

According to staff, a notification process and protocol will "balance the rights of residents,

improve relations and maintain efficiencies with residents while ensuring public safety is not compromised.?

?The current process

to notify residents that Bylaw Services has attended the property is to leave a door knocker indicating the nature of the visit (property standards, zoning, long grass, etc.) The process is informal and does not necessarily provide residents and/or property owners an official notification that Bylaw is requesting entry to property for the purpose of investigating a complaint.

?A formal

notification process and protocol would be beneficial for many reasons, including balancing the privacy of residents and property owners with the Town's rights to enter; allowing property owners to schedule appointments with the officers if they would like to be present for the inspection; promote initial conversations to occur that are not offensive and lead to better relations and improved cooperation for voluntary compliance, [and] provide a safer working environment for our officers.?

While the proposed

changes received the widespread support of Council, Mayor Tom Mrakas had a different view.

?I fundamentally have

an issue with someone just walking into a backyard,? said Mayor Mrakas. ?To me, it speaks to privacy of those residents. I understand it has gone to court on previous occasions in other jurisdictions and municipalities and it has found they are allowed to have that right of entry power and it is not an invasion on their Charter rights, but it is just me. That's the way I feel.

?I don't expect

everyone to feel that way, so I will be voting against this [but] staff did a tremendous job putting this together. I think if this was in front of us last term when we decided to move forward with the pilot to have warrants executed, I don't think this would have happened. Whichever way this falls, I think as a Town and as staff, we're going to do whatever we can to ensure the residents are done right by.?

The chips fell in favour of staff's recommendations last Tuesday and this decision was ratified this week.

?It seems to me,

according to all of the appropriate plans and policies, that we can do what is suggested which basically is not making it more difficult for staff to properly investigate serious concerns on the part of residents,? said Councillor Wendy Gaertner. ?I think that the compromise that has come through in this report is right on. We tried it a different way, it really didn't work, so now we're coming to move forward with this.?

Councillor Sandra

Humfries, said she was more on the fence on the proposed changes, but saw the

merits looking ahead.

?The process to get a warrant is time consuming and I think it costs a lot of manhours,? she said.

Added Councillor

Harold Kim: ?I am glad we came to this conclusion. It is a delicate balance between health and safety and privacy concerns and residents of this Town.?

Councillor Rachel

Gilliland was of a similar mind, noting that property standards issues have proven to be a ?real thorn in people's sides? in issues such as long grass.

?The report has balance and you're very specific on the procedure and I think that is what we're all looking for ? the procedure of entering a backyard when you are considering public health and safety and whether or not people are put at risk,? she said. ?I think what you've presented today reflects what we're looking for.?