



K'ómoks First Nation

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November 08, 2024

To the Mayor and City Council:

Re: Proposed Bylaw 3121

K'ómoks Chief and Council wants to begin our response with this [CBC story](#)¹ about Gerry Williams, an unhoused Indigenous man in Toronto who, over time, was given \$65,000 in tickets for 450 bylaw infractions. He ultimately settled for 156 hours of community service, to be completed over 22 months of probation (a month of full-time work). It took over 100 hours just to complete the appeal forms, which were then changed mid-process. Outstanding tickets and fines can impact credit rating, ability to obtain permits or licences, employment, housing, etc. Many individuals do not have legal support, and these consequences create steep barriers to sobriety and change. In creating a Bylaw that will outlast both of our Councils, we must consider the impact on Gerry and others like him and how we can uplift rather than burden them.

KFN welcomes the invitation from the City of Courtenay by letter dated March 18, 2024 to provide input with respect to the draft Bylaw 3121 and hopes to continue the consultation process through redrafting and implementation. KFN values the City amending its Bylaw with the intent to better protect environmental, archaeological, and cultural spaces and ensure there is no ban against sheltering within the City. KFN further recognizes the necessity to address public health and safety risks such as fire hazards.

KFN expresses concern about working within the colonially imposed framework of land ownership. Further, many conceptions of public property presuppose that everyone has access to private property, and lead to the attitude that public property should not be for things that private property is for.² KFN rejects this notion. We support the principles outlined in the United Nations Declaration on the Rights of Indigenous Peoples (*UNDRIP*), affirmed in *DRIPA*, and emphasize Art. 43 “The rights recognized herein constitute the **minimum standards** for the survival, dignity and well-being of the indigenous peoples of the world. [Emphasis added.]”

¹ <<https://www.cbc.ca/news/canada/toronto/programs/metromorning/law-student-homeless-tickets-fines-appeal-1.3788734>>

² Jeremy Waldron, Homelessness and Community, *The University of Toronto Law Journal*, Vol. 50, No. 4 (Autumn, 2000), pp. 371-406, <<https://homelesshub.ca/sites/default/files/Homelessness%20and%20Community.pdf>>

RECOMMENDATIONS FOR ACTION:

1. Enshrine Consultation Mechanism: KFN recommends the Bylaw include the following: “The City of Courtenay recognizes the significance of Indigenous consultation in matters affecting Indigenous peoples' rights and interests, as outlined in *UNDRIP* and affirmed in *DRIPA*. Therefore, before enacting or amending any provisions of this bylaw, the City shall engage in meaningful consultation with local Indigenous partners to obtain free, prior, and informed consent, ensuring alignment with Indigenous Peoples' entitlements to adequate housing, non-discrimination, and self-determination.”

Rationale: The City needs an agreed-upon process for meaningful consultation with Indigenous communities before enacting/changing measures that affect their lands or rights or in adopting or implementing legislative or administrative measures that may affect them, in alignment with Arts. 8, 10, & 19 of *DRIPA*. These articles emphasize the importance of consulting and obtaining free, prior, and informed consent from Indigenous Peoples, and ensuring Indigenous perspectives are included during the development phase and not after the fact. KFN also shares IWSS' concern that consultation processes can burden Indigenous Peoples who are often expected to provide free labour. KFN suggests having regular joint meetings with City Council, or a joint position dedicated to supporting consultation and policy review.

2. Eliminate Potential Bias: KFN recommends "offensive" be removed from s. 5.9(b) “Disorderly, dangerous, or offensive behaviour”, excluding subjective interpretations that may disproportionately impact Indigenous Peoples and/or individuals experiencing homelessness due to bias. Alternatively, the City could define offensive to remove the ambiguity.

Rationale: KFN echoes the concerns outlined in the **Coalition's Report** (Attachment 2). We are further concerned based on the comments from the Staff Report (Attachment 3): “‘Offensive’ behavior typically refers to conduct that causes discomfort, upset, or annoyance to others, often by violating social norms or standards of decency. This can include actions, language, or gestures that are perceived as rude, disrespectful, or inappropriate. Some examples of offensive behavior may include verbal abuse of a sports referee, explicit language that disturbs others, discriminatory behavior – derogatory remarks.” KFN takes no issue with “offensive behaviour” meaning verbal abuse, discrimination or derogatory remarks. However, we remind Council that our cultural practices were criminally banned in this country, within the memories of current members. Differing cultural practices or norms can cause discomfort, upset, or annoyance, and can be seen to violate social norms or standards. As City Council has outlined it, KFN believes that this could itself invite or facilitate discrimination, especially when complaints are anonymous.

The amendment would enhance clarity in the bylaw language and help prevent intentional or unintentional discrimination, aligning with Arts. 2 and 15(2) of *DRIPA*, which underscore Indigenous Peoples' right to live free of discrimination, and the government's obligation to promote understanding and good relations between Indigenous Peoples and all others in society.

3. Trauma-Informed Enforcement: KFN recommends s. 5.10 “The City is committed to providing excellent service to the public and creating positive experiences for all individuals while promoting a culture of respect and professionalism, and to ensure that this commitment is met, the City has established provisions outlining expectations for the interaction between City employees and members of the public.”

be amended to: “To promote a culture of respect and professionalism, City employees shall adhere to the Bylaw Compliance Policy, incorporating trauma-informed approaches in interactions with members of the public, particularly those experiencing homelessness.”

AND

That s. 10.2 “The Director, a bylaw enforcement officer or a peace officer may enforce this bylaw, and in doing so may be assisted by another such officer or a City personnel (City of Courtenay, 2023a).

be amended to include: “In respect of the enforcement of provisions relating to sheltering, only trained officials, including bylaw enforcement officers or peace officers, shall enforce these provisions, with a focus on collaborative partnerships with social support services to provide timely information and resources to individuals affected by the bylaw, thereby minimizing conflicts and enhancing support for vulnerable populations.”

Rationale: While KFN recognizes the need to eliminate redundancies and cross-references, the amendment explicitly incorporates the name of the relevant policy to ensure it is accessible, and incorporates the principle of trauma-informed approaches so it is not dependent on another policy.

Trauma-informed approaches are in line with *DRIPA* Arts. 13(2), 15(2), 21(2), 22 & 24(2). These articles support the right to understand and be understood in legal/administrative proceedings such as bylaw enforcement, the state’s obligation to foster good relations among Indigenous Peoples and others, the state’s duty to improve the social conditions of Indigenous Peoples, provide particular attention to the needs of those with disabilities, and support Indigenous Peoples’ right to equal enjoyment of the highest attainable standard of health. They are also in line with the broader goals of remediating historical and current injustices and ensuring that policies and practices are sensitive to the unique experiences and needs of Indigenous Peoples.

4. Sheltering Pathway & Accommodation: KFN recommends 7.2(d) “All temporary shelters must be taken down and moved before 9:00 a.m. each day, except for those situated in a location authorized by the City Manager for daytime use.”

be amended to “Temporary shelters shall be taken down and moved before 9:00 a.m. each day unless authorized by the City Manager for daytime use, acknowledging the necessity for accommodation in cases of inclement weather, health conditions or disability, thereby upholding the rights and dignity of individuals experiencing homelessness to shelter in place beyond designated time slots.”

Rationale: Beyond creating prohibitions or directives, KFN encourages the City to define pathways for those who are unhoused to ensure that regulations and policies cohere and continue to do so over time. If there is not yet a place where individuals can go, then the City may need to create interim plans or modify enforcement. By considering disabilities and other factors in the amendments, as suggested by IWSS, Wachiay, and the Coalition Report, we align with Arts. 21(2), 22, and 24(2) of *DRIPA* as noted in the previous recommendation. Our amendments aim to address the specific challenges faced by Indigenous peoples and those with disabilities experiencing homelessness, ensuring that they have access to safe and adequate shelter and health. We also echo the comment that the First Nations Health Authority should be part of the consultation process, particularly with respect to health conditions, disabilities, and the health impact of forcing individuals to pack up and transport wet material that may develop mould.

5. Implementation: KFN recommends consultative and phased implementation of the Bylaw complementing the strategies relating to housing (per Art. 19 of *DRIPA*), a one-year community consultation and review involving analysis of enforcement and issues arising, and a clear formal and informal restorative justice process.

Please note that this letter is specifically intended for Council's deliberation with respect to the Bylaw and is without prejudice to all future consultation with our Nation. KFN reserves the right to raise any objections if we discover impacts on our rights or interests that we had not foreseen. We also reserve our right to pursue any other course of action in the future in respect of the Bylaw.


Respectfully,

K'ómoks Elected Council

Elected Chief Councillor Ken Price



Elected Councillor Susan Savoie



Elected Councillor Candace Newman



Elected Councillor Coral MacKay