

## **Council Report**

**For the Meeting of Thursday, April 15, 2021**

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**To:** Council **Date:** April 12, 2021  
**From:** Shannon Perkins, Manager, Bylaw Services  
**Subject:** Bylaw Compliance Strategy - End of 24/7 Sheltering

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### **CLOSED MEETING RATIONALE**

This report is recommended for a closed meeting of Council because it relates to law enforcement, potential litigation involving the City, and the receipt of advice that is subject to solicitor-client privilege, including communications necessary for that purpose. Consideration of this report in a closed meeting is authorized under section 90(1)(f), (g), and (i) of the *Community Charter*.

### **RECOMMENDATION**

That Council:

1. Endorse the enforcement approach as set out in this report;
2. Authorize the City Manager, at her discretion, to instruct the City Solicitor to commence legal proceedings to enforce the *Parks Regulation Bylaw* in relation to sheltering in City parks including, at his discretion, seeking injunctive relief; and
3. Request that the City Manager and City Solicitor report back to Council regularly on enforcement efforts and conduct of any legal proceedings.

### **EXECUTIVE SUMMARY**

Beginning May 1, daytime sheltering will no longer be allowed in City parks. People sheltering in parks will again be required to take down, pack up and move their shelter and belongings daily by 7 a.m.

The City is working closely with BC Housing and nearly 120 people have already been moved inside from City parks and public spaces. Approximately 100 people experiencing homelessness remain in the parks and will all receive an offer to move inside by May 1.

The Province and the City have invested significant resources to ensure that appropriate indoor shelters are available to all those who need them. Furthermore, BC Housing has committed that all persons in shelters will be on a path to permanent housing. Therefore, there should be no need for anyone to shelter in City parks once all the indoor shelters are available.

Every effort is being made to ensure everyone is accounted for in this process, and it is expected that most people will accept an offer to move inside. While the City will begin individualized enforcement starting in May, achieving compliance in circumstances such as this will take time and involve considerable City resources.

To ensure the greatest likelihood of success, a two-phased enforcement process will be undertaken by the City. This approach involves the identification of each person and their unique needs and circumstances (phase 1) which will enable the City, working collaboratively with BC Housing and others, to assist in the transition of each person to indoor shelters (phase 2).

The City's plan is to work collaboratively with BC Housing, outreach workers and other service providers to achieve voluntary compliance, and despite the fact, that the planned enforcement approach will involve respectful communications and individualized approach, we must be prepared for the likelihood that some persons will refuse indoor shelter offers and will refuse to comply.

While every effort will be made to achieve voluntary compliance, success will depend on the City enforcing and being seen to enforce its bylaws. Therefore, it is recommended that Council authorize the City Manager to instruct the City Solicitor to initiate legal proceedings to enforce the *Parks Regulation Bylaw*, if necessary. Doing so will provide the City with flexibility to respond to evolving situations quickly and effectively.

## **PURPOSE**

The purpose of this report is to provide Council with an overview of the City's planned approach to achieve compliance with the *Parks Regulation Bylaw* provisions regarding sheltering, in anticipation of, and following, bylaw changes on May 1, 2021.

## **BACKGROUND**

Last year, as consequence of the COVID-19 pandemic, the City experienced a dramatic increase in instances of persons experiencing homelessness sheltering in City parks. In accordance with public health advice and to facilitate their ability to shelter in place, the City first suspended enforcement of daytime prohibition on sheltering and, subsequently, temporarily amended the *Parks Regulation Bylaw* to explicitly allow daytime sheltering under some circumstances.

On March 11, 2021, the Attorney General and Minister of Housing David Eby, working with the City, announced that the Province had secured a sufficient number of temporary indoor housing and shelter spaces for everyone currently living outside as a pathway to permanent stable housing. The Province and BC Housing have committed to deliver at least 220 spaces. This satisfies public health recommendations regarding municipal bylaw enforcement during the pandemic.

On March 18, 2021, the City adopted an amendment to the *Parks Regulation Bylaw* to remove a provision allowing daytime sheltering in parks by people experiencing homelessness, effective May 1, 2021. The change means that from May 1, daytime sheltering will no longer be allowed in City parks. People sheltering in parks will again be required to take down, pack up and move their shelter and belongings daily by 7 a.m.

The City is working closely with BC Housing and nearly 120 people have already been moved inside from City parks and public spaces. Approximately 100 people experiencing homelessness remain

in the parks and will all receive an offer to move inside by May 1.

Every effort is being made to ensure everyone is accounted for in this process, and it is expected that most people will accept an offer to move inside. However, for a variety of reasons, it is anticipated that some people will not accept an offer of indoor space and will continue to shelter in parks in contravention of the *Parks Regulation Bylaw*.

To effectively manage the transition to compliance regarding the prohibition on daytime sheltering in parks, the City is developing an action plan to guide the work of Bylaw, Parks, Public Works and other City departments. A coordinated communications plan is being implemented in collaboration with BC Housing and outreach service providers to ensure clear, consistent and people-centred communication to make people currently sheltering aware of the upcoming changes to sheltering in parks regulations. The communications plan will also include strategies to effectively communicate with residents, Neighbourhood Associations and other groups.

There is an expectation in the community that as of May 1, enforcement efforts will begin to prohibit daytime sheltering and that people experiencing homelessness will take down their shelters during the day. Although the City will start individualized enforcement on May 1st, achieving compliance in circumstances such as this will take time and involve considerable City resources, due to the complexities of working with vulnerable citizens. Despite the fact that the planned enforcement approach will involve respectful communications and individualised approach, it is almost certain that some persons will refuse to comply. Therefore, the City will likely require legal proceedings to achieve full compliance.

Bylaw enforcement to end 24/7 sheltering in parks will be conducted in a phased approach with an emphasis on personalized relocation and support plans, rather than a blanket approach for everyone. As a result, it is important to recognize that these phases may unfold differently in various locations. Flexibility and ability to quickly adjust to evolving situation is essential for ultimately successful outcomes in each case.

### **Phase 1 – Collaboration, Support and Preparation (Now until May 1)**

The City, in close collaboration with BC Housing, is developing a master list of people living outside to track who is sheltering where, when they have been offered housing, whether they have accepted the offer, and where and when they are expected to move inside. This will support awareness of each person's individual situation and will help the City work with community partners to ensure people are getting the support required to move out of parks and public spaces and into indoor living spaces.

Peer support will be essential in helping people overcome barriers that make it difficult for them to accept indoor housing offers. There are practical methods including, but not limited to, one-to-one support, shelter tours, property downsizing assistance, and acknowledgement of pets and spouses when making indoor offers. Other critical assistance, such as mental health support, is expected to be provided based on individual needs, by local service providers.

Priorities during this phase:

- Support BC Housing to identify people and ensure housing applications are complete
- Provide assistance, such as relocating belongings, to individuals who are transitioning to indoor living spaces
- Connect individuals to various outreach supports as required
- Collaborate with BC Housing, outreach services and the Greater Victoria Coalition to End

### Homelessness

- Communicate the end of 24/7 sheltering and requirements to take down tents at 7 a.m. daily as of May 1
- Continue to gain compliance of existing temporary sheltering bylaws including size, prohibitions, setbacks, etc. in authorized parks
- Continue to gain compliance with the court order prohibiting structures and property in Environmentally Sensitive Areas
- Continue to gain compliance of the Streets and Traffic bylaw prohibiting sheltering on sidewalks, streets and boulevards

## **Phase 2 – Collaboration, Support and Individualized Compliance Phase (Begins May 1)**

Priorities during this phase:

- Begin to enforce the daily 7 a.m. requirement to remove shelters from parks for those who have refused shelter opportunities and/or support
- Track progress for individuals who have accepted indoor living spaces and are transitioning to move inside, as well as people who are actively receiving outreach support to overcome barriers to accept housing offers. This individualized support and compliance plan will ensure clear and consistent conversations are taking place regarding compliance timelines, expectations and deadlines
- Provide assistance to individuals who are transitioning to indoor living spaces
- Connect individuals to various outreach supports as required
- Collaborate with BC Housing, outreach services and the Greater Victoria Coalition to End Homelessness

There will be regular internal reporting of compliance levels and enforcement activities to determine appropriate resourcing requirements. It is important to note that due to the complex and fluid nature of this process, additional bylaw and police support resources may be required to achieve full and consistent compliance with the bylaw regulations prohibiting daytime sheltering.

Everyone is expected to comply with bylaws, however some may need more time to come into compliance given their unique situations. For others who have openly declared they have no intention of complying, have refused all offers of shelter and support, or those supports have been exhausted, enforcement will begin immediately on May 1.

## **ISSUES & ANALYSIS**

There are several obstacles to achieving immediate compliance with the *Parks Regulation Bylaw* after May 1:

### **Volume**

There are currently more than 100 individuals experiencing homelessness sheltering in parks and many more structures. Because of a need for individualized approach to each person, relocating this many people and removal of all structures will take considerable time. Depending on how much property a person has and how much time they take to dismantle their shelter site, dealing with each person or structure can take several hours or days and require multiple interactions, involving City staff, BC Housing, outreach workers and peer supports, before compliance is achieved.

## **Entrenchment**

Many individuals have been sheltering in the parks for over a year and have accumulated a lot of property. Assistance with property reduction and relocation to indoor sheltering in those circumstances requires careful and respectful handling. As such, it can be time consuming despite best efforts and intentions of all parties.

## **Protests**

Despite the fact that everyone currently sheltering in City parks will be offered indoor shelter space and a path to appropriate housing, it is likely that any attempt to reduce sheltering in parks will attract protests and opposition. Interference with City staff while conducting duties creates inefficiencies and additional legal processes which detract from constructive outcomes for the persons experiencing homelessness.

## **Safety**

This information is withheld under sections "15(1)(f) endanger the life or physical safety of a law enforcement officer or any other person" and "19(1)(b) interfere with public safety" of the *Freedom of Information and Protection of Privacy Act*.

## **Lack of available outreach and mental health supports**

Many times, bylaw officers are providing supports and connecting individuals with urgent help due to gaps in outreach services, specifically mental health crisis, hoarding disorders, addictions, general health, emotional support, among others. These essential actions, add considerable time to being able to move people indoors.

## **OPTIONS & IMPACTS**

The Province and the City have invested significant resources to ensure that appropriate indoor shelters are available to all those who need them. Furthermore, BC Housing has committed that all persons in shelters will be on a path to permanent housing. Therefore, there should be no need for anyone to shelter in City parks once all the indoor shelters are available.

However, for reasons set out above, it will take considerable effort and time to relocate all persons presently sheltering in parks to indoor shelters. While the City's plan is to work collaboratively with BC Housing, outreach workers and other service providers to achieve voluntary compliance, the likelihood of people refusing to move indoors is a reality. Indeed, some persons in the parks have already indicated that they do not intend to move indoors. Others have refused to accept the City's authority over the parks and reject the validity of the *Parks Regulation Bylaw*.

The City Solicitor advises that there is no question that the City has jurisdiction over the parks and has the authority to enact the *Parks Regulation Bylaw*. The prohibition on daytime sheltering has been upheld by the BC Court of Appeal and is legally sound. The *Community Charter* authorizes the City to enforce its bylaws through a civil proceeding and injunctive relief. In the past, injunctions have typically been sought in relation to large encampments or entire parks. However, it is also possible to seek injunctions against smaller groups, or even individuals, if necessary.

For the City's efforts to achieve voluntary compliance to be successful, the City needs to be able to quickly respond to any challenges to its authority in relation the parks. Some people currently

sheltering in the parks who would otherwise be interested in moving indoors may be reluctant to do so if they see others challenging the City and refusing to comply with the *Parks Regulations Bylaw* with impunity. Therefore, Council authority to initiate legal action, including seeking of injunctive relief, is necessary to allow for quick and flexible response to any instances where other efforts to achieve compliance are ineffective.

Injunction applications can be time consuming and require considerable City resources. Therefore, any legal proceedings would be utilized as a last resort in each instance, only after other efforts to achieve compliance are unsuccessful. However, it is possible that a narrowly focused injunction to deal with difficult individual(s) early in the process may make for a smoother transition process for others by signaling that the City is serious about achieving compliance with the *Parks Regulation Bylaw*.

### **Option 1: Proceed with “normal” enforcement**

The City could approach the bylaw change on May 1 as “business as usual” and rely on its normal enforcement processes. That would involve bylaw officers responding to complaints and taking progressively escalating measures until compliance is achieved.

For the reasons explained above, this approach is not likely to be successful and is not recommended. Specifically, given the entrenched nature of the sheltering activity in City parks over the last year, mental and emotional state of many persons sheltering in the parks, and the numbers of persons involved, a more deliberate and structured process is required.

### **Option 2: Proceed with phased enforcement (recommended)**

Sheltering in parks is a humanitarian crisis. Although the immediate scale of it relates to the pandemic, its causes are much more complex. Critically, individual circumstances are unique to each person. Therefore, a methodical and individualized response is required.

The enforcement process developed by the City, with its two phases, allows for the necessary individual approach while also providing the needed structure and methodology that offers the greatest likelihood of ultimate success. Identification of each person and their unique needs and circumstances (phase 1) will enable the City, working collaboratively with BC Housing and others, to assist in the transition of each person to indoor shelters (phase 2).

While every effort will be made to achieve voluntary compliance, success will depend on the City enforcing and being seen as, able to enforce its bylaws. Therefore, it is recommended that Council authorize the City Manager to instruct the City Solicitor to initiate legal proceedings to enforce the *Parks Regulation Bylaw* if necessary. Doing so, will provide the City with flexibility to respond to evolving situations quickly and effectively.

### ***Impacts to Financial Plan***

For 2021 and going forward we are going to require additional bylaw staff resources in order to adequately enforce the Parks Regulation Bylaw and Streets and Traffic Bylaw specifically as it relates to the end of 24/7 sheltering. Even with the additional 5 bylaw officers which were hired in November 2020, our call load remains high and an unacceptable number of pending files remain unassigned and unanswered, effectively rendering those bylaws ineffective. The backlog of files is as a direct result of competing priority work in parks and public spaces that has been consuming the majority of bylaw hours. In addition, we have inadequate administrative support

creating decreased customer service capabilities. Additional bylaw officers and support staff is being requested through the Strengthening Communities Grant. If we are not successful in obtaining these funds, we will report back to Council.

If there is a desire to either increase enforcement to speed up achieving compliance, or if circumstances in the parks deteriorate such that greater police assistance is required, further resources may be necessary regardless of which option is selected. Similarly, current Legal Services resources are sufficient to handle some additional legal work associated with enforcement of the *Parks Regulation Bylaw*. However, if numerous proceedings are required or a serious legal challenge to the City is launched, it may be beyond existing Legal Services budget and additional resources may be required.

#### *Rise and Report Considerations*

No rise and report is recommended at this time. Should the City commence legal proceedings to enforce the *Parks Regulation Bylaw* in relation to sheltering in City parks including, this would be a public process and the City would develop a proactive communications plan at that time.

## **CONCLUSIONS**

In conclusion, it is recommended that a thoughtful, individualized enforcement approach be used to bring an end to 24/7 sheltering in parks. This is consistent with the City's approach to bylaw compliance generally, where a person's unique situation is taken into consideration and those making efforts toward that goal are given time to comply. However, that timeframe is not indefinite, and escalating enforcement may be required if compliance cannot be met within a reasonable time frame and/or there is no advancement of the situation.

It is also understood, based on conversations with some of the people currently sheltering in the parks, that there are individuals who have made their position clear that they never intend to move inside, for a variety of reasons. For these individuals, immediate enforcement is appropriate.

Individualized enforcement, with the potential use of an injunction, will be the most effective and efficient way to achieve compliance in a manner that ensures the safety of City staff and individuals who are sheltering outside.

Respectfully submitted,

Shannon Perkins  
Bylaw Manager

**Report accepted and recommended by the City Manager**