

**CORPORATE SERVICES DIVISION  
OPEN SESSION REPORT**

TO: Mayor and members of Council  
FROM: Randi Kalar, Acting City Solicitor  
David Stockdale, General Manager of Corporate Services  
DATE: August 12, 2024  
SUBJECT: Encampment Protocol

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**Recommendation**

It is recommended:

1. That Sarnia City Council approve and implement the revised Encampment Protocol; and
2. That Sarnia City Council provide the Sarnia Police with express authority, on behalf of the City, to implement the *Trespass to Property Act*, as required to enforce the Encampment Protocol; and

**Background**

At the July 8, 2024 Regular Council Meeting, the following Motion was carried:

**That Sarnia City Council receive the attached Draft Encampment Response Protocol; and**

**That Sarnia City Council direct staff to send the Draft Encampment Response Protocol to outside legal counsel to ensure its constitutionality.**

Feedback has been received from our external counsel and the draft Protocol has been revised accordingly. Recommendations from other municipalities and community members have also been taken into consideration.

The revised draft is attached (attachment 1). Based on conversations with external legal counsel, the City's insurance provider, other municipalities, and community members, staff are recommending the revisions be approved by Council and the Protocol implemented immediately.

**Comments**

Trespass to Property Act

As the owner of the municipal property affected by the Encampment Protocol, Council must provide the Sarnia Police with express authority to implement the *Trespass to Property Act* as required to enforce the Encampment Protocol.

### Rainbow Park

This Encampment Protocol applies to new encampments. It does not apply to the established encampment at Rainbow Park. Sarnia Police have advised they require a court Order to dismantle this encampment. If Council wants to proceed with dismantling this encampment, despite the legal advice received to date, Council can consider the options detailed below.

#### *Apply for an injunction*

Council may wish to reconsider its option to proceed with an application for an injunction, which had been previously been considered and defeated at the June 3, 2024 City Council meeting.

If Council decides to proceed with an application for an injunction, there may be a significant cost as previously advised. There is also a risk that the application may not be successful.

If Council reconsiders its prior decision and directs staff to proceed with this option, staff recommend that the County of Lambton participate as a co-applicant, or at minimum, agree to work with the City to furnish the necessary evidence to the Court to support the application.

If successful, the persons currently occupying Rainbow Park may disburse to other areas of the City, and could re-establish an entrenched encampment elsewhere. They cannot be forced to accept available shelter options.

#### *Notice to vacate the premises in Rainbow Park*

As previously advised by staff, and external legal counsel, proceeding with this option exposes the City to risk of litigation alleging the City violated the Charter rights of the persons occupying the park. Based on the legal opinion, and the trends we are seeing emerge in the developing caselaw, the City may not be successful in defending this action in Court if challenged.

In the legal opinion received by Council on May 6 (attachment 2), external counsel advised that where a municipality cannot demonstrate sufficient shelter space that is truly accessible, enforcement of a municipal parks bylaw or the *Trespass to Property Act* would likely be unconstitutional if challenged.

The lawyer strongly recommended that the City not proceed in any way to take enforcement action to clear the encampment in Rainbow Park. Removal of the

encampment would expose the city to significant litigation risk and it is likely the City's actions would be found to be unconstitutional. This opinion was based on current caselaw which was summarized in the opinion.

Other municipalities have accepted the risk associated with potential litigation, and taken steps to dismantle encampments where they have adequate shelter space to accommodate the residents. Staff recommend that Council should consider the number of available and accessible shelter spaces before deciding to dismantle the encampment at Rainbow Park.

A representative of Community Legal Assistance Sarnia spoke to Council at the May 6, 2024 City Council meeting and advised there would be legal consequences if the City proceeded with removal of the encampment.

If Council directs staff to proceed with this option, staff would take the necessary steps to defend the City in the event of a Charter or human rights challenge.

### Security Measures

At the June 14, 2024 Special City Council Meeting, the following Motion was made:

**That the CAO be authorized to implement temporary measures in Rainbow Park, including, but not limited to fencing, sanitation, lighting, and security measures until further legal options become available; and,**

**That staff be directed to explore any available opportunities for financial support for these temporary measures from senior levels of government and the County of Lambton; and,**

**That the CAO be instructed to report to Council on the actions taken under this directive; and, That Council review this directive in 30 days.**

Various security measures have been implemented at Rainbow Park. Information on these measures and the associated costs will be communicated to Council via the Non-Agenda mail. Council may wish to review this directive at this time.

### **Consultation**

In preparing the Protocol, staff consulted with various community members/organizations, the County of Lambton, internal staff, our external legal counsel, and representatives from other municipalities.

### **Financial Implications**

Financial implications depend on further direction received by Council. There are costs associated with a Court Application whether it be in the capacity of

an applicant or respondent, and there are costs associated with obtaining external legal counsel.

Reviewed by:

David Stockdale  
General Manager of Corporate  
Services

Approved by:

Chris Carter  
Chief Administrative Officer

This report was prepared by Randi Kalar, Acting City Solicitor.

Attachments:

- Encampment Response, Draft #2
- Opinion from Aird and Berlis, dated May 6, 2024