

COMMITTEE OF THE WHOLE-SEPTEMBER 6, 2005

BY-LAW ENFORCEMENT OFFICERS REQUEST TO ATTORNEY GENERAL

Recommendation

The City of Vaughan Special Constable Committee representatives - Regional Councillor Linda Jackson, Councillor Bernie Di Vona and Senior Manager By-Law Enforcement Tony Thompson recommend:

That the City of Vaughan approve of the recommendation to amend the Municipal Act 2001 as contained herein.

That the Attorney General of Ontario, Regional Municipality of York, York Region Police Services Board and Local MPP's be notified of our approval.

Economic Impact

Purpose

That the City of Vaughan Council support the recommendation from the Special Constable Task Force for the amendment to the Municipal Act, 2001, imposing a statutory duty on individuals to identify themselves to a by-law enforcement officer, thus facilitating more effective enforcement of municipal by-laws, and that it be forwarded to the Attorney General and local MPP's for their review and approval.

Background - Analysis and Options

See Attachment 1.

The Town of Markham and Town of Richmond Hill are bringing similar recommendations to their respective Councils.

Relationship to Vaughan Vision 2007

This report is consistent with the priorities previously set by Council and the necessary resources have been allocated and approved.

Conclusion

The proposed amendments to the Municipal Act, 2001 will facilitate more effective enforcement of municipal by-laws.

Attachments

1. Attachment 1-Backgrounder
2. Attachment 2-Proposed Amendments to Municipal Act, 2001
3. Copy of draft memo to Attorney General from David Barrow

Respectfully submitted,

Linda D. Jackson

Local and Regional Councillor

Bernie Di Vona

Councillor, Ward 3

Highway Traffic Act, R.S.O. 1990, c. H.8

As to carrying licences and surrender on demand

33. (1) Every driver of a motor vehicle or street car shall carry his or her licence with him or her at all times while he or she is in charge of a motor vehicle or street car and shall surrender the licence for reasonable inspection upon the demand of a police officer or officer appointed for carrying out the provisions of this Act. R.S.O. 1990, c .H.8, s.33(1).

Same, re novice driver rules

(2) Every accompanying driver, as defined under section 57.1, shall carry his or her licence and shall surrender the licence for reasonable inspection upon the demand of a police officer or officer appointed for carrying out the provisions of this Act. 1993, c. 40, s.3.

Identification on failure to surrender licence

(3) Every person who is unable or refuses to surrender his or her licence in accordance with subsection (1) or (2) shall, when requested by a police officer or officer appointed for carrying out the provisions of this Act, give reasonable identification of himself or herself and, for the purposes of this subsection, the correct name and address of the person shall be deemed to be reasonable identification. 1993, c.40, s.3.

Arrests without warrant

217. (2) Any police officer who, on reasonable and probable grounds, believes that a contravention of any of the provisions of subsection 9(1), subsection 12(1), subsection 13(1), subsection 33(3), subsection 47(5), (6), (7) or (8), section 51, 53, 130, 172 or 184, subsection 185(3), clause 200(1)(a) or subsection 216(1) has been committed, may arrest, without warrant, the person he or she believes committed the contravention. R.S.O. 1990, c. H.8, s.217(2); 1993, c.40, s.8.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by the Statutes of Ontario, 1996, chapter 20, section 31 by striking out “section 51, 53, 130, 172 or 184” and substituting “section 51 or 53, subsection 106 (8.1), section 130, 172 or 184”. See: 1996, c.20, ss. 31, 32.

Arresting on view

(3) Every person may arrest without warrant any person whom he or she finds committing any such contravention. R.S.O. 1990, c. H.8, s. 217(3).

Cyclist to identify self

218. (1) A police officer who finds any person contravening this Act or any municipal by-law regulating traffic while in charge of a bicycle may require that person to stop and to provide identification of himself or herself. R.S.O. 1990, c. H.8, s. 218(1).

Idem

(2) Every person who is required to stop, by a police officer acting under subsection (1), shall stop and identify himself or herself to the police officer. R.S.O. 1990, c. H.8, s. 218(2).

Idem

(3) For the purposes of this section, giving one's correct name and address is sufficient identification. R.S.O. 1990, c. H.8, s. 218(3).

Idem

(4) A police officer may arrest without warrant any person who does not comply with subsection (2), R.S.O. 1990, c. H.8, s. 218(4).

Liquor Licence Act, R.S.O. 1990, c. L. 19

Arrest without warrant

48. If a police officer finds a person apparently in contravention of this Act or apparently in contravention of a prescribed provision of the regulations and the person refuses to give his or her name and address or there are reasonable grounds to believe that the name or address given is false, the police officer may arrest the person without warrant. R.S.O.1990, c. L. 19, s. 48; 1994, c. 37, s. 16.

PROPOSED AMENDMENTS TO MUNICIPAL ACT, 2001

**PART I
INTERPRETATION**

Definitions

New

Provincial Offences Officer for the purposes of this Act and the Provincial Offences Act means a by-law enforcement officer, police officer and special constable.

**PART XIV
ENFORCEMENT**

New

Duty to Identify Self

426 (1) – Any person whom a Provincial Offences Officer reasonably believes has committed an offence under this Act, a By-law passed under this Act, or an Order made under this Act, shall upon the demand of the officer, identify themselves to the officer with such government issued document as they may have in their possession which contains a photograph, name and address. In the event the person does not have such a document in their possession, the person shall identify them self by their correct name, address. The name and address provided by either the document or the self identification shall be deemed voluntary and admissible in any proceeding and shall be presumed to be correct, absent any evidence to the contrary.

Obstruction

(2) No person shall hinder obstruct, or attempt to hinder or obstruct, any person exercising a power or performing a duty under this Act or a by-law under this Act.

Offence

(3) Any person who contravenes subsection (1) or (2) is guilty of an offence.

Municipal Act, 2001 – Proposed Amendments Backgrounder

Pre-Charter – Common Law Duty to Identify Oneself

Prior to the enactment of the Canadian Charter of Rights and Freedoms, the Supreme Court of Canada confirmed the existence of a common law duty to identify oneself to the police. In *R. v. Moore (1978)*, 43 C.C.C. (2d) 83 (S.C.C.), the Supreme Court dealt with a situation in which a police officer observed a person riding a bicycle go through a red light. The officer followed the accused who refused to stop. When the accused finally stopped, he refused to identify himself. The officer charged the accused with wilfully obstructing a peace officer in the execution of his duty, contrary to the Criminal Code. The main issue was whether there was any obligation on the accused to identify himself. The majority of the Supreme Court of Canada held that there was no statutory duty to identify himself under the British Columbia Motor Vehicle Act.

The majority of the court did however determine that the accused had a common law duty to identify himself. The court held that the officer was required to enforce the laws of the province and that in so doing, the defendant's refusal to accede to the officer's request for identification amounted to an obstruction of the constable performing his duty to investigate wrongdoing. The majority of the court also felt that the provisions of the Canadian Bill of Rights and individual freedom in general would not be contravened by the minimal interference with any freedom of a citizen who is seen committing an offence by a police officer by simply requesting their name and address without any attempt to obtain from that person any admission of fault or any comment whatsoever. On the other hand, the refusal of a citizen to identify himself under such circumstances causes a major inconvenience or obstruction to the police in carrying out their proper duties. The dissenting opinion however was that there is no common law duty to identify oneself. The duty would have to be found in statute. The dissenting judges were not prepared to extend a common law obligation on a defendant to identify himself.

Post Charter – Statutory Duty to Identify Oneself

Since the enactment of the Charter in 1982, and the introduction of rights such as the right against self-incrimination, the Canadian courts have made it clear that there is no common law duty to identify oneself to the police absent a specific statutory duty. In *R. v. Greaves*, the B.C. Court of Appeal determined that although the police may have the right to ask questions, and indeed may be under a duty to do so where they reasonably suspect that the

person questioned was involved in a crime, citizens are under no legal obligation to respond to those questions in the absence of a statutory duty to do so. The court further concluded that a person cannot then be convicted of obstructing a police officer in the execution of duty for simply refusing to say or establish who he or she is when asked to do so. According to the court in *Greaves*, recognition of a police power to conduct investigative detentions "does not impose an obligation on the detained individual to answer questions posed by the police."

The most recent case involving an obstruct police charge for failure to identify oneself is *R. v. Lawrence*, [2005] B.C. J. No. 374, (B. C. Supreme Court). In that case, a police officer asked a driver of a vehicle for his name and birth date. The defendant refused to identify himself and he was placed under arrest for obstructing a police officer. In this case, however, s. 73 of the *British Columbia Motor Vehicle Act* imposes a statutory duty upon a driver of a vehicle to identify himself by stating his name and address. A failure to do so is an offence under the Motor Vehicle Act. Given there was a statutory duty to identify himself, the defendant was guilty of obstructing the peace officer in the performance of his duties under the Criminal Code.

Examples of a statutory duty to identify oneself can be found in several Ontario statutes, including the *Highway Traffic Act* and *Liquor Licence Act*. Section 33 of the *Highway Traffic Act* requires all drivers to carry his or her licence while in charge of a motor vehicle and to surrender the licence upon demand of a police officer. Drivers are further required to give reasonable identification of themselves to a police officer if unable to produce a licence. Section 217 (2) of the *Highway Traffic Act* authorizes an officer to arrest a person without a warrant if they contravene s.33(3). In addition, s.218 of the *Highway Traffic Act* requires a cyclist to identify himself to a police officer. [see attachment 1]

Similarly s.48 of the *Liquor Licence Act* allows a police officer to arrest a person without a warrant if they find that person committing an offence and if they refuse to give their name and address or if there are reasonable grounds to believe that the name and address given is false.

Powers of By-law Enforcement Officers

It should be noted that the cases outlined above involve police officers in the performance of their duties as set out in the Police Services Act legislation. The police have both a statutory duty to investigate crime and enforce the laws of the province as well as a common law duty to investigate crimes. There is no similar statutory duty posed upon by-law enforcement officers.

It should also be noted that the definition of "Peace Officer" in the Criminal Code does not include by-law officers. As such, a refusal to identify oneself to a by-law officer does not give rise to a criminal "obstruct peace officer" charge. It could, however, give rise to an obstruct or hinder charge under s. 426 of the *Municipal Act, 2001*. The practical problem is that you don't know who to charge if they won't identify themselves.

Proposed Amendments – Municipal Act, 2001

Statutory amendments are required in order to give by-law enforcement officers the statutory authority to require individuals to identify themselves. The proposed amendments [see attachment 2] would create a statutory duty to identify oneself to a by-law enforcement officer where the officer believes that the person has committed an offence under a by-law or the *Municipal Act* or Regulations, and to produce identification to the officer upon request. The proposed amendments would also create a corresponding offence for breach of the duty to identify oneself.

In addition, the amendments include a provision that the statement given by the defendant to the officer would be admissible in any proceeding, as well as a presumption as to the correctness or accuracy of the information. This provision is intended to address concerns raised by the courts, including some Ontario Justices of the Peace who have indicated that they are not satisfied with verbal identification, and charges have been dismissed if the officer has not obtained some form of documentary identification.

The proposed amendments also address concerns expressed by the Supreme Court of Canada in *R. v. White [1999] 2 S.C.R. 417*, in which the Court held that a statement or admission given by a person under a statutory compulsion should be excluded as violating s.7 of the Charter as well as the common law power of the Court to exclude evidence to prevent an unfair trial. If a person is compelled by statute to identify themselves, then the statement concerning their admission as to who they are could be excluded either under s. 7 if imprisonment is an option as a penalty, or at common law. Imprisonment is an option for example, for violating an adult entertainment by-law. If an owner, operator or attendant were convicted for violating the by-law, they could face imprisonment. As such, their statutory obligation to identify themselves maybe viewed as inadmissible, applying the principles from the White case. In order to overcome this problem, the section must include a provision that the evidence is admissible.

July 13, 2005

BY FAX (905) 326-4016

The Honourable Michael J. Bryant
Attorney General
Ministry of the Attorney General
720 Bay Street, 11th Floor
Toronto ON M5G 2K1

Dear Minister Bryant:

Re: By-law Enforcement Officers

I am writing on behalf of The Regional Municipality of York Police Services Board and our municipal partners in York Region concerning municipal by-law enforcement. Several lower-tier municipalities in York Region have requested that the Police Services Board confer Special Constable status on their by-law enforcement officers to increase the effectiveness of the enforcement of local by-laws and to assist municipalities in addressing community issues. The Board has studied this matter over the past two years and recently decided to take no further action in response to these requests, as it is not prepared to extend police powers to by-law enforcement officers. However, the Board agreed to bring this issue to the attention of the Provincial Government to request that the underlying concerns of the municipalities be addressed through legislative amendment.

The Police Services Board was first approached by the City of Vaughan in February 2003, requesting that the Board appoint the City's by-law enforcement officers as Special Constables. The City has established a Special Enforcement Unit as part of a proactive effort to respond to issues of concern to the community including minor theft, mischief, drugs and alcohol offences, as well as trespass to City property. The by-law officers patrol parks, community centres and other City property to act as a deterrent to these types of behaviour. However, they are not police officers and such their authority is very restricted. The Town of Markham has made a similar request for Special Constable status for its by-law enforcement officers although the Town's request is focused on traffic enforcement. The Town of Richmond Hill has also expressed an interest in Special Constable status for its by-law enforcement officers.

Pursuant to the *Police Services Act*, the Police Services Board with the approval of the Minister of Community Safety and Correctional Services may appoint Special Constables and confer on them specified powers, including the designation of "peace officer" pursuant to the *Criminal*

Code. As such, Special Constables are given powers and corresponding protections not otherwise available to by-law enforcement officers.

By-law enforcement officers have certain powers in respect of municipal property, including the *Trespass to Property Act* under which they are authorized agents of the property owner. They also have a citizen's power of arrest. However, unlike "peace officers" by-law enforcement officers do not have the ability to detain individuals if necessary, to obtain identification where the officer believes he/she has observed the individual in the commission of an offence. Failure of an individual to produce identification to a peace officer in certain circumstances may result in the criminal offence of obstruction. By-law enforcement officers in contrast have no statutory right to require individuals to produce identification, resulting in limited enforcement powers. There are several examples of Special Constables in Ontario currently, including GO Transit, TTC, Toronto Housing Authority and the University of Toronto campus security.

The Regional Municipality of York Police Services Board is sympathetic to the issues raised by the area municipalities, however, after studying the issue and consulting with our municipal partners and staff from the Ministry of Community Safety and Correctional Services, the Board concluded that the risks and potential liability associated with conferring police powers on these officers is unacceptable. The Board is therefore working with its municipal partners to develop alternate means of addressing the underlying community issues, particularly with respect to criminal and provincial offences that are within the purview of our mandate. Despite these efforts, the effectiveness of by-law enforcement will continue to be hampered by the inability of by-law enforcement officers to require persons to produce identification, and the impact of this limitation on the effectiveness of by-law enforcement.

These concerns are not unique to York Region, and are no doubt of concern to other municipalities, particularly lower and single tier municipalities. The Board therefore believes that these issues should therefore be addressed at the provincial level and meaningful change in the effectiveness of municipal by-law enforcement could be achieved through amendments to the *Municipal Act* as outlined in the attached background paper. These amendments would impose a statutory duty on individuals to identify themselves to a by-law enforcement officer, thus facilitating more effective enforcement of municipal by-laws.

We would welcome the opportunity to discuss our proposals with you or your staff in greater detail. Our municipal partners can provide further information on the limitations they face in by-law enforcement. We trust that you will recognize the importance of effective by-law enforcement for Ontario municipalities, and will therefore give consideration our proposals. We thank you for your attention to this matter.

Sincerely,

David Barrow, Chair

/jm

Attachment

Copy to: Chief A. LaBarge, York Regional Police
Minister of Community Safety and Correctional Services (416-325-6067)
Minister of Municipal Affairs and Housing (416-585-6470)
Town of Aurora (905-726-4732)
Town of East Gwillimbury (905-478-2808)
Town of Georgina (905-476-1475)
Township of King (905-833-2300)
Town of Markham (905-479-7771)
Town of Newmarket (905-953-5100)
Town of Richmond Hill (905-771-2502)
City of Vaughan (905-832-8535)
Town of Whitchurch-Stouffville (905-640-1910)

L13\Police\Special Constables\Barrow ltr to Attorney General

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