

NO!

From a rink visitor at Giovanni Caboto outdoor ice rink, December 22 2007:

“A father started videotaping his son at a point when I was the only other skater on the ice. The two rink guards were on the side talking to their supervisor. The supervisor told the man he’s not allowed to videotape unless there are no people on the ice. I was the only other skater, so I went up and said I didn’t mind being videotaped. The supervisor said she can’t make any exceptions. The father said he understood, and turned off the camera.”



The Policy says:

“Patrons wishing to use cameras, ... must receive permission from staff before filming. Pictures may only be taken of children/patrons in their personal care. Every attempt should be made to limit or eliminate other patrons from being filmed in the background. When possible, staff should make a verbal request for permission to photograph other patrons who may be in the area where pictures are being taken. Documentation of the verbal permission must be noted in the facility log book including date, program and name of patron taking the pictures. The policy was established for the privacy and safety of our patrons.”

What is the law?

City staff advised that Council did not approve or pass a by-law confirming the photography policy for parks.

City legal staff confirmed that city staff did not need Council approval. He said that staff has the legal power to make this policy based on the Trespass to Property Act.

Here are some excerpts from that law:

2. (1) Every person who is not acting under a right or authority conferred by law and who,

(a) **without the express permission of the occupier**, the proof of which rests on the defendant,

(ii) **engages in an activity on premises when the activity is prohibited under this Act**; or ...
is guilty of an offence and on conviction is liable to a fine of not more than \$2,000.

Limited prohibition

(2) Where entry on premises is not prohibited under section 3 or by notice that one or more particular activities are permitted under subsection (1), **and notice is given that a particular activity is prohibited, that activity and entry for the purpose is prohibited** and all other activities and entry for the purpose are not prohibited.

Method of giving notice

5. (1) A notice under this Act may be given,

(a) orally or in writing;

(b) **by means of signs posted** so that a sign is clearly visible in daylight under normal conditions from the approach to each ordinary point of access to the premises to which it applies; ...

*But, doesn't the City of Toronto Act (also a law) say that **only elected Councillors can make policy?***

So is staff allowed to make this policy?

City of Toronto Act, 2006

Governing principles

1. (1) The City of Toronto exists for the purpose of providing good government with respect to matters within its jurisdiction, **and the city council is a democratically elected government which is responsible and accountable.**

Role of city council

131. It is the role of city council,

(a) to represent the public and to consider the well-being and interests of the City;

(b) **to develop and evaluate the policies and programs of the City;**

(c) to determine which services the City provides;

(d) to ensure that administrative policies, practices and procedures and controllership policies, practices and procedures are in place to implement the decisions of council;

(e) to ensure the accountability and transparency of the operations of the City, including the activities of the senior management of the City;
...

Powers of city council

132. (1) **The powers of the City shall be exercised by city council.**

Role of officers and employees

136. **It is the role of the officers and employees of the City,**

(a) **to implement the decisions of city council** and to establish administrative practices and procedures to carry out those decisions;

(b) **to undertake research and provide advice to city council on the policies** and programs of the City; and ...

Even if council wanted to, doesn't the law, in the City of Toronto Act, limit council's power to delegate its "law-making" powers?

Restriction re: delegation of legislative and quasi-judicial powers

21. (1) Sections 7 and 8 **do not authorize the City to delegate legislative and quasi-judicial powers** under any Act except those listed in subsection (2) **and the legislative and quasi-judicial powers under the listed Acts may be delegated only to, ...**

(c) an individual who is **an officer, employee** or agent of the City.

Restriction re officers, employees, etc.

(4) No delegation of a legislative power shall be made to an individual described in clause (1) (c) unless, in the opinion of city council, the power being delegated is of a **minor nature** and, in determining whether or not a power is of a minor nature, city council, in addition to any other factors council wishes to consider, shall have regard to the **number of people**, the **size of geographic area** and the **time period** affected by an exercise of the power.

Is the power to prevent picture-taking in parks of a "minor" nature, since it applies indefinitely, to everyone who uses parks facilities anywhere in Toronto? Many people are prevented from taking photographs of their friends and family, at public facilities across the city, often by young city staff who have limited experience in using discretion.