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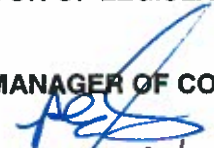
**TO:** GENERAL COMMITTEE


**SUBJECT:** BUSINESS LICENSING BY-LAW AMENDMENT - SECOND HAND SALES

**WARD:** ALL

**PREPARED BY AND KEY CONTACT:** H. CASSIS, RECORDS AND INFORMATION SUPERVISOR, EXT. 4377

**SUBMITTED BY:** D. MCALPINE, CITY CLERK/DIRECTOR OF LEGISLATIVE AND COURT SERVICES 

**GENERAL MANAGER APPROVAL:** P. ELLIOTT-SPENCER, GENERAL MANAGER OF COMMUNITY AND CORPORATE SERVICES 

**CHIEF ADMINISTRATIVE OFFICER APPROVAL:** C. LADD, CHIEF ADMINISTRATIVE OFFICER 

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**RECOMMENDED MOTION**

1. That the Inspection Section of the Business Licensing (General) By-law 2006-266, be amended by adding sub-section (v) as follows:  
  
"For the purpose of Second Hand Sales, a Municipal Law Enforcement Officer, Police Officer or other duly appointed individual shall not access or remove personal information collected by the vendor unless such information is directly related to an active investigation, court or other legal proceeding and is necessary to the investigation."
2. That the relevant Operating Criteria Sections of the Business Licensing (General) By-law 2006-266 related to Second Hand Sales, be amended by deleting the following requirement:  
  
"record the name and address of the person from whom the purchase or acquisition was made;"
3. That the relevant Operating Criteria Sections of the Business Licensing (General) By-law 2006-266 related to Second Hand Sales, be amended by deleting the following requirement:  
  
"provide a copy of any record referred to in Section 90.2.2.0.0. (d), to a Municipal Law Enforcement Officer, Police Officer or other duly appointed individual upon demand. Such record shall be open to inspection by any Municipal Law Enforcement Officer, Police Officer or other duly appointed individual any at all times during business hours and may be removed at any time by such officer for the purpose of photocopying or for use in any court or other proceeding."
4. That the City Clerk/Director of Legislative and Court Services be authorized to make any necessary changes to By-law 2006-266 required to fully implement the intent of the above changes.

## PURPOSE & BACKGROUND

### Report Overview

5. The purpose of this staff report is to recommend amendments to the General Business Licensing By-law, By-law 2006-266, to address the requirements of the Information and Privacy Commissioner's Office in response to a complaint regarding the unnecessary collection of and access to personal information with regards to the sale of second hand goods.

### Background

6. In 2006, the most recent general Business Licensing By-law was passed (By-law 2006-266). By-law 2006-266 establishes provisions related to the licensing, regulating and governing of various businesses operating within the City of Barrie. In subsequent years amendments to the By-law were made to improve the efficiency and the effectiveness of the by-law. Specific operating criteria and licensing requirements are included in By-law 2006-266 for each type of business. Second hand sales is one of the business categories identified as requiring a business licence to operate within the City of Barrie with specific operating and licensing criteria.
7. The current by-law directs vendors to collect personal information relating to individuals who have sold items to second-hand goods shops. The sections state that the vendors of second hand goods shall:  
  
"record the name and address of the person from whom the purchase or acquisition was made"
8. The current language of the by-law also indicates that second hand good vendors shall:  
  
"provide a copy of any record referred to in Section 90.2.2.0.0. (d), to a Municipal Law Enforcement Officer, Police Officer or other duly appointed individual upon demand. Such record shall be open to inspection by any Municipal Law Enforcement Officer, Police Officer or other duly appointed individual any at all times during business hours and may be removed at any time by such officer for the purpose of photocopying or for use in any court or other proceeding."
9. One of the purposes of the *Municipal Freedom of Information and Privacy Act*, R.S.O. 1990, c. M.56 (MFIPPA) is to ensure that the collection and retention of personal information is strictly controlled and justified.
10. Personal information is defined under the MFIPPA as:  
  
"recorded information about an identifiable individual, including,
  - (a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,
  - (b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,
  - (c) any identifying number, symbol or other particular assigned to the individual,
  - (d) the address, telephone number, fingerprints or blood type of the individual,
  - (e) the personal opinions or views of the individual except if they relate to another individual,
  - (f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,
  - (g) the views or opinions of another individual about the individual, and
  - (h) the individual's name if it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual.

11. Under MFIPPA Section 28(2) no person shall collect personal information on behalf of an institution unless one of three conditions are met:
  - a) the collection is expressly authorized by statute,
  - b) used for the purposes of law enforcement, or
  - c) necessary to the proper administration of a lawfully authorized activity.

### **ANALYSIS**

12. A complaint was received by the Office of the Information and Privacy Commissioner of Ontario (IPC) regarding the information collection practices of the Barrie Police Service and the City of Barrie. The complainant stated that Police and City were inappropriately collecting and using the personal information of the sellers of used goods, contrary to the MFIPPA.
13. After a review of the matter, the Barrie Police Service changed its practices and now receives lists of items with descriptions that were provided to second-hand goods shops which are compared against the descriptions of items that have been reported as stolen.
14. City of Barrie Municipal Law Enforcement Officers were only confirming that a second hand goods vendor had a process in place to record required information and were not collecting the specific personal information from the vendors. Although the collection of personal information from second hand goods vendors has not been undertaken by the City of Barrie Municipal Law Enforcement Officers, the current language allows unrestricted access to records which contain personal information held by second hand goods shops by Municipal Law Enforcement Officer, Police Officers or other duly appointed individuals. As such, the IPC Mediator determined that amendments to the Business Licensing By-law 2006-266 were necessary to ensure that the Corporation was also in compliance with MFIPPA.
15. By deleting the relevant sections from By-law 2006-266 and adding sub-section (v) to Section 2.10.3.0.0 of the by-law, the access and collection of personal information by law enforcement staff is limited to circumstances where an active investigation, court or other legal proceeding is underway. These changes will satisfy the IPC Mediator's conditions required to close the complaint file.
16. The proposed changes do not limit the ability of the Barrie Police Services outside of the scope of the by-law to gather personal information during the course of a specific investigation or otherwise within the scope of their law enforcement powers, for example, as found under the Police Services Act. It is not anticipated that the recommended changes to By-law 2006-266 will have a significant impact on Municipal Law Enforcement staff's ability to perform their duties under the by-law.

### **ENVIRONMENTAL MATTERS**

17. There are no environmental matters related to the recommendation.

### **ALTERNATIVES**

18. The following alternative is available for consideration by General Committee.

#### **Alternative #1**

The Corporation may choose not to amend By-law 2006-266. This would result in the Corporation being found in violation of the *Municipal Freedom of Information and Protection of Privacy Act* and may result in fines levied against the Corporation.

**FINANCIAL**

19. There are no financial implications for the Corporation resulting from the proposed recommendations.

**LINKAGE TO 2014-2018 STRATEGIC PLAN**

20. The recommendations included in this Staff Report are not specifically related to the goals identified in the 2014-2018 Strategic Plan.