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Hamilton City Council
Hamilton City Hall
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Hatim Kheir
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VIA EMAIL

Dear Mayor Horwath and Councillors of Hamilton:

RE: By-Law 10-122 (the "Fortification Bylaw")

We are a registered charity and civil society organization with the purpose of upholding Canada's constitutional freedoms, civil rights and human rights. We litigate across Canada to defend the constitutional rights of Canadians.

We are writing on behalf of Daniel Myles to warn you that the Fortification Bylaw's blanket prohibition on recording beyond the perimeter of one's own residence is unconstitutional.

Factual Background

Daniel Myles is a Hamiltonian residing at 218 MacNab Street North. He has ten cameras situated around his home which film outward. Mr. Myles requires these cameras to protect himself against the high level of crime in the neighbourhood. The cameras provide the additional benefit of improving the security of the whole neighbourhood.

On August 15, 2025, Mr. Myles received an Order to Comply directing him to remove all security cameras from his property (the "**Order**"). The Order was made under the Fortification Bylaw.

Section 4 of the Fortification Bylaw states that "No person shall... (2) Apply, use, cause, permit or maintain excessive protective elements to or on land." Section 2(10) defines "excessive protective elements" as:

the use, maintenance or construction of devices, objects, material components, or any contrivance designed for surveillance or to control, hinder, restrict, or deny access to or from land or which have the effect of controlling, hindering, restricting or denying access to or from the land and which are the following:

...

c. The application of visual surveillance equipment, including

video cameras, 'night vision' systems, or electronic listening devices capable of permitting either stationary or scanned viewing or listening, designed or operated so as to listen or view persons or land beyond the perimeter of the land actually owned, leased or rented by the occupant, or the use of visual surveillance equipment where the exterior lenses are obstructed from view or which are employed so as to prevent observation of the direction in which they are aimed.
[Emphasis added]

We take issue particularly with the restriction on cameras showing public property outside of a person's property, which we view as unreasonable and unconstitutional.

We note that on September 5, Angela Laricella of Hamilton's Planning and Economic Development Department wrote to Mr. Myles stating that the cameras are allowed to capture public property, but not neighbouring properties. In fact, the Fortification Bylaw imposes a blanket prohibition on all cameras capable of viewing beyond the perimeter of the residence (the "Camera Ban").

Support from the Community

Mr. Myles has five statements of support from neighbours who all agree that Mr. Myles' cameras provide security and peace of mind (see enclosed letters at tabs 1-5). In addition to residents, Mr. Myles has received a letter of support from Our Lady of All Souls parish, whose parking lot is down the street from Mr. Myles' home (see enclosed letters at tab 6). They write that the cameras provided assistance in solving the murder of one of their parishioners and, since their installation, have reduced car break-ins and thefts.

Mr. Myles has also received a statement of support from [REDACTED] of the collision Reconstruction Unit of the Hamilton Police Service (see enclosed letters tab 7). He stated that a video from Mr. Myles' cameras was "like gold" without which it would have been "almost impossible" to have secured a conviction in a case on which Mr. Myles provided video evidence. In fact, Mr. Myles has been contacted over 40 times by the HPS to provide video evidence captured by his cameras.

The Camera Ban is Unconstitutional and Unjustified

The Camera Ban violates s. 2(b) of the *Canadian Charter of Rights and Freedoms*. Section 2(b) guarantees the freedom of "expression, including freedom of the press and other media of communication."

The Supreme Court of Canada has held that audio and video recording are expressive activity protected by s. 2(b).¹ Mr. Myles' cameras serve the purpose of truth-seeking by allowing him to capture the reality of activity in his neighbourhood. The videos he captures are then useful in bringing the truth to bear in criminal investigations and trials, as demonstrated by the HPS's repeated reliance on them.

¹ *Canadian Broadcasting Corp. v. Canada (Attorney General)*, [2011 SCC 2](#) at paras. [40-41](#).

There is no doubt that Mr. Myles' cameras also provide a deterrent effect on crime, as they greatly increase the likelihood that a perpetrator would be identified and convicted.

Given the infringement to s. 2(b), the City bears the onus of justifying the infringement under s. 1 of the *Charter*.

We write to warn the City that the Camera Ban is unjustifiable because it is unconnected to the purpose of the Fortification Bylaw and infringes freedom of expression well beyond what is necessary. The test for justification under s. 1 has four parts. Limits on *Charter*-protected rights must:

- 1) serve a pressing and substantial objective;
- 2) be rationally connected to the objective;
- 3) minimally impair *Charter* rights in pursuing the objective; and
- 4) be proportional in that their salutary effects must outweigh their deleterious effects.²

The Camera Ban fails at both the second and third stages, at least. **First**, the Camera Ban is not rationally connected to any pressing and substantial objective. To determine if there is a rational connection, the objective of the Camera Ban must first be identified. The purpose of the Fortification Bylaw as a whole is contained in its preamble. It is to promote and protect the "health, safety, and protection of the public" by prohibiting "excessive fortification and protection of land, buildings and structures...limiting the impact on egress or access to lands in case of emergencies and rescue." Put briefly, it is to prohibit elements that make it unsafe to enter or leave premises.

The sweeping prohibition on filming beyond the perimeter of one's own premises is not rationally connected to ensuring safe entrance and exit of properties is possible. Obviously, the mere presence of cameras poses no danger to anyone on the property. In fact, as corroborated by the numerous supporting letters, Mr. Myles' promote safety in the whole neighbourhood. This further highlights the irrationality of the Camera Ban.

In evaluating, the justification for the Camera Ban, its purpose may not be redefined. The motivation behind the provision may not shift.³ Accordingly, the Camera Ban cannot be defended as necessary to defend privacy. Neither the Fortification Bylaw generally, nor the Camera Ban specifically, were passed to protect privacy. This much is evident from the broad nature of the Camera Ban. It prohibits any video surveillance that goes beyond the perimeter of one's own property. This includes cameras which film public streets and sidewalks, on which there is no reasonable expectation of privacy.

Second, the Camera ban is not minimally impairing. To be minimally impairing, a provision must infringe a right no more than necessary to achieve its objective. The Camera Ban, however, goes far beyond what is necessary to protect health and safety. For the reason argued above, prohibiting video surveillance is unconnected to the protection of safety. However, even if some regulation on the ability to install cameras on one's property was necessary, there is no

² *R. v. Oakes*, [1986 CanLII 46 \(SCC\)](#), [1986] 1 SCR 103 at paras. [69-71](#).

³ *R. v. Zundel*, [1992 CanLII 75 \(SCC\)](#), [\[1992\] 2 SCR 731](#) at pp. [760-62](#).

justification for breadth contained in the Camera Ban.

Given the widespread adoption of doorbell cameras – which almost always point outwards towards the street and the homes across the street – a prohibition on any camera pointed beyond the border of one's property is entirely unreasonable. The City appears to tacitly acknowledge the overbroad nature of the Camera Ban in its communications. Angela Lauricella's correspondence dated September 5, 2025 stated that the City supports the use of cameras that capture public property, but not neighbouring properties. This distinction is completely absent from the Fortification Bylaw. The City may not shield an unconstitutional bylaw by selectively enforcing it.

The Camera Ban is unconstitutional and unjustified. It must be repealed and, if necessary, replaced with a constitutionally compliant bylaw.

If the City does not remedy this situation, it may face a constitutional challenge to the Camera Ban. We look forward to your prompt action to correct this matter.

Yours sincerely,

CHARTER ADVOCATES CANADA

Per:

A handwritten signature in black ink, appearing to read 'Hatim Kheir', written in a cursive style.

Hatim Kheir
Staff Lawyer

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Enclosure: Supporting letters