




INFORMATION REPORT

TO:	Mayor and Members City Council
COMMITTEE DATE:	October 13, 2021
SUBJECT/REPORT NO:	Encampment Response Update PED21188(a)/HSC20038(d)/LS21039) (City Wide)
WARD(S) AFFECTED:	City Wide
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SUBMITTED BY: SIGNATURE:	Grace Mater General Manager Healthy and Safe Communities Department 

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

COUNCIL DIRECTION

N/A

INFORMATION

The purpose of this Information Update is to provide an update on the City response to encampments following a temporary Court decision made on October 7th, 2021. The court decision places partial limits on enforcement of City by-laws on encampments in parks, and these restrictions are expected to last until October 15th, 2021. The restrictions may be extended by the Court to allow a decision in litigation involving encampments which was commenced in the week of October 4th.

During the week of October 4th, a Court Application was filed on behalf of five homeless persons and naming the City as Respondent. The Application sought court orders to prevent enforcement of City by-laws involving the removal of persons and their encampments from City parks. The Applicants included a request for the Court to hear an urgent motion without notice to or participation of the City (ex parte), and seeking an interim injunction preventing by-law enforcement. That motion was scheduled as an ex parte matter for October 7th, 2021 and resulted in a decision detailed below.

Legal counsel acting for the City obtained the court materials late in the evening on October 5th and prepared responding materials for the City to oppose the motion. These materials were served on the applicants and provided to the court on the Wednesday. On Thursday October 7th legal counsel for the City attended the court hearing to oppose the motion by raising challenges to the urgency and basis for an interim injunction. After preliminary argument the City's right to participate was conceded. The Court then heard initial submissions for the Applicants and City on the approach to the motion and Application as a whole.

During a court recess a full day of court time was found available on October 15th. When proceedings resumed the Court expressed intent to adjourn the matter, to allow the Application itself to be argued with a full record of the parties' evidence and arguments. The Court sought conditions on the adjournment of eight days to maintain the current state between the parties. Conditions raised by the Applicants were opposed by the City. The Court ultimately imposed its own modified set of conditions, placing temporary limits on by-law enforcement on encampments in parks, which are as follows:

- Within the areas above the City be permitted to follow the steps set out in its Encampment Process save and except for notification of the Hamilton Police Service for the purpose of removal of encampments. In particular Municipal Law Enforcement Officers may continue to provide verbal trespass notices to the Applicants and homeless persons as part of the Encampment Process.

- The above conditions apply to encampments existing on October 7th, 2021 and do not apply to new encampments.
- The Court set additional terms for the adjournment dealing with preparation, exchange and filing of document for the hearing. The effect of the Court's ruling is similar to restrictions found in an interim injunction, but the decision on October 7th is not an interim injunction such as the City had been subject to for part of last year.

As a result of the above restrictions on by-law enforcement, immediate steps were taken by Staff in Licensing and By-law Services to comply with the Court's requirements, including communication with Hamilton Police Services. A modified enforcement protocol is being developed for encampments affected by the Court restrictions, which require a temporary limit on the removal of persons from encampments until at minimum October 15th, 2021. It is being developed in light of staffing resources and the use of other City by-laws.

Outreach efforts for persons facing homelessness continue through Healthy and Safe Communities Staff and other involved community partners without restriction from the above activity. These efforts are aimed at person-centred strategy and supports to address urgent issues for persons experiencing homelessness, connecting persons to shelter and shelter services while supporting long-term adequate housing solutions and ultimately housing options for persons facing homelessness including persons in encampments wherever they may be found in the City.

In respect of the return to Court, extensive work is underway to meet the timing requirements for preparing, serving and court filing of the additional materials to be used by the parties and the court on October 15th. This includes cross examination of some persons who supplied evidence by affidavit. While the court's decision above is temporary, it is likely the court may reserve decision on October 15th and extend these or similar restrictions until the court's decision is made. The court stated on October 7th that it would be providing its decision as soon as practical in consideration of the situation. Every effort is being made to meet timelines, but in the event the hearing for next Friday is delayed or further adjourned then the court may impose these or similar enforcement restrictions on a temporary basis.

APPENDICES AND SCHEDULES ATTACHED

N/A