



Committee of the Whole Report For the Meeting of September 21, 2017

To: Committee of the Whole
Chris Coates, City Clerk
From: Thomas Soulliere, Director, Parks, Recreation and Facilities
Tom Zworski, City Solicitor
Subject: Proposed Amendments to the Parks Regulation Bylaw

RECOMMENDATION

That Council direct staff to bring forward to the September 21 Council meeting amendments to the *Parks Regulation Bylaw* including the following new provisions:

1. Ability to temporarily close a park or part of a park;
2. Prohibition on interference with City workers engaged in clean-up, maintenance or other work in a park;
3. Establishment of a time limit on occupation of a park or part of a park;
4. Authority to impound property unlawfully left in a park;
5. Ability to apply for permits to carry out protests and other expressive activities in a park; and
6. Consequential and housekeeping amendments.

EXECUTIVE SUMMARY

The City manages 137 parks and open spaces that enable a multitude of uses for residents and visitors.

The current *Parks Regulation Bylaw* was adopted almost 10 years ago and, through the experience gained with the bylaw certain gaps have been identified that create challenges for the effective administration and management of City parks.

The experience over the last several years suggests that changes to some of the regulations will address certain situations that adversely affect park operations and benefit park users in general. The proposed bylaw amendments establish more effective tools to deal with patrons who do not readily fulfil staff requests to comply with Bylaw regulations. In addition, City parks can be impacted by uses that occur with higher frequency and under certain weather conditions. There is no provision in the bylaw that enables temporary closures of parks or parts of parks, such as may be required to undertake reconstructive work or to simply allow natural vegetation to recover after extensive use or major weather and natural events. Therefore, staff recommend amending the *Parks Regulation Bylaw* to address these gaps to ensure that the parks continue to be available for the use and enjoyment of residents and visitors.

Also recommended is updating of the provisions dealing with permitting for demonstrations and special events to better provide for a system of permits to address legitimate protests or other expressive activity in the parks.

PURPOSE

The purpose of this report is to seek Council direction regarding amendments to the *Parks Regulation Bylaw* to better regulate the use and operation of the parks.

BACKGROUND

The City manages a total of 137 parks and open spaces ranging in size from small lots to large multi-use spaces occupying many hectares.

Annually, City staff undertake a diverse program of regular maintenance as well as major projects to ensure “green and growing” assets (i.e., plants, trees, turf, etc.) and hard assets (i.e., benches, washrooms, sport courts, waste collection bins, etc.) are effectively managed and can be safely used by Victoria residents and visitors. Except in cases of major reconstruction work, most of the maintenance work is carried out while the parks continue to be open to the public. In the majority of cases, park users voluntarily comply with reasonable staff requests for cooperation related to, for example, temporary closure of parts of parks or the removal of personal possessions. From time to time, however, staff encounter confrontational or uncooperative patrons. In such cases, staff's ability to require compliance is limited.

In addition, City parks are used for sheltering by persons experiencing homelessness. Amendments to the bylaw, to bring it into compliance with the court decision in *Victoria (City) v. Adams*, specifically allow homeless persons to erect shelter in the parks between 7 p.m. and 7 a.m. Experience over the last several years has shown that while limiting sheltering between 7 p.m. and 7 a.m. is generally followed, there has been some experience related to longer use of certain parks or areas in the parks for sheltering purposes. City staff undertake a daily morning “wake up” monitoring within City parks to manage sheltering in step with the bylaw provisions. While compliance is generally good, as noted above, there are circumstances where further attention is required. The real concern is that some persons remain in the same location where they have sheltered the previous night. This kind of prolonged occupation of the same space has significant impact on the park areas in terms of physical effect on grass and other vegetation as well as on the ability of other park users to use the area for recreation activities.

ISSUES & ANALYSIS

The experience of Bylaw enforcement personnel and the police suggests that there are gaps in the existing *Parks Regulation Bylaw*. The following are five areas where amendments are recommended. Four of the areas identified below are of general application, while one deals specifically with consequences of an increased use of the parks by persons who are homeless. The proposed draft new bylaw provisions are attached as Appendix “A”. For convenience, the current Bylaw is attached as Appendix “B”.

Ability to temporarily close a park or part of a park

There is no provision in the bylaw to permit staff to close any part of the park when required for public safety or to carry out work, whether it be routine work such as clean-up, maintenance, or more substantive restorative or construction activity. While the majority of park users comply with requests from City staff, there is no legal requirement to do so. As a consequence, a person could refuse to leave and, potentially, delay or even prevent staff from performing their tasks. Similarly, there are no provisions for legally closing parts of a park to allow a field to recover after intensive use or to re-seed the grass. Nor is there any

ability to close a park during severe weather events, such as a windstorm that may cause parks to be unsafe. It is therefore recommended that the bylaw be amended to include a provision which would allow the Director of Parks, Recreation and Facilities to temporarily close a park or part of a park. Such closures would be time limited and used when required to facilitate work in a park or to deal with matters of public safety, such as severe weather conditions. Any closure that would exceed three weeks would be reported on to Council.

This authority would be provided through the new section 9A as shown in Appendix A.

Prohibition on interference with City employees

The bylaw does not contain any provisions that address situations where park users, by their presence or the presence of their possessions, interfere with the ability of City staff to perform their duties. Whether such interference is intentional or not, it can have significant impact on staff's ability to carry out their duties. It can also present safety issues for both staff and members of the public. Therefore it is recommended that the bylaw be amended to include explicit language prohibiting interference with City staff and requiring park users to comply with requests from City staff engaged in work in the park. This change would provide staff with clear legal authority to require the public's cooperation when it is necessary to enable staff to perform their duties in a park.

This prohibition would be included as a new section 14A as shown in Appendix A.

Establishment of a time limit on occupation of a park

Due to acute housing crisis, City parks are regularly used for sheltering. While sheltering in the parks is not an answer to homelessness, the bylaw expressly allows overnight sheltering by homeless persons. However, continuous or repeated use of the same park space for sheltering purposes can severely damage a park, both green and growing, as well as hard assets, because City parks are not designed to accommodate such prolonged use and occupation. The bylaw does not currently include any limit on how long a person or group of persons may occupy a single location. Therefore, it is recommended that the bylaw be amended to include a provision that a person cannot occupy the same location in a park for more than six hours in any 24 hour period, except as authorized by a park use permit or by section 16A (overnight sheltering). The effect of such an amendment would be to ensure that park users, including persons sheltering in the parks, could not use the same location for extended periods of time. However, this would not prevent authorized special events or overnight sheltering in a park as already provided for in the bylaw.

This proposed amendment is provided for through a new section 16B as shown in Appendix A and includes two components: a general 6 hour limit on occupation of a park (subsection (1)) that applies to all users; and special provision requiring persons sheltering overnight to move to another location in the park at the end of the 12 hour sheltering period provided for in section 16A (subsection (3)).

Authority to impound property unlawfully left in a park

At this time the *Parks Regulation Bylaw* contains very limited provisions for dealing with property left in a park. This presents potential problems for the City in effectively dealing with personal property that may occupy a park or otherwise be interfering with public use of a park or City staff's ability to perform their work in a park. Therefore, it is recommended that

the bylaw be amended to include explicit authority for City staff and police to impound any property unlawfully in a park. Such impounded property would be dealt with in accordance with the City's existing policies for impounded property, namely, it would be returned to the lawful owner on payment of an impound fee if claimed within 30 days and disposed off if not claimed. The proposed amendment would apply to property unlawfully in the park, not property in possession of persons lawfully present in the park, including persons sheltering in accordance with the existing bylaw provisions.

In recognition that occasionally impounded property may include possessions essential to persons sheltering in a park, such as a tent, the draft bylaw includes a requirement that any impounded property must be made available for the owner to claim it within 6 hours of impoundment. It further provides the Manager of Bylaw Enforcement and Licensing the discretion to waive impound fee if the person does not have the ability to pay. The proposed changes would be added as amendments to section 19 as shown in Appendix A. These amendments should be read together with existing subsections (4) through (8) of section 19 (as shown in Appendix B).

Amendments to permitting for demonstrations and other expressive activity

Parks have been traditionally used for demonstrations and other expressive activities protected under section 2 of the *Canadian Charter of Rights and Freedoms*. It is important to ensure that this fundamental Canadian right is continued and protected while also ensuring appropriate management of parks, including competing uses and demands on limited park space. At the moment, the bylaw contains a system for issuance of permits for special events, including demonstrations. However, the existing permitting system is not sufficiently flexible to allow for some demonstrations and protests nor does it adequately deal with placement of signs or other structure with expressive content in a park. Proposed amendments would allow for true protests to be permitted without a need for a complex permitting process. This would provide for legitimate protest activity to occur in the parks while still allowing the City to properly manage this scarce public resource.

The new permitting provisions would be included in a new section 5A as shown in Appendix A.

These five proposed amendments would clarify authority for dealing with any park use issues or personal property in a park. They would also improve staff's ability to manage City parks and reduce the harmful impacts to natural areas caused as a result of the *Adams* decision and the increased use of City parks for sheltering.

The proposed amendments are all consistent with the Court of Appeal decision in *Adams* as well as the more recent court decisions dealing with homeless persons' use of public parks for shelter. They represent a reasonable regulation of parks and park users and would not unreasonably interfere with the homeless persons' constitutional rights.

OPTIONS & IMPACTS

2015 – 2018 Strategic Plan

The proposed amendments further objective 8 of the Strategic Plan: Enhance and Steward Public Spaces, Green Spaces and Food Systems by improving City regulations of parks, clarifying legal

authorities and ensuring that public parks can be managed and maintained for the benefit of all users.

Impacts to Financial Plan

The proposed amendments are not intended to create any new services or demands on the City and, as such, are not expected to have any direct financial impacts. However, by clarifying the City's legal authority for dealing with detrimental uses of the parks, they may help avoid future problems that could have significant financial implications.

Official Community Plan Consistency Statement

The proposed amendments would improve existing regulation of City parks ensuring that everyone enjoys convenient access to community parks, open spaces and the amenities that they offer. As such these amendments are consistent with the Official Community Plan goal 9(A).

CONCLUSIONS

The proposed amendments to the *Parks Regulation Bylaw* would fill-in the gaps identified by City staff and police in the legal framework and would allow for better management of parks and green spaces for all users while respecting constitutional rights of persons who are homeless and are forced to seek shelter in the parks.

Respectfully submitted,



Chris Coates,
City Clerk



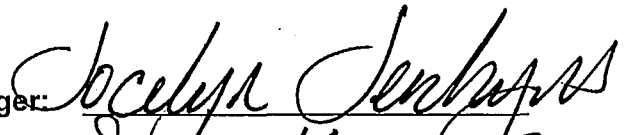
Thomas Soulliere
Director, Parks, Recreation and Facilities



Tom Zworski
City Solicitor

Report accepted and recommended by the City Manager:

Date:


Sep. 14. 2017

List of Appendices

Appendix "A" – proposed new bylaw provisions

Appendix "B" – current *Parks Regulation Bylaw*