

Staff Report



To	City Council
Service Area	Public Services
Date	Wednesday, February 14, 2024
Subject	Public Space Use By-law

Recommendation

1. That Council approve the draft Public Space Use By-law, as attached to report 2024-76, and incorporating Council's feedback at their February 14, 2024 meeting that staff be directed to place the by-law on the February 27, 2024 agenda for final adoption after which the by-law will come into effect on March 1, 2024.
2. That Council respectfully request that the County of Wellington supply the necessary resources and tools, as well as monthly statistics regarding daily availability and access to accessible permanent shelter for all those on the "by name" list, as well as data on the number of offers made to individuals for accessible permanent shelter where the individual has turned down the offer.
3. That Guelph's advocacy efforts continue with the Association of Municipalities of Ontario (AMO) and the Provincial government to address the need for greater municipal funding to deal with housing instability issues, legislative reform to address public space use by-laws, and greater health care funding to address urgent community need connected to mental health and substance use issues.

Executive Summary

Purpose of Report

To seek Council approval to pass a Public Space Use By-law to address safety concerns regarding encampments and related activities on lands owned or operated by the City of Guelph.

Key Findings

There are several goals of a public space use by-law. In response to Council's recent adoption of a human rights-based approach to housing, and with the recognition that there is an ongoing challenge for individuals to find accessible shelter space, the by-law aims to safely accommodate the needs of unsheltered individuals in our community so that they can live safely and with dignity. The by-law will also help to make public spaces owned and operated by the City safer for all members of the community, and to ensure that spaces are being used for their intended purposes and accessible to all residents.

Based on the Council direction to bring a by-law back by the end of February 2024, there was recognition that staff would not have time to follow the normal processes under the Community Engagement Framework, and instead would rely on the Council delegation and correspondence process to obtain feedback from the community on the proposed by-law.

It is vitally important that continued coordinated efforts be made to ensure that accessible shelter spaces are available in the community to meet the needs of unsheltered individuals in the community. One of the most important tools needed is a robust tracking system that is accessible to City Bylaw staff to monitor what spaces are available and track when spaces are offered to individuals on the County of Wellington's "by name list", to be able to provide the City with monthly statistics.

Strategic Plan Alignment

The proposed by-law will align with a number of objectives in the strategic plan including making downtown a vibrant place for everyone, supporting community wellbeing and addressing issues related to homelessness in our community, and ultimately finding the balance between the needs of all residents by caring for our community space and places.

Future Guelph Theme

City Building

Future Guelph Objectives

City Building: Grow and care for our community space and places

Financial Implications

It is difficult to quantify the financial implications associated with the by-law, as staff cannot predict what legal challenges may be faced (as has occurred in other communities), and the associated legal costs of defending the by-law.

Additional costs may arise related to enforcement of the by-law. Staff do not have adequate Bylaw resources to fully address enforcement of this new by-law without a reduction in other enforcement activities. However, we will prioritize enforcement of this new by-law using existing resources that are already included in the approved 2024 budget and then will need to re-address the required resources based on call volume. Should there be a need to increase staff resources within 2024, staff would report back through the variance process, and then would bring further considerations back to Council as part of the 2025 budget confirmation process.

Report

On January 16, 2024, the City of Guelph council passed the following motion:

That staff be directed to draft a Public Space Use By-law to address safety concerns regarding encampments and related activities on lands owned or operated by the City of Guelph, to be brought for Council consideration by the end of February 2024.

Staff from several departments worked together to prepare this report and attached draft Public Space Use By-law. While there was little time available to do extensive research, the preparation work included a review of the [Collective Results report](#)

and recommendations as presented to Council in September 2023 to assist with the considerations for those living in our community who are struggling with housing instability and homelessness. Staff also reviewed by-laws and policies of other Ontario municipalities to consider best practices and what has worked well in those jurisdictions. Additionally, there was a review of recent legal decisions and relevant case law to inform the by-law development.

When conducting the review, staff considered human dignity, community safety, and environmental risks. Recognizing that Guelph City Council adopted a human rights-based approach to housing in October 2023, staff looked to other cities for similar approaches, and utilized learnings from the City of Hamilton's human-centred approach with their "Encampment Protocol". This approach, while allowing encampments to exist in a number of City owned spaces, sets certain distances from specific areas or buildings. This protocol balances the rights and needs of those living in encampments, along with those from the community as a whole wishing to access City space, while also taking into consideration impacts to the environment.

Staff from the City and County, along with community partners, maintain a coordinated response to supporting individuals experiencing homelessness and in encampments. Outreach staff, along with the City's Bylaw staff complete various routes daily to connect with individuals experiencing homelessness who may need assistance. Staff and community partners are committed to consistently looking to improve areas along the response, which includes reducing initial response times, enhancing the response to include after-hours and weekends, and making more successful connections to fully accessible shelter for those in need.

In their role as the Consolidated Municipal Services Manager (CMSM), the County of Wellington Housing Services team is compiling a 2023 data analysis report of the emergency shelter occupancy which will include updated projections for 2024 and 2025. Recent trends indicate that there were times over the first three quarters of 2023 in which one of the County's contracted temporary shelter provider (Stepping Stone) did have some nights at full occupancy where they had to turn individuals away. Some of these individuals were temporarily accommodated through emergency hotel sheltering. However, Stepping Stone received additional funds to open two more shelters before winter; this has resulted in being able to accommodate everyone who needs or wants overnight accommodation, including adding additional cots as required to ensure people do not have to sleep outside in the cold. As a result, they have enough beds available to accommodate everyone who requests one.

As articulated in the Collective Results report, there is a clear connection between many of the challenges experienced in our community related to encampments and people living in chronic homelessness, and systemic health issues including mental health and substance use challenges. There is an urgent need for the provincial government to provide increased funding to address these systemic healthcare challenges, as well as to provide support to municipalities on addressing the urgent housing crisis, especially as it is felt by the most vulnerable individuals in the community. The Association of Municipalities of Ontario (AMO) recently reported that municipalities are spending \$3.8 billion more than they receive in areas of provincial responsibility like social housing, long-term care, land ambulance, and social services. Ongoing advocacy efforts are needed with AMO and the Provincial

government to address these issues that municipalities do not have the ability solve alone.

While this by-law will not resolve these significant underlying issues, it will assist with balancing the competing space needs for City owned property, addressing safety concerns, setting out guidelines to protect vulnerable individuals, and supporting the enjoyment of public spaces by all residents. Therefore, staff are proposing that Council adopt the attached Public Space Use By-law which includes the following provisions:

- a) Prohibition on encampments in spaces with competing public use during the daytime hours
- b) Prohibition on encampments within certain distances from specified areas such as railways, waterways, splashpads, property lines of schools, childcare centres, and cemeteries.
- c) Provisions to prevent the misuse of municipal electricity, water, and infrastructure including but not limited to fountains, outdoor faucets, and electrical outlets.
- d) Prohibition on damaging City infrastructure.
- e) Prohibition on encampments being placed in environmentally sensitive areas (for example, Carter Lands) as there is a risk of an impact on drinking water safety.
- f) Regulations related to safety regarding the type of shelters permitted and permitted materials.
- g) Regulations related to the keeping and storing of propane tanks.
- h) Regulations related to the number of shelters permitted within each cluster and distance requirements for clusters.
- i) Provisions to prohibit the removal of any encampment or part of, by unauthorized persons.

While not intended to be an exhaustive synopsis or a legally binding interpretation, the following are illustrations of common examples of how the by-law will regulate encampments in specific locations, provided that all safety criteria are followed:

- Where there is no competing public use, encampments will be permitted both daytime and overnight. Examples would be open park space that is not programmed or designated as a sports field, and not in an environmentally sensitive area.
- Where space is programmed or designated for other purposes, encampments are permitted overnight only (from one hour before sunset to one hour after sunrise), provided the space is not otherwise booked. Examples would be a sports field, picnic pavilion or public square.
- Where space is deemed to be sensitive or specifically designated, encampments are prohibited at all times. Examples would include splash pads, playgrounds, community gardens, sidewalks, and trails.

Staff will work with local social service agencies and the County of Wellington Housing team to provide education and notice to those individuals who are in encampments in locations that will no longer be permissible under the by-law, supporting them in finding alternate permanent shelter options and to explain the acceptable locations for temporary shelters.

As with all by-laws, staff retain discretionary authority to consider exceptions to enforcement, particularly in extenuating circumstances like an extreme weather alert as designated by Environment Canada. Discretion will be used in these circumstances and enforcement may be temporarily suspended to address emergency needs.

It should be noted that this by-law will only regulate encampments located on properties owned or operated by the Corporation of the City of Guelph. The short timeline for preparing this by-law did not allow for staff to consult with any private property owners in the City, and future consideration may be given to property owners including, but not limited to, the University of Guelph, County of Wellington, Province of Ontario, and local school boards, should they wish to similarly regulate public space use on their properties in Guelph.

The City of Guelph currently has a robust standard operating procedure related to encampments on City owned property, and the document will be updated upon approval of the proposed by-law. However, the basic principles will remain the same; we will work with partners in social service agencies and the County of Wellington to make sure that any individual living in an encampment situation is connected with health and social services supports wherever possible, and that we ensure they get registered on the County's "by name" list to try to access more permanent housing. We will also continue to ensure that there is a thorough process in place to ensure the respectful handling and security of any individual's belongings whenever an encampment is either abandoned or needs to be dismantled.

Once passed, for the Public Use By-law to be effective in addressing the safety needs of those residing in encampments and the community, and to address the legal precedents established in other communities, there is a key role for the County of Wellington as the City's CSM, responsible for the provision of Housing Services. The County will need to provide statistics to the City, on a monthly basis, demonstrating the number of fully accessible permanent shelter spaces that have been provided to those individuals on the "by name" list, as well as documentation of instances where individuals have turned down the offer of permanent accessible shelter.

Financial Implications

It is difficult to quantify the financial implications associated with the by-law, as staff cannot predict what legal challenges may be faced (as has occurred in other communities), and what the associated legal costs of defending the by-law might be. According to a publicly available study completed by the Department of Justice in 2016, the costs of arguing a *Charter* challenge all the way to the Supreme Court can range from as low as \$50,000 to as high as \$1,000,000.

Additional costs may arise related to enforcement of the by-law. Staff will endeavour to address the enforcement using existing resources included in the approved 2024 budget but will need to re-address the required resources based on call volume. If the call volume increases significantly, responding to this by-law could result in reduced responses on other by-laws, like the noise by-law, nuisance parties, or issuing of parking tickets; this could have a negative impact on revenues if, for instance, there was a reduction of parking fine revenues.

Alternatively, staff may need to consider bringing on additional staff resources. Should additional staff resources within 2024 be required, there would be an estimated additional cost of \$69,000 in operating costs in 2024, for which staff would report back through the variance process. Future operating and capital budget impacts would be brought back for further consideration as part of the 2025 budget confirmation process.

Consultations and Engagement

Due to the Council direction to bring the by-law back no later than the end of February 2024, there was no opportunity to conduct community engagement. All feedback from community stakeholders will need to be submitted to Council by the February 9, 2024 deadline for inclusion in the agenda and/or through public delegations on February 14, 2024.

Attachments

Attachment-1: Public Space Use By-law

Departmental Approval

The by-law was discussed and reviewed by several department representatives: Legal Services, Operations, Finance, Economic Development and Tourism, Parks, Strategic Initiatives and Intergovernmental Services, Fire Services.

Report Author

James Parr - Service Performance Development Analyst, Operations, Public Services

This report was approved by:

Doug Godfrey
General Manager, Operations Department
Public Services
519-822-1260 extension 2520
doug.godfrey@guelph.ca

Jennifer Charles
General Manager, Legal & Court Services/ City Solicitor
Corporate Services
519-822-1260 extension 2452
jennifer.charles@guelph.ca

This report was recommended by:

Colleen Clack-Bush
Deputy Chief Administrative Officer
Public Services
519-822-1260 extension 2588
colleen.clack-bush@guelph.ca

Jayne Holmes
Deputy Chief Administrative Officer
Infrastructure, Development and Enterprise Services
519-822-1260 extension 2248
jayne.holmes@guelph.ca

Trevor Lee
Deputy Chief Administrative Officer
Corporate Services
519-822-1260 extension 2282
trevor.lee@guelph.ca

Scott Stewart
Chief Administrative Officer
Office of the Chief Administrative Officer
519-822-1260 extension 2221
CAO@guelph.ca