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<th>TO:</th>
<th>Chair and Members, Planning Committee</th>
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<td>WARD(S) AFFECTED:</td>
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<td>COMMITTEE DATE:</td>
<td>November 22, 2011</td>
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<td>SUBJECT/REPORT NO:</td>
<td>Sharing The Names Of Owners Whose Dogs Are Involved In Attacks And Banning Dog Ownership/ PED11053(a)</td>
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<td>(City Wide) (Outstanding Business List Item)</td>
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<td>SUBMITTED BY:</td>
<td>Peter A. Barkwell</td>
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<td>City Solicitor, Legal Services</td>
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<td>City Manager's Officer</td>
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<td>PREPARED BY:</td>
<td>Lisa Pasternak, Senior Solicitor</td>
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<td>905-546-2424, ext. 7292</td>
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**SIGNATURE:**

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**RECOMMENDATION**

(a) That the City Solicitor be directed to submit Report PED11053(a) and the Disclosure Policy attached to Report PED11053(a) as Appendix A to the Information and Privacy Commissioner for comment on its privacy protection implications, in accordance with subsection 46(a) of the Municipal Freedom of Information and Protection of Privacy Act.

(b) That the City Solicitor report back to the Planning Committee when the Information and Privacy Commissioner has responded to the submission of the attached Disclosure Policy.

(c) That Council receive the information contained in Report PED11053(a) with respect to banning dog ownership for life for those owners whose dogs have been involved in repeat attacks.
1. Disclosure of Names, Charges and Addresses

In response to Council's direction to staff to prepare a policy which will enable the City to release the names of pet owners who own pets involved in attacks, the Disclosure Policy attached as Appendix A has been drafted.

As set out in Report PED11053, the Information and Privacy Commissioner has made a series of decisions upholding the refusals of both municipalities and police forces to disclose the personal information of a dog owner whose dog has attacked a person or a person's animal. These decisions all found that to disclose the personal information was an unjustifiable invasion of personal privacy. Accordingly, we are recommending that, as a first step, this Report and the Disclosure Policy be submitted to the Information and Privacy Commissioner for comment, as provided for under s. 46(a) of Municipal Freedom of Information and Protection of Privacy Act (MFIPPA).

46. The Commissioner may,

(a) offer comment on the privacy protection implications of proposed programs of institutions;

When the Information and Privacy Commissioner's comment has been received, the City Solicitor will report back to Council. If the comment indicates that the Disclosure Policy would be contrary, in whole or in part, to MFIPPA, the City Solicitor's report will include options for review, such as directing staff to make an access request and appealing a refusal to the Information and Privacy Commissioner as prescribed under MFIPPA.

2. Ownership Ban

A provision could be added to the Responsible Animal Ownership By-law authorizing the Poundkeeper (Senior Director, Parking and By-law Services or designate) to recommend the refusal or revocation of a licence for an owner whose dog has attacked a person or a person's animal. The recommendation would be confirmed, modified or rescinded after a hearing under the Statutory Powers Procedure Act (SPPA).

Alternatives for Consideration – See Page 6

Financial/Staffing: There are no financial/staffing implications for the recommendations contained in this Report.
Options in response to the Information and Privacy Commissioner's comment on the Disclosure Policy, if the comment is negative, could result in a need for additional resources. These additional resources would be addressed when the options are brought forward.

Ownership bans under the Responsible Animal Ownership By-law, which would require hearings, could result in a need for additional resources. These additional resources would be addressed when a By-law amendment is brought forward.

**Legal:** There are no legal implications for the recommendations contained in this Report.

**HISTORICAL BACKGROUND (Chronology of events)**

At its January 18, 2011 meeting, the Planning Committee directed staff “to bring a report on the sharing of names of pet owners of dogs involved in attacks, and other incidents, to the Committee as soon as possible.”

On March 21, 2001, staff responded with Report PED11053 to Planning Committee. The Report explained that Ontario’s Information and Privacy Commission has found the disclosure an owner’s personal information to be an unjustifiable invasion of personal privacy. After considering Report PED11053, the following direction was given to staff:

(a) That staff prepare a policy which will enable the City to release names of pet owners who own pets involved in attacks, on an individual basis, to those people who have been victimized by such attacks; and

(b) That staff investigate the feasibility of banning for life, any ownership of pets by people whose animals have been involved in repeat attacks, and that staff report back as soon as possible on both items.

**POLICY IMPLICATIONS**

1. **Disclosure of Names, Charges and Addresses**

Currently, personal information with respect to the owner of a dog which has been involved in an attack is not released. The proposed Disclosure Policy would alter this as set out.

2. **Ownership Ban**

Not applicable.
Parking and By-law Services and the Office of the City Clerk were consulted in the preparation of this Report.

ANALYSIS / RATIONALE FOR RECOMMENDATION

(include Performance Measurement/Benchmarking Data, if applicable)

1. Disclosure of Names, Charges and Addresses

Please note that while Council’s direction to staff was limited to disclosing the name to victims, the Disclosure Policy has been expanded to permit disclosure of the name, the charge and the last known address to the public. In addition, please note that the Disclosure Policy only addresses attacks by dogs. Animal Services advises that while attacks by dogs only occasionally involve a mitigating factor, attacks by other pets usually involve a mitigating factor: for example, a cat might attack if provoked.

Keeping in mind that the name, the charge and the last known address all form part of a charge and are publicly available, but difficult to access, through the courts; and that improved access can be provided by the City, which has the same information:

Disclosure of Name and Charge to the Public

Disclosure of the name and charge to the public is supported by the rationale, as found in several decisions of the Information and Privacy Commissioner, that disclosure to the public serves a purpose that is consistent with the purpose for which the personal information was obtained or compiled, namely it notifies the public of the City’s law enforcement activities and deters others from committing similar offences. The last know address is not included in this item because, again as recognized in decisions of the Information and Privacy Commissioner, its disclosure is not necessary to accomplish notification of the public of the City’s law enforcement activities or deterrence from the commission of similar offences and may expose the individual to certain harms.

Disclosure of Name, Charge and Last Known Address to the Public

Disclosure of the last known address to the public is supported by s. 14(1)(b) of MFIPPA:

Personal privacy

14. (1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
(b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;

Disclosure of information that is subject to s. 14(1)(b) is not an unjustified invasion of personal privacy.

Only some dogs that have attacked are impounded immediately. In cases of dog attacks reported to Animal Services, it may take a month or longer before any protective measures, including muzzling, secure enclosure or impounding, can be imposed under the DOLA or the City's By-law. Given these circumstances, there have been instances of a dog that has attacked being at large or even attacking again. This establishes "a reasonable link between disclosure of the information in the record pertaining to the affected person" and the health or safety of the residents of the City.2

Disclosure of Name, Charge and Last Known Address to a Victim

Disclosure of the name, charge and last known address to a victim is supported by recent court decisions which overturned Information and Privacy Commissioner decisions, finding that they too narrowly interpreted MFIPPA and/or failed to fully consider the purpose the Act or, in other words, were not reasonable.3 It does not appear to be "sensible or logical" to rule that information that is public and accessible in the hands of one arm of government - i.e. the Courts - should be private and inaccessible simply because it is in the hands of another arm of government, which, in fact, assembled the information for use in Court. Preventing the City from disclosing information it already has as a result of its enforcement activities and which is publicly available through the courts creates an unnecessary barrier to a victim's access to information. Rather than having to obtain a court order requiring the City to disclose the information or tracking the matter down through court dockets, this information should be available from the City after a charge has been laid.

2. Ownership Ban

Please note, that as with the discussion of disclosure in this Report, the discussion of an ownership ban only addresses attacks by dogs. Again, this is the result of Animal Services' advice that attacks by other pets usually involve a mitigating factor. Accordingly, these attacks are not dealt with at all under provincial legislation and only in a limited fashion under the Responsible Animal Ownership By-law.

The Dog Owners' Liability Act (DOLA) provides for an ownership ban for a specified period of time when the court finds that a dog has bitten or attacked a person or domestic animal or that a dog's behaviour is such that it is a menace to the safety of persons or domestic animals. Such an order is in effect throughout Ontario.
A similar provision could be added to the Responsible Animal Ownership By-law, in effect refusing to issue a dog licence to the dog owner. The refusal of a licence is a statutory power of decision and would require a hearing under the SPPA. The refusal would only be in effect for the City of Hamilton. The refusal would also have to be for a specified period of time, up to and including a life-time ban. The courts have stated in a number of contexts involving bans that life-time bans are reserved for the most egregious of circumstances.

If Council chooses to include an ownership ban in the Responsible Animal Ownership By-law, care would have to be taken to ensure that two proceedings did not conflict, e.g. an unsuccessful attempt to refuse a licence under the Responsible Animal Ownership By-law compromising a DOLA application.

### ALTERNATIVES FOR CONSIDERATION

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

#### 1. Disclosure of Names, Charges and Addresses

Council may choose to direct the Manager of Animal Services to make an MFIPPA request for the name, charge and address of an owner on behalf of the public or a victim after a dog attack and, if the request is refused, to appeal to the Information and Privacy Commissioner. However, while this will continue to be an option at a later date, it would be prudent to first ask for the Information and Privacy Commissioner's comment, as provided for under s. 46(a) of MFIPPA, on the proposed Disclosure Policy.

If additional resources were required for an appeal, staff would seek Council approval in advance.

#### 2. Ownership Ban

Not applicable.

### CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)

**Healthy Community**

- Protecting safety and privacy of all citizens

### APPENDICES / SCHEDULES

Appendix A – Disclosure Policy: Owner Whose Dog Has Attacked A Person Or a Person’s Animal

Appendix B - Footnotes to the “Analysis / Rationale for Recommendation” Section
APPENDIX A

DISCLOSURE POLICY
OWNER WHOSE DOG HAS ATTACKED A PERSON OR A PERSON’S ANIMAL

1. **Policy Statement**

   This Policy sets out when the Manager of Animal Services, Parking and By-law Enforcement, Planning Department ("Animal Services Manager") may disclose the name of, charge against and last known address of an owner whose dog has attacked a person or a person’s animal.

2. **Definitions**

   For the purposes of this Policy:

   "**animal**" means any member of the animal kingdom, other than a human;

   "**charge**" means a charge under a City of Hamilton by-law or the Dog Owners’ Liability Act;

   "**owner**" means an adult who has care, control or possession of an animal; and

   "**victim**" means:

   (a) a person who has been attacked by a dog and includes:

   (i) when the person is a child, the child’s parent or guardian;

   (ii) when the person is incompetent or incapacitated, the person’s legal representative; or

   (b) an owner of an animal that has been attacked by a dog.

3. **Scope**

   This policy applies to dog attacks on a person or a person’s animal in the City of Hamilton that are investigated by Animal Services.

4. **Before a Charge is Laid / No Charge is Laid**

   (1) The Animal Services Manager may not disclose the name and/or last known address of an owner whose dog has attacked a person or a person’s animal before a charge in respect of the attack is laid.
Disclosure is not provided before a charge is laid because this may be detrimental to proceeding with enforcement. (Section 8(1)(b) Municipal Freedom of Information and Protection of Privacy Act) In addition, the information is not yet publicly available through the courts.

(2) The Manager of Animal Services may not disclose the name and/or last known address of an owner whose dog has attacked a person or a person’s animal when no charge in respect of the attack is laid.

Disclosure is not provided when no charge is laid because, in most circumstances, this occurs when a reasonable belief that an offence took place is lacking. In addition, the information is not publicly available through the courts.

5. **After a Charge is Laid**

(1) The Manager of Animal Services may disclose to the public the name of, the charge against and the last known address of an owner whose dog has attacked a person or a person’s animal after a charge with respect to the attack is laid upon request, in the form of a press release or by other means.

Disclosure to the public of the name and the charge is provided after a charge is laid because it notifies the public of the City’s law enforcement activities and deters others from committing similar offences. In addition, the name and the charge are publicly available through the courts.

Disclosure of the name, the charge and the last known address is provided after a charge is laid when the dog has not been impounded to protect the health and safety of residents of the City by making them aware of where the dog is kept and allowing them to take precautions to protect themselves and their animals against subsequent attacks. Notice of this disclosure will be provided to the dog owner in accordance with s. 14(1)(b) of Municipal Freedom of Information and Protection of Privacy Act which states that:

**Personal privacy**

14.(1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,
(b) in compelling circumstances affecting the health or safety of an individual, if upon disclosure notification thereof is mailed to the last known address of the individual to whom the information relates;

In addition, the name, the charge and the last known address are publicly available, but difficult to access, through the courts. Improved access to this information, which is also known to the City, would be provided by the City.

(2) The Animal Services Manager may disclose to a victim the name of, the charge against and the last known address of an owner whose animal has attacked a person or a person's animal after a charge which respect to the attack is laid upon request.

Disclosure of the name, the charge and the last known address is provided after a charge is laid to a victim to enable them to seek redress.

In addition, the name, the charge and the last known address are publicly available, but difficult to access, through the courts. Improved access to this information, which is also known to the City, would be provided by the City.

6. **Access Request under the Municipal Freedom of Information and Protection of Privacy Act**

It is open to the public to make a formal access request to the City of Hamilton for the name and/or last known address of a dog owner under the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA). Access requests will be considered in accordance with MFIPPA and may be granted, granted in part or denied. Such access requests should be directed to:

Manager, Records and Freedom of Information
City Clerk's Division
City Hall
71 Main Street West, 1st Floor
Hamilton, ON L8P 4Y5

(905) 546-2424 ext 2743
(905) 546-2095 (fax)
clerk@hamilton.ca (email)

7. **Review and Updating of Policy**

This Policy will be reviewed and updated as required.
APPENDIX B

Footnotes to the “Analysis / Rationale for Recommendation” Section

1Excerpts from Information and Privacy Commissioner decisions:

Investigation 193-054P, January 24, 1994 (complainant's name, the company where he had been employed, details of his conviction for offences under the Environmental Protection Act and the amount the complainant was said to have been fined was disclosed in a published article and in a press release):

The Ministry stated that in enforcing the EPA, it has the role of informing the public of the ramifications of violations of the EPA so as to deter would-be-polluters. In this case, the Ministry publicized the complainant's violations and the amount of his restitution in order to advise the public and would-be-polluters of the Ministry's enforcement activities. The Ministry stated that by publicizing this information, the public was made aware of its efforts in a geographical area where concerned citizens and the media had shown particular attention to the issues.

In this case, the complainant's personal information had originated from proceedings conducted in court. Except in the most exceptional circumstances, proceedings before the courts are open to the public. This serves the dual purpose of informing the public of judicial proceedings as well as acting as a deterrent to potential would-be-offenders.

In our view, the Ministry subsequently disclosed the complainant's personal information for substantially similar purposes: namely, to inform the public of its enforcement activities and to deter would-be-polluters. Accordingly, it's our view that the Ministry's disclosure was for a purpose that was reasonably compatible with the purpose for which the personal information had originally been compiled by the court. Therefore, the disclosure was for a consistent purpose and was in accordance with section 42(c) of the Act.

Investigation 196-018P, April 2, 1996 (complainant's first and last name and the four charges laid against him by the OPP were published in a community newspaper):

It is our view that the OPP would have compiled the complainant's personal information for a law enforcement purpose, namely, to process the accused person (the complainant) through the justice system. It is also our view that the OPP disclosed the complainant's personal information in the community newsletter to notify the public of its law enforcement activities and to deter others from committing similar offences.

In our view, the complainant could have reasonably expected that having been charged with these offences, such information might be released by the OPP to the community. Therefore, in our view, the OPP's disclosure of the charges against the complainant was for a consistent purpose, in compliance with section 42(c) of the Act.

Investigation PC-990034-1, September 22, 2000 (The Workplace Safety and Insurance Board issued a press release concerning charges laid against the complainant . . . and also posted this press release on its Internet website. The information consisted of the complainant's name, age, home address . . . and information regarding charges laid against the complainant . . . The press release also identified the date, address and name of the Court where the complainant . . . [was] scheduled to appear in relation to the charges.)

With respect to section 42(c), the Board states:
In this case, the Board collects the information for the purposes of investigating and prosecuting its offences, and equally important [sic], to inform honest employers, who pay for the system, and injured workers who rely upon it of its Zero Tolerance Strategy and enforcement activities. This ensures public accountability and deters would-be-wrongdoers. . . .

The Board also relies on the findings of Commissioner Cavoukian in Investigation I93-054P, where she found:

In this case, the complainant's personal information had originated from proceedings conducted in court. Except in the most exceptional circumstances, proceedings before the courts are open to the public. This serves the dual purpose of informing the public of judicial proceedings as well as acting as a deterrent to potential would-be-offenders.

In our view, Ministry [of the Environment and Energy] subsequently disclosed the complainant's personal information for substantially similar purposes: namely, to inform the public of its enforcement activities and to deter would-be-polluters. Accordingly, it is our view the Ministry's disclosure was for a purpose that was reasonably compatible with the purpose for which the personal information had originally been compiled by the court.

Applying the reasoning to past matters, I find that the Board obtained and compiled the complainant's personal information in order to administer and enforce the WSIA, and disclosed his name and the charges against him for the purpose of notifying the public of its enforcement activities and to deter others from committing similar offences. Accordingly, I find that the Board's disclosure of the complainant's name and the charges against him was for a purpose that was reasonably compatible with the purpose for which the personal information was originally compiled, and was, therefore, a consistent purpose under section 42(c) of the Act.

While an individual might reasonably expect his/her name and charge details to be disclosed by the Board, in my view, it is not reasonable to expect that age and home address would similarly be disclosed. In my view, disclosing an individual's name together with information concerning the company provides sufficient information to avoid any possible public confusion with another individual having the same or similar name. I find disclosure of the complainant's age and home address was not for a purpose that was reasonably compatible with the purpose for which the personal information was originally compiled and does not meet the requirements of section 42(c) or any other parts of section 42 of the Act.

Order MO-1335, September 8, 2000 (appellant requested records with respect to a Firearms Interest Person notation on his CPIC record):

The appellant submits that having the FIP notation on his CPIC record constitutes a threat to his health and safety.

I do not accept the appellant's argument that section 14(1)(b) applies. In my view, the appellant has failed to establish a reasonable link between disclosure of the information in the record pertaining to the affected person, and any threat to his health or safety.

Ontario (Ministry of the Attorney General) v. Toronto Star, Ontario Superior Court of Justice (Divisional Court), March 26, 2010: The Adjudicator "made an unreasonable order that does not fall within a range of possible acceptable outcomes in the particular factual and legal context of this request."

Ottawa (City) v. Ontario (Information & Privacy Commissioner), Ontario Superior Court of Justice (Divisional Court, December 13, 2010, appealed to Ontario Court of Appeal: "Dunsmuir establishes that decision can be said to be reasonable if it 'falls within a range of possible, acceptable outcomes which are
defensible in respect of the facts and law.' In my view, it is not reasonable for emails belonging to a private individual to be subject to access by members of the public merely because they are sent or received on a government owner email server. That is not a sensible or logical result whether as a question of fact or a question of law. The implications for the many thousands of employees who work in government offices across this country are staggering. I do not consider this decision to fall within the range of reasonable possible outcomes described by the Supreme Court in Dunsmuir as necessary to meet the reasonableness standard.