

Memo



To: Committee of the Whole
From: **Corporate Services**
Date: 2019-06-10
Subject: Review of Parks Access Bylaw No. 2057

Background

Council has received feedback from residents living near George Massie Park regarding the fact that Massie Park was omitted from the list of parks which may not be used for overnight camping or other temporary shelter, and asked Staff to return the Bylaw for discussion.

Massie Park can be added to the bylaw by updating Schedule A, the list of "Parks and Public Spaces where Temporary Shelters are Prohibited".

For discussion, Council should consider the decision of the BC Supreme Court in *Abbotsford (City) v. Shantz*, 2015 BCSC 1909.

Chief Justice Hinkson ruled that [222] "While I accept that the choice to erect an outdoor shelter without permit, when there are other accessible options, is not a fundamental personal choice engaging dignity concerns, I have found that there are, at present, insufficient viable and accessible options for all of the City's homeless."

The Chief Justice paraphrased the decision behind *Victoria (City) v. Adams*, 2008 BCSC 1363: "When the number of homeless people exceeds the number of available shelter beds, does a bylaw that prohibits homeless people from sleeping in public spaces without securing a permit from the City and erecting any form of temporary overhead shelter at night, including tents, tarps attached to trees, boxes or other structure without securing a permit from the City, violate those persons constitutional rights to life, liberty and security of the person under [s. 7](#) of the [Canadian Charter of Rights and Freedoms](#)."

The BC Court of Appeal, in *Adams BCCA* held that: "Thus, the decision did not grant the homeless a freestanding constitutional right to erect shelter in public parks. The finding of unconstitutionality is expressly linked to the *factual finding that the number of homeless people exceeds the number of available shelter beds*. If there were sufficient shelter spaces to accommodate the homeless population in Victoria, a blanket prohibition on the erection of overhead protection in public parks might be constitutional." (Emphasis added)

Under the condition that insufficient shelter space is available, the Courts have shown that *some* space must be available for temporary shelter for overnight accommodation, however limitations requiring removal during the day have been held as acceptable.

With guidance from Council, Staff will prepare an amendment by Bylaw 2057 Schedule A or other changes as requested.

Benefits or Impacts

General

Strategic Impact



[fiscal]



[economic growth]



[community engagement]



[community liveability]

Policy/Legislation

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

Victoria (City) v. Adams, 2008 BCSC 1363

Attachments

Parks Access Bylaw No. 2057 (2019)