

The companion bylaw No. 23-106: *Miscellaneous Amendments Bylaw (For Administration of Property in City Custody Bylaw)* is intended to remove existing impounding regulations and replace them with consistent impounding authority that references the new *Administration of Property in City Custody Bylaw*.

The proposed new bylaw does not expand impound authority but merely clarifies the impound regulations and streamlines them to better reflect the actual experience with impounding of items unlawfully occupying public places.

PURPOSE

The purpose of this report is to describe administrative problems regarding the management of property unlawfully occupying public spaces and to recommend council bring forward the attached bylaw No. 23-105: *Administration of Property in City Custody Bylaw* and bylaw No. 23-106: *Miscellaneous Amendments Bylaw (For Administration of Property in City Custody Bylaw)* to the Dec 7, 2023, Council meeting for consideration. These changes clarify and streamline impounding process but do not expand the impounding powers

BACKGROUND

Attached for Council's consideration is a copy of the proposed bylaw No. 23-105: *Administration of Property in City Custody Bylaw* and a companion bylaw No. 23-106: *Miscellaneous Amendments Bylaw (For Administration of Property in City Custody Bylaw)*.

The City regulates the use of public places such as parks and streets to ensure their orderly use for the benefit of the community. Although the City owns most of these spaces, its primary role is not as a property owner but as a manager balancing competing uses of this scarce public resource. For example, streets, including sidewalks, are used for a variety of competing purposes, including:

- Movement of vehicles and pedestrians,
- Underground and overhead utilities
- Emergency services (such as fire and ambulance) access
- Street furniture such as benches or garbage and recycling cans
- Access to businesses and residences
- Sidewalk patios
- Public transit, including bus stops and their infrastructure.
- Deliveries to businesses and residences
- Vehicle and bicycle parking
- Street vending and entertainment
- Protests and demonstrations

Similarly, parks are used for a multitude of competing activities, including:

- Provision of open, green space
- Preservation of environmentally sensitive areas
- Protection of culturally significant areas
- Recreational, cultural, and social activities
- Overnight sheltering by persons experiencing homelessness

These, and many other activities, are not always compatible with each other. Municipal regulations are intended to manage these conflicts and ensure that public places function as intended. In Victoria, this is done primarily through the *Streets and Traffic Bylaw* in relation to streets and the *Parks Regulation Bylaw* in relation to parks.

Enforcement of these bylaws is critical to avoid conflicts between competing uses and achieve City objectives as reflected in those bylaws. While enforcement can take a number of different forms depending on circumstances, when it comes to property unlawfully occupying public places, the most effective tool is impoundment. Impounding property is primarily intended to remove an obstruction from public property to allow for the property’s free use by the community. It can also serve as a deterrent to violation of the bylaws due to the inconvenience and cost associated with recovering impounded items. In appropriate circumstances, property may be impounded to eliminate the immediate problem while the City pursues other remedies.

At this time, the rules related to impoundment of property unlawfully occupying public places vary depending on the nature of the public place – see table 1 below.

Table 1

Provision	Parks Regulation Bylaw	Streets and Traffic Bylaw
Seizing or Removing Unlawfully Placed Property	<p>Bylaw officers can “remove, seize, [or] impound [...] any property, matter or thing that unlawfully remains or has been unlawfully placed or left in a park.”</p> <p>For nuisances and obstructions, officers can “remove [...] from a park any obstruction or thing placed there contrary to the [Parks Bylaw]”</p>	<p>With authorization from the Director of Engineering, bylaw officers can remove “an object, obstruction, or thing unlawfully occupying a portion of a street or public place.”</p>
Procedures for seizure, impoundment, and return of Unlawfully Placed Property	<p>Seized, removed, or impounded property must be made available for pick up by its owner within six hours</p> <p>Service to arrange for a return only has to be available during regular business hours at the Bylaw and Licensing Services office</p>	<p>A person entitled to recover impounded Unlawfully Placed Property may do so only by paying the prescribed fees and signing an undertaking promising not to place the same Unlawfully Placed Property in a public place in contravention of the bylaw again</p>
Final disposition of impounded property	<p>After 30 days, if there is no claim for return, the Director of Parks must determine if it appears to them that the Unlawfully Placed Property has market value</p> <p>Sale by auction is an <i>option</i> if property has market value</p> <p>Must discard as garbage if no market value</p>	<p>After 30 days, if there is no claim for return, the Director of Engineering must determine if it appears to them that the Unlawfully Placed Property has market value</p> <p>Sale by auction is <i>mandatory</i> if property has market value</p> <p>Must discard as garbage if no market value</p>

ISSUES & ANALYSIS

Rationale for new approach

Many factors contribute to the impetus for an updated approach, including the large number of impounds, the volume of impounded material, the labour costs of impounding and returning material, safety concerns, lack of deterrence in the current system, and a misalignment of existing bylaw provisions with feasible practices.

a. Labour cost

The labour required by the present process poses a significant concern. A typical impound, which includes collecting, transporting, screening for hazardous material, tagging, and storing unlawful placed property, takes three to four hours of labour, on average. During the process, officers may take upwards of 300 photographs for documentation. Each return or attempted return takes about two hours. In all, impounding and returning unlawfully placed property can easily consume over 500 labour hours in a month. (For context, based on a 35-hour week, one employee will work 140 hours per month – and so, currently, the equivalent of 3.5 FTEs on an ongoing basis)

Additional delays and complications frequently arise. For example, multiple people sometimes claim ownership of the same impounded property. Also, owners frequently do not attend at the arranged return location, which contributes to the disproportionate amount of time city staff spend on the return of unlawfully placed property.

b. Volume of Impounds

City staff are impounding on average between 5 and 10 tonnes of material weekly. Waste identified during the impound process can comprise a significant part of the unlawfully placed property. About half of what is impounded is never claimed, the great majority of which is ultimately disposed of as waste.

c. Lack of Deterrence

A very disproportionate amount of staff time is spent impounding the property of a few specific individuals. For instance, one individual's property has been impounded more than 100 times over a period of 15 years.

d. Impracticality of Existing Bylaws

There are at least six practical challenges arising from the bylaw provisions presently in force:

1. The Parks Bylaw indicates that impounded property will be released at the Bylaw and Licensing Services Office (at 12 Centennial Square). This is not feasible, in part because the office cannot store impounded property. Instead, multiple storage facilities are located across the city, resulting in the delivery of the impounded property (as opposed to the owner collecting it from a set location).
2. The Parks Bylaw provides a window of only six hours (during business hours) for staff to impound, sort, document, and have the property available for return to the owner. It is broadly agreed that this window is insufficient. As noted above, the impounding process takes approximately three to four hours, and a return takes approximately two hours. Even if officers were always available to immediately facilitate a return, this timeline is not practically feasible.

3. The present wording of the *Streets and Traffic Bylaw* undertaking is practically ineffective, as it purports to prevent the same individual from unlawfully placing the *same property* a second time, rather than preventing the same *individual* from placing *any* property unlawfully a second time.
4. The fee structure under the *Streets and Traffic Bylaw* is based on weight of items and repeat fees are applied to specific items and not the person in violation. It is impractical for staff to weigh all impounded items. Furthermore, whether the “second or subsequent detention or removal” fee set out in the *Streets and Traffic Bylaw* applies to the same items or same person is ambiguous.
5. Those who may be liable for a fee typically lack the financial means to pay, and so in the majority of instances the imposition of a fee has little practical effect.
6. The bylaws contemplate that unlawfully placed property will be removed, seized, or impounded, and then made available for pickup. This approach is impractical when the unlawfully placed property include very large items and pose significant challenges for transportation, storage, and return.

Goals of Amended Provisions and Processes

The existence of two different sets of rules regarding impoundment of property creates unnecessary administrative challenges and increases the City’s operating costs. It also makes impounding rules needlessly confusing for the public. Clarification and streamlining of these rules is consistent with the City’s commitment to continuing improvement of its processes. No significant policy changes are proposed as part of these process changes and there is no expansion of the impounding authority or change to when property unlawfully occupying public places may be impounded.

Given the current challenges with impounding, and the authority available to the City, the proposed bylaw No. 23-105: *Administration of Property in City Custody Bylaw*, is an opportunity for a new regulatory scheme that more practically and efficiently addresses the City’s present situation. Such a scheme is proposed with three goals in mind, namely increased deterrence, reduction of the volume of impounding, and increased efficiency and effectiveness in the impound process. In addition, experience during the last few years suggests a need for greater transparency of the process and ensuring its fair application.

1. Increased Deterrence

The challenges faced are exacerbated by habitual violations by individuals who are capable of adhering to bylaws regarding placement of property but decline to do so. To address this, property owners should be deterred from having it impounded in the first place. Fees, fines and, perhaps most importantly, inconvenience, are potential components of deterrence in this proposed bylaw. Proposed fees will increase with each impound and will have to be paid before impounded property is returned. Additionally, the proposed bylaw provides the City with the ability to recover its full costs for removal of any commercial property unlawfully occupying public places from its owner, whether or not it is claimed by the owner.

To ensure that persons experiencing homelessness are not placed at undue risk as a result of impoundment, the proposed bylaw includes an exemption from fees for life-sustaining objects such as tents, sleeping bags, and other essentials.

2. Reduce the Volume of Impounds

The high volume of most impounds is a significant challenge. The proposed bylaw contains provisions to specifically address opportunities to reduce the amount of material impounded. For example, the proposed bylaw provides City staff more discretion to discard material that is clearly identifiable as rubbish, hazardous, or bulky items, rather than being required to impound, transport, and document such items.

The prescribed 30-day holding period also contributes to the volume issue. Most claims on impounded property occur within a week, yet the remaining impounds continue to occupy facility space for 30 days prior to disposal. This time frame causes pressures on storage, creating additional work for staff to manage capacity issues. The proposed bylaw recommends decreasing the holding period from 30 days to 14 days to address this pressure.

3. Increased Efficiency and Effectiveness

Ideally, impounds of unlawfully placed property would represent a proportionate amount of staff time and resources in comparison to other departmental priorities, and would more effectively target the kinds of valuable or important property contemplated in the *Community Charter* seizure provisions.

The proposed *Administration of Property in City Custody Bylaw* attempts to address these inefficiencies by clarifying definitions including rubbish, hazardous waste and bulky items thereby reducing the volume of material impounded and amount of subsequent time for the return process. It also simplifies and clarifies the return process by designating a specified location to claim retained property.

4. Improved Transparency

A single bylaw that applies to all impounds, other than vehicles or animals, provides improved clarity and transparency regarding applicable process. Currently, impounding rules are contained within bylaws regulating public places and are not always easy to find. The proposed bylaw would change that and would make accessing and understanding applicable rules easier for everyone.

Bylaw No. 23-106: Miscellaneous Amendments Bylaw (For Administration of Property in City Custody Bylaw)

This is a companion bylaw to the proposed new *Administration of Property in City Custody Bylaw*. It removes the existing impounding regulations from the *Streets and Traffic Bylaw* and the *Parks Regulation Bylaw* and replaces them with consistent impounding authority incorporating the new *Administration of Property in City Custody Bylaw* rules. It does not expand the existing authority but, through incorporation of the new uniform rules, allows for uniform process as to how impounded property is processed.

OPTIONS & IMPACTS

Option 1 – Bring forward bylaw amendments (Recommended)

This option is recommended as it will provide increased deterrence, reduce the volume of impounding, and increase efficiency and effectiveness in the impound process, while ensuring a fair and transparent process. Apart from adjustments intended to improve the City's administrative processes, the two substantive changes include a new fee structure that would apply to property owners, and a reduction in the holding period for impounded property from 30 days to 14 days.

1. That Council consider bylaw No. 23-105: *Administration of Property in City Custody Bylaw* to govern impoundment of objects unlawfully occupying public places.
2. That this motion be forwarded to the December 7, 2023, daytime meeting of Council and that at this meeting, Council consider giving three readings of bylaw No. 23-105: *Administration of Property in City Custody Bylaw* and bylaw No. 23-106: *Miscellaneous Amendments Bylaw (For Administration of Property in City Custody Bylaw)*.

Option 2 – Do not bring forward bylaw amendments (Not Recommended)

Council can choose to continue with the present impounding scheme, which is legally valid. However, this option will deny opportunities for improved efficiency and effectiveness related to public space management. Therefore, it is not recommended.

2023 – 2026 Strategic Plan

Adoption of bylaw No. 23-105: *Administration of Property in City Custody Bylaw* advances the following strategic priorities identified by Council in the 2023-2026 Strategic Plan.

Community Well-being and Safety Support priority, specifically:

- Support a range of civilian, bylaw and policing crisis response and prevention services,
- Beautify, support, and enhance Victoria's downtown and urban villages.

Economic Health and Community Vitality

- Support small businesses and the visitor economy, and work to strengthen and add vitality to the downtown core.
- Activate streets, sidewalks, patios and public space, and support business initiatives and ideas.

CONCLUSIONS

The City is faced with two fundamental problems:

1. The enormous amount of material which is routinely and unlawfully placed on public sidewalks, streets, and parks, and the challenges which flow from that – most notably, the staff time and other resources required to seize, process, and impound such material; and
2. The procedure for returning impounded material to property owners, which presently absorbs significant staff time and other resources.

The extent to which these challenges can be effectively managed relies on City policy decisions. Specifically, the City must decide the extent to which it wishes to require individuals to take responsibility for their own property. At present, the City assumes almost all practical responsibility for unlawfully placed materials, which are carefully sorted and stored, and then personally delivered back to the owner at a time convenient for him or her. Bylaw No. 23-105: *Administration of Property in City Custody Bylaw* shifts this responsibility more heavily onto property owners.

Respectfully submitted,

Director of Bylaw and Licencing Services
Shannon Perkins

Report accepted and recommended by the City Manager

List of Attachments

Appendix A - *Bylaw No. 23-105: Administration of Property in City Custody Bylaw*
Appendix B - *Bylaw No. 23-106: Miscellaneous Amendments Bylaw (For Administration of Property in City Custody Bylaw)*