

Region of Waterloo**Planning, Development & Legislative Services****Legal Services**

To: Regional Council

Meeting Date: December 15, 2021

Report Title: **Policy Review of Region Bylaw 13-050 – Use or Occupation of Region-owned Public Land**

1. Recommendation:

That that the Regional Municipality of Waterloo approve a policy for responding to unauthorized use of Region-owned or occupied land attached as an Appendix to Report PDL-LEG-21-69 dated December 15th, 2021.

2. Purpose / Issue:

The purpose of this report is to provide an overview of the existing process for responding to an unauthorized occupation of Region-owned public lands by individuals experiencing homelessness and recommend possible modifications to this process. This report includes a recommended policy that would guide Region of Waterloo staff going forward in providing outreach services to persons living rough on lands owned by the Region of Waterloo. The policy stresses the importance of outreach and service delivery as the first point of engagement and the need to balance the need for providing supports to vulnerable individuals with the civic responsibility of maintaining the use of lands for the public and/or operational needs of the municipality.

3. Strategic Plan:

The information provided in this report supports the Healthy, Safe and Inclusive Communities and Responsive and Engaging Public Service Strategic Plan focus area, specifically objective 4.3, namely activity to “promote and enhance equity in policies, planning, services and decision-making in order to positively affect community well being.

4. Key Considerations:

- 1) Regional By-law 13-050 – **A By-law respecting the Conduct of Persons Entering upon Buildings or Grounds owned or occupied by the Regional Municipality of Waterloo** – delegates authority to “Designated Personnel” to issue notices of trespass and take action to prohibit certain activities on region-owned or occupied lands. The persons delegated with decision-making

authority include Director/Manager level staff having operational responsibility for the lands. By-law enforcement officers also have delegated authority.

- 2) “Prohibited Activities” under the bylaw include, broadly, any activities that hinder or obstruct the use or enjoyment of the property by the public or for the operational requirements of the Region of Waterloo. The list of specific prohibited activities expressly references “erecting a structure, tent or temporary shelter on public property without authorization”.
- 3) This bylaw provides general direction for the form and delivery of notice to persons engaged in a Prohibited Activity. It also provides that staff may engage the Waterloo Regional Police Service to request assistance or initiate any other action the police service may determine necessary in the circumstances.
- 4) Enforcement of the Region’s bylaw has historically been complaint driven. In the instance of enforcement which took place on November 26th, complaints about the encampment at 34 Stirling Street the Region were received from members of the public including passengers on GRT expressing concern about safety given the close proximity of tents to the nearby transit shelter/stop.
- 5) The Region’s bylaw has broad application to a wide range of prohibited activities. As a result, specific direction as to the timing and manner of enforcement is not set out in the bylaw. In the instance of enforcement that took place at the property at 34 Stirling Street, the Licensing and Enforcement Division made the operational decision to include a road maintenance crew with heavy equipment due to the presence of large items and that the site posed broader health and safety concerns. These concerns stemmed from the presence of generally unsanitary conditions, broken glass from the nearby bus shelter, large items (ie. couch and mattresses) and drug paraphernalia, including sharps (some of which were removed by by-law enforcement officers).
- 6) The Region’s bylaw is similar to bylaws in other municipalities which largely adopt the provisions of provincial legislation, namely the *Trespass to Property Act*, a statute which provides legal authority for any owner or occupier of land – whether publicly or privately owned – to require individuals to vacate land on prior notice. The bylaw provides general direction and while staff actions undertaken in the context of the 34 Stirling Street site were consistent with the requirements of the bylaw, the manner in which these actions were carried out did not reflect the dignity of those living at the encampment.
- 7) As a result, Regional staff conducted a review of the existing process and have attached a sample policy to this Report. The policy would supplement the existing bylaw and is intended to:
 - a. prioritize the health and safety of all concerned and respect for the

- individuals experiencing homeless and their possessions;
- b. put greater emphasis on the importance of assisting individuals to access safer, sustainable, and healthier alternatives and clarify that enforcement will only occur after all reasonable support efforts have been attempted without success;
 - c. provide for a centralized process for receiving information about encampments and co-ordinating communications with members of Regional Council, delivery of outreach services and engagement with other Regional departments; and
 - d. elevate decision-making to senior management recognizing the complexity of balancing the need to provide appropriate supports to vulnerable individuals with the civic responsibility of maintaining public safety and public uses of land.

5. Background:

On November 26th, 2021, Regional by-law enforcement staff attended at 34 Stirling Street in the City of Kitchener to enforce the provisions of a Region bylaw prohibiting unauthorized occupation of Region-owned public lands. While the decision to remove belongings with heavy equipment was made to protect the health and safety of staff and members of the community, the manner in which this was carried out did not reflect the dignity of those living at the encampment.

As a result, Region staff undertook to conduct a review and suggest modifications to the Region's process to ensure individuals experiencing homelessness and their belongings are treated with respect and dignity.

6. Area Municipality Communication and Public/Stakeholder Engagement:

As noted above, area municipalities have similar by-laws – specifically addressing prohibited activities in parks. By-law 13-050 and the attached policy, if approved, would apply only to Region-owned or occupied (ie. rented) land and would not apply to lands within the jurisdiction of area municipalities or private lands.

7. Financial Implications:

None.

8. Conclusion / Next Steps:

This report recommends adopting a policy intended to provide enhanced clarity of decision-making and communications in situations where Regional staff may have to respond to an encampment on Region-owned property in the future. This policy would supplement existing By-law 13-050 described above.

9. Attachments / Links:

[Appendix A:](#) Region Bylaw 13-050 – Conduct of Persons Entering upon Buildings or Grounds owned or occupied by the Region of Waterloo (DOCS # 1535396)

[Appendix B:](#) Draft Policy – Encampments on Region-owned Public Lands

Prepared By: **Jeff Schelling**, Regional Solicitor/Director of Legal Services

Reviewed By: **Arran Rowles**, Acting Commissioner, Community Services

Approved By: **Jeff Schelling**, Regional Solicitor and Director of Legal Services

Appendix B- Draft Policy – Encampments on Region-owned Public Lands**The Regional Municipality of Waterloo****Draft Policy - Homeless Encampments on Region-owned or occupied lands**

This policy will guide Region of Waterloo staff in providing outreach services to individuals living rough on lands owned or occupied by the Region of Waterloo. This policy seeks to balance the need to provide appropriate supports to vulnerable individuals with the civic responsibility of maintaining the use of these lands for the public and/or operational requirements of the municipality.

This policy is also intended to supplement, not replace, Regional By-law 13-050 – A By-law respecting the Conduct of Persons Entering upon Buildings or Grounds owned or occupied by the Regional Municipality of Waterloo.

Key Principles:

The following four principles will guide any action required to support individuals living rough and experiencing homelessness on lands owned or occupied by the Region of Waterloo:

- (1) The Region's priority is to assist individuals to access safer, sustainable, and healthier alternatives, not enforcement. Enforcement will only occur after all reasonable support efforts have been attempted without success and with reasonable advance notice of the requirement to vacate a public space. In exceptional circumstances, however, more immediate intervention may be required to address public safety concerns.
- (2) Regional staff, supported by community social service agencies, will work with individuals living outside to respond to their individual needs on a case-by-case basis by providing access to services, supports and shelter. The Region will use a co-ordinated approach between Regional departments in responding to the needs and issues related to individuals living rough or experiencing homelessness.
- (3) The Region will engage in ongoing proactive communication with individuals experiencing homelessness, service providers, Regional councillors, community agencies and other groups.
- (4) The Region acknowledges that individuals living rough cannot be forced to accept services and supports. However, the refusal of an individual to accept services and supports is not sufficient reason to prevent the enforcement of Regional by-laws.

Step 1 - Outreach Services to Assist Individuals Experiencing Homelessness

The first point of engagement with individuals occupying Region owned or occupied lands will be through the Region's Community Services department, directly, or

indirectly via third party outreach agencies. The goal of the Region's outreach initiatives will be to assist and encourage people currently living rough on publicly owned lands to access safer and healthier alternatives, including housing, support services, shelter and more permanent housing options.

The Director of Housing and their staff will receive all reports of encampments within the Region of Waterloo and will coordinate efforts to provide services for individuals living rough and experiencing homelessness through community agencies and other Region departments, including Public Health. The Housing Division will work closely with other Regional departments to ensure that the timing of any enforcement activities is co-ordinated with outreach efforts. In some circumstances, it is anticipated that given the appropriate outreach and supports over time, individuals will be assisted in securing better alternatives than living rough and will voluntarily vacate Region-owned or occupied lands, making enforcement unnecessary.

Step 2 – Notification, Communication and Enforcement

Enforcement will only occur after all reasonable outreach and support efforts have been provided without success and with reasonable advance notice of the requirement to vacate a public space. In exceptional circumstances, however, more immediate intervention may be required to address public safety concerns.

The Commissioner of the Regional department having operational responsibility for the Region-owned or occupied public lands shall be responsible for making a determination to provide notice to individuals that camping is to be discontinued and that personal goods, debris and structures are to be cleared by the individuals from a public space or right of way. The Commissioner shall consult with the Regional Solicitor and Chief Administrative Officer in making this determination. Regional Council will be notified of a decision to issue notices to vacate.

The primary objective of any enforcement activity will be to ensure the safety of all concerned and respect for the individuals experiencing homeless and their possessions. In circumstances where a site has been vacated due to prior outreach activities, by-law enforcement officers will attend at the site to undertake any required clean-up having regard to the foregoing primary objective. These activities may be co-ordinated with the Waterloo Region Police Service and other Regional departments to maintain the safety of staff. In circumstances where a site is not vacant, by-law enforcement officers will consult with the Regional Solicitor prior to initiating on-site enforcement. The Regional Solicitor shall be responsible for providing advice to Regional Council on any proposed enforcement activity on a site where individuals refuse to accept supports and have not vacated a particular property.

BY-LAW NUMBER 13-050

OF

THE REGIONAL MUNICIPALITY OF WATERLOO

A By-law Respecting the Conduct of Persons Entering Upon
Buildings, Grounds and Public Transportation Vehicles Owned or
Occupied by The Regional Municipality of Waterloo

The Council of the Regional Municipality of Waterloo enacts as follows:

WHEREAS The Regional Municipality of Waterloo owns or occupies certain buildings, grounds and public transportation vehicles for the purpose of carrying out its municipal services;

AND WHEREAS persons, from time to time, enter onto these buildings, grounds and public transportation vehicles and cause physical damage to the premises, disruption to Regional operations or the use and enjoyment of these premises by other persons;

AND WHEREAS it is the desire of The Regional Municipality of Waterloo to create a code of use in regard to these premises;

AND WHEREAS The Regional Municipality of Waterloo has the capacity, rights, powers and privileges of a natural person and the ability to govern its affairs as it considers appropriate pursuant to sections 8 and 9 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;

AND WHEREAS The Regional Municipality of Waterloo has the authority to enact by-laws respecting its public assets and the protection of persons and property pursuant to subsection 11(2) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended;

NOW THEREFORE THE COUNCIL OF THE REGIONAL MUNICIPALITY OF WATERLOO ENACTS AS FOLLOWS:

PART I - DEFINITIONS

1. In this By-law:

- (1) **“Designated Personnel”** means those persons listed in Schedule “A” of this By-law;
- (2) **“Designated Premises”** means any public transportation vehicle that is owned or operated by the Region or any building, grounds or other premises, other than a highway or the private residential unit of an individual, that are owned or occupied by the Region;
- (3) **“Director”** means the Director of Facilities Management and Fleet Services or any successor position, or his or her designate;
- (4) **“highway”** means a common and public highway and includes any bridge, trestle, viaduct or other structure forming part of the highway and, except as otherwise provided, includes a portion of a highway;
- (5) **“Municipal Act, 2001”** means the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, or any successor legislation;
- (6) **“Prohibited Activity”** means any activity that is listed in Schedule “B” of this By-law;
- (7) **“public transportation vehicle”** means a bus or other motor vehicle that is designed to operate on a highway, as well as a train that runs upon rails, wherein passengers are transported for a fee or other consideration;

- (8) “**Region**” means The Regional Municipality of Waterloo;
- (9) “**sign**” means any device, object or thing that creates a design or conveys a message, or that is designed to convey a message and that is placed for the purposes of advertising, announcing, directing or promoting any idea, event, activity, product, service or facility, identifying a business or enterprise, or conveying any other type of message; and
- (10) “**Trespass to Property Act**” means the *Trespass to Property Act*, R.S.O. 1990, c. T.21, as amended, or any successor legislation.

PART II – PROHIBITION

2. No person shall do a Prohibited Activity on Designated Premises.
3. (1) No person shall place, or cause or permit to be placed, a sign, or any part of a sign, on Designated Premises.
- (2) Subsection (1) of this section shall not apply to a sign that is placed at a location that is designated for signs by the Director and the sign meets the following criteria:
- (a) the sign is less than 1,600 square centimeters in area;
 - (b) the sign does not promote an unlawful activity or discrimination on the basis of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability;
 - (c) the sign does not contain profanity or obscenity; and
 - (d) the sign is not obsolete in relation to a past event or a business or enterprise that is no longer conducted, or an activity, product, service or facility that is not in season or is no longer provided.
4. Every person who contravenes section 2 or 3 of this By-law is guilty of an offence and on conviction is liable to a fine not exceeding \$5,000, exclusive of costs.

PART III - TRESPASS

5. Without limiting Part II of this By-law, Designated Personnel may exercise any of the following enforcement options at Designated Premises when a person is doing or has done a Prohibited Activity:
- (1) Issue a verbal direction to refrain from a Prohibited Activity;
 - (2) Issue a verbal direction to leave the Designated Premises citing as the reason the failure to refrain from a Prohibited Activity;
 - (3) Serve a written notice upon a person prohibiting a Prohibited Activity citing as the reason the failure of the person to refrain from a Prohibited Activity;
 - (4) Serve a written notice upon a person prohibiting entry upon a Designated Premises citing as the reason the failure of the person to refrain from a Prohibited Activity;
 - (5) Post a sign so that the sign is clearly visible in daylight under normal conditions from the approach to each ordinary point of access to the Designated Premises prohibiting a Prohibited Activity;
 - (6) Post a sign so that the sign is clearly visible in daylight under normal conditions from the approach to each ordinary point of access to the Designated Premises prohibiting entry upon the Designated Premises by a person citing as the reason the failure to refrain from a Prohibited Activity; and
 - (7) Exercise any other rights or powers pursuant to the *Trespass to Property Act* that are reasonable in the circumstances.

6. Any verbal direction, written notice or sign pursuant to section 5 of this By-law shall be reasonable in relation to the conduct prohibited, the breadth of the location and the duration of the time imposed.
7.
 - (1) Any person who is subject to a verbal direction, written notice or sign pursuant to section 5 of this By-law may apply to the Director in writing with a request that the verbal direction, written notice or sign be rescinded or modified.
 - (2) Any written request pursuant to subsection (1) of this section shall set out the grounds for the request and shall be submitted to the Director within 30 calendar days of:
 - (a) the person's receipt of the verbal direction or written notice or the person's observance of the sign; or
 - (b) any changed circumstance that relates to the impact of the verbal direction, written notice or sign upon the person.
 - (3) Upon the receipt of the written request pursuant to subsection (1) of this section, the Director shall investigate and determine whether the verbal direction, written notice or sign should be rescinded or modified and the Director shall advise the person of his or her decision in writing.
 - (4) The verbal direction, written notice or sign that is the subject of a request pursuant to this section shall remain in full effect pending the Director's decision in writing.
8. Designated Personnel may contact the Waterloo Regional Police Service, or any other police service having lawful jurisdiction, at any time to request assistance or to initiate any other action as the police service may deem necessary in the circumstances.

PART IV - GENERAL

9. This By-law may be enforced by a Designated Personnel or a police officer.
10.
 - (1) The Director shall have all necessary authority to administer this By-law.
 - (2) Without limiting subsection (1) of this section, the Director shall have the authority to:
 - (a) prescribe any administrative forms for the purposes of this By-law;
 - (b) designate permitted locations for signs at Designated Premises; and
 - (c) remove, or cause the removal, of any sign that does not meet the requirements of this By-law.
11. This By-law may be cited as the "Code of Use By-law".
12. Any procedural by-law of the Region governing the conduct of any person during a session of Council of the Region, or of a committee of Council of the Region, shall govern and this By-law shall apply with necessary modification.
13. If any section or sections of this By-law or parts thereof are found by any Court to be illegal or beyond the power of Council of the Region to enact, such section or sections or parts thereof shall be deemed to be severable and all other sections or parts of this By-law shall be deemed to be separate and independent therefrom and shall continue in full force and effect unless and until similarly found illegal.
14.
 - (1) By-law 05-055 of The Regional Municipality of Waterloo, A By-law Respecting the Conduct of Persons Using the Public Transit System ("Grand River Transit") Operated by the Regional Municipality of Waterloo, shall be repealed effective on the coming into force and effect of this By-law.
 - (2) Notwithstanding subsection (1) of this section, any direction or notice issued to a person pursuant to By-law 05-055 of The Regional

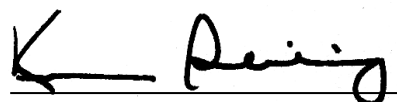
Municipality of Waterloo, A By-law Respecting the Conduct of Persons Using the Public Transit System ("Grand River Transit") Operated by the Regional Municipality of Waterloo, that is in effect at the time that the By-law is repealed shall be deemed to be a direction or notice pursuant to this By-law and shall continue in full force and effect.

15. This By-law shall come into force and take effect on the date of final passage hereof.

By-law read a first, second and third time and finally passed in the Council Chamber in the Regional Municipality of Waterloo this 11th day of December, A.D., 2013.



REGIONAL CLERK



REGIONAL CHAIR

SCHEDULE "A"

DESIGNATED PERSONNEL

1. The following are Designated Personnel:
 - (1) the Director having responsibility for the Designated Premises;
 - (2) an employee of the Region having responsibility for the Designated Premises, or any part thereof, at the particular time;
 - (3) Manager, Business Services, for the Region, or any successor position thereto;
 - (4) Supervisor, Security Services, for the Region, or any successor position thereto;
 - (5) Supervisor, Transit Security for the Region, or any successor position thereto;
 - (6) a municipal law enforcement officer as appointed by the Region;
 - (7) a security guard under contract to the Region; and
 - (8) other persons from time to time as may be designated by Council of the Region.

SCHEDULE "B"

PROHIBITED ACTIVITIES

1. In this Schedule:
 - (1) "authorization" means written permission from the Director for the Region having responsibility for the Designated Premises, or his or her designate;
 - (2) "loitering" means to linger without due cause or purpose;
 - (3) "nuisance" includes any conduct or behavior which interferes with the ordinary enjoyment of persons using Designated Premises; and
 - (4) "service line" means an indoor or outdoor line of two or more persons awaiting service of any kind, regardless of whether or not such service involves the exchange of money, including but not limited to, sales, provision of information, transactions, or advice and transfers of money or goods.
2. The following activities are Prohibited Activities:
 - (1) An activity that obstructs, prevents or hinders the rights of others to use and enjoy Designated Premises or which obstructs, prevents or hinders the operations of the Region or any of its employees, agents or contractors;
 - (2) Without limiting the generality of the foregoing, an activity that obstructs, prevents or hinders the rights of others to use and enjoy the Designated Premises or which obstructs, prevents or hinders the operations of the Region or any of its employees, agents or contractors includes, but is not limited to:
 - (a) smoking tobacco or holding lit tobacco in any elevator or escalator, in any service line, public area or area designated as a "No Smoking" or "Smoke Free" area;
 - (b) committing any nuisance, disturbing the peace or acting contrary to public order;
 - (c) spitting, urinating or otherwise causing unsanitary conditions;
 - (d) littering;
 - (e) loitering;
 - (f) rollerblading or skateboarding without authorization;
 - (g) using profanity, obscene language or racial slurs;
 - (h) vandalizing the Designated Premises or any personal property on the Designated Premises;
 - (i) using, removing or possessing any personal property of the Region or any other person without authorization;
 - (j) selling or attempting to sell, distribute or solicit any good or service without authorization;
 - (k) operating any radio, tape recorder, DVD, CD or MP3 player, musical instrument or similar device, without authorization, unless the sound is conveyed by earphone at a decibel level that does not disturb any other person;
 - (l) operating for commercial purposes any camera, video recording device, movie camera or any similar device without authorization;

- (m) carrying any goods, without authorization, which are offensive, dangerous, toxic, corrosive, flammable or explosive in nature that are likely to alarm, inconvenience, cause discomfort or injure any person, or cause damage to property, whether or not such good are contained in an approved container;
 - (n) bringing any large animal onto the Designated Premises, without authorization, other than during an emergency or for use as a service or guide animal;
 - (o) entering, without authorization, onto the Designated Premises without a shirt or footwear;
 - (p) bringing a small animal or bird, without authorization, that is not in a cage or carrying device designed for secure and safe transport unless the small animal or bird is required for use as a service or guide animal;
 - (q) acts which are perceived as threatening, intimidating or sexual harassment;
 - (r) entering, without authorization, any area that is designated or used as a work area for an employee;
 - (s) interfering with an operator of a public transportation vehicle or obstructing his or her vision;
 - (t) erecting, without authorization, any structure, tent or temporary shelter;
 - (u) consuming alcohol without authorization;
 - (v) riding or standing on any exterior portion of a public transportation vehicle or leaning out of or projecting any body part through any window of a public transportation vehicle;
 - (w) projecting a body beyond the edge of any platform for a public transportation vehicle, except to enter or leave the vehicle;
 - (x) riding a bicycle on any platform for a public transportation vehicle; and
 - (y) any activity contrary to the *Criminal Code of Canada*, R.S. 1985, c. C-46, as amended, other federal statutes, provincial statutes or municipal by-laws;
- (3) Acts which are contrary to any specific rules or terms of use for the Designated Premises provided that the specific rules or terms of use have been posted in a conspicuous location at the Designated Premises;
 - (4) Entering Designated Premises without paying the required fee or fare or having proof of payment for the required fee or fare for admission to the Designated Premises;
 - (5) Failing to comply with the terms and conditions of any pass, transfer or other instrument that is required for the entrance or use of Designated Premises; and
 - (6) Entering a public transportation vehicle at other than a designated passenger entrance.