
CITY OF KELOWNA

MEMORANDUM

Date: July 30, 2007

File No.: **BL9851, 9852, 9853 and 9854**

To: City Manager

From: Licence and Bylaw Enforcement Supervisor

Subject: Amendments to Panhandling Bylaw No. 8214; Parks and Public Spaces Bylaw No. 6819-91, Traffic Regulation Bylaw No. 8120 and Ticket Information Utilization Bylaw No. 6550

RECOMMENDATION:

THAT Council receive the recommendations of the Licence and Bylaw Enforcement Supervisor as outlined in the report dated July 30, 2007;

AND THAT Bylaw No. 9851 being "Amendment No. 1 to Panhandling Bylaw No. 8214" be advanced for reading consideration;

AND THAT Bylaw No. 9852 being "Amendment No. 13 to Parks and Public Spaces Bylaw No. 6819-91" be advanced for reading consideration;

AND THAT Bylaw No. 9853 being "Amendment No. 10 to Traffic Regulation Bylaw No. 8120" be advanced for reading consideration;

AND FURTHER THAT Bylaw No. 9854 being "Amendment No. 69 to Ticket Information Utilization Bylaw No. 6550" be advanced for reading consideration.

BACKGROUND:

The City of Kelowna Bylaw Enforcement Department and the Kelowna RCMP over the past two years have developed and implemented a joint enforcement process in order to deal with on-going concerns in the City of Kelowna and particularly in the downtown centre. The process has included amending a number of our bylaws to address these issues as well as revisiting the provisions of the Offence Act to obtain a Recognizance Order (Red Zone) for frequent violators. This process consists of the use of our Municipal Ticket Information (M.T.I's) and Long Form Informations which has resulted in the issuance of warrants for the persons who fail to attend court as ordered.

This process has been very effective in dealing with frequent offenders and the criminal transient concerns in the City but to be truly effective there must be effective follow up where offenders do not comply with the terms of recognizance orders. The Bylaw Enforcement Department has attempted to obtain prosecutions against those persons who have violated their terms of recognizance but to-date have been unsuccessful in obtaining such prosecutions by the Crown Council Office. A request made to the Crown Counsel Office to permit the City Solicitor to prosecute these breaches has been recently rejected by the local Crown Counsel Office, although this was stated as not representing the definitive position of the Criminal Justice Branch. It was suggested that amendments to the Offence Act may be in order and we expect to pursue this further with the City Solicitor.

In the meantime, Bylaw Enforcement is requesting amendments to the City bylaws most frequently utilized in dealing with criminal transient conduct. The amendments would add incarceration as a possible sentence option. Where an offender breaches a recognizance under the Offence Act (for a municipal bylaw offence) the offender can be brought back before the court to be re-sentenced. To provide an effective deterrent, the re-sentencing judge should be provided with a sentencing option other than imposing a fine, which is the limitation under the bylaws as they currently stand.

It is not the intention of the Bylaw Department to suggest incarceration for an offender at the initial prosecution, but only in the event of a breach of a recognizance imposed by the court.

We are recommending that Section 8 of the **“Panhandling Bylaw No. 8214”** be amended to read:

8. Any person who does anything prohibited by this bylaw or fails to do anything required by this bylaw commits an offence and is liable on conviction to a fine of not more than \$2,000.00, or liable to a term of incarceration for a period of not more than 90 days or both.

We are recommending that the **“Parks and Public spaces Bylaw No. 6819-91”** be amended as follows:

Amend Section 3.38 to read:

Any person who violates any provisions of this bylaw or who suffers or permits any act or thing to be done in contravention or in violation of any of the provisions of this bylaw or who neglects or refrains from doing anything required to be done by any of the provisions of this bylaw, or who does any act which constitutes an offence against the bylaw may be ordered to leave from any park or public space by the Parks Manager or any member of the Royal Canadian Mounted Police or Bylaw Enforcement Officer appointed by the Council of the City of Kelowna for a period of up to 48 hours.

Add Section 3.39:

No person shall return to or enter any park or public space once that person has been ordered to leave for a period of up to 48 hours and each violation shall be considered a separate offence.

Amend Section 6.2 to read:

Every person who commits an offence against this bylaw is liable on conviction, to a fine of up to \$10,000.00, or liable to a term of incarceration for a period of not more than 90 days, or both. Any penalty imposed pursuant to this bylaw shall be in addition to, and not in substitution for, any other penalty or remedy imposed pursuant to any other applicable statute, law or legislation.

We are recommending that the “**Traffic Bylaw No. 8120**” be amended as follows:

Add new Section 2.1.6:

Obstruct Peace Officer – No person shall obstruct, interfere with, impede, hinder or prevent a peace officer, a bylaw enforcement officer, employee of the City or any other person engaged by the City from performing any duties or exercising any authority under this bylaw.

Amend Section 2.4.3 to read:

Impoundment of Chattel – Any chattel, including but not limited to in-line skates, roller skates, cycles, skateboards, sleighs, skates, skis, or any other similar means of conveyance, obstructing, or unlawfully occupying any portion of a highway, sidewalk or boulevard, may be removed, detained or impounded by a Peace Officer, Bylaw Enforcement Officer or a person authorized by the Engineer.

Amend Section 10.1.1 to read:

Offences and Penalties – Every person who contravenes any provision of the bylaw or any order or permit issued under this bylaw, or who suffers or permits anything to be done in contravention of any provisions of this bylaw, or any order or permit issued under this bylaw, or who neglects to do or refrains from doing anything required to be done by any provision of this bylaw or any order or permit issued under this bylaw, commits an offence and, except as hereinbefore specifically provided, shall be liable, on summary conviction, to a penalty not exceeding ten thousand dollars (\$10,000.00) and the costs of prosecution. And where the offence is contrary to Sections 2.1.6, 8.1.2, 8.2.4, 8.2.5, 9.1.1 or 9.1.4 may be liable on conviction to a penalty not exceeding \$10,000.00 or a term of incarceration for a period of not more than 90 days, or both. Where any offence is a continuing one, each day that the offence continues shall be a separate offence.

We are recommending that the “**Ticket Information Utilization Bylaw No. 6500-89**” Schedules 12 & 13 be amended to read:

Add sections:

<u>Parks and Open Space Bylaw No. 6819-91</u>	<u>Section</u>	<u>Fine</u>
- Enter park or public space when prohibited	3.39	\$100.00
<u>Traffic Bylaw No. 8120</u>		
- Obstruct Peace Officer	2.1.6	\$150.00

INTERNAL CIRCULATION TO: Parks and Transportation Departments. No comments.

LEGAL/STATUTORY AUTHORITY: The City solicitor, Lidstone Young Anderson, has reviewed the above recommendations and is satisfied that they are within our authority.

EXTERNAL AGENCY/PUBLIC COMMENTS: Discussion and recommendations for these amendments were had with the RCMP Enforcement Units and the Downtown Patrol.

Considerations that were not applicable to this report:

LEGAL/STATUTORY PROCEDURAL REQUIREMENTS:

FINANCIAL/BUDGETARY CONSIDERATIONS:

PERSONNEL IMPLICATIONS:

TECHNICAL REQUIREMENTS:

ALTERNATE RECOMMENDATION:

Submitted by:

J.A. Dixon
Licence and Bylaw Enforcement Supervisor

Approved for Inclusion:

David Shipclark
Acting Director of Planning & Corporate Services