



THE CORPORATION OF THE CITY OF COURTENAY

## STAFF REPORT

**To:** Council

**File No.:** 4000-20

**From:** Director of Corporate Services

**Date:** September 27, 2023

**Subject:** Parks Control Bylaw Modernization Project – Parks and Open Spaces Bylaw Guiding Document

**PURPOSE:** To seek Council approval of the Parks and Open Spaces Bylaw Guiding Document.

### EXECUTIVE SUMMARY:

The City of Courtenay initiated the Parks Control Bylaw Modernization Project in February 2023 to better reflect and address the needs of its population, changing park usage trends, and emerging challenges related to climate change and urbanization.

Upon analyzing the existing Parks Control Bylaw, City Staff identified significant barriers to parks service delivery in a modern context, such as a lack of explicit authority and clarity for both City staff and the public. Furthermore, legal compliance was found to be lacking, particularly in relation to court rulings on sheltering in parks.

To modernize the Parks Control Bylaw, a systematic approach to develop the Parks and Open Spaces Bylaw was employed, advancing through three phases. Staff first formulated regulations that aligned with Courtenay's priorities and integrated best practices through municipal comparisons. Next, Staff conducted a comprehensive impact assessment that carefully considered the implications of proposed regulatory actions and policy perspectives. The impact assessment underscored the achievement of a balanced approach, allowing for a variety of activities while safeguarding ecological zones and the community's natural assets. Lastly, regulations were refined through engagement with various contributors, including city staff from various departments, Vancouver Island Health Authority's medical health officer, the Comox Valley Coalition to End Homelessness, the Homelessness Response Team, and unhoused individuals.

The outcome of this approach is the development of a pragmatic and purpose-driven regulatory framework that shapes the management and utilization of Courtenay's green spaces. The bylaw features a clear and adaptable structure that offers guidance for various park usages, accommodates recreational transportation trends, addresses substance use aligning with provincial acts, and includes provisions for temporary sheltering in alignment with legal precedents.

Should Council decide to proceed with the draft bylaw, staff will work with a Legal consultant to craft the Parks and Open Spaces Bylaw and present the bylaw to Council for three readings and adoption, accompanied by a request to repeal the existing Parks Control Bylaw. Concurrently, an extensive implementation and communications plan will be developed, outlining crucial milestones and action deadlines.

### BACKGROUND:

In June 2019, Council instructed staff to create a bylaw that would ban smoking of tobacco, cannabis, and vaping devices in the City's parks and properties. However, the Covid-19 pandemic and staff changes

prevented the adoption of the bylaw. Upon resuming work in this area, staff realized that the existing Parks Control Bylaw no longer met the needs of the expanding population, changing park usage patterns, and emerging challenges linked to climate change, reconciliation, and urbanization. Therefore, the City recognized the imperative need for a comprehensive review of the bylaw.

To address these issues and prioritize necessary amendments, the Parks Control Bylaw Modernization Project was initiated in February 2023. City staff completed four phases of the project over several months.



*Project phases completed between February 2023 and September 2023*

Significant risks were identified upon analyzing the outdated Parks Control Bylaw, such as a lack of explicit authority and clarity for both City Staff and the public. Furthermore, legal compliance was found to be lacking, particularly in relation to court rulings on sheltering in parks.

In addition to the authority and clarity issues, ensuring legal compliance with a human-centric approach emerged as a critical risk associated with the outdated bylaw. The analysis revealed that the current bylaw did not align with the principles outlined in key court rulings, especially concerning the right to housing and the importance of sheltering in parks when individuals have nowhere else to go.

Having recognized the shortcomings of the existing bylaw, staff have worked to craft a comprehensive Parks and Open Spaces Bylaw that addresses the confirmed City priorities and emphasizes social responsibility and environmental protection. The new bylaw aims to balance the community's needs, the preservation of natural resources, and the sustainable use of parks and open spaces.

#### **DISCUSSION:**

City Staff developed the Parks and Open Spaces Bylaw<sup>1</sup> Guiding Document through a strategic three-stage process. Staff incorporated best practices from similar jurisdictions and aligned them with the community's specific priorities. Each provision was thoroughly evaluated, with particular attention given to environmentally and culturally sensitive areas and park sheltering. Finally, the regulations were tailored to suit Courtenay's unique needs informed by contributor feedback and staff impact assessments. The Bylaw is expected to effectively manage the parks and open spaces for the benefit of all residents. The following section outlines Staff's step-by-step approach to draft and refining the Parks and Open Spaces Bylaw.

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<sup>1</sup> Parks are identified in the Parks and Recreation Master Plan and Open Spaces are defined as non-park-like spaces that are used for recreation and or cultural purposes (e.g. Randy Wiwchar Plaza).

**Three stage development process**

Step 1	Draft regulation using key priorities and best practices.
Step 2	Assess the impacts.
Step 3	Refine and tailor regulations to meet the City’s needs.

**Step 1 Drafting regulations by using key priorities and leveraging best practices**

During the drafting of the Parks and Open Spaces Bylaw, Staff placed high importance on aligning the regulations with the City's identified priorities: clarity and guidance, protection of natural and cultural areas, sheltering in parks, authority and accountability, enforcement and penalties, smoking and vaping, future proofing and legal compliance. These priorities served as guideposts to ensure that the bylaw would effectively address the specific needs and challenges of the City of Courtenay, while establishing an effective framework or foundation from which continuous improvement can be implemented.

After completing a best practices review, valuable guidance was found by the staff in the examples of Port Coquitlam and Victoria's bylaws. In addition, insights drawn from the approaches of Vancouver and Victoria in managing sheltering in parks played a pivotal role in shaping the provisions concerning temporary sheltering. Notably, these communities have responded adeptly to the increased volume of individuals sheltering in parks, adjusting their bylaws to facilitate temporary sheltering as to mitigate associated risks.

By closely aligning the regulations with the City's identified priorities, the Parks and Open Spaces Bylaw effectively addresses the specific needs and challenges of the City of Courtenay, as demonstrated in the following table:




Key Priority	How the priority is achieved
 Clarity & Guidance	<ul style="list-style-type: none"> <li>• Intent statements that articulate the City’s position on the topic</li> <li>• Easily Understandable Regulations aligned with best practices</li> </ul>
 Protection of Natural & Cultural Areas	<ul style="list-style-type: none"> <li>• Robust measures safeguarding environmentally sensitive areas as defined by the Official Community Plan</li> </ul>
 Sheltering in Parks	<ul style="list-style-type: none"> <li>• Clear regulations that specify when and where individuals can seek temporary shelter in Parks and Open Spaces that comply with case law</li> </ul>
 Authority & Accountability	<ul style="list-style-type: none"> <li>• Easily understandable regulations that provide clarity to the public &amp; authority to City Staff</li> </ul>
 Enforcement & Penalties	<ul style="list-style-type: none"> <li>• Regulations that equip staff with tools to ensure compliance</li> <li>• Clear consequences</li> <li>• Regulations focused on safety and mitigating risks</li> </ul>
 Addressing Smoking & Vaping	<ul style="list-style-type: none"> <li>• Consistent regulations for substance use endorsed by the Medical Health Officer</li> </ul>
 Future Proofing	<ul style="list-style-type: none"> <li>• Provisions allow for flexibility in the present and adaption in the future</li> </ul>
 Legal Compliance	<ul style="list-style-type: none"> <li>• All regulations comply with relevant case law and will go through a final legal review prior to adoption</li> </ul>

Having aligned the regulations with City priorities and incorporating best practices, the drafting process moved into Step 2, where staff assessed the real-world impacts of the draft provisions.

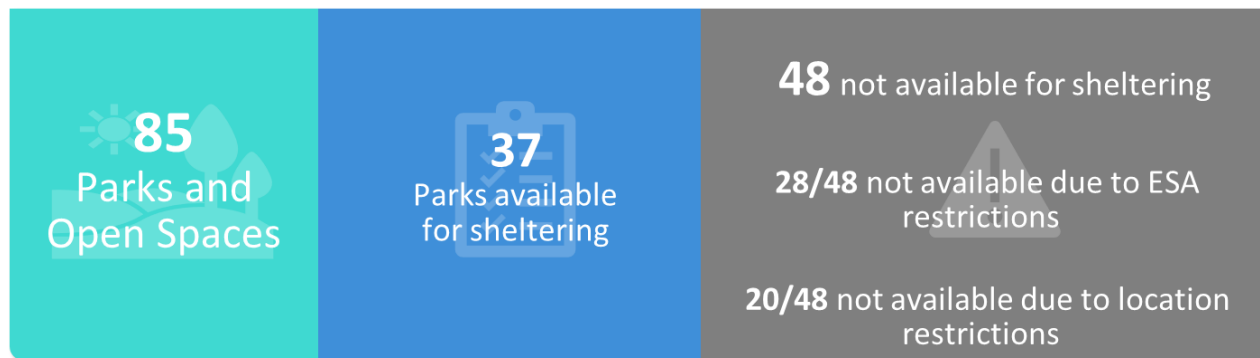
**Step 2 Assess the Impacts**

Staff initiated a comprehensive impact assessment of the new regulations, focusing on the intricate interplay between rules governing the preservation of environmentally sensitive areas and the guidelines for sheltering in parks. This focus was chosen because of the anticipated impact on park users, distinguishing it from other regulations that primarily aimed to clarify existing rules and operational authority delegation.

The assessment encompassed the following actions:

Impact Assessment	
 <p><b>Action 1:</b> Assess the Current State</p>	Staff developed a thorough inventory of parks and open spaces, documenting existing characteristics, amenities, and natural features to establish a clear baseline for the areas affected.
 <p><b>Action 2:</b> Map the Restrictions</p>	Utilizing GIS technology, staff precisely mapped designated restrictions to identify areas where temporary sheltering would be prohibited or restricted, ensuring clarity and accuracy.
 <p><b>Action 3:</b> Evaluate the Impacts</p>	Staff evaluated the impact of the regulations on each park and open space, considering both East and West Courtenay and the overall city geography.

The chart presented below provides an overview of the outcomes of the impact assessment.



The impact assessment results show that the City has taken a balanced approach, safeguarding 28 parks with significant ESAs while allowing sheltering in 37 parks and open spaces to ensure accessibility for those in need. Additionally, 20 parks are excluded from sheltering due to various factors, such as protecting recreational infrastructure, legal agreements, or unsuitability for shelter. Sheltering availability is evenly

distributed across the city, with West Courtenay having 17 out of 37 spaces available and East Courtenay having 20 out of 37<sup>2</sup>.

It is important to note, that based on BC Supreme Court rulings, prior to the adoption of the proposed bylaw, unhoused individuals are currently permitted to shelter in all City Parks, and the proposed amendment to the Parks Control Bylaw would result in a 57% reduction in sheltering locations.

Recognizing the potential impact on unhoused community members, staff then focused on engagement activities that would ensure the bylaw regulations aligned precisely with the specific needs of the City and its residents.

### Step 3

#### **Refine and Tailor Regulations to the City's Specific Needs**

Upon completion of the impact assessment, Staff actively sought feedback from internal and external contributors. This engagement aimed to gain a comprehensive understanding of the potential impacts of the proposed regulations.

Engaging with the City's senior leadership early was essential. This proactive approach allowed staff to effectively identify and address potential challenges and make way for opportunities, by tailoring the regulations to align with and support operational needs.

In partnership with the Comox Valley Coalition to End Homelessness, the City held a workshop with unhoused community members, where they received positive feedback, garnered endorsement, and gained operational insights critical for implementation. Participants agreed with the rationale for protecting natural areas and park assets and were pleased with the number of parks and areas still available for overnight sheltering. This engagement allowed staff to bridge the gap between policymakers and those directly affected, enabling a deeper understanding of the implications and a shared commitment to the changes.

Next, staff engaged the Comox Valley Coalition to End Homelessness Leadership Team, and the Homelessness Response Team to foster alignment and collaboration. By sharing the considerations and resulting rationale behind the proposed changes, and discussing impacts and communication strategies, staff and the contributors built a sense of partnership and common understanding. Contributors provided invaluable feedback that played a pivotal role in refining regulations, ensuring that they were finely tuned to meet the needs and concerns of both the community and City staff. This inclusive approach saw concern transform into shared support and laid the foundation for ongoing cooperation and potential partnerships.

Throughout the engagement process, the staff received a wide range of feedback beyond the scope of the Parks Control Bylaw project. Recognizing the importance of contributor insights and recommendations regarding City service provision, staff are sharing information gathered with other City project and initiative

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<sup>2</sup> Appendix C of the Parks and Open Spaces Bylaw Guiding Document (Appendix A) contains detailed information about which parks permit and prohibit sheltering.

leads such as the Bylaw Policy and Compliance Strategy Project and the future planned Community and Social Development Framework. The City’s comprehensive approach to tackling diverse urban issues served as a valuable resource, enabling the staff to facilitate sessions effectively.

**The Parks and Open Spaces Bylaw – Highlights and Insights**

The proposed Parks and Open Spaces Bylaw is a pragmatic and purpose-driven regulatory framework shaping the management and utilization of Courtenay's green spaces. Grounded in City priorities and informed by proven practices, the proposed bylaw guiding document represents a strategic stride toward aligning park usage with community values. Appendix A, titled “Parks and Opens Spaces Bylaw Guiding Document,” provides a comprehensive look at the content of the proposed bylaw.

The following section highlights key insights and provisions within the Parks and Open Spaces Bylaw, showcasing its comprehensive approach to park management, accessibility, and user experience.

**Highlight 1: Clear and Adaptable Structure**

A key feature of the Parks and Open Spaces Bylaw is its easily comprehensible structure. Its provisions were intentionally developed with a forward-thinking perspective, allowing for adaptability over time. This ensures that the bylaw remains responsive to evolving legal requirements, community needs, and emerging challenges. By establishing a clear and adaptable framework, the bylaw creates a solid foundation for effective park governance that can withstand unknown future challenges.

Priorities Addressed	Clarity & Guidance	Futureproofing
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**Highlight 2: City Intent Statements for Each Section**

Ensuring the objectives of the City are clearly communicated, the bylaw includes intent statements for each key section, which provide clear guidance on the goals of the regulations. By explicitly stating the purpose behind each provision, enhanced transparency enables better comprehension of the regulations and their rationale. This approach helps individuals to understand the rules and reasons for their inclusion.

Priorities Addressed	Clarity & Guidance	Futureproofing
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**Highlight 3: Guidance for Park Usage**

The bylaw introduces an inclusive framework designed to accommodate a spectrum of park usage scenarios, recognizing the varied requirements of park visitors. Its provisions establish transparent and pragmatic guidance, from exclusive activities (e.g. rentals and organized sports) to general use, empowering park users to fully utilize the available amenities and spaces while facilitating positive interactions with fellow visitors. Additionally, the Director of Recreation, Culture and Community Services is empowered to facilitate adaptable regulations, ensuring that activities and events align effectively with the City's evolving needs.

Priorities Addressed	Clarity & Guidance	Futureproofing	Authority & Accountability
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**Highlight 4: Protecting the Environment and Culturally Sensitive Areas**

The proposed bylaw demonstrates Courtenay's dedication to environmental and cultural preservation by incorporating robust regulations for safeguarding sensitive ecological areas and protecting green and cultural assets. These provisions, supported by explicit intent statements, serve as a foundation for responsible park management that prioritizes the protection of natural habitats and culturally significant artifacts/locations, ensuring their protection and preservation for the benefit of current and future generations.

Priorities Addressed	Clarity & Guidance	Futureproofing	Protecting Natural & Cultural Areas
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**Highlight 5: Addressing Recreational Transportation**

In alignment with contemporary transportation trends, the bylaw proactively addresses the integration of various modes of transportation within park areas. Notably, it includes pragmatic regulations governing vehicle use, including the growing trend of e-bikes. The City's commitment to promoting safe and responsible mobility practices within park premises is evident through this integration, further enhancing visitor experiences and promoting sustainable transportation options.

Priorities Addressed	Clarity & Guidance	Futureproofing	Authority & Accountability
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**Highlight 6: Substance Use in Parks and Open Spaces**

The bylaw aligns with Provincial and Federal Acts governing the use of substances such as cannabis, tobacco, alcohol, and Illicit drugs.

Notably, on May 31, 2022, Health Canada granted an exemption under the Controlled Drugs and Substances Act to the Province of B.C. As a result, from January 31, 2023, until January 31, 2026, adults in B.C. are not subject to criminal charges for the personal possession of small amounts of certain illegal drugs. On September 14, 2023, the Province of British Columbia announced an amendment to the decriminalization policy, which prohibits the possession of illicit drugs within 15 meters of any play structure in a playground, a spray or wading pool, or skate park.

The proposed safety focused provisions within the bylaw enable the City to promptly adjust to policy changes made by the provincial and federal governments concerning the use of substances like cannabis, tobacco, alcohol, and illicit drugs. To effectively address potential safety concerns within parks, the bylaw incorporates provisions enabling staff to respond to unsafe conditions that may jeopardize public safety. Furthermore, an operational plan (Implementation Plan: Item 4) will be developed to guide the City's responses to safety issues occurring within parks and the intent of the amendment to the decriminalization policy will inform the operational response plan. This approach strikes a balance between creating a safe atmosphere and upholding the legal rights of individuals.

Priorities Addressed	Clarity & Guidance	Futureproofing	Smoking & Vaping	Legal Compliance
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### Highlight 7: Legal Compliance for the Provision for Temporary Sheltering

On October 21, 2015, the Honourable Chief Justice Hinkson of the BC Supreme Court rendered his decision on the Abbotsford (City) v Shantz trial. The ruling allows people to erect shelters and sleep in municipal parks between the hours of 7:00 p.m. and 9:00 a.m. The court found that Abbotsford’s bylaws interfered with the fundamentally important personal decision to shelter oneself in circumstances where there is no practicable alternative shelter.

In alignment with the ruling, staff are introducing essential additions to the bylaw. These provisions explicitly permit temporary sheltering within designated park areas between 7:00 p.m. and 9:00 a.m., provided no other accessible shelter space is available. Individuals must adhere to specific conditions, including constructing shelters according to regulations, dismantling them daily, and following location restrictions to protect natural and cultural assets and ensure access to recreational facilities for all.

These adjustments underscore the City's commitment to compassionately address homelessness, aligning the bylaw with established legal precedents and human rights considerations. The goal is to provide meaningful support and assistance to those in need while upholding legal and ethical standards.

Priorities Addressed	Clarity & Guidance	Futureproofing	Sheltering in Parks	Legal Compliance
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### Highlight 8: Enhancing Operational Authority for City Staff within the Proposed Bylaw

City staff will have clear management authority within the proposed bylaw, which represents a notable shift from the existing bylaw. This transition legally empowers staff to make decisions and facilitates clear and transparent communication of park guidelines to the public. The bylaw ensures the adaptability and responsiveness of park management by providing staff with the necessary tools and authority in support of modern park usage, reducing the need for extensive amendments by allowing staff to address varying situations effectively.

The delegation of operational authority to staff does not delegate the policy decision-making authorities of Council.

Priorities Addressed	Clarity & Guidance	Futureproofing	Authority & Accountability
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### Putting the Bylaw Into Action: Implementation Plan

A comprehensive approach involving various key actions and considerations is necessary to successfully implement the Parks and Open Spaces Bylaw. An implementation committee will oversee the prioritization of activities, ensuring coordination among departments and alignment with the communication strategy and change management principles. Key implementation activities will include but not be limited to:



### ***1. Developing a Communication Strategy***

Staff will develop and implement a robust communication plan to ensure that the public, user groups, social service providers, and the unhoused are well-informed about the changes introduced by the bylaw. The communication strategy will emphasize transparency, engagement, and the rationale behind the regulations, with the aim of fostering understanding, cooperation, and a shared sense of responsibility toward our community's parks and open spaces. Funding for the development of regulatory parks signage and education materials will be presented to Council as part of the 2024 budget process.

### ***2. Permit Updates for Exclusive Use***

The Recreation, Culture and Community Services Department will need to update and establish permits that will facilitate the exclusive use of parks for various activities, including research, parks special events, and commercial use. Staff will align these permits with the regulations and objectives outlined in the bylaw to ensure that park activities are conducted within the specified parameters.

### ***3. Identification and Communication of Environmentally Sensitive Areas (ESAs) and Cultural Heritage***

To preserve the city's natural and cultural heritage, and demonstrate the City's commitment to safeguarding precious ecosystems, interpretive park signing will be considered as part of the Bylaw communication and implementation plan. Further opportunities regarding interpretive signage may also be identified through the future development of the City's Reconciliation Action Plan.

### ***4. Development of an Operational Plan***

The Corporate Services Department will collaborate with Bylaw Services, Public Works, and Recreation, Culture, and Community Services to develop an operational plan to address urban challenges related to park safety and overall community well-being. By identifying and prioritizing potential risks and fostering cross-departmental collaboration, it aims to create safe, vibrant park spaces.

This integrated approach ensures a cohesive response to emerging issues and facilitates efficient coordination among various City departments. By aligning efforts and resources, the operational plan enhances cross-collaboration and provides a proactive approach to mitigating risks.

### ***5. Assess and Report***

To ensure that resources are allocated in alignment with the bylaw's objectives, Staff will incorporate updates into Management Reports and Annual Budget processes. Once the City has completed the first year of implementation, staff will present an Implementation Update Report to the Council. This report will offer a comprehensive overview of achievements, ongoing initiatives, and any necessary adjustments.

## **NEXT STEPS**

If Council wishes to proceed with the bylaw, staff will work with external legal counsel to draft the Parks and Open Spaces Bylaw and conduct a final legal review of its regulations. Staff will then present the bylaw to Council for three readings and subsequent adoption, along with a request for repeal of the existing Parks

Control Bylaw. Beginning in early 2024, staff will create a comprehensive implementation and communications plan, highlighting key milestones and various action deadlines. This plan will prioritize clear and transparent communication, facilitating a seamless transition and fostering mutual understanding among all parties involved.

#### **POLICY ANALYSIS:**

The **Bylaw Enforcement Policy** provides consistent enforcement and management of complaints related to City of Courtenay Bylaws. The 2017 Policy is current being updated and is expected to be amended before the end of 2023. The Bylaw Enforcement Policy will be supported by the Bylaw Compliance Strategy (under development) and awareness of the policy, strategy and other City bylaw regulations will be presented in the Bylaw Good Neighbour Guide (under development).

#### **Bylaws**

City of Courtenay Parks Control Bylaw No.1664, 1992

Municipal Ticket Information Bylaw No. 2435, 2006

Official Community Plan Bylaw No. 3070, 2022

Fire Protective Services Bylaw No. 2556, 2008

Special Events Regulations Bylaw No. 2396, 2005

Business Licence Bylaw No. 2523, 2008

#### **Legislation**

*Controlled Drugs and Substances Act*, Province of B.C. Exemption from January 31, 2023 to January 31, 2026

#### **Case Law**

Victoria v. Adams (2009), 280 B.C.A.C 237 (CA); 474 W.A.C. 237

Vancouver Board of Parks and Recreation V. Williams (2014) BCSC 1926

Abbotsford (City) v. Shantz, (2015) BCSC 1909

British Columbia v. Adamson, (2016) BCSC 1245

Nanaimo (City) v. Courtoreille, (2018) BCSC 1629

Vancouver Fraser Port Authority v. Brett, (2020) BCSC 576

Prince George (City) v. Steward, (2021) BCSC 2089

Bamberger v. Vancouver Board of Parks and Recreation, (2022) BCSC 49

#### **FINANCIAL IMPLICATIONS:**

Many City departments will have a role to play in the implementation and ongoing management of the Parks and Open Spaces Bylaw. Through the process of the bylaw review, operational capacity gaps were identified and additional resources will be required over time to fully implement the regulations and processes outlined in the bylaw. Resource priorities will be a topic of discussion with the implementation committee and activities will either be undertaken in priority order under existing operational budgets or future budget requests put forward by the responsible departments. Priority and workplan reporting will be included in the

reports to Council providing Council with the opportunity to inform priorities throughout the implementation process.

**ADMINISTRATIVE IMPLICATIONS:**

Due to the complexity of the bylaw, significant time will be required to develop the bylaw draft. Corporate Services will lead the development of the bylaw as part of their annual operations.

Setting up and administering the implementation committee will require resources from a variety of City departments, and participation in the committee is an increased administrative requirement for those involved. Each department will be responsible for identifying the approach to ensure their capacity to participate in the committee.

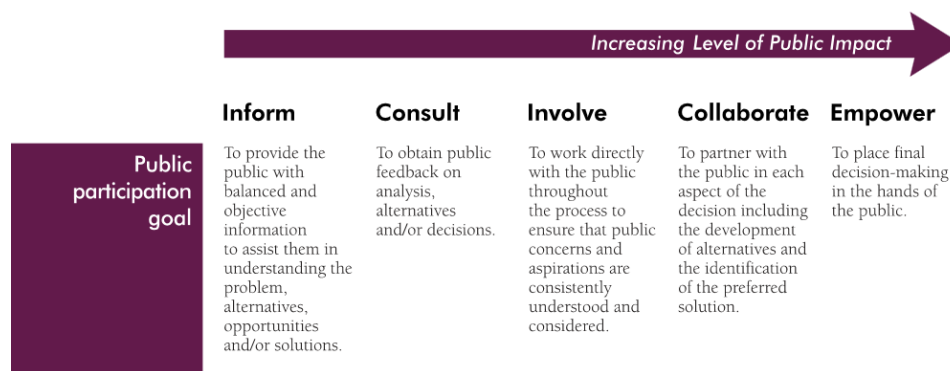
**STRATEGIC PRIORITIES REFERENCE:**

This initiative addresses the following strategic priorities:

- Social Infrastructure - Review City operations with a social equity, reconciliation and anti-racism lens and develop corporate policy
- Local Economy - Review City processes that may be barriers to economic development

**PUBLIC ENGAGEMENT:**

Staff have informed, consulted and involved community contributors in the development of Parks and Open Spaces Bylaw Guiding Document and will inform the public based on the IAP2 Spectrum of Public Participation:



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**OPTIONS:**

1. THAT Council approve the Parks and Open Spaces Bylaw Guiding Document and direct staff work with external legal counsel to draft a new Parks and Open Spaces Control Bylaw; and,

THAT staff be directed to report back to Council on any further amendments to B.C.’s current decriminalization policy and or at such time further guidance for local governments is provided by

the Province.

2. THAT Council refer the Parks and Open Spaces Bylaw Guiding Document back to staff and provide further direction.

**ATTACHMENTS:**

1. Parks and Open Spaces Bylaw Guiding Document

Prepared by: Kate O'Connell, Director of Corporate Services

Reviewed by: Susie Saunders, Director of Recreation, Culture and Community Services

Kyle Shaw, Director of Public Works Services

Concurrence: Geoff Garbutt, M.Pl., MCIP, RPP, City Manager (CAO)