



The Corporation of the City of Courtenay

# Staff Report

**To:** Council

**File No.:** 4000-20

**From:** Director of Corporate Services

**Date:** March 13, 2024

**Subject:** Parks and Open Spaces Regulation Bylaw – Amendment

**PURPOSE:** To provide information regarding amendments to the proposed Parks and Open Spaces Regulation Bylaw as requested by a delegation who appeared before Council at the February 14, 2024 Council meeting; to seek Council approval of a proposed amendment; and, to request Council consideration of third reading of the Parks and Open Spaces Regulation Bylaw No.3121.

## **BACKGROUND:**

At the February 14, 2024 Council meeting, a delegation requested Council consider amending the Parks and Open Spaces Regulation Bylaw No. 3121. Upon consideration of third reading of the Bylaw, and the amendments requested by the delegation, Council deferred consideration of the Bylaw and passed the following resolution:

*THAT Council direct staff to report back on the following requests and amendment, as proposed in the report “Working Toward System Change – Assessing Courtenay’s Approach to Homelessness”:*

1. *Remove the term “offensive” from section 5.9 (b)*
2. *Strike out “with or without shelter” from section 5.9 (d)*
3. *Strike out 5.9(g) in its entirety*
4. *Incorporate language from the Bylaw Compliance Policy, which discusses how City employees should behave while enforcing the bylaw*
5. *Include express language outlining trauma-informed bylaw enforcement*
6. *Remove reference to “interfering with a bylaw officer in performing their duties” and replace with language that prohibits physical obstruction or interference with City employees while carrying out their duties in parks*
  - a. *Strike out Section 5.10(d) and combine it with 5.10(c)*
7. *Strike out section 7.2(f)*
8. *Strike out “and in doing so may be assisted by another such officer or a City personnel” from section 10.9, and consider specifying “emergency personnel”*
9. *Add language to the bylaw that emphasizes Social Service partnership and support.*

*AND THAT Council direct staff to highlight options to work with Indigenous partners on the proposed bylaw in the report.*

## **DISCUSSION:**

The following section outlines the current language contained within proposed Parks and Open Spaces Regulation Bylaw No. 3121, interspersing requested amendments and considerations throughout.

### **Section 5.9 – Current (*Italicized*)**

*Behaviour and Conduct: The City is dedicated to creating a safe and accessible parks and open spaces for all community members to enjoy and to achieve this goal, the City aims to minimize nuisances and obstructions that may impact the use and enjoyment of these spaces by all community members; therefore, the following*

*provision aim to ensure that individuals using the City's parks and community facilities do so in a safe and respectful manner:*

*a) All individuals in a park or open space must abide by all federal and provincial laws, City bylaws, policies, and any posted notices or signs;*

*b) Disorderly, dangerous, or offensive behavior is not allowed in parks and open space;*

**Requested Amendment:** "Disorderly, dangerous, or offensive behaviour is not allowed in parks and open spaces (City of Courtenay, 2023a):"

- "Offensive behaviour" is too broad a term to provide any sort of objectivity. Disorderly or dangerous conduct can be objectively observed outside of a feeling or emotion. Implicit bias may lead to a disproportional impact on people experiencing homelessness."

**Consideration:** "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.

Enforcement in response of offensive behaviors, similarly to other undefined terms, is subject to the test of reasonableness (see subsequent section of the report for more information), and would be required to be undertaken in accordance with the Bylaw Compliance Policy.

*c) High-speed activities that involve projectiles, such as golf, archery, war games, radio-controlled aircraft, drones, or cars, require authorization through a facility use permit;*

*d) Camping in a park or open space, with or without shelter, is only permitted with a valid permit that complies with all terms and conditions of the permit.*

**Requested Amendment:** "Camping in a park or open space, with or without shelter, is only permitted with a valid permit that complies with all terms and conditions of the permit:"

- It is unclear how someone would camp without shelter. If they are referring to someone sleeping in the park, then that should be clearly defined. We recommend striking out "with or without shelter" to create a clear delineation between the definition of camping and sheltering."

**Consideration:** Camping, as defined in the bylaw, is undertaken for recreational purposes and sheltering as defined in the bylaw "means seeking temporary protection or refuge in a park or open space, often due to being unhoused or adverse weather conditions". Examples of camping without shelter may include a Scouts Troop camping under the stars, or another group desiring a back-to-nature camping experience. This section does not apply to sheltering. Individuals sheltering in a park or public space do not require a permit, camping as a recreation activity and would require a permit.

*e) Entering or using any frozen or apparently frozen body of water in a park is prohibited unless posted authorization indicates otherwise.*

*f) Constructing any permanent structure in a park or open space is only allowed if it complies with all City bylaws, permits, requirements, and regulations and has been authorized through a resolution of Council.*

*g) Preventing or obstructing other individuals' free use and enjoyment of parks or open spaces is not permitted unless authorized through a valid permit.*

**Requested Amendment:** Preventing or obstructing other individuals' free use and enjoyment of parks or open spaces is not permitted unless authorized through a valid permit"

- It is unclear what behaviour would "prevent or obstruct" an individual's use of parks or open spaces that are not already covered by the Bylaw provisions. The bylaw already provides for situations in which a permit is necessary. There are provisions against dangerous or disorderly conduct that may obstruct someone's use of a park or open space. There are also provisions prohibiting the building of permanent structures.
- The unintended consequence of this provision may target a subset of the community, namely people experiencing homelessness, who may be seen as preventing or obstructing other individuals' use and enjoyment simply by relying on that public space.
- Amendment recommendation: Strike the entire provision.

**Consideration:** Any individual or group desiring exclusive use of a public space, which would prohibit free use and enjoyment for others, would require a permit.

The language of this section is consistent with recreation facility codes of conduct, and section 60 (b) of the City's Traffic Regulation Bylaw No. 1926.

*h) Using or operating any device in a way that interferes with other individuals' enjoyment of the park is not allowed. This includes but is not limited to the use of amplified or projected sound equipment without a valid permit and in accordance with the Prevention of Public Nuisance bylaw No. 2084.*

#### **Section 5.10 – Current**

**Interaction with City Employees:** *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 the expectations for the interaction between City employees and members of the public; therefore:*

**Requested Amendment:** 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.

- It is noted that the bylaw attempts to regulate the behaviour of the public when interacting with City employees. However, it does not incorporate language which governs how city employees behave towards the public.

- Amendment Recommendation 1: To incorporate language directly from the Bylaw Compliance Policy, which discusses how City employees should behave while enforcing the bylaw.
- Amendment Recommendation 2: to have express language outlining trauma-informed bylaw enforcement.

**Consideration:** This section of the bylaw is reflective of the City’s Respectful Workplace Policy, and provides the ability to use enforcement approaches to ensure staff are treated in a way that is consistent with the Council adopted Bylaw Compliance Policy. In the event a City employee undertakes their work in a way that is contrary to the Bylaw Compliance Policy and the City’s Respectful Workplace Policy, Human Resource policies are in place that outline performance management and respectful workplace investigation processes. Employee rights and obligations are also outlined in the Collective Agreement. Further information regarding bylaw enforcement mechanisms and the City’s accountability framework are outlined in another section of this report.

- a) *City employees engaged in park maintenance, clean up, or renovation may ask individuals within the park to relocate or leave in order to carry out their duties;*
- b) *Individuals who are asked to move by City employees must comply with the request and remove all of their property as directed;*
- c) *It is prohibited to obstruct or interfere with the duties of City employees in a park or open space; and*
- d) *Interfering with a bylaw officer in performing their duties, including issuing tickets or notices, is prohibited under this bylaw.*

**Requested Amendment:** Amendment to Section 5.10(c) & (d): It is prohibited to obstruct or interfere with the duties of City employees in a park or open space. Interfering with a bylaw officer in performing their duties, including issuing tickets or notices, is prohibited under this bylaw.

- These provisions are frequently applied to impede advocates and observers during decampment operations. Mere inquiry, negotiation, or advocacy, whether for oneself or others, should not be deemed as ‘obstruction’ or ‘interference.’ To uphold the principles of democracy, public engagement, and freedom of speech, it is recommended that the provision explicitly recognizes the necessity for “physical obstruction or interference.”
- Amendment recommendation 1: It is prohibited to *physically* obstruct or *physically* interfere with City employees while carrying out their duties in parks or open spaces, or bylaw officers while performing their duties, including issuing tickets or notices.
- Amendment recommendation 2: Strike out Section 5.10 (d) and combine it with 5.10 (c).

**Consideration:** Limiting interference to physical obstruction would permit verbal obstruction in all forms. Permitting verbal obstruction at a level warranting enforcement would be contrary to the City’s Respectful Workplace Policy. Obstruction is subject to the test of reasonableness (outlined in another section of this report) and in accordance with the Bylaw Compliance Policy.

### **Section 7.3 – Current**

**Shelter Requirements:** *Temporary shelters must adhere to the following regulations:*

*a) Temporary shelters must not be erected:*

*i. within 25 metres of a playground or school or community centre;*

*ii. within 5 meters of a private residential property;*

*iii. in or on a:*

*(A) beach, pond, slough or dock;*

*(B) trail, bridge, seawall, roadway or park entrance;*

*(C) environmentally protected natural area; culturally significant area;*

*(D) garden, community garden or horticultural display area;*

*(E) pool or water park;*

*(F) sports field, sports court, skate park, or fitness amenity;*

*(G) fieldhouse;*

*(H) bleacher, stage, gazebo, plaza, public monument, pavilion, designated picnic site, picnic shelter or washroom;*

*(I) designated off-leash dog area;*

*(J) area identified by signs prohibiting or restricting sheltering in that location; or*

*(K) designated areas of park or open space that have otherwise been issued a permit pursuant to this bylaw;*

*b) Temporary shelters must not impede public use of, or access to a park or opens space or to a facility in a park or open space;*

*c) Temporary shelters must not hinder or interrupt the ability of staff or contractors to perform their work, as set out in section 3.10 of this by-law;*

*d) Temporary shelters must not contain any campfire, lighted candles, or propane lanterns or stoves, or other similar devices;*

*e) Temporary shelters must not be used to sell goods or conduct business; and*

*f) Temporary shelters must not be left unattended.*

**Amendment Requested:** Temporary shelters must not be left unattended.

- The Bylaw states that people can temporarily shelter in designated parks and open spaces between the hours of 7:00 pm and 9:00 am, a span of 14 hours. There are numerous reasons why an unhoused person may need to leave their temporary shelter unattended, including to get food or use the washroom. It is unreasonable to require that someone not leave their temporary shelter over the course of 14

hours. This statement does not consider the reality of those experiencing homelessness.

- Amendment recommendation: Strike the entire provision.

**Consideration:** This section was intended to decrease the attractant potential of an unattended shelter. Based on the City’s Bylaw Compliance Policy, a responding enforcement approach would be unlikely to result in the enforcement of this portion of the bylaw. Striking this section of the Bylaw as requested would not impede or impact the effectiveness of the bylaw.

## Section 10.2 – Current

**Enforcement:** *The Director, a bylaw enforcement officer or a peace officer may enforce this bylaw, and in doing so may be assist by another such officer or a City personnel and:*

**Requested Amendment:** 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.

- Only trained officials should be enforcing the bylaw. City personnel is too broad and can include anyone employed by the city. This not only puts the public at risk but also the city personnel who are asked to operate outside their job responsibilities and without the proper training.
- Furthermore, it is redundant to authorize bylaw officers and peace officers to enforce the bylaw with the assistance of another bylaw officer or peace officer.
- Amendment recommendation 1: Strike out “and in doing so may be assisted by another such officer or a City personnel.” Alternatively, specify emergency personnel.
- Amendment recommendation to emphasize Social Service partnership and support. The Bylaw policy and regulation should incorporate language that promotes collaborative partnerships with social support services. Express language in Bylaw 3121 that acknowledges social support services diminishes the likelihood of conflicts but also enables individuals experiencing homelessness to receive timely information on available resources, services, and secure locations for additional support and rest.

**Consideration:** The proposed Parks and Open Spaces Regulation Bylaw includes regulations and expectations regarding conduct in a variety of areas including but not limited to: event permitting, environmental protections, nuisance, sheltering, vehicle use etc. Restricting assistance to Bylaw Officers to emergency personnel would prohibit assistance from the following positions: arborists, towing services, event staff, animal control contractors, engineers, custodians, etc.

The Strategic Plan for Bylaw Compliance identifies “Collaborations and Partnerships” as a core objective and includes the following activities to be undertaken over the next three years:

- Enhance relationships with key contributors including outreach support services, health services, and the RCMP by participating in round tables and identifying communication channels to facilitate collaboration.

- Share appropriate resources and data to enhance the collective approach to problem-solving complex issues.
- Collaborate with internal and external agencies to create approaches to responding to bylaw related matters related to the unhoused to ensure enforcement activities to not lead to re-traumatization.

The inclusion of a reference in the Bylaw to the role of, and relationship between, the City and social service partners will be considered as part of the work identified in the Strategy. As the City does not currently have any formal agreements that identify the roles, responsibilities, and procedures that contemplate a partnership between the City and social services it would be difficult to define the role of social services in the bylaw at this time.

*a) The above referenced authorized personnel may order a person who contravenes this bylaw, or a park use permit to do any of the following:*

- i. cease and desist;*
- ii. leave the park or open space immediately;*
- iii. remove or cause to be removed any animal, bicycle, e-bike, vehicle, vessel, structure or other thing which causes or is contributing to a contravention of this bylaw or of a park use permit; and*
- iv. restore any damage caused by the contravention to natural park features or facilities;*

*b) Authorized personnel may restrain, seize and detain or cause to have restrained, seized and detained a dog or other domestic animal with no apparent custodian and have the animal removed to an animal shelter or other appropriate facility, in which case the provisions for impoundment and fees apply as established by applicable bylaws; and*

*c) Bylaw enforcement officers may enter onto any property in accordance with section 16 of the Community Charter in order to inspect and determine if this bylaw is being contravened.*

### **No Specific Section Reference**

**Requested amendment:** Include express language outlining trauma-informed bylaw enforcement.

**Consideration:** Trauma-informed bylaw enforcement approaches are yet to be fully developed, and there is no established standard of practice for the industry. However, working with external agencies to inform the City's trauma-informed procedures is identified within the Strategic Plan for Bylaw Compliance as follows:

- Identify training opportunities for bylaw enforcement staff that focus on culturally informed practice, trauma-informed practice, mental health, violence de-escalation and prevention, and addiction.
- Review and update bylaw compliance procedures to reflect principles of trauma and culture-informed practice.
- Collaborate with internal and external agencies to create approaches to responding to bylaw matters related to the unhoused to ensure enforcement activities do not lead to re-traumatization.

## Test of Reasonableness

The "test of reasonableness" is a legal principle used to assess whether a particular action or decision taken by authorities, such as law enforcement officers, bylaw enforcement officer, or government officials, is fair, rational, and justifiable in the circumstances. This test is often applied in cases where individuals challenge the legality of actions taken against them.

The test typically involves evaluating whether the action or decision:

1. Is rationally connected to a legitimate government objective or purpose.
2. Is proportionate to the importance of that objective.
3. Represents the least intrusive or restrictive means of achieving that objective.

In essence, the test of reasonableness requires that actions or decisions be justified by a legitimate purpose and be proportionate to that purpose.

## BYLAW ENFORCEMENT MECHANISMS AND ACCOUNTABILITY FRAMEWORK

The main difference between a local government bylaw and a local government policy lies in their nature and function.

### Local Government Bylaw:

- Bylaws are legally binding regulations that have the force of law within a municipality or local government's jurisdiction.
- They are typically enacted by a formal process, often involving public consultation, hearings, and approval by elected officials or governing bodies.
- Bylaws are enforceable through legal mechanisms, such as fines, penalties, or legal action, if violated.
- Bylaws generally address specific issues or behaviors and provide clear guidelines and consequences for non-compliance.

When a local government policy is adopted by City Council, it gains a level of authority and formality that sets it apart from informal guidelines or internal administrative procedures for the following reasons:

**Formal Adoption:** When a policy is adopted by City Council, it undergoes a formal approval process. This process often involves discussions, revisions, and a vote by the council members.

**Public Accountability:** Policies adopted by City Council are public and subject to scrutiny by residents, contributors, and oversight bodies.

**Implementation and Enforcement:** Although policies may not be enforceable in the same way as bylaws, they influence the implementation of programs, services, and initiatives within the municipality. City departments and officials are expected to adhere to these policies in their decision-making and operations.

In summary, when a local government policy is adopted by City Council, it gains a level of formal recognition and authority, providing guidance for decision-making and actions within the municipality. While it may not



have the same legal force as a bylaw, it still carries weight and serves as an important tool in local governance.

### **Human Resource Policies and the Collective Agreement**

When staff members undertake their work inconsistently or contrary to Council-adopted policies, human resource policies, and if appropriate, performance management approaches come into play. Human resource policies provide guidelines on employee conduct, expectations, and disciplinary procedures. If an employee's actions are inconsistent with Council policies, HR policies such as the City's Respectful Workplace Policy outline steps for corrective action including but not limited to counseling, warnings, or performance improvement plans. Ultimately, consistent application of HR policies and performance management ensures alignment with Council-adopted policies and maintains organizational integrity and compliance.

In situations where employee performance is inconsistent with Council-adopted policies, it is also essential to consider any rights outlined in the collective agreement regarding performance management processes. Union agreements often delineate procedures for addressing employee performance issues, including the right to representation, grievance procedures, and due process. Adhering to these agreements ensures that employee rights are upheld throughout the performance management process, fostering fairness and equity in dealing with policy violations.

### **FIRST NATIONS ENGAGEMENT**

In the engagement stages of both the Bylaw Compliance Policy and the Parks and Open Spaces Regulation Bylaw project, City staff contacted K'ómoks First Nation staff responsible for duties in line with bylaw services. Unfortunately, requests to participate in interview processes were not responded to. The City has just initiated a project to develop an Engagement Strategy and Council has identified a Reconciliation Framework as a strategic priority. The City will seek to engage K'ómoks First Nation and other Indigenous communities in the development of the Engagement Strategy. The following options are presented if Council desires further engagement with K'ómoks First Nation:

**Interest Confirmation:** Inquiry through a Council to Council process if K'ómoks First Nation desires further consultation on the Parks and Open Spaces Regulation Bylaw.

**Formal Request for Input:** Send a letter to K'ómoks First Nation, requesting comments and input on the Parks and Public Spaces Regulation Bylaw.

### **POLICY ANALYSIS:**

**Strategic Plan for Bylaw Compliance (Attachment A):** The City of Courtenay's Strategic Plan for Bylaw Compliance is dedicated to reinforcing adherence, fostering awareness, and streamlining enforcement to benefit all community members, providing a clear roadmap for implementing six objectives effectively.

**Bylaw Compliance Policy (Attachment B):** The purpose of this Policy is dual: firstly, to provide an understanding of our approach to activities that may negatively impact the environment, public health, safety, and well-being; and secondly, to encourage compliance and promote accountability within our community through responsible enforcement. This is achieved by ensuring fairness, promoting education, and fostering community involvement.

**FINANCIAL IMPLICATIONS:**

There are no financial implications.

**ADMINISTRATIVE IMPLICATIONS:**

There are no administrative implications at this time.

**STRATEGIC PRIORITIES REFERENCE:**

This initiative addresses the following strategic priorities:

- Streets and Transportation - Review City's approach to parking standards downtown: Bylaw Enforcement Policy review and update

**OPTIONS:**

- THAT Council direct staff to amend the Parks and Open Spaces Regulation Bylaw No. 3121 by removing Section 7.3(f), which reads as follows “Temporary shelters must not be left unattended”; and,  
THAT Council give third reading to the Parks and Open Spaces Regulation Bylaw No. 3121 as amended.
- THAT Council receive the Parks and Open Spaces Regulation Bylaw – Amendments Report for information; and,  
THAT Council direct staff on the form of First Nations and Indigenous engagement as desired; and,  
THAT Council defer third reading of the Parks and Open Spaces Regulation Bylaw No.3121 until such time as the directed First Nations and Indigenous engagement direction [details to be provided by Council] has been completed.
- THAT Council provide alternate direction to staff.

**ATTACHMENTS:**

1. Strategic Plan for Bylaw Compliance
2. Bylaw Compliance Policy
3. Parks and Open Spaces Regulation Bylaw No. 3121

Prepared by: Kate O’Connell, Director of Corporate Services  
Concurrence: Geoff Garbutt, M.Pl., MCIP, RPP, City Manager (CAO)