

Addressing Parks and Open Spaces Bylaw

On April 4, Council gave three readings to the Parks and Open Spaces Bylaw with an amendment to allow for a 40 metre setback from the playground in Foster Park. This bylaw will go to Council for approval and final reading on April 18.

Overnight Camping on Public Lands

The BC Supreme Court provided direction to municipalities about how far we can go in regulating overnight camping in public spaces by people who are homeless. The bylaws must be reasonable in terms of how restrictive they are and the impact they may have on the homeless community.

In October 2015, the BC Supreme Court issued its decision in the Abbotsford V Shantz case. This case and several other recent cases provide direction to local governments on their ability to regulate overnight accommodation in public spaces. As a result of the Court's direction, Council asked staff to investigate options for regulating overnight accommodation on public lands.

Local governments cannot enact an outright prohibition on overnight accommodation on public lands by people who are homeless. Section 7 of the Canadian Charter of Rights and Freedoms grants a constitutional right to someone who finds themselves homeless allowing them to erect a temporary shelter and take up accommodation on public lands in order to sleep during the night. However, local governments do have the authority to regulate the use and balance it with other uses in the community.

In summary, the Court decision says a person who is homeless can erect a temporary shelter on public lands between the hours of 7 pm and 9 am daily. Local governments can balance competing interests and can prohibit overnight accommodation in "key sensitive areas". It is believed the Community Park, Springwood Park and the municipal well fields and City owned lands along the oceanfront meet the legal tests to be considered sensitive lands and the City would be justified in prohibiting overnight accommodation by anyone in these areas.

These three areas were chosen for a number of reasons including development permit area designations for environmental sensitivity and natural hazards, a high volume of competing uses, community economic and tourism factors and obvious conflicts based on the 7 pm to 9 am time period where accommodation can occur. The City does not have the legal authority to prohibit overnight camping by the homeless in all City parks.

Parks and Open Spaces Bylaw No. 1523 in Section 4 states the following:

OVERNIGHT ACCOMMODATION AND ERECTING STRUCTURES

4.1. A homeless person may take up overnight accommodation and erect and occupy a Temporary Shelter in a park, between the hours of 7:00 pm on one day and 9:00 am the following day, provided the homeless person:

- (i) does not erect the shelter within 40 metres of the playground in Foster Park, within 10 metres of any other playground, sports field, tennis court, picnic shelter, gazebo, water park, public washroom, ornamental garden or horticultural display;
- (ii) does not erect the shelter on or within 5 metres of an established trail;
- (iii) does not damage or alter city property, including fencing, trees, shrubs, plantings, benches, or other municipal equipment or infrastructure;
- (iv) removes the shelter completely by 9:00 am each morning and does not leave possessions, debris, litter or any other article behind;
- (v) does not obstruct a highway or interfere with the lawful use of a person or vehicle using a highway; (vi) does not obstruct a city employee in the performance of his duty;

4.2. Cooking Fires: A homeless person may utilize a fire for the purpose of cooking, provided the source of burning materials is charcoal, wood, propane or natural gas contained within a hibachi, barbeque or fire pit having a surface area not greater than 0.5 square metres and covered by a grate.

4.3. Notwithstanding section 4.1, the following activities are prohibited in a Sensitive Area:

- (i) overnight accommodation;
- (ii) the erection of Temporary Shelter; and
- (iii) the occupancy of a Temporary Shelter erected by another person
- (iv) Open burning for any purpose.

Please note Council will be considering final adoption of this bylaw on April 18, 2016.

References:

Report to Council – Homelessness and Overnight Accommodation in Parksville
<https://parksville.civicweb.net/document/21166>
Parks and Open Spaces Bylaw No. 1523

For more information:

Keeva Kehler, Director of Administrative Services
250 954-4660; kkeehler@parksville.ca