

Court File No. CV-21-00077187-0000

**ONTARIO SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**KRISTEN HEEGSMA, DARRIN MARCHAND, GORD SMYTH, MARIO MUSCATO,  
SHAWN ARNOLD, CASSANDRA JORDAN, JULIA LAUZON, AMMY LEWIS,  
ASHLEY MACDONALD, COREY MONAHAN, MISTY MARSHALL,  
SHERRI OGDEN, JAHMAL PIERRE, and LINSLEY GREAVES**

Applicants

-and-

**CITY OF HAMILTON**

Respondent

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**APPLICANTS' APPLICATION RECORD**

**VOLUME 1 (TABS 1-18)**

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<b>3.</b>	<b>Further Amended Fresh as Amended Notice of Application November 18, 2024</b>
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ONTARIO  
SUPERIOR COURT OF JUSTICE

Electronically issued  
Délivré par voie électronique : 04-Oct-2021  
Hamilton

RRIN MARCHAND, GORD SMYTH, MARIO MUSCATO &  
SHAWN ARNOLD

Applicants

- and -

CITY OF HAMILTON

Respondent

APPLICATION UNDER RULE 14.05 OF THE *RULES OF CIVIL PROCEDURE*

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NOTICE OF APPLICATION

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TO THE RESPONDENT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing on date to be determined by the parties and the Court, at the court house, 45 Main Street East, Hamilton, Ontario, L8N 2B7.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS

YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

**A4290**

Date October 4, 2021

Issued by \_\_\_\_\_

Local Registrar

Address of  
court office:

Superior Court of Justice  
45 Main Street East  
Hamilton ON  
L8N 2B7

TO:

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**1. The Applicants make application for:**

- (a) An Order declaring that, particularly in the context of the novel COVID-19, and intersected with Hamilton's homelessness and housing crisis, sections 12 (encroachment), 17 (camping and lodging) and 18 (tents and structures) of By-Law No. 01-129 (the "Parks By-Law"), and section 16(12) (miscellaneous prohibitions) of By-Law No. 86-077 as amended by By-Law No. 97-162 (the "Streets By-Law), by-laws enacted by the City of Hamilton (the "City" or the "Respondent"), violates the rights of the Applicants and other homeless individuals under ss. 7 and/or 12 and/or 15 of the *Canadian Charter of Rights and Freedoms* (the "*Charter*") and that such violation cannot be demonstrably justified in a free and democratic society pursuant to s. 1 of the *Charter*;
- (b) An Order declaring that sections 12 (encroachment), 17 (camping and lodging) and 18 (tents and structures) of the Parks By-Law and section 16(12) of the Streets By-Law are of no force or effect to the extent that they unjustifiably violate the Applicants' rights to due process, unreasonable seizure, security of person, cruel and unusual treatment, and equality under the law, under the *Charter* and should be read down;
- (c) A Declaration that the City's action or proposed action to involuntarily evict or remove the Applicants and other homeless individuals from the encampment and/or dismantle the encampments, whether by reliance on the Parks By-Law, the Streets By-Law or otherwise, without having suitable alternative accommodations for these individuals violates the rights of the Applicants and other individuals under ss. 1, 2, 11, and/or 47(2) of the Ontario *Human Rights Code*, R.S.O 1990 c. H.9 (the "*Code*");
- (d) A Declaration that the verbal notices to dismantle homeless encampments in Hamilton, and any other such notice or government action or proposed action which would have the effect of removing tents, shelters and/or the personal belongings of the Applicants and other

violates the rights of the Applicants and other homeless individuals under ss. 7 and/or 12 and/or 15 of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”) and that such violation cannot be demonstrably justified in a free and democratic society pursuant to s. 1 of the *Charter*;

- (e) A Declaration that the verbal notice to dismantle two homeless encampments in Hamilton, and any other such notice or government action or proposed action which would have the effect of removing tents, shelters and/or the personal belongings of the Applicants and other homeless individuals, is unlawful, void, and of no force or effect;
- (f) An injunction prohibiting the Respondent from taking further steps to evict or remove the Applicants and other homeless individuals from encampments in parks and/or other public spaces considered parks within the City of Hamilton as set out below in paragraph (g), including but not limited to issuing or enforcing orders for eviction and removal made under the Parks By-Law, Streets By-Law and/or any other City By-Law, the *Trespass to Property Act* RSO 1990, c T.21, the *Provincial Offences Act*, R.S.O. 1990, c. P.33, c C-46 or the City of Hamilton By-laws;
- (g) An Order that the Applicants and homeless individuals be permitted to remain in parks and/or other public spaces considered parks in the City of Hamilton, and to maintain their encampments, including overnight, where such encampments are located:
  - (i) in an area considered to be a “park” within the meaning of By-law No. 01-219 (“Parks by-law”);
  - (ii) 50 meters away from a playground, school or childcare centre; and
  - (iii) in groupings of a maximum of six tents. Additional groupings of six tents must be at least 200 meters away from all other groupings.
- (h) An Order that there be no costs in this proceeding;

may deem just; and

- (j) Such further and other relief as to this Honourable Court may deem just.

**2. The grounds for the application are:**

- (a) On March 17, 2020, the Province of Ontario issued a Declaration of Emergency under the *Emergency Management and Civil Protection Act*, RSO 1990, c. E.9 (the “EMCPA”) due to the outbreak of the coronavirus disease 2019 (COVID-19). COVID-19 is a novel coronavirus that was declared a pandemic by the World Health Organization on March 11, 2020. A “pandemic” is declared when a new disease for which people do not have immunity spreads globally beyond expectations. By virtue of the provincial order, City of Hamilton Mayor Fred Eisenberger also declared a state of emergency.
- (b) Physical distancing is known to be the central health strategy for managing the health impact of COVID-19, at both population and individual levels. Public health guidance for all Hamiltonians and all Ontarians consistently emphasizes the critical importance of adequate physical distancing, including maintaining a distance of at least two metres from people outside of one’s household, and “sheltering in place.” Individuals experiencing homelessness are unable to comply with physical distancing directives. Reliance on shelters that are funded by the City, many of which are congregate living settings, bring many people into close contact with one another, sharing the air and touching surfaces, increasing the risk of COVID-19 transmission.
- (c) Prior to the COVID-19 outbreak, individuals experiencing homelessness routinely reported being unable to access city shelter beds due many barriers, including shelters being over capacity and individuals facing shelter restrictions (or “bans”). Despite City efforts, this has continued to be the case throughout the COVID-19 pandemic, in particular for women and couples. Individuals who want to obtain a shelter bed are frequently unable to do so.

shelters, sometimes due to outbreaks of COVID-19, and other times it is simply a question of capacity.

- (d) Since the beginning of the COVID-19 pandemic, there has been a significant increase in the number of people sleeping in homeless encampments. Many individuals are choosing or are forced to sleep in encampments for a variety of reasons, including difficulties they have experienced within the shelter system, mental health issues and drug use, and shelters that do not permit animals or allow couples to stay together. Since the COVID-19 pandemic was declared, many people have chosen to sleep in encampments at least in part due to their desire to avoid contracting COVID-19 in a high-risk congregate living setting of a homeless shelter.
- (e) The growth in numbers and the visibility of homeless encampments must also be considered in the context of an ongoing affordable housing crisis – federally, provincially and in Hamilton itself. Individuals who are in receipt of social assistance or are low income have extremely limited housing options. Displaced encampment residents are therefore placed in an impossible and dire situation of being unable to remain encamped, being unable to access shelter space, and unable to afford housing costs.
- (f) Homeless encampments have arisen in places where there are services in place nearby, such as hygiene facilities, safe consumption sites, meal programs and access to water. This is critical because COVID-19 led to the closure of many fast food restaurants and public restrooms where individuals who are homeless would otherwise be able to clean themselves and, critically in the context of the pandemic, wash their hands.
- (g) Individuals in those encampments have indeed been accessing support provided through those encampments, including but not limited to regular access to food, clothing, healthcare and supervised substance use; assistance with tasks such as obtaining an OHIP card and

bringing meals, blankets, bedding, hygiene products, and medial supports such as insulin injections.

- (h) On August 9, 2021, the Respondent repealed an Encampment Protocol that had been reached as part of a settlement of Court File No. CV-20-73435 in the fall of 2020. The Encampment Protocol had created a person-centred approach, which required, *inter alia*, the City to assess and accommodate individual needs before requiring the person to leave their encampment. In some instances, individuals assessed to be higher acuity were permitted to remain encamped indefinitely. The Respondent voted to return to “pre-pandemic enforcement” of By-laws which prohibits camping in parks.
- (i) The Respondent delayed By-law enforcement until August 30, 2021. Following the revocation of the Encampment Protocol, many community advocates for the homeless population decried the decision and urged the Respondent to reconsider. Rallies were held and community stakeholders delegated to the Emergency and Community Services Committee.
- (j) On September 9, 2021, the City released an “Information Report”, which provided a six step process for responding to and enforcing By-law infractions concerning encampments.
- (k) Despite the public outcry, on September 17, 2021, the Respondent began removing people from encampments. Known locations of encampment dismantlement included Durand and Wellington Park. A further dismantlement took place on September 20, 2021 at JC Beamer Park. At each instance, residents were given two hours’ notice to vacate. Individuals never received actual written notice of a By-law infraction, nor were they offered appropriate indoor shelter options prior to the dismantlement. Since then, By-law officers and Hamilton Police Services have regularly attended various encampments and given verbal

enforcement of encampment removals.

- (l) If the Applicants and other homeless individuals in the encampment are further summarily removed and their encampment dismantled, they face a risk of substantial harm in the form of destabilization; psychological trauma; exacerbated mental stress and addiction relapse; loss of worldly possessions; difficulty obtaining necessities of life (e.g., food, water, shelter, healthcare); exposure to extreme weather; and a severing from service providers. Some individuals will have no choice but to resort to individually sleeping rough and/or in the open, which places them at an increased risk of being physically assaulted and of suffering adverse mental and physical health effects of poor sleep routine and exposure to the elements. They will be forced into an uncertain situation of re-locating, which is in some cases inhibited by mobility impairments and mental and cognitive impairments.
- (m) Dismantling encampments and removing their residents puts individuals who are the most predisposed to experiencing the most severe symptomology and worst health outcomes of COVID-19 at a higher and unnecessary risk of contracting COVID-19 if they are moved into congregate living facilities such as homeless shelters. This is a per se health risk and also heightens the risk of negative mental health impacts due to increased fear and/or anxiety of contracting COVID-19.

## **I. Parties**

- (n) The Applicants are homeless individuals who have been encamped in various public parks and/or other public spaces considered parks throughout the City of Hamilton. These parks and/or other public spaces include JC Beemer Park, the greenspace at Strachan and James Streets, and Central Park (the 'encampments'). Some of the Applicants have erected tents or other shelters in these parks and/or other public spaces to protect themselves from the elements, to give them privacy, and to store and protect their essential belongings like food,



and medical supplies. After being repeatedly told to vacate, other Applicants simply “sleep rough” in various public parks and/or other public spaces in an effort to avoid being further targeted for removal. The Applicants view their ability to erect a tent or shelter within their community, and to store their essential belongings, as integral to their ability to safely shelter in place in the midst of a global pandemic so long as they are homeless.

- (o) The Applicants Darrin Marchand (“Darren”), Ashley Poff (“Ashley”), and Mario Muscato (“Mario”) are currently residing at various City Parks after being removed from encampments. The Applicant Shawn Arnold (“Shawn”) is currently residing at various City Parks after leaving JC Beemer Park on or about August 30, fearing that the Respondent would soon attend to dismantle the encampment. The Applicant Gord Smyth (“Gord”) is currently residing at Central Park.
- (p) While City staff have, in some cases, made offers of indoor shelter to some residents of the encampments, the Applicants, justifiably, do not feel that these shelter spaces meet their needs.
- (q) While some of the residents of the encampments have been offered spaces in hotels or buildings temporarily converted into shelter space, for a variety of reasons these offers have not adequately met the needs of the Applicants and other encampment residents. Many of them have spent time in shelters or hotels and have either been evicted or left of their own accord because of safety concerns. The strict rules in place in such settings are often excessively paternalistic and people who use drugs are routinely discriminated against in the shelter system.
- (r) Each of the Applicants has their own further distinct and personal reasons for having been or remaining encamped in their respective locations.

shelters, including witnessing a fellow resident being attacked with a machete by another resident in December 2020. Darrin has also been service-restricted, or banned, from various shelters at different times. Darrin receives medical care and food support in the encampments. Darrin would suffer adverse emotional and physical impacts such as significant levels of stress if he were to be displaced from his encampment.

- (t) Ashley chose to live in an encampment for several reasons, including the ongoing shortage of shelter bed for women in the City, being repeatedly service restricted, or banned, from shelters. Ashley has a substance use disorder and other mental health issues, and has faced discrimination in the shelter system. Being able to remain in one location would allow Ashley the stability she needs to pursue treatment for her mental health and substance use.
- (u) Shawn chose to live in an encampment because he feels unable to access shelter spaces because he is recovering from past substance use, and reasonably fears that the rampant substance use in shelters is a threat to his sobriety. Shawn was also assessed under the previous Encampment Protocol as being high acuity, and as such was permitted to remain at JC Beemer Park. Shawn was able to benefit from a nearby methadone treatment program, receive meal support and connect with other social supports.
- (v) After living independently for 30 years and facing eviction, Gord chose to live in an encampment because there is a shortage of affordable housing in the City that has been exacerbated by the COVID-19 pandemic. Gord has mental health disabilities including a personality disorder, which make it difficult for him to be around groups of people for sustained periods. Gord also has a dog who would not be allowed in shelters, and separating from his pet would have a significant impact on his mental health. Gord has had regular access to community agencies and volunteers who deliver meals, hygiene products, and medical supports. Gord would suffer severe upset if he were to be evicted

Gord also has mobility difficulties that would make relocating even more onerous.

- (w) After being evicted due to an administrative error with Ontario Works, Mario chose to live in an encampment after being repeatedly service restricted – or banned – from shelters, and experiencing the rampant theft that is synonymous with shelter life. Although Mario strives to stay connected with medical and housing supports, his constant transiency makes it exceedingly difficult.
- (x) The Applicants are members of historically marginalized groups, including people with disabilities, Indigenous people, people in receipt of social assistance, and people with substance use disorders. These marginalized groups are disproportionately overrepresented among Hamilton’s homeless population.
- (y) The Applicants and other homeless individuals do not have access to accommodations that permit them to comply with “stay at home” or physical distancing measures.
- (z) The Respondent, The City of Hamilton (“Hamilton”) is a municipality in the Province of Ontario, and is constituted as a body corporate pursuant to s 2 (1) of the *City of Hamilton Act*, 1999, SO 1999, c 14, Sch C (the “*City of Hamilton Act*” or the “*Act*”). Hamilton is governed by a City Council. The City deals with local issues including public transit, parks and public spaces, streets and sidewalks, community safety, police relations, affordable housing, and homelessness. The verbal notice to dismantle encampments was issued by the Respondent’s Director of Housing Services (the “Director”).
- (aa) The encampments on City-owned and operated parks and/or public spaces are public parks and/or spaces under the care, control and responsibility of the Respondent and the Respondent’s Director of Housing Services.

*Charter* applies to the City's by-laws, including the Parks By-Law and/or Streets By-Law, and the City's action in enforcing its by-laws.

## **II. The Parks By-Law**

(cc) The relevant sections of the Parks By-Law read as follows:

### **§1(r). Definitions**

"park" means any land, and land covered by water and all portions thereof owned by or made available by lease, agreement, or otherwise to the City, that is or hereafter may be established, dedicated, set apart or made available for use as a public open space or golf course, and that has been or hereafter may be placed under the jurisdiction of the Director including any and all buildings, structures, facilities, erections, and improvements located in or on such land, save and except where such land is governed by other by-laws of the City.

### **§ 12. Encroachment.**

Unless authorized by the Director or by permit, no person shall encroach upon or take possession of any park, by any means whatsoever, including the construction, installation or maintenance of any fence or structure, the dumping or storage of any materials, or planting, cultivating, grooming or landscaping, thereon.

...

### **§ 3. Hours of Entrance.**

3. No person shall enter into, or be in any park between the hours of eleven in the afternoon (11:00 p.m.) and six o'clock in the forenoon (6:00 a.m.), except where after hours use of a park has been approved by the City.

...

### **§ 17. Camping and Lodging.**

Unless authorized by permit, no person shall dwell, camp or lodge in any park.

...

### **§ 18. Tents and structures.**

Unless authorized by permit, no person shall place, install or erect any temporary or permanent tent or structure in any park.

to enforce the prohibitions set out under the Parks By-Law. These include informal enforcement measures such as informing a person of the provisions of the Parks By-Law, ordering a person to stop the contravening activity, ordering them to remove their property, or ordering them to leave the park.

### III. The Streets By-Law

(ee) The relevant sections of the Streets By-Law read as follows:

#### § 16. Miscellaneous Prohibitions

[...]

(12) 12.1 For the purposes of this subsection:

(a) "*cease*" means to stop or bring to an end.

(b) "*congregate*" means to gather into a group of more than one person.

(c) "*obstruct*" means to interfere with or make difficult of passage.

(d) "*officer*" [sic] means a sworn member of the Hamilton-Wentworth Regional Police Service or a municipal by-law enforcement officer appointed by the City of Hamilton.

General:

12.2 No person shall congregate and sit or stand so as to obstruct the free passage of either pedestrian or vehicular traffic on any streets or sidewalks regulated by this By-law.

12.3 Any person who obstructs pedestrian or vehicular traffic on a sidewalk or street shall, when directed to do so by an officer, cease such obstruction.

[...]

Enforcement:

12.5 Sworn members of the Hamilton-Wentworth Regional Police Service and municipal by-law enforcement officers of the City of Hamilton are authorized to enforce the provisions of this by-law

**Parks**

- (a) As previously stated, on September 17, 2021, Municipal Law Enforcement and members of the Hamilton Police Services began dismantling encampments at Durand Park and Wellington Park. A further dismantlement took place on September 20, 2021, at JC Beemer Park. The majority of the residents were disbursed into other green space with no alternative shelter.
- (b) To date, the Applicants have not received formal notice of dismantlement under the Parks By-Law, the Streets By-Law, or any other City By-Law. However, the City has demonstrated a clear intention to continue with the dismantlement of encampments, with a motion before City Council this week to expedite enforcement of same.

**V. Enforcement of the Parks By-Law and/or Streets By-Law against Homeless Individuals Sheltering-in-Place is Unconstitutional**

*a. Infringement of section 7*

- (c) The Parks By-Law and/or the Streets By-Law infringes the Applicants' and other homeless individuals' rights to life, liberty and security of the person by preventing them from engaging in essential life sustaining activities in public space and from creating shelter for themselves, when they have no other viable alternative.
- (d) The Parks By-Law and/or the Streets By-Law further infringes the Applicants' and other homeless individuals' rights under s. 7 by preventing them from meeting essential needs, such as providing themselves with shelter which would allow them to stay safe and dry and protected from the elements, to safely store necessities-of-life such as food, water, clothing, bedding, sentimental belongings, personal hygiene supplies, medication and medical supplies, and to sleep and rest.
- (e) In the context of the COVID-19 pandemic and affordable housing crisis, the Parks By-Law and/or the Streets By-Law and the proposed action of the Respondent further infringes the

of adequate housing with necessary supports and no alternative but to move into either unsafe congregate living situations or other places (like hotels) where they stand little chance of success. It further deprives the Applicants and other homeless individuals of the liberty to make their own decisions about matters fundamentally impacting their lives, such as where and how to safely shelter in place. One of the hotels that people may be forced to go to is inappropriate for their circumstances. They require lengthy transit trips to return to the supports they depend upon, including supervised injection sites and medical facilities, social workers, mental health services, etc. Individuals experiencing homelessness are not provided funds for public transit. Some of these facilities also have curfews and other onerous rules that numerous individuals experiencing homelessness have been unable to follow which has led to their removal from these facilities.

- (f) Depriving individuals experiencing homelessness of the ability to provide themselves with safe, warm, dry shelter in public spaces in Hamilton exposes the Applicants and other homeless individuals to additional health and safety risks. It also causes serious, state-imposed stress and interferes with their ability to make this basic and fundamental decision to take practical steps to protect themselves from the elements.
- (g) The Parks By-Law and/or the Streets By-Law prevents the Applicants and other homeless individuals from living together in a manner which allows them to provide each other safety and security. This constitutes a deprivation of their liberty and security of the person.
- (h) These deprivations are not in accordance with the principles of fundamental justice because they are contrary to the principle that no one should be subject to sanction for engaging in activities when there is no realistic opportunity to avoid those activities, or for engaging in those activities which are necessary to sustain an individual's safety and well-being. These deprivations are also contrary to the principle of fundamental justice that laws must not be

*Charter.*

- (i) These s. 7 violations are not justifiable under s. 1 of the *Charter*.

*b. Infringement of section 12*

- (j) The Parks By-Law and/or the Streets By-Law also constitutes an interference with the rights of the Applicants and other homeless individuals' right under s. 12 of the *Charter* to be free of cruel and unusual punishment.
- (k) As a result of the Parks By-Law and/or the Streets By-Law, individuals experiencing homelessness are deprived of sleep and the ability to provide themselves shelter, and are subject to being moved along, having their belongings seized, destroyed and/or disposed of, and being forced to pay for the cost of the disposal of their belongings, simply for engaging in activities when there is no realistic opportunity to avoid those activities, or for engaging in those activities which are necessary to sustain their safety and well-being.
- (l) These s. 12 violations are not justifiable under s. 1 of the *Charter*.

*c. Infringement of section 15*

- (a) The Parks By-Law and/or the Streets By-Law also discriminates against the Applicants and other homeless individuals in violation of s. 15 of the *Charter*. The Applicants are all members of groups protected by s. 15, and in some cases they are members of multiple protected groups. These groups include Indigenous people, and people with mental and physical disabilities (including but not limited to mobility impairments and substance use disorders). The homeless population more generally also consists disproportionately of people who are members of groups protected by s. 15. For the Applicants, their status as a person experiencing homelessness is immutable and undeniably connected to their status as a member of these historically disadvantaged groups.



and other homeless individuals by making it impossible for them to perform essential life-sustaining activities, and provide each other with support and protection, without sanction.

The Parks By-Laws and/or the Streets By-Law, in their application to the Applicants and other homeless individuals, are based on the premise that the needs of the homeless, including their need to sleep, rest, be peaceful, protect their belongings, and remain warm and dry, are not worthy of respect, concern and consideration. The Parks By-Law and/or the Streets By-Law has the effect of perpetuating or promoting the view that the homeless are less worthy of recognition or value as a human being or a member of Canadian society.

- (c) These s. 15 violations are not justifiable under s. 1 of the *Charter*.

**VI. Enforcement of the Parks By-Law and/or the Streets By-Law against Homeless Individuals Sheltering-in-Place violates the Ontario *Human Rights Code***

- (d) The Applicants and other individuals experiencing homelessness have a right under the *Code* to be free from discrimination with respect to services and accommodation, and to be accommodated to the point of undue hardship in the provision or receipt of same;
- (e) The Applicants and other individuals experiencing homelessness include people with disabilities (including but not limited to mobility impairments and substance use disorders, i.e. addictions), people in receipt of social assistance, and Indigenous people. These are protected characteristics under the *Code*. Individuals with the aforesaid protected characteristics are overrepresented within the sheltered and unsheltered homeless population.
- (f) The Applicants and other individuals experiencing homelessness have experienced both direct discrimination within the shelter system and its temporary expansion into hotels, as well as adverse-effects discrimination due to the City's failure to accommodate their needs arising from *Code*-protected characteristics. The failure in the duty to accommodate is based, in particular, on the geographical location of hotel rooms and shelters as well as the

nightly bedtime check-ins, which the Applicants in some cases cannot follow.

- (g) Additionally, those Applicants and other individuals who use drugs may be less likely to be accepted into a hotel solely due to their drug use, which constitutes further direct discrimination against these individuals.
- (h) Many shelters also have rules in place that prohibit couples from accessing the same shelter together, which engages the *Code*-protected grounds of family status and marital status.
- (i) While the Respondent threatens to dismantle encampments and remove the Applicants from their respective city parks and/or other public spaces, they have failed to provide the Applicants with appropriate, adequate and acceptable alternate housing in a manner consistent with their obligations under the *Code*.
- (j) The application and/or enforcement of the Parks By-Law and/or the Streets By-Law has a disproportionate adverse effect on the Applicants and other individuals experiencing homelessness with the aforesaid *Code*-protected characteristics, and thereby constitutes constructive discrimination;
- (k) By actively and/or constructively discriminating against, and/or failing to accommodate the *Code*-protected characteristics of the Applicants, the Respondent has infringed the rights of the Applicants and other homeless individuals with respect to services (s. 1) and accommodation (s. 2) under the *Code*.

#### **Other Grounds**

- (a) The *Canadian Charter of Rights and Freedoms*, ss. 1, 7, 12, 15, and 24;
- (b) The *Constitution Act, 1982*, s. 52;
- (c) The Ontario *Human Rights Code*, R.S.O. 1990 c. H.9, ss. 1, 2, 11 and 47(2);

- (e) The *Trespass to Property Act* RSO 1990, c T.21;
- (f) The *Provincial Offences Act*, R.S.O. 1990, c. P.33, c C-46;
- (g) The *Rules of Civil Procedure*, RRO 1990, Reg 194, rr. 14.05, 38, 39; and
- (h) Such further and other grounds as counsel may advise and this Honourable Court may permit.

**2. The following documentary evidence will be used at the hearing of the application:**

- (a) Affidavit of Darren Marchand, sworn on September 29, 2021;
- (b) Affidavit of Ashley Poff, sworn on September 28, 2021;
- (c) Affidavit of Mario Muscato, sworn on September 28, 2021;
- (d) Affidavit of Gord Smyth, sworn on September 29, 2021;
- (e) Affidavit of Shawn Arnold, sworn on September 29, 2021;
- (f) Affidavit of Gillian (Jill) Wiwcharuk, sworn on October 3, 2021;
- (g) Affidavit of Tim O'Shea, sworn October 4, 2021;
- (h) Affidavit of Marcie McIlveen, sworn October 4, 2021;
- (i) Affidavit of Olivia Mancini, sworn October 4, 2021;
- (j) City of Hamilton By-law No. 01-219
- (k) Encampment Protocol 2020
- (l) Information Report, Encampment Response Update, September 9, 2021

permit.

October 4, 2021

**HAMILTON COMMUNITY LEGAL SERVICES**

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Hamilton, ON L8N 3W4

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**Lawyers for the Applicants**

ASHLEY POFF *et al*  
Applicants

-and-

CITY of HAMILTON  
Respondents **A4309**

Court File No.

***Ontario***  
**Superior Court of Justice**

PROCEEDING COMMENCED AT HAMILTON

**NOTICE OF APPLICATION**

**HAMILTON COMMUNITY LEGAL CLINIC**  
**100 Main Street East**  
**Suite 203**  
**Hamilton, ON L8N 3W4**  
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**Lawyers for the Applicants**

**A25**



Court File No. CV-21-00077187-0000

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.

)

MONDAY, THE 9TH

)

JUSTICE J. GOODMAN

)

DAY OF SEPTEMBER, 2024

B E T W E E N:

**KRISTEN HEEGSMA, DARRIN MARCHAND, GORD SMYTH,  
MARIO MUSCATO, SHAWN ARNOLD, BRADLEY CALDWELL,  
CHRISTINE DELOREY, GLEN GNATUK, TAYLOR GOGO-HORNER,  
CASSANDRA JORDAN, JULIA LAUZON, AMMY LEWIS,  
ASHLEY MACDONALD, COREY MONAHAN, MISTY MARSHALL,  
SHERRI OGDEN, JAHMAL PIERRE, LINSLEY GREAVES and  
PATRICK WARD**

Applicants

and

**CITY OF HAMILTON**

Respondent

APPLICATION UNDER 14.05 OF THE *RULES OF CIVIL PROCEDURE*

**ORDER**

**THIS MOTION**, brought by the Applicants to amend the Notice of Application was read this day, at 45 Main Street E., Hamilton ON L8N 2B7.

**ON READING** the Consent of the Parties, filed.

-2-

1. **THIS COURT ORDERS** that leave is granted pursuant to Rule 26.02 (b) and 26.03(2) of the *Rules of Civil Procedure* to file an Amended Fresh as Amended Notice of Application in the form attached hereto as Schedule “A”.



---

Justice

Issued and entered electronically by

---

Local Registrar  
45 Main St East  
Hamilton, ON  
L8N 2B7

Schedule A



**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**KRISTEN HEEGSMA, DARRIN MARCHAND, GORD SMYTH, MARIO  
MUSCATO, SHAWN ARNOLD, BRADLEY CALDWELL, CHRISTINE DELOREY,  
GLENN GNATUK , TAYLOR GOGO-HORNER, CASSANDRA JORDAN, JULIA  
LAUZON, AMMY LEWIS, ASHLEY MACDONALD, COREY MONAHAN, MISTY  
MARSHALL, SHERRI OGDEN, JAHMAL PIERRE, LINSLEY GREAVES and  
PATRICK WARD**

Applicants

– and –

**CITY OF HAMILTON**

Respondent

APPLICATION UNDER RULE 14.05 OF THE *RULES OF CIVIL PROCEDURE*

---

**AMENDED FRESH AS AMENDED NOTICE OF APPLICATION**

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TO THE RESPONDENT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing on date to be determined by the parties and the Court, at the courthouse, 45 Main Street East, Hamilton, Ontario, L8N 2B7.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date June 15, 2022

Issued by

Local Registrar

Address of  
court office: Superior Court of Justice  
45 Main Street East  
Hamilton ON  
L8N 2B7

TO: **CITY OF HAMILTON**

**A4315**

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AND TO: **The Attorney General of Ontario**

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720 Bay Street, 4th floor

Toronto, Ontario M5G 2K1

Fax: (416) 326-4015

AND TO: **The Attorney General of Canada**

120 Adelaide Street West, Suite 400

Toronto, Ontario M5H 1T1

Fax: (416) 952-0298

## APPLICATION

### 1. The Applicants make application for:

(a) An order pursuant to section 52(1) of the *Constitution Act, 1982*, declaring sections 3 (hours of entrance), 12 (encroachment), 17 (camping and lodging) and 18 (tents and structures) of City of Hamilton *By-Law No. 01-129 01-219* (the “*Parks By-Law*”), and section 16(12) (miscellaneous prohibitions) of City of Hamilton *By-Law No. 86-077* as amended by *By-Law No. 97-162* (the “*Streets By-Law*”), are either of no force or effect or inapplicable to the Applicants and other homeless individuals who erect tents as a temporary form of shelter, pursuant to section 52(1) of the *Constitution Act, 1982*.

(b) In the event that this Honourable Court suspends any declaration of invalidity issued in relation to the *Parks By-Law* and/or *Streets By-Law*, that any such suspension be for no longer than six months from the date of this Honourable Court’s decision.

(c) In the event that this Honourable Court suspends any declaration of invalidity issued in relation to the *Parks By-Law* and/or *Streets By-Law*, an order pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”) during the period of the suspension, in the form of an interlocutory injunction, that prohibits the City of Hamilton from preventing the erection of tents as a temporary form of shelter by homeless individuals (including the Applicants), and/or giving notice to homeless individuals (including the Applicants) to dismantle and/or move such tents, and/or evicting or removing homeless individuals (including the Applicants) from such tents and/or dismantling such tents, if those tents comply with the following conditions, which are based on the following parameters:

- (i) The tent is in an area considered to be a “park” within the meaning of the *Parks By-Law*;
- (ii) The tent is at least 50 meters away from a playground, school or childcare centre;
- (iii) The tent consists of a grouping of a no more than of six tents; and

- (iv) The tent be at least 200 meters away from any other grouping of a no more than of six tents.

(d) In the event that this Honourable Court does not suspend any declaration of invalidity issued in relation to the *Parks By-Law* and/or *Streets By-Law*, or the suspension expires without the adoption of measures to replace the provisions declared invalid by this Honourable Court, an order granting a permanent injunction with terms identical to order (c) above.

(e) An order pursuant to section 24(1) of the *Charter* declaring that the City of Hamilton, and/or its agents, pursuant to any purported legal authority, including but not limited to the *Parks By-Law*, the *Streets By-Law*, *Noise Control By-Law No. 11-285* ("*Noise Control By-Law*") and/or the *Public Nuisance By-Law No. 20-077* ("*Public Nuisance By-Law*") violated the *Charter* rights of the Applicants, including section 7 and/or section 15, by preventing them from erecting tents as a temporary form of shelter, and/or giving notice to homeless individuals (including the Applicants) to dismantle and/or move such tents, and/or evicting or removing homeless individuals (including the Applicants) from such tents and/or dismantling such tents, and that such violations cannot be demonstrably justified in a free and democratic society pursuant to section 1 of the *Charter*.

(f) In addition, an order pursuant to section 24(1) of the *Charter* for compensatory, **deterrence and vindication** damages for the physical harm(s) suffered by the Applicants caused by the City of Hamilton and/or its agents pursuant to any purported legal authority, including but not limited to the *Parks By-Law*, the *Streets By-Law*, *Noise Control By-Law*, and/or the *Public Nuisance By-Law* in violation of the *Charter* rights of the Applicants, including section 7 and/or section 15, by preventing them from erecting tents as a temporary form of shelter, and/or giving notice to homeless individuals (including the Applicants) to dismantle and/or move such tents, and/or evicting or removing such tents and/or dismantling such tents.

(g) Costs of this proceeding on a full indemnity basis or in the alternative, on a substantial indemnity basis.

(h) Such further and other relief as counsel may advise to this Honourable Court may deem just.

**2. The grounds for the application are:**

Overview

(a) The Applicants are 19 individuals who have erected tents or shelters (collectively referred to as "tents"), and thereby have created and lived in encampments ("encampment residents"), in various public parks and/or other public spaces considered parks throughout Hamilton, including J.C. Beemer Park, the greenspace at Strachan and James Streets, Sir. John A. McDonald, Ferguson and Central Park ("encampments"). The City of Hamilton ("City") has forcibly evicted the Applicants and many other homeless individuals from encampments where they resided, pursuant, *inter alia*, to the *Parks By-Law* and/or *Streets By-Law*. These encampments were located in City-owned and operated parks and/or public spaces under the care, control and responsibility of the City.

(b) The Applicants became homeless for the reasons that are common. Housing precarity has become an unfortunate reality in Hamilton, because of raising rental costs, inadequate Ontario Disability Support Program ("ODSP") and Ontario Works benefit levels, and the breakdown of relationships, especially women fleeing domestic abuse at the hands of male partner. Some individuals with complex mental health, addiction and/or trauma cannot function in independent living. Chronically homeless individuals may become trapped in a vicious cycle of homelessness they cannot escape.

(c) The Applicants, like other homeless individuals, have at times not entered shelter for many reasons. The demand for shelter spaces often exceeds supply. As of March 2022, 1,596 people were actively experiencing homelessness in Hamilton, but there are only 96 shelter beds designated by the City of Hamilton for women and 212 for men. There is a dramatic undersupply of shelter spaces for women, a shortage and often complete absence of shelters which permit couples to stay together, and no shelter in Hamilton for indigenous men, couples, youth or Two Spirit individuals. There are also structural barriers in the design of shelters that prevent individuals from using them: admission on a first

come, first served basis, and a limit on the number of nights individuals can stay. The design of the shelter system discriminates on the basis of disability, against individuals with complex mental health, addiction and/or trauma, substance dependencies, and mental health disorders that trigger disruptive behaviour. Shelters do not accommodate Indigenous cultural practices. Shelters are congregate settings where individuals face the risk of assault and theft, and of contracting infectious disease (as happened during the COVID-19 pandemic). Shelters do not permit individuals to keep personal items or pets. They afford individuals little control over their living space. Finally, there is a risk to women queuing to enter shelters from male sexual predators who loiter in the vicinity to target victims who are unable to access shelters.

(d) The Applicants had no choice but to reside in encampments instead of sleeping on the street, because encampments function as mutual aid societies where residents share food, blankets and huddle together to stay warm; provide a buffer that mitigates the risk of rape, sexual assault, theft and assault; mitigate the risk of overdosing; provide an emotional support system for residents; and provide physical care and support for disabled residents. Encampments also provide shelter 24 hours, 7 days a week, which mitigates the risk of hypothermia, sunburn, heatstroke, and dehydration; make life less physically taxing because residents are not transient; enable residents to exert control over substance use; promote mental health; provide a sense of community and reduce isolation; and enable residents to attend to wellness beyond survival. Encampments enable residents to live continuously in a single location, which enhances their access to: medical care; social workers or other system navigators who can help residents access social programs; harm reduction supplies and treatment; medication delivery; food donations; and donations of blankets, clothing, and mobile phones.

(e) Most of the Applicants remain homeless. After being repeatedly evicted from encampments by the City, many Applicants simply “sleep rough” (i.e., without a tent) in various public parks and/or other public or private spaces in an effort to avoid being further targeted for eviction. Without shelter and a community to protect them, they have experienced and face an increased risk of rape, sexual assault, theft, and violence. Because they can no longer reside in encampments, they suffer from the health effects of sleeping out

in the open and being exposed to the elements, including hypothermia and chronic sleep deprivation. Because they no longer reside in a fixed location, and/or they have been forced to move to remote locations to avoid further evictions, their access to medical care, addiction treatment, and support services has been greatly impaired. Most do not have a mobile phone.

(f) Among Hamilton's homeless population, Indigenous persons (23%) and women (53%) are overrepresented. The Applicants reflect this diversity. Seven are Indigenous women and three are non-Indigenous women. They also include among their number a transgender black woman, an Indigenous man, and a black man.

(g) The evictions of the Applicants violated sections 7 and 15 rights of the *Charter* in a manner that cannot be justified under section 1. In addition, the relevant provisions of the *Parks By-Law* and/or *Streets By-Law* violate sections 7 and 15 of the *Charter* and cannot be justified under section 1.

Kristen Heegsma

(h) Kristen Heegsma ("Kristen") is a 31 year old Indigenous woman who has been homeless continuously since 2019, after being evicted by family members (although she was occasionally homeless before then). Kristen lives with mental health and substance abuse disorders and receives approximately \$900 in ODSP benefits per month to cover her basic needs and special diet. She is not entitled to a shelter allowance while homeless. Even if she received an additional shelter allowance of \$497 per month, she would be unable to afford housing.

(i) Between 2019 and Fall 2021, Kristen lived in a tent in encampments. In Summer 2020, Kristen was forcefully evicted from the Ferguson Encampment. She went onto stay in three more encampments and was evicted each time. The last time Kristen slept in a tent was at Wolverton Park, in Fall 2021. During these repeated evictions, she lost her belongings, including her tent.

(j) Since Fall 2021, Kristen has slept on the streets with only a sleeping bag.



(k) Within two to three weeks after being evicted from Wolverton Park, Kristin was raped while sleeping on a public bench outside of City Hall. She has been repeatedly robbed and assaulted. Without even the protection of a tent, she often wakes up to discover that her belongings have been stolen.

(l) Kristen has been unable to access a shelter, for many reasons. Kristen has repeatedly tried to get into a women's shelter, without success. She does not have a phone but has her physician and the Wesley Day Centre regularly call women's shelters on her behalf. They are almost always told that the women's shelters are full. In the past, Kristen was periodically able to access a shelter bed, but was repeatedly service restricted for a variety of reasons, including missing curfew and allegations of domestic violence. Kristen has periodically been in a relationship during her periods of homelessness and has at times been unable to access a shelter bed with her partner.

(m) When Kristen cannot get into a shelter and cannot put up a tent, she usually wanders around all night trying to find somewhere safe, putting her at an increased risk of violence. She has slept in stairwells, on the street outside of an overflow shelter, and on a park bench. As a result, Kristen hardly sleeps at night. Instead, she is up for days at a time, and then crashes. She regularly falls asleep during the day. In late May 2020, she fell asleep while walking and fell, hitting her head and cutting it open.

(n) Kristen would prefer to live in a tent again for the following reasons: a degree of privacy in order to get changed, be removed from the public gaze; improved sleep; protection against the risk of sexual assault, assault and theft by having a physical barrier, locking her tent, and having the protection of friends and allies in an encampment; improved mental health that comes from a sense of belonging and community, which translates into a lower dependence on drugs lower risk of overdose; and maintaining connections to street outreach supports such as medical care.

### Cassandra Jordan

(o) Cassandra Jordan ("Cassandra") is a 39 year old Indigenous woman who has been homeless since August or September 2020. Cassandra became homeless after an

unlawful eviction from her rental unit. Cassandra is a person living with disabilities, in receipt of ODSP. Her medical conditions include degenerative disc disease, chronic pain and substance abuse disorder.

(p) When Cassandra first became homeless, she could not access a shelter bed because she was told that they were all full. This led her to erect a tent at the Ferguson Encampment, from which she was eventually evicted. Although she was offered space in a hotel during the eviction, it was not held for her while she coordinated storage of her belongings. In the end, she did not secure a shelter space. She was left on the street. She lost her tent in the eviction.

(q) Cassandra has continued to reside in various encampments after being unable to access women's shelters because they were full. When she resided in an encampment, Cassandra developed a community that looked out for one another which helped to prevent robberies and assaults.

(r) Casandra has been repeatedly evicted from encampments. Cassandra has witnessed a heavy police presence with By-law officers at encampment evictions, along with bobcats and garbage trucks to dispose of peoples' belongings. Cassandra describes the evictions as intimidating, traumatizing and forceful, and she felt that she had no option but to comply with By-law officers' directions to move. She has repeatedly lost her tents in evictions. Having to pack up and move from encampment to encampment is exhausting physically, mentally and emotionally.

(s) Cassandra was subject to a forceful eviction while she was recovering from third degree burns on her legs. This led to her placement in the Barrett Centre, a shelter for individuals experiencing a mental health crisis. There were no shelter beds available when Cassandra was discharged from the Barrett Centre. She once again was forced to sleep on the street. She stayed with her mother in her subsidized rental unit temporarily but was required to leave to avoid breaching the guest rules for subsidized housing

(t) In February 2022, Cassandra attempted to get into Carol Anne's Place, an overflow shelter for women. She was denied entry because she had tested positive for COVID-19. She was forced to sleep outside in the freezing cold without a tent.

(u) Cassandra has continued to attempt to access women's shelters but has not been consistently able to do so because of an ongoing lack of shelter space for women. Without being able to erect a tent in an encampment, Cassandra has been forced to stay on the streets: in tunnels, outside of Tim Horton's, the back of City Hall, and outside of churches. When she has to sleep outside without a tent, she is often alone and in hidden, hard to find spaces. She has been robbed while sleeping outside.

### Misty Marshall

(v) Misty Marshall ("Misty") is a 30 year old Indigenous woman who has been homeless for just over two years.

(w) Misty has a past history of opiate use disorder, major depressive disorder with suicidal ideation and asthma and stimulant use disorder. She has a history of abuse in childhood and has been in abusive relationships throughout her adult years. Misty's asthma is exacerbated when she is homeless and living in a tent due to oppressive humidity. While homeless and living in a tent her asthma has deteriorated to point that she has required emergency treatment.

(x) Without access to a shower or laundry facilities, Misty has presented with a severe case of head lice that caused underlying cellulitis (skin infection) to her scalp and ears. She has also had extensive body rashes caused likely by scabies.

(y) A physician treating Misty lost contact with her immediately following her eviction from the Ferguson Encampment. Her physician reconnected with her a year later and reported that Misty had drastically decompensated physically and mentally since she was last seen. Misty's street outreach physician was better able to connect with Misty and treat medical issues, but only when they knew where Misty was living. In the opinion of her physicians, had Misty remained in one place, she would not have decompensated to the extent that she did.

(z) As well, it is difficult to establish trust with Misty and this results in her unwillingness to accept help from people readily. Trust can be established with continuity of connection.

(aa) Since becoming homeless, Misty has been unsuccessful in accessing shelter in the women's shelter system. She has attempted to get into the overflow at Carol Anne's Place, but through hard experience has learned that there is little chance of getting in, even after lining up for entry at 10:00 pm. She sometimes feels that it is not worth trying, because she is that much more at risk of violence if she does not have a plan for the night by 10:00 pm. While lining up outside of Carol Anne's Place, Misty has witnessed men driving around Carol Anne's Place soliciting the women in line for sex.

(bb) Misty has stayed in a tent in several encampments as a result of not getting into the women's shelters. She has been evicted from all of these encampments and has lost belongings in the evictions. In some instances, she was only given 20 minutes notice to move. She has witnessed bobcats removing encampment residents' possessions during the course of eviction. Housing support and shelter was not offered to Misty at the time of her evictions from encampments.

### Sherri Ogden

(cc) Sherri Ogden ("Sherri") is a 28 year old Indigenous woman in receipt of ODSP. She has been homeless for the past five years. Like the other applicants, Sherri has not been successful in accessing women's shelters, which has resulted in her staying in tents in encampments, only to be evicted and displaced to other encampments. During the course of these evictions, the City has disposed of her possessions, including her tents.

(dd) Sherri does not have a mobile phone. Staff at the Wesley Day Centre have repeatedly tried to get her into shelter but have been told that they are full. Sherri did secure a hotel stay (with a temporary hotel program funded by the City and staffed by Mission Services) for two weeks with an ex-boyfriend but was kicked out over a false allegation of domestic violence that she tried to dispute. She was banned from the hotel for one month. The hotel program has since ended.

(ee) Sherri's applications for supportive and transitional housing both the YWCA and Indwell have been denied because of her complex mental health issues that allegedly exceed the supports available in these programs.

(ff) Without being able to stay in an encampment in a tent, Sherri sleeps in stairwells, parking garages and in parks with only a blanket. She hardly sleeps.

Christine Delorey

(gg) The applicant Christine Delorey ("Christine") is a 33 year old woman in receipt of Ontario Works. She became homeless for the first time in her life when her father kicked her and her (now former) spouse out of his house in 2019. Without shelter space for her and her spouse as a couple, they erected a tent by the Urban Core Encampment where they could remain together and close to healthcare, food and supports.

(hh) Christine prefers to stay in a shelter but is not always able to access it because they are usually full. She was able to access the City's temporary hotel program with her spouse. However, the City accused them of domestic violence based on a verbal argument, and immediately kicked them out and onto the street without alternative shelter, and without an opportunity to challenge the decision. In February 2021, and while pregnant, she was kicked out of another hotel due to a false accusation of selling drugs.

(ii) In order to access an overflow bed at Carol Anne's Place, she lines up for entry hours before the 10:00 pm entry time. She was successful on some nights, and unsuccessful on other nights. When she is unable to access shelter and is not able to erect a tent, she stays in corridors, couch surfs, sleeps in the open with a sleeping bag, finds a parking garage to hide in and sleep, or wanders the streets without sleeping.

(jj) When there is not a space in shelter, a tent offers Christine protection from the elements, privacy and some degree of safety. Being in a tent eases her mental and emotional wellbeing compared to without because she is more sleep deprived without a tent.

Jahmel Lopierre

(kk) Jahmel Lopierre ("Jammy") is a 32 year old black transgender woman in receipt of OW. She has been diagnosed with PTSD, anxiety, depression and substance abuse disorder. She has been homeless one and off for about three years.

(ll) Most recently, Jammy became homeless after being evicted from the Transitional Living Program at the YWCA.

(mm) Jammy has been kicked out of the temporary hotel program for missing curfew. She fled a women's shelter after being threatened with being issued a form under the *Mental Health Act*.

(nn) Jammy has been denied access to women's shelters when they are full. In some cases, Jammy will change her clothing to present as a male in order to get into men's shelters. Having to change her gender expression and identity in order to access a shelter bed is degrading and harmful to her wellbeing.

(oo) It is difficult for Jammy to function in the congregate shelter system because she feels anxious around large groups of strangers and has trouble sleeping. She has experienced theft in shelters and feels that she has no control over her life.

(pp) Jammy has experienced routine evictions from encampments by police and has been ticketed repeatedly while homeless. She never has a good night's sleep because of a lack of a stable and secure place to stay overnight and feels safer in a tent because she has control over who is around her.

(qq) Jammy no longer erects a tent when she is outside of shelter because of the City's increased enforcement measures. She knows she will just be told to move.

Darrin Marchand

(rr) Darrin Marchand has chosen to live in an encampment because he has had negative experiences in shelters, including witnessing a fellow resident being attacked with a machete by another resident in December 2020. Darrin has also been service-restricted,

or banned, from various shelters at different times, which means that even when he wants to secure shelter where he was not victimized, he is unable to. Darrin has been service restricted from all shelters for long periods, including several consecutive months, leaving him with no option but to sleep on the street.

(ss) Darrin would suffer adverse emotional and physical impacts such as significant levels of stress if he were to be displaced from his encampment. Darrin receives medical care and food support in the encampments.

(tt) At times, Darrin has slept out in the open in the streets for months without a tent. Darrin was the victim of a random shooting while sleeping without a tent on the stairs of a church and believes that he would not have been shot had he been in a tent. It was only when he was shot that a shelter lifted a restriction allowing him to enter, but he was kicked out mid recovery.

Ashley MacDonald

(uu) Ashley MacDonald ("Ashley") is a homeless Indigenous woman, and she has had no other option but to live in an encampment for several reasons, including the ongoing shortage of shelter beds for women in the City, being repeatedly service restricted, or banned, from shelters. Ashley has a substance use disorder and other mental health issues and has faced discrimination in the shelter system. Ashley has also been denied access to supportive and transitional housing programs because of her high acuity needs. Being able to remain in one encampment would allow Ashley the stability she needs to maintain ongoing and recurrent street outreach healthcare, and pursue treatment for her mental health and substance use.

Shawn Arnold

(vv) Shawn Arnold ("Shawn Arnold") chose to live in an encampment because he feels unable to access shelter spaces because he is recovering from past substance use, and reasonably fears that the rampant substance use in shelters is a threat to his sobriety. Shawn was also assessed under the *Encampment Protocol* as being high acuity, and as such was permitted to remain at the J.C. Beemer Park Encampment. While an encampment resident,

Shawn was able to benefit from a nearby methadone treatment program, receive meal support and connect with other social supports including a housing worker that secure his current housing. The stabilized encampment location was critical to securing housing, illustrated by the fact that he almost lost a housing offer after being evicted from his encampment, causing him to lose contact with his housing worker.

Gord Smyth

(ww) Gord Smyth ("Gord") chose to live in an encampment because there is a shortage of affordable housing in the City that has been exacerbated by the COVID-19 pandemic.

(xx) Gord cannot live in a shelter. He has mental health disabilities, including a personality disorder, which make it difficult for him to be around groups of people for sustained periods. Gord also has a dog who would not be allowed in shelters and separating from his pet would have a significant impact on his mental health.

(yy) When living in encampments, Gord has had regular access to community agencies and volunteers who deliver meals, hygiene products, and medical supports.

(zz) Gord was repeatedly evicted from encampments in breach of the *Encampment Protocol*. He was only given 7 days' notice to move. He also was required to move without having had a VIS PDT assessment completed. On one occasion, Gord was evicted from an encampment within three hours of having been evicted from another encampment. During the course of his encampment evictions, the City did not offer him alternatives to congregate shelter options that accommodate his disability related needs. The constant evictions and the threat of evictions from encampment were mentally and emotionally draining and demoralizing.

(aaa) After several evictions, a paramedic administered Gord a Service Prioritization Decision Assistance Tool ("VIS PDT"), the results of which qualified him to remain in his encampment indefinitely. However, the City refused to accept these results. Although the City presented Gord with rental options, none of them were affordable. Gord was finally



offered a unit with City Housing Hamilton that was subsidized and moved into it on November 27, 2021.

Mario Muscato

(bbb) Mario Muscato ("Mario") is a severely disabled 48 year old Indigenous man who has been homeless since 2017. He was evicted from his accommodation due to an administrative error with Ontario Works. He has resided in encampments when he cannot access shelters.

(ccc) Mario has had negative experiences in the shelter system, including: being unable to access shelter because they are full; being service restricted and routinely being kicked out; having his personal items stolen; experiencing discrimination as a person living with disabilities; and experiencing discrimination as an Indigenous person on the basis of race and creed.

(ddd) Mario does not have the use of his hands and is an amputee. He is a victim of childhood abuse. He has also been diagnosed with opioid use disorder, stimulant use disorder, HIV, post-traumatic stress disorder, major depressive disorder, acquired brain injury, extensive burn injury from neck to face causing chronic pain, severe neuropathy to both upper extremities, and right forearm amputation.

(eee) Mario relies on other encampment residents to assist him with his activities of daily living because he does not have functioning hands. Encampment evictions deny him access to assistance from other residents and friends, for example, to erect a tent, change his clothes, open doors, and cover himself. He cannot erect and dismantle a tent or carry all of his possessions on his own due to his disabilities.

(fff) He has been evicted from encampments and lost his tent on numerous occasions. Evictions are very physically taxing, and this adds to his depressive state where he feels like he would prefer to die.

(ggg) When Mario is forced to sleep in the open, he experiences sleep deprivation, feels unsafe, is not able to meet his basic needs because of a loss of support from other

encampment residents and friends, experiences a deterioration in his mental health and greater sleep deprivation.

(hhh) Although Mario strives to remain connected with medical and housing supports, his constant transiency makes it exceedingly difficult.

Linsley Greaves

(iii) Linsley Greaves ("Linsley") is a 52 year old black man in receipt of OW.

(jjj) Linsley has had periods of homelessness for over ten years. His most recent housing ended two years ago, after his roommates did not pay their share of the rent. Since Linsley's name was on the lease, he was evicted.

(kkk) Linsley has stayed in men's shelters on and off during his periods of homelessness. He has had several negative experiences, including theft, being incited to fight, and having trouble sleeping. Linsley has had several experiences of racism while in shelter, including being repeatedly subjected to the use of the "N" word, being racially profiled, and lacking a sense of community with other Black Canadians.

(lll) Linsley has difficulties functioning in a shelter environment because of his substance use disorder. He is dependent on substances which are not permitted in shelters. This requires him to both hide his drug use and frequently leave. He knows that every time he is absent from the shelter, he risks not being allowed back in.

(mmm) Linsley stayed in a tent in one encampment for almost two years, including during the time the *Encampment Protocol* was in force. During this time, he developed a community. Three women lived beside him for safety and would call out to him if they needed protection.

(nnn) Linsley stopped putting up a tent after his eviction because he knew it would not take long for the City to evict him again. Although he tried to use tarps to provide some protection against the elements, he developed frostbite in his left toes in or about March 2022 when he was sleeping outside with just a blanket. Linsley is slowly losing one of his big toes, and the tips of his other toes.

(ooo) Linsley finds it difficult to sleep in the open because he constantly moves around trying to stay warm and safe. Even without a tent, the City tells him to move along. The constant moving worsens his anxiety. As a result of being unable to sleep properly at night, Linsley falls asleep during the day whenever possible, and has trouble concentrating.

Brad Caldwell

(ppp) Brad Caldwell ("Brad") is a 57 year old homeless man in receipt of the ODSP. He has been homeless for roughly three years. His loss of housing coincided with his wife's passing.

(qqq) Brad has had negative experiences from staying in shelters. He had his possessions stolen more often in shelters than on the street. He has been kicked out of shelter for not securing housing on time, which he could not do because accommodation was not unaffordable. Brad has found the shelter system unreliable. He has been unable to get into shelter because it is full, and he has been kicked out during his stays.

(rrr) When the men's shelter hotel program ended, he was kicked out without a transition plan to alternative shelter. He was forced to sleep on the street.

(sss) Brad has been evicted from various encampment. In some instances he has only received 24 hour notice. He has witnessed evictions where dump trucks and garbage disposal attend and load up residents' tents and possessions. He had not been offered guaranteed shelter prior to eviction.

(ttt) Brad has also been issued roughly fifty to sixty tickets for either sleeping in a public space or in a tent in an encampment. He will comply with a direction to move to avoid escalating the situation, and because of the fear of charges.

(uuu) Brad has difficulty managing his diabetes while homeless because he does not have proper refrigeration to store insulin, and his glucose meter has been stolen from him because it has been mistaken for a digital scale to measure drugs.

(vvv) For Brad, the benefits of staying in a tent include being able to enhance safety through community with other encampment residents, staying warm together to avoid

freezing to death, remaining close to services, and lessening sleep deprivation by stabilizing his immediate environment.

(www) Brad has suffered from infections which have required hospitalization. Because he has been discharged into homelessness where he is exposed to the elements, experiences sleep deprivation, and needs to move, he cannot fully recover and remain healthy.

(xxx) When sleeping in the open, Brad is so physically taxed and tired that his body gives up on him, and he is forced to sleep where his body stops him.

### Corey Monahan

(yyy) Corey Monahan ("Corey") is 45 years old, has been homeless for the majority of his life. He is an ODSP recipient.

(zzz) Corey has been diagnosed with fetal alcohol syndrome, attention deficit hyperactivity disorder, and substance abuse disorders. He receives healthcare through the Shelter Health Network and has reported distress sleeping outside, and frustration in not being able to access shelter despite advocacy efforts due to restrictions. His state of homelessness causes mental distress and the stress of it has negatively impacted his mental health.

(aaaa) Despite Corey's best efforts to reside in shelters, he cannot so do so. Space is not always available. Moreover, staying in shelters has significant adverse effects on his mental health, because he does not function well in congregate settings. In some cases, he has had physical altercations with other shelter residents, which have led him to be service restricted.

(bbbb) Corey sleeps in a tent in an encampment. Evictions displace him from encampment to encampment. This has been very destabilizing, psychologically draining and traumatizing. He usually cannot remove all of his possessions and tent in advance of an eviction. He avoids watching City officials tear down his tent because it is traumatizing for him.

Patrick Ward

(cccc) Patrick Ward ("Patrick") is 59 year old man with disabilities. He is an ODSP recipient.

(dddd) Patrick became homeless for the first time in 2017, when the residential care facility that he was renting a room from was abruptly and without notice closed.

(eeee) Upon eviction, he went to a shelter but found was the victim of assaults and theft. The shelter space was detrimental to his mental and emotional wellbeing. He has chosen to erect a tent in an encampment.

(ffff) Patrick has repeatedly been evicted from encampments, and moved along by By-law officers from various locations to other locations, even though those officers are aware that he continues to violate the *Parks By-law* in those new locations. To avoid confrontation with authorities, he has moved to less visible public spaces and into the escarpment.

(gggg) A tent offers Patrick protection from intruders and shields him from animals and the weather. Being routinely evicted from encampments is physically and psychologically draining.

Ammy Lewis

(hhhh) Ammy Lewis ("Ammy") is a 43 year old Indigenous woman. She is an ODSP recipient.

(iiii) Ammy was victim to her landlord's predatory advancements whereby he attempted to extort sex from her. She felt so unsafe that she left her accommodation with her dog who is her constant companion and main source of emotional support. Ammy has been homeless for five months and she has not been accepted into shelter because of her dog.

(jjjj) Ammy relies on her dog for emotional support as well as keeping her safe while she remains without shelter on the street. She sleeps in underground parking lots,

abandoned cars, dumpsters when she does not have a tent. Even without a tent, Ammy is routinely forced to move from where she is in public regardless of the time of day. She has also been assaulted while homeless.

Julia Lauzon

(kkkk) Julia Lauzon ("Julia") is a 24 year old Indigenous woman who is homeless.

(llll) Julia suffers from significant mental health issues and has not been able to get the medical help that she needs because of a lack of phone and a lack of fixed address, which are all related to her homelessness status. As such, she has not been able to follow through on referrals, she has been cut off from ODSP and has no income at all. There have been multiple unsuccessful attempts to get her help for her addictions, but it is difficult to get a hold of her. She has been to the hospital for suicidal ideations.

(mmmm) Julia has stayed on and off in a tent while homeless because she has been denied access to shelter due to a lack of capacity, however she is occasionally able to get into the overnight drop in center at Carol Anne's Place.

(nnnn) Being displaced from her tent and its location results in operating in a constant survival mode that results in her inability to focus on other things such as getting to appointments, including medical appointments because of a lack of concentration due to lost sleep and being in survival mode. Julia has been assaulted while living outside without a tent.

(oooo) Julia has a housing worker from the Hamilton Regional Indian center and is on a waitlist for housing.

Glenn Gnatuk and Taylor Gogo-Horner

(pppp) Glenn Gnatuk ("Glenn") and Taylor Gogo-Horner ("Taylor") are a disabled couple in receipt of ODSP. They became homeless five years ago after being evicted from their rental unit. They began couch surfing with friends and family but that was time limited, and they had a negative experience where Taylor was assaulted by one the friends that they stayed with.

(qqqq) They were once able to remain as a couple in the hotel shelter program, but this was short lived after they were falsely accused of domestic violence and banned for one year.

(rrrr) Taylor has stayed in shelter on only a few occasions and found her separation from Glenn too difficult, causing so much anxiety that she left to return to stay with him in an encampment.

(ssss) They have been routinely evicted from several different locations throughout Hamilton. They have since begun to erect their tents in less visible places to stay hidden and avoid enforcement. Sometimes they pre-emptively move to avoid conflict. The constant movement has been destabilizing for them.

(tttt) When they were without a tent in the winter, they slept on the grounds of the Children's Museum, only with blankets. They feel that they are always on the run which causes them stress. They hardly sleep because they are worried about their safety. They have experienced severe frostbite, causing their fingers to crack and lose sensation.

#### Chronology and procedural history

(uuuu) On April 18, 2020, residents of a longstanding encampment located at the Sir John A. MacDonald School ("Sir John A. MacDonald Encampment") in Hamilton advised Hamilton Harm Reduction Action League ("KeepingSix") that they had been given notice to dismantle their tents and move within a week. KeepingSix is a community-based organization that defends the rights, dignity, and humanity of people who use drugs. KeepingSix works closely with the Hamilton Social Medicine Response Team ("HAMSMaRT"), an organization made up of physicians, midwives, and peer workers that provides clinical care to individuals who have difficulty accessing the traditional medical system, primarily the homeless and people who use drugs.

(vvvv) On April 21, 2020, KeepingSix and HAMSMaRT attended a regular weekly meeting with the City of Hamilton ("City") to discuss encampment management and raised concerns about the eviction notice provided to the Sir John A. MacDonald Encampment.

(www) On April 25, 2020, the City evicted the residents of the Sir John A. MacDonald Encampment. KeepingSix and HAMSMaRT attended the eviction. Several residents moved to the encampment at Jackie Washington Park ("Jackie Washington Park Encampment"), because they had been advised that the City could better support individuals on municipal property.

(xxxx) On April 27, 2020, the City provided an eviction notice to the residents of the Jackie Washington Park Encampment.

(yyyy) On May 6, 2020, the City evicted the residents of the Jackie Washington Park Encampment. In the course of the eviction, residents' belongings were destroyed.

(zzzz) On June 4, 2020, legal counsel from the Hamilton Community Legal Clinic ("HCLC") and Ross and McBride LLP wrote the City Manager, the General Manager of Healthy and Safe Communities and the Director of Housing Services, setting out legal arguments against encampment evictions based on the harm they caused to health and wellbeing, in the context of the COVID-19 pandemic and a shortage of viable alternatives for shelter. They also requested a meeting.

(aaaaa) On June 26, 2020 legal counsel from the HCLC and Ross and McBride LLP, members of HAMSMaRT and Keeping Six met with legal counsel for the City and representatives from the City's housing and Community and Social Services departments. During this meeting, they asked the City to pause on the encampment evictions pending a satisfactory resolution of the shelter needs of encampment residents and provided notice to the City that any further eviction would be challenged in the courts.

(bbbbb) On July 7, 2020, the parties met again to further discuss solutions to encampments in Hamilton. The City was again asked to pause encampment evictions pending resolution and reminded that news of any new evictions would lead the parties into litigation.

(ccccc) On July 10, 2020, the City provided notice of an imminent "clean up" (i.e., eviction) to the residents of the York Encampment and Bay Encampment. Within a day, KeepingSix and HAMSMaRT worked with the residents to remove larger items from the



site, which led the City to decide not to bring heavy equipment to clear the two encampments.

(ddddd) On July 13, 2020, Councillor Narinder Nann proposed a motion at a meeting of the Emergency and Community Services Committee of Hamilton City Council to request the City analyze the *National Protocol for Homeless Encampments in Canada* (“*National Encampments Protocol*”) proposed by the United Nations Rapporteur for Housing. The motion carried, with Councillor Terry Whitehead voting against.

(eeee) On July 22, 2020 legal counsel from HCLC and Ross and McBride LLP wrote a second letter to the City, that alleged that the removal of items necessary for an individual to exist in an encampment, such as a tent or bed, was in effect an eviction.

(ffff) On July 20, 2020, Councillor Jason Farr wrote in an email: “To sum up, I am supportive of dismantling the tents and if staff do not act soon, I will have Council order it.”

(ggggg) On July 28, 2020, the City provided notice that it intended to dismantle encampments on July 31, 2020. The City would not commit to refrain from the involuntarily removal of encampment residents.

(hhhhh) On July 29, 2020, counsel for a subset of the current Applicants, KeepingSix and HAMSMaRT commenced proceedings in this Honourable Court for an injunction prohibiting the City from dismantling encampments.

(iiii) On July 30, 2020, this Honourable Court issued a 10 day interim injunction, in *Bailey et al. v. City of Hamilton*, Hamilton Court File No. CV-20-73435.

(jjjjj) On August 7, 2020, the 10 day injunction was extended on consent to a court date set for September 2020.

(kkkkk) On September 30, 2020, the parties executed a settlement agreement, which consisted of: an *Encampment Protocol* which required the City to assess and accommodate individual needs before evicting encampment residents, which in some cases resulting in residents remaining in certain sanctioned encampments indefinitely, and which established

rules around the permissible size and locations of encampments; and a confidential Letter of Understanding, which included a term that the City could remove the largest Ferguson Encampment.

(lllll) Between September 30, 2020 to August 2021, HCLC, KeepingSix and HAMSMaRT had many disagreements with the City over its failure to comply with the *Encampment Protocol* as a result of the perception that the City was not applying the *Encampment Protocol* in the spirit in which it was negotiated. HCLC repeatedly requested a meeting with the City to discuss possible solutions, to no avail.

(mmmmm) On August 9, 2021, Hamilton City Council voted to repeal the *Encampment Protocol* in an emergency meeting, without notice to, or consultation with, the parties to the settlement agreement who had negotiated the *Encampment Protocol* or encampment residents.

(nnnnn) The City delayed new encampment evictions until August 30, 2021.

(ooooo) On September 9, 2021, a peaceful protest of the revocation of the *Encampment Protocol* took place outside City Hall. Representatives from HCLC, HAMSMaRT, Keeping Six, the YWCA, Hamilton Regional Indian Centre, and the Wesley Day Centre all decried the sudden decision taken without consultation, and implored the City to sit down with stakeholders to develop a new approach to encampments. On the same day, the City released a "Six Step Encampment Response" at a meeting of Hamilton City Council. This policy framework does not adhere to or align with the *National Encampments Protocol*. At the same Council meeting, Dr. Jill Wiwcharuk from HAMSMaRT and Marcie McIlveen from KeepingSix addressed the Council, and informed them of the issues with shelter shortages, and harm to encampment residents from evictions. Stephanie Cox, counsel in the within Application, addressed the Council meeting to raise legal concerns.

(ppppp) On September 17, 2021, the City engaged in encampment evictions at the Durand Encampment and Wellington Park Encampment. On September 20, 2021, a further eviction took place at the J.C. Beamer Park Encampment. On these occasions, the City only provided two hours verbal notice to encampment residents to vacate. The City did not

provide written notice of a By-law infraction. The City did not offer appropriate indoor shelter options prior to the eviction. Subsequently, By-law officers and Hamilton Police Services have regularly attended various encampments and only given verbal notice to vacate.

(qqqqq) On October 4, 2021, the Applicants issued this Notice of Application, and brought a motion for an *ex parte* injunction against the City to prohibit it from using its By-laws to evict encampment residents. This Honourable Court directed that the City refrain from encampment evictions pending its ruling.

(rrrrr) On October 13, 2021, the ~~Manager of Housing Service's~~ reported to City Council that: there was not enough shelter space for encampment residents to move into; ~~the system cannot accommodate all unsheltered person's needs; that "the suitability of~~ those [shelter] beds it needs to be discussed as much as the availability of those beds"; that ~~it was~~ "unconscionable to put these individuals into beds or units without the right supports because it creates in many instances, more stress on the individual, whether it's through isolation, whether it's through not meeting their needs"; ~~that there was nowhere else for~~ people to go than to sleep in encampments; that Hamilton ~~has always had people "sleeping rough even in the winter"; and that during the operation of the Encampment Protocol,~~ "many [encampment residents] have had weeks or months potentially of stability which no longer the case, because this has been a tremendous traumatic experience for everybody involved."

(sssss) On November 2, 2021, this Honourable Court dismissed the motion for an interim injunction, in *Poff v. City of Hamilton*, 2021 ONSC 7224.

(ttttt) The City of Hamilton immediately recommenced encampment evictions, ~~notwithstanding the City's~~ awareness that many encampment residents had no indoor shelter options. In some cases, shelters were full at the time of eviction. In other instances, the evicted encampment residents were service restricted from shelter. On November 6, 2021, Councillor Nann Tweeted: "I'm here at Woodlands Park to observe an encampment clearing. I have been informed HPS on-site whom have been providing direct engagement that there are no shelter spaces for the couples nor the individuals remaining here."

(uuuuu) On December 9, 2021, Councillor Nann proposed a motion to the Emergency and Community Services Committee of Hamilton City Council for a human rights based approach to encampment evictions. This motion passed. To date, the approach to responding to encampments outlined in this motion has not come to fruition.

(vvvvv) On March 22, 2022 Councillor Farr proposed a motion that was adopted by City Council, which directs City staff to expedite encampment evictions, and specifically to: issue a Trespass Notice within 12 to 72 hours after staff receive the first complaint regarding unauthorized camping a City or public place; immediately notify the Hamilton Police Service of the Trespass Notice for enforcement purposes; and enforce the By-laws against encampments 24 hours a day, seven days a week. The City of Hamilton allocated \$416,673.73 to hire four new By-law officers to ensure that tents were removed from parks within 12 to 72 hours.

(wwwww) In response to Councillor Farr's motion, City staff stated the following at the Council Meeting: "there is currently no capacity for families or couples in the shelter system, but between 15 and 20 spaces each in the men's and women's systems"; "even when there is space available, some people can't access it due to issues such as having a pet or having had past behavioural issues at the shelter that can lead to barred access"; "we do not have enough housing"; and "we do not have enough beds".

(l) Since the adoption of Councillor Farr's motion, the eviction against encampment residents has dramatically increased, with evictions taking place continuously. Some former encampment residents have gone deeper into hiding to avoid enforcement, making them more vulnerable and disconnected from supports. Individuals are now "sleeping rough" without even a tent to protect them from the elements and provide a basic level of personal security. Some individuals use a patchwork of tarps, blankets and sheets in a desperate attempt to recreate the protection offered by tents.

#### Causes of homelessness

(yyyyy) Individuals become homeless for a number of different reasons.

(zzzzz) A major reason for homelessness is the housing precarity has become an unfortunate reality in Hamilton.

- (i) The costs of rental accommodation have increased sharply, and in some cases has become completely unaffordable.
- (ii) ODSP and Ontario Works benefit levels are insufficient, even with a housing allowance.
- (iii) Since poverty intersects with, race, indigeneity, and disability, housing precarity is experienced disproportionately by those groups.

(aaaaaa) Another cause of homelessness is the breakdown of relationships.

- (i) Women may become homeless when fleeing domestic abuse at the hands of male partners.
- (ii) Individuals may also become homeless if they are forced to leave accommodation shared with family or friends.

(bbbbbb) Some individuals with complex mental health, addiction and/or trauma cannot function in independent living.

(cccccc) Chronically homeless individuals may become trapped in a vicious cycle of homelessness they cannot escape.

*Why homeless individuals do not go to shelter*

(dddddd) Homeless individuals do not enter shelters for many reasons.

(eeeeee) ~~The demand for shelter spaces often exceeds supply, as the Applicants'~~ firsthand experiences attest to. Moreover, aggregate supply and demand mask inequalities in the availability of shelter for different groups:

- (i) There is a dramatic undersupply of shelter space for women, which reflects underfunding that is a product of the hidden nature of

homelessness for women and a hierarchy of deservingness that systematically devalues the need of women for shelter.

- (ii) There is a shortage, and often a complete absence, of shelters which permit couples to stay together.
- (iii) Although Hamilton has a shelter for indigenous women fleeing domestic violence, it does not have a shelter for indigenous men, couples, youth, or Two Spirit individuals.

(fffff) There are structural barriers in the design of shelters that prevent individuals from using them:

- (i) Admission to shelters is on a first come, first served basis, without any prioritization based on need.
- (ii) Shelters impose a limit to the number of nights that individuals can stay – they are at best temporary and are never a permanent accommodation solution.
- (iii) The design of the shelter system also discriminates on the basis of disability.
  - (1) Shelters cannot meet the needs of individuals with complex mental health, addiction and/or trauma, who therefore decided not to enter them;
  - (2) Some disability-related behaviours conflict with shelter policies. Individuals with substance dependencies can neither use them while in shelter, nor bring harm reduction materials into shelters to help them recover from addiction;
  - (3) Individuals have mental health disorders which may trigger disruptive behaviour in the congregate setting of a shelter; and

(4) It is physically taxing for some disabled individuals with mobility issues to enter and leave shelters every day.

(iv) Shelters do not accommodate Indigenous cultural practices. In addition, the design of shelters may reinforce intergenerational trauma and the lack of trust in institutions arising from the systemic abuse of Indigenous children in residential schools.

(v) Shelters are congregate settings where individuals who have been victims of assault and theft and are unwilling to enter shelter to face that risk again.

(vi) Shelters are congregate settings that create the risk of infectious disease spread, as became apparent during the COVID-19 pandemic.

(vii) Shelters do not permit pets, which provide important emotional support to individuals.

(viii) Shelters do not permit individuals to keep personal items with them, beyond their immediate personal effects.

(ix) Shelter rules afford individuals little or no control over their living space and micromanage them. For example, shelters impose a strict curfew. Moreover, these institutional rules can elicit a trauma response.

(x) Shelters may be situated in remote locations which are hard to reach on foot.

(gggggg) Finally, there is a risk to women queuing to enter shelters from male sexual predators who loiter in the vicinity to target victims who are unable to access shelters.

Why homeless individuals who do not go to shelter erect tents in encampments

(hhhhhh) Homeless individuals who do not shelter for any of the reasons above may choose to erect tents in encampments instead of sleeping on the street, for a number of reasons.

- (vi) Encampments give rise to communities that provide individuals with safety:
  - (i) They function as mutual aid societies, where residents share food, blankets, and even huddle together to stay warm in the cold weather.
  - (ii) They provide a buffer that mitigates the risk of rape and sexual assault, theft and assault for residents from non-residents.
  - (iii) They mitigate the risk of overdosing, because of the presence of peers.
  - (iv) They provide an emotional support system for residents.
  - (v) They provide physical support and care for disabled residents.
- (jjjjjj) Encampments provide health benefits to their residents compared to living in the open:
  - (i) They provide shelter 24 hours a day, 7 days a week. By contrast, shelters only provide accommodation in the evenings.
  - (ii) They mitigate the risk of hypothermia, by providing protection from the wind, rain, snow, and cold.
  - (iii) They mitigate the risk of sunburn, heatstroke, and dehydration, by providing protection against the sun.
  - (iv) They make life less physically taxing for residents because they are less transient than if they lived in shelters on the street.



- (v) They enable residents to exert control over substance use – either to use it, or to avoid them – by enabling them to choose their peer group.
- (vi) They promote mental health, by providing a feeling of safety for individuals who distrust institutions, based on negative experiences.
- (vii) They provide a sense of community and reduce social isolation.
- (viii) They enable residents to attend to their wellness beyond basic survival.

(kkkkkk) Encampments enable their residents to live with greater dignity compared to living in the open:

- (i) They provide a modicum of privacy and solitude, essential for many basic functions including sleep.
- (ii) They enable couples to live together in the same tent.
- (iii) They enable residents to have pets that provide them with emotional support.
- (iv) They enable residents to keep personal possessions beyond their immediate personal effects.
- (v) They enable residents to come and go as they please without a curfew.
- (vi) They enable residents to plan their lives, because they know where they will be sleeping at night.
- (vii) They enable residents to satisfy their desire for autonomy.
- (viii) They enable residents to build stable relationships with other residents.

(lllll) Encampments enable residents to live continuously in a single location, which enhances their access to:

- (i) medical care;
- (ii) social workers or other system navigators who can help residents access social programs (e.g. the Ontario Disability Support Program, Ontario Workers, and public housing), and apply for government issued identification;
- (iii) harm reduction supplies and treatment;
- (iv) medication delivery;
- (v) food donations; *and*
- (vi) donations of blankets, clothing, and mobile phones.

*Harms from encampment eviction*

(mmmmmm) Encampment evictions harm residents in many ways.

(nnnnnn) Evictions deprive former encampments residents of the safety that comes from the encampment community:

- (i) They face additional hurdles to sharing food and blankets and huddling together to stay warm.
- (ii) They lose the buffer that mitigates the risk of rape and sexual assault, theft and assault for residents from non-residents.
- (iii) They lose the peer group that mitigates the risk of overdosing.
- (iv) They lose the emotional support system provided by other residents.
- (v) Disabled residents lose the physical support and care they receive from other residents.

(oooooo) Evictions force former encampment residents to live in the open, which is harmful to their health:

- (i) They face a greater risk of hypothermia because they are exposed to the wind, rain, snow, and cold.
- (ii) They face a greater risk of sunburn, heatstroke, and dehydration because they are exposed to the sun.
- (iii) They face a life that is more physically taxing because their lives are now transient.
- (iv) They lose the ability to exert control over substance use, because they can no longer choose their peer group.
- (v) They may suffer worsened mental health because they lose a feeling of safety.
- (vi) They lose a sense of community and experience increased social isolation.
- (vii) They cannot attend to their wellness beyond basic survival.

(pppppp) Evictions undermine the dignity of former encampment residents:

- (i) They lose all privacy and the ability to seek solitude.
- (ii) Couples face greater hurdles in living together in the same tent.
- (iii) They lose the ability keep personal possessions beyond their immediate personal effects.
- (iv) They lose the ability to plan their lives, because they no longer know where they will be sleeping at night.
- (v) They lose the ability to build stable relationships with other residents.

(qqqqqq) Evictions impede the access of former encampment residents to:

- (i) medical care, including the diagnosis and treatment of medical conditions, and treatment for normal life conditions such as pregnancy;
- (ii) social workers or other system navigators;
- (iii) housing supports and connections;
- (iv) harm reduction supplies and treatment;
- (v) medication delivery;
- (vi) food donations; *and*
- (vii) donations of blankets, clothing, and mobile phones.

(rrrrrr) In addition, former encampment residents may move to remote locations to avoid further evictions, which put them at a greater geographical distance from the services and supports listed in the previous paragraph.

(ssssss) The process of eviction harms former encampment residents:

- (i) They lose their possessions.
- (ii) They experience dislocation.
- (iii) They experience emotions of fear, loss, and grief
- (iv) They may experience the exacerbation of pre-existing mental health conditions.
- (v) They may lose trust in authority in the police, governments and other public institutions.

Section 7

(tttttt) Sections 3 (hours of entrance), 12 (encroachment), 17 (camping and lodging) and 18 (tents and structures) of the *Parks By-Law*, and section 16(12) of the *Streets By-Law*, violate section 7 of the *Charter*, because they deprive homeless individuals of their liberty and/or security of the person, in a manner that is not in accordance with the principles of fundamental justice.

(uuuuuu) These violations of section 7 cannot be justified under section 1 of the *Charter*.

(vvvvvv) The eviction of the Applicants from encampments violated section 7 of the *Charter*, because those evictions deprived them of their liberty and/or security of the person, in a manner that was not in accordance with the principles of fundamental justice.

(wwwww) These violations of section 7 cannot be justified under section 1 of the *Charter*.

(xxxxxx) The interpretation of section 7 of the *Charter* must comply with Canada's international legal obligations under the *International Covenant of Economic, Social and Cultural Rights*, including (but not limited to) Article 11(1), the right to adequate housing.

Section 15

(yyyyyy) Sections 3 (hours of entrance), 12 (encroachment), 17 (camping and lodging) and 18 (tents and structures) of the *Parks By-Law*, and section 16(12) of the *Streets By-Law*, violate section 15 of the *Charter*, because they discriminate on the basis of race and/or indigeneity, sex, disability, and marital status, either separately or in combination (i.e., intersectional discrimination).

(zzzzzz) These violations of section 15 cannot be justified under section 1 of the *Charter*.

(aaaaaa) The eviction of the Applicants from encampments violated section 15 of the *Charter*, because those evictions discriminated against them on the basis of race and/or

indigeneity, sex, disability, and marital status, either separately or in combination (i.e., intersectional discrimination).

(bbbbbbb) These violations of section 15 cannot be justified under section 1 of the *Charter*.

(ccccccc) The interpretation of section 15 of the *Charter* must comply with Canada's international legal obligations under the *International Covenant of Economic, Social and Cultural Rights*, including (but not limited to) Article 11(1), the right to adequate housing.

**3. The Applicant relies on the following legal instruments:**

- (a) The *Canadian Charter of Rights and Freedoms*.
- (b) The *Constitution Act, 1982*.
- (c) *International Covenant on Economic, Social and Cultural Rights*.
- (d) City of Hamilton *By-Law No. ~~01-129~~ 01-219* ("*Parks By-Law*").
- (e) City of Hamilton *By-Law No. 86-077* as amended by *By-Law No. 97-162* ("*Streets By-Law*").
- (f) City of Hamilton *By-Law No. 11-285* ("*Noise Control By-Law*").
- (g) City of Hamilton *By-Law No. 20-077* ("*Public Nuisance By-Law*").
- (h) Such further and other grounds as counsel may advise and this Honourable Court may permit.

**4. The following documentary evidence will be used at the hearing of the Application:**

- (a) Affidavit of Kirsten Heegsma.
- (b) Affidavit of Darrin Marchand.

- (c) Affidavit of Gord Smyth.
- (d) Affidavit of Mario Muscato.
- (e) Affidavit of Shawn Arnold.
- (f) Affidavit of Bradley Caldwell.
- (g) Affidavit of Christine Delorey.
- (h) Affidavit of Glenn Gnatuk and Taylor Gogo-Horner.
- (i) Affidavit of Cassandra Jordan.
- (j) Affidavit of Julia Lauzon.
- (k) Affidavit of Ammy Lewis.
- (l) Affidavit of Ashley Macdonald.
- (m) Affidavit of Corey Monahan.
- (n) Affidavit of Misty Marshall.
- (o) Affidavit of Sherri Ogden.
- (p) Affidavit of Jahmal Pierre.
- (q) Affidavit of Linsley Greaves.
- (r) Affidavit of Patrick Ward.
- (s) Affidavit of Audrey Davis.
- (t) Affidavit of Leilani Farha.
- (u) Affidavit of Stephen Gaetz.
- (v) Affidavit of Kate Hayman.

- (w) Affidavit of Stephen Hwang.
- (x) Affidavit of Ameil Joseph.
- (y) Affidavit of Olivia Mancini.
- (z) Affidavit of Lisa Nussey.
- (aa) Affidavit of Andrea Sereda.
- (bb) Affidavit of Kaitlin Schwan.
- (cc) Affidavit of Medora Uppal.
- (dd) Affidavit of Ruth Toskas.
- (ee) Such further and other evidence as counsel may advise and this Honourable Court may permit.

June 15, 2022

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Applicants

- and -

**CITY OF HAMILTON**  
Respondent

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
PROCEEDING COMMENCED AT HAMILTON

**AMENDED FRESH AS AMENDED NOTICE OF  
APPLICATION**

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**ONTARIO**  
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GLENN GNATUK, TAYLOR GOGO-HORNER~~, CASSANDRA JORDAN, JULIA  
LAUZON, AMMY LEWIS, ASHLEY MACDONALD, COREY MONAHAN, MISTY  
MARSHALL, SHERRI OGDEN, JAHMAL PIERRE and LINSLEY GREAVES and  
PATRICK WARD**

Applicants

– and –

**CITY OF HAMILTON**

Respondent

**APPLICATION UNDER RULE 14.05 OF THE *RULES OF CIVIL PROCEDURE***

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**FURTHER AMENDED FRESH AS AMENDED NOTICE OF APPLICATION**

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**TO THE RESPONDENT(S)**

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing on date to be determined by the parties and the Court, at the courthouse, 45 Main Street East, Hamilton, Ontario, L8N 2B7.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date June 15, 2022

Issued by \_\_\_\_\_

Local Registrar

Address of court office: Superior Court of Justice  
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Hamilton ON  
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TO: **CITY OF HAMILTON**

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## APPLICATION

### 1. The Applicants make application for:

(a) An order pursuant to pursuant to section 52(1) of the *Constitution Act, 1982*, declaring sections 3 (hours of entrance), 12 (encroachment), 17 (camping and lodging) and 18 (tents and structures) of City of Hamilton *By-Law No. ~~01-129~~ 01-219* (the “*Parks By-Law*”), and section 16(12) (miscellaneous prohibitions) of City of Hamilton *By-Law No. 86-077* as amended by *By-Law No. 97-162* (the “*Streets By-Law*”), are *either* of no force or effect *or* inapplicable to the Applicants and other homeless individuals who erect tents as a temporary form of shelter, pursuant to section 52(1) of the *Constitution Act, 1982*.

(b) In the event that this Honourable Court suspends any declaration of invalidity issued in relation to the *Parks By-Law* and/or *Streets By-Law*, that any such suspension be for no longer than six months from the date of this Honourable Court’s decision.

(c) In the event that this Honourable Court suspends any declaration of invalidity issued in relation to the *Parks By-Law* and/or *Streets By-Law*, an order pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”) during the period of the suspension, in the form of an interlocutory injunction, that prohibits the City of Hamilton from preventing the erection of tents as a temporary form of shelter by homeless individuals (including the Applicants), and/or giving notice to homeless individuals (including the Applicants) to dismantle and/or move such tents, and/or evicting or removing homeless individuals (including the Applicants) from such tents and/or dismantling such tents, if those tents comply with the following conditions, which are based on the following parameters:

- (i) The tent is in an area considered to be a “park” within the meaning of the *Parks By-Law*;
- (ii) The tent is at least 50 meters away from a playground, school or childcare centre;
- (iii) The tent consists of a grouping of a no more than of six tents; *and*

- (iv) The tent be at least 200 meters away from any other grouping of a no more than of six tents.

(d) In the event that this Honourable Court does not suspend any declaration of invalidity issued in relation to the *Parks By-Law* and/or *Streets By-Law*, or the suspension expires without the adoption of measures to replace the provisions declared invalid by this Honourable Court, an order granting a permanent injunction with terms identical to order (c) above.

(e) An order pursuant to section 24(1) of the *Charter* declaring that the City of Hamilton, and/or its agents, pursuant to any purported legal authority, including but not limited to the *Parks By-Law*, the *Streets By-Law*, *Noise Control By-Law No. 11-285* ("*Noise Control By-Law*") and/or the *Public Nuisance By-Law No. 20-077* ("*Public Nuisance By-Law*") violated the *Charter* rights of the Applicants, including section 7 and/or section 15, by preventing them from erecting tents as a temporary form of shelter, and/or giving notice to homeless individuals (including the Applicants) to dismantle and/or move such tents, and/or evicting or removing homeless individuals (including the Applicants) from such tents and/or dismantling such tents, and that such violations cannot be demonstrably justified in a free and democratic society pursuant to section 1 of the *Charter*.

(f) In addition, an order pursuant to section 24(1) of the *Charter* for compensatory, **deterrence and vindication damages** for the physical harm(s) suffered by the Applicants caused by the City of Hamilton and/or its agents pursuant to any purported legal authority, including but not limited to the *Parks By-Law*, the *Streets By-Law*, *Noise Control By-Law*, and/or the *Public Nuisance By-Law* in violation of the *Charter* rights of the Applicants, including section 7 and/or section 15, by preventing them from erecting tents as a temporary form of shelter, and/or giving notice to homeless individuals (including the Applicants) to dismantle and/or move such tents, and/or evicting or removing such tents and/or dismantling such tents.

(g) Costs of this proceeding on a full indemnity basis or in the alternative, on a substantial indemnity basis.

(h) Such further and other relief as counsel may advise to this Honourable Court may deem just.

**2. The grounds for the application are:**

Overview

(a) The Applicants are 1419 individuals who have erected tents or shelters (collectively referred to as “tents”), and thereby have created and lived in encampments (“encampment residents”), in various public parks and/or other public spaces considered parks throughout Hamilton, including J.C. Beemer Park, the greenspace at Strachan and James Streets, Sir. John A. McDonald, Ferguson and Central Park (“encampments”). The City of Hamilton (“City”) has forcibly evicted the Applicants and many other homeless individuals from encampments where they resided, pursuant, *inter alia*, to the *Parks By-Law* and/or *Streets By-Law*. These encampments were located in City-owned and operated parks and/or public spaces under the care, control and responsibility of the City.

(b) The Applicants became homeless for the reasons that are common. Housing precarity has become an unfortunate reality in Hamilton, because of raising rental costs, inadequate Ontario Disability Support Program (“ODSP”) and Ontario Works benefit levels, and the breakdown of relationships, especially women fleeing domestic abuse at the hands of male partner. Some individuals with complex mental health, addiction and/or trauma cannot function in independent living. Chronically homeless individuals may become trapped in a vicious cycle of homelessness they cannot escape.

(c) The Applicants, like other homeless individuals, have at times not entered shelter for many reasons. The demand for shelter spaces often exceeds supply. As of March 2022, 1,596 people were actively experiencing homelessness in Hamilton, but there are only 96 shelter beds designated by the City of Hamilton for women and 212 for men. There is a dramatic undersupply of shelter spaces for women, a shortage and often complete absence of shelters which permit couples to stay together, and no shelter in Hamilton for indigenous men, couples, youth or Two Spirit individuals. There are also structural barriers in the design of shelters that prevent individuals from using them: admission on a first



come, first served basis, and a limit on the number of nights individuals can stay. The design of the shelter system discriminates on the basis of disability, against individuals with complex mental health, addiction and/or trauma, substance dependencies, and mental health disorders that trigger disruptive behaviour. Shelters do not accommodate Indigenous cultural practices. Shelters are congregate settings where individuals face the risk of assault and theft, and of contracting infectious disease (as happened during the COVID-19 pandemic). Shelters do not permit individuals to keep personal items or pets. They afford individuals little control over their living space. Finally, there is a risk to women queuing to enter shelters from male sexual predators who loiter in the vicinity to target victims who are unable to access shelters.

(d) The Applicants had no choice but to reside in encampments instead of sleeping on the street, because encampments function as mutual aid societies where residents share food, blankets and huddle together to stay warm; provide a buffer that mitigates the risk of rape, sexual assault, theft and assault; mitigate the risk of overdosing; provide an emotional support system for residents; and provide physical care and support for disabled residents. Encampments also provide shelter 24 hours, 7 days a week, which mitigates the risk of hypothermia, sunburn, heatstroke, and dehydration; make life less physically taxing because residents are not transient; enable residents to exert control over substance use; promote mental health; provide a sense of community and reduce isolation; and enable residents to attend to wellness beyond survival. Encampments enable residents to live continuously in a single location, which enhances their access to: medical care; social workers or other system navigators who can help residents access social programs; harm reduction supplies and treatment; medication delivery; food donations; and donations of blankets, clothing, and mobile phones.

(e) Most of the Applicants remain homeless. After being repeatedly evicted from encampments by the City, many Applicants simply “sleep rough” (i.e., without a tent) in various public parks and/or other public or private spaces in an effort to avoid being further targeted for eviction. Without shelter and a community to protect them, they have experienced and face an increased risk of rape, sexual assault, theft, and violence. Because they can no longer reside encampments, they suffer from the health effects of sleeping out

in the open and being exposed to the elements, including hypothermia and chronic sleep deprivation. Because they no longer reside in a fixed location, and/or they have been forced to move to remote locations to avoid further evictions, their access to medical care, addiction treatment, and support services has been greatly impaired. Most do not have a mobile phone.

(f) Among Hamilton's homeless population, Indigenous persons (23%) and women (53%) are overrepresented. The Applicants reflect this diversity. Seven are Indigenous women ~~and three are non-Indigenous women~~. They also include among their number a transgender black woman, an Indigenous man, and a black man.

(g) The evictions of the Applicants violated sections 7 and 15 rights of the *Charter* in a manner that cannot be justified under section 1. In addition, the relevant provisions of the *Parks By-Law* and/or *Streets By-Law* violate sections 7 and 15 of the *Charter* and cannot be justified under section 1.

Kristen Heegsma

(h) Kristen Heegsma ("Kristen") is a 31 year old Indigenous woman who has been homeless continuously since 2019, after being evicted by family members (although she was occasionally homeless before then). Kristen lives with mental health and substance abuse disorders and receives approximately \$900 in ODSP benefits per month to cover her basic needs and special diet. She is not entitled to a shelter allowance while homeless. Even if she received an additional shelter allowance of \$497 per month, she would be unable to afford housing.

(i) Between 2019 and Fall 2021, Kristen lived in a tent in encampments. In Summer 2020, Kristen was forcefully evicted from the Ferguson Encampment. She went onto stay in three more encampments and was evicted each time. The last time Kristen slept in a tent was at Wolverton Park, in Fall 2021. During these repeated evictions, she lost her belongings, including her tent.

(j) Since Fall 2021, Kristen has slept on the streets with only a sleeping bag.

(k) Within two to three weeks after being evicted from Wolverton Park, Kristin was raped while sleeping on a public bench outside of City Hall. She has been repeatedly robbed and assaulted. Without even the protection of a tent, she often wakes up to discover that her belongings have been stolen.

(l) Kristen has been unable to access a shelter, for many reasons. Kristen has repeatedly tried to get into a women's shelter, without success. She does not have a phone but has her physician and the Wesley Day Centre regularly call women's shelters on her behalf. They are almost always told that the women's shelters are full. In the past, Kristen was periodically able to access a shelter bed, but was repeatedly service restricted for a variety of reasons, including missing curfew and allegations of domestic violence. Kristen has periodically been in a relationship during her periods of homelessness and has at times been unable to access a shelter bed with her partner.

(m) When Kristen cannot get into a shelter and cannot put up a tent, she usually wanders around all night trying to find somewhere safe, putting her at an increased risk of violence. She has slept in stairwells, on the street outside of an overflow shelter, and on a park bench. As a result, Kristen hardly sleeps at night. Instead, she is up for days at a time, and then crashes. She regularly falls asleep during the day. In late May 2020, she fell asleep while walking and fell, hitting her head and cutting it open.

(n) Kristen would prefer to live in a tent again for the following reasons: a degree of privacy in order to get changed, be removed from the public gaze; improved sleep; protection against the risk of sexual assault, assault and theft by having a physical barrier, locking her tent, and having the protection of friends and allies in an encampment; improved mental health that comes from a sense of belonging and community, which translates into a lower dependence on drugs lower risk of overdose; and maintaining connections to street outreach supports such as medical care.

Cassandra Jordan

(o) Cassandra Jordan ("Cassandra") is a 39 year old Indigenous woman who has been homeless since August or September 2020. Cassandra became homeless after an

unlawful eviction from her rental unit. Cassandra is a person living with disabilities, in receipt of ODSP. Her medical conditions include degenerative disc disease, chronic pain and substance abuse disorder.

(p) When Cassandra first became homeless, she could not access a shelter bed because she was told that they were all full. This led her to erect a tent at the Ferguson Encampment, from which she was eventually evicted. Although she was offered space in a hotel during the eviction, it was not held for her while she coordinated storage of her belongings. In the end, she did not secure a shelter space. She was left on the street. She lost her tent in the eviction.

(q) Cassandra has continued to reside in various encampments after being unable to access women's shelters because they were full. When she resided in an encampment, Cassandra developed a community that looked out for one another which helped to prevent robberies and assaults.

(r) Casandra has been repeatedly evicted from encampments. Cassandra has witnessed a heavy police presence with By-law officers at encampment evictions, along with bobcats and garbage trucks to dispose of peoples' belongings. Cassandra describes the evictions as intimidating, traumatizing and forceful, and she felt that she had no option but to comply with By-law officers' directions to move. She has repeatedly lost her tents in evictions. Having to pack up and move from encampment to encampment is exhausting physically, mentally and emotionally.

(s) Cassandra was subject to a forceful eviction while she was recovering from third degree burns on her legs. This led to her placement in the Barrett Centre, a shelter for individuals experiencing a mental health crisis. There were no shelter beds available when Cassandra was discharged from the Barrett Centre. She once again was forced to sleep on the street. She stayed with her mother in her subsidized rental unit temporarily but was required to leave to avoid breaching the guest rules for subsidized housing

(t) In February 2022, Cassandra attempted to get into Carol Anne's Place, an overflow shelter for women. She was denied entry because she had tested positive for COVID-19. She was forced to sleep outside in the freezing cold without a tent.

(u) Cassandra has continued to attempt to access women's shelters but has not been consistently able to do so because of an ongoing lack of shelter space for women. Without being able to erect a tent in an encampment, Cassandra has been forced to stay on the streets: in tunnels, outside of Tim Horton's, the back of City Hall, and outside of churches. When she has to sleep outside without a tent, she is often alone and in hidden, hard to find spaces. She has been robbed while sleeping outside.

### Misty Marshall

(v) Misty Marshall ("Misty") is a 30 year old Indigenous woman who has been homeless for just over two years.

(w) Misty has a past history of opiate use disorder, major depressive disorder with suicidal ideation and asthma and stimulant use disorder. She has a history of abuse in childhood and has been in abusive relationships throughout her adult years. Misty's asthma is exacerbated when she is homeless and living in a tent due to oppressive humidity. While homeless and living in a tent her asthma has deteriorated to point that she has required emergency treatment.

(x) Without access to a shower or laundry facilities, Misty has presented with a severe case of head lice that caused underlying cellulitis (skin infection) to her scalp and ears. She has also had extensive body rashes caused likely by scabies.

(y) A physician treating Misty lost contact with her immediately following her eviction from the Ferguson Encampment. Her physician reconnected with her a year later and reported that Misty had drastically decompensated physically and mentally since she was last seen. Misty's street outreach physician was better able to connect with Misty and treat medical issues, but only when they knew where Misty was living. In the opinion of her physicians, had Misty remained in one place, she would not have decompensated to the extent that she did.

(z) As well, it is difficult to establish trust with Misty and this results in her unwillingness to accept help from people readily. Trust can be established with continuity of connection.

(aa) Since becoming homeless, Misty has been unsuccessful in accessing shelter in the women's shelter system. She has attempted to get into the overflow at Carol Anne's Place, but through hard experience has learned that there is little chance of getting in, even after lining up for entry at 10:00 pm. She sometimes feels that it is not worth trying, because she is that much more at risk of violence if she does not have a plan for the night by 10:00 pm. While lining up outside of Carol Anne's Place, Misty has witnessed men driving around Carol Anne's Place soliciting the women in line for sex.

(bb) Misty has stayed in a tent in several encampments as a result of not getting into the women's shelters. She has been evicted from all of these encampments and has lost belongings in the evictions. In some instances, she was only given 20 minutes notice to move. She has witnessed bobcats removing encampment residents' possessions during the course of eviction. Housing support and shelter was not offered to Misty at the time of her evictions from encampments.

### Sherri Ogden

(cc) Sherri Ogden ("Sherri") is a 28 year old Indigenous woman in receipt of ODSP. She has been homeless for the past five years. Like the other applicants, Sherri has not been successful in accessing women's shelters, which has resulted in her staying in tents in encampments, only to be evicted and displaced to other encampments. During the course of these evictions, the City has disposed of her possessions, including her tents.

(dd) Sherri does not have a mobile phone. Staff at the Wesley Day Centre have repeatedly tried to get her into shelter but have been told that they are full. Sherri did secure a hotel stay (with a temporary hotel program funded by the City and staffed by Mission Services) for two weeks with an ex-boyfriend but was kicked out over a false allegation of domestic violence that she tried to dispute. She was banned from the hotel for one month. The hotel program has since ended.

(ee) Sherri's applications for supportive and transitional housing both the YWCA and Indwell have been denied because of her complex mental health issues that allegedly exceed the supports available in these programs.

(ff) Without being able to stay in an encampment in a tent, Sherri sleeps in stairwells, parking garages and in parks with only a blanket. She hardly sleeps.

Christine Delorey

(gg) The applicant Christine Delorey ("Christine") is a 33 year old woman in receipt of Ontario Works. She became homeless for the first time in her life when her father kicked her and her (now former) spouse out of his house in 2019. Without shelter space for her and her spouse as a couple, they erected a tent by the Urban Core Encampment where they could remain together and close to healthcare, food and supports.

(hh) Christine prefers to stay in a shelter but is not always able to access it because they are usually full. She was able to access the City's temporary hotel program with her spouse. However, the City accused them of domestic violence based on a verbal argument, and immediately kicked them out and onto the street without alternative shelter, and without an opportunity to challenge the decision. In February 2021, and while pregnant, she was kicked out of another hotel due to a false accusation of selling drugs.

(ii) In order to access an overflow bed at Carol Anne's Place, she lines up for entry hours before the 10:00 pm entry time. She was successful on some nights, and unsuccessful on other nights. When she is unable to access shelter and is not able to erect a tent, she stays in corridors, couch surfs, sleeps in the open with a sleeping bag, finds a parking garage to hide in and sleep, or wanders the streets without sleeping.

(jj) When there is not a space in shelter, a tent offers Christine protection from the elements, privacy and some degree of safety. Being in a tent eases her mental and emotional wellbeing compared to without because she is more sleep deprived without a tent.

Jahmel Lopierre

(kk) Jahmel Lopierre (“Jammy”) is a 32 year old black transgender woman in receipt of OW. She has been diagnosed with PTSD, anxiety, depression and substance abuse disorder. She has been homeless one and off for about three years.

(ll) Most recently, Jammy became homeless after being evicted from the Transitional Living Program at the YWCA.

(mm) Jammy has been kicked out of the temporary hotel program for missing curfew. She fled a women’s shelter after being threatened with being issued a form under the *Mental Health Act*.

(nn) Jammy has been denied access to women’s shelters when they are full. In some cases, Jammy will change her clothing to present as a male in order to get into men’s shelters. Having to change her gender expression and identity in order to access a shelter bed is degrading and harmful to her wellbeing.

(oo) It is difficult for Jammy to function in the congregate shelter system because she feels anxious around large groups of strangers and has trouble sleeping. She has experienced theft in shelters and feels that she has no control over her life.

(pp) Jammy has experienced routine evictions from encampments by police and has been ticketed repeatedly while homeless. She never has a good night’s sleep because of a lack of a stable and secure place to stay overnight and feels safer in a tent because she has control over who is around her.

(qq) Jammy no longer erects a tent when she is outside of shelter because of the City’s increased enforcement measures. She knows she will just be told to move.

Darrin Marchand

(rr) Darrin Marchand has chosen to live in an encampment because he has had negative experiences in shelters, including witnessing a fellow resident being attacked with a machete by another resident in December 2020. Darrin has also been service-restricted,



or banned, from various shelters at different times, which means that even when he wants to secure shelter where he was not victimized, he is unable to. Darrin has been service restricted from all shelters for long periods, including several consecutive months, leaving him with no option but to sleep on the street.

(ss) Darrin would suffer adverse emotional and physical impacts such as significant levels of stress if he were to be displaced from his encampment. Darrin receives medical care and food support in the encampments.

(tt) At times, Darrin has slept out in the open in the streets for months without a tent. Darrin was the victim of a random shooting while sleeping without a tent on the stairs of a church and believes that he would not have been shot had he been in a tent. It was only when he was shot that a shelter lifted a restriction allowing him to enter, but he was kicked out mid recovery.

#### Ashley MacDonald

(uu) Ashley MacDonald (“Ashley”) is a homeless Indigenous woman, and she has had no other option but to live in an encampment for several reasons, including the ongoing shortage of shelter beds for women in the City, being repeatedly service restricted, or banned, from shelters. Ashley has a substance use disorder and other mental health issues and has faced discrimination in the shelter system. Ashley has also been denied access to supportive and transitional housing programs because of her high acuity needs. Being able to remain in one encampment would allow Ashley the stability she needs to maintain ongoing and recurrent street outreach healthcare, and pursue treatment for her mental health and substance use.

#### Shawn Arnold

(vv) Shawn Arnold (“Shawn Arnold”) chose to live in an encampment because he feels unable to access shelter spaces because he is recovering from past substance use, and reasonably fears that the rampant substance use in shelters is a threat to his sobriety. Shawn was also assessed under the *Encampment Protocol* as being high acuity, and as such was permitted to remain at the J.C. Beemer Park Encampment. While an encampment resident,

Shawn was able to benefit from a nearby methadone treatment program, receive meal support and connect with other social supports including a housing worker that secure his current housing. The stabilized encampment location was critical to securing housing, illustrated by the fact that he almost lost a housing offer after being evicted from his encampment, causing him to lose contact with his housing worker.

Gord Smyth

(ww) Gord Smyth (“Gord”) chose to live in an encampment because there is a shortage of affordable housing in the City that has been exacerbated by the COVID-19 pandemic.

(xx) Gord cannot live in a shelter. He has mental health disabilities, including a personality disorder, which make it difficult for him to be around groups of people for sustained periods. Gord also has a dog who would not be allowed in shelters and separating from his pet would have a significant impact on his mental health.

(yy) When living in encampments, Gord has had regular access to community agencies and volunteers who deliver meals, hygiene products, and medical supports.

(zz) Gord was repeatedly evicted from encampments in breach of the *Encampment Protocol*. He was only given 7 days’ notice to move. He also was required to move without having had a VISPD assessment completed. On one occasion, Gord was evicted from an encampment within three hours of having been evicted from another encampment. During the course of his encampment evictions, the City did not offer him alternatives to congregate shelter options that accommodate his disability related needs. The constant evictions and the threat of evictions from encampment were mentally and emotionally draining and demoralizing.

(aaa) After several evictions, a paramedic administered Gord a Service Prioritization Decision Assistance Tool (“VISPD”), the results of which qualified him to remain in his encampment indefinitely. However, the City refused to accept these results. Although the City presented Gord with rental options, none of them were affordable. Gord was finally

offered a unit with City Housing Hamilton that was subsidized and moved into it on November 27, 2021.

Mario Muscato

(bbb) Mario Muscato (“Mario”) is a severely disabled 48 year old Indigenous man who has been homeless since 2017. He was evicted from his accommodation due to an administrative error with Ontario Works. He has resided in encampments when he cannot access shelters.

(ccc) Mario has had negative experiences in the shelter system, including: being unable to access shelter because they are full; being service restricted and routinely being kicked out; having his personal items stolen; experiencing discrimination as a person living with disabilities; and experiencing discrimination as an Indigenous person on the basis of race and creed.

(ddd) Mario does not have the use of his hands and is an amputee. He is a victim of childhood abuse. He has also been diagnosed with opioid use disorder, stimulant use disorder, HIV, post-traumatic stress disorder, major depressive disorder, acquired brain injury, extensive burn injury from neck to face causing chronic pain, severe neuropathy to both upper extremities, and right forearm amputation.

(eee) Mario relies on other encampment residents to assist him with his activities of daily living because he does not have functioning hands. Encampment evictions deny him access to assistance from other residents and friends, for example, to erect a tent, change his clothes, open doors, and cover himself. He cannot erect and dismantle a tent or carry all of his possessions on his own due to his disabilities.

(fff) He has been evicted from encampments and lost his tent on numerous occasions. Evictions are very physically taxing, and this adds to his depressive state where he feels like he would prefer to die.

(ggg) When Mario is forced to sleep in the open, he experiences sleep deprivation, feels unsafe, is not able to meet his basic needs because of a loss of support from other

encampment residents and friends, experiences a deterioration in his mental health and greater sleep deprivation.

(hhh) Although Mario strives to remain connected with medical and housing supports, his constant transiency makes it exceedingly difficult.

Linsley Greaves

(iii) Linsley Greaves (“Linsley”) is a 52 year old black man in receipt of OW.

(jjj) Linsley has had periods of homelessness for over ten years. His most recent housing ended two years ago, after his roommates did not pay their share of the rent. Since Linsley’s name was on the lease, he was evicted.

(kkk) Linsley has stayed in men’s shelters on and off during his periods of homelessness. He has had several negative experiences, including theft, being incited to fight, and having trouble sleeping. Linsley has had several experiences of racism while in shelter, including being repeatedly subjected to the use of the “N” word, being racially profiled, and lacking a sense of community with other Black Canadians.

(lll) Linsley has difficulties functioning in a shelter environment because of his substance use disorder. He is dependent on substances which are not permitted in shelters. This requires him to both hide his drug use and frequently leave. He knows that every time he is absent from the shelter, he risks not being allowed back in.

(mmm) Linsley stayed in a tent in one encampment for almost two years, including during the time the *Encampment Protocol* was in force. During this time, he developed a community. Three women lived beside him for safety and would call out to him if they needed protection.

(nnn) Linsley stopped putting up a tent after his eviction because he knew it would not take long for the City to evict him again. Although he tried to use tarps to provide some protection against the elements, he developed frostbite in his left toes in or about March 2022 when he was sleeping outside with just a blanket. Linsley is slowly losing one of his big toes, and the tips of his other toes.

(ooo) Linsley finds it difficult to sleep in the open because he constantly moves around trying to stay warm and safe. Even without a tent, the City tells him to move along. The constant moving worsens his anxiety. As a result of being unable to sleep properly at night, Linsley falls asleep during the day whenever possible, and has trouble concentrating.

Brad Caldwell

(ppp) Brad Caldwell ("Brad") is a 57 year old homeless man in receipt of the ODSP. He has been homeless for roughly three years. His loss of housing coincided with his wife's passing.

(qqq) Brad has had negative experiences from staying in shelters. He had his possessions stolen more often in shelters than on the street. He has been kicked out of shelter for not securing housing on time, which he could not do because accommodation was not unaffordable. Brad has found the shelter system unreliable. He has been unable to get into shelter because it is full, and he has been kicked out during his stays.

(rrr) When the men's shelter hotel program ended, he was kicked out without a transition plan to alternative shelter. He was forced to sleep on the street.

(sss) Brad has been evicted from various encampment. In some instances he has only received 24 hour notice. He has witnessed evictions where dump trucks and garbage disposal attend and load up residents' tents and possessions. He had not been offered guaranteed shelter prior to eviction.

(ttt) Brad has also been issued roughly fifty to sixty tickets for either sleeping in a public space or in a tent in an encampment. He will comply with a direction to move to avoid escalating the situation, and because of the fear of charges.

(uuu) Brad has difficulty managing his diabetes while homeless because he does not have proper refrigeration to store insulin, and his glucose meter has been stolen from him because it has been mistaken for a digital scale to measure drugs.

(vvv) For Brad, the benefits of staying in a tent include being able to enhance safety through community with other encampment residents, staying warm together to avoid

~~freezing to death, remaining close to services, and lessening sleep deprivation by stabilizing his immediate environment.~~

~~(www) — Brad has suffered from infections which have required hospitalization. Because he has been discharged into homelessness where he is exposed to the elements, experiences sleep deprivation, and needs to move, he cannot fully recover and remain healthy.~~

~~(xxx) — When sleeping in the open, Brad is so physically taxed and tired that his body gives up on him, and he is forced to sleep where his body stops him.~~

### Corey Monahan

(yyy) Corey Monahan (“Corey”) is 45 years old, has been homeless for the majority of his life. He is an ODSP recipient.

(zzz) Corey has been diagnosed with fetal alcohol syndrome, attention deficit hyperactivity disorder, and substance abuse disorders. He receives healthcare through the Shelter Health Network and has reported distress sleeping outside, and frustration in not being able to access shelter despite advocacy efforts due to restrictions. His state of homelessness causes mental distress and the stress of it has negatively impacted his mental health.

(aaaa) Despite Corey’s best efforts to reside in shelters, he cannot so do so. Space is not always available. Moreover, staying in shelters has significant adverse effects on his mental health, because he does not function well in congregate settings. In some cases, he has had physical altercations with other shelter residents, which have led him to be service restricted.

(bbbb) Corey sleeps in a tent in an encampment. Evictions displace him from encampment to encampment. This has been very destabilizing, psychologically draining and traumatizing. He usually cannot remove all of his possessions and tent in advance of an eviction. He avoids watching City officials tear down his tent because it is traumatizing for him.

Patrick Ward

(cccc) — Patrick Ward (“Patrick”) is 59 year old man with disabilities. He is an ODSP recipient.

(dddd) — Patrick became homeless for the first time in 2017, when the residential care facility that he was renting a room from was abruptly and without notice closed.

(eeee) — Upon eviction, he went to a shelter but found was the victim of assaults and theft. The shelter space was detrimental to his mental and emotional wellbeing. He has chosen to erect a tent in an encampment.

(ffff) — Patrick has repeatedly been evicted from encampments, and moved along by By-law officers from various locations to other locations, even though those officers are aware that he continues to violate the *Parks By law* in those new locations. To avoid confrontation with authorities, he has moved to less visible public spaces and into the escarpment.

(gggg) — A tent offers Patrick protection from intruders and shields him from animals and the weather. Being routinely evicted from encampments is physically and psychologically draining.

Ammy Lewis

(hhhh) Ammy Lewis (“Ammy”) is a 43 year old Indigenous woman. She is an ODSP recipient.

(iiii) Ammy was victim to her landlord’s predatory advancements whereby he attempted to extort sex from her. She felt so unsafe that she left her accommodation with her dog who is her constant companion and main source of emotional support. Ammy has been homeless for five months and she has not been accepted into shelter because of her dog.

(jjjj) Ammy relies on her dog for emotional support as well as keeping her safe while she remains without shelter on the street. She sleeps in underground parking lots,

abandoned cars, dumpsters when she does not have a tent. Even without a tent, Ammy is routinely forced to move from where she is in public regardless of the time of day. She has also been assaulted while homeless.

Julia Lauzon

(kkkk) Julia Lauzon (“Julia”) is a 24 year old Indigenous woman who is homeless.

(llll) Julia suffers from significant mental health issues and has not been able to get the medical help that she needs because of a lack of phone and a lack of fixed address, which are all related to her homelessness status. As such, she has not been able to follow through on referrals, she has been cut off from ODSP and has no income at all. There have been multiple unsuccessful attempts to get her help for her addictions, but it is difficult to get a hold of her. She has been to the hospital for suicidal ideations.

(mmmm) Julia has stayed on and off in a tent while homeless because she has been denied access to shelter due to a lack of capacity, however she is occasionally able to get into the overnight drop in center at Carol Anne’s Place.

(nnnn) Being displaced from her tent and its location results in operating in a constant survival mode that results in her inability to focus on other things such as getting to appointments, including medical appointments because of a lack of concentration due to lost sleep and being in survival mode. Julia has been assaulted while living outside without a tent.

(oooo) Julia has a housing worker from the Hamilton Regional Indian center and is on a waitlist for housing.

Glenn Gnatuk and Taylor Gogo Horner

~~(pppp) — Glenn Gnatuk (“Glenn”) and Taylor Gogo Horner (“Taylor”) are a disabled couple in receipt of ODSP. They became homeless five years ago after being evicted from their rental unit. They began couch surfing with friends and family but that was time limited, and they had a negative experience where Taylor was assaulted by one the friends that they stayed with.~~



~~(qqqq) — They were once able to remain as a couple in the hotel shelter program, but this was short lived after they were falsely accused of domestic violence and banned for one year.~~

~~(rrrr) — Taylor has stayed in shelter on only a few occasions and found her separation from Glenn too difficult, causing so much anxiety that she left to return to stay with him in an encampment.~~

~~(ssss) — They have been routinely evicted from several different locations throughout Hamilton. They have since begun to erect their tents in less visible places to stay hidden and avoid enforcement. Sometimes they pre-emptively move to avoid conflict. The constant movement has been destabilizing for them.~~

~~(tttt) — When they were without a tent in the winter, they slept on the grounds of the Children's Museum, only with blankets. They feel that they are always on the run which causes them stress. They hardly sleep because they are worried about their safety. They have experienced severe frostbite, causing their fingers to crack and lose sensation.~~

### Chronology and procedural history

(uuuu) On April 18, 2020, residents of a longstanding encampment located at the Sir John A. MacDonald School ("Sir John A. MacDonald Encampment") in Hamilton advised Hamilton Harm Reduction Action League ("KeepingSix") that they had been given notice to dismantle their tents and move within a week. KeepingSix is a community-based organization that defends the rights, dignity, and humanity of people who use drugs. KeepingSix works closely with the Hamilton Social Medicine Response Team ("HAMSMaRT"), an organization made up of physicians, midwives, and peer workers that provides clinical care to individuals who have difficulty accessing the traditional medical system, primarily the homeless and people who use drugs.

(vvvv) On April 21, 2020, KeepingSix and HAMSMaRT attended a regular weekly meeting with the City of Hamilton ("City") to discuss encampment management and raised concerns about the eviction notice provided to the Sir John A. MacDonald Encampment.

(www) On April 25, 2020, the City evicted the residents of the Sir John A. MacDonald Encampment. KeepingSix and HAMSMaRT attended the eviction. Several residents moved to the encampment at Jackie Washington Park (“Jackie Washington Park Encampment”), because they had been advised that the City could better support individuals on municipal property.

(xxxx) On April 27, 2020, the City provided an eviction notice to the residents of the Jackie Washington Park Encampment.

(yyyy) On May 6, 2020, the City evicted the residents of the Jackie Washington Park Encampment. In the course of the eviction, residents’ belongings were destroyed.

(zzzz) On June 4, 2020, legal counsel from the Hamilton Community Legal Clinic (“HCLC”) and Ross and McBride LLP wrote the City Manager, the General Manager of Healthy and Safe Communities and the Director of Housing Services, setting out legal arguments against encampment evictions based on the harm they caused to health and wellbeing, in the context of the COVID-19 pandemic and a shortage of viable alternatives for shelter. They also requested a meeting.

(aaaaa) On June 26, 2020 legal counsel from the HCLC and Ross and McBride LLP, members of HAMSMaRT and Keeping Six met with legal counsel for the City and representatives from the City’s housing and Community and Social Services departments. During this meeting, they asked the City to pause on the encampment evictions pending a satisfactory resolution of the shelter needs of encampment residents and provided notice to the City that any further eviction would be challenged in the courts.

(bbbbb) On July 7, 2020, the parties met again to further discuss solutions to encampments in Hamilton. The City was again asked to pause encampment evictions pending resolution and reminded that news of any new evictions would lead the parties into litigation.

(ccccc) On July 10, 2020, the City provided notice of an imminent “clean up” (i.e., eviction) to the residents of the York Encampment and Bay Encampment. Within a day, KeepingSix and HAMSMaRT worked with the residents to remove larger items from the

site, which led the City to decide not to bring heavy equipment to clear the two encampments.

(ddddd) On July 13, 2020, Councillor Narinder Nann proposed a motion at a meeting of the Emergency and Community Services Committee of Hamilton City Council to request the City analyze the *National Protocol for Homeless Encampments in Canada* (“*National Encampments Protocol*”) proposed by the United Nations Rapporteur for Housing. The motion carried, with Councillor Terry Whitehead voting against.

(eeee) On July 22, 2020 legal counsel from HCLC and Ross and McBride LLP wrote a second letter to the City, that alleged that the removal of items necessary for an individual to exist in an encampment, such as a tent or bed, was in effect an eviction.

(fffff) On July 20, 2020, Councillor Jason Farr wrote in an email: “To sum up, I am supportive of dismantling the tents and if staff do not act soon, I will have Council order it.”

(ggggg) On July 28, 2020, the City provided notice that it intended to dismantle encampments on July 31, 2020. The City would not commit to refrain from the involuntarily removal of encampment residents.

(hhhhh) On July 29, 2020, counsel for a subset of the current Applicants, KeepingSix and HAMSMaRT commenced proceedings in this Honourable Court for an injunction prohibiting the City from dismantling encampments.

(iiii) On July 30, 2020, this Honourable Court issued a 10 day interim injunction, in *Bailey et al. v. City of Hamilton*, Hamilton Court File No. CV-20-73435.

(jjjjj) On August 7, 2020, the 10 day injunction was extended on consent to a court date set for September 2020.

(kkkkk) On September 30, 2020, the parties executed a settlement agreement, which consisted of: an *Encampment Protocol* which required the City to assess and accommodate individual needs before evicting encampment residents, which in some cases resulting in residents remaining in certain sanctioned encampments indefinitely, and which established

rules around the permissible size and locations of encampments; and a confidential Letter of Understanding, which included a term that the City could remove the largest Ferguson Encampment.

(lllll) Between September 30, 2020 to August 2021, HCLC, KeepingSix and HAMSMaRT had many disagreements with the City over its failure to comply with the *Encampment Protocol* as a result of the perception that the City was not applying the *Encampment Protocol* in the spirit in which it was negotiated. HCLC repeatedly requested a meeting with the City to discuss possible solutions, to no avail.

(mmmmm) On August 9, 2021, Hamilton City Council voted to repeal the *Encampment Protocol* in an emergency meeting, without notice to, or consultation with, the parties to the settlement agreement who had negotiated the *Encampment Protocol* or encampment residents.

(nnnnn) The City delayed new encampment evictions until August 30, 2021.

(ooooo) On September 9, 2021, a peaceful protest of the revocation of the *Encampment Protocol* took place outside City Hall. Representatives from HCLC, HAMSMaRT, Keeping Six, the YWCA, Hamilton Regional Indian Centre, and the Wesley Day Centre all decried the sudden decision taken without consultation, and implored the City to sit down with stakeholders to develop a new approach to encampments. On the same day, the City released a “Six Step Encampment Response” at a meeting of Hamilton City Council. This policy framework does not adhere to or align with the *National Encampments Protocol*. At the same Council meeting, Dr. Jill Wiwcharuk from HAMSMaRT and Marcie McIlveen from KeepingSix addressed the Council, and informed them of the issues with shelter shortages, and harm to encampment residents from evictions. Stephanie Cox, counsel in the within Application, addressed the Council meeting to raise legal concerns.

(ppppp) On September 17, 2021, the City engaged in encampment evictions at the Durand Encampment and Wellington Park Encampment. On September 20, 2021, a further eviction took place at the J.C. Beamer Park Encampment. On these occasions, the City only provided two hours verbal notice to encampment residents to vacate. The City did not

provide written notice of a By-law infraction. The City did not offer appropriate indoor shelter options prior to the eviction. Subsequently, By-law officers and Hamilton Police Services have regularly attended various encampments and only given verbal notice to vacate.

(qqqqq) On October 4, 2021, the Applicants issued this Notice of Application, and brought a motion for an *ex parte* injunction against the City to prohibit it from using its By-laws to evict encampment residents. This Honourable Court directed that the City refrain from encampment evictions pending its ruling.

(rrrrr) On October 13, 2021, the Manager of Housing Service's reported to City Council that: there was not enough shelter space for encampment residents to move into; the system cannot accommodate all unsheltered person's needs; that "the suitability of those [shelter] beds it needs to be discussed as much as the availability of those beds"; that it was "unconscionable to put these individuals into beds or units without the right supports because it creates in many instances, more stress on the individual, whether it's through isolation, whether it's through not meeting their needs"; that there was nowhere else for people to go than to sleep in encampments; that Hamilton has always had people "sleeping rough even in the winter"; and that during the operation of the *Encampment Protocol*, "many [encampment residents] have had weeks or months potentially of stability which no longer the case, because this has been a tremendous traumatic experience for everybody involved."

(sssss) On November 2, 2021, this Honourable Court dismissed the motion for an interim injunction, in *Poff v. City of Hamilton*, 2021 ONSC 7224.

(ttttt) The City of Hamilton immediately recommenced encampment evictions, notwithstanding the City's awareness that many encampment residents had no indoor shelter options. In some cases, shelters were full at the time of eviction. In other instances, the evicted encampment residents were service restricted from shelter. On November 6, 2021, Councillor Nann Tweeted: "I'm here at Woodlands Park to observe an encampment clearing. I have been informed HPS on-site whom have been providing direct engagement that there are no shelter spaces for the couples nor the individuals remaining here."

(uuuuu) On December 9, 2021, Councillor Nann proposed a motion to the Emergency and Community Services Committee of Hamilton City Council for a human rights based approach to encampment evictions. This motion passed. To date, the approach to responding to encampments outlined in this motion has not come to fruition.

(vvvvv) On March 22, 2022 Councillor Farr proposed a motion that was adopted by City Council, which directs City staff to expedite encampment evictions, and specifically to: issue a Trespass Notice within 12 to 72 hours after staff receive the first complaint regarding unauthorized camping a City or public place; immediately notify the Hamilton Police Service of the Trespass Notice for enforcement purposes; and enforce the By-laws against encampments 24 hours a day, seven days a week. The City of Hamilton allocated \$416,673.73 to hire four new By-law officers to ensure that tents were removed from parks within 12 to 72 hours.

(wwwww) In response to Councillor Farr's motion, City staff stated the following at the Council Meeting: "there is currently no capacity for families or couples in the shelter system, but between 15 and 20 spaces each in the men's and women's systems"; "even when there is space available, some people can't access it due to issues such as having a pet or having had past behavioural issues at the shelter that can lead to barred access"; "we do not have enough housing"; and "we do not have enough beds".

(xxxxx) Since the adoption of Councillor Farr's motion, the eviction against encampment residents has dramatically increased, with evictions taking place continuously. Some former encampment residents have gone deeper into hiding to avoid enforcement, making them more vulnerable and disconnected from supports. Individuals are now "sleeping rough" without even a tent to protect them from the elements and provide a basic level of personal security. Some individuals use a patchwork of tarps, blankets and sheets in a desperate attempt to recreate the protection offered by tents.

#### Causes of homelessness

(yyyyy) Individuals become homeless for a number of different reasons.

(zzzzz) A major reason for homelessness is the housing precarity has become an unfortunate reality in Hamilton.

- (i) The costs of rental accommodation have increased sharply, and in some cases has become completely unaffordable.
- (ii) ODSP and Ontario Works benefit levels are insufficient, even with a housing allowance.
- (iii) Since poverty intersects with, race, indigeneity, and disability, housing precarity is experienced disproportionately by those groups.

(aaaaaa) Another cause of homelessness is the breakdown of relationships.

- (i) Women may become homeless when fleeing domestic abuse at the hands of male partners.
- (ii) Individuals may also become homeless if they are forced to leave accommodation shared with family or friends.

(bbbbbb) Some individuals with complex mental health, addiction and/or trauma cannot function in independent living.

(ccccc) Chronically homeless individuals may become trapped in a vicious cycle of homelessness they cannot escape.

*Why homeless individuals do not go to shelter*

(ddddd) Homeless individuals do not enter shelters for many reasons.

(eeeeee) The demand for shelter spaces often exceeds supply, as the Applicants' firsthand experiences attest to. Moreover, aggregate supply and demand mask inequalities in the availability of shelter for different groups:

- (i) There is a dramatic undersupply of shelter space for women, which reflects underfunding that is a product of the hidden nature of

homelessness for women and a hierarchy of deservingness that systematically devalues the need of women for shelter.

- (ii) There is a shortage, and often a complete absence, of shelters which permit couples to stay together.
- (iii) Although Hamilton has a shelter for indigenous women fleeing domestic violence, it does not have a shelter for indigenous men, couples, youth, or Two Spirit individuals.

(fffff) There are structural barriers in the design of shelters that prevent individuals from using them:

- (i) Admission to shelters is on a first come, first served basis, without any prioritization based on need.
- (ii) Shelters impose a limit to the number of nights that individuals can stay – they are at best temporary and are never a permanent accommodation solution.
- (iii) The design of the shelter system also discriminates on the basis of disability.
  - (1) Shelters cannot meet the needs of individuals with complex mental health, addiction and/or trauma, who therefore decided not to enter them;
  - (2) Some disability-related behaviours conflict with shelter policies. Individuals with substance dependencies can neither use them while in shelter, nor bring harm reduction materials into shelters to help them recover from addiction;
  - (3) Individuals have mental health disorders which may trigger disruptive behaviour in the congregate setting of a shelter; and



(4) It is physically taxing for some disabled individuals with mobility issues to enter and leave shelters every day.

(iv) Shelters do not accommodate Indigenous cultural practices. In addition, the design of shelters may reinforce intergenerational trauma and the lack of trust in institutions arising from the systemic abuse of Indigenous children in residential schools.

(v) Shelters are congregate settings where individuals who have been victims of assault and theft and are unwilling to enter shelter to face that risk again.

(vi) Shelters are congregate settings that create the risk of infectious disease spread, as became apparent during the COVID-19 pandemic.

(vii) Shelters do not permit pets, which provide important emotional support to individuals.

(viii) Shelters do not permit individuals to keep personal items with them, beyond their immediate personal effects.

(ix) Shelter rules afford individuals little or no control over their living space and micromanage them. For example, shelters impose a strict curfew. Moreover, these institutional rules can elicit a trauma response.

(x) Shelters may be situated in remote locations which are hard to reach on foot.

(gggggg) Finally, there is a risk to women queuing to enter shelters from male sexual predators who loiter in the vicinity to target victims who are unable to access shelters.

Why homeless individuals who do not go to shelter erect tents in encampments

(hhhhhh) Homeless individuals who do not shelter for any of the reasons above may choose to erect tents in encampments instead of sleeping on the street, for a number of reasons.

(iiiiii) Encampments give rise to communities that provide individuals with safety:

- (i) They function as mutual aid societies, where residents share food, blankets, and even huddle together to stay warm in the cold weather.
- (ii) They provide a buffer that mitigates the risk of rape and sexual assault, theft and assault for residents from non-residents.
- (iii) They mitigate the risk of overdosing, because of the presence of peers.
- (iv) They provide an emotional support system for residents.
- (v) They provide physical support and care for disabled residents.

(jjjjjj) Encampments provide health benefits to their residents compared to living in the open:

- (i) They provide shelter 24 hours a day, 7 days a week. By contrast, shelters only provide accommodation in the evenings.
- (ii) They mitigate the risk of hypothermia, by providing protection from the wind, rain, snow, and cold.
- (iii) They mitigate the risk of sunburn, heatstroke, and dehydration, by providing protection against the sun.
- (iv) They make life less physically taxing for residents because they are less transient than if they lived in shelters on the street.

- (v) They enable residents to exert control over substance use – either to use it, or to avoid them – by enabling them to choose their peer group.
- (vi) They promote mental health, by providing a feeling of safety for individuals who distrust institutions, based on negative experiences.
- (vii) They provide a sense of community and reduce social isolation.
- (viii) They enable residents to attend to their wellness beyond basic survival.

(kkkkkk) Encampments enable their residents to live with greater dignity compared to living in the open:

- (i) They provide a modicum of privacy and solitude, essential for many basic functions including sleep.
- (ii) They enable couples to live together in the same tent.
- (iii) They enable residents to have pets that provide them with emotional support.
- (iv) They enable residents to keep personal possessions beyond their immediate personal effects.
- (v) They enable residents to come and go as they please without a curfew.
- (vi) They enable residents to plan their lives, because they know where they will be sleeping at night.
- (vii) They enable residents to satisfy their desire for autonomy.
- (viii) They enable residents to build stable relationships with other residents.

(lllll) Encampments enable residents to live continuously in a single location, which enhances their access to:

- (i) medical care;
- (ii) social workers or other system navigators who can help residents access social programs (e.g. the Ontario Disability Support Program, Ontario Workers, and public housing), and apply for government issued identification;
- (iii) harm reduction supplies and treatment;
- (iv) medication delivery;
- (v) food donations; *and*
- (vi) donations of blankets, clothing, and mobile phones.

Harms from encampment eviction

(mmmmm) Encampment evictions harm residents in many ways.

(nnnnn) Evictions deprive former encampments residents of the safety that comes from the encampment community:

- (i) They face additional hurdles to sharing food and blankets and huddling together to stay warm.
- (ii) They lose the buffer that mitigates the risk of rape and sexual assault, theft and assault for residents from non-residents.
- (iii) They lose the peer group that mitigates the risk of overdosing.
- (iv) They lose the emotional support system provided by other residents.
- (v) Disabled residents lose the physical support and care they receive from other residents.

(oooooo) Evictions force former encampment residents to live in the open, which is harmful to their health:

- (i) They face a greater risk of hypothermia because they are exposed to the wind, rain, snow, and cold.
- (ii) They face a greater risk of sunburn, heatstroke, and dehydration because they are exposed to the sun.
- (iii) They face a life that is more physically taxing because their lives are now transient.
- (iv) They lose the ability to exert control over substance use, because they can no longer choose their peer group.
- (v) They may suffer worsened mental health because they lose a feeling of safety.
- (vi) They lose a sense of community and experience increased social isolation.
- (vii) They cannot attend to their wellness beyond basic survival.

(pppppp) Evictions undermine the dignity of former encampment residents:

- (i) They lose all privacy and the ability to seek solitude.
- (ii) Couples face greater hurdles in living together in the same tent.
- (iii) They lose the ability keep personal possessions beyond their immediate personal effects.
- (iv) They lose the ability to plan their lives, because they no longer know where they will be sleeping at night.
- (v) They lose the ability to build stable relationships with other residents.

(qqqqqq) Evictions impede the access of former encampment residents to:

- (i) medical care, including the diagnosis and treatment of medical conditions, and treatment for normal life conditions such as pregnancy;
- (ii) social workers or other system navigators;
- (iii) housing supports and connections;
- (iv) harm reduction supplies and treatment;
- (v) medication delivery;
- (vi) food donations; *and*
- (vii) donations of blankets, clothing, and mobile phones.

(rrrrrr) In addition, former encampment residents may move to remote locations to avoid further evictions, which put them at a greater geographical distance from the services and supports listed in the previous paragraph.

(ssssss) The process of eviction harms former encampment residents:

- (i) They lose their possessions.
- (ii) They experience dislocation.
- (iii) They experience emotions of fear, loss, and grief
- (iv) They may experience the exacerbation of pre-existing mental health conditions.
- (v) They may lose trust in authority in the police, governments and other public institutions.

Section 7

(tttttt) Sections 3 (hours of entrance), 12 (encroachment), 17 (camping and lodging) and 18 (tents and structures) of the *Parks By-Law*, and section 16(12) of the *Streets By-Law*, violate section 7 of the *Charter*, because they deprive homeless individuals of their liberty and/or security of the person, in a manner that is not in accordance with the principles of fundamental justice.

(uuuuuu) These violations of section 7 cannot be justified under section 1 of the *Charter*.

(vvvvvv) The eviction of the Applicants from encampments violated section 7 of the *Charter*, because those evictions deprived them of their liberty and/or security of the person, in a manner that was not in accordance with the principles of fundamental justice.

(wwwwww) These violations of section 7 cannot be justified under section 1 of the *Charter*.

(xxxxxx) The interpretation of section 7 of the *Charter* must comply with Canada's international legal obligations under the *International Covenant of Economic, Social and Cultural Rights*, including (but not limited to) Article 11(1), the right to adequate housing.

Section 15

(yyyyyy) Sections 3 (hours of entrance), 12 (encroachment), 17 (camping and lodging) and 18 (tents and structures) of the *Parks By-Law*, and section 16(12) of the *Streets By-Law*, violate section 15 of the *Charter*, because they discriminate on the basis of race and/or indigeneity, sex, disability, and marital status, either separately or in combination (i.e., intersectional discrimination).

(zzzzzz) These violations of section 15 cannot be justified under section 1 of the *Charter*.

(aaaaaa) The eviction of the Applicants from encampments violated section 15 of the *Charter*, because those evictions discriminated against them on the basis of race and/or

indigeneity, sex, disability, and marital status, either separately or in combination (i.e., intersectional discrimination).

(bbbbbbb) These violations of section 15 cannot be justified under section 1 of the *Charter*.

(ccccccc) The interpretation of section 15 of the *Charter* must comply with Canada's international legal obligations under the *International Covenant of Economic, Social and Cultural Rights*, including (but not limited to) Article 11(1), the right to adequate housing.

**3. The Applicant relies on the following legal instruments:**

- (a) The *Canadian Charter of Rights and Freedoms*.
- (b) The *Constitution Act, 1982*.
- (c) *International Covenant on Economic, Social and Cultural Rights*.
- (d) City of Hamilton *By-Law No. ~~01-129~~ 01-219* ("*Parks By-Law*").
- (e) City of Hamilton *By-Law No. 86-077* as amended by *By-Law No. 97-162* ("*Streets By-Law*").
- (f) City of Hamilton *By-Law No. 11-285* ("*Noise Control By-Law*").
- (g) City of Hamilton *By-Law No. 20-077* ("*Public Nuisance By-Law*").
- (h) Such further and other grounds as counsel may advise and this Honourable Court may permit.

**4. The following documentary evidence will be used at the hearing of the Application:**

- (a) Affidavit of Kirsten Heegsma.
- (b) Affidavit of Darrin Marchand.



- (c) Affidavit of Gord Smyth.
- (d) Affidavit of Mario Muscato.
- (e) Affidavit of Shawn Arnold.
- (f) ~~\_\_\_\_\_ Affidavit of Bradley Caldwell.~~
- (g) ~~\_\_\_\_\_ Affidavit of Christine Delorey.~~
- (h) ~~\_\_\_\_\_ Affidavit of Glenn Gnatuk and Taylor Gogo Horner.~~
- (i) Affidavit of Cassandra Jordan.
- (j) Affidavit of Julia Lauzon.
- (k) Affidavit of Ammy Lewis.
- (l) Affidavit of Ashley Macdonald.
- (m) Affidavit of Corey Monahan.
- (n) Affidavit of Misty Marshall.
- (o) Affidavit of Sherri Ogden.
- (p) Affidavit of Jahmal Pierre.
- (q) Affidavit of Linsley Greaves.
- (r) ~~\_\_\_\_\_ Affidavit of Patrick Ward.~~
- (s) Affidavit of Audrey Davis.
- (t) Affidavit of Leilani Farha.
- (u) Affidavit of Stephen Gaetz.
- (v) Affidavit of Kate Hayman.

- (w) Affidavit of Stephen Hwang.
- (x) Affidavit of Ameil Joseph.
- (y) Affidavit of Olivia Mancini.
- ~~(z) Affidavit of Lisa Nussey.~~
- (aa) Affidavit of Andrea Sereda.
- (bb) Affidavit of Kaitlin Schwan.
- (cc) Affidavit of Medora Uppal.
- ~~(dd) Affidavit of Ruth Toskas.~~
- (ee) Such further and other evidence as counsel may advise and this Honourable Court may permit.

June 15, 2022

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- AND -

CITY OF HAMILTON  
RESPONDENT

A4396

Court File No. CV-21-00077187-0000  
ONTARIO  
SUPERIOR COURT OF JUSTICE

**FURTHER AMENDED FRESH AS  
AMENDED NOTICE OF APPLICATION**

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*This By-law is a consolidated version and includes amendments made by the amending by-laws listed on the following page. This consolidation is prepared for purposes of convenience only and is not the official or legal version of the By-law. For accurate reference to the By-law, certified copies should be obtained through the City Clerk's Office.*

Consolidation Update: June 15, 2022

## **CITY OF HAMILTON**

### **By-law No. 01-219**

### **A By-law To Manage and Regulate Municipal Parks**

## **OFFICE CONSOLIDATION**

**A By-law To Manage and Regulate Municipal Parks  
Consolidation By-law No. 01-219**

**Incorporating amendments made by:**

<b>By-Law No:</b>	<b>Effective Date:</b>	
03-209	July 23, 2003	Amend Section 1 (i) Director definition Amend Section 1 (r) Amend Section 51 Amend Section 53 to add 53 (6)
05-099	April 27, 2005	Delete subsections (j) and (k) of Section 1 and add definition for "General Manager" and "Leash Free Park" Amend Section 3 Amend Section 6 Amend Section 8, subsections (a), (b), (c), (d), (e) and (f) Amend Section 9, subsection (d) Amend Section 10 Amend Section 12 Amend Section 13 Amend Section 14 Amend Section 15 Amend Section 29 Amend Section 32, subsections (2) and (8) Amend Section 33, subsection (1) Amend Section 35 Amend Section 40, subsection (3) and (4) Amend Section 41, subsection (2) Amend Section 43, subsection (b) and (d) Amend Section 44, subsection (2) and (3) Amend Section 45 Amend Section 48 Amend Section 52, subsection (2)(b) Amend Section 56 Amend Schedule B Amend Schedule C
08-065	March 26, 2008	Update to provide for Operation of Segway Personal Transporters in Municipal Parks Amend Section 1, definition "persons with disabilities" and "disabled person" Amend Section 30, subsection (2)
09-179	August 13, 2009	Add to Section 1 (i) Filming event definition Amend Section 46 Amend Section 56 Delete Schedule "B"

20-169	August 21, 2020	<p>Update to City of Hamilton By-law No. 01-219, being a By-law to Manage and Regulate Municipal Parks, and Administrative Penalty By-law No. 17-225 to create Special Enforcement Areas Ward: 13</p> <p>Add Section 32 subsections (13), (14), (15), (16), (17) and (18)</p> <p>Add to Section 56, Schedule "D" – Special Enforcement Areas</p> <p>Add Schedule D, "Schedule "D" – Special Enforcement Areas</p>
20-271	December 16, 2020	<p>Update to explicitly prohibit electric kick-scooters ("E-Scooters") in Hamilton parks except in designated areas and to provide regulations for their permitted use and to Amend By-law No. 17-225, Being a By-law to Establish a System of Administrative Penalties, Table 12 – By-law No. 01-219 To Manage and Regulate Municipal Parks Ward: City Wide</p> <p>Add to Section 1, definition for "E-Scooter:</p> <p>Amend definition for "motorized recreational vehicle"</p> <p>Amend Section 30 (2)</p> <p>Add Section 34.1 "E-Scooters"</p>
22-118	May 25, 2022	Amend Section 13

**City of Hamilton BY-LAW NO. 01-219****TO MANAGE AND REGULATE MUNICIPAL PARKS**

**WHEREAS** Section 191(1) of the Municipal Act, R.S.O. 1990, Chapter M.45, as amended, provides that the council of every corporation may pass by-laws for acquiring land for the purposes of the corporation and for erecting and repairing buildings thereon and for making additions to or alterations of such buildings;

**AND WHEREAS** Section 191(6) of the Municipal Act provides that the council of every corporation may pass by-laws providing for the use by the public of lands of which the corporation is the owner and for the regulation of such use and the protection of such lands;

**AND WHEREAS** the City of Hamilton may exercise all or any of the powers that are conferred on Boards of Park Management by the Public Parks Act, R.S.O. 1990, Chapter P.46, as amended, pursuant to Section 207, paragraph 52 of the Municipal Act;

**AND WHEREAS** Section 207(42) of the Municipal Act, provides for the prohibition of vehicles from sidewalks, pathways or footpaths in Parks;

**AND WHEREAS** the City of Hamilton Act, 1999, S.O. 1999 Chapter 14, Schedule C did incorporate, as of January 1st, 2001, the municipality "City of Hamilton";

**AND WHEREAS** the City of Hamilton is the successor to the following former area municipalities, namely: The Corporation of the Town of Ancaster; The Corporation of the Town of Dundas; The Corporation of the Town of Flamborough; The Corporation of the Township of Glanbrook; The Corporation of the City of Hamilton; and the Corporation of the City of Stoney Creek; all hereinafter referred to as the "former area municipalities";

**AND WHEREAS** the City of Hamilton Act, 1999, provides that the By-laws of the former area municipalities continue in force and effect in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

**AND WHEREAS** the Council of the City of Hamilton deems it expedient to enact a single by-law to provide for the maintenance, operation, management and regulation of Municipal Parks, in place of by-laws of the former area municipalities;



**NOW THEREFORE** the Council of the Corporation of the City of Hamilton enacts as follows:

## PART I - DEFINITIONS AND APPLICATION

### Definitions

1. In This By-law,
  - (a) "Authorized Emergency Vehicle" means:
    - (i) any vehicle owned or operated by the City of Hamilton while the operator is engaged in the performance of his or her duties;
    - (ii) any vehicle owned or operated by a Police Service, a Fire Department or a Ministry of the Province;
    - (iii) any vehicle owned or operated by an ambulance service, a mortuary or a funeral home while the operator is engaged in the performance of his or her duties;
    - (iv) any vehicle owned or operated by a public utility including but not limited to vehicles owned or operated by Canada Post, a telephone company, a natural gas utility, a hydro electric power provider, and any other public utility, telegraph or telecommunications company, provided that such vehicles are each clearly identified by a crest or other marking and provided the operator is actively engaged in the provision of the services offered by the utility;
    - (v) any service vehicle owned or operated by an accredited road side service agency or automobile club or a licensed towing agency while the operator is providing a towing or other emergency roadside service.
  - (b) "authorized sign" means any sign, notice, or other device placed or erected in or upon a Park under the authority of this By-law;
  - (c) "bicycle" includes a tricycle, a unicycle and a bicycle to which a trailer device designed for the purpose of conveying children is attached, but does not include a motor assisted bicycle;
  - (d) "City" means the City of Hamilton;
  - (e) "control" includes care and custody;
  - (f) "Council" means the council of the Corporation of the City of Hamilton;

- (g) "commercial motor vehicle" means a Motor Vehicle having attached to it a truck or delivery body or unit;
- (h) "designated area" means any area defined, set aside or constructed for a specific use which may include posted conditions;
- (i) "filming event" means filming, videotaping, photography or any other form of visual recording for a feature film, television film, television program, documentary, commercial, music video, educational film or other purpose outside a studio or film laboratory, but does not include street interviews, newscasts, press conferences or visual recordings for personal purposes only;
- (j) "Director" means the Director or Acting Director of Operations and Maintenance for the City and includes his designate and successor or the Director or Acting Director of any other City project on lands referred to in ss. 1 (r) of City of Hamilton By-Law No. 01-219 as amended;
- (k) "E-Scooter" means a vehicle that has,
  - (a) two wheels placed along the same longitudinal axis, one placed at the front of the e-scooter and one at the rear,
  - (b) a platform for standing between the two wheels,
  - (c) a steering handlebar that acts directly on the steerable wheel, and
  - (d) an electric motor not exceeding 500 watts that provides a maximum speed of 24 kilometres per hour;
- (l) "General Manager" means the General Manager of the Public Works Department for the City of Hamilton and includes his or her designate or designates and successor;
- (m) "Leash Free Park" means a park, or a designated area within a park, or a public open space set aside as an area where dogs are not required to be leashed or otherwise restrained;
- (n) "motor vehicle" means a snowmobile, go-cart, trail bike, mini bike, all-terrain vehicle, or similar vehicle, or E-Scooter, or similar vehicle, propelled or driven by an internal combustion engine, battery, or other form of power, other than muscular power;
- (o) "motorized recreational vehicle" means a snowmobile, go-cart, trail bike, mini bike, all-terrain vehicle, or similar vehicle, propelled or driven by an internal combustion engine;
- (p) "organized sport or activity" means a sport, game or activity pre-planned by a group or organization whether or not formally constituted and whether or not the players or members wear uniforms;

- (q) "permit" means any written authorization of Council, a committee established by Council, or the General Manager or the Director where such authority has been delegated by Council;
- (r) "post" or "posted" refers to the erection or presence of permissive, regulatory, restrictive, warning, or prohibitive signs;
- (s) "posted area" means an area where such signs are erected;
- (t) "park" means any land, and land covered by water and all portions thereof owned by or made available by lease, agreement, or otherwise to the City, that is or hereafter may be established, dedicated, set apart or made available for use as a public open space or golf course, and that has been or hereafter may be placed under the jurisdiction of the Director including any and all buildings, structures, facilities, erections, and improvements located in or on such land, save and except where such land is governed by other by-laws of the City. For greater certainty, the provisions of By-Law No. 01-219, as amended, shall be deemed to apply to all open space lands, including road allowances shown on a registered plan of subdivision, required for the Red Hill Valley Project, until such time as the City declares otherwise.
- (u) "persons with disabilities" and "disabled person" includes any person who is blind, or a person who has any degree of physical disability, which requires the physical reliance upon a wheelchair, crutches, braces, canes, or other similar remedial appliance or device, or who are authorized users of Segway Personal Transporters, or requires the reliance upon an animal trained to provide guidance or other form of assistance;
- (v) "public parking area" or "parking space" means any area of the Park which has been set aside and designated by the City for the parking of vehicles and where there is an authorized sign indicating said designation or otherwise regulating said parking;
- (w) "residence" means a place that is actually occupied or used as a residential building;
- (x) "roadway" means that part of a Park that is set aside and improved for the use of vehicular traffic;
- (y) "vehicle" includes a Motor Vehicle as defined under the Highway Traffic Act, and includes any bicycle, carriage, wagon, sleigh or other vehicle or conveyance of every description, whatever the mode of power, but excludes a wheelchair or similar device, powered or otherwise, used by an individual due to disability, baby carriage or cart, child's wagon, child's stroller, child's sleigh or other conveyance of a like nature;
- (z) "watercraft" means any device for conveyance in or on water and includes but is not limited to powerboats, rowboats, sailboats, sailboards, canoes,

kayaks, or dinghies.

2. (1) In this By-law, whenever a word imparts the masculine gender it is deemed to include the feminine gender.
- (2) In this By-law, the singular sense is deemed to be inclusive and interchangeable with the plural sense.
- (3) This By-law is subject to the provisions of any by-law of the City regulating the control of dogs or other animals.

## PART II - USE OF FACILITIES

### Hours of Entrance

3. (1) No person shall enter into or be in any park, except during the times the park is open to the public or during such times as otherwise expressly authorized by permit.
- (2) A park shall only be open to the public:
  - (a) where there is displayed at, within or adjacent to a park a posted sign or notice as to the times such park is open to the public, during the times so indicated on such sign or notice; or
  - (b) in the absence of a posted sign or notice as referred to in subsection 3(2)(a), a park shall only be open to the public each day from six o'clock in the forenoon (6:00 a.m.) until eleven o'clock in the afternoon (11:00 p.m.).

### Restricted Areas

4. While in a park, no person shall enter into areas posted to prohibit or restrict admission of the public.

### Conduct

5. While in a park, no person shall:
  - (a) indulge in any riotous, violent, threatening, or illegal conduct or use profane or abusive language;
  - (b) cast, throw, or in any way propel any object in such a manner as may or does endanger or cause injury or damage to any person or property;
  - (c) spy, accost, frighten, annoy or otherwise disturb other persons; or
  - (d) create a nuisance or in any way interfere with the peaceful enjoyment of the

park by other persons

### **Firearms and Weapons**

6. While in a park, no person shall be in possession of or use any firearm, air gun, bow and arrow, axe or offensive weapon of any kind unless expressly authorized by permit, provided that this prohibition shall not apply to a Police Officer, an employee of the City, or such other persons as are providing contractual services to the City requiring the use of such weapons, while engaged in the performance of their duties.

### **Fireworks**

7. While in a park, no person shall ignite, discharge or set off any firecrackers, rockets, or other fireworks except as a fireworks display authorized by permit. For the purpose of this section, "fireworks" includes any explosive, flammable, combustible or incendiary device or material.

### **Injury and Damage**

8. No person shall, in any park, unless expressly authorized by permit:
  - (a) climb or descend any natural formation, including but not limited to a cliff, precipice, rock face, overhang, or gorge, or any building, structure or equipment, unless such equipment or structure is specifically created, designed or erected for the purpose of climbing;
  - (b) break, injure, deface, move or remove the whole or any part of any flowers, plant material, trees or other vegetation or any building, structure, equipment or other property of the City;
  - (c) move, remove, excavate, disturb, alter, damage, or cause the deterioration or erosion of, the whole or any part of rocks, boulders, rock faces, soil, sand, wood, or like substance, or any other property or thing;
  - (d) in any manner, disturb ground which is under repair, prepared for planting, has been newly seeded or sodded, or is in an area posted to that effect;
  - (e) conduct archaeological research, or remove any relic, artifact or natural object;
  - (f) drive, park or walk in any area posted to prohibit same.

### **Waste and Pollution**

9. No person shall in any park:

- (a) subject to (b) and (c) herein, dispose of or dump garbage, litter, tree trimmings, refuse or any other matter or thing, except that which is generated through the normal use of the park, and shall only deposit same in receptacles provided for such purpose;
- (b) dispose of or dump garden refuse except in a designated area therefore;
- (c) unless authorized by permit, dump or deposit snow, fill, soil, building or construction materials;
- (d) dispose of, cause the release of, dump, drain or discharge any material or substance, whether solid or liquid and whether toxic, hazardous (as defined by the *Environmental Act*, R.S.O. 1990, as amended) or otherwise, on or into any soil or the waters of any pool, pond, lake, stream, fountain or watercourse, regardless of the place of origin and the means of transmission or transportation of said material or substance, unless expressly authorized by permit;
- (e) release any balloons, except in accordance with Schedule "A".

### **Protection of Wildlife**

10. While in any park, unless expressly authorized by permit, no person shall:
- (a) subject to the provisions of Section 22, kill, attempt to kill, maim, injure, trap, remove or disturb any animal, bird, waterfowl, worm, or other wildlife; or
  - (b) touch, disturb, injure or remove any nest, or any egg therefrom;
- unless authorized in writing by the Director.

### **Animal and Fish Displays**

11. While in any park, no person shall:
- (a) feed or attempt to feed any wild bird or fish or any bird or fish owned by or under the control of the City unless posted otherwise;
  - (b) throw, deposit, place or attempt to throw, material of any kind whatsoever in any area where birds or fish are kept for public display; or
  - (c) kill, attempt to kill, maim or in any way injure or molest any bird, waterfowl or fish that is kept for public display.

### **Encroachment**

12. (a) Unless expressly authorized by permit, no person shall encroach upon or take possession of any park, or any part or area within a park, by any means

whatsoever, including but not limited to the placing, construction, installation or maintenance of any fence, structure or other thing, the dumping or storage of any materials, or by planting any plant or otherwise cultivating, grooming or landscaping any part of the grounds thereof;

- (b) Where the Director determines that an encroachment upon a part or area of a park will be reasonable in the circumstances and will not be detrimental to the interests of the City, the Director may authorize by permit an encroachment upon a part or area of a park, upon such terms and conditions as the Director may deem appropriate in the circumstances, and may take or require to be taken such measures or actions as the Director deems reasonable to ensure that any authorized encroachments are and continue to be satisfactory to the City;
- (c) The Director is authorized to remove or cause to be removed, and to dispose of or cause to be disposed of, any unauthorized or no longer authorized encroachment from any park by any means and in any manner whatsoever, as the Director may, in the exercise of an absolute discretion, deem appropriate in the circumstances, including but not limited to the issuance of an order to remove an encroachment against the person or persons responsible for the encroachment.
- (d) No person, responsible for an authorized encroachment, shall fail to comply with the terms and conditions of the permit authorizing such encroachment
- (e) No person responsible for an encroachment shall fail to remove an encroachment, when directed or ordered by the Director, where such encroachment is not authorized or no longer authorized by permit.
- (f) In the event that a person or persons, against whom an order to remove an encroachment from a park has been made or issued by the Director, fails to comply with said order within the time indicated on the order, the Director may cause the encroachment to be removed and disposed of, all at the expense of such person or persons and the amount of such expense may be recovered by the City by action or may be added by the City Clerk to the collector's roll against any lands within the City of Hamilton owned by such person or persons and collected in a like manner as municipal taxes.

### **Alcohol and Gambling**

#### **13. While in a park:**

- (1) No person shall be in possession of, consume, serve or sell alcoholic beverages unless authorized by a permit issued by the City and with the approval of the Liquor Licence Board of Ontario.
- (2) Any person who serves or sells alcoholic beverages in a park pursuant to a permit issued by the City, shall obtain sufficient insurance to conform with

current Council policy respecting liability insurance, and naming the City as an insured party and shall comply with all other terms and conditions of the permit.

- (3) No person shall play or bet at or against any game conducted, dealt or carried on with cards, dice or other devices for money, chips, shells, credit or other thing representative or value, or maintain or inhabit any gambling table or other instrument of gambling or gaming; unless otherwise authorized by the Director.

### **Campfires and Barbecues**

- 14. While in any park, unless expressly authorized by permit or in a permitted area designated by posted signs, no person shall;
  - (a) light, build or stoke an open fire or bonfire or move, alter, or expand authorized fire pit locations;
  - (b) use any solid, liquid or gas fuelled portable barbecue, and, under no circumstances shall the fuel tank, cylinder or container for use with a liquid or gas fuelled barbecue exceed twenty (20) pounds capacity;
  - (c) use fuel other than charcoal or briquettes in any stationary barbecue; or,
  - (d) leave a barbecue or fire unattended without first extinguishing the barbecue or fire and ensuring that any remaining embers, coals, ashes or other residue, are fully extinguished and cold.

### **Organized Gatherings, Picnics, and Group Photography**

- 15. Unless expressly authorized by permit, no person while in any park shall:
  - (a) hold a picnic, public meeting, or other organized gathering or event of more than twenty persons; or
  - (b) interfere with a picnic, organized gathering or event authorized by permit; or
  - (c) engage in group photography involving more than ten persons.

### **Amplifiers and Loud Speakers**

- 16. Unless authorized by permit, no person shall operate loud speakers or amplifying equipment in any park, provided that this shall not prohibit the use of a portable radio, tape player or compact disk player, in a manner which does not disturb any other person or otherwise interfere with any other person's enjoyment of the park.

### **Camping and Lodging**

- 17. Unless authorized by permit, no person shall dwell, camp or lodge in any park.



### **Tents and Structures**

18. Unless authorized by permit, no person shall place, install or erect any temporary or permanent tent or structure in any park.

### **Bathing, Swimming and Sun Bathing**

19. No person shall in any park:
- (a) enter any public swimming pool, except at times designated for swimming;
  - (b) in, or adjacent to, any swimming pool, fail to abide by posted signs or fail to obey the instructions of any lifeguard or other authorized person;
  - (c) swim, bathe or wade in any fountain, pond, water course, lake or stream, except in a designated swimming, wading or bathing area;
  - (d) utilize facilities without being properly attired, including appropriate swimwear or beach clothing;
  - (e) dress or undress adjacent to any swimming wading or bathing area except in facilities provided for such purpose; or,
  - (f) bring into any swimming, wading or bathing area and the waters attendant thereto any underwater spear or shooting device or any other weapon.

### **Use of Wash and Change Rooms**

- 20.
- (1) No person shall enter any washroom, change-room, bathhouse or bathing station, or portion thereof, in any park, set apart for the opposite sex provided that this shall not apply to children who are 12 years of age or younger and who are, at that time, under the care of a parent or guardian.
  - (2) No person shall loiter in any washroom, change-room, bathhouse or bathing station, in any park, or conduct themselves in such a manner as to be objectionable to another person using, or in the vicinity of, said washroom, change-room, bathhouse or bathing station.

## **PART III - GAMES AND SPORTS**

### **Sports or Activities**

21. (1) While in any park, no person shall:
- (a) arrange or engage in an organized sport or activity, unless authorized by permit; or

- (b) interfere with an organized sport or activity authorized by permit.
- (2) In addition to the prohibitions set out in subsection (1), while in any park, no person shall utilize a designated area without a permit where same is posted to prohibit or restrict such use.
- (3) No person shall, while in a park, take part in any game, sport or activity except within an area specifically set aside for that game, sport or activity.

### **Fishing**

- 22. (1) No person shall fish in an area posted to prohibit same, in any park.
- (2) No person shall fish in any park except in compliance with the Fish and Wildlife Conservation Act 1997, S.O. 1997, c.41, as amended, and the Fisheries Act, Chapter F-14, as amended.
- (3) No person shall fish in any park for commercial purposes.

### **Golfing**

- 23. (1) While in any park, no person shall play or practise golf or strike a golf ball, except on a golf course or in a designated area.
- (2) On any golf course located in a park, no person shall:
  - (a) play or practise golf unless registered on that day as a player;
  - (b) hunt for or pick up any lost, misplaced, or abandoned golf balls provided that nothing herein shall prevent a person registered as a player or such player's caddy from retrieving or attempting to retrieve golf balls lost by such registered player; or,
  - (c) during the period from the opening of the course to the closing of the course, enter upon the playing area thereof unless registered on that day as a player or accompanying such player as a caddy.

### **Model Aircraft and Rockets**

- 24. While in any park, no person shall operate any powered models of aircraft, rockets, watercraft or any ground vehicle unless authorized by permit.

### **Aircraft**

- 25. Unless authorized by permit, no person shall tether, launch or land any fixed wing aircraft, helicopter, hot air balloon, hang glider, ultra light aircraft or similar

conveyance in any park.

### **Skating**

26. On any natural or artificial ice surface located in any park, no person shall:
- (a) use speed skates unless authorized by permit or in a posted area in accordance with the posted conditions;
  - (b) skate or act in such a manner as to interfere with and/or endanger any other person using the surface; or
  - (c) use a stick of any kind except in accordance with posted conditions.

### **Skiing, Tobogganing and Sledding**

27. (1) No person shall downhill ski, toboggan, snowboard, skibob or sled in any area park unless otherwise posted to allow same.
- (2) No person shall cross country ski in any area park that has been posted to prohibit same.

### **Roller Skates and Skateboards**

28. (1) While in any park, no person shall:
- (a) operate or utilize skate boards, traditional roller skates, in-line or linear skates, scooters or like conveyances where signs are posted to prohibit or otherwise restrict the use of same; or,
  - (b) obstruct, inconvenience or endanger other users of the park while operating or utilizing skate boards, traditional roller skates or in-line or linear skates, scooters or like conveyances.
- (2) While in a park, no person shall fail to give way to the right while operating or utilizing a skate board, traditional roller skates, in-line or linear skates, a scooter or a like conveyances on any trail, path or roadway.
- (3) While in a park, no person while operating or utilizing a skate board, traditional roller skates, in-line or linear skates, a scooter or a like conveyance shall fail to yield the right of way to any other person or persons travelling on foot.
- (4) While in a park, no person while operating or utilizing a skate board, traditional roller skates, in-line or linear skates, a scooter or a like conveyance shall fail give an audible warning when overtaking and passing any other person.

- (5) While in a park, no person while travelling together with another person or persons, at any time, whether on foot or otherwise, may do so in such a manner as to occupy more than 50% of the width of any path or trail.
- (6) While in a park, no child of 16 years of age or less shall fail to wear a proper Canadian Standards Association approved bicycle helmet while riding a bicycle.
- (7) While in a park, no person having a child of 16 years of age or less under their care shall allow said child to ride a bicycle except when wearing a proper Canadian Standards Association approved bicycle helmet.
- (8) While in a park, no child of 16 years of age or less shall fail to wear a proper Canadian Standards Association approved helmet while riding on or using rollerskates, in-line skates, scooters, skate boards or like conveyances.
- (9) While in a park, no person having a child of 16 years of age or less under their care shall allow said child to ride on or use rollerskates, in-line skates, scooters, skate boards or like conveyances except when wearing a proper Canadian Standards Association approved helmet.

### **Tennis**

- 29. No person shall enter, walk, or play upon or otherwise use any area or part thereof in any park, designated for the purpose of playing tennis, or any area enclosed as a tennis court or tennis courts, except in accordance with the posted rules and regulations, unless otherwise expressly authorized by permit.

## **PART IV - VEHICLES**

### **Roadway**

- 30.
  - (1) The Council or, where such authority has been designated, the Director or a Committee established by Council, is authorized to establish appropriate regulations to manage and control the use of the park roadways.
  - (2) Unless authorized by permit, and except as provided in section 34 with respect to bicycles or as provided in section 34.1 with respect to E-Scooters, no person shall while in any park, drive, operate, pull or ride any vehicle except on roadway or public parking area.
  - (3) For the purposes of this section, "authorized users of Segway Personal Transporters" means a member of the Hamilton Police Service for the purpose of law enforcement, or a person who is 14 years old or older whose mobility is limited by one or more disabilities, conditions or functional impairments who operates the Segway in compliance with

Ontario Regulation 488/06.

- (4) For the purposes of this section a Segway Personal Transporter is a device manufactured by Segway Inc. and called a Segway Personal Transporter or a Segway Human Transporter, which device has not been modified after its manufacture other than by the addition of a basket, bag, bell, horn or lamp or other accessory customarily attached to a bicycle, and which addition does not increase the speed capability of the device.

## Signs

31. (1) There may be erected one or more of the following signs in a Park:
- (a) Signs displaying the symbol for "No Parking" as specified under the Highway Traffic Act.
  - (b) Signs displaying the word "Yield", or a symbol in lieu thereof, specified under the Highway Traffic Act.
  - (c) Signs displaying the word "Stop", or a symbol in lieu thereof, specified under regulations to the Highway Traffic Act.
  - (d) Signs displaying the maximum speed limit, specified under regulations to the Highway Traffic Act.
  - (e) Signs displaying the symbol for "No "U" Turns", specified under regulations to the Highway Traffic Act.
  - (f) Signs indicating "one-way traffic", specified under regulations to the Highway Traffic Act.
  - (g) Signs indicating lane use designated, specified under regulations to the Highway Traffic Act.
  - (h) Signs prohibiting entry by vehicles or persons.
  - (i) Signs indicating that a roadway or drive is closed to vehicular traffic or to a particular class of vehicular traffic.
  - (j) Signs indicating a public parking area.
  - (k) Signs indicating a time limit for parking.
  - (l) Signs indicating service roads.
- (2) The signs referred to in subsection 1 may contain,

- (a) an exception or exceptions relating to an activity permitted in a particular area;
- (b) additional information relating to the regulation of traffic or parking.

### **Parking**

32. No person shall in any park:

- (1) Park or leave any vehicle except in a designated area for parking;
- (2) Park or leave a vehicle, except during the times the park is open to the public, as defined in Section 3 of By-Law 01-219 as amended herein, or in a designated area allowing for such overnight parking, or during such times otherwise expressly authorized by permit, provided that such authorization is clearly displayed in the driver's side front windshield of the vehicle in such a manner as to be readable from the exterior of the vehicle;
- (3) Park a vehicle in a designated area for parking, except in a proper parking space and in accordance with markings and posted conditions;
- (4) Park a vehicle in any area or parking space where signs have been erected to prohibit parking;
- (5) Stop a vehicle in any area or parking space where signs have been erected to prohibit stopping;
- (6) Park or stop a vehicle in any area or parking space where signs have been erected to reserve the area or space for use by specific persons or vehicles;
- (7) Park a vehicle in a parking space reserved for persons with disabilities, unless a disabled person parking permit, issued in accordance with the provisions of the Highway Traffic Act, as amended, is properly displayed on or in the vehicle;
- (8) Park or stop a vehicle in any area or parking space except while actively using the park, or unless expressly authorized by permit, provided that such authorization is clearly displayed in the driver's side front windshield of the vehicle in such a manner as to be readable from the exterior of the vehicle;
- (9) Park or stop a vehicle in such a manner as to interfere with the use of any other area or parking space;
- (10) Park or allow any vehicle to stand unattended, unless it is secured in such a manner as to prevent its operation by any person not so authorized by the owner of the vehicle.
- (11) Park a vehicle for a period of time longer than the posted time limit, if any,

unless expressly authorized by permit, provided that such authorization is clearly displayed in the driver's side front windshield of the vehicle in such a manner as to be readable from the exterior of the vehicle.

- (12) Park or stop a vehicle, or allow a vehicle to stand, contrary to the instructions of a Police Officer, a Municipal Law Enforcement Officer, or an employee of the City.
- (13) No person shall park or stop a vehicle in contravention of Section 32(3), Section 32(4) or Section 32(5) of this By-law within a Special Enforcement Area.
- (14) For the purposes of subsection (13), "Special Enforcement Area" means an area set out on Schedule D-1.
- (15) Schedule D-1 describes the following:
  - (a) in column one thereof, the name of the roadway or part of the roadway included within the Special Enforcement Area;
  - (b) in column two thereof, the side of the roadway, by compass direction, where the Special Enforcement Area regulation applies;
  - (c) in column three thereof, the point upon the subject roadway where the Special Enforcement Area regulation commences and the point where the regulation terminates;
  - (d) in column four thereof, those periods during which the Special Enforcement Area regulation is in force and effect.
- (16) No person shall park or stop a vehicle in contravention of Section 32(8) of this By-law within a Special Enforcement Area.
- (17) For the purposes of subsection (16), "Special Enforcement Area" means an area set out on Schedule D-2.
- (18) Schedule D-2 describes the following:
  - (a) in column one thereof, the name of the Park or part of the Park included within the Special Enforcement Area;
  - (b) in column two thereof, the location where the Special Enforcement Area

regulation commences and the point where the regulation terminates;

- (c) in column three thereof, those periods during which the Special Enforcement Area regulation is in force and effect.

33. No person shall make use of any roadway or parking lot in any park for:

- (1) washing, cleaning, servicing, maintaining or, except in the event of an emergency, the repair of any vehicle, unless expressly authorized by permit.
- (2) instructing, teaching or coaching any person in the driving of a motor vehicle.

### **Bicycles**

34. While in a park, no person shall:

- (1) Ride, operate or be in possession of any bicycle where signs are posted to prohibit same;
- (2) Obstruct, inconvenience or endanger other users of the park while riding or operating a bicycle;
- (3) Subject to Section 37, fail to comply with all rules of the road normally in force and effect on a highway;
- (4) Ride abreast of more than one other cyclist;
- (5) Operate a bicycle which is not equipped with a bell or horn;
- (6) Operate a bicycle after dark which is not equipped with a front white light and a rear red light;
- (7) Fail to activate the required bicycle lighting when operating a bicycle after dark;
- (8) Ride or operate a bicycle in any area not set aside for that purpose, or ride a bicycle in an area set aside for any other purpose; or,
- (9) Fail to maintain proper control of the bicycle at all times.

### **E-Scooters**

34.1

- (1) No person shall ride an E-Scooter in a park, unless in a designated area where City signs are posted to permit same.



- (2) No person shall operate, or cause to be operated, or use an E- Scooter in a park, or part thereof, where cycling, skateboarding or rollerblading is prohibited.
- (3) No person shall ride or push an E-Scooter in a park abreast of another E-Scooter or bicycle.
- (4) No person riding an E-Scooter in a park shall carry any package or article or act in such a way as to prevent that person from maintaining one hand on the handlebars at all times, including while signaling for a turn or stop and in any case, no person shall fail to maintain control of an E-Scooter.
- (5) No person shall cause an obstruction to pedestrian and/or vehicular traffic by parking an E-Scooter in a path or trail.
- (6) No person under the age of 16 years shall operate an E-Scooter.
- (7) Every person under the age of 18 years old shall wear a helmet that complies with the Highway Traffic Act when operating an E-Scooter.
- (8) No person operating an E-Scooter shall carry any other person thereon.
- (9) No person operating an E-Scooter shall tow another person, vehicle or device.
- (10) No person operating an E-Scooter shall attach themselves to another E-Scooter, vehicle or device for the purpose of being drawn or towed.
- (11) No person operating an E-Scooter shall operate it in any position other than while standing at all times.
- (12) The operator of an E-Scooter shall keep a safe distance from pedestrians and other users of the roadway, shoulder, bicycle lane, trail, path, walkway, or multi-use pathway trail at all times and shall give way to a pedestrian or bicycle by slowing or stopping, as necessary, where there is sufficient space for the pedestrian or bicycle and the E-Scooter to pass.
- (13) No person shall operate an E-Scooter on a trail, or in a park, or multi-use pathway at a speed that is markedly greater than the speed of the pedestrians who are proximate to the E-Scooter.
- (14) Every owner or operator of an E-Scooter shall ensure that the E-Scooter is equipped with a bell or horn, which shall be kept in good order and sounded whenever it is reasonably necessary to notify cyclists, pedestrians or others of its approach.
- (15) When operated at any time from one-half hour before sunset to one-half hour after sunrise and at any other time when, due to insufficient light or

unfavourable atmospheric conditions, persons and vehicles are not clearly discernible at a distance of 150 metres or less, every operator of an E-Scooter shall carry a lighted lamp displaying a white or amber light at the front and a lighted lamp displaying a red light at the rear. The lamps may be attached to the E-Scooter or may be carried or worn by the operator on his or her person.

- (16) No person shall operate or use an E-Scooter in such a manner that it may harm, injure or damage, either directly or indirectly, any person or property.

### **Motorized Recreational Vehicles**

35. No person shall ride, drive, park or be in possession or control of a motorized recreational vehicle in any park except in a designated area or when expressly authorized by permit.

### **Trucks and Commercial Vehicles**

36. No person shall drive, operate, pull or ride in any park:
- (a) any heavy machinery or equipment of any description and whatever the mode of power; or
  - (b) any truck, trailer, or bus whatsoever except a vehicle that is,
    - (i) being used for the purpose of making a delivery to a point within the limits of the park, while it is proceeding to or from such point of delivery, or
    - (ii) operated for personal, recreational or non-commercial use and provided authorization or a permit has been issued by the Director.

### **Speed**

37. Unless authorized by permit, while in any park, no person shall operate:
- (a) any vehicle on a roadway at a speed in excess of the posted limit; or
  - (b) a bicycle other than on a roadway at a speed which endangers or is liable to endanger any other person using the park, or which causes another person using the park to experience a reasonable apprehension that they are at risk of injury or harm.

### **One-way Traffic**

38. No person shall drive a vehicle on a one-way roadway in a direction opposite to the direction of the traffic.

## Horses

39. (1) Unless authorized by permit, no person as the owner of a horse, or as a person having a horse under their care or control, shall permit the horse to enter or remain in a park unless:
- (a) the horse remains within an area designated for use by horses; and,
  - (b) the horse is well broken and wearing a bridle.
- (2) No person riding or having a horse under their care or control in any park shall obstruct, inconvenience or endanger other users of the park.
- (3) No person riding or having a horse under their care or control in any park shall hitch or fasten said horse at any place except that which is set aside for such purpose.
- (4) The provisions of this section shall not apply to a horse under the control of a Police Officer.

## Dogs

40. (1) While in any park, no person as the owner of a dog, or as a person having a dog under their care or control, shall:
- (a) allow the dog to run at large;
  - (b) excluding persons with disabilities reliant upon a guide dog, permit the dog to enter any beach, pond, swimming area, farm area, garden, landscaped area, playground or sports field, or any other area posted to prohibit same;
  - (c) excluding persons with disabilities reliant upon a guide dog, permit the dog to enter any area of the park where a special event, carnival, celebration or other festival is taking place where signs are posted to prohibit same
- (2) While in a park no person as owner of a dog, or as a person having a dog under their care or control, shall:
- (a) fail to ensure that the dog is on a leash or chain not exceeding 2.4 metres in length; and,
  - (b) fail to pick up and remove from the park any excrement left by the dog.
- (3) A dog within a designated "Leash Free Park" shall be deemed not to be at

large.

- (4) The provisions of subsections      and      of Section 40 shall not apply to a Police work dog under the control of a Police Officer, or to a working dog under the      of an employee of the City, or under the control of such agents or contractors as may be providing contractual services to the      City, which services require dogs to run off leash, and only while engaged in the performance of the duties required by the agreement with the City.”

### **Other Animals**

41. (1) No person as the owner of an animal, or as the person having any animal under their care or control, shall bring into, or permit such animal to enter any park, if the animal constitutes, or may constitute, a danger to other park users, or if the animal it is likely to give rise to justified apprehension in the minds of other park users, or if the animal is likely to interfere with another person's use or enjoyment of the park.
- (2) Subject to Sections 39 and 40, no person shall bring or permit to be brought any livestock into any park, except where expressly authorized by      and in accordance with the terms and conditions of the permit authorizing such livestock to be upon specified park lands.
- (3) No person, except a Police Officer, having an animal under their care or control shall fail to appropriately restrain said animal.

## **PART VI - WATERCRAFT**

### **Boating**

42. No person shall, subject to any right at law to do so, place, operate, drive or ride any watercraft in any park in any area posted so as to prohibit or restrict the type and allowable uses of watercraft.

### **Mooring**

43. Unless authorized by permit, no person shall, subject to any right at law to do so, moor watercraft in any park:
- a)      except in a designated area;
  - (b)      for a period longer than one (1) hour;
  - (c)      contrary to posted restrictions or prohibitions or in any way that may or does endanger or inconvenience other watercraft or their use or other users of the park;

- (d) without prior payment of the fee, if any, therefore authorized by Council;
- (e) without prior payment of the requisite fee or fees, if any, approved by Council.

## PART VII - COMMERCIAL ENTERPRISES

### **Sale of Merchandise Trade or Business**

44. (1) Unless authorized by permit, no person shall, while in a park, sell or offer or display for sale:
- (a) any food, drink or refreshment;
  - (b) any goods, wares, merchandise or articles including promotional material, souvenirs and novelties; or
  - (c) any art, skill, service or work;
- except in accordance with The City of Hamilton Street Vendor Program.
- (2) While in any park, no person shall practise, carry on, conduct or solicit for any trade, occupation, business or profession, unless expressly authorized by permit;
- (3) No person shall, in any park, place, maintain or allow to remain any coin operated vending machine or game of any nature except when expressly authorized by permit.

### **Subscriptions and Contributions**

45. While in a park, no person shall beg, panhandle, solicit or invite subscriptions or contributions, unless expressly authorized by permit.

### **Filming**

46. While in a park, no person shall undertake or permit the undertaking of a filming event without a valid permit issued for the filming event under the Hamilton Film Permit By-law.

### **Circulars and Advertisements**

47. (1) Unless authorized by permit, no person shall:
- (a) while in any park distribute, discard, or display any handbill, notice, or other circular, bill or advertisement; or

- (b) post, nail, attach, stencil or otherwise fasten or erect any poster, sign, notice, placard or other circular, bill, advertisement or paper to any park property;

## PART VIII - REGULATIONS AND ENFORCEMENT

### Permits and Licences

48. (1) The authority to issue permits referred to in the by-law is delegated to the Director.
- (2) The Director may issue a permit on such terms and conditions as the Director considers in the best interests of the City taking into account the general use of the park, the proposed use, the degree of interference or incompatibility that the proposed use may have with other uses or other users of the park, matters of health and safety, the effect the proposed use may have on flora and fauna and such other circumstances that the Director may consider appropriate.
- (3) The Director may impose such terms and conditions on the issuance of a permit as the Director considers appropriate in the circumstances including but not limited to: restrictions as to uses; time and location restrictions; indemnification, insurance and security for injury to persons or damage to property; protective measures for flora and fauna; and payment of permit and other costs associated with the permit and use.
- (4) The Director may refuse to issue a permit or revoke immediately a permit issued: where the applicant or permit holder has breached or failed to comply with any term or condition of the permit or issuance thereof; for non-payment of any fee or cost required to be paid by the applicant or permit holder; the breach or failure to comply with any City policy or by-law; the breach of any federal or provincial law; where the use by the permit holder is causing or has caused a disturbance; where the proposed use or current use unreasonably interferes with the use of the park by the public; and where it otherwise is in the best interests of the City that the application for a permit be denied or permit revoked.
- (5) A permit authorized under this By-Law is non-transferable.
- (6) The issuance of a permit pursuant to this by-law shall not relieve any person from the necessity of acquiring any other licence or permit required for such activity by any governmental or public authority.
- (7) All permits issued for activities contemplated in this by-law remain the property of the City.'

### **Posting of Signs**

49. The Director is authorized to post signs of permission, regulation, restriction, warning or prohibition with respect to uses of, or activities in, any park, in accordance with the provisions hereof.

### **Temporary Closure**

50. The Director is authorized to close off for such temporary period as the Director deems appropriate any park or part or parts thereof to relieve or prevent overcrowding or traffic congestion, or in the interest of public safety, or as may otherwise be authorized by council.
51. A Director is authorized for such temporary period or periods as the Director deems appropriate to close off or restrict access to any land or part or parts thereof referred to in ss. 1 (r) of By-Law No. 01-219 as amended to provide for or permit construction of works or undertakings in, on or through such lands as well as to provide for repairs, restoration, reconstruction or other remedial action with respect to parks, grounds or structures thereon.

### **Exclusions and Exceptions**

52. (1) The provisions of this By-law respecting the driving, operating, parking or stopping of vehicles shall not apply to Authorized Emergency Vehicles while the operators thereof are performing their duties.
- (2) Without limiting the generality of the foregoing, the provisions of this by-law shall not apply to:
- (a) the drivers and attendants of ambulances or other emergency medical services vehicle, Police Officers, Officers of the Hamilton Fire Service or Municipal Law Enforcement Officers appointed by the Council of the City of Hamilton, while engaged in the performance of their duties;
  - (b) employees, agents or contractors of the City while engaged in works or services undertaken for or on behalf of the City; or
  - (c) a park, property or building that is now or hereafter under the jurisdiction of a board established by the Council or by statute, the members of which are appointed by Council.
- (3) This by-law shall be subject to provisions of contracts and agreements now or hereafter entered into by the City respecting works or services to be performed in any park.

### **Enforcement**

53. (1) Any Police Officer, Municipal Law Enforcement Officer, or employee of the City designated by the Director for the purpose of this section is authorized to inform any person of the provisions of this by-law and to request compliance therewith.
- (2) Any Police Officer, Municipal Law Enforcement Officer or employee of the City whose duties include the enforcement of this By-law, is authorized to order any person believed by such Officer or employee to be in contravention of this by-law or who has contravened any provision of this by-law:
- (a) to desist from the activity constituting or contributing to such contravention;
  - (b) to remove from the park any animal or thing owned by or under the care of such person which the officer or employee believes is or was involved in such contravention; or
  - (c) to leave the park.
- (3) Any Police Officer, Municipal Law Enforcement Officer may enforce the provisions of this by-law.
- (4) Where any person contravenes any of the provisions of this by-law, or fails to comply with any order referred to in subsection (2) hereof, the permission and licence of such person to remain in that park is revoked.
- (5) Where any person contravenes any of the provision of this by-law and fails to comply with an order to leave the park, such person is subject to the provisions of the Trespass to Property Act, R.S.O. 1990, c.T.21.
- (6) In addition to those persons referred to in ss. 53 (1) to (3), an agent of the City, or a contractor or subcontractor of the City, and their agents, if designated by a Director, is authorized to carry out the functions described in those subsections

### **Penalty**

54. (1) Any person contravening any provision of this by-law is guilty of an offence and on conviction is liable to a such penalty as is provided for under the Provincial Offences Act, R.S.O. 1990, Chapter P.33, as amended.
- (2) The owner of a motor vehicle that is parked or left in contravention of Section 32 of this by-law is guilty of an offence and on conviction is subject such penalty as is provided for under the Provincial Offences Act, unless at the time of the offence the motor vehicle was in the possession of another



person without the owner's consent.

- (3) A Police Officer or Municipal Law Enforcement Officer observing a vehicle alleged to be parked or stopped or standing in contravention of this by-law may attach a serially numbered parking infraction notice to the motor vehicle.
- (4) Any person upon presentation of the parking infraction notice may, within 7 days, pay a penalty out of Court in the amount prescribed by an order made by the Senior Regional Justice respecting the subject violation pursuant to Part II of the Provincial Offences Act.

### **Removal of Vehicles**

- 55. A Police Officer or Municipal Law Enforcement Officer upon discovery of any vehicle parked, stopped or standing in contravention of section 32 of this by-law may cause it to be moved or taken to and placed or stored in a suitable place and all costs and charges for removing, care and storage thereof, if any, are a lien upon the vehicle which may be enforced in the manner provided by the Repair and Storage Liens Act, R.S.O. 1990, Chapter R.25, as amended.

### **Schedules**

- 56. The schedules attached to this by-law and listed below shall have the same force and effect as if the provisions contained therein were contained in the body of this by-law:

Schedule "A" - Release of Balloons

Schedule "C" - Mooring

Schedule "D"- Special Enforcement Areas

### **Severance**

- 57. Should a court of competent jurisdiction declare any part or the whole of any provision of this by-law to be invalid or of no force and effect, the provision or part shall be deemed to have been severed from this by-law, and it is the intention of Council that the remainder of the by-law survive and be applied and enforced in accordance with its terms to the extent possible under law.

### **Short Title**

- 58. The short title of this by-law shall be "The Parks By-law".

### **Repeals and Enactment**

- 59. By-law 70-2303 (Ancaster), passed on the 9th of June, 1970, By-law 2746-74 (Dundas), passed on the 7th of October, 1974, By-law 87-98-P (Flamborough) passed on the 17th of August, 1987, By-law 123-77 (Glanbrook), passed on the

6th of June, 1977, By-law 95-126 (Hamilton), passed on the 30th of May, 1995 and By-law 1951-85 (Stoney Creek), passed on the 26th of November, 1985, each as amended, and all Schedules thereto, are hereby repealed in their entirety.

60. Any references to By-laws 70-2303, 2746-74, 87-98-P, 123-77, 95-126 and 1951-85, as amended, antedating the passing and enactment of this By-law shall be deemed a reference to this By-law.
61. This By-law shall come into force and effect on the date of its passing and enactment.

**PASSED AND ENACTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2001

Office Consolidation - Updated as Amended

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

SCHEDULE "A"

1. No person shall, while in a park, release more than nine balloons within any 24-hour period.

## SCHEDULE "C"

Unless expressly authorized by permit no operator or owner of a boat or other watercraft shall moor, allow to be moored, or operate such a boat or watercraft within Bayfront Park or Pier 4 Park or along the Sea Walls located within Bayfront Park or Pier 4 Park or within the waters of any marina owned or operated by the City of Hamilton.

## SCHEDULE "D"

Schedule D-1 - Special Enforcement Area			
Roadway	Side	Location	Increased Fine inEffect
Medwin Drive	Both	290m westerly of Tews Ln to westerly end	March 15 - November 15

Schedule D-2 - Special Enforcement Area		
Park	Location	Increased Fine in Effect
Johnson Tew Park	All areas within the boundaries of the Park	March 15 - November 15

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A4430

A146

The Corporation of the City of Hamilton  
BY-LAW NO. 86- 77  
To Consolidate:  
STREETS BY-LAW NO. 9329

NOW THEREFORE the Council of The Corporation of  
the City of Hamilton enacts as follows:

DEFINITIONS

1. In this by-law,
  - (a) "City" means The Corporation of the City of Hamilton;
  - (b) "Commissioner of Engineering" means the Commissioner of Engineering of The Regional Municipality of Hamilton-Wentworth;
  - (ba) "Commissioner of Transportation" means the Commissioner of Transportation of The Regional Municipality of Hamilton-Wentworth;
  - (c) REPEALED. By-law No. 82-153, S.2.
  - (ca) "highway" means a common and public highway and includes a street, sidewalk, boulevard whether or not paved, and a bridge forming part of a highway or on, over or across which a highway passes and any portion of the land situate between street lines;
  - (d) "Director of Public Works" means the Director of Public Works of the City;
  - (e) "Traffic Commissioner" means the Director of Traffic Services of the City. By-laws Nos. 79-106, S.2; 81-127, S.1; 81-166, S.1; 85-160; S.1.
2. (1) REPEALED. By-law No. 82-153, S.3.

(2) Enforcement. In default of the doing of any matter or thing by any person required by the provisions of this by-law to do it, such matter or thing shall be done at his expense, and the expense incurred in doing it shall be recovered by action or in like manner as municipal taxes.

(3) Power to Restrain by Action. Where any provision of this by-law is contravened, such contravention may, in addition to any other remedy and to any penalty which may be imposed, be restrained by action at the instance of a ratepayer or the City Corporation or a local board.

#### RECORD OF THE HIGHWAYS AND NUMBER OF BUILDINGS

3. (1) Street Names. The Planning and Development Committee of the City is authorized to recommend to the City Council from time to time, names for unnamed highways, and names for highways the names of which are desired to be changed. By-law No. 82-153, S.4.

(2) Street Name Signs. The Traffic Commissioner is authorized and directed to affix at the corners of highways, on public or private property, highway name signs of such type and to such number as may from time to time be authorized by the City Council, and to maintain the same in proper condition. By-law No. 82-153, S.7(1).

(3) Record of Highways and of the Numbers of Buildings. The Planning and Development Committee of the City is authorized to recommend to the Assessment Commissioner the numbers for buildings, and the last revised assessment roll shall be the record of the highways with boundaries and distances as required by The Municipal Act to be kept for public inspection. By-law No. 82-153, S.4.

(4) Affixing Numbers to Buildings. The Building Commissioner shall, upon the issuing of each building permit for the erection or for the removal to a new location of any building or structure, deliver to the person receiving the building permit a number sign of such type as may from time to time be authorized by the City Council, and corresponding to the number assigned in the last revised assessment roll, for affixing to such building or structure, and in default of any such number sign being so affixed within a reasonable time, or in the event of its removal, the Building Commissioner is authorized to affix the same or a like sign, and the amount of the expenses incident thereto may be entered by the City Clerk in the collector's roll and collected in the same manner as taxes, or, if paid by the occupant of the premises, the same may, (subject to any agreement between him and the owner), be deducted from the rent payable to the owner.



(5) Changing Numbers. Whenever it becomes necessary to change the numbers for buildings on any highway, and they are so changed in the assessment roll, the owners and occupants of all such buildings shall be certified forthwith, or beforehand if possible, and new number signs shall be supplied by the Building Commissioner, and the postal authorities shall similarly be notified at as early a date as possible, by the City Clerk; and in default of any such new number sign being affixed, the same may be affixed by the Building Commissioner with the results provided in subsection 4.

#### BOULEVARDS

4. (1) Parts of Highway Set Apart as Boulevards. All such parts of the highways as are situated between the curb or edge of the roadway and the nearest street line, exclusive of the area covered by sidewalk or pavement, and all planted strips between the two roadways of a divided highway, are hereby set apart for the purpose of boulevards and may be known and referred to as such; and the former may be known and referred to as "side-boulevards" and the latter as "middle-boulevards", and a side-boulevard which adjoins the limit of the highway may be known and referred to as an "inner side-boulevard", and the one which adjoins the curb or edge of the roadway, as an "outer boulevard".

(2) Abutting Owners May Maintain Side-Boulevards. Subject to the provisions of this by-law respecting trees on highways, and subject to the provisions of other by-laws respecting public works and obstructions to the view of drivers at intersections, an owner of land abutting on a highway may at his own expense maintain in grass, flowers and trees, that part of any side-boulevard immediately opposite his land, but not so as unreasonably to confine, impede or incommode public traffic.

(3) Prohibitions. No person shall,

- (a) wilfully injure any planted boulevard, or walk upon it if there be any crossing within reasonable distance; or
- (b) cause or permit any horse, mule, pony or vehicle to be upon any planted boulevard; or
- (c) cause or permit any hedge or other obstruction to the clear view of drivers of vehicles, to be upon side-boulevards within thirty feet of the limit of any intersecting highway.

## TREES

5. (1) The Director of Public Works is hereby authorized to supervise the planting, trimming and removal of trees growing in the highways, and the trimming of trees planted upon a highway or upon private property, where the branches extend over a highway.

- (a) Definition. In this section except where otherwise indicated, "trees" includes a growing tree or shrub planted or left growing on either side of a highway for the purpose of shade or ornament. By-law No. 81-166, S.1(2).

(2) Owners of Land May Plant Trees. Any owner of land abutting on a highway may with the approval of the City Council expressed by resolution plant shade or ornamental trees upon that portion of the highway upon which his land abuts and which has been set apart for the purpose of a side-boulevard.

(2a) It is hereby authorized and directed that the City may, with the consent of the owner, plant shade or ornamental trees within eight feet of the highway at the expense of the City of Hamilton provided,

- (a) any tree planted is the property of the owner of the land on which the tree is planted; and
- (b) the owner of the land shall undertake and agree that the City of Hamilton is not liable for maintenance, replacement, removal or otherwise in respect of any tree so planted. By-law No. 75-292, S.1.

(3) Not To Be Obstruction.

- (a) No tree shall be so planted that the same is or may become a nuisance in the highway, or obstruct the reasonable use of the same;
- (b) No tree shall be planted upon any highway, nearer to any other tree upon a highway, than thirty feet;

Provided, however, that in this clause, "tree" shall not be deemed to include any shrub or tree of a sort which does not normally attain a height or spread of more than twenty feet;



- (c) Unsuitable Species. No tree shall be planted in any highway, of any of the following species, which the council deems unsuited for that purpose, and the Director of Public Works is authorized to remove without notice any or all of such trees growing on a highway or planted thereon contrary to the provisions of this by-law:

Chinese Elms  
Cottonwood or  
Balm of Gilead

Poplar  
Soft Maple  
Willow

Provided, however, that this subsection shall be construed as obligating the City Corporation or the Director of Public Works to remove all or any of such trees, unless the City Corporation has had notice that the roots of the same have already obstructed a sewer of the City Corporation or a sewer connection serving land other than the parcel abutting upon that part of the highway in which the tree is growing. By-law No. 81-166, S.1(2).

(4) Permission to Cut Down. The owner of any tree upon a highway may remove or cut down the same with the authority in writing of the Director of Public Works, but nothing herein shall be construed as requiring the Director of Public Works to give such permission in writing without a resolution of the City Council, when in his opinion the removal of such tree might be against the public interest. By-law No. 81-166, S.1(2).

(5) Removal in Public Interest. Any tree planted upon a highway shall be removed when deemed necessary in the public interest, but in such case the owner of the tree shall be given ten days notice of the intention of the City Council to remove such tree, and be recompensed for his trouble in planting and protecting it, and if he so desires shall be entitled himself to remove the tree, but shall not in such case be entitled to any further or other compensation.

(6) Notice to Remove. The notice required by subsection 5 may be given by leaving the same with a grown-up person residing on the land adjacent to the highway and nearest to the tree, or, if the land is unoccupied, by posting it in a conspicuous place on the said land, and if the tree has not been removed upon the expiration of ten days after such giving of the notice, the Director of Public Works shall forthwith proceed to remove the tree. By-law No. 81-166, S.1(2).

## (7) Decayed Trees.

- (a) An owner of a tree shall not leave standing any decayed or dangerous tree upon a highway, or any such tree so near to a highway that the same may be or become dangerous to persons lawfully using the highway;
- (b) Overhanging Limbs. An owner of a tree standing upon or adjacent to a highway shall not leave projecting over the highway any branch of any such tree in such manner as to obstruct the reasonable and safe use of the highway.

(8) No person shall injure or destroy a tree. By-law No. 79-106, S.1.

(9) No person shall attach any object or thing to a tree located on any highway or public place, except with the consent of the Director of Public Works notwithstanding that such attachment would not injure or destroy the tree. By-laws Nos. 79-106, S.1; 81-166, S.1(2).

## TEMPORARY CLOSING OF HIGHWAY FOR REPAIRS, ETC.

6. (1) To Be Closed While Work in Progress. During the construction, repairing or improvement of any highway or portion thereof, the said highway or that portion of it being so constructed, repaired or improved shall be temporarily closed.

(2) Alternative Route. Where a highway or portion thereof is so closed, the Commissioner of Engineering shall provide and the Director of Public Works shall keep in repair, a reasonable temporary alternative route as selected and designed by the Traffic Commissioner for traffic and for all property owners who cannot obtain access to their property by reason of such closing. By-laws Nos. 81-166, S.1; 82-153, S.7(1); S.8(1).

(3) Barricades and Detour Signs. While a highway or portion thereof is so closed to traffic, there shall be erected by the Commissioner of Engineering or by the Director of Public Works, whichever is in charge of the work, at each end of the highway or portion thereof, and where an alternative route deviates therefrom, a barricade upon which an adequate warning device shall be exposed and in good working order continuously



except during full daylight, and at such points there shall be erected detour signs by the Traffic Commissioner, indicating the alternative route and that the highway is closed to traffic. Every such barricade shall be of that type which may from time to time be adopted by the City Council. By-law No. 82-153, S. 7(1); S.8(1).

#### REMOVAL OF SNOW AND ICE

7. (1) (a) From Roofs of Certain Occupied Buildings. With respect to every occupied building having a pitched roof from which snow and ice might fall upon any highway or other place to which the public has access, the occupants shall clear away and remove the snow and ice from the roof whenever there is sufficient accumulation to threaten danger in the event of a thaw.

(b) Recovery of Cost From Occupants, in Case of Default. In default of compliance with the requirements of this subsection, the Director of Public Works in lieu of or in addition to any other remedy provided by this by-law, is authorized to clear away and remove such snow and ice at the expense of the occupants, and in default of payment on demand, the amount of the expense incurred in doing it shall be recovered from the said occupants by action. By-law No. 81-166, S.1(2).

(2) (a) From Roofs of Certain Unoccupied Buildings. With respect to every unoccupied building having a pitched roof from which snow and ice might fall upon any highway or other place to which the public has access, the Director of Public Works is authorized to clear away and remove, at the expense of the owner of the building, the snow and ice from the roof whenever it has come to his attention that there is a dangerous condition. By-law No. 81-166, S.1(2).

(b) Recovery From Owner of Cost of Removal. The amount of the expense incurred in clearing away and removing snow and ice from the roof of any unoccupied building pursuant to the provisions of clause (a) of this subsection shall be added by the City Clerk to the collector's roll and collected as municipal taxes against land are collected.

(3) (a) From Sidewalks at Certain Occupied Buildings. The occupants of all classes of buildings except office buildings, multiple dwellings, other buildings of multiple occupancy and

government buildings, shall clear away and remove the snow and ice from all the sidewalks on the highways in front of, alongside or at the rear of such buildings, as soon as reasonably practicable after every snowfall, and in any event within twenty-four hours.

(b) The owners of all office buildings, multiple dwellings, other buildings of multiple occupancy and government buildings, shall clear away and remove the snow and ice from all the sidewalks on the highways in front of, alongside or at the rear of such buildings, as soon as reasonably practicable after every snowfall, and in any event within twenty-four hours. By-law No. 73-366, S.2.

(c) Recovery of Cost From Occupants, in Case of Default. In default of compliance with the requirements of this subsection, the Director of Public Works in lieu of or in addition to any other remedy provided by this by-law, is authorized to clear away and remove such snow and ice at the expense of the occupants, and the amount of the expense incurred in doing it shall be recovered from the said occupants, by action, or shall be recovered in the manner provided by subsection 4 of this section. By-laws Nos. 73-366, S.1; 81-166, S.1(2).

(4) From Other Public Sidewalks. The Director of Public Works is authorized to clear away and remove snow and ice from the sidewalks on any highway or part of a highway, in front of, alongside or at the rear of any occupied or unoccupied building or vacant lot, at the expense of the owners, and the amount of such expense shall be added by the City Clerk to the collector's roll and collected as municipal taxes against land are collected. By-law No. 73-366, S.1.

(5) Manner of Removal. In the clearing away and removal of snow and ice from sidewalks or roofs, no snow or ice shall be deposited in such manner as to obstruct drainage to any drain or sewer, or so as to obstruct access to any fire hydrant, and no such snow or ice shall unnecessarily be deposited upon the travelled portion of any highway.

(6) Sanding of Crossings, etc. by Director of Public Works. It shall be the duty of the Director of Public Works to cause to be levelled or sanded, or both if necessary, all sidewalks and cross-walks which are in a condition of non-repair by reason of snow or ice; and the Director of Public Works is also authorized to cause to be levelled or sanded, or both, any roadway or part of a roadway in special cases when authorized to do so. By-law No. 81-166, S.1(2).



#### REMOVAL OF VEHICLES FOR SNOW-CLEANING

8. No person shall park or leave a vehicle on a highway where snow or ice is being moved to open the road for travel on it, and any vehicle which has been parked or left on a highway prior to the commencement of or during a snow or sleet storm or the work of moving the snow or ice to open the road for travel on it shall be removed within one hour after the commencement of such storm or work; and in default of its being so removed, any constable upon discovery of any vehicle parked or left in contravention of this provision may cause it to be taken to and placed or stored in a suitable place and all costs and charges for removing, care and storage thereof, if any, shall be a lien upon the vehicle, which may be enforced in the manner provided by section 52 of The Mechanics' Lien Act. By-law No. 82-153, S.5.

#### OBSTRUCTING, ENCUMBERING, INJURING OR FOULING HIGHWAYS PROHIBITED

9. (1) Save as herein otherwise provided or as otherwise specifically permitted by law, no person shall obstruct, encumber, injure or foul any highway, or obstruct any drain, ditch or culvert upon a highway.

(2) Obstructions and Encumbrances. Without in anywise limiting the generality of the foregoing prohibition of obstructing or encumbering a highway, no person shall without lawful authority erect, install, place or maintain or cause or permit the erection, installing, placing or maintaining of any pole, post, fence, hedge, awning, canopy, marquee, sign, area opening, porch, doorstep, vehicle approach ramp, sidewalk, driveway, or other building, structure, firewood or thing either wholly or partly upon, in, under or over a highway, or firewood or any other thing calculated to obstruct it, and no person shall cause or permit the hanging or maintenance of any gate, door or other thing in such a manner as to allow it to swing over any part of a highway.

(3) Removal of Obstructions, etc. Any pole, post, fence, hedge, awning, canopy, marquee, sign, porch, doorstep, vehicle approach ramp, sidewalk, driveway or other building, structure, firewood or thing unlawfully upon, in, under or over a highway, either wholly or partly, shall be removed by the owner or occupant of the land in connection with which the same exists, and any area under and opening to it, unlawfully in any highway shall be filled up by the owner or occupant of the land in connection

with which it exists; and in default of compliance with this provision any such obstruction or encumbrance may be removed and any such area and opening to it may be filled in by the City, and the highway restored to its former condition, all at the expense of the owner or occupant of the land in connection with which such obstruction, encumbrance, area or opening exists, and the amount of such expense may be recovered by action or may be added by the City Clerk to the collector's roll against the said land and collected in like manner as municipal taxes. By-laws Nos. 81-166, S.2; 82-153, S.7(2).

(4) Fouling Highways. Without in anywise limiting the generality of the foregoing prohibition of fouling a highway, no person shall foul any highway or cause or permit the fouling thereof, either by,

- (a) the littering by throwing, placing or depositing of any dirt, filth, glass, hand-bill, paper or other rubbish or refuse, or the carcass of any animal. By-law No. 71-268, S.1;
- (aa) the placing or depositing of mud, soil or building material by spilling from or tracking by one or more vehicles making egress from or ingress to adjacent land. By-law No. 77-105, S.1;
- (b) the throwing, placing or depositing of any hay, straw, coal, manure, earth or other matter or thing, whether refuse or not, and whether spilled from a vehicle or not; or
- (c) discharging liquid waste; or
- (d) fouling a highway in any other manner.

(5) Where a highway is fouled contrary to any provision in clause (aa) of subsection 4, the owner of the adjacent land shall immediately remove the fouling and restore the highway to its condition prior to the fouling. By-law No. 77-105, S.2.

(6) Where the fouling is discovered by an official, servant, agent or any other person, the Commissioner of Engineering or the Director of Public Works may remove the fouling in such a manner as to restore the highway to the condition prior to the fouling. By-laws Nos. 77-105, S.2; 82-153, S.8(1).



(7) The fouling shall be removed at the expense of the owner of the adjacent land referred to in clause (aa) of subsection 4, and shall be recovered in a like manner as municipal taxes against the land of the owner. By-law No. 77-105, S.2.

9a. (1) The whole or portion of every load carried by a motor vehicle on a highway and which is not enclosed by the vehicle or a load container, shall be covered by a covering that is made of tarpaulin, canvas, netting or other material that prevents the load or any part of the load from falling upon the highway. By-law No. 79-332, S.1.

(2) Subsection 1 does not apply to municipal vehicles,

- (a) in the course of applying sand, salt, a mixture of sand and salt or similar substance to the highway for the purpose of highway or winter highway maintenance;
- (b) in the course of collecting waste;
- (c) within the limits of a highway construction contract. By-law No. 79-332, S.1.

(3) For the purpose of this section, "load" includes,

- (a) domestic or industrial waste of any kind within the meaning of By-law No. 68-360; or
- (b) construction material; or
- (c) earth, sand, gravel, stone, crushed stone, slag, salt or any mixture thereof; or
- (d) any other material or thing,

that may foul a highway by being blown thereon or by spilling or falling onto the highway. By-law No. 79-332, S.1.

#### POLES IN AND WIRES OVER A HIGHWAY

10. (1) May Be Permitted. Notwithstanding the provisions of this by-law prohibiting the obstructing, encumbering, injuring or fouling of highways, but subject to the provisions of other

applicable Acts and by-laws, the following obstructions and encumbrances are permitted upon such terms and conditions as may be agreed upon:

- (a) electric light, power, telegraph and telephone poles and wires, and poles and wires for the transmission of electricity across or along any highway or public place;
- (b) poles, towers, wires, cables, amplifiers and other accessory equipment upon, across or along any highway or public place, for the purpose of transmitting electrical or electric impulses, signals and messages of every nature and kind, including those of alarm and protective systems, radio programmes or parts thereof, and television programmes or parts thereof, and the placing and maintenance of such equipment and of pipes, ducts, and conduits for enclosing such equipment, upon and within any poles, towers, pipes, ducts and conduits then erected, constructed or laid down, with the consent of the owner and the body in which is vested the management and control of such poles, towers, pipes and conduits.

(2) Location of Poles and Heights of Wires, etc. All such poles and towers referred to in subsection 1 shall be located, installed and maintained under the supervision and to the satisfaction of the Commissioner of Engineering and all such wires shall be placed and maintained at a height of not less than eighteen feet. By-law No. 82-153, S.8(1).

#### UNDERGROUND SERVICES IN NEW SUBDIVISIONS

10a. Notwithstanding any other provision of this by-law, all wires and conduits for,

- (a) the transmission of electricity; and
- (b) electrical or electric impulses, signals and messages of every kind and nature,

shall be installed underground in new subdivisions. By-law No. 79-217, S.1.

MISCELLANEOUS OBSTRUCTIONS AND ENCUMBRANCES  
PERMITTED UPON OR OVER A HIGHWAY

11. Notwithstanding the provisions of this by-law prohibiting the obstructing or encumbering of a highway, but subject to the provisions of other applicable Acts and by-laws, the following obstructions and encumbrances are permitted during the pleasure of the City Council, in accordance with the provisions following:

Where No Permit or Other Formality Required

(1) Paved Sidewalks and Driveways Not Over 25' Wide. Save as otherwise provided in subsection 8, a paved sidewalk or driveway of a width of not more than twenty-five feet, without any curb and at the same level as the adjoining ground, from the public sidewalk to the land abutting upon the highway, or, where there is an outer side-boulevard then from the public sidewalk to the edge of the roadway, but this provision shall not be deemed to include an approach ramp. By-law No. 81-127, S.2.

(2) Canvas or Other Non-Rigid Awnings. An awning of canvas or other such light and flexible material to project over a sidewalk to the extent of not more than three-quarters of the width of the same.

Provided it is on a suitable frame properly supported from a building or structure on the land abutting upon a highway, that it is not attached to any tree, pole or other erection or thing on the highway, that no part of its supporting frame is closer to the sidewalk than seven feet and six inches, that no part of the awning is closer to the sidewalk than six feet and eight inches, and that it is so constructed, installed and equipped as readily to be capable to being raised to a furled position in which it extends not more than ten inches over the highway and is at least eight feet above the surface of the sidewalk below it.

Where Only Building Permit Required

(3) Refacing Existing Buildings. An existing building to encroach or further encroach upon a highway to such an extent as may be necessary to provide for refacing any such building. By-law No. 77-56, S.1.

(4) Awning Containers, Cornices, etc. Sills, brackets, awning containers and awning covers, to an extent of not more than two inches, at least eight feet above the ground.



Cornices of show windows to an extent of not more than twelve inches, at least eight feet above the ground.

Eaves, and other cornices, to an extent of not more than eighteen inches, at least twelve feet above the ground.

Window air-conditioners to an extent of not more than eighteen inches, at least eight feet above the ground.

(4a) Architectural or Ornamental But Non-Structural Features. Architectural or ornamental but non-structural features at least eight feet above the sidewalk or where there is no sidewalk at least fourteen feet above the roadway to an extent of not more than one foot, provided that the area of vertical projection of such features which projected over the highway shall not exceed, in any area of one hundred square feet of wall, twenty square feet. By-laws Nos. 66-97, S.1; 76-90, S.1.

(5) Signs. A sign or other advertising device having an area of vertical projection of no more than sixty square feet and a thickness between its principal faces of no more than eighteen inches, to project over the highway to the extent of not more than ten feet or two-thirds as far as the curb lines, whichever is the lesser distance, at a height of at least eight feet above the ground; or, where the curb line is no more than seven feet from the street line, it may project as far as the curb line if the clearance above the ground is at least fourteen feet. By-laws Nos. 9417, S.2; 76-90, S.2.

Where Annual Charge or Indemnification Agreement, etc. Required

(6) Paving of a part of a side-boulevard other than as permitted under subsection 1, upon a permit in writing from the Commissioner of Engineering, according to his specifications and to his satisfaction, after registration in the Registry Office for the Registry Division of Wentworth, of an agreement satisfactory to the City Solicitor, to indemnify and save harmless the City Corporation for any and all actions, claims, demand and loss whatsoever which may result. By-law No. 81-127, S.3.

(7) Bridges, Canopies and Marquees. After registration of an indemnification agreement as aforesaid, a bridge or other structure over or across a highway at a height of not less than eighteen feet, for the purpose of access by the owner of land to

land of the same owner on the other side of the highway, and a canopy or marquee to the curb line at a height of at least eight feet above the sidewalk or ground. By-law No. 76-90, S.3.

(8) A vehicle approach ramp may be constructed as an independent installation by the City upon specifications of the Commissioner of Engineering and to his satisfaction,

- (a) in the case of ramps not more than twenty feet in width for single-family dwellings or two-family dwellings, after application in writing to the Director of Public Works;
- (b) in the case of any other ramps, after application in writing to the Traffic Commissioner,

upon payment by the applicant of any money as a charge for its construction as the City may approve, based on the average cost per square foot of construction of vehicle approach ramps independently constructed during the preceding calendar year.

By-laws Nos. 71-326, S.1; 81-127, S.4; 82-153, S.6, S.7(1), S.8(1).

(8a) Except as provided in subsection (8b), the location of all vehicle approach ramps shall be to the satisfaction of the Traffic Commissioner. By-laws Nos. 71-326, S.1; 81-127, S.5.

(8b) The location of a vehicle approach ramp for a driveway not more than twenty feet wide for single-family dwellings and two-family dwellings shall be to the satisfaction of the Director of Public Works. By-laws Nos. 71-326, S.1; 81-127, S.5; 81-166, S.1(2).

(8c) Except as provided in subsection (8d), no vehicle approach ramp may be located to allow access to a driveway where the distance between the building and the side property line is less than seven feet wide. By-laws Nos. 71-326, S.1; 74-267, S.1; 80-132, S.1; 81-127, S.5.

(8d) A vehicle approach ramp may be located,

- (a) to allow access to an attached garage or to a carport or to a front, side or rear yard;
- (b) to allow access to a mutual driveway not less than seven feet wide if,

- (i) the mutual driveway is established in accordance with any instrument registered in the Registry Office against the title of the lands of the abutting parcels; and
  - (ii) a hard surfaced paved rear or side yard parking space having dimensions not less than nine feet wide and twenty feet long can be established.
- By-laws Nos. 71-326, S.1; 81-127, S.5.

(8e) Where there is registered on title an agreement for paving a portion of the highway satisfactory to the Traffic Commissioner, notwithstanding subsection (8b), a vehicle approach ramp to one or more parking spaces located partially in the front, side or rear yard of a single-family, two-family or three-family dwelling and partially upon the boulevard of a public highway, shall be located to the satisfaction of the Traffic Commissioner. By-laws Nos. 74-267, S.1; 81-127, S.6, S.7(1), S.8(1); 84-43, S.1.

(8f) Where a vehicle approach ramp has been constructed in accordance with subsection (8e), the parking spaces provided shall not be occupied by,

- (a) a commercial motor vehicle or trailer within the meaning of The Highway Traffic Act; or
  - (b) a boat; or
  - (c) a mobile housing unit.
- By-law No. 81-127, S.8.

(9) Benches for the use of the public, on the untravelled portion of any highway, subject to such terms and conditions as may be agreed upon.

(10) Transit system shelters for the use of the public, on the untravelled portion of any highway, subject to such terms and conditions as may be agreed upon.

(11) Telephone booths for the use of the public, upon such terms and conditions including an annual or other charge, as may be agreed upon.



(12) Subject to the provisions of The Municipal Act in that behalf, iron waste paper boxes on the street corners or elsewhere, for the use of the public upon such terms or conditions including an annual fee, as may be agreed upon.

(13) The maintenance and use by any person owning or occupying any building or other erection which by inadvertence has been wholly or partially erected upon any highway, upon the payment of such annual fee or charge as the City Council may from time to time deem reasonable, for such owner or occupant to pay for such privilege; and such fee or charge shall form a charge upon the land used in connection with such encroachment, and shall be collected in like manner as municipal taxes, for so long as the City Council permits the continuance of such encroachment.

Provided that an inadvertent encroachment which has been so permitted to continue shall be removed at the expense of the owner upon termination by resolution of the City Council, of the privilege for the continuance of such inadvertent encroachment.

11a. (1) The elevation of any access driveway at the street line shall be approved by the Commissioner of Engineering, By-law No. 71-21, S.1.

(2) Subsection (1) does not apply to single-family dwellings or to two-family dwellings. By-law No. 71-21, S.1.

11b. (1) Every person shall before placing one or more print media vending or distribution boxes on a sidewalk or a highway,

- (a) enter into an agreement satisfactory to the City;
- (b) pay an equivalent sum annually on January 1st of each year for each vending or distribution box but prorated for the balance of the year where vending or distribution boxes are placed after January 1st;
- (c) provide at the time of each annual payment and from time to time as may be required by the Commissioner of Transportation,

- (i) an alphabetical street name inventory listing exactly where the vending or distribution boxes are placed; and
- (ii) a map of the City satisfactory to the Commissioner of Transportation showing the location where each vending or distribution box is situate;
- (d) provide a \$1,000,000 public liability policy of insurance wherein the City is an additional named insured and the policy contains a provision for cross-liability. By-laws Nos. 84-40, S.1; 85-160, S.3.

(2) Every print media vending or distribution box shall be situate on a sidewalk or a highway only in accordance with the following regulations:

1. No vending or distribution box shall be placed,
  - (a) in such a manner as in the opinion of the Commissioner of Transportation may obstruct pedestrian or vehicular movement;
  - (b) on sidewalks having a width of 2 metres or less;
  - (c) within 30 metres of all street intersections except at the back of the sidewalk;
  - (d) at bus loading areas;
  - (e) within 6 metres of any fire hydrant;
  - (f) at or adjacent to pedestrian and vehicular egress and ingress locations including ramps and crosswalks so as to obstruct or interfere with egress and ingress;
  - (g) so as to obstruct or interfere with street maintenance.



2. No vending or distribution box shall be chained, fastened or affixed to,
  - (a) utility apparatus, such as signal poles, lamp posts, H.S.R. utility poles;
  - (b) telephone booths, post boxes, bus shelters, bus roscos, sign posts, parking meters;
  - (c) a building, structure or fixture not designed to accommodate vending or distribution boxes, unless prior written permission from the owner is first obtained.
3. No deliveries to, maintenance of, and repairs to, vending or distribution boxes shall, in the opinion of the City, obstruct or interfere with the use of the travelled portion of the sidewalk or the highway on which the boxes are situate.
4. The exact location and manner of placement and maintenance of vending or distribution boxes shall be to the satisfaction of the Commissioner of Transportation. By-law No. 84-40, S.1.

(3) For the purpose of clause (b) of subsection 1, "equivalent sum" means a sum of money equal to the charge required to be paid by The Regional Municipality of Hamilton-Wentworth. By-law No. 83-160, S.1.

(4) For the purpose of clause (c) of paragraph 2 of subsection 2, "owner" means an owner or registered owner or other person satisfactory to the Commissioner of Transportation. By-law No. 83-160, S.1.

MISCELLANEOUS EXCAVATIONS AND INSTALLATIONS  
PERMITTED IN OR UNDER A HIGHWAY

12. Notwithstanding the provisions of this by-law prohibiting the obstructing, encumbering or injuring of highways, the surface of any highway may, subject to the provisions of section 13, be cut and the following obstructions and encumbrances permitted during the pleasure of the City Council, in accordance with the following provisions:

1. Area Opening. Subject to the provisions of the Building By-law, an area under and an opening to it in the highway upon permission of the City Council and after registration in the Registry Office for the Registry Division of Wentworth, of an agreement satisfactory to the City Solicitor, to indemnify and save harmless the City Corporation from any and all actions, claims, demands and loss whatsoever which may result.
2. Sewer Connections. A connection from a sewer of the City Corporation to the boundary of the highway, upon a permit in writing from the Commissioner of Engineering. By-law No. 82-153, S.8(1).
3. Pipes, Conduits, etc. Subject to the provisions of The Municipal Act, The Municipal Franchises Act and other applicable Acts,

- (a) pipes or conduits for transmitting gasoline, petroleum or petroleum products, along, under, in or upon a highway or land owned by the municipality;
- (b) pipes or conduits for enclosing wires for the transmission of electricity, under a highway or public place;
- (c) pipes or conduits for transmitting steam, under a highway or public square;
- (d) pipes and other necessary works for the transmission of water, gas or sewage on, in, under, along or across a highway; and
- (e) subways for cattle under a highway, upon the permission of the City Council in accordance with such terms and conditions as may be agreed upon.

REQUIRED PROCEDURE RESPECTING INSTALLATIONS UNDER  
A HIGHWAY OR CUTTING THE SURFACE OF A HIGHWAY

13. (1) Application of Section. Wherever any work permitted by the provisions of this by-law or otherwise permitted by law involves any excavating in a highway or cutting the surface of a highway, the provision of this section shall apply, except in the case of sewer mains, water mains, water service pipes, vehicle approach ramps and other work done by the City Corporation.

(2) Where No Permit Required From Commissioner of Engineering. No permit from the Commissioner of Engineering to cut or excavate is required with respect to,

- (a) the laying of any private sidewalk or driveway, (except a vehicle approach ramp). Not more than fifteen feet wide, or;
- (b) an area under and opening to it in a highway, which is authorized under the provisions of this by-law, but all other relevant provisions of this section shall apply to the same. By-law No. 82-153, S.8(1).



(3) Where Permit Required From Commissioner of Engineering. A permit in writing from the Commissioner of Engineering is required before the cutting of the surface of any highway with respect to the installation or replacement of,

- (a) any paving more than twelve feet wide;
  - (b) any sewer connection;
  - (c) any pole or tower;
  - (d) any pipe or conduit; or
  - (e) any other underground work or other work involving the cutting of the surface of any highway, except as otherwise provided in subsection 2.
- By-law No. 82-153, S.8(1).

(4) Application For Permit. Every application for a permit required under this section shall be made to the Commissioner of Engineering in writing in six copies, together with a plan in five copies, showing the proposed location, nature and particulars of the work, and the Commissioner of Engineering shall forward one copy of the application and one copy of the plan, each, to the Traffic Commissioner and to the Director of Public Works. By-law No. 82-153, S.7(1); S.8(1).

(5) Issue of Permit. The Commissioner of Engineering upon receipt of the application and after consultation with any other official aforesaid who may reasonably be concerned, will as soon as possible issue the permit to any applicant to whom such permit ought to be issued, but no permit shall be issued for the cutting of a highway where in the opinion of the Commissioner of Engineering the work ought to be done by boring instead of cutting, and in such case the permit shall be issued for boring. By-law No. 82-153, S.8(1).

(6) Notice of Commencement and Carrying on of the Work. Except in case of emergency, no such work shall be commenced without at least forty-eight hours notice in writing to the Commissioner of Engineering, the Director of Public Works and the Traffic Commissioner, or a full week's notice where a street will have to be closed, or the traffic on a heavily travelled street seriously interfered with, and daily notice shall be given to the Commissioner of Engineering, of the progress of all such work until its completion and the restoration of the highway; and, in case of any emergency work notice shall be given and an application for permit made as soon as possible after commencement of

the work, namely on the same day, or, if too late in the day, then within one hour of the opening of the Commissioner of Engineering's office on the next following day which is not a Sunday or other holiday. By-law No. 82-153, S.8(1).

(7) All Underground Work to be Done Only by City Corporation, Bonded Contractor, Public Utility or Franchise Holder. With the exception of work done by the City Corporation or its servants, agents or contractors, all work referred to in subsection 3 of this section except paving, and except an area under and opening to it in the highway, shall be done only by the public utility or the franchise holder lawfully in control or by a contractor who has deposited with the City Clerk a satisfactory bond of a recognized bonding company licensed to carry on business in Ontario, in such amount as may be deemed sufficient, that he will perform all work done upon, in or under a highway in a proper and workmanlike manner, take all proper precautions and safety measures for the protection of public and private property and of the public, including the maintenance of all necessary warning lights and watchmen, carry out and complete all such work and restore the highway to as good condition as before with all due expedition and dispatch, maintain the disturbed portion of the highway in proper repair for the period of two years after completion of the work, and indemnify and save harmless the City Corporation from any and all actions, claims, damages and loss whatsoever arising directly or indirectly from doing of the work.

(8) Supervision, Inspection, and Inspection Fees. All work referred to in this section shall be carried out under the direction and supervision of the Commissioner of Engineering and to his satisfaction, and the person in control of such work shall, forthwith upon demand after completion of the work, pay to the City Corporation all costs incurred by the City Corporation for inspection and supervision of the work, and all other costs which have been incurred. By-law No. 82-153, S.8(1).

(9) Carrying Out of the Work.

- (a) Generally. All work to which the provisions of this section apply shall be carried out in a proper workmanlike manner, with all proper precautions and safety measures for the protection of public and private property, and of the public, including the maintenance of all necessary warning lights and watchmen, and brought to completion and the highway restored to as good condition as before as expeditiously as possible, all under the direction and supervision of the Commissioner of Engineering and to his satisfaction;



- (b) Cut in Boulevard. Where a sodded or planted boulevard is cut, top soil to a depth of at least six inches shall be placed over the required back filling, and the sod or other planting restored to as good condition as before; but in the case of a pavement cut, the entire section of pavement shall be replaced for its full length and width, and the paving restored to as good condition as before;
- (c) Cut in Sidewalk or Vehicle Approach Ramp. Where a cut is made in a sidewalk or vehicle approach ramp, the entire section which is cut shall be replaced in conformity with the concrete specifications and other requirements of the City Corporation;
- (d) Cut in Roadway. Where a cut is made in an unpaved roadway, it shall be backfilled with suitable granular material properly tamped, except the top twelve inches which shall be backfilled with crushed stone graded in size from three-eighths of an inch to dust, properly tamped; but where the cut is in an asphalt pavement, whether it is asphalt on macadam or asphalt on concrete, the pavement shall be replaced by three inches of hot-mix asphalt on an eight-inch concrete base over suitable granular material properly tamped;
- (e) Where Any Drain Connections, etc. Disturbed. Where a sewer or catch-basin connection or other service or facility of the City Corporation is broken or disturbed, the person in control of the work shall at once notify the Commissioner of Engineering who shall perform all necessary work of restoration at such person's expense, and where a private drain connection is broken or disturbed, such person shall at once cause the same to be repaired by a bonded sewer contractor.  
By-law No. 82-153, S.8(1).

#### USE OF HIGHWAY DURING BUILDING OPERATIONS

14. (1) Use of Part of Highway Permitted. Notwithstanding the provisions of this by-law prohibiting the obstruction, encumbering, injuring or fouling of highways, the use of a portion

of any highway by the owner or occupant of land adjoining such highway during building operations upon such land for the storage of materials for such building or for the erection of boards is permitted in accordance with the provisions of this section.

(2) Permit Required. No such use shall be commenced unless and until a permit in writing has been obtained from the Traffic Commissioner, and no such use shall be made of any part of the highway except in accordance with the terms of the permit and all applicable provisions of the Building By-law. By-law No. 82-153, S.8(2).

(3) Terms of Permit. Every such permit shall show what part of what highway may be so used, for what part or parts of the day during what period of time, and no such permit shall be for the use of a greater area of the highway or for a longer period of time than is reasonably necessary, having regard to the safety and convenience of the public as well as the need of the applicant, and every such permit shall be subject to cancellation by the Traffic Commissioner at any time. By-law No. 82-153, S.8(2).

(4) No permit shall be issued until there has been paid a fee in such amount as may be determined from time to time by the City Council, and, upon the expiry of the permit, no such use shall be made of any part of the highway unless and until another permit in writing has been obtained and a further fee paid.

(5) Indemnification Agreement. No permit shall be issued until there has been delivered by the applicant an agreement from a recognized bonding company licensed to carry on business in Ontario, in such sum as may be required, to indemnify and save harmless the City Corporation, from any and all actions, claims, damages and loss whatsoever, arising from such use of the highway.

(6) Where Consent of Adjoining Owner Required. Before any permit is given for the use of any part of the highway beyond the limits of the frontage of the applicant, there shall be obtained from the owner of the adjoining lands, in writing, a consent and waiver of all claims against the City Corporation of any damages which may result, whether directly or indirectly from any such use of that part of the highway during the period to be covered by the permit and for a reasonable time thereafter.

(7) Other Requirements. Every person making use of any part of a highway during building operations shall be responsible that the following requirements are observed:



- (a) Mixing Mortar. No mortar, concrete or other such substance shall be mixed upon the highway, save upon a platform of wood, iron or other as suitable material and so located and guarded as to give adequate protection both to the highway and to children and the public;
- (b) Keep Drains Clear. No material shall be allowed to obstruct the free passage of water in any drain, gutter or watercourse;
- (c) Dust, Nuisance, etc. No unnecessary dust or noise shall be allowed, or any unnecessary or unreasonable annoyance to the public;
- (d) Warning Lights. No building material or other obstruction shall be allowed on a highway without sufficient suitable warning lights and such other safeguards as may be necessary or desirable for the protection of children and the public;
- (e) Clear and Restore Highway. All building material and other obstructions and all debris and residue shall be removed from the highway and the same restored to as good condition as before on or before the day of expiration of their permit.

#### MISCELLANEOUS REGULATIONS

15. (1) Firearms. No person shall discharge any gun or other firearm, air-gun or spring-gun of any class or type, anywhere in the City of Hamilton.

Provided, however, that this prohibition shall not apply to the discharge of firearms,

- (a) in properly constructed and supervised rifle ranges; or
- (b) in shooting galleries licensed by the Board of Commissioners of Police; or
- (c) by police officers or employees of the City Corporation carrying out their proper duties in the killing of stray pigeons, vicious dogs, or otherwise.



(2) Fireworks. REPEALED. By-law No. 79-128, S.34.

(3) Vehicle Crossing Sidewalk. Notwithstanding the provisions of the Traffic By-law prohibiting vehicles on sidewalks save at properly constructed crossings, it is permitted to cross a sidewalk with a vehicle with building materials during building operations, or for other reasonable and temporary need, where there is no regular crossing, provided that the sidewalk is protected by planking at least two inches thick, securely fastened and chamfered or bevelled at the ends for the greater safety of pedestrians, and provided further that a suitable temporary bridge is constructed across the adjoining gutter in such manner as not to obstruct the same.

(4) Filling Up and Draining Vacant Lots. The owner of any ground, yard or vacant lot shall be responsible to fill up and drain any depression where water lies, and to keep such ground, yard or lot clean and free of any debris and refuse. By-law No. 9643, S.2.

(5) Pits and Quarries.

- (a) In Operation. No excavation for any pit or quarry shall be made or commenced within less than ten feet of the limits of any highway or other public place, or within less than ten feet of the limits of any adjoining lands; the slope at the sides of the excavation shall in no case be steeper than one and a half feet horizontal to one foot vertical, and the depth shall nowhere be greater than thirty feet;
- (b) Not in Operation. The owner of any pit or quarry which is within three hundred feet of a road and which has not been in operation for a period of twelve consecutive months, shall level and grade the floor and sides thereof and the area within three hundred feet of its edge or rim so that it will not be dangerous or unsightly to the public.

(6) Strayed Pigeons. The Director of Public Works upon the complaint of the owner or occupant of any premises is empowered to enter upon such premises and the land buildings in the vicinity thereof for the purpose of trapping, removing or exterminating strayed pigeons which are causing annoyance to the owner or occupant or damage to such premises. By-law No. 81-166, S.1(2).

## MISCELLANEOUS PROHIBITIONS

16. (1) Indecent Placards, etc. No person shall post or exhibit any placard, play bill, poster, writing or picture, or write any word or make any picture or drawing, which is indecent or may tend to corrupt or demoralize, on any wall or fence or elsewhere on a highway or in a public place.

(2) Defacing Signs. No person shall pull down or deface any sign or other advertising device or notice lawfully affixed.

(3) Discharging Rain Water on Highway. No owner, occupant or other person in control of any premises, shall allow any rain conductor or other drainage facility to discharge water so as to flow upon any highway; and no owner of any paved area other than a private driveway or sidewalk shall allow it to drain onto a highway.

(4) Depositing Snow on Highway. No person shall deposit any snow or ice on the travelled portion of any highway. By-law No. 10107, S.1(1).

(5) Discharging Nauseous Liquid. No person shall discharge or allow the discharge into any highway or public place, or into any sewer of the City Corporation of any toxic, flammable, corrosive or other nauseous liquid.

(6) Putting Kitchen Waste, etc. in Waste Paper Boxes. No person shall deposit into any waste paper box or basket on a highway, a lighted cigarette or other fire, or any accumulation of a kitchen waste or other garbage which ought rather to be put out in a container for collection in the City's regular garbage collection, or any other material of a kind not reasonably appropriate for depositing in a waste paper box or basket on a highway.

(7) Disturbing Noises. No person shall ring a bell, blow a horn, or shout or make any unusual noise, or any noise likely to disturb the inhabitants.

Provided that this shall not be deemed to prohibit the ringing of church bells, the sounding of motor vehicle horns when reasonably necessary or other noises of a reasonable nature and intensity on proper occasions. By-laws Nos. 10107, S.1; 68-290, S.1.



(8) Obstructing Watercourses. No person shall obstruct any drain or watercourse. By-law No. 10107, S.1(3).

(9) Other Public Nuisances. The throwing of stones or playing of games on a highway, the climbing of trees or fences, defacing of buildings with paint or writing or otherwise, and all other public nuisances of whatsoever kind or nature, are hereby prohibited.

(10) Criers and Vendors of Smallwares. Except as may be provided in any other by-law of the City, no crier and no vendor of smallwares shall practise his calling in the market place, or on the highways or on any vacant lot adjacent to the market place or to a highway. By-laws Nos. 9417, S.1; 10107, S.1(4); 85-103, S.1.

(11) Retail Selling. Except as may be provided in any other by-law of the City, no person shall sell by retail in any highway or on any vacant lot, lot adjacent to a highway, any meat, fish, vegetables, grain, hay, fruit, flowers, beverages, smallwares or other articles.

Provided that this shall not be deemed to apply to the sale of newspapers or magazines in a highway, or to the operations of any licensed refreshment vehicle in a highway, or to door-to-door or other persons lawfully selling from door-to-door. By-laws Nos. 10107, S.1(5); 85-67, S.1.

(11a) Notwithstanding subsection 11, the untravelled portion of a highway within that portion of the City of Hamilton that may be used for commercial or industrial purposes, may be leased or licensed to the owners or occupants of adjoining property for the purpose of establishing an outdoor cafe and the City may determine the consideration and terms and conditions of the lease or licence and may determine what constitutes an outdoor cafe. By-law No. 75-315, S.1.

16a. (1) No person shall erect or place or affix a sign or post a notice on property abutting on a defined highway or part of a highway. By-law No. 83-022, S.1.

(2) Every person who erects, places or affixes a sign or posts a notice contrary to subsection 1 shall upon written or oral notice forthwith pull down or remove the sign or notice. By-law No. 83-022, S.1.

(3) Notwithstanding subsection 1, the City may grant permission to erect, place or affix a sign or post a notice

upon such terms and conditions as the City may require, but nothing in this by-law shall oblige the City to grant such permission. By-law No. 83-022, S.1.

- (4) For the purpose of this section,
- (a) "building" includes structure;
  - (b) "defined highway" means a highway listed in City Traffic By-law No. 66-100 and in Regional Municipality of Hamilton-Wentworth By-law No. R 77-78, situate within the City;
  - (c) "local board" has the same meaning as in The Municipal Affairs Act;
  - (d) "person" includes the owner of the sign or notice, any individual or organization that has erected or caused to be erected, placed or affixed the sign or that has posted or caused to be posted the sign, or any individual or organization holding themselves out in the content of the sign or notice as sponsoring or responsible for the message therein;
  - (e) "property" means a building owned or used by the City, or local board, or used by any person on City land;
  - (f) "sign" does not include,
    - (a) a sign, advertising device or other device or apparatus within the meaning of section 5 of Traffic By-law No. 66-100; or
    - (b) a sign that is of a temporary nature and is free standing and on its own supports.  
By-law No. 83-022, S.1.

PENALTIES

17. Every person who contravenes any provision of this by-law is guilty of an offence and is liable to a fine of not more than \$2,000.00. By-laws Nos. 73-39, S.1; 79-106, S.4; 81-218, S.1.

REPEAL

18. The following by-laws are hereby repealed, namely:

- (a) By-law No. 5789 Respecting Streets, passed on the 28th day of May, A.D. 1946, and all amendments thereto;
- (b) By-law No. 8317 Respecting the Sale and Setting Off of Fireworks, passed on the 10th day of June, A.D. 1958, and all amendments thereto;
- (c) By-law No. 8567 Prohibiting the Discharge of Firearms, passed on the 10th day of March, A.D. 1959, and all amendments thereto;
- (d) By-law No. 48 of the Revised By-laws of 1910, Respecting sand and gravel pits, and all amendments thereto; and
- (e) By-law No. 2380 of the Township of Barton To Regulate the Operation of Pits and Quarries, passed on the 30th day of June, A.D. 1958.

19. Every reference to By-law No. 9329 shall be a reference to this by-law.

20. The short title of this by-law is "The Streets By-law".

PASSED this 25th day of FEBRUARY A.D. 1986.

  
City Clerk

  
Mayor



Bill No. B-77

The Corporation of the City of Hamilton

BY-LAW NO. 88-244

To Amend:

Streets By-law No. 9329

Respecting:

TREES AND SHRUBS

WHEREAS the Council of The Corporation of the City of Hamilton passed By-law No. 9329 on the 9th day of May, 1981, being the Streets By-law, to regulate, among other things, the planting of trees and shrubs along the boulevards and road allowances in the City of Hamilton;

AND WHEREAS By-law No. 86-77 was passed on the 25th day of February, 1986 to consolidate the Streets By-law No. 9329 as amended to date;

AND WHEREAS the Council of The Corporation of the City of Hamilton, in adopting Item 4(a) of the Eighth Report of the Transport and Environment Committee at its meeting held on the 10th day of May, 1986, directed that By-law No. 9329 (as consolidated by By-law No. 86-77) be amended further with respect to the planting of trees and shrubs on the boulevards and road allowances in the City of Hamilton.

NOW THEREFORE the Council of The Corporation of the City of Hamilton enacts as follows:

1. (1) Section 5(2) of By-law No. 9329, as consolidated by By-law No. 86-77, is further amended by adding thereto the following subsection:

(b) Owners of Land May Plant Shrubs. Subject to subsection (3)(bb), any owner of land abutting on a highway may plant hedges and shrubs and other plant material upon that portion of the highway upon which his or her land abuts and which has been set apart for the purpose of a side-boulevard.

(2) Section 5(2) of By-law No. 9329, as consolidated by By-law No. 86-77, is further amended by inserting after the numeral (2) the letter (a).

2. Section 5(3) of By-law No. 9329, as consolidated by By-law No. 86-77, is amended by adding thereto the following subsection:

- (bb) 1. No hedge or shrub or other plant material that is planted within 10 feet of a public sidewalk or curb or edge of a roadway shall be permitted to exceed 30 inches in height.
2. No hedge or shrub or other plant material shall be so planted, or permitted to grow to such an extent, that it overhangs the sidewalk, shoulder or roadway.

3. Section 5 of By-law No. 9329, as consolidated by By-law No. 86-77, is further amended by adding thereto the following subsection:



A4463

(10) Pruning. Every person who plants a tree or trees on a side-boulevard within 10 feet of a public sidewalk, curb, or edge of a roadway shall prune the tree or trees to the trunk for the first 8 feet above the ground.

4. In all other respects, section 5 of By-law No. 9329, as consolidated by By-law No. 86-77, is hereby confirmed, unchanged.

5. (1) Section 9(2) of By-law No. 9329, as consolidated by By-law No. 86-77, is amended by adding after the word "hedge" in the sixth line, the following:

shrub, tree, or other plant material,

(2) Section 9(3) of By-law No. 9329, as consolidated by By-law No. 86-77, is amended by adding after the word "hedge" in the second line, the following:

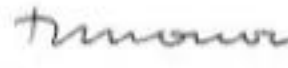
shrub, tree or other plant material.

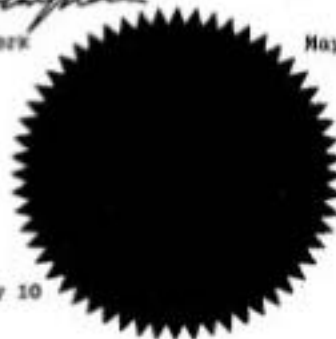
(3) In all other respects, section 9 of By-law No. 9329, as consolidated by By-law No. 86-77 is hereby confirmed, unchanged.

PASSED this 25th day of October

A.D. 1988.

  
City Clerk

  
Mayor



(1988) 8 R.T.E.C. 4a, May 10

A179

Bill No. A-1

## The Corporation of the City of Hamilton

BY-LAW NO. 92-010

To Amend:

By-law No. 86-77

Respecting:

## SERVICE CLUB SIGNS ON HIGHWAYS

WHEREAS By-law No. 86-77 was enacted by the Council of The Corporation of the City of Hamilton on the 25th day of February 1986 to consolidate Streets By-law No. 9329;

AND WHEREAS the Council of The Corporation of the City of Hamilton, in adopting Section 12 of the 15th Report of the Transport and Environment Committee authorized the preparation of this by-law.

NOW THEREFORE the Council of The Corporation of the City of Hamilton enacts as follows:

1. Section 1 of By-law No. 86-77 is amended by repealing clause (b).

2. Section 1 of the said by-law is amended by repealing clause (ba) and replacing it with the following:

(ba) "Commissioner of Transportation/Environmental Services" means the Commissioner of Transportation/Environmental Services of The Regional Municipality of Hamilton-Wentworth;

3. Section 1 of the said by-law is amended by adding the following clause:

(dd) "Service Club" means a non-profit organization or association which has charitable or social objects;

4. Section 11 of the said by-law is amended by adding the following subsection:

(14) Service Club Signs. The Commissioner of Transportation/Environmental Services may issue a permit to allow the placing of service club signs upon the City highways. The location of the signs shall be acceptable to the Commissioner of Transportation/Environmental Services and to the Traffic Commissioner. The signs shall be constructed and installed by the City at the expense of the service club.



5. Section 17 of the said by-law is repealed and replaced by the following:

17. Every person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to the fine specified in section 62 of the Provincial Offences Act, R.S.O. 1980, Chapter 400, as amended.

PASSED this 14th day of January A.D. 1992.

  
City Clerk

  
Mayor



(1991) 15 R.T.E.C. 12, October 29

The Corporation of the City of Hamilton

BY-LAW NO. 93- 003

To Amend:

Streets By-law No. 86-77

Respecting

**SIGNS**

**WHEREAS** the uncontrolled posting of signs and notices on utility poles on the highway creates a safety hazard for City employees and a potential traffic hazard;

**AND WHEREAS** the posting of signs and notices creates an aesthetic and visual blight;

**AND WHEREAS** the City provides kiosks for the public to affix signs in certain parts of the City;

**NOW THEREFORE** the Council of The Corporation of the City of Hamilton enacts as follows:

1. Section 16a. of By-law 86-77 is repealed and the following is substituted in lieu:

16a. (1) No person shall erect or place or affix a sign or post a notice on property abutting a highway or part of a highway except in accordance with this section.

(2) Any person posting a sign or notice shall follow the directions of the Director of Public Works.

(3) Signs or notices shall be fastened with adhesive tape. No person shall fasten the sign or poster on a utility pole with staples or any metal device.

(4) The person posting the sign or notice shall remove the sign or notice and all posted materials five days after the event advertised has occurred.

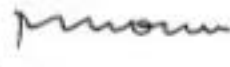
(5) No sign or notice which exceeds the dimensions of eleven (11) inches wide by seventeen (17) inches long shall be posted.

(6) For the purposes of this by-law, "sign" does not include a sign that is free standing and on its own supports.

PASSED this 12th day of January , A.D. 1993.

  
City Clerk



  
Mayor

Bill No. A-7

The Corporation of the City of Hamilton

By-law No. 94 - 016

To Amend Streets By-law No. 9329

As Consolidated by By-law No. 86-77

Respecting

SNOW AND ICE ON HIGHWAYS

WHEREAS City Council, on February 8, 1994, in adopting Item 13 of the 2nd Report of the Transport and Environment Committee authorized an amendment to subsection 5 of Section 7 of By-law No. 86-77;

NOW THEREFORE the Council of The Corporation of the City of Hamilton enacts as follows:

1. Subsection 5 of Section 7 of By-law No. 86-77 is repealed and replaced by the following:
  - \*5. No person shall throw, place, bring or deposit snow or ice or slush onto the travelled portion of any highway or obstruct drainage to any drain or sewer or obstruct access to any fire hydrant.\*

PASSED this 8th day of February 1994.



CITY CLERK



MAYOR



(1994) 2 R.T.E.C. 13, February 8

## The Corporation of the City of Hamilton

## BY-LAW NO. 96-122

To Amend:

Streets By-laws No. 86-77

Respecting:

## TEMPORARY HIGHWAY CLOSURES FOR EVENTS

WHEREAS the Council of The Corporation of the City of Hamilton has enacted "The Streets By-law" No. 86-77, on the 25th day of February 1986;

AND WHEREAS the Municipal Act, R.S.O. 1990, c. 45, section 207(44) states as follows:

"207. By-laws may be passed by the councils of all municipalities:

44. Temporary closing of highway. -- For closing to vehicular traffic on a temporary basis for such period as shall be specified in the by-law, any highway under the jurisdiction of the council for such social, recreational, community, athletic or cinematographic purpose, or combination of such purposes, as may be specified in the by-law and for authorizing a committee of council or a municipal officer or employee, subject to such conditions as council may impose, to exercise any of the powers of council under this paragraph.

- (b) A by-law under this paragraph may prohibit the use, except for pedestrian traffic, of the highway or portion of the highway so closed during the period of closure except under the authority of a Permit issued under the by-law upon such terms and conditions, including such fee for the Permit, as may be set out in the by-law."

AND WHEREAS the Municipal Act, R.S.O. 1990, c. 45, section 207(44)(a) provides that clauses (a) and (b) below, with necessary modifications, apply where closures of highways on a temporary basis to vehicular traffic are authorized pursuant to section 207 (44) of the Municipal Act:

- (a) Where a highway or portion thereof is closed by by-law under this paragraph, the municipality shall provide and keep in repair a reasonable temporary alternative route for traffic and for all property owners who cannot obtain access to their property by reason of such closing.
- (b) While a highway or portion thereof is so closed to traffic, there shall be erected at each end of such highway or portion thereof, and where an alternative route deviates therefrom, a barricade upon which an adequate warning device shall be exposed and in good working order continuously from sunset until sunrise and at such points there shall be erected a detour sign indicating the alternative route and containing a notice that the highway is closed to traffic.

AND WHEREAS it is desirable to amend the said Streets By-law to provide for the matters referred to in section 207(44) as hereinafter provided;

AND WHEREAS Council at its meeting held on May 14, 1996, in adopting Item 27 of the 7th Report of the Transport and Environment Committee, resolved to amend the Streets By-law as follows.

NOW THEREFORE the Council of The Corporation of the City of Hamilton enacts as follows:

1. By-law No. 86-77 is amended by adding thereto the following definitions to section 1,

- (f) "Chief of Police" means the Chief of Police for the Regional Municipality of Hamilton-Wentworth;
- (g) "Fire Chief" means Chief of the Fire Department of the City of Hamilton;
- (h) "motor vehicle" means motor vehicle as defined in the Highway Traffic Act, R.S.O. 1990, c. H.8, as amended.

2. By-law No. 86-77 is amended by adding thereto the following provision as section 6.1:

6.1 (1) In this section,

(a) "social, recreational, community, athletic or cinematographic purposes" shall be deemed to include the following events:

- (i) bicycle races;
- (ii) bicycle rides for charity;
- (iii) film making and television productions;
- (iv) hay rides;
- (v) music festivals;
- (vi) parades and processions regulated pursuant to By-law No. 75-42
- (vii) religious ceremonies;
- (viii) running races;
- (ix) soap box derbies;
- (x) street dances;
- (xi) street festivals - jugglers, magicians, etc.,
- (xii) walk-a-thons;

(b) the phrase, closure on a temporary basis, means a closure for a period or periods of time totalling less than thirty six hours and comprising no single period of closure in excess of 12 consecutive hours to a maximum of twenty-four hours closure within any forty-eight hour period;

(2) Except where otherwise lawfully permitted, a highway shall not be closed in whole or in part to vehicular traffic on a temporary basis and used for social, recreational, community, athletic or cinematographic purposes except under the authority of a Permit issued under this section upon the terms and conditions, including such fee for the Permit, as may be set out in this by-law.



(3) **Committee.** A special committee of Council is hereby established to be known as the Highway Temporary Closures Committee. The Secretary of the Committee shall be the City Clerk or the Clerk's designate. This Committee shall be comprised of the following elected officials and decisions may be made by any three members of the Committee:

- (a) the Mayor, (or Acting Mayor);
- (b) the Chairman of the Transport and Environment Committee, (or Vice Chairman); and
- (c) the Aldermen of the Ward within which a highway is intended to be temporarily closed to vehicular traffic.

(4) (a) Applications to close a highway in whole or in part on a temporary basis to vehicular traffic for the social, recreational, community, athletic or cinematographic purposes listed below shall be under the jurisdiction of the Transport and Environment Committee for recommendation to Council:

- (i) events involving the sale and/or consumption of alcohol;
- (ii) events involving gambling;
- (iii) motor vehicle and motorcycle races;
- (iv) events with aircraft, including passenger balloons and parachutes;
- (v) events within the downtown area bounded by Bay, York, Wilson, Wellington and Main Streets;
- (vi) events taking place in more than one ward;

(b) **Delegation of Authority.** Subject to subsection (a) above, the power of Council to authorize the closing of highways in whole or in part on a temporary basis to vehicular traffic for social, recreational, community, athletic or cinematographic purposes is hereby delegated to the said Highway Temporary Closures Committee, pursuant to the Municipal Act, [R.S.O. 1990, c. M.45, s. 207(44)];

(c) Applications for closure of a highway to vehicular traffic shall not be approved pursuant to this by-law where the closure is for a period longer than "on a temporary basis" or the closure is for other than social, recreational, community, athletic or cinematographic purpose, or combination of such purposes.

(5) (a) An application for closing a highway in whole or in part on a temporary basis to vehicular traffic for an event may be,

- (i) approved, subject to the conditions herein together with such other conditions of approval which may reasonably be required as a condition of approval; or
- (ii) denied, or
- (iii) where an application is under the jurisdiction of the Highway Temporary Closures Committee, as an alternative to (i) or (ii) above, the special Committee may refer the application to the Transport and Environment Committee for consideration and recommendation to Council;

(b) No decision shall be made by the Highway Temporary Closures Committee until,

- (i) the applicant has submitted an application to the City;

- (ii) the applicant has paid an application fee at such rate as Council may require from time to time; and
- (iii) the Committee has received the appropriate staff report and recommendation on the application;

(c) All decisions of the Highway Temporary Closures Committee shall be reported to the Transport and Environment Committee for the information of that Committee;

(d) **Appeals.** A decision of the Highway Temporary Closures Committee under this section may be appealed by the applicant to the Transport and Environment Committee for its recommendation to Council, provided the applicant submits a Notice and grounds of appeal in writing to the Secretary of the Transport and Environment Committee.

(6) The closure and occupation of a highway for a greater area or for a longer period of time than may be necessary in the opinion of the Committee, having regard to the nature of the proposed purpose and the safety and convenience of the public, shall not be approved. Events upon a highway in a residential area shall be restricted to the period between 8:00 a.m. and 11:00 p.m. unless otherwise permitted as a condition of approval.

(7) All closures of highways in whole or in part on a temporary basis to vehicular traffic, approved by the Highway Temporary Closures Committee or Council, as the case may be, shall be subject to the conditions in this by-law and to additional specific conditions of approval, if any.

(8) (a) **Application.** Every application for a closure of a highway in whole or in part, to vehicular traffic on a temporary basis, shall be submitted to the City and shall include the following minimum information:

- name and street address of applicant (event sponsor) and the mailing address, (if different) ;
- charitable registration number of applicant, (if any), from Revenue Canada;
- name and contact address of applicant's agent or representative;
- proposed location(s) of the portion(s) of highway(s) to be closed on a temporary basis to vehicular traffic;
- proposed hours and date(s) of closure of highway to vehicular traffic;
- specific nature of proposed event;
- proposed hours and date(s) of event;
- where applicable, number of estimated participants and number of estimated spectators;
- the fees or charges (if any) intended to be received by the applicant from participants in the proposed event or from members of the public.

(b) The application shall be reviewed, circulated for comments to the appropriate departments and public agencies and a recommendation on each application shall be made for a decision:

(9) **Application Fees.** Every applicant shall pay such application fee at such rate as may be prescribed from time to time by Council. Council may set fees for the following classes of applicants:

- (i) applications by a commercial organization, (including non profit companies comprised of commercial organizations);



- (ii) applications by a charitable organization registered as a charity with Revenue Canada, or by a board or commission as defined in the Municipal Affairs Act;
- (iii) applications by a person not within either of the above two groups.

(10) **Agreement to cover costs and indemnify City.**

(a) Every applicant shall, prior to the issuance of a Permit, enter into a Licence Agreement with and satisfactory to the City in accordance with the conditions of approval, in respect of the temporary closing and the proposed event, regarding the standard and additional specified conditions, (if any), of approval, including, the following minimum conditions:

- (i) the area of the highway to be closed on a temporary basis, the hours and date of such closure, the purpose of the closing, ie social, recreational, community, athletic or cinematographic purpose, and the nature of the proposed event;
- (ii) payment of application fee for this privilege at such rate as may be fixed by Council from time to time;
- (iii) set up, maintenance, dismantling and clean up of applicant's equipment, including clean up of the highway;
- (iv) reimbursement of the City for any costs incurred or to be incurred by the City as a result of such occupation and the deposit with the City the estimated amount of such costs prior to issuance of the Permit;
- (v) indemnification of the City, Regional Police, The Regional Municipality of Hamilton-Wentworth, and any board, commission or utility from any action, claim, damage, or loss whatsoever which may be sustained as a result of the applicant's event, arise from closing of the highway to traffic, issuance of the Permit or from the occupation of the highway thereunder;
- (vi) where the applicant is not incorporated, the licence agreement shall be signed by not less than two persons who shall assume the obligations in the licence agreement in favour of the City.

(b) In addition, as a condition of approval, an applicant may be required to provide the following, (details of which shall be included in the said Licence Agreement):

- (i) payment of cash or letter of credit satisfactory to City, as security that conditions of approval will be fulfilled, including clean up of highway and that expenses incurred by the City shall be paid;
- (ii) agreement of a bonding company acceptable to the City and licensed to carry on business in Ontario, in such sum as may be required, to indemnify and hold harmless the City, from any and all actions, claims, damages and loss whatsoever, arising from such use of the highway;

- (iii) a consent and waiver from owners of adjoining lands of all claims against the City for any damages which may result, whether directly or indirectly, from such closure and use of that part of the highway, which shall be filed with the City before the Permit is issued;
- (iv) such other conditions as may reasonably be required in the opinion of the Committee or Council, as the case may be.

(11) **Insurance.** Every applicant shall, prior to issuance of a Permit, obtain and file with the City, a Comprehensive General Liability, Property Damage, Bodily Injury insurance in the amount of \$2,000,000.00, (or such larger amount as may be required as a condition of approval), covering the activity -- with a company and in a form satisfactory to the City, in the name of the applicant and providing The Corporation of the City of Hamilton and The Regional Municipality of Hamilton-Wentworth as additional insured, subject to cross liability and severability of interest provisions.

(12) **Issuance of Permit.**

After an application is approved, a Permit shall not be issued for an event until the following matters have been completed and/or received as required from the applicant:

- (a) evidence satisfactory to the City of compliance with the conditions in this provision and the conditions of approval, if any, specified in the decision, including in particular, the filing of a Certificate of the required Insurance and entering into the indemnification agreement;
- (b) a declaration confirming that owners, tenants, or occupants of premises adjacent to City highway intended to be closed have been notified of the intended closure of the highway to vehicular traffic and of the proposed event, including their respective times and details;
- (c) evidence of approval from the Chief of Police or his designate, to the closure and that such special duty police officers as may be deemed necessary by the Chief of Police will be provided at the applicant's expense.

(13) **Terms of Permit**

- (a) Every Permit shall indicate which part of the highway may be so used, during what period of time, and every Permit shall be during the pleasure of the City, subject to cancellation at any time by the Highway Temporary Closures Committee;
- (b) A permit issued under this by-law is not transferable. The City reserves the right to require the applicant to fulfill such additional conditions of approval as may be specified at any time.

- (c) **Cancellation of Permit.** In case of emergency or where it is believed that the applicant is or will be in breach of any condition of the Permit or that an unsafe or hazardous condition has or is about to arise, the Highway Temporary Closures Committee, staff, or any police officer, may, at any time, require an applicant to cease activities covered by the Permit in whole or in part for such period(s) as may be directed.

**(14) Closure of highway to vehicular traffic on temporary basis.**

After a Permit is issued hereunder, staff,

- (a) is authorized to and shall take steps necessary to prohibit vehicular traffic in order that the said highway or that portion of it being so closed, shall be temporarily closed and, for that purpose to cover such traffic signs and parking meters as may be necessary to give effect to the approved closure of the highway to vehicular traffic;
- (b) shall immediately forward a copy of the approved decision, the additional specified conditions of approval if any, and the Permit, to the appropriate departments and agencies, including, the Ward Aldermen;

**(15) Standard Conditions of Approval.** All closures of highways to vehicular traffic on a temporary basis for an event are subject to the applicant fulfilling each of the following standard conditions of approval:

- (a) **Notice.**
  - (i) Prior to the issuance of the Permit, that all property owners and tenants adjacent to the highway intended to be closed on a temporary basis be notified by the applicant of the temporary highway closing and the proposed event, in a form and at date(s) satisfactory to the City. Such notification shall not be less than a full fourteen day's notice prior to the event;
  - (ii) such other Notice to the public on such dates, in such form and in such media as may reasonably be required in the opinion of the City;
  - (iii) wherever an applicant recognizes or credits in any form of media, contributors whose assistance made the event possible, the applicant shall include the City among those credits.
- (b) **Admission Charges.** That the applicant shall not collect any admission charges except when expressly permitted in the City's decision;
- (c) **Consent of Participant.** That prior to the event, where the event is a race or other competitive athletic event or sport, the applicant shall obtain from each participant a Release, Waiver and Indemnity of the City from any and all claims resulting from the event, satisfactory to the City and file such Release with the City;



(c) **Alternative Route.**

- (i) That no property owner or resident adjacent to the highway closed to vehicular traffic shall, because of the temporary highway closing and the event, be denied access by foot to their property. Further, the applicant shall take all reasonable action required to ensure the safety of and minimize interference with owners, tenants, and occupants of adjoining properties;
- (ii) That where a highway or portion thereof is so closed, the applicant shall provide and keep in repair within the portion of the highway closed to vehicular traffic, to the extent required, a reasonable temporary route satisfactory to staff for the use of emergency vehicles and for all property owners to obtain pedestrian access to their property;

(Note: The Municipal Act states that, with necessary modification, "Where a highway or portion thereof is closed by by-law under this paragraph, the municipality shall provide and keep in repair a reasonable temporary alternative route for traffic and for all property owners who cannot obtain access to their property by reason of such closing." Municipal Act, R.S.O. 1990, c.45, section 207(44)(a))

- (d) **Supervision, Inspection, and Inspection Fees.** That all temporary closings be carried out under the direction of and satisfactory to staff; the applicant shall not in advance or during the event erect any traffic or parking signs upon or adjacent to the highway.
- (e) **Other By-Laws.** That the applicant comply with the other by-laws of the City and the Region, including The Noise Control By-law and the bylaw titled, The City of Hamilton Licensing Code.
- (f) **Other Requirements.** That the applicant comply with such other conditions that may be specified in writing as a condition of approval and such additional conditions that may be required in writing or verbally by the City before or during the event;
- (g) **During the temporary closing of highway.**
  - (i) That the applicant use only the permitted part(s) of a highway in accordance with the terms of the Permit, the conditions of approval and provisions of this By-law.
  - (ii) That regular reports shall be given by the applicant to the City of the progress of compliance with conditions for the event and subsequently, restoration of the highway;
  - (iii) That the temporary closings be carried out in a proper workmanlike manner, with all property precautions and safety measures for the protection of public and private property, including maintenance of all necessary warning lights and watchmen, all under the direction and to the satisfaction of staff;

- (iv) That the applicant not allow any portion of the event, including spectators, participants, vehicles, partitions, barricades, signs, or other equipment used in connection with the event, to block any fire hydrants, access/egress ramps, snow and garbage removal, or interfere with the installation, maintenance, or repair to any plant or equipment of the City, The Regional Municipality of Hamilton-Westworth or any other utility in the City highway .
- (v) That the applicant not allow any of the applicant's event, its participants, spectators or equipment, to impede emergency vehicles;
- (vi) **Barricades and Detour Signs.** That prior to and during the closure of the highway to vehicular traffic, the City shall erect and maintain sufficient warning signs and devices to adequately warn the public of the occupation and obstruction of the highway, at each end of the highway or portion thereof so closed to traffic, and where an alternative route deviates therefrom, a barricade upon which an adequate warning device shall be exposed and in good working order continuously (except during full daylight), and at such points shall be erected detour signs indicating the alternative route and containing a notice that the highway is closed to traffic.  
All barricading, temporary highway closure signs, detour signs warning signs and devices, including labour and materials for their construction, erection, maintenance and removal, shall provided by and at the expense of the applicant and the applicant shall pay the City those costs.
- (vii) That all barricading, detour signing equipment and other property of the applicant and traffic control be subject to the direction of the Chief of Police or his/her designate;
- (ix) That if it is necessary for the City to relocate, remove or alter the signs, barricades or other equipment or property of the applicant for any reason whatsoever, either before, during or after the event, the applicant shall re-imburse the City against such costs and against any loss, cost or damage arising from such work;
- (x) That the applicant comply with all other provisions of the Streets By-law and obtain all other applicable approvals to the temporary closing and the event;
- (h) **After event.** That the applicant, at its expense, carry out clean up operations immediately after the event to restore the highway to as good condition as before as expeditiously as possible and before re-opening of the highway(s) to vehicular traffic.

The applicant, upon demand, after the event, pay to the City all costs incurred by the City pursuant to this by-law in excess of the cost pre-estimate monies or security already received by the City, (if any).

(16) In the event of non-compliance with the provisions herein, by any person, an Order to Comply may be issued and served upon such person, by,

- (a) the City Clerk or any authorized by-law enforcement officer for the City; or
- (b) the Chief of the Fire Department, or the Chief Fire Prevention Officer, or any Officer or Inspector of the Fire Department; or
- (c) the Chief of Police or any other police constable.

(17) Every person to whom an Order to Comply is issued, or upon whom an Order to Comply is served, shall, forthwith, take such steps as are necessary to comply with the Order within the time provided for compliance.

(18) Where any holder of a permit fails to comply with an Order to Comply issued pursuant to this by-law, in addition to any other remedy or penalty under this by-law, the City may immediately revoke their permit and shall forthwith cause them to be served with a written notice of such revocation and upon service of the notice of revocation the permit holder shall forthwith surrender the permit to the City.

2. This by-law comes into force and effect on the date of its passing and enactment in respect of all applications submitted to the City on or after the said date.

3. Except as amended herein, Streets By-law No. 86-77 is hereby confirmed.

PASSED this 9th day of July A.D. 1996

*Dr. Hollenbeck*

Acting CITY CLERK



*[Signature]*

Acting MAYOR

Bill No. A-71

The Corporation of the City of Hamilton

BY-LAW NO. 96-205

To Amend

By-law No. 86-77

**TO REGULATE USAGE OF HEDGES, SHRUBS  
AND PLANT MATERIAL ON ROAD ALLOWANCES**

**WHEREAS** Subsection 308(3) of the Municipal Act, R.S.O. 1990, c. M.45, as amended, authorizes the council of every municipality to pass by-laws for placing or permitting any person under such conditions as may be agreed upon to place, construct, install, maintain, and use objects in, on, under or over highways under its jurisdiction, to permit any person to make, maintain and use areas under and openings in the highways, for prescribing the terms and conditions upon which the same are to be placed, constructed, installed, maintained or used and for making such annual or other charge for the privilege conferred by the by-law as it considers reasonable;

**AND WHEREAS** Subsection 314(1) of the Municipal Act, R.S.O. 1990, c. M.45 as amended authorizes the councils of all municipalities to pass by-laws for prohibiting or regulating the obstructing, encumbering, injuring or fouling of highways or bridges;

**AND WHEREAS** the Council of The Corporation of the City of Hamilton passed By-law No. 9329 on the 9th day of May, 1961, being the Streets By-law, to regulate, among other things, the planting of trees and shrubs along the boulevards and road allowances in the City of Hamilton;

**AND WHEREAS** By-law No. 86-77 was enacted on the 25th day of February, 1986 to consolidate the Streets By-law No. 9329;

**AND WHEREAS** By-law No. 88-244 was passed on the 5th day of October, 1988 to amend By-law No. 86-77 on the planting of trees and shrubs on boulevards and the road allowance;

**AND WHEREAS** By-law No. 88-244 was repealed by By-law No. 92-155;

**AND WHEREAS** City Council, on July 9, 1996, in adopting Section 12 of the 10th Report of the Transport and Environment Committee authorized this By-law;

**NOW THEREFORE** the Council of The Corporation of the City of Hamilton enacts as follows:

1. (1) Paragraph (d) of Section 1 of By-law No. 86-77 is amended by deleting paragraph (d) and substituting in lieu,
  - (d) "Director of Public Works" shall mean the "Commissioner of Public Works and Traffic".
- (2) Paragraph (e) of Section 1 of By-law No. 86-77 is further amended by deleting paragraph (e) and substituting in lieu,
  - (e) "Traffic Commissioner" shall mean the "Commissioner of Public Works and Traffic".



2. By-law No. 86-77 is amended by the addition of the following Section:

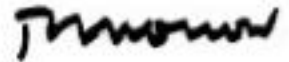
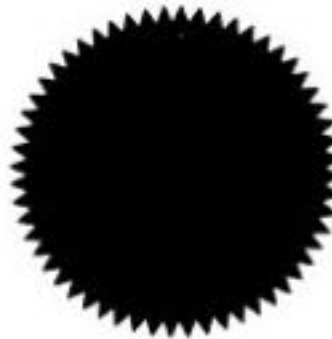
OWNERS OF LAND MAY PLANT HEDGES AND SHRUBS

5. (1) Hedges, shrubs and other plant material may be permitted on the boulevard of the highway provided that any such hedge, shrub or other plant material situated within the highway
- (i) shall not create an obstruction to traffic using the highway;
  - (ii) shall be maintained by the owner of the land abutting the highway at not higher than 76 cm or 30 inches in height;
  - (iii) shall not overhang the sidewalk, shoulder or roadway;
  - (iv) shall maintain a minimum clearance of 0.6 metres or 2 feet from a fire hydrant, and
  - (v) shall not obstruct the view of a fire hydrant from the road.
- (2) Where an owner of land abutting a highway has planted a tree on the boulevard of a highway, the tree shall be pruned to the trunk for the first 2.4 metres or 8 feet by the Department of Public Works and Traffic.

PASSED this 10th day of December, 1996.



CITY CLERK



MAYOR

## The Corporation of the City of Hamilton

By-law No. 97-162

To Amend:

By-law No. 86-77  
The Streets By-law

Respecting:

**PANHANDLING**

**WHEREAS** paragraph 140, Section 210 of the Municipal Act, R.S.O. 1990, Chapter M.45 authorizes municipalities to enact by-laws to regulate public nuisances;

**AND WHEREAS** Section 102 of the Municipal Act allows that every council may pass such by-laws and make such regulations for the health, safety, morality and welfare of the inhabitants of the municipality in matters not specifically provided for by the Municipal Act as may be deemed expedient and are not contrary to law;

**AND WHEREAS** the Council of the City of Hamilton deems it necessary to ensure citizens reasonably unencumbered access to pedestrian walkways within the City of Hamilton;

**AND WHEREAS** Council, on Thursday, 1997 August 7th, in adopting Section One of the Seventeenth Report for 1997 of the Finance and Administration Committee authorized this By-law;

**NOW THEREFORE** the Council of The Corporation of the City of Hamilton enacts as follows:

Section 16 of By-law No. 86-77 is amended by the addition of the following subsections:

(12) 12.1 For the purposes of this subsection:

- (a) "cease" means to stop or bring to an end.
- (b) "congregate" means to gather into a group of more than one person.
- (c) "obstruct" means to interfere with or make difficult of passage.
- (d) "officer" means a sworn member of the Hamilton-Wentworth Regional Police Service or a municipal by-law enforcement officer appointed by the City of Hamilton.

General:

12.2 No person shall congregate and sit or stand so as to obstruct the free passage of either pedestrian or vehicular traffic on any streets or sidewalks regulated by this By-law.

12.3 Any person who obstructs pedestrian or vehicular traffic on a sidewalk or street shall, when directed to do so by an officer, cease such obstruction.

## Exclusions:

- 12.4 Any parade, festive occasion or other event approved by the City of Hamilton shall be excluded from the provisions of this subsection.

## Enforcement:

- 12.5 Sworn members of the Hamilton-Wentworth Regional Police Service and municipal by-law enforcement officers of the City of Hamilton are authorized to enforce the provisions of this by-law.

- (13) 13.1 For the purposes of this subsection, "aggressive panhandling" means:

- (a) approaching, speaking to or following a person for the purpose of entreating or urging that person to give money, in such a manner as would cause a reasonable person to fear bodily harm or harm to property on the person's immediate possession;
- (b) touching a person without their consent while panhandling from such person;
- (c) repeatedly panhandling from a person, or following a person after a person has made a negative response; or
- (d) panhandling by standing, sitting or otherwise in such a manner so as to intentionally block, obstruct or interfere with the safe passage of pedestrians or vehicles, including unreasonably causing a person or vehicle to take evasive action to avoid physical contact.

- 13.2 No person shall aggressively panhandle on any streets or sidewalks regulated by this by-law.

- 13.3 No person shall solicit money from any pedestrian by panhandling on any streets or sidewalks regulated by this by-law in such a manner as to interfere with the ability of pedestrians to enter business establishments located on such streets.

PASSED this

7th

day of

August

1997.



CITY CLERK



MAYOR

**Authority:** Item 4, Committee of the Whole  
Report 03-028 (PW03130/PD03226)  
CM: October 15, 2003

**Bill No. 296**

**CITY OF HAMILTON  
By-law No. 03-296  
Being a By-law to provide for the removal of snow and ice from  
roofs and sidewalks**

**WHEREAS** Section 130 of the Municipal Act, Chapter 25, S.O. 2001, provides that a municipality may regulate matters related to the health, safety, and well-being of the inhabitants of the municipality;

**AND WHEREAS** the City of Hamilton Act, 1999, SO. 1999 Chapter 14, Schedule C did incorporate, as of January 1st, 2001, the municipality of the "City of Hamilton";

**AND WHEREAS** the City of Hamilton Act, 1999, provides that the By-laws of the former municipalities continue in force and effect in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

**AND WHEREAS** the Council for the City of Hamilton deems it expedient to enact a single By-law to provide for the removal of snow and ice from roofs and sidewalks, in place of By-laws of the former area municipalities;

**NOW THEREFORE**, the Council for the City of Hamilton enacts as follows:

**Definitions**

1. In this By-law,
  - (a) "City" means the City of Hamilton;
  - (b) "Council" means the council for the City of Hamilton;
  - (c) "Consecutive winter storm events" refers to any precipitation and/or accumulation of snow or ice from the beginning of the original winter snow event, and any subsequent storm events occurring within a 24 hour period of the cessation of the previous storm event;
  - (d) "Director" means the Director of the Operations and Maintenance Division of the Public Works Department for the City, and includes his designate and successor;
  - (e) "Highway" means a common and public highway under the jurisdiction of the City of Hamilton, and includes a street, sidewalk, boulevard whether paved or not paved, an unopened road allowance, and any portion of the land situated between street lines;



- (f) "Winter Storm Event" refers to any precipitation and/or accumulation of snow or ice.
- 2. In this By-law, whenever a word imparts the masculine gender it is deemed to include the feminine gender;
- 3. In this By-law, the singular sense is deemed to be inclusive and interchangeable with the plural sense

#### **Application of By-law**

- 4. The provisions of this By-law shall apply to all lands within the boundaries of the City, except for those areas designated as being exempt by the Director.

#### **General Duties, Obligations, and Prohibitions**

- 5. That every occupant or owner shall, within 24 hours of the cessation of a Winter Storm Event, or within 24 hours of the cessation of a series of Consecutive winter storm events, remove and clear all snow and ice from sidewalks abutting the highways in front of, or along side, or at the rear of any occupied or unoccupied lot, or vacant lot;
- 6. All owners or occupants of buildings where the roof or eaves of which abut or overhang the highway or sidewalk upon the highway shall, whenever ice or snow accumulates on the roof or eaves, remove the same immediately, and in a manner showing due care and precaution for the safety of persons passing.
- 7. No owner or occupant shall throw, place, bring, or deposit snow or ice:
  - (a) On or immediately adjacent to a fire hydrant, or in any manner that obstructs access to a fire hydrant;
  - (b) On or adjacent to a travelled portion of the highway, or in such a manner so as to interfere with the safe passage of vehicles, or pedestrians, or obstruct the visibility of vehicle operators or pedestrians
  - (c) In such a manner so as to obstruct drainage to any drain or sewer
- 8. That if the owner or occupant fails, neglects, or refuses to comply with Sections 5, 6, and 7 of this By-law, the Director in lieu of, or in addition to any other remedy provided by this By-law, is authorized to have the snow or ice to be removed at the expense of the owner or occupant, and in the case of non-payment, such expenses may be recovered in a like manner as municipal taxes.

#### **Enforcement**

- 9. Any Police Officer, Municipal Law Enforcement Officer, or employee of the City designated by the Director for the purpose of this Section is authorized to inform any person of the provisions of this By-law and to request compliance therewith, A199

10. Any Police Officer, Municipal Law Enforcement Officer, or employee of the City designated by the Director for the purpose of this Section is authorized to order any person believed by such Officer or employee to be in contravention of this By-law to desist from the activity consisting or contributing to such contravention;

#### Penalty

11. Any person contravening any provision of this By-law is guilty of an offence and upon conviction, is liable to such penalty as provided for under the Provincial Offences Act, R.S.O. 1990, Chapter P.33, as amended.

#### Severance

12. Should a court of competent jurisdiction declare any part or whole of any provision of this By-law to be invalid or of no force and effect, the provision or part shall be deemed to have been severed from this By-law, and it is the intention of Council that the remainder of the By-law survive and be applied and enforced in accordance with the terms to the extent possible under law.

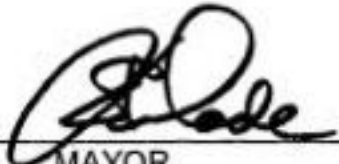
#### Short Title

13. The short title of this By-law shall be "The Snow Removal By-law".

#### Repeals and Enactment

14. That By-law 88-152-S (Flamborough), By-law 86-77 (Hamilton) Section 7, By-law 4114-93 (Dundas), By-law 434-90 (Glanbrook), By-law 4477-96 (Stoney Creek), and By-law R77-109 (Regional Roads By-law) be repealed.
15. Any references to By-laws 88-152-S, 86-77, 4114-93, 434-90, 4477-96, and R77-109, as amended, antedating the passing and enactment of this By-law shall be deemed a reference to this By-law.
16. This By-law shall come into force and effect on the date of its passing and enactment.

PASSED AND ENACTED this 15<sup>TH</sup> day of October, 2003.

  
MAYOR

  
CLERK



**Authority:** Item 13, Public Works, Infrastructure  
and Environment Committee  
Report 06-010 (PW06034a)  
CM: June 14, 2006

**Bill No. 151**

## **CITY OF HAMILTON**

### **BY-LAW NO. 06-151**

#### **To Regulate the Planting, Maintenance, and Preservation of Trees on or Affecting Public Property**

**WHEREAS** Council deems it in the public interest to protect Hamilton's tree assets on Public Property to preserve the quality of life and environment for the present and future inhabitants, and to ensure that any necessary tree removal is considered in advance and carried out under conditions as may be imposed;

**AND WHEREAS** *the Municipal Act S.O. 2001, Chapter 25* as amended, Sections 2 and 8 through 11, allows that Council may provide necessary and desirable services, manage and preserve public assets, foster environmental well-being, and exercise specific and general powers to act, and to regulate and prohibit the acts of others;

**AND WHEREAS** the City, pursuant to Section 135 of *the Municipal Act S.O. 2001, Chapter 25* may by by-law prohibit or regulate the injuring or destruction of trees;

**AND WHEREAS** the City, pursuant to Section 141 of *the Municipal Act* may provide trees to the owners of land adjacent to any highway;

**AND WHEREAS** the City, pursuant to Section 62(1) of *the Municipal Act* may, at any reasonable time, enter upon land lying along any of its highways to inspect trees and conduct tests on trees; and to remove decayed, damaged, or dangerous trees or branches of trees if, in the opinion of the municipality, the trees or branches pose a danger to the health or safety of any person using the highway;

**AND WHEREAS** the City, pursuant to Section 62(2) of *the Municipal Act* may remove a decayed, damaged or dangerous tree or branch of a tree immediately without notice to the owner of the land upon which the tree is located, if in the opinion of the Employee or agent, the tree or branch poses an immediate danger to the health or safety of any person using the highway;

**AND WHEREAS** *the City of Hamilton Act, 1999, S.O. 1999, Chapter 14, Schedule C* did incorporate, as of January 1st 2001, the municipality known as the "City of Hamilton";

**AND WHEREAS** the City of Hamilton is the successor to the following former area municipalities, namely: The Corporation of the Town of Ancaster; The Corporation of the Town of Dundas; the Corporation of the Town of Flamborough; The Township of Glanbrook; The Corporation of the City of Hamilton; and the Corporation of the City of



Stoney Creek, and to the Regional Municipality of Hamilton-Wentworth, all hereinafter referred to as the "former municipalities";

**AND WHEREAS** the *City of Hamilton Act, 1999*, provides that the By-laws of the former municipalities continue in force and effect in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

**NOW THEREFORE** the Council of the City of Hamilton enacts as follows:

### **Definitions and Application**

1(1) In this By-law:

- (a) "City" as the context requires, means the municipal corporation "City of Hamilton" or the geographical limits of the municipality;
- (b) "Contractor" means a person engaged to perform a specific activity or service, on or at a particular land or premises;
- (c) "Council" means the Council for the City of Hamilton and includes its successor;
- (d) "Destroy" in relation to a tree includes any action which causes or results in the death of the tree, not limited to but including the acts of cutting, burning or knocking over the tree, and "destruction" shall have a corresponding meaning;
- (e) "Diameter at Breast Height or "DBH" means the diameter, including the bark, of the trunk of a tree measured at the lower of (a) a point 1.3 meters (4 feet and 3 inches) above the ground in an undisturbed state at the base of the tree, (b) in the case where the main trunk of the tree splits below the point in (a) the point of measurement shall be at the point on the tree trunk where the trunk separates, or (c) at the top of the stump of the tree where the tree has been cut down and all that remains of the stump is below the point in (a);
- (f) "Director" means the Director of Operations and Maintenance for the City and includes the Director's designate or successor;
- (g) "Drip Line" means the outer boundary of an area on the surface of the ground directly below and which corresponds with the outer edge of the crown of the tree;
- (h) "Emergency Work" means any work carried out by the City, a public utility service, or other authority and its contractors, whether above and below ground level, which is work necessary in an emergency situation for maintenance, or to restore or ensure service is maintained, and specifically includes the following whether as a repair, upgrade, or new installation, and without limiting the generality of the foregoing: utility

work, storm or accident damage repairs, road work, storm sewer and sanitary sewer work;

- (i) "Employee" means all employees, servants, and agents of the City of Hamilton or contractors hired by the City of Hamilton;
- (j) "Forestry and Horticulture Section" means the Forestry and Horticulture Section of the Operations and Maintenance Division within the Public Works Department of the City of Hamilton and includes its successor;
- (k) "Forestry Management Plan" refers to all City of Hamilton policies and procedures governing forest health, tree maintenance, planting requirements, activities affecting public trees, and includes the policies attached to this By-law as schedules;
- (l) "Good Arboricultural Practice" shall be a reference to the guidelines and practices relating to proper tree maintenance and care, as defined and published by the ISA (International Society of Arboriculture);
- (m) "Highway" means a common and public highway under the jurisdiction of the City of Hamilton, and includes any bridge, trestle, viaduct or other structure forming part of a highway, and includes any portion of a highway to the full width thereof;
- (n) "Improper Pruning" means trimming a tree so as to cause irreversible damage in a manner contrary to Good Arboricultural Practices;
- (o) "Injure" includes any act or treatment which causes irreversible damage to a tree and includes, but is not limited to the acts of changing grades around trees so as to affect further growth or health of the tree by exposing roots or burying the trunk or branches, compacting soil over root areas so as to prevent sufficient absorption by the tree of water, severing or damaging roots, the improper application of chemicals, improper pruning or the removal of bark and "injuring" and "injury" shall have corresponding meanings;
- (p) "Municipal Law Enforcement Officer" means a person appointed as such under this or any by-law of the City;
- (q) "Naturalized Area" means an area that has been set aside by the City of Hamilton for the undisturbed growth of any tree species where the desired effect is that of natural growth, and for the purposes of this By-law the term will include municipal woodlots and woodlands;
- (r) "Officer" means any person designated by the Director to carry out duties, issue orders or take actions under this By-law, and the term includes the Director;



- (s) "Operations and Maintenance Division" refers to the Operations and Maintenance Division of the Public Works Department of the City of Hamilton and includes its successor;
- (t) "Pest" means any organism, including but not limited to such things as insects or diseases whether viral, fungal, or bacterial, which directly or indirectly cause irreversible damage to the long-term health, vitality, longevity, and integrity of a tree;
- (u) "Planning and Economic Development Department" refers to the Planning and Economic Development Department for the City of Hamilton and includes its successor;
- (v) "Private Property" means land other than public property, and includes those public unassumed alleys which have been occupied or fenced by a person other than the City;
- (w) "Private Tree" means any tree which has greater than fifty (50) per cent of its trunk diameter measured at ground level on private property;
- (x) "Pruning" means the cutting away of parts of a tree for reasons including but not limited to: safety concerns; maintenance of legislated clearances; tree health and vitality; disease control; clearance for pedestrian and vehicular traffic; visibility clearance for stop signs, traffic signals, and bus stops; clearance for buildings; removal of deadwood; crown thinning for tree health or to improve sunlight penetration; crown balancing to correct storm damage; crown reduction when overall size is considered problematic; or clearance from hydro lines and other utilities;
- (y) "Public Property" includes a highway, park, public unassumed alley, or any other public place or land owned by, or leased to, or controlled by, or vested in, the City;
- (z) "Public Tree" means any tree which has greater than or equal to fifty (50) per cent of its trunk diameter measured at ground level on public property, and "public tree" shall be used interchangeably with "municipal tree", "municipally owned tree", "City tree" or "City owned tree";
- (aa) "Public Works Department" means the Public Works Department for the City of Hamilton and includes its successor;
- (bb) "Removal" means the elimination, in whole or in part, of a tree;
- (cc) "Tree" means a plant of any species of woody perennial including its root system, which has reached or can reach a height of at least 4.5 metres at physiological maturity;

- (dd) "Tree Maintenance" includes all operations of watering, trimming, pruning, spraying, injecting, fertilizing, treating, cabling and bracing, and any other like activity;
  - (ee) "Tree Protection Zone (TPZ)" means a restricted area, enclosed by fencing, around the base of a tree with a minimum radius equal to the drip line, which serves to protect a tree and its root zone;
  - (ff) "Work" means the labour, task, duty, function, or assignment often being a part or a phase of a larger activity or project, and shall include, but not be restricted to, excavation, construction, development, ditching, tunnelling, trenching, soil disturbances, or compaction.
- 1(2) In this By-law, the singular tense is deemed to be inclusive and interchangeable with the plural tense; the plural tense is deemed to be inclusive and interchangeable with the singular tense.
- 1(3) In this By-law, where both metric and imperial measurements are given for the same item, the imperial measurement is provided for convenience only and is approximate.
- 2(1) Subject to subsection 2(2), this By-law applies to:
- (a) Persons within the City of Hamilton;
  - (b) Public trees; and
  - (c) Private trees, which pose a threat or hazard to persons or property on public property.
- 2(2) This By-law does not apply to:
- (a) Trees in private woodlands, as woodlands are defined in By-law No. R00-054 of the former Regional Municipality of Hamilton-Wentworth, or such successor by-law enacted under the authority of Section 135 of *the Municipal Act*;
  - (b) Woodlots, as defined in By-law No. 4401-96, as amended of the former City of Stoney Creek; or
  - (c) The matters listed in sub-section 135(12) of the *Municipal Act*.
- 2(3) The requirements and prohibitions in this By-law are in addition to any applicable prohibitions or requirements in the City of Hamilton Parks By-law No. 01-219 as amended, and in the event of conflict, the provisions which are most protective of trees prevail.

**Authority of the Director**



- 3(1) The Director is hereby authorized to administer and enforce this By-law and has delegate authority granted by Council to execute the provisions of this By-law or to provide consent or approval where required, including the imposition of conditions as necessary to ensure compliance with this By-law and ensure minimal removal or other negative effects from removal of trees.
- 3(2) The Director may request municipal law enforcement officers to enforce this By-law, who shall have the authority to carry out inspections, issue orders, and otherwise enforce this By-law, and the Director may assign duties or delegate tasks under this By-law whether in his or her absence or otherwise.
- 4 The Director has the authority to develop and maintain a Forestry Management Plan including level of service standards and practices / guidelines.
- 5 Where consent of the Director is required under this By-law, and where permission or approval has been refused, or where permission or approval has been granted and subsequently withdrawn, written justification must be provided to the individual detailing the basis for not granting approval.
- 6 In addition to the authority otherwise provided in this By-law and subject to the Council authorized budget, the Director is authorized to perform or arrange the performance of the following duties:
- (a) Supervision of the planting, care, and maintenance of public trees;
  - (b) Supervision of the pruning or removal of trees:
    - (i) Upon public property;
    - (ii) Upon private property where the branches extend over public property and the removal is performed by City employees or contractors; or
    - (iii) Upon a highway where the branches of any public or private tree extend over a highway and the removal is performed by City employees or contractors.
- 7 The Director, once designated as an inspector by the President of the Canadian Food Inspection Agency, for the purposes of the *Plant Protection Act*, S. C. 1990, c.22, has the authority to inspect for the presence of pests and to take action including the removal of trees on all public and private property, in accordance with that Act.

#### **Prohibitions Against Injury or Destruction**

- 8 No Person shall undertake to or cause or permit the undertaking of any of the following actions towards a public tree:

- (a) Injure, remove, disturb, damage, destroy, cut above or below ground, spray, prune, or alter in any way a public tree; without prior approval and compliance with terms provided in Section 10, or as provided for in the City of Hamilton Public Tree Removal Policy; or
  - (b) Deposit, place, store, or maintain any stone, brick, sand, concrete, soil, or any material, equipment, or vehicles that may impede the free passage of water, air, or nutrients to the roots of a public tree, or perform any work within the dripline of a public tree which causes the destruction of, removal of, or injury to the tree, without prior approval and compliance with terms provided in Section 10; or
  - (c) Fasten any sign, bill, notice, wire, rope, nail, or other object to, around, on, or through any public tree in any manner, or around, on or through the stakes or posts that protect such tree; or
  - (d) Cause or permit any gaseous, liquid, or solid substances which are harmful or toxic to any public tree, to come in contact with any public tree, or apply to a public tree or an area used by said tree's root system; or
  - (e) Set fire to or permit any fire to burn where such fire or the heat thereof will injure any portion of any public tree; or
  - (f) Interfere with fences, structures, barriers delineating tree protection zones, or associated signage or other protective devices around any public tree; or
  - (g) Alter or change any soil levels on public property within the drip line of any public tree in a manner likely to cause injury to said tree; without prior approval and compliance with terms provided in Section 10; or
  - (h) Excavate any ditch, tunnel, trench, or lay any walkway or driveway, or disturb the soil on public property, within the drip line of a public tree; without prior approval and compliance with terms provided in Section 10; or
  - (i) Climb, or permit any person under their care or control to climb any public tree.
- 9(1) A person who damages or injures a public tree on public property or who causes or permits a person to damage or injure such a tree, shall be subject to the regulations listed in the City of Hamilton Reforestation Policy – Municipally Owned Lands in addition to any necessary enforcement under this By-law.
- 9(2) Where a person reports having injured or damaged a public tree, or where a person is found to have injured or damaged a public tree, the Director shall issue an order requiring that the person arrange for the payment of restitution in accordance with the regulations of the City of Hamilton Reforestation Policy -A207



Municipally Owned Lands, in addition to any necessary enforcement of this By-law.

### **Protective Measures For Trees During Construction**

- 10 Any person undertaking to perform any work within the drip line of a public tree, requires the consent of the Director, and shall follow the regulations and conditions listed in the City of Hamilton Tree Preservation and Protective Measures For Trees Affected by Construction Policy and otherwise shall comply with any conditions imposed through the Director's consent.

### **Planting of Trees**

#### **Prohibited Species**

- 11(1) No person shall plant or place, or cause or permit the planting or placing of a tree of the type or species listed below upon public property:
- (a) *Acer negundo* - Manitoba Maple;
  - (b) *Acer saccharinum* - Silver Maple;
  - (c) *Populus* spp. - Poplar Species;
  - (d) *Salix* spp. - Willow Species;
  - (e) *Ulmus pumila* - Siberian Elm; or
  - (f) *Ginkgo biloba* - Female only.
- 11(2) Unless authorized by the Director in writing, no person shall plant or place, or cause or permit the planting or placing of any coniferous trees upon public property.

#### **Planting Trees on Public Property**

- 12(1) No person shall, without prior written consent of the Director, plant or cause to be planted any tree on public property.
- 12(2) The City reserves the right, at its sole discretion, to plant, or to have planted trees on any portion of public property.
- 12(3) All trees planted by the City of Hamilton, or by any contractor or person on public property, are subject to this By-law, the City of Hamilton Street Tree Planting Policy – New Developments; and the City of Hamilton Street Tree Planting Policy – Planning & Design.
- 12(4) Any Tree planted or located on a highway is deemed to be a public tree and is subject to all the provisions and regulations contained in this By-law as well as

to the City of Hamilton Street Tree Planting Policy – New Developments; City of Hamilton Street Tree Planting Policy - Planning & Design; and the City of Hamilton Street Tree Planting Policy – Rural Roadways.

**13(1) Notwithstanding Section 12;**

- (a) Any tree planted on public property with or without the consent of the Director, is the property of the City, is deemed to be a public tree, and is subject to all terms and conditions as set out in this By-law;
- (b) For greater certainty, a tree referred to in subsection (a) above may be treated as a public tree or removed as provided for in this By-law, and in particular, any tree removed by the City may be removed without compensation owing by the City, and if removed by someone other than the City without the required permission for removal by the City, may result in enforcement, claims for compensation, and replanting costs and orders, and if such tree planted is a prohibited species, may be removed by the City or its contractors at the expense of the person planting or causing such planting to occur.

**Tree Planting on Private Property**

- 14(1) Any tree planted on private property, whether planted by the City or by any other person, is the property of the land owner and as such is the owner's sole responsibility.
- 14(2) The owner of property on which a private tree is standing shall not permit or leave the tree or branches thereof projecting over the highway in such manner as to obstruct the reasonable and safe use of the highway.

**Removal of Trees**

- 15 All authorized public tree removals and all private tree removals or pruning carried out by or on behalf of the City shall be performed by the City or by a contractor approved by the Director.
- 16 Excluding those public tree removals performed as "necessary for the public interest", as that phrase is defined in Section 18:
  - (a) The removal of all live, healthy public trees shall be subject to the provisions of the City of Hamilton Reforestation Policy - Municipally Owned Lands; and the City of Hamilton Public Tree Removal Policy;
  - (b) A person removing, injuring or damaging a public tree, where the Director in his sole discretion, decides that the tree needs to be replaced, shall, in addition to any enforcement of this By-law, be subject to the requirements of the City of Hamilton Reforestation Policy.

**Public Tree Removals**

- 17 The Director is authorized to remove or cause to be removed a tree or part thereof on public property when it is considered "necessary for the public interest", as that phrase is defined in Section 18, or in accordance with the City of Hamilton Public Tree Removal Policy.

**Necessary for the Public Interest**

- 18 For the purpose of Section 17, "necessary for the public interest" means removal for one or more of the following reasons:
- (a) A tree is decayed in whole or in part;
  - (b) A tree that has failed, or in its current physiological condition has the potential to fail, and by its failure, or potential failure, poses a direct and immediate threat to public property or to individuals using public property;
  - (c) A tree that is a source, host, or infested with any pest which directly or indirectly causes irreversible damage to the long-term health, vitality, longevity, and integrity of a tree;
  - (d) A tree whose structural value, or integrity, as determined by the Director, has been seriously compromised by construction, weather related events, or by pruning;
  - (e) A tree planted along a highway which obstructs or impedes the safe use of the same;
  - (f) A tree whose root system has been proven to compromise the structural integrity of the foundation of any building; or
  - (g) A tree of poor quality, or undesirable species whose removal is required to facilitate new street tree plantings.

**Naturalized Areas**

- 19(1) No person shall remove, or cause, or permit the removal of any public tree that has fallen in a naturalized area from such area.
- 19(2) Any public tree that has fallen in a naturalized area and impedes on the use of public property may be cut back by the City of Hamilton so as to provide safe access and use of the public property, however, the tree will not be removed from the area.

**Private Trees**



- 20(1) Subsections (2) and (3) of this section do not apply where the City does not enter private property for its property or highway maintenance purposes, and in particular do not apply when the City, from its own property, removes the portions of private trees growing upon or over its property and highways for the purposes of property or highway maintenance so as to ensure reasonable or appropriate use of the property or highway as determined solely by the City and the elimination of dangers or obstructions for users of the City properties or highways; and further, any rights or permissions granted in this or any by-law to persons to maintain trees on private property or part of the road allowance, or other public property shall be subject to this provision for needs or maintenance purposes and so as to allow the City to meet the legal obligations to maintain its highways and carry out its intentions towards use of its properties for its own and the public benefit.
- 20(2) Pursuant to section 62 of the *Municipal Act, 2001* and in accordance with section 431 of that Act where required, a municipal employee or a contractor of the municipality, for the purpose of tree trimming in relation to highways or for the maintenance of highways, may where necessary, at any reasonable time, enter on lands adjacent to any of its highways to:
- (a) inspect or conduct tests on trees; or
  - (b) remove decayed, damaged or dangerous trees or their branches, where in the opinion of the employee or contractor, the tree or branch poses a danger to the health and safety of any person using the highway.
- 20(3) Pursuant to subsection 62(2) of the *Municipal Act, 2001* a municipal employee or a contractor, where such person is of the opinion that a tree or branch of land adjacent to the highway poses an immediate danger to the health and safety of any person using the highway, where necessary and in accordance with paragraphs (b), (c) or (d) of section 431 of that Act where required, may enter the land without notice to remove the tree or branch.
- 20(4) Subsections 20(2) and (3) do not permit entry into a building on the land excepting where proper notices have been given or permissions obtained.
- 20(5) The owner of private property shall ensure that all trees growing partially on public property are maintained in good condition and state of repair, free of decay or damage, such that the tree or branches thereof do not pose a danger to persons on City properties or its highways.
- 20(6) The obligations in subsection 20(5) shall be deemed to include the requirement of the owner to cause or carry out such inspections and testing as are reasonably necessary to determine the condition of the private tree and its branches.

#### **Regulations and Enforcement**

#### **Exclusions and Exceptions**

- 21 The provisions of this By-law shall not apply to:
- (a) The employees of the City of Hamilton while engaged in the performance of their duties;
  - (b) The operators, drivers and attendants of authorized emergency services vehicles, Police Officers, Officers of the Hamilton Fire Service, or Municipal Law Enforcement Officers appointed by the Council of the City of Hamilton, while engaged in the performance of their duties; or
  - (c) The operators, drivers and attendants of authorized public utility companies including, but not limited to, a natural gas utility, a hydro electric provider, and any other public utility, or telecommunication company, provided that their vehicles and crews are clearly identified by a crest or other marking and provided the operator, driver or attendant is actively engaged in the provision of any emergency services offered by the utility.

#### **Enforcement**

- 22 A Municipal Law Enforcement Officer, an employee of the City designated as an officer by the Director for the purpose of this Section or a police officer is authorized to inform any person of the provisions of this By-law, to issue warnings or notices, and to issue an order for discontinuance or for compliance therewith in the terms and content required by Section 137 of the *Municipal Act*, S. O. 2001, c. 25.
- 23(1) A Municipal Law Enforcement Officer or police officer may enforce the provisions of this By-law.
- 23(2) An officer appointed for the purposes of this By-law may be issued identification by the Director for purposes including the issuing of orders.

#### **Penalty and Remedies for Breach or Contravention**

- 24 Any Person contravening any provision of this By-law or contravening an order to discontinue issued under this By-law pursuant to section 137 of the *Municipal Act* is guilty of an offence, and upon conviction is liable to the fines and obligations for replanting and rehabilitation specified in Section 138 of the *Municipal Act*, S.O. 2001, Chapter 25.
- 25(1) In addition to any other remedy and to any penalty imposed by the By-law, a court in which a conviction has been entered under this By-law, and any court of competent jurisdiction thereafter may:
- (a) Make an Order prohibiting the continuation or repetition of the offence by the person convicted; and



- (b) Order the person to rehabilitate the land or to plant or replant trees in such a manner and within such period as the court considers appropriate, including any silvicultural treatment necessary to re-establish the trees.

25(2) Where under this By-law a person is required or directed that a matter or thing be done and the person defaults or otherwise fails to comply, the Director may, pursuant to section 427 of the *Municipal Act, 2001*, carry out the thing or cause the matter to be done at the person's expense, and recover the City's costs as defined in that section by action or by adding the costs to the tax roll for the person and collecting them in the same manner as taxes.

### **Severance**

26 Should a court of competent jurisdiction declare a part or whole of any provision of this By-law to be invalid or of no force or effect, the provision or part is deemed severable from this By-law, and it is the intention of Council that the remainder survive and be applied and enforced in accordance with its remaining terms to the extent possible under law.

### **Short Title**

27 The Short Title of this By-law shall be "The City of Hamilton Public Trees By-law".

### **Repeals and Enactment**

28(1) The following By-laws of the former area municipalities, as may be amended, are hereby repealed: By-law No. 4156-95 (Stoney Creek), By-law No. 91-36-P (Flamborough), By-law No. 4502-99 (Dundas), By-law No. 4486-99 (Dundas), By-law No. 241-82 (Glanbrook), and By-law No. 92-155 (Hamilton).

28(2) By-law No. 86-077 (Hamilton Streets By-law), as may be amended, is hereby further amended in the following respects:

- (a) At the beginning of subsection 4(2), deleting the words "Subject to the provisions of this By-law respecting trees on highways, and";
- (b) Within subsection 4(2) repealing the words "grass, flowers and trees" and replacing them with the words "grass and flowers";
- (c) Section 5 of By-law No. 86-077 (Hamilton Streets By-law), as amended, is hereby repealed;
- (d) Sub-section 16(9) of By-law No. 86-077 (Hamilton Streets By-law), as may be amended, is hereby further amended by repealing the words "of trees" after the word "climbing"; and



- (e) In all other respects, By-law No. 86-77 (Hamilton) is confirmed without change.
- 28(3) By-law No. 328-86 (Glanbrook) as may be amended is hereby further amended by deleting "tree," from clause 8(g), and in all other respects, By-law No. 328-86 (Glanbrook) is confirmed without change.
- 28(4) By-law No. 2000-118 (Ancaster) as may be amended, is hereby further amended in the following respects:
- (a) the title to By-law No. 2000-118 (Ancaster) is repealed and replaced with the following:  

"Being a By-law to Prohibit the Injury or Destruction of Specified Classes of Trees on Private Property in the Geographic District of former Town of Ancaster in the City of Hamilton";
  - (b) By-law No. 2000-118 (Ancaster) is further amended by repealing and replacing section 2.20 with the following:  

"2.20 "Owner" means the owner as registered on title to the lands.";
  - (c) By-law No. 2000-118 (Ancaster) is further amended by repealing and replacing section 2.31 with the following:  

"2.31 "woodland" means any area of private land of 0.2 hectare (0.5 acres) or more with at least:

    - (i) 1000 trees per hectare (405 trees per acre) of any size;
    - (ii) 750 trees per hectare (303 trees per acre) measuring over 5 centimetres (2 inches) DBH;
    - (iii) 500 trees per hectare (202 trees per acre) measuring over 12 centimetres (5 inches) DBH; or
    - (iv) 250 trees per hectare (101 trees per acre) measuring over 20 centimetres (8 inches) DBH, not including orchards or plantations.

For the purposes of this By-law, the boundary of the woodland shall be defined by the ecological limit of the woodland and not by private property boundaries, and shall include the area up to the drip line of the woodland and any corridors measuring up to 30 metres in width. Where a potential woodlot is dissected by a corridor or natural feature such as a creek, the area of the woodlot shall be calculated exclusive of the area of the corridor or natural feature.";

- (d) By-law No. 2000-118 (Ancaster) is further amended by repealing and replacing clause 3.1.2(i) with the following:
- "(i) Heritage Trees on private lands located outside of Woodlands;"
- (e) By-law No. 2000-118 (Ancaster) is further amended by repealing and replacing clause 5.1.1(ii) with the following:
- "(ii) for the removal of Heritage Trees on private lands within 7.5 metres (25 feet) of the outer edge of an Occupied Building;"
- (f) By-law No. 2000-118 (Ancaster) is further amended by repealing Sections 2.25, 5.1.2, 9.3.1, 9.3.2, 9.3.3, 9.3.4, 9.3.5 and 9.3.6 in their entirety; and
- (g) In all other respects By-law No. 2000-118 (Ancaster) is hereby confirmed without change.
- 28(5) By-law No. 4513-99 (Dundas) as may be amended, is hereby further amended by repealing and replacing subsection 3(e) with the following:
- "(e) Trees overhanging onto private land from abutting private lands are specifically included under the Control of this By-law."
- 29 Further to Section 28, any references to the aforementioned By-laws and schedules in other City policies, signage or By-laws, as amended, antedating the passing and enactment of this By-law, shall be deemed a reference to this By-law.
- 30 This By-law shall come into force and take effect on the date of its passing and enactment.

**PASSED and ENACTED** this 14<sup>th</sup> day of June, 2006.

  
\_\_\_\_\_  
MAYOR

  
\_\_\_\_\_  
CLERK

**Authority:** Item 16, Planning and Economic  
Development Committee  
Report: 06-014 (PED05172(b))  
CM: August 9, 2006

**Bill No. 243**

**CITY OF HAMILTON**

**BY-LAW NO. 06-243**

**A By-Law Respecting Signs And Other Advertising Devices Within The City Of Hamilton**

**WHEREAS** subsection 5(3) of the *Municipal Act, 2001*, S.O. 2001, c. 25, provides that a municipal power shall be exercised by by-law;

**AND WHEREAS** section 8 of the *Municipal Act, 2001*, S.O. 2001, c. 25, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under that or any other Act;

**AND WHEREAS** subsection 9(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, provides that section 8 of that Act shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate, and to enhance their ability to respond to municipal issues;

**AND WHEREAS** subsection 11(1), paragraph 1 of the *Municipal Act, 2001*, S.O. 2001, c. 25, authorizes the City of Hamilton to pass by-laws respecting highways over which it has jurisdiction;

**AND WHEREAS** subsection 11(1), paragraph 7 of the *Municipal Act, 2001*, S.O. 2001, c. 25, authorizes the City of Hamilton to pass by-laws respecting signs;

**AND WHEREAS** subsection 9(3) of the *Municipal Act, 2001*, S.O. 2001, c. 25, provides that a by-law under section 11 of that Act respecting a matter may regulate or prohibit and, as part of the power to regulate or prohibit may require a person to do things, provide for a system of licences permits, approvals or registrations and impose conditions as a requirement of obtaining, continuing to hold or renewing a licence, permit, approval or registration;

**AND WHEREAS** subsection 63(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, authorizes the City of Hamilton, if it passes a by-law for prohibiting or regulating the placing of an object on a highway, to provide for the removal of any object placed on a highway in contravention of that by-law;



**AND WHEREAS** subsection 99.3 of the *Municipal Act, 2001*, S.O. 2001, c. 25, authorizes the City of Hamilton to enter land and pull down or remove an advertising device, at the expense of the owner of the advertising device, if it is erected, located, or displayed in contravention of a by-law respecting advertising devices, including signs;

**AND WHEREAS** subsections 427(1) and 427(3) of *Municipal Act, 2001*, S.O. 2001, c. 25, authorize the City of Hamilton, if it has authority by by-law or otherwise, to direct or require that a matter or thing be done, to direct in the same by-law that, in default of it being done by the person directed or required to do it, such matter or thing be done at the person's expense and to recover that expense by action or by adding it to the tax roll and collecting it in the same manner as taxes;

**AND WHEREAS** section 425 of the *Municipal Act, 2001*, S.O. 2001, c. 25, establishes that any person who contravenes any by-law of the City of Hamilton is guilty of an offence;

**AND WHEREAS** public notice, including notice of a public participation meeting held by the Planning and Economic Development Committee on the 22<sup>nd</sup> day of June, 2006, of the intention to pass this By-law was given on the 2<sup>nd</sup> day of June, 2006 and the 9<sup>th</sup> day of June, 2006 pursuant to subsection 99.1 of the *Municipal Act, 2001*, S.O. 2001, c. 25, by publishing the public notice in local newspapers;

**NOW THEREFORE**, the Council of the City of Hamilton enacts as follows:

## **PART 1.0**

### **TITLE, SCOPE AND INTENT OF SIGN BY-LAW**

#### **1.1 TITLE**

This By-law shall be known and cited as the "Hamilton Sign By-law".

#### **1.2 SCOPE**

1.2.1 This By-law shall regulate the location, size, number, construction, alteration, repair and maintenance of all signs and advertising devices within the geographic boundaries of the City of Hamilton.

1.2.2 All schedules attached to this By-law form part of this By-law.

1.2.3 All signs and advertising devices located on public and private Property within the geographic boundaries of the City of Hamilton are subject to the provisions of this By-law.

- 1.2.4 This By-law does not apply to signs erected, located, or displayed, or caused to be erected, located, or displayed by federal, provincial or municipal governments, the Conservation Authorities or a local board as defined in the *Municipal Act, 2001*, including, but not limited to, signs designating a public library, a public community centre, a public arena, signs required by the City of Hamilton to inform the public of planning applications submitted under the *Planning Act* and TODs signs.
- 1.2.5 Notwithstanding subsection 1.2.4, the applicable regulations under this By-law for Ground Signs or Wall Signs shall apply to signs that function as Ground Signs or Wall Signs.

### 1.3 INTENT

The purpose of this By-law is to regulate signs in the City of Hamilton with the intent of authorizing signs that:

- (a) are appropriate in size, number, and location to the type of activity or use to which they pertain;
- (b) provide reasonable and appropriate means for the public to locate and identify facilities, businesses, and services without difficulty or confusion;
- (c) are compatible with their surroundings;
- (d) protect and enhance the aesthetic qualities and visual character of the City of Hamilton;
- (e) are consistent with the City of Hamilton's planning, urban design and heritage objectives;
- (f) do not create a distraction or safety hazard for pedestrians or motorists;
- (g) minimize adverse impacts on nearby public and private property;
- (h) regulate signs while impairing the public's right to expression as little as possible and in proportion to the purpose of the By-law.

## PART 2.0 DEFINITIONS

In this By-law:

**"Advertising Device"** means any device or object erected, located, or displayed so as to attract public attention to any goods or services or facilities or events and includes flags, banners, pennants, and lights.

**"Animated Sign"** means a video screen or any flashing, kinetic, or illusionary motion of all or any part of a Sign and includes a rotating Sign but does not include an Electronic Message Display.

**"Authorized Sign"** means any Sign placed or erected on a highway under the authority of By-law 01-215, the City of Hamilton Traffic By-law, for the purpose of regulating, warning or guiding traffic.

**"Awning Sign"** means a retractable structure, covered with fabric or like material that is attached and projects from the exterior wall of a building over a window or door and provides shade or other protection from the elements and that is or functions as a Sign.

**"Banner"** means a Sign or an Advertising Device made from cloth, plastic or a similar lightweight non-rigid material.

**"Bed and Breakfast Sign"** means a Sign identifying a bed and breakfast establishment.

**"Billboard"** means an outdoor Sign erected, located or displayed by a Person engaged in the sale or rental of the space on the Sign, upon which space is displayed Copy that advertises goods, products, or services not sold or offered on the Property where the Sign is erected, located, or displayed, and the Sign is either single faced or double faced.

**"Business Improvement Area"** means an area designated by the City of Hamilton as an improvement area under the *Municipal Act, 2001*.

**"Campaign Office"** means the actual building or portion of a building in which a candidate maintains his office for the purpose of running an election campaign.

**"Canopy Sign"** means a non-retractable awning or roof-like structure that is not supported from the ground but instead is attached to and supported from the exterior wall of a building and that is or functions as a Sign.

**"Charity"** means a registered charity as defined in the *Income Tax Act* (Canada) or successor legislation, which has a registration number issued by the Canada Revenue Agency, or successor agency.

**"Chief Building Official"** means the person and/or his or her designate so appointed by Council pursuant to the *Building Code Act, 1992*.

**"Community Organization"** means a non-profit group of persons organized for the advancement of a civic, cultural or recreational nature.

**"Construction Information Sign"** means a Sign which identifies or provides information relating to or advertising the development or the construction of a



building on the Property on which the Sign is erected, located, or displayed but does not include a New Home Development Ground Sign.

**"Copy"** means the graphic content of a sign surface in either permanent or removable letter, pictorial, symbolic, or numeric form.

**"Council"** means the Council of the City of Hamilton.

**"Designated Utility Pole"** means a utility pole, including a light standard, designated by the City of Hamilton and fitted with a Poster Sleeve.

**"Designated Official"** means an employee of the City of Hamilton who has been assigned the responsibility of administering and enforcing this By-law, or his designate.

**"Directional Sign"** means any Sign on a Property which gives directions or instructions for the control of vehicular or pedestrian traffic and shall include an entry and exit Sign.

**"Driveway Line"** means the line forming a boundary between that portion of a Property not normally used by vehicular traffic and the lateral limit of a driveway.

**"Election Sign"** means a Sign advertising or promoting the election of a political party or a candidate for public office in a federal, provincial or municipal election.

**"Electronic Message Display"** means a permanent Sign which is electronically controlled and which displays information in a prearranged sequence, and on which the intensity of illumination is maintained at a constant level.

**"Facade"** means the entire building wall including a parapet.

**"Frontage"** means the length of the Property Line of any one Property parallel to and along each legally accessible Street.

**"Grade"** means the average surface elevation of the finished ground below a Sign or which is in contact with a Ground Sign.

**"Ground Sign"** means a Sign which is free standing and is supported by a structure secured to the ground and which is not supported by any building or other structure.

**"Home Occupation Sign"** means a Sign identifying a home occupation as defined in the zoning by-laws of the City of Hamilton.

**"Height"** means the vertical distance measured from the average elevation of the Grade immediately below a Sign to the highest point of the Sign and includes any support structure or ornamental feature.

**"Incidental Sign"** means a Sign containing information that has a purpose incidentally related to the use or occupancy of a Property and which Sign is intended to assist the public with the location of business facilities or provides courtesy or directional information but is not an advertisement.

**"Inflatable Sign"** means a Sign or an Advertising Device filled with air or gas and tethered to the ground, a vehicle or any structure and shall include balloons and any other inflatable Advertising Device.

**"Information Sign"** means a Sign for public safety or convenience regulating traffic, parking or other functional subdivision of the Property or a Sign denoting sections of a building and bearing no commercial advertising.

**"Marquee Sign"** means a permanent canopy or a roof-like structure, often bearing a signboard, projecting or extending from the façade, over an entrance and that is or functions as a Sign.

**"Mobile Sign"** means a Sign that is temporary, designed for the rearrangement of Copy on the sign face, is capable of being readily moved from one location to another, and may be part of or attached to a wheeled trailer or frame without wheels.

**"Mural"** means any type of display or artistic endeavour applied as paint, film or any other covering to any external wall or other integral part of a building or structure which does not include any words or advertisement or any other promotional message or content, including logos or trademarks.

**"New Home Development Ground Sign"** means a Sign that advertises the sale of Properties and homes of a subdivision but not the developer's or landowner's business in general.

**"New Home Development Portable Sign"** means a non-illuminated Sign which is not permanently installed or affixed to the ground and where the purpose of the Sign is to direct attention to the sale of new home developments.

**"Official Sign"** means any Sign required by a federal or provincial statute or regulation or by a municipal by-law and shall include a traffic sign, street name sign and a permanent sign erected, located, or displayed on a Street to inform the public of the location of Business Improvement Areas, public buildings, hospitals, public libraries, institutions, places of worship, parks, recreational or educational facilities.

**"Open House Directional Sign"** means a temporary portable sign intended to direct traffic to a residence for sale or lease, but does not include a New Home Development Portable Sign.

**"Owner"** means the registered owner of the Property, or the Person or the Person's authorized agent in lawful control of a Property.

**"Parapet Sign"** means a Sign attached to the parapet of a building.

**"Person"** means any individual, association, proprietorship, partnership, syndicate, company, corporation, firm, business, authorized agent, trustee and the heirs, executors or other legal representatives, or any combination of the foregoing.

**"Portable Sign"** means a free standing moveable sign not fastened by any means to the ground or any structure.

**"Poster"** means a printed notice conveying information intended to be displayed for a temporary period of time and includes but is not limited to a bill, handbill, leaflet, notice or placard.

**"Poster Sleeve"** means a collar or other protective covering or identifier fitted by the City of Hamilton to a Designated Utility Pole.

**"Projecting Sign"** means a Sign attached to a building and projecting out horizontally from a building at a right angle to the building.

**"Property"** means a parcel of land which can be legally conveyed pursuant to the *Planning Act* and includes any buildings and structures thereon.

**"Property Line"** means the legal boundaries of a Property and includes a Street Line.

**"Readograph"** means that part of a permanent Sign composed of changeable letters intended to convey a temporary message and which is designed or constructed so that the message on the Sign may be easily changed and rearranged mechanically or as part of an Electronic Message Display.

**"Real Estate Sign"** means a temporary non-illuminated Sign displayed on Property and advertising the sale, rent, or lease of the Property.

**"Roof Sign"** means a Sign supported entirely or partly by the roof of a building or structure which projects above the roof and parapet or is erected, located or displayed on a sloped roof.



**"Sidewalk Sign"** means a freestanding Sign which is typically shaped like an "A" or a "T" and has one or two sign faces.

**"Sign"** means any surface, structure and other component parts, which are used or capable of being used as a visual medium or display to attract attention to a specific subject matter for identification, information or advertising purposes and includes an Advertising Device.

**"Sign Area"** means the entire area of the surface of a Sign including the border or frame, together with any material forming an integral part of the background of the display or used to differentiate the Sign from the backdrop or building against which it is erected, located, or displayed. Where there is no border or the Sign is composed of individually installed letters, numerals or shapes, the Sign Area shall include all of the area of the smallest polygon containing a maximum of eight right angle sides that enclose the surface of the Sign or the grouping of letters, numerals or shapes.

**"Sign Owner"** means any Person described on the Sign, or whose name and address or telephone number appears on the Sign, or who installed the Sign, or who is in lawful control of the Sign, or who benefits from the message on the Sign, and for the purposes of this definition, there may be more than one Sign Owner.

**"Street"** means any public highway but does not include a provincial highway.

**"Street Furniture"** means all Street related amenities and includes benches, kiosks, telephone booths, newspaper boxes, mail boxes, clocks, street lighting, transit shelters, litter containers, clothing recycling collection boxes, bicycle racks, tree guards, planters and other similar privately or publicly owned features.

**"Street Line"** means the dividing line between a Property and a Street.

**"Temporary Personal Sign"** means a non-illuminated Sign displaying a personal announcement or congratulatory message.

**"Use"** when used in conjunction with the words zone, residential, employment, industrial, commercial, institutional, agricultural, open space, or similar words, shall mean such uses as may be permitted under the zoning by-laws of the City of Hamilton.

**"Vacant"** means a Property separately assessed that does not have any building or any occupied building thereon.

**"Validation Marker"** means an attachment issued by the City of Hamilton signifying the issuance of a valid Sign permit.

**"Visibility Triangle"** means the triangular space formed within a Property by the intersection of the Street Line and a Driveway Line or the projections thereof and a straight line connecting them 6.0 metres from their point of intersection.

**"Wall Sign"** means a Sign erected, located, or displayed on or against a wall of a building, or supported by or through a wall of a building and having the sign face thereof on a plane approximately parallel to the plane of such wall.

**"Width"** means the measurement taken at right angles to the Height.

**"Window Sign"** means a Sign painted, etched, or attached to the interior or exterior surface of a window which is intended to be seen from off the Property.

**"Zone"** means any land use zone established in the zoning by-laws of the City of Hamilton and passed under the *Planning Act* or any predecessor or successor Act.

## **PART 3.0**

### **INTERPRETATION AND ADMINISTRATION**

#### **3.1 Interpretation**

- 3.1.1 Words importing the singular number or the masculine gender only include more Persons, parties or things of the same kind than one, and females as well as males and the converse.
- 3.1.2 A word interpreted in the singular number has a corresponding meaning when used in the plural.
- 3.1.3 The word "shall" is mandatory and the word "may" is permissive.

#### **3.2 Administration**

- 3.2.1 The Designated Official shall be responsible for the administration and enforcement of this By-law on all public and private Property within the geographic boundaries of the City of Hamilton.
- 3.2.2 The Designated Official may enter upon any Property at any reasonable time to inspect a Sign for the purpose of determining or affecting its compliance with this By-law.



### **3.3 Permits**

- 3.3.1 Every Person erecting, locating or displaying a Sign within the City of Hamilton, with the exception of a Sign listed in Schedule "B", shall apply for and obtain a permit.
- 3.3.2 Every Person applying for a Sign permit shall provide to the Designated Official:
- (a) a completed application form as prescribed by the City of Hamilton;
  - (b) all plans, drawings and other materials as required by the City of Hamilton;
  - (c) all applicable permit fees as set out in Schedule "A";
  - (d) the written authorisation of the Owner where the Person applying for the Sign permit is not also the Owner of the Property where the Sign will be erected, located, or displayed; and,
  - (e) where applicable, proof of approval for the proposed Sign from all governmental authorities having jurisdiction.
- 3.3.3 An application for a Sign permit shall be accompanied by plans and drawings that contain the following information:
- (a) a key map showing the location of the Property on which the proposed Sign is to be located and the nearest major Street intersection;
  - (b) a site plan showing the Property where the Sign is to be erected, located, or displayed, drawn to scale showing the dimensions of all Property Lines, existing or proposed buildings, location of proposed Signs, and location of all existing Signs on the same Property;
  - (c) drawings and specifications of the Sign drawn to scale and showing sections and elevations of the Sign to be erected, located, or displayed, construction details, supporting framework, foundations, materials, illumination details, Height of Sign, Sign Area, length and Width of Sign; and,
  - (d) sufficient information for the Chief Building Official to determine that the Sign has been designed and will be constructed in compliance with the applicable structural and fire prevention provisions of the Ontario Building Code.
- 3.3.4 The Chief Building Official may require the certification by a Registered Professional Engineer of all plans and specifications covering the erection of the Sign and supporting framework with respect to the structural adequacy of the Sign.
- 3.3.5 The application of the Ontario Building Code to any sign permit application will be considered by the City and where the City determines that the Ontario Building Code applies to a Sign, any sign permit issued pursuant to this By-law will be deemed to satisfy the requirements for a building permit under the Ontario Building Code Act.
- 3.3.8 If required, a Person shall obtain approval for the proposed Sign from other governmental authorities having jurisdiction.



### **3.4 Sign Permit Refusal, Expiry, or Renewal**

- 3.4.1 A permit may be refused if the proposed Sign does not comply with this By-law, any other By-law or federal or provincial statute or regulation.
- 3.4.2 A Billboard, Awning Sign, Canopy Sign, Ground Sign, Marquee Sign, New Home Development Ground Sign, Parapet Sign, Projecting Sign, or Wall Sign permit issued by the City of Hamilton shall expire six months from the date of issuance unless the Sign is erected, located, or displayed for its intended purpose and a permit shall expire upon the removal of the Sign.
- 3.4.3 Where a Billboard, Awning Sign, Canopy Sign, Ground Sign, Marquee Sign, New Home Development Ground Sign, Parapet Sign, Projecting Sign or Wall Sign permit has been issued and before it has expired, an application may be made to extend the permit for a further six months, provided the Sign continues to conform to all By-law requirements and federal or provincial statutory or regulatory requirements existing at the time of renewal.
- 3.4.4 The City of Hamilton may revoke a permit under the following circumstances:
- (a) the City of Hamilton issued the permit in error;
  - (b) the Sign does not comply with this By-law or any other by-law, the Ontario Building Code, or any federal or provincial statute or regulation;
  - (c) the City of Hamilton issued the permit as the result of false, mistaken, incorrect, or misleading statements, information, or undertakings on the application;
  - (d) the erection, location, or display of the Sign has not commenced within six months after the issuance of the permit;
  - (e) the erection, location or display of the Sign, in the opinion of the Designated Official, has been substantially suspended or discontinued for a period of more than one calendar year;
  - (f) the permit holder requests in writing that the permit be revoked; or
  - (g) the business, product, activity or service to which the Sign relates ceases to operate or is no longer available.

### **3.5 Existing Signs**

- 3.5.1 Any Sign that is lawfully erected, located, or displayed on the day this By-law comes into force may continue to be erected, located, or displayed provided it is not substantially altered in a manner that would bring it into non-compliance or increase its non-compliance with this By-law. Anything done to preserve the condition of a

Sign or to prevent the deterioration of a Sign, including the restoration of a Sign by removing or replacing worn out, missing, damaged or broken parts, or a change in the message or Copy displayed by the Sign does not in itself constitute a substantial alteration.

### **3.6 Refunds**

3.6.1 Subject to subsections 3.6.2 and 3.6.3, the Designated Official shall determine the amount of the fees, if any, that may be refunded in accordance with Schedule "A" where:

- (a) the Sign permit applicant requests in writing that the Sign Permit application be cancelled;
- (b) the Designated Official refuses to issue the Sign permit because the Sign does not comply with this By-law or any other by-law, the Ontario Building Code, or any federal or provincial statute or regulation; or
- (c) the City of Hamilton issued the permit in error.

3.6.2 There shall be no refund where:

- (a) the City of Hamilton issued the permit as the result of false, mistaken, incorrect, or misleading statements, information, or undertakings on the application; or
- (b) the Sign, for which the permit application is made, has been erected, located or displayed prior to the issuance of a permit.

3.6.3 Refunds shall only be provided for Ground Sign, New Home Development Ground Sign, Awning Sign, Canopy Sign, Marquee Sign, Parapet Sign, Projecting Sign and Wall Sign permit applications.

## **PART 4.0 GENERAL PROHIBITIONS AND REGULATIONS**

4.1 No Person shall erect, locate, or display or cause to be erected, located, or display a Sign:

- (a) for which a permit has not been obtained, if a permit is required under this By-law;
- (b) which is not in compliance with this By-law or the conditions of any variance granted under this By-law;
- (c) listed in Schedule "B" which is not in compliance with any regulation listed in the Schedule for that sign type;

- (d) listed in Schedule "C" which is not in compliance with any regulation listed in the Schedule for that sign type;
- (e) which is not specifically permitted under this By-law;
- (f) which is on City of Hamilton Property except as permitted by this By-law;
- (g) which obstructs the view of any pedestrian or driver of a motor vehicle, obstructs the visibility of any traffic sign or device, or interferes with vehicular traffic in a manner that could endanger any person;
- (h) which illuminates any adjacent Property or the path of vehicular traffic;
- (i) which is not maintained in a proper state of repair, becomes unsightly, becomes structurally inadequate or faulty, or could be hazardous to a pedestrian or motorist;
- (j) which the Designated Official has directed be removed; or,
- (k) which bears or displays the City of Hamilton logo, crest or seal in whole or in part, without the express written permission of the City of Hamilton.

- 4.2 A Person shall be deemed to be erecting, locating, or displaying a Sign if that Person is the Sign Owner and directs, permits or fails to stop the erection, location, or display of the Sign.

## **PART 5.0 REGULATIONS FOR PARTICULAR TYPES OF SIGNS**

### **5.1 Prohibited Signs**

#### **5.1.1 The following Signs are prohibited under this By-law:**

- (a) any flashing or Animated Sign, with the exception of an Electronic Message Display as permitted under this By-law;
- (b) any Projecting Sign except as permitted under this By-law;
- (c) any Roof Sign;
- (d) any Sign erected, located, or displayed within a Visibility Triangle;
- (e) any Sign displayed on a vehicle, trailer or truck which is parked or located on Property in a manner that is unrelated to its normal use as a vehicle and is more consistent with the use of the vehicle as a Sign; or,
- (f) any Sign which obstructs or is erected, located, or displayed in a parking space required by the zoning by-laws of the City of Hamilton.

#### **5.1.2 Where a Sign is not expressly permitted by this By-law, it shall be deemed to be prohibited.**



- 5.1.3 Where a type of Sign is not specifically permitted within a particular Zone or on a Property with a particular zoned use under Schedule "C", it shall be deemed to be prohibited within that Zone or on that Property.
- 5.1.4 Notwithstanding subsections 5.1.2 and 5.1.3 and subject to the approval of Council, Signs on Street Furniture erected, located or displayed pursuant to an agreement with the City of Hamilton are permitted.
- 5.2 Ground Signs**
- 5.2.1 No Person shall erect, locate, or display a Ground Sign except in accordance with the applicable regulations under Schedule "C", the applicable general regulations under this By-law, and the specific regulations under this section of the By-law.
- 5.2.2 No Ground Sign shall be erected, located or displayed except a Ground Sign embedded in a foundation in the ground to a depth of at least 1.2 metres.
- 5.2.3 No Ground Sign shall be erected, located or displayed in a commercial or industrial Zone without displaying on the top or bottom the municipal address number of the Property on which the Ground Sign is erected, located, or displayed in numerals that are a minimum height of 15.0 centimetres.
- 5.2.4 No Ground Sign shall be erected, located, or displayed within 15.0 metres of a traffic signal or traffic control device.
- 5.2.5 No Ground Sign shall be erected, located, or displayed within 1.5 metres or a distance equal to 75% of the Height of the Ground Sign, whichever is greater, from any Property Line.
- 5.2.6 The maximum total Sign Area for a Ground Sign that is double faced or multi-faced Sign shall be double the maximum Sign Area permitted for one sign face.
- 5.2.7 The sign face of a Ground Sign may allocate a maximum 50% of the sign face to a Readograph or Electronic Message Display.
- 5.2.8 No message displayed on an Electronic Message Display on a Ground Sign shall be displayed for less than three (3) seconds, during which there shall be no movement or change in colour or intensity of illumination.
- 5.2.9 A Ground Sign shall be erected, located, or displayed along the same Street Frontage used to calculate the maximum Sign Area of the Ground Sign.

- 5.2.10 Where more than one Ground Sign is erected, located, or displayed parallel to a Street Frontage, no Ground Sign shall be erected, located, or displayed within 200.0 metres of another Ground Sign on the same Property.
- 5.2.11 A Ground Sign shall be permitted in all zones except where the use of the property is for one or more of the following uses:
- (a) A Single Detached Dwelling;
  - (b) A Semi Detached Dwelling;
  - (c) A Duplex;
  - (d) A Triplex;
  - (e) A Fourplex or Quadruplex;
  - (f) A Street townhouse;
  - (g) A Mobile Home;
  - (h) A Residential Care Facility for 6 or less residents;
  - (i) A Lodging House for 6 or less lodgers;
  - (j) A Retirement Home for 6 or less residents; or
  - (k) An Emergency Shelter for 6 or less residents.
- 5.2.12 Where a Property on which a Billboard is erected, located, or displayed ceases to be Vacant or undeveloped and the Billboard has not been removed, no Ground Sign shall be erected, located, or displayed on the Property.
- 5.3 Wall Signs and Parapet Signs**
- 5.3.1 No Person shall erect, locate, or display a Wall Sign or a Parapet Sign except in accordance the applicable regulations under Schedule "C", the applicable general regulations under this By-law, and the specific regulations under this section of the By-law.
- 5.3.2 No Wall Sign or Parapet Sign shall extend beyond the extremity of the wall Facade on which it is erected, located, or displayed.
- 5.3.3 No Wall Sign or Parapet Sign shall project more than 60 centimetres from the wall to which it is attached.
- 5.3.4 No Wall Sign or Parapet Sign erected, located, or displayed on a building above a location where the public passes shall be erected, located, or displayed less than 2.5 metres above the Grade below the Wall Sign or Parapet Sign.
- 5.3.5 No Wall Sign or Parapet Sign shall be erected, located, or displayed unless it is parallel to the wall to which it is attached.

- 5.3.6 No Wall Sign shall be erected, located or displayed unless it is on the same building Facade used to calculate the maximum Sign Area of the Wall Sign.
- 5.3.7 The sign face of a Wall Sign may be a Read-o-graph or Electronic Message Display.
- 5.3.8 No message displayed on an Electronic Message Display on a Wall Sign shall be displayed for less than three (3) seconds, during which there shall be no movement or change in colour or intensity of illumination.
- 5.3.9 No Parapet Sign shall be erected, located or displayed unless it is on the same building Façade used to calculate the maximum Sign Area of the Parapet Sign.
- 5.3.10 In a multi-occupant building the area of a Wall Sign for tenants shall be in direct proportion to the linear distance each occupant controls on the applicable Facade.
- 5.3.11 A Parapet Sign shall consist only of a business's logo or name.
- 5.3.12 A Wall Sign or a Parapet Sign shall be permitted in all zones except where the use of the property is for one or more of the following uses:
- (a) A Single Detached Dwelling;
  - (b) A Semi Detached Dwelling;
  - (c) A Duplex;
  - (d) A Triplex;
  - (e) A Fourplex or Quadruplex;
  - (f) A Street townhouse;
  - (g) A Mobile Home
  - (h) A Residential Care Facility for 6 or less residents;
  - (i) A Lodging House for 6 or less lodgers;
  - (j) A Retirement Home for 6 or less residents; or
  - (k) An Emergency Shelter for 6 or less residents.

#### **5.4 Projecting Signs**

- 5.4.1 No Person shall erect, locate, or display a Projecting Sign except in accordance with the applicable regulations under Schedule "C", the applicable general regulations under this By-law, and the specific regulations under this section of the By-law.
- 5.4.2 The Owner of Property where a Projecting Sign is erected, located, or displayed that overhangs a public right of way under the jurisdiction of the City of Hamilton shall enter into an encroachment agreement with the City of Hamilton and shall satisfy the City of Hamilton's requirements for liability insurance.



- 5.4.3 No portion of a Projecting Sign shall be less than 2.5 metres above the Grade below the Projecting Sign.
- 5.4.4 The sign face of a Projecting Sign may be a Read-o-graph or Electronic Message Display.
- 5.4.5 No message displayed on an Electronic Message Display on a Projecting Sign shall be displayed for less than three (3) seconds, during which there shall be no movement or change in colour or intensity of illumination.

## **5.5 Awning Signs, Canopy Signs and Marquee Signs**

- 5.5.1 No Person shall erect, locate, or display an Awning Sign, Canopy Sign or Marquee Sign except in accordance the applicable regulations under Schedule "C", the applicable general regulations under this By-law, and the specific regulations under this section of the By-law.
- 5.5.2 No Awning Sign, Canopy Sign or Marquee Sign erected, located, or displayed on a building above a location where the public passes shall be erected, located, or displayed less than 2.5 metres above the Grade below the Awning Sign, Canopy Sign or Marquee Sign.
- 5.5.3 An Awning Sign, Canopy Sign or Marquee Sign shall be permitted in all zones except where the use of the property is for one or more of the following uses:
- (a) A Single Detached Dwelling;
  - (b) A Semi Detached Dwelling;
  - (c) A Duplex;
  - (d) A Triplex;
  - (e) A Fourplex or Quadruplex;
  - (f) A Street townhouse;
  - (g) A Mobile Home
  - (h) A Residential Care Facility for 6 or less residents;
  - (i) A Lodging House for 6 or less lodgers;
  - (j) A Retirement Home for 6 or less residents; or
  - (k) An Emergency Shelter for 6 or less residents.

## **5.6 Mobile Signs**

- 5.6.1 No Person shall erect, locate, or display a Mobile Sign except in accordance with the applicable regulations under Schedule "C", the applicable general regulations under this By-law, and the specific regulations under this section of the By-law.

- 5.6.2 A permit for a Mobile Sign shall be valid for a period of fourteen (14) consecutive days.
- 5.6.3 No more than six (6) Mobile Sign permits shall be issued for a single business at a single Property in a calendar year for a total calendar year allotment of twelve (12) weeks.
- 5.6.4 The maximum display period for a Mobile Sign shall be twenty-eight (28) consecutive days, being two (2) permit periods.
- 5.6.5 Where one (1) permit for a Mobile Sign has been issued for a Property for a display period of fourteen (14) consecutive days, being one (1) permit period, no subsequent permit for the Property shall be issued until at least fourteen (14) days have elapsed from the date of expiry of the previous permit.
- 5.6.6 Where two (2) permits for a Mobile Sign has been issued for a Property for a display period of twenty-eight (28) consecutive days, being two (2) permit periods, no subsequent permit for the Property shall be issued until at least fourteen (14) days have elapsed from the date of expiry of the previous permit.
- 5.6.7 Where there are two (2) Mobile Signs on a Property, each shall comply with subsection 5.6.5 or 5.6.6.
- 5.6.8 A Mobile Sign shall have a maximum of two sign faces and a separate permit shall be required for each sign face if they relate to different businesses. The applicable permit fee under Schedule "A" shall be paid for each permit.
- 5.6.9 An application for a Mobile Sign permit shall be submitted no earlier than twenty-eight (28) days prior to the intended date the permit comes into effect.
- 5.6.10 Applications for Mobile Sign permits on a Property shall be processed by the City of Hamilton in the order of receipt, and in the event that applications are submitted simultaneously and insufficient opportunities exist for the display of a Mobile Sign, priority for a permit shall be established by means of a draw conducted by the Designated Official.
- 5.6.11 A Mobile Sign shall be erected, located, or displayed entirely on private Property and only in the front or exterior side yard of a Property.
- 5.6.12 No Mobile Sign shall be erected, located, or displayed on a Vacant Property.
- 5.6.13 No Mobile Sign shall be erected, located, or displayed except on the Property where the business or activity being advertised on the Mobile Sign is located.

- 5.6.14 No Mobile Sign shall exceed a maximum area of 4.5 m<sup>2</sup> per sign face for a commercial or industrial use and 1.8 m<sup>2</sup> for an institutional use.
- 5.6.15 No Mobile Sign shall exceed 2.7 metres in Height.
- 5.6.16 No Mobile Sign shall be greater than 2.5 metres in any linear dimension.
- 5.6.17 No more than two (2) Mobile Signs shall be erected, located, or displayed on a Property at any one time.
- 5.6.18 Where more than one (1) Mobile Sign is erected, located or displayed on the same Property, they shall be separated by a distance of at least 50.0 metres.
- 5.6.19 No Mobile Sign shall be erected, located, or displayed within:
- (a) 10.0 metres of a Ground Sign on the same Property;
  - (b) 15.0 metres of an intersection or traffic signal or traffic control device;
  - (c) 3.0 metres of a Driveway Line;
  - (d) 3.0 metres of side Property Line;
  - (e) 1.5 metres of a Street Line;
  - (f) any parking space required under the zoning by-laws of the City of Hamilton; or,
  - (g) 15.0 metres of a property used solely for residential purposes.
- 5.6.20 A Mobile Sign shall display the name and telephone number of the Sign Owner in a clearly visible location.
- 5.6.21 A Mobile Sign shall display a Validation Marker in a clearly visible location.
- 5.6.22 No Mobile Sign shall be illuminated or animated, nor shall any Mobile Sign create noise or motion.
- 5.6.23 The Copy and message board of the Mobile Sign shall be only black on white or white on black, provided that:
- (a) one line of letters or numbers no more than 30 centimetres in height may be a single colour other than black or white; and,
  - (b) graphics or business logos totalling a maximum of 10% of the Sign Area may be any colour or combination of colours.
- 5.6.24 Subsection 5.6.23 shall not come into effect until one year after the passage and enactment of this By-law.
- 5.6.25 A Mobile Sign shall be permitted in all zones except where the use of the property is for one or more of the following uses:
- (a) A Single Detached Dwelling;



- (b) A Semi Detached Dwelling;
- (c) A Duplex;
- (d) A Triplex;
- (e) A Fourplex or Quadruplex;
- (f) A Street townhouse;
- (g) A Mobile Home
- (h) A Residential Care Facility for 6 or less residents;
- (i) A Lodging House for 6 or less lodgers;
- (j) A Retirement Home for 6 or less residents; or
- (k) An Emergency Shelter for 6 or less residents.

5.6.26 Notwithstanding subsection 5.6.25, no Mobile Sign shall be erected, located, or displayed on a Property within the Downtown Community Improvement Project Area, a Business Improvement Area, or within the Ancaster Village Core Area.

5.6.27 Notwithstanding subsections 5.6.17 and 5.6.18, and subject to the other requirements for Mobile Signs in this By-law, one Mobile Sign, advertising a grand opening or closing promotional event, may be erected, located or displayed on a Property for seven (7) consecutive days, provided that:

- (a) the Mobile Sign shall advertise a grand opening or closing promotional event for any business only once;
- (b) where the Mobile Sign advertises a grand opening or closing promotional event for a business, a Banner shall not also advertise that grand opening or closing promotional event; and,
- (c) there is no Mobile Sign permit otherwise available under this section for the Property.

## **5.7 Banners**

5.7.1 No Person shall erect, locate, or display a Banner except in accordance with the applicable regulations under Schedule "B" or Schedule "C", the applicable general regulations under this By-law, and the specific regulations under this section of the By-law.

5.7.2 No Banner shall exceed 6.0 m<sup>2</sup> in Sign Area or 1.0 metre in Height.

5.7.3 No Banner shall be erected, located, or displayed on a Property for more than twenty-eight (28) days in one calendar year.

5.7.4 No Banner advertising a special event shall be erected, located, or displayed on fencing adjacent to a Street unless the special event is organized by a Charity or Community Organization and the Charity or Community Organization has obtained the permission of the Owner of the Property on which the fence is located.

- 5.7.5 Notwithstanding subsection 5.7.3, and subject to the other requirements for Banners in this By-law, one Banner, advertising a grand opening or closing promotional event, may be erected, located or displayed on a Property for seven (7) consecutive days, provided that:
- (a) the Banner shall advertise a grand opening or closing promotional event for a business only once;
  - (b) where the Banner advertises a grand opening or closing promotional event for a business, a Mobile Sign shall not also advertise that grand opening or closing promotional event; and
  - (c) the Banner is attached only to a wall of the building containing the business or only to a Ground Sign.

## **5.8 Sidewalk Signs**

- 5.8.1 No Person shall erect, locate, or display a Sidewalk Sign except in accordance with the applicable regulations under Schedule "B" or Schedule "C", the applicable general regulations under this By-law, and the specific regulations under this section of the By-law.
- 5.8.2 No Sidewalk Sign shall be more than 0.6 metres in Width or 0.8 metres in Height.
- 5.8.3 No Sidewalk Sign shall be permanently secured to the ground, any structure or tree.
- 5.8.4 Where a Sidewalk Sign is erected, located, or displayed on private Property, it shall be erected, located, or displayed against the front wall of the business it is advertising.
- 5.8.5 No Sidewalk Sign shall be erected located, located or displayed on public Property except on a public sidewalk.
- 5.8.6 Where a Sidewalk Sign is erected, located, or displayed on a public sidewalk, it shall be erected, located, or displayed adjacent to the curb opposite or against the front wall of the business it is advertising provided there is a minimum 1.5 metres of unobstructed sidewalk and the Sidewalk Sign does not encroach on any Urban Braille System.
- 5.8.7 No Person shall erect, display or locate a Sidewalk Sign on a public sidewalk except during the hours of operation of the business the Sidewalk Sign is advertising.



5.8.8 No Sidewalk Sign shall be erected, located, or displayed on a public sidewalk without a permit issued by the City of Hamilton and the permit shall be valid for one (1) calendar year.

5.8.9 No Sidewalk Sign shall be erected, located, or displayed on a public sidewalk without displaying a Validation Marker and the Sign Owner shall satisfy the City of Hamilton's requirements for liability insurance.

## **5.9 Inflatable Signs**

5.9.1 No Person shall erect, locate, or display an Inflatable Sign except in accordance with the applicable regulations under Schedule "B" or Schedule "C", the applicable general regulations under this By-law, and the specific regulations under this section of the By-law.

5.9.2 A permit for an Inflatable Sign shall be valid for seven (7) consecutive days.

5.9.3 No Person or his agent shall apply for or receive permits for an Inflatable Sign which total more than fourteen (14) days for any Property within one (1) calendar year.

5.9.4 No Inflatable Sign shall be more than 7.0 metres in Height or 6.0 metres in Width.

5.9.5 No Inflatable Sign shall be erected, located, or displayed less than 50.0 metres from a Mobile Sign.

5.9.6 An application for a permit for an Inflatable Sign shall provide information satisfactory to the Designated Official on how the Inflatable Sign is to be secured to a fixed base and shall satisfy the City of Hamilton's requirements for liability insurance.

5.9.7 Notwithstanding subsections 5.9.4 and 5.9.5, an Inflatable Sign advertising a holiday or festival may be erected, located or displayed, provided that the Inflatable Sign:

- (a) is no more than 2.7 metres in Height;
- (b) is no more than 2.5 metres in Width;
- (b) is not located within 3.0 metres of any Property Line; and,
- (c) is secured to a fixed base.

## **5.10 New Home Development Ground Signs**

5.10.1 No Person shall erect, locate, or display a New Home Development Ground Sign except in accordance with the applicable regulations under Schedule "C", the

applicable general regulations under this By-law, and the specific regulations under this section of the By-law.

- 5.10.2 No New Home Development Ground Sign shall be permitted to be erected, located, or displayed unless draft plan approval has been granted to the plan of subdivision it advertises.
- 5.10.3 No New Home Development Ground Sign shall be erected, located, or displayed within 5.0 metres of any Property Line.
- 5.10.4 No New Home Development Ground Sign shall erected, located or displayed except on Vacant Property.
- 5.10.5 No more than two (2) New Home Development Ground Signs may be erected, located, or displayed in a subdivision and no more than two (2) New Home Development Ground Signs may be erected, located, or displayed outside the subdivision on private Property with the approval of the Owner of the Property.
- 5.10.6 No New Home Development Ground Sign shall exceed a maximum Sign Area of 18.0 m<sup>2</sup>.
- 5.10.7 In addition to a New Home Development Ground Sign, a maximum of one (1) model home Sign for each model home may be erected, located, or displayed within a subdivision provided the model home Sign does not exceed a maximum Sign Area of 3.0 m<sup>2</sup>.
- 5.10.8 A New Home Development Ground Sign shall be removed twenty-eight (28) days after the date that the sale of homes in the subdivision has ended.

## **5.11 New Home Development Portable Signs**

- 5.11.1 No Person shall erect, locate, or display a New Home Development Portable Sign except in accordance with the applicable regulations under Schedule "C", the applicable general regulations under this By-law, and the specific regulations under this section of the By-law.
- 5.11.2 No New Home Development Portable Sign shall be erected, located, or displayed on the untravelled portion of a Street except in accordance with the following regulations:
  - (a) the Sign Area of the New Home Development Portable Sign shall not exceed 1.2 m<sup>2</sup>;

- (b) the Height of the New Home Development Portable Sign shall not exceed 1.2 m;
- (c) the New Home Development Portable Sign shall not be illuminated or animated, nor shall it and contain any device that creates noise or motion;
- (d) the New Home Development Portable Sign shall be displayed no earlier than noon on any Friday and removed by no later than noon of the following Monday, provided that where a statutory holiday falls on a Friday, the New Home Development Portable Sign shall be displayed no earlier than noon on the preceding Thursday, and where a statutory holiday falls on a Monday, the New Home Development Portable Sign shall be removed by no later than noon on the following Tuesday;
- (e) the New Home Development Portable Sign shall not be erected, located or displayed where it impairs or obstructs the visibility or movement of vehicular or pedestrian traffic, or where it impairs or obstructs the visibility of warning devices for railways, traffic signals, traffic control devices or Official Signs or Authorized Signs;
- (f) the New Home Development Portable Sign shall not be erected, located, or displayed on a traffic island or median or attached to a light standard or utility pole;
- (g) the New Home Development Portable Sign shall display a Validation Marker;
- (h) the Sign Owner shall satisfy the liability insurance requirements of the City of Hamilton;
- (i) no more than ten (10) permits shall be issued for New Home Development Portable Signs advertising the sale of homes in the subdivision;
- (j) the maximum number of New Home Development Portable Signs permitted at each intersection shall be three (3) Signs on any one corner of an intersection and each builder shall use no more than one (1) Sign on each intersection;
- (k) no New Home Development Portable Sign shall be erected, located, or displayed less than 1.5 metres from the curb or edge of the travelled portion of the roadway where there is no curb;
- (l) no New Home Development Portable Sign shall be erected, located, or displayed on a public sidewalk; and,
- (m) no New Home Development Portable Sign shall be erected, located, or displayed less than 3.0 metres from a Driveway Line.

## **5.12 Poster**

- 5.12.1** No Person shall erect, locate, or display a Poster except in accordance with Schedule "B" and the general regulations applicable under this By-law.



- 5.12.2 Notwithstanding Schedule "B" and any general regulations applicable under this By-law, the City of Hamilton may remove and dispose of Posters without notice or compensation to any person.

### **5.13 Election Signs**

- 5.13.1 No Person shall erect, locate, or display an Election Sign except in accordance with the applicable regulations under Schedule "B", the applicable general regulations under this By-law, and the specific regulations under this section of the By-law.
- 5.13.2 The maximum size of an Election Sign is 1.5 m<sup>2</sup> for each sign face.
- 5.13.3 No Person or his agent shall erect, locate, or display an Election Sign unless it is erected, located, or displayed on private Property, except as a Poster subject to all of the regulations regarding Posters in this By-law and to subsections 5.13.4, 5.13.5, and 5.13.7.
- 5.13.4 No Election Sign associated with a federal or provincial election shall be erected, located, or displayed earlier than the date the writ of election is issued, with the exception of signage at a Campaign Office.
- 5.13.5 No Election Sign associated with a municipal election shall be erected, located, or displayed earlier than twenty-eight (28) days prior to voting day, with the exception of signage at a Campaign Office.
- 5.13.6 Any Sign used by a candidate during an election that is larger than an Election Sign shall comply with the regulations of this By-law with respect to permits, structure, location, dimensions, and characteristics.
- 5.13.7 All Election Signs shall be removed no later than three (3) days after the voting day of the election for which the Sign was erected, located, or displayed. For the purpose of this subsection, the candidate shall be responsible for the removal of the Election Signs.

### **5.14 Billboards**

- 5.14.1 No Person shall erect, locate, or display a Billboard except in accordance with the applicable regulations under Schedule "C", the applicable general regulations under this By-law, and the specific regulations under this section of the By-law.

- 5.14.2 No Billboard shall be erected, located, or displayed except in accordance with the following regulations:
- (a) the Billboard shall not be erected, located, or displayed within 400.0 metres of the right of way of Highway 403, the Queen Elizabeth Way, the Lincoln M. Alexander Parkway, or the Red Hill Creek Expressway;
  - (b) the Billboard shall not be erected, located, or displayed on a Property within the Downtown Community Improvement Project Area;
  - (c) the Billboard shall not be erected, located, or displayed less than 300.0 metres from another Billboard;
  - (d) the Billboard shall not be erected, located, or displayed less than 300.0 metres from any residentially Zoned Property;
  - (e) the Billboard shall not be animated;
  - (f) the Sign Area of a Billboard shall not exceed 18.0 m<sup>2</sup>;
  - (g) the Height of a Billboard shall not exceed 12.0 metres;
  - (h) the Width of a Billboard shall not exceed 4.0 metres; and,
  - (i) the Billboard shall be erected, located, or displayed on Vacant, undeveloped Property Zoned commercial or industrial.
- 5.14.3 Where a Property on which a Billboard is erected, located, or displayed ceases to be Vacant or undeveloped, the Sign Owner shall remove the Billboard from the Property.

## **PART 6.0 VARIANCES**

- 6.1 Any Person may apply for a variance from this By-law or any provision thereof.
- 6.2 An application for variance shall be made on the form prescribed by the City of Hamilton and shall be accompanied by the applicable fee, as set out in Schedule "A".
- 6.3 Variances may be authorized by the Director of Development and Real Estate or his designate.
- 6.4 The City of Hamilton may authorize a variance if in its opinion the general intent and purpose of the By-law are maintained.
- 6.5 In considering an application for a variance, the City of Hamilton shall have regard for:
- (a) special circumstances or conditions applying to the land, building or use referred to in the application;



- (b) whether strict application of the provisions of this By-law in the context of the special circumstances applying to the land, building or use, would result in practical difficulties or unnecessary and unusual hardship for the applicant, inconsistent with the general intent and purpose of this By-law;
- (c) whether such special circumstances or conditions are pre-existing and not created by the Sign Owner or applicant; and
- (d) whether the Sign that is the subject of the variance will alter the essential character of the area in which the Sign will be located.

- 6.6 An applicant may appeal the variance application decision of the Director of Development and Real Estate to the Planning and Economic Development Committee.
- 6.7 The City Clerk shall notify the applicant once a hearing date before the Planning and Economic Development Committee has been fixed and if the applicant does not attend at the appointed time and place, the Committee may proceed in the absence of the applicant and the applicant shall not be entitled to further notice in the proceeding.
- 6.8 Council may uphold or vary the recommendations of the Planning and Economic Development Committee or do any act or make any decision that it might have done had it conducted the hearing itself and the applicant shall not be entitled to a further hearing on the matter before Council and the decision of Council shall be final.

## **PART 7.0**

### **PENALTIES AND ENFORCEMENT**

- 7.1 Every Person who contravenes any provision of this By-law is guilty of an offence. Pursuant to the provisions of the *Provincial Offences Act*, upon conviction a Person is liable to a fine of not more than \$5,000.00 exclusive of costs.
- 7.2 Where a Person has been convicted of an offence, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy or penalty provided for by law, make an order prohibiting the continuation or repetition of the offence by the Person convicted.
- 7.3 Where a Sign is erected, located, or displayed on, over, partly on, or partly over, Property owned by or under the jurisdiction of the City of Hamilton and not in accordance with the regulations of this By-law, the Sign may be removed immediately by the City of Hamilton without notice or compensation.
- 7.4 Where a Sign is erected, located, or displayed in contravention of this By-law, the Designated Official may immediately pull down or remove any Sign that he

determines constitutes a safety hazard or a concern without notice or compensation.

- 7.5 Where a Sign does not comply with this By-law or a permit issued under this By-law, the Designated Official may order the Sign Owner to remove or bring the Sign into compliance in the manner and within the time specified in the order.
- 7.6 The order mentioned in section 7.5 may be served:
- (a) by personal service upon the Sign Owner;
  - (b) by prepaid registered mail sent to the last address of the Sign Owner, shown on the records of the City of Hamilton; or,
  - (c) by prominently posting a copy of the order either on the Sign in respect of which the order is made, or on the Property upon which the Sign is erected, located, or displayed.
- 7.7 Where the order is served in accordance with section 7.6 it is deemed to have been received by the party being served upon the mailing or posting of the order.
- 7.8 Where a Sign is not removed or is not brought into conformity as required by an order under section 7.5, the Designated Official may have the Sign removed without notice or compensation. For this purpose, the Designated Official, an inspector and their contractor or other agent may enter upon the Property at any reasonable time.
- 7.9 The cost incurred by the City of Hamilton in removing a Sign under this part of the By-law is deemed to be municipal taxes and may be added to the collector's roll and collected in the same manner as municipal taxes. Despite the foregoing, the cost incurred by the City of Hamilton in removing a Sign under this part of the By-law is a debt payable to the City of Hamilton and may be recovered in any court of competent jurisdiction.
- 7.10 Any Sign removed by the City of Hamilton shall be stored by the City of Hamilton for twenty-eight (28) days, during which time the Sign Owner may redeem such Sign upon payment of the applicable fee prescribed on Schedule "A."
- 7.11 Where a Sign has been removed by the City of Hamilton and has been stored for a period of twenty-eight (28) days and has not been redeemed by the Sign Owner, such Sign may be destroyed or otherwise disposed of by the City of Hamilton without notice or compensation.

**PART 8.0  
CONFLICT**

- 8.1 Where a provision of this By-law conflicts with a provision of any other by-law or any federal or provincial statute or regulation, the provision that establishes the higher standard to protect the health, safety and welfare of the general public shall prevail.

**PART 9.0  
VALIDITY**

- 9.1 If a court of competent jurisdiction declares any subsection, section or part of this By-law invalid, it is the intention of Council that the remainder of the By-law shall continue to be in force.

**PART 10.0  
REPEAL**

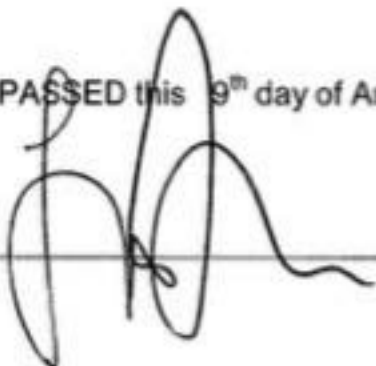
- 10.1 The By-laws listed on Schedule "D" are hereby repealed as of the day on which this By-law comes into force and effect.

**PART 11.0  
EFFECTIVE DATE**

- 11.1 This By-law comes into force and effect on February 1, 2007.

ENACTED AND PASSED this 9<sup>th</sup> day of August, 2006.

MAYOR



CLERK





<b>SCHEDULE "A" TO BY-LAW NO. 06-243</b>	
<b>Fees</b>	
<b>1. PERMITS FOR SIGNS</b>	
<b>SIGN TYPE</b>	<b>FEE</b>
Ground Sign New Home Development Ground Sign	\$150.00 sign area of less than or equal to 2.5 m <sup>2</sup> \$250.00 sign area from greater than 2.5 m <sup>2</sup> to equal to 4.0 m <sup>2</sup> \$500.00 sign area of greater than 4.0 m <sup>2</sup>
Awning, Canopy, Marquee, Parapet, Projecting and Wall Signs	\$250.00
Billboard	\$500.00
Mobile Sign	\$100.00 for 28 consecutive days \$65.00 for 14 consecutive days
Mobile Sign advertising a grand opening or closing promotional event	\$150 for 7 consecutive days
Sidewalk Sign	\$75.00 per year
Banner	\$75.00 for 28 consecutive days
Banner advertising a grand opening or closing promotional event	\$150 for 7 consecutive days
Inflatable Sign	\$75 for 7 consecutive days
New Home Development Portable Sign	\$50.00 per year
<b>2. SIGN VARIANCE APPLICATION</b>	
Fee	\$670.00

<b>SCHEDULE "A" TO BY-LAW NO. 06-243</b>	
<b>Fees</b>	
Fee for a Sign Erected, Located or Displayed Without a Permit	\$970.00
<b>3. ENFORCEMENT FEES</b>	
Removal of an Unlawful Permanent Sign	\$200.00 per Sign or the actual cost of removing the Sign, whichever is greater
Storage Charge for an Unlawful Permanent Sign	\$50.00 per Sign per day
Removal of an Unlawful Mobile Sign	\$200.00 per Sign or the actual cost of removing the Sign, whichever is greater
Storage Charge for an Unlawful Mobile Sign	\$50.00 per Sign per day
Removal of an Unlawful Portable Sign	\$50.00 per Sign or the actual cost of removing the Sign, whichever is greater
Storage Charge for an Unlawful Portable Sign	\$25.00 per Sign per day
Storage Charge for an Unlawful Election Sign	\$25.00 per Sign per day
<b>4. REFUND of FEES</b>	
Notwithstanding the percentages below, no refund is to be made of an amount less than \$75.00	
75 percent if, in the opinion of the Designated Official, administrative functions only have been performed	
50 percent if, in the opinion of the Designated Official, administrative and plan examination functions only have been performed	
25 percent if the permit has been issued and no inspections have been performed subsequent to permit issuance and the Sign has not been erected, located or displayed	



**SCHEDULE "B" TO BY-LAW NO. 06-243****Signs Not Requiring Permits**

No permit shall be required for Signs meeting the following regulations:

<b>SIGN TYPE</b>	<b>LOCATION/ZONE</b>	<b>REGULATIONS</b>
Sign in a City of Hamilton park or cemetery	City of Hamilton park or cemetery	Subject to the provision of the City of Hamilton By-law governing the park or cemetery.
Inflatable Sign advertising a holiday or festival	Private Property	Refer to Subsection 5.9.7
Election Sign	Private Property	Refer to Section 5.13
Commemorative Sign, plaques, or corner stone of a non-advertising nature	Public and Private Property	Attached to the wall of the building.
Emblem of Religious Organization	Private Property	-
Flag of a country, province, territory, municipality, corporation, organization or association	Public and Private Property	-
Sidewalk Sign	Private Property	Refer to Section 5.8
Home Occupation Sign	Residential Zone	Maximum Sign Area 0.3 m <sup>2</sup> . Signs must be attached to and flat against the wall of the related building. Signs must be non-illuminated.
Bed and Breakfast Sign	Residential Zone	Maximum Sign Area 0.3 m <sup>2</sup> .
No Trespass or Warning Sign	Private Property	Maximum Sign Area 0.2 m <sup>2</sup> .
Sign advertising the sale of seasonal farm produce	Agricultural Zone	Maximum Sign Area 3.0 m <sup>2</sup> Approval of the Owner of the Property.

<b>SCHEDULE "B" TO BY-LAW NO. 06-243</b>		
<b>Signs Not Requiring Permits</b>		
No permit shall be required for Signs meeting the following regulations:		
Sign associated with an agricultural use	Agricultural Zone	Maximum Sign Area 3.0 m <sup>2</sup> .
Sign erected, located or displayed by a non-profit agricultural society for an event or fair it operates	Agricultural Zone	Maximum Sign Area 9.0 m <sup>2</sup> Approval of the Owner of the Property.
Mural	Commercial Zone	Maximum Sign Area 50% of the wall on which the mural is displayed.
Incidental Sign	Private Property	Maximum Sign Area 1.0 m <sup>2</sup> .
Directional Sign	Private Property	
Banner erected, located or displayed by a Charity or community organization	Private Property	Refer to Section 5.7.
Sign erected, located or displayed by a Person performing work or services on a residential Property	Private Property in Residential Zones if the service is being performed at that Property	Maximum Sign Area not exceeding 1.2 m <sup>2</sup> and Height not exceeding 1.25 metres. No illumination. Display only during the period the work or service is being performed.
Real Estate Sign	Private Property/Residential Use	Maximum Sign Area 1.0 m <sup>2</sup> Only erected, located, or displayed on Property for sale or rent. Display no longer than seven (7) days after a firm sale is reported to the local realtors association or seven (7) days after the Property or space has been leased.

<b>SCHEDULE "B" TO BY-LAW NO. 06-243</b>		
<b>Signs Not Requiring Permits</b>		
No permit shall be required for Signs meeting the following regulations:		
Real Estate Sign	Private Property/Apartment	Maximum Sign Area 4.0 m <sup>2</sup> Only erected, located, or displayed on Property for sale or rent. Display no longer than seven (7) days after a firm sale is reported to the local realtors association or seven (7) days after the Property or space has been leased.
Real Estate Sign	Private Property Commercial/Industrial Use	Maximum Sign Area 4.0 m <sup>2</sup> Only erected, located, or displayed on Property for sale or rent.
Open House Directional Sign		Maximum Sign Area 0.5 m <sup>2</sup> Not erected, located, or displayed on a traffic median, traffic island, light standard or utility pole. Located no closer than 0.3 metres from the sidewalk. Displayed between 10:00 a.m. and 6:00 p.m. the day of the open house.
Construction Information Sign	Private Property	Maximum Sign Area 10.0 m <sup>2</sup> . Display no longer than 30 days after project's completion.
Temporary Personal Sign	Private Property	Maximum Sign Area 2.0 m <sup>2</sup> . Located 3.0 metres from the Street Line and 3.0 metres from any interior Property Line. Maximum display period of 48 hours.

**SCHEDULE "B" TO BY-LAW NO. 06-243****Signs Not Requiring Permits**

No permit shall be required for Signs meeting the following regulations:

Poster	Community Bulletin Boards or Poster Sleeve at Designated Locations	<ul style="list-style-type: none"><li>- Paper or cardboard only.</li><li>- Maximum Sign Area 22.0 cm by 28.0 cm.</li><li>- Only affixed by tape.</li><li>- Maximum one Poster per approved location.</li><li>- Maximum display period of 21 days and not more than 3 days after the end of an advertised event.</li></ul>
Window Sign	Private Property	Maximum 50% of the window surface.

**SCHEDULE "C" TO BY-LAW NO. 06-243****Sign Provisions For Signs Requiring Permits**

A permit shall be required for the following Signs:

Sign Type	Zone/Use	Regulations		
		Maximum Number	Maximum Sign Area	Maximum Height
Ground Sign	Refer to Subsection 5.2.11	Separation of 200.0 metres between each Ground Sign parallel with the Frontage on a Street	0.3 times the Property Frontage on which the Sign is erected, located, or displayed to a maximum area of 18.0 m <sup>2</sup> for each Sign Face	3.5 metres (Sign Area less than 4.0 m <sup>2</sup> )
				6.0 metres (Sign Area 4.0 m <sup>2</sup> to 6.0 m <sup>2</sup> )
				7.5 metres (Sign Area over 6.0 m <sup>2</sup> )
Wall Sign	Refer to Subsection 5.3.12	-	15% of the building elevation on which the Sign is erected, located, or displayed	-
Awning, Canopy and Marquee Signs	Refer to Subsection 5.5.3	-	Graphic or lettering limited to 20% of the surface	-
Inflatable Sign not including an Inflatable Sign advertising a holiday or festival	Commercial and Industrial Zones on developed and occupied Property	Refer to Section 5.9		



**SCHEDULE "C" TO BY-LAW NO. 06-243****Sign Provisions For Signs Requiring Permits**

A permit shall be required for the following Signs:

Parapet Sign	Refer to Subsection 5.3.12	1 for each side of a building	15% of the parapet	-
Projecting Sign	Commercial Zones	1	1.0 m <sup>2</sup>	-
Billboard	Commercial and Industrial Zones on Vacant, undeveloped Property	Refer to Section 5.14		
Mobile Sign	Refer to Subsections 5.6.25 and 5.6.26	Refer to Section 5.6		
Banner not including a Banner erected, located or displayed by a Charity or community organization	Commercial, Industrial and Institutional Zones	Refer to Section 5.7		
Sidewalk Sign not including a Sidewalk Sign on private Property	Commercial use	Refer to Section 5.8		
New Home Development Ground Sign	Residential and Commercial Zones	Refer to Section 5.10		
New Home Development Portable Sign	Residential and Commercial Zones	Refer to Section 5.11		

**SCHEDULE "D" TO BY-LAW NO. 06-243****By-law Laws Repealed by By-law 06-243**

The Corporation of the Town of Ancaster  
95-50  
95-51

The Corporation of the Town of Flamborough  
97-67-S

The Corporation of the Township of Glanbrook  
511-94  
512-94  
512-1-95

The Corporation of the City of Hamilton  
Subsections 5(3a), 5(3b) and 5(3c) of 66-100  
Section 1 of By-law 75-127  
81-160  
81-218  
Section 16a. of 86-77  
93-003  
93-121  
94-056  
96-092  
97-026  
97-075

City of Hamilton  
02-368  
05-154

The Corporation of the Town of Dundas  
3094-79  
3140-79 amends 3094-79  
3213-80 amends 3094-79  
3238-81 amends 3094-79  
3304-81 amends 3094-79  
3386-83 amends 3094-79  
3422-83 amends 3094-79  
3559-85  
3732-88 amends 3094-79  
4286-96 amends 3094-79  
4333-97 amends 3094-79  
4384-97 amends 3094-79  
4410-98 amends 3094-79  
4532-00 amends 3094-79

4579-00 amends 3094-79

The Corporation of the City of Stoney Creek

2531-88

2627-88

2792-89 amends 2627-88

2867-89 amends 267-88 and 2792-89

3042-89

3141-90

3263-90 amends 3042-89

3515-92 amends 3042-89

3721-93 amends 3042-89

3961-94 amends 3042-89

4267-95

4529-97 amends 3042-89

The Regional Municipality of Hamilton-Wentworth

R94-117

R97-030

R99-002 amends R94-117

**Authority:** Item 9, Public Works Committee  
Report 14-008 (PW14027)  
CM: April 9, 2014

**Bill No. 088**

**CITY OF HAMILTON**

**BY-LAW NO. 14-088**

**To Amend**

**By-law No. R77-109, the Hamilton Regional Roads By-law and  
By-law No. 86-77, the Hamilton Streets By-law**

**WHEREAS** the Publications Boxes Annual Permit Policy replaces the provisions in By-law No. R77-109, the Hamilton Regional Roads By-law, and By-law No. 86-77, the Hamilton Streets By-law;

**NOW THEREFORE** the Council of the City of Hamilton enacts as follows:

1. Subsection 11(13a) of Schedule A of By-law No. R77-109, the Hamilton Regional Roads By-law, is deleted;
2. Subsection 11b of By-law No. 86-77, the Hamilton Streets By-law, is deleted;
3. This By-Law comes into force on the date of its passing.

**PASSED** this 23<sup>rd</sup> day of April, 2014.

  
R. Bratina  
Mayor

  
R. Caterini  
City Clerk

## The Corporation of the City of Hamilton

By-law No. 97-162

To Amend:

By-law No. 86-77  
The Streets By-law

Respecting:

**PANHANDLING**

**WHEREAS** paragraph 140, Section 210 of the Municipal Act, R.S.O. 1990, Chapter M.45 authorizes municipalities to enact by-laws to regulate public nuisances;

**AND WHEREAS** Section 102 of the Municipal Act allows that every council may pass such by-laws and make such regulations for the health, safety, morality and welfare of the inhabitants of the municipality in matters not specifically provided for by the Municipal Act as may be deemed expedient and are not contrary to law;

**AND WHEREAS** the Council of the City of Hamilton deems it necessary to ensure citizens reasonably unencumbered access to pedestrian walkways within the City of Hamilton;

**AND WHEREAS** Council, on Thursday, 1997 August 7th, in adopting Section One of the Seventeenth Report for 1997 of the Finance and Administration Committee authorized this By-law;

**NOW THEREFORE** the Council of The Corporation of the City of Hamilton enacts as follows:

Section 16 of By-law No. 86-77 is amended by the addition of the following subsections:

(12) 12.1 For the purposes of this subsection:

- (a) "cease" means to stop or bring to an end.
- (b) "congregate" means to gather into a group of more than one person.
- (c) "obstruct" means to interfere with or make difficult of passage.
- (d) "officer" means a sworn member of the Hamilton-Wentworth Regional Police Service or a municipal by-law enforcement officer appointed by the City of Hamilton.

General:

- 12.2 No person shall congregate and sit or stand so as to obstruct the free passage of either pedestrian or vehicular traffic on any streets or sidewalks regulated by this By-law.
- 12.3 Any person who obstructs pedestrian or vehicular traffic on a sidewalk or street shall, when directed to do so by an officer, cease such obstruction.



## Exclusions:

- 12.4 Any parade, festive occasion or other event approved by the City of Hamilton shall be excluded from the provisions of this subsection.

## Enforcement:

- 12.5 Sworn members of the Hamilton-Wentworth Regional Police Service and municipal by-law enforcement officers of the City of Hamilton are authorized to enforce the provisions of this by-law.

- (13) 13.1 For the purposes of this subsection, "aggressive panhandling" means:
- (a) approaching, speaking to or following a person for the purpose of entreating or urging that person to give money, in such a manner as would cause a reasonable person to fear bodily harm or harm to property on the person's immediate possession;
  - (b) touching a person without their consent while panhandling from such person;
  - (c) repeatedly panhandling from a person, or following a person after a person has made a negative response; or
  - (d) panhandling by standing, sitting or otherwise in such a manner so as to intentionally block, obstruct or interfere with the safe passage of pedestrians or vehicles, including unreasonably causing a person or vehicle to take evasive action to avoid physical contact.
- 13.2 No person shall aggressively panhandle on any streets or sidewalks regulated by this by-law.
- 13.3 No person shall solicit money from any pedestrian by panhandling on any streets or sidewalks regulated by this by-law in such a manner as to interfere with the ability of pedestrians to enter business establishments located on such streets.

PASSED this

7th

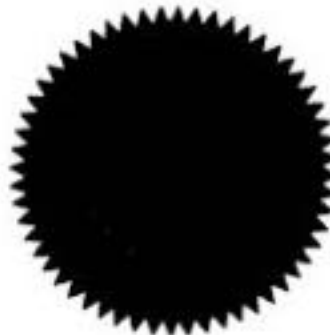
day of

August

1997.



CITY CLERK



MAYOR

## Bylaw Enforcement Protocol

When the Encampment Taskforce has been contacted regarding an encampment location, the following process will commence. All city services and responses will be coordinated through the Taskforce.

Persons experiencing homelessness shall be offered an assessment using the Vulnerability Index - Service Prioritization Decision Assistance Tool ("VI-SPDAT") tool for a determination of acuity. The application of this test and determination of test results shall be completed by the City of Hamilton's Mental Health Street Outreach Program on a periodic basis. The test shall have occurred within the past ninety (90) days.

The VI-SPDAT tool will determine the path for how individuals sleeping rough are approached and engaged. Below outlines the steps and circumstances available:

- For individuals with a VI-SPDAT scores below 13, or those refusing to engage with outreach workers for assessment under the VI-SPDAT tool, the maximum duration for contact, assessment and removal is 14 days from the earliest of the City or its agents making contact as requested by the Encampment Taskforce with a person experiencing homelessness. The outreach that occurs during this 14 day period will provide supports including but not limited to the following:
  - Engagement that treats every individual from a rights-based approach, ensuring dignity and confidentiality is maintained;
  - Immediate work on a personalized housing plan;
  - Informing individuals of the timeline for encampment removal;
  - Determine previous (if any) barriers affecting access into the system and attempt to resolve them
  - Assist with matters that facilitate the movement to shelter/housing including but not limited to transportation, financial assistance and storage of possessions.
- High acuity will be defined as a VI-SPDAT score of 13 or more for the purpose of the protocol for the enforcement of the bylaw. It is recognized that in rare occasions special circumstances may arise that cannot be addressed through the VI-SPDAT assessment. In those cases it is agreed that the City's designate outreach team – currently the City's Mental Health Street Outreach Program – will provide recommendations to the enhanced Encampment Task Force in those rare situations where additional considerations are required outside of the VI-SPDAT assessment.

- Where a person experiencing homelessness is assessed as high-acuity and there is no available option for supportive housing or shelter, outreach efforts will continue in order to help the individual(s) move from the streets to shelter/housing. Such individuals are subject to the prohibited locations/activities listed below but not subject to the defined 14 day timeline for removal.
- In the case of persons experiencing homelessness determined through assessment by the City to have shelter or housing options available for which the transition would not cause trauma or a decline in mental health as determined by the City's Mental Health Street Outreach Program – which are offered and refused or otherwise not accepted or who refuse to be assessed, then the City may remove such persons and their possessions under such legal authorities as may be employed by the City.

**Prohibited Areas:** all individuals experiencing homelessness in encampments – even when deemed high acuity or engaged with outreach in the 14-day grace period outlined above - are subject to the following restrictions and may be removed or moved if not in compliance with them:

- No more than 5 in an encampment;
- No encampments on sidewalks, roadways or boulevards;
- Encampments must not encumber an entrance or exit or deemed fire route;
- Encampments must be 50 meters from a playground, school or childcare centre;
- No encampments within any property with an environmental or heritage designation; and
- Situations where health and safety concerns exist for those living within or adjacent to an encampment will be addressed in a reasonable fashion, in good faith, on a case by case basis by the City in its sole discretion that balances the needs of both the person experiencing homelessness/encamped individuals and community members. In these situations, the City will consult with the Encampment Task Force and the City's Mental Health and Street Outreach team to determine how to best balance the needs of persons experiencing homelessness/encamped individuals and other community members.

# INFORMATION REPORT

<b>TO:</b>	Chair and Members Emergency and Community Services Committee
<b>COMMITTEE DATE:</b>	September 9, 2021
<b>SUBJECT/REPORT NO:</b>	Encampment Response Update (PED21188/HSC20038(c)) (City Wide)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Monica Ciriello (905) 546-2424 Ext. 5809 Edward John (905) 546-2424 Ext. 4860
<b>SUBMITTED BY:</b>  <b>SIGNATURE:</b>	Jason Thorne General Manager Planning and Economic Development Department
<b>SUBMITTED BY:</b>  <b>SIGNATURE:</b>	Grace Mater General Manger Healthy and Safe Communities Department

## COUNCIL DIRECTION

At its August 9, 2021 meeting, Council approved the repealing of the By-law Enforcement Protocol that permitted some individuals to camp in public spaces for up to 14 days. Further to that decision and the three-week winddown associated with it, as of August 30, 2021, the City returned to pre-protocol enforcement of City by-laws that prohibit camping on City property, including park areas.

## INFORMATION

The COVID-19 pandemic highlighted and exacerbated ongoing systemic challenges and inequities across Canada as it relates to housing and homelessness. This has been demonstrated by the rise in, and visibility of, unsheltered homelessness and encampments throughout many Canadian cities. Person-centred strategies and approaches are required to address urgent issues associated with supporting residents

experiencing homelessness and living in encampments, while supporting long-term adequate housing solutions and broader community needs.

### **Encampment Process**

With the repealing of the By-law Enforcement Protocol, staff will proceed with the following Encampment Process:

#### **Step one**

Complaints are received by Municipal Law Enforcement (MLE) regarding structures/tents in parks, road allowance and private property.

#### **Step two**

MLE attends, determines if there is a violation of a City By-law including the Parks Bylaw, seeks voluntary compliance and notifies Housing Outreach.

#### **Step three**

Housing Focused Street Outreach attends site and carries out the following:

- Work from Housing Focused Street Outreach framework and within the context of Hamilton's Homeless Coordinated Access System
- Support individuals, families and groups, in order to promote connection to shelter, housing and the achievement of their optimal health and well-being
- Collaborative development of housing and service plans
- Assist individuals with obtaining necessary documents needed to obtain housing, including the completion of supportive and subsidized housing applications
- Collaborate and co-ordinate services with appropriate community and health agencies
- Crisis intervention
- Provide a summary of these actions (omitting any privileged and confidential information) in the form of an encampment assessment checklist to MLE pursuant to their request

#### **Step four**

MLE re-attends and issues a verbal trespass notice and notifies Hamilton Police Service (HPS).

#### **Step five**

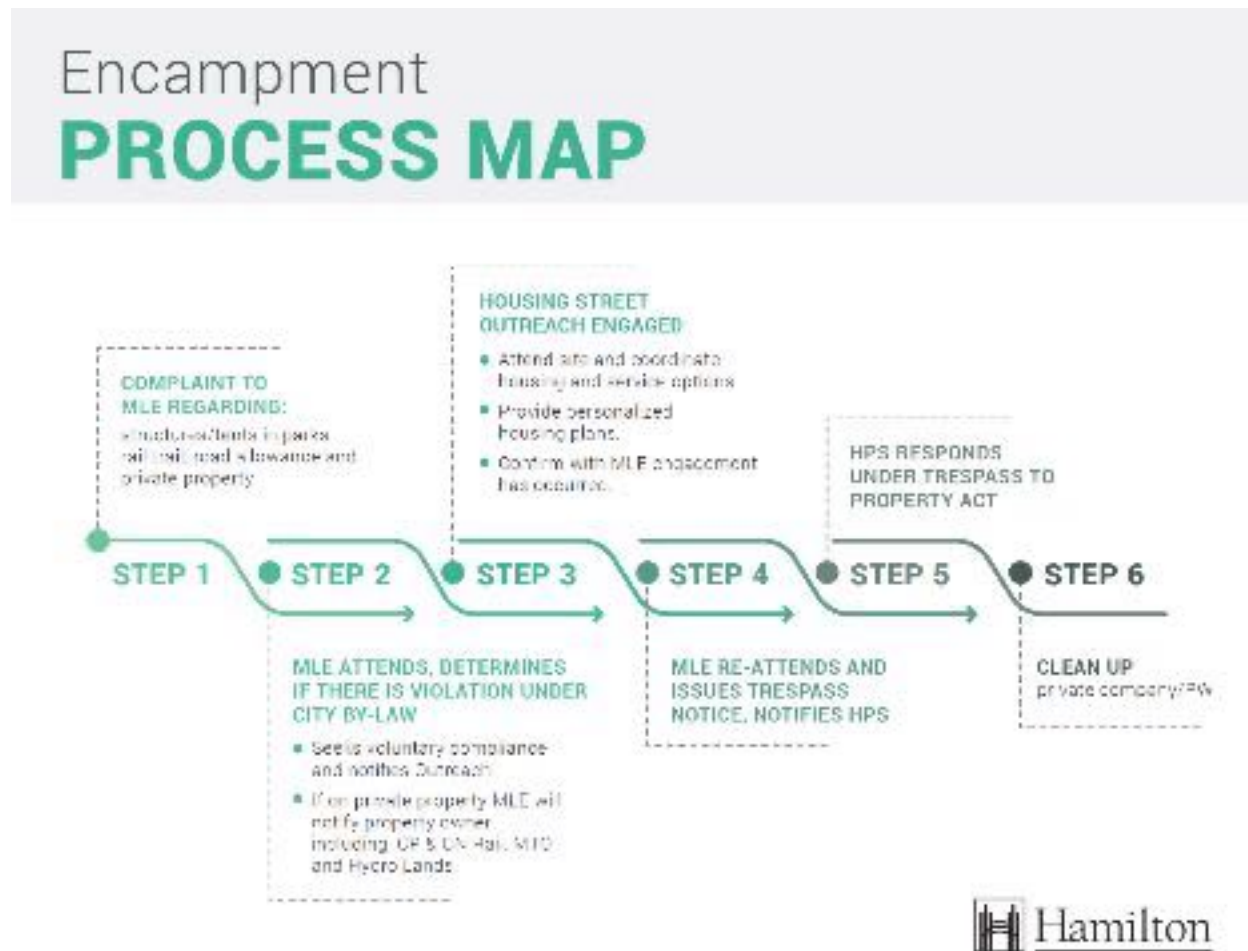
Hamilton Police Service responds under the *Trespass to Property Act*, R.S.O. 1990, c. T.21

#### **Step six**

Park and Waste Divisions are contacted to coordinate a clean up.



Table 1



## Encampment Response

The City of Hamilton's Licensing and Bylaw Services Division will be the first point of contact for complaints regarding structures and tents in parks, road allowances and private property. MLE Officers will attend to determine if there is a City Bylaw, including the Parks By-law 01-291 violation, which prohibits camping on City property, including park areas. MLE Officers will be responding to complaints proactively Monday to Friday and reactively on weekends along with other COVID-19 By-law and Provincial Regulation priorities. MLE Officers will attend, provide education and seek voluntary compliance under the City Bylaw, ticketing those who are unsheltered will not be a course of action. If determined to be private property, MLE Officers will notify the property owner, including CP & CN Rail and MTO. If voluntary compliance is not achieved, MLE Officers will reach out to the Street Outreach team within the Housing Services Division and the Social Navigator Program.

The Housing Focused Street Outreach team will, if not already, attend the site and engage with those individuals currently unsheltered. Outreach will endeavor to provide an update summary of the site including identifying potential opportunities for connection to services and housing for those individuals, assess their needs and update MLE of the actions that have occurred.

MLE Officers will re-attend the location and, a verbal trespass notice would be issued to those contravening the bylaw. MLE will contact the Hamilton Police Service as the *Trespass to Property Act*, R.S.O. 1990, c. T.21 is a Provincial Act enforced by HPS. The City will continue to collaborate with HPS and the Social Navigator with regard to the service pathway. The last step will be to contact the Public Works Department (Parks, Streets, Waste Management) to coordinate a clean up.

Following the Council decision to repeal the By-law Enforcement Protocol, the City of Hamilton's Housing Services Division remains focused on supporting individuals experiencing homelessness in securing safe and affordable housing, by continuing to take an individualized approach to connect them to available supports.

Housing Services' Housing Focused Street Outreach Team connects with unsheltered individuals, regardless of their circumstances, to assess their immediate needs and housing preferences. The team completes common consent and intake forms for individuals not yet on the City's By-Name List (BNL), supports with benefit applications, unit viewings, harm reduction supplies, connections and referrals. As part of the City's homeless-servicing system, Outreach uses a shared system-wide database to stay connected to residents in encampments and outside of encampments in areas such as alleys, vacant lands, etc. Outreach services are provided to unsheltered residents across the geographic area of Hamilton Monday to Friday from 8:00 a.m. to 8:00 p.m. and Saturday and Sunday from 8:00 a.m. to 4:00 p.m. On a daily basis, the team undertakes progressive engagement to offer shelter or other available (and appropriate) space, works with individuals to find safe and supportive housing options, and works to address any barriers including a referral to our health partners.

During the COVID-19 pandemic, emergency shelter capacity has been expanded; however, occupancy pressures exist, particularly for women. Challenges remain in the access to available beds and in a number of instances capacity is not available. For example, length of stay in shelters has increased significantly during the pandemic and, with factors such as unaffordable costs of rent, housing availability has not kept pace with demand. Longer stays impact shelter bed turnover frequency, thus reducing the capacity of shelters to serve a higher volume of individuals. Outbreak status, availability of appropriate supports, staff turnover, shortages and burnout further impact the responsiveness of the system. When a move from encampment to emergency shelter occurs, the City of Hamilton recognizes that this remains a temporary measure of accommodation until safe, secure and adequate housing is secured.

For individuals for whom emergency shelters are not an option, Housing Services' Outreach Team supports connection to health partners, works to address issues related to service restrictions, and continues progressive engagement towards accepting housing assistance. The City of Hamilton funds numerous agencies to assist in the housing of homeless individuals through funding streams such as the Federal Reaching Home program. City staff monitor, advise and assist these agencies in meeting predetermined targets through the homeless-serving sector's coordinated access system. From January 2020 to present, approximately 440 individuals and families have been housed by agencies funded by the City. Of the approximately 440 households housed, this includes people who have been unsheltered at one point during that time period. Since March 2020, more than 70 individuals were housed directly from encampments.

Outreach staff engage with every individual from a rights-based approach, ensuring dignity and confidentiality is maintained. On an ongoing basis, both Housing Services and agency staff work from a person-centred approach to engage with individuals in order to refer and make connections to appropriate support and resources. Referrals may include Intensive Case Management, Rapid Rehousing, Transitional or permanent supportive housing programs, in addition to housing affordability benefits, depending on individuals' needs, preferences and available resources. Increased engagement for the direct purpose of assessing effectiveness of approaches and appropriateness of available resources will continue to inform potential changes or adaptations to service and supports over time.

Coming Together to End Homelessness: Hamilton's Systems Planning Framework outlines a strategic local approach to preventing and ending homelessness, which must account for the systemic over-representation of Indigenous persons experiencing homelessness. The City is committed to ongoing coordination with Hamilton's Urban Indigenous Community to ensure that approaches to service coordination and provision are culturally appropriate, safe and built on principles of relationship, trust and informed consent. This includes ongoing discussion to achieve equitable access to resources including, for example, housing affordability benefits as they become available to support unsheltered individuals who identify as Indigenous. Through ongoing dialogue with the Indigenous community, the City aims to ensure appropriate referrals are consistently made from mainstream supports to Indigenous agencies, including at intake by City outreach staff.

The City continues to commit to permanent housing solutions by implementing increased prioritization of those in encampments for permanent housing and intensive case management support programs while continuing multi-sectoral discussions to enhance permanent housing with supports options. From September to December 2021, Housing Services Division, together with partner agencies, will undertake a

housing campaign to maximize resources and collaboration to house 250 households experiencing homelessness.

### **Health and Safety Concerns**

Due to the vulnerability and transience of encampment populations, health and safety concerns are present for both residents and City staff. COVID-19 exposure, verbal and sometimes physical aggressions have been noted at various sites. MLE Officers are not trained in outreach or mental health engagement techniques and therefore cannot offer support to address health and safety for encampment residents. This fact extends to include staff themselves, who navigate a challenging array of health and safety concerns when carrying out their duties. For example, Waste management staff have received numerous negative comments, which may be perceived as threats from residents, activists, advocates and the general public. Staff have been videotaped with postings on social media platforms such as Twitter and Facebook. Staff have been called repeatedly at all hours on their cell phone. In one instance a staff member was assaulted during clean up, resulting in injuries to the worker and charges being laid by Hamilton Police Service. As a result, the injured employee has yet to return to work.

There is a steady increase of incidents involving the Hamilton Fire Department and the Hamilton Police Service. Where emergency service response is needed, the City will respond swiftly with staff health and safety supports. Healthy and Safe Communities Department staff are better able to flag resident health and safety concerns to the appropriate support services for timely resolution.

The professional skillset required of Housing Service's Outreach staff facilitates mitigation of challenging behaviours, circumstances and establishment of positive rapport. Staff have been trained in non-violent crisis intervention, work only in pairs and are in constant communication with each other.

### **Budgetary Implications**

Costs vary site to site; while staff time is not itemized by site, typical contractor costs for waste management average \$15 K. Across all encampments, average monthly security costs have been approximately \$23 K from October 2020 to July 2021.

### **Licensing and By-law Services**

Council may direct Licensing and Bylaw Services (LBS) to enforce 7 days a week, inclusive of evenings and weekends. To oversee and coordinate the MLE officer response for encampments 7 days a week LBS requires 1 temporary FTE By-law Clerk at a cost of \$26, 162 and 1 temporary FTE MLE Officer at a cost of \$30, 795 from the date of Council approval to December 31, 2021. These staff will assist in the collection of

weekly stats on complaints received, locations of encampments, determine priority locations in collaboration with others on the Encampment Response Team, provide status updates as to the step each encampment site is in throughout the City. MLE Officers will be attending encampment sites in pairs, and one additional temporary FTE MLE Officer will allow for a timely proactive and reactive response to each encampment site 7 days a week. The Bylaw Clerk will provide administrative support to the MLE Officers and will ensure all tracking, scheduling, monitoring, entering areas of concern, preparation of orders, and dispatch to this team 7 days a week. The total cost would be \$56, 958.

### **Emergency Services Responses**

The Hamilton Fire Department has attended to an increasing number of incidents involving encampments and individuals experiencing homelessness over the last three years (54 incidents in 2019, 82 incidents in 2020, and 101 incidents to date in 2021). The majority of incidents in 2021 to date have involved burning (controlled) and property fires/explosion.

Hamilton Paramedic Service responded to 55 encampment related calls in four parks from October 1, 2020 to August 31, 2021. There has been a steady increase in paramedic service response to encampments in City parks in 2021, ranging from two in January to 15 in August.

The Hamilton Police Service indicated there were 502 events from October 1, 2020 to August 31, 2021 related to six known encampment locations, but not necessarily due to the presence of an encampment. These incidents include events related to trespassing, assist (ambulance & fire), and other events requiring police service response (i.e. assault, harassment, protests, etc.)

### **Government Outreach**

There remains an ongoing need to align provincial health and housing and homelessness investments to enable service managers to provide permanent housing with supports for high acuity chronically homeless individuals living in shelters and encampments. Strategic investment and partnership between Ontario Health West and City of Hamilton can demonstrably reduce chronic homelessness in Hamilton and the reliance on emergency hospital resources for those with the most complex, co-occurring needs.

Staff are actively pursuing funding opportunities from higher levels of government to address these needs. Specifically, the Ministry of Health (Ontario), Associate Minister of Mental Health and Addictions and the Ministry of Municipal Affairs and Housing (Ontario) in addition to the equivalent Ministries federally such as Health, Housing,



Infrastructure and Communities, and Families, Children and Social Development. Staff have proposed a pilot project to the Government of Ontario in order to address the needs of high-acuity individuals in Hamilton, this pilot outlines the resources required to take immediate action.

The proposed pilot would include 40 new units of supportive housing to address the needs of higher acuity individuals and continuing existing outreach activities will address needs in a new and improved way. The total funding necessary to undertake this development is \$2,440,000. The request for on-going provincial operational funding is \$1,940,000.

Staff have been using forums like the Association of Municipalities of Ontario (AMO), Federation of Canadian Municipalities (FCM) and Ontario Big City Mayors, of which Hamilton is a member, to further advocacy and align objectives in voicing our concerns about the lack of funding from higher levels of government to address these immediate needs. AMO, FCM and Ontario Big City Mayors are focused on improving supports for mental health. Ontario Big City Mayors has provided recommendations to support and complement the Province's Road to Wellness plan which seeks to improve mental health and addictions services across Ontario. The proposed recommendations and desire to collaborate demonstrate the need for municipalities to work with other levels of government and local service providers to ensure residents can access the help they need, where and when they need it.

#### **APPENDICES AND SCHEDULES ATTACHED**

None



CITY OF HAMILTON

# ENCAMPMENT PROTOCOL



Hamilton

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## **A) Shared Principles**

When engaging in encampment response, all staff in a frontline capacity will use the same philosophical approach. In all interactions with people who are living unsheltered, staff will engage utilizing a human-centered, housing first, health-focused, rights-based approach. All actions will be guided by a commitment to upholding the human rights and human dignity of all individuals living in encampments, temporary shelters, or tents. Staff will also work to build rapport through mutual respect, effective communication, empathy, and by maintaining transparency around the expectations of individuals living in encampments, temporary shelters, or tents and City staff.

It is vital that all actions taken in the Protocol are grounded in the understanding that housing is a fundamental human need, and that people in our community deserve housing and homelessness responses that are based on intentional planning and good evidence and that have measurable positive impacts and outcomes. Working to provide permanent housing for all is critical and will require an ongoing commitment from the City, community, and other levels of government to find innovative, meaningful solutions.

## **B) Complaints and Service Request Information:**

Individuals in the community who encounter an active or abandoned encampment, temporary shelter, or tent, or someone who is living unsheltered, and/or have questions or concerns about an encampment, should contact the Coordinated Response Team led by Housing Focused Street Outreach by email at [unsheltered@hamilton.ca](mailto:unsheltered@hamilton.ca) or by phone at 905-546-2828.

Any contacts made with other internal City divisions or through other City channels regarding encampments, temporary shelters, or tents will also be forwarded to Housing Focused Street Outreach for first response.

## **C) Alignment to Housing Resources and Supports**

In establishing a housing-focused approach to interacting with individuals living unsheltered and/or in encampments, all individuals will be given an opportunity to complete a Vulnerability Index – Service Prioritization Decision Assistance Tool (VI-SPDAT)

In the context of individuals living in encampments, temporary shelters, or tents, the Vulnerability Index – Service Prioritization Decision Assistance Tool is a triage tool, with a series of questions asked by Housing Focused Street Outreach staff to individuals who are experiencing homelessness. The assessment tool is used to support conversations where staff learn about an individual's housing situation, needs, and strengths to help build a plan to achieve stable housing. It is also used to inform additional supports that may be needed and/or help prioritize housing interventions



within Hamilton's Homeless-serving System likely to be most beneficial to support an individual's needs, preferences, and long-term housing outcomes.

There is no requirement for anyone who is living in an encampment, temporary shelter, or tent to complete the Vulnerability Index – Service Prioritization Decision Assistance Tool and it will have no bearing on whether they are able to stay in a particular location or for a specific duration of time. The assessment tool will only be used to help connect individuals experiencing homelessness to housing resources and supports.

#### **D) Prohibited Areas for Erecting Encampments, Temporary Shelters, or Tents**

In order to provide for the availability of space for temporary shelter in parks, persons without shelter or being homeless will be able to establish an encampment through erecting a temporary shelter for themselves and also be able group together with other such persons' temporary shelters. However, the encampment or cluster of shelters must not exceed five tents or similar temporary shelters, and there must be at least 50 metres separating the encampment or cluster from other encampments or clusters of shelters. Further, the balancing of public and private interests while allowing for temporary shelter will require encampments or clusters not to be located:

On or within **100 metres** of:

- a school or children daycare centre; and,
- spaces that are designed and programmed for children; and,
- a playground, pool, waterpark, or any spray pad; and,
- a funeral home; and,
- a long-term care facility.

On or within **50 metres** of:

- any lake, beach, pond, watercourse or other body of water, or a dock; and,
- any sports fields, inclusive of but not limited to, skateboard parks, fitness amenities, golf courses, ball diamonds, soccer pitches, tennis courts, or any other sports or multi-use courts, as well as stadiums, dugouts, stages, and bleachers.

On or within **25 metres** of:

- an active construction site.

On or within **10 metres** of:

- any private property lines.

On or within **5 metres** of:

- any transit stop or a highway and specifically including a sidewalk, boulevard, or bridge or tunnel being part of such highway; and,
- any property with an environmental or heritage designation; and,
- any pathway, walkway, sidewalk, or parking lot or on or under any bridge including pedestrian access points to such areas and structures.



Encampments are **NOT to be located** on or within any:

- the full length of the Strachan Linear Park,
- fenced-in, off-leash dog area,
- cemetery, including its roads, lanes and paths for travel within the cemetery,
- community garden and including any garden shed or greenhouse; and,
- designated fire route, or the entrance to or exit from a designated fire route, or located so as to block any fire hydrant,
- entrance, exit or a doorway to a building or structure, and including, without limiting the generality of the foregoing, an area adjacent to such entrances or exits required in the event of fire or emergency,
- accessibility entrance or ramp or located in a way that blocks access to such entrances or ramps,
- area identified susceptible to flooding, erosion, slope instability, or other environmental hazards that presents a risk to health and safety,
- Further no temporary shelter or tent will be placed against, or under, or be attached or tied to any building or permanent structure. All shelters or tents must be freestanding.

### E) Campfire and Barbecue Use

Section 14 of By-Law 01-219, the Parks By-Law, which regulates campfires and barbecues in City Parks; as well as By-Law No. 02-283, the Open Air Burning By-Law, which regulates open-air burning within the City, shall be complied with and will be enforced.

### F) Maximum Personal Space Allotment(s)

The total area for a single tent and all its associated belongings cannot exceed beyond a 3-metre-by-3-metre area, or 9-metres-squared, and the total area for five tents within a cluster cannot exceed beyond a total area of 45-metres-squared. The following chart identifies space limits by number of temporary shelters or tents:

Number of Temporary Shelters/Tents within Encampment Cluster	Maximum Total Space Allotment (metres)
One	9m <sup>2</sup>
Two	18m <sup>2</sup>
Three	27m <sup>2</sup>
Four	36m <sup>2</sup>
Five	45m <sup>2</sup>

Any items located outside of the allotted personal space area will be subject to removal by City staff.

## G) Encampment Response Processes

Given that there are several circumstances that require a unique response from the Coordinated Response Team, the following guidelines have been established to direct responses to people living in encampments, and their temporary shelters, or tents:

- I. When an encampment, temporary shelter, or tent is located on public property, and not within a prohibited area, as defined by this Protocol:
  1. Within 72 hours after receiving a complaint or request for service (unless exceptional circumstances exist), Housing Focused Street Outreach staff will engage with the individual(s) living within an encampment, temporary shelter, or tent to better understand their needs and connect them with internal and community supports, including housing-focused case management; referral into the emergency shelter system; referrals to health agencies, social assistance supports, and specialized outreach supports; and any other relevant supports available that would improve an individual's health and wellbeing.
  2. If no health and safety issues are observed by Housing Focused Street Outreach (see Section J, 'Health and Safety' for further detail on specific circumstances or factors), and the encampment, temporary shelter, or tent complies with the prohibitions and locations outlined in this Protocol, individuals will be allowed to maintain and occupy temporary such shelter for the duration of the Protocol, as defined by City Council. Housing Focused Street Outreach will continue to engage with the individual(s) on an ongoing basis to provide supports and referrals as needed and work towards goals in individualized housing plans.
  3. Only if a substantial change in circumstances is observed by Housing Focused Street Outreach in subsequent visits to the encampment, temporary shelter, or tent, such as new significant health or safety issues, will Hamilton Police Services be asked to attend to support any response. Hamilton Police Services will attend encampments within the normal course of responding to emergencies and other policing duties, and Housing Focused Street Outreach and other City partners would work cooperatively with Hamilton Police Services if a concern related to health and safety is identified at an encampment.
  4. Any items or circumstances that are of clear and immediate risk to the individuals living in an encampment or neighbouring encampments or the broader public will result in a call for immediate emergency response. Hamilton Police Service Encampment Engagement Officers will attend the location and conduct a risk assessment when requested and as required.
- II. When an encampment, temporary shelter, or tent is located on public property, within a prohibited area, as defined by this Protocol:

1. Within 72 hours after receiving a complaint or request for service (unless exceptional circumstances exist), Housing Focused Street Outreach staff will engage with individual(s) living within an encampment, temporary shelter, or tent to better understand their needs and connect them with internal and community supports, including housing-focused case management; referral into the emergency shelter system; referrals to health agencies, social assistance supports, and specialized outreach supports; and any other relevant supports available that would improve an individual's health and wellbeing. Housing Focused Street Outreach will have available information about possible suitable and compliant sites and will consider the needs and choices of the individual and collaborate with the individual(s) living within an encampment, temporary shelter, or tent, to identify a more suitable area that meets the conditions noted within this Protocol.
2. If after visiting an encampment, temporary shelter, or tent, Housing Focused Street Outreach staff observe the encampment, temporary shelter, or tent to be in a prohibited area, as defined by this Protocol, Housing Focused Street Outreach will contact Municipal Law Enforcement within 72 hours of receiving the initial complaint, and Municipal Law Enforcement will respond to the within four (4) business days.
3. Municipal Law Enforcement Officers will visit the site within four business days and confirm whether the encampment, temporary shelter, or tent is in a prohibited area. If so, Municipal Law Enforcement Officers will notify the individual(s) living at the location via a Notice of Trespass and verbally, if possible, that they are in a prohibited area, and that they will be required to move from the existing location.
4. Municipal Law Enforcement Officers will determine compliance timelines depending on the presenting circumstances, for the issuance of notices or actions to be taken in respect to the encampment, temporary shelter, or tent, within a maximum of four (4) total days from the issuance of notice, unless exceptional circumstances exist. For example, if the Municipal Law Enforcement Officers observes a significant health or safety issue for the individual due to placing a shelter on a highway the Municipal Law Enforcement Officers will take more urgent action to require compliance or remediate the concern and may seek Hamilton Police Services support. If there are few or no immediate health, safety, or other concerns due to encampment or its location within a prohibited area, Municipal Law Enforcement Officers will allow for more time, up to a maximum of four (4) total days, unless exceptional circumstances exist, to engage with the individuals in an encampment, temporary shelter, or tent around supports and next steps.
5. After a Trespass Notice has been served and prior to an area being cleared, Housing Focused Street Outreach's will continue to engage with individual(s) at the location to identify alternate sheltering options and attempt to address any

barriers to shelter or housing, such as lack of identification or item storage.

6. If the duration of time provided by a Trespass Notice expires and individual(s) at the site has not moved voluntarily and are unwilling to move, Municipal Law Enforcement Officers will notify Hamilton Police Services Encampment Engagement Officers. Hamilton Police Services will be available to support and assist the Municipal Law Enforcement Officers, operational plan, and/or the individual(s) living at the encampment, temporary shelter, or tent to vacate the prohibited area.
7. Hamilton Police Services Encampment Engagement Officers will interact with individuals in encampments, temporary shelters, or tents at the request of Housing Focused Street Outreach and/or Municipal Law Enforcement, in a supportive capacity. Otherwise, their level of intervention will be dictated by their own internal policies and the circumstances at a given encampment, temporary shelter, or tent site.
8. Parks staff will coordinate the clean-up, to be completed either by Parks staff, Roads staff, or the contractor, depending on the location, within 72 hours, with discretion for extenuating circumstances such as inclement weather.

III. When an encampment, temporary shelter, or tent is located on public property, is not located in a prohibited area, but health and safety concerns are identified:

1. If Housing Focused Street Outreach identify or confirm a health or safety issue at an encampment, temporary shelter, or tent, and depending on circumstances, will address or may collaborate with appropriate partners to address the health and safety concerns identified.
2. If the health and safety concern is considered serious and/or imminent (e.g., exposed electrical wiring, accumulation of discarded needles, use of propane tanks and other combustible materials, possession of weapons) as identified by Housing Focused Street Outreach or Hamilton Police Services Encampment Engagement Officers, Hamilton Police Services will follow appropriate policing responses required in the circumstances. In addition, they will communicate with the Coordinated Response Team and prioritize working with community partners to address any remaining safety concern. These partners may include Hamilton Fire Department, Hamilton Public Health's Community Points program, Hamilton Parks, or any other parties deemed necessary to address the observed health and safety concerns.
3. All items determined by Hamilton Police Services and/or partners to be a serious risk to the health and safety of individual(s) living at the encampment, temporary shelter, or tent, as well as the public will be removed at the earliest opportunity.

4. If the encampment, temporary shelter, or tent is also in an area deemed to be A275

prohibited based upon the provisions identified in Section D of this Protocol, and after health and/or safety issues placing Municipal Law Enforcement Officers at risk have been removed, Municipal Law Enforcement Officers will initiate steps 4-9 in Encampment Response Process B – *“If an encampment is located on public property, in a prohibited area.”*

5. If all serious health and/or safety issues have been removed or otherwise corrected, and the encampment, temporary shelter, or tent is not located in a prohibited area as designated in Section D of this Protocol, then the individual(s) will be permitted to remain where they are, in accordance with Encampment Response Process A.

## **H) Encampments on Private Property**

Encampments, temporary shelters, or tents identified on private property are primarily the responsibility of the property owner. Where the owner has not provided consent, concerns of the owner are within Hamilton Police Services’ jurisdiction and will be subject to ordinary enforcement procedures in accordance with applicable laws.

Hamilton Police Services may seek the assistance of Municipal Law Enforcement Officers as appropriate or required in the circumstances.

Provided the property owner permits, Housing Focused Street Outreach will engage with encampment, temporary shelter, or tent residents to identify alternate sheltering options and attempt to address any barriers to shelter or housing. Additionally, Housing Focused Street Outreach will work with individuals at the encampment, temporary shelter, or tent to provide supports and referrals as needed and work towards goals in individualized housing plans.

## **I) Process for Designating an Encampment, Temporary Shelter, or Tent as Abandoned**

While Housing Focused Street Outreach is aware of many encampments, temporary shelters, and tents in the community, people living in encampments, temporary shelters, and tents may move to new locations and/or may abandon a previous site without Housing Focused Street Outreach’s or other Coordinated Response Team partners’ knowledge. Given that maintaining one’s possessions while experiencing homelessness is vital to a human-rights based approach, staff will be cautious when deeming a site to be abandoned.

The following process will be followed regarding potentially abandoned sites on public property:

1. If Housing Focused Street Outreach have not interacted with anyone at a particular site and/or there has been observed inactivity for at least three (3) days, they will review the site with the Coordinated Response Team partners at



the nearest opportunity to confirm there has been no recent activity witnessed at the site.

2. If Coordinated Response Team partners (i.e., Municipal Law Enforcement, Hamilton Police Services, Parks) have not witnessed anyone at the site and/or can confirm that the former inhabitants of the site have moved elsewhere, Housing Focused Street Outreach will place a notice at the site in a conspicuous area informing potential residents that the site is due to be cleaned in three (3) days from the time of the notice being placed.
3. Within the three-day timeline, all reasonable attempts will be made by Housing Focused Street Outreach and/or other Coordinated Response Team partners to ensure that individuals known to be previously staying at a site have been made aware that their former site will be deemed abandoned and cleaned.
4. If no interaction has been made by Housing Focused Street Outreach with the former inhabitants at the site, no attempts have been made by the former inhabitants of the site to contact Housing Focused Street Outreach, and/or no other changes are observed at the site by the end of the allotted time, Housing Focused Street Outreach will provide approval to Parks Section to clean the site.
5. Parks staff will coordinate the clean-up, to be completed either by Parks staff, Roads staff, or the contractor, within 72 hours of approval, with discretion for extenuating circumstances such as inclement weather.

Clean-up and maintenance of encampments, temporary shelters, or tents previously on private property are the responsibility of the property owner.

## **J) Health and Safety**

Defining specific health and safety issues is difficult and can be based upon several factors unique to a particular site or circumstance. Some examples include, exposed electrical wiring, accumulation of discarded needles, illegal activity, abuse, threats or violence against staff, HPS or other persons, improper use or storage of propane tanks and other flammable materials, and acts involving weapons. Health and safety issues may also be identified via complaints from the public and/or businesses in relation to the encampment, temporary shelter, or tent; for example, regarding harassment, vandalism, and/or stolen personal property.

Housing Focused Street Outreach staff will notify Animal Services when a pet is encountered at an encampment site. Housing Focused Street Outreach staff will collaborate with appropriate parties including the pet owner to identify how to best support the pet and pet owner, including implementing strategies to reduce any potential harms to the pet owner, public, City staff and the animal.

Health and safety concerns existing for those living within or adjacent to an encampment, temporary shelter, or tent will be addressed in a reasonable and timely fashion, in good faith, on a case-by-case basis, prioritizing the seriousness of the concern and recognizing that there is a need to balance the needs of both the individual living in an encampment, temporary shelter, or tent and community members.

In situations where the need to intervene is less acute, the City may consult with additional internal and external partners to determine how to best balance the needs of individuals living encamped and community members.

If at any time City staff encounter someone in medical distress requiring immediate attention, witness violence, or believe violence to be imminent to people living in encampments, temporary shelters, or tents, staff, or community members, they will notify emergency medical, Hamilton Fire Department, or Hamilton Police Services, including members of the Hamilton Police Crisis Response Branch), to have the appropriate services dispatched. Additionally, City staff will leave the site irrespective of all procedures above, if their health and safety is currently being, or at risk of being threatened. To ensure safety of staff, the presence of Hamilton Police Services may be required while visiting the site.

## **K) Reporting**

To provide ongoing accountability and transparency to the City's encampment response program and the implementation of its encampment protocol, communication with Council and Ward Councillors regarding the Encampment Protocol will be through monthly, ongoing Information Reports to General Issues Committee and include data and trends, operational updates, and any continuous improvement measures implemented to further efforts toward providing ongoing accountability and transparency to the City's encampment response program and the implementation of its encampment protocol. Where a Ward Councillor requests information regarding a specific encampment site within their ward, Housing Focused Street Outreach will provide an update as to whether the encampment has been deemed to be within a prohibited area. Reporting on the status of outreach or enforcement activities will be limited to the monthly Council reports.

## **L) Communicating Protocol to Residents of Encampments**

An engagement strategy has been developed to update unsheltered individuals living in encampments about the Protocol as well as to communicate expectations of places within the City where encampments, temporary shelters, or tents can be erected.

The following approaches will be taken to build understanding of the Protocol:

- Housing Focused Street Outreach workers will have an information sheet outlining expectations of the Protocol, to be shared with unsheltered individuals when staff visit an encampment. Additionally, outreach staff will collaborate with individuals to understand their needs and choices in order to

- identify suitable locations (compliant sites) within the City where the individual can set up a temporary shelter or tent.
- Information sheets will also be shared with external frontline service providers who manage drop-ins, emergency shelters, and other related services and programs in the community, which can be posted in their locations and also communicated to staff throughout these organizations.
  - City partners who also engage in frontline response, i.e., Parks Section and Municipal Law Enforcement, will also be provided information sheets to share with unsheltered individuals within the City, and community partners upon request.
  - The City will post the Encampment Protocol and information sheet on the City's website for public access.

Court File No. CV-21-77187

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

THE HONOURABLE  
 A.J.  
 JUSTICE GOODMAN

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TUESDAY, THE 8<sup>th</sup> DAY  
 OF NOVEMBER, 2022

BETWEEN:

ASHLEY POFF, DARRIN MARCHAND, GORD SMYTH,  
 MARIO MUSCATO and SHAWN ARNOLD

Applicants

and

THE CITY OF HAMILTON

Respondent

**ORDER**

THIS MOTION, made by the Applicants was heard on this day at the Courthouse, 45 Main Street East, Hamilton, ON, L8N 2B7.

ON READING the Motion Record of the Applicants, filed; and on hearing the submissions of counsel for the Applicants and Respondent,

1. THIS COURT ORDERS that pursuant to Rule 59.06(1) of the *Rules of Civil Procedure*, the Reasons for Judgment of the Honourable Andrew J. Goodman dated November 2, 2021 in this proceeding shall be amended to remove the phrase "...and the Application is dismissed" from paragraph 256 thereof, to clarify that this Honourable Court dismissed the Applicants' motion for an interim injunction, only, and not the Application.

2. THIS COURT ORDERS that leave is granted pursuant to Rules 26.02(c) and 26.03(1) of the *Rules of Civil Procedure* to file a Fresh as Amended Notice of Application in the form attached hereto as Schedule "A".

3. THIS COURT ORDERS that the title of proceedings herein shall be amended as follows:

Court File No. CV-21-00077187-0000

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

BETWEEN:

**KRISTEN HEEGSMA, DARRIN MARCHAND, GORD SMYTH, MARIO  
MUSCATO, SHAWN ARNOLD, BRADLEY CALDWELL, CHRISTINE  
DELOREY, GLENN GNATUK, TAYLOR GOGO-HORNER, CASSANDRA  
JORDAN, JULIA LAUZON, AMMY LEWIS, ASHLEY MACDONALD, COREY  
MONAHAN, MISTY MARSHALL, SHERRI OGDEN, JAHMAL PIERRE,  
LINSLEY GREAVES and PATRICK WARD**

Applicants

and

**THE CITY OF HAMILTON**

Respondent

4. THIS COURT ORDERS that pursuant to Rule 37.07(2) of the *Rules of Civil Procedure* service of notice of this motion on Kristen Heegsma, Bradley Caldwell, Christine Delorey, Glenn Gnatuk, Taylor Gogo-Horner, Cassandra Jordan, Julia Lauzon, Ammy Lewis, Ashley Macdonald, Corey Monahan, Misty Marshall, Sherri Ogden, Jahmal Pierre, Linsley Greaves and Patrick Ward shall be and is hereby dispensed with.



5. THIS COURT ORDERS that there shall be no costs of this motion.



Mr. Justice A-J Goodman

Schedule A

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

**KRISTEN HEEGSMA, DARRIN MARCHAND, GORD SMYTH, MARIO  
MUSCATO, SHAWN ARNOLD, BRADLEY CALDWELL, CHRISTINE DELOREY,  
GLENN GNATUK , TAYLOR GOGO-HORNER, CASSANDRA JORDAN, JULIA  
LAUZON, AMMY LEWIS, ASHLEY MACDONALD, COREY MONAHAN, MISTY  
MARSHALL, SHERRI OGDEN, JAHMAL PIERRE, LINSLEY GREAVES and  
PATRICK WARD**

Applicants

– and –

**CITY OF HAMILTON**

Respondent

APPLICATION UNDER RULE 14.05 OF THE *RULES OF CIVIL PROCEDURE*

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**FRESH AS AMENDED**

**NOTICE OF APPLICATION**

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TO THE RESPONDENT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED by the Applicant. The claim made  
by the Applicant appears on the following page.

THIS APPLICATION will come on for a hearing on date to be determined by the parties and the Court, at the courthouse, 45 Main Street East, Hamilton, Ontario, L8N 2B7.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date June 15, 2022

Issued by

Local Registrar

Address of court office: Superior Court of Justice  
45 Main Street East  
Hamilton ON  
L8N 2B7

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## APPLICATION

### 1. The Applicants make application for:

(a) An order pursuant to pursuant to section 52(1) of the *Constitution Act, 1982*, declaring sections 3 (hours of entrance), 12 (encroachment), 17 (camping and lodging) and 18 (tents and structures) of City of Hamilton *By-Law No. 01-129* (the “*Parks By-Law*”), and section 16(12) (miscellaneous prohibitions) of City of Hamilton *By-Law No. 86-077* as amended by *By-Law No. 97-162* (the “*Streets By-Law*”), are *either* of no force or effect *or* inapplicable to the Applicants and other homeless individuals who erect tents as a temporary form of shelter, pursuant to section 52(1) of the *Constitution Act, 1982*.

(b) In the event that this Honourable Court suspends any declaration of invalidity issued in relation to the *Parks By-Law* and/or *Streets By-Law*, that any such suspension be for no longer than six months from the date of this Honourable Court’s decision.

(c) In the event that this Honourable Court suspends any declaration of invalidity issued in relation to the *Parks By-Law* and/or *Streets By-Law*, an order pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms* (the “*Charter*”) during the period of the suspension, in the form of an interlocutory injunction, that prohibits the City of Hamilton from preventing the erection of tents as a temporary form of shelter by homeless individuals (including the Applicants), and/or giving notice to homeless individuals (including the Applicants) to dismantle and/or move such tents, and/or evicting or removing homeless individuals (including the Applicants) from such tents and/or dismantling such tents, if those tents comply with the following conditions, which are based on the following parameters:

- (i) The tent is in an area considered to be a “park” within the meaning of the *Parks By-Law*;
- (ii) The tent is at least 50 meters away from a playground, school or childcare centre;
- (iii) The tent consists of a grouping of a no more than of six tents; *and*

- (iv) The tent be at least 200 meters away from any other grouping of a no more than of six tents.

(d) In the event that this Honourable Court does not suspend any declaration of invalidity issued in relation to the *Parks By-Law* and/or *Streets By-Law*, or the suspension expires without the adoption of measures to replace the provisions declared invalid by this Honourable Court, an order granting a permanent injunction with terms identical to order (c) above.

(e) An order pursuant to section 24(1) of the *Charter* declaring that the City of Hamilton, and/or its agents, pursuant to any purported legal authority, including but not limited to the *Parks By-Law*, the *Streets By-Law*, *Noise Control By-Law No. 11-285* ("*Noise Control By-Law*") and/or the *Public Nuisance By-Law No. 20-077* ("*Public Nuisance By-Law*") violated the *Charter* rights of the Applicants, including section 7 and/or section 15, by preventing them from erecting tents as a temporary form of shelter, and/or giving notice to homeless individuals (including the Applicants) to dismantle and/or move such tents, and/or evicting or removing homeless individuals (including the Applicants) from such tents and/or dismantling such tents, and that such violations cannot be demonstrably justified in a free and democratic society pursuant to section 1 of the *Charter*.

(f) In addition, an order pursuant to section 24(1) of the *Charter* for compensatory damages for the physical harm(s) suffered by the Applicants caused by the City of Hamilton and/or its agents pursuant to any purported legal authority, including but not limited to the *Parks By-Law*, the *Streets By-Law*, *Noise Control By-Law*, and/or the *Public Nuisance By-Law* in violation of the *Charter* rights of the Applicants, including section 7 and/or section 15, by preventing them from erecting tents as a temporary form of shelter, and/or giving notice to homeless individuals (including the Applicants) to dismantle and/or move such tents, and/or evicting or removing such tents and/or dismantling such tents.

(g) Costs of this proceeding on a full indemnity basis or in the alternative, on a substantial indemnity basis.

(h) Such further and other relief as counsel may advise to this Honourable Court may deem just.

**2. The grounds for the application are:**

Overview

(a) The Applicants are 19 individuals who have erected tents or shelters (collectively referred to as “tents”), and thereby have created and lived in encampments (“encampment residents”), in various public parks and/or other public spaces considered parks throughout Hamilton, including J.C. Beemer Park, the greenspace at Strachan and James Streets, Sir. John A. McDonald, Ferguson and Central Park (“encampments”). The City of Hamilton (“City”) has forcibly evicted the Applicants and many other homeless individuals from encampments where they resided, pursuant, *inter alia*, to the *Parks By-Law* and/or *Streets By-Law*. These encampments were located in City-owned and operated parks and/or public spaces under the care, control and responsibility of the City.

(b) The Applicants became homeless for the reasons that are common. Housing precarity has become an unfortunate reality in Hamilton, because of raising rental costs, inadequate Ontario Disability Support Program (“ODSP”) and Ontario Works benefit levels, and the breakdown of relationships, especially women fleeing domestic abuse at the hands of male partner. Some individuals with complex mental health, addiction and/or trauma cannot function in independent living. Chronically homeless individuals may become trapped in a vicious cycle of homelessness they cannot escape.

(c) The Applicants, like other homeless individuals, have at times not entered shelter for many reasons. The demand for shelter spaces often exceeds supply. As of March 2022, 1,596 people were actively experiencing homelessness in Hamilton, but there are only 96 shelter beds designated by the City of Hamilton for women and 212 for men. There is a dramatic undersupply of shelter spaces for women, a shortage and often complete absence of shelters which permit couples to stay together, and no shelter in Hamilton for indigenous men, couples, youth or Two Spirit individuals. There are also structural barriers in the design of shelters that prevent individuals from using them: admission on a first

come, first served basis, and a limit on the number of nights individuals can stay. The design of the shelter system discriminates on the basis of disability, against individuals with complex mental health, addiction and/or trauma, substance dependencies, and mental health disorders that trigger disruptive behaviour. Shelters do not accommodate Indigenous cultural practices. Shelters are congregate settings where individuals face the risk of assault and theft, and of contracting infectious disease (as happened during the COVID-19 pandemic). Shelters do not permit individuals to keep personal items or pets. They afford individuals little control over their living space. Finally, there is a risk to women queuing to enter shelters from male sexual predators who loiter in the vicinity to target victims who are unable to access shelters.

(d) The Applicants had no choice but to reside in encampments instead of sleeping on the street, because encampments function as mutual aid societies where residents share food, blankets and huddle together to stay warm; provide a buffer that mitigates the risk of rape, sexual assault, theft and assault; mitigate the risk of overdosing; provide an emotional support system for residents; and provide physical care and support for disabled residents. Encampments also provide shelter 24 hours, 7 days a week, which mitigates the risk of hypothermia, sunburn, heatstroke, and dehydration; make life less physically taxing because residents are not transient; enable residents to exert control over substance use; promote mental health; provide a sense of community and reduce isolation; and enable residents to attend to wellness beyond survival. Encampments enable residents to live continuously in a single location, which enhances their access to: medical care; social workers or other system navigators who can help residents access social programs; harm reduction supplies and treatment; medication delivery; food donations; and donations of blankets, clothing, and mobile phones.

(e) Most of the Applicants remain homeless. After being repeatedly evicted from encampments by the City, many Applicants simply “sleep rough” (i.e., without a tent) in various public parks and/or other public or private spaces in an effort to avoid being further targeted for eviction. Without shelter and a community to protect them, they have experienced and face an increased risk of rape, sexual assault, theft, and violence. Because they can no longer reside encampments, they suffer from the health effects of sleeping out

in the open and being exposed to the elements, including hypothermia and chronic sleep deprivation. Because they no longer reside in a fixed location, and/or they have been forced to move to remote locations to avoid further evictions, their access to medical care, addiction treatment, and support services has been greatly impaired. Most do not have a mobile phone.

(f) Among Hamilton's homeless population, Indigenous persons (23%) and women (53%) are overrepresented. The Applicants reflect this diversity. Seven are Indigenous women and three are non-Indigenous women. They also include among their number a transgender black woman, an Indigenous man, and a black man.

(g) The evictions of the Applicants violated sections 7 and 15 rights of the *Charter* in a manner that cannot be justified under section 1. In addition, the relevant provisions of the *Parks By-Law* and/or *Streets By-Law* violate sections 7 and 15 of the *Charter* and cannot be justified under section 1.

#### Kristen Heegsma

(h) Kristen Heegsma ("Kristen") is a 31 year old Indigenous woman who has been homeless continuously since 2019, after being evicted by family members (although she was occasionally homeless before then). Kristen lives with mental health and substance abuse disorders and receives approximately \$900 in ODSP benefits per month to cover her basic needs and special diet. She is not entitled to a shelter allowance while homeless. Even if she received an additional shelter allowance of \$497 per month, she would be unable to afford housing.

(i) Between 2019 and Fall 2021, Kristen lived in a tent in encampments. In Summer 2020, Kristen was forcefully evicted from the Ferguson Encampment. She went onto stay in three more encampments and was evicted each time. The last time Kristen slept in a tent was at Wolverton Park, in Fall 2021. During these repeated evictions, she lost her belongings, including her tent.

(j) Since Fall 2021, Kristen has slept on the streets with only a sleeping bag.



(k) Within two to three weeks after being evicted from Wolverton Park, Kristin was raped while sleeping on a public bench outside of City Hall. She has been repeatedly robbed and assaulted. Without even the protection of a tent, she often wakes up to discover that her belongings have been stolen.

(l) Kristen has been unable to access a shelter, for many reasons. Kristen has repeatedly tried to get into a women's shelter, without success. She does not have a phone but has her physician and the Wesley Day Centre regularly call women's shelters on her behalf. They are almost always told that the women's shelters are full. In the past, Kristen was periodically able to access a shelter bed, but was repeatedly service restricted for a variety of reasons, including missing curfew and allegations of domestic violence. Kristen has periodically been in a relationship during her periods of homelessness and has at times been unable to access a shelter bed with her partner.

(m) When Kristen cannot get into a shelter and cannot put up a tent, she usually wanders around all night trying to find somewhere safe, putting her at an increased risk of violence. She has slept in stairwells, on the street outside of an overflow shelter, and on a park bench. As a result, Kristen hardly sleeps at night. Instead, she is up for days at a time, and then crashes. She regularly falls asleep during the day. In late May 2020, she fell asleep while walking and fell, hitting her head and cutting it open.

(n) Kristen would prefer to live in a tent again for the following reasons: a degree of privacy in order to get changed, be removed from the public gaze; improved sleep; protection against the risk of sexual assault, assault and theft by having a physical barrier, locking her tent, and having the protection of friends and allies in an encampment; improved mental health that comes from a sense of belonging and community, which translates into a lower dependence on drugs lower risk of overdose; and maintaining connections to street outreach supports such as medical care.

Cassandra Jordan

(o) Cassandra Jordan ("Cassandra") is a 39 year old Indigenous woman who has been homeless since August or September 2020. Cassandra became homeless after an

unlawful eviction from her rental unit. Cassandra is a person living with disabilities, in receipt of ODSP. Her medical conditions include degenerative disc disease, chronic pain and substance abuse disorder.

(p) When Cassandra first became homeless, she could not access a shelter bed because she was told that they were all full. This led her to erect a tent at the Ferguson Encampment, from which she was eventually evicted. Although she was offered space in a hotel during the eviction, it was not held for her while she coordinated storage of her belongings. In the end, she did not secure a shelter space. She was left on the street. She lost her tent in the eviction.

(q) Cassandra has continued to reside in various encampments after being unable to access women's shelters because they were full. When she resided in an encampment, Cassandra developed a community that looked out for one another which helped to prevent robberies and assaults.

(r) Cassandra has been repeatedly evicted from encampments. Cassandra has witnessed a heavy police presence with By-law officers at encampment evictions, along with bobcats and garbage trucks to dispose of peoples' belongings. Cassandra describes the evictions as intimidating, traumatizing and forceful, and she felt that she had no option but to comply with By-law officers' directions to move. She has repeatedly lost her tents in evictions. Having to pack up and move from encampment to encampment is exhausting physically, mentally and emotionally.

(s) Cassandra was subject to a forceful eviction while she was recovering from third degree burns on her legs. This led to her placement in the Barrett Centre, a shelter for individuals experiencing a mental health crisis. There were no shelter beds available when Cassandra was discharged from the Barrett Centre. She once again was forced to sleep on the street. She stayed with her mother in her subsidized rental unit temporarily but was required to leave to avoid breaching the guest rules for subsidized housing

(t) In February 2022, Cassandra attempted to get into Carol Anne's Place, an overflow shelter for women. She was denied entry because she had tested positive for COVID-19. She was forced to sleep outside in the freezing cold without a tent.

(u) Cassandra has continued to attempt to access women's shelters but has not been consistently able to do so because of an ongoing lack of shelter space for women. Without being able to erect a tent in an encampment, Cassandra has been forced to stay on the streets: in tunnels, outside of Tim Horton's, the back of City Hall, and outside of churches. When she has to sleep outside without a tent, she is often alone and in hidden, hard to find spaces. She has been robbed while sleeping outside.

### Misty Marshall

(v) Misty Marshall ("Misty") is a 30 year old Indigenous woman who has been homeless for just over two years.

(w) Misty has a past history of opiate use disorder, major depressive disorder with suicidal ideation and asthma and stimulant use disorder. She has a history of abuse in childhood and has been in abusive relationships throughout her adult years. Misty's asthma is exacerbated when she is homeless and living in a tent due to oppressive humidity. While homeless and living in a tent her asthma has deteriorated to point that she has required emergency treatment.

(x) Without access to a shower or laundry facilities, Misty has presented with a severe case of head lice that caused underlying cellulitis (skin infection) to her scalp and ears. She has also had extensive body rashes caused likely by scabies.

(y) A physician treating Misty lost contact with her immediately following her eviction from the Ferguson Encampment. Her physician reconnected with her a year later and reported that Misty had drastically decompensated physically and mentally since she was last seen. Misty's street outreach physician was better able to connect with Misty and treat medical issues, but only when they knew where Misty was living. In the opinion of her physicians, had Misty remained in one place, she would not have decompensated to the extent that she did.

(z) As well, it is difficult to establish trust with Misty and this results in her unwillingness to accept help from people readily. Trust can be established with continuity of connection.

(aa) Since becoming homeless, Misty has been unsuccessful in accessing shelter in the women's shelter system. She has attempted to get into the overflow at Carol Anne's Place, but through hard experience has learned that there is little chance of getting in, even after lining up for entry at 10:00 pm. She sometimes feels that it is not worth trying, because she is that much more at risk of violence if she does not have a plan for the night by 10:00 pm. While lining up outside of Carol Anne's Place, Misty has witnessed men driving around Carol Anne's Place soliciting the women in line for sex.

(bb) Misty has stayed in a tent in several encampments as a result of not getting into the women's shelters. She has been evicted from all of these encampments and has lost belongings in the evictions. In some instances, she was only given 20 minutes notice to move. She has witnessed bobcats removing encampment residents' possessions during the course of eviction. Housing support and shelter was not offered to Misty at the time of her evictions from encampments.

#### Sherri Ogden

(cc) Sherri Ogden ("Sherri") is a 28 year old Indigenous woman in receipt of ODSP. She has been homeless for the past five years. Like the other applicants, Sherri has not been successful in accessing women's shelters, which has resulted in her staying in tents in encampments, only to be evicted and displaced to other encampments. During the course of these evictions, the City has disposed of her possessions, including her tents.

(dd) Sherri does not have a mobile phone. Staff at the Wesley Day Centre have repeatedly tried to get her into shelter but have been told that they are full. Sherri did secure a hotel stay (with a temporary hotel program funded by the City and staffed by Mission Services) for two weeks with an ex-boyfriend but was kicked out over a false allegation of domestic violence that she tried to dispute. She was banned from the hotel for one month. The hotel program has since ended.

(ee) Sherri's applications for supportive and transitional housing both the YWCA and Indwell have been denied because of her complex mental health issues that allegedly exceed the supports available in these programs.

(ff) Without being able to stay in an encampment in a tent, Sherri sleeps in stairwells, parking garages and in parks with only a blanket. She hardly sleeps.

Christine Delorey

(gg) The applicant Christine Delorey ("Christine") is a 33 year old woman in receipt of Ontario Works. She became homeless for the first time in her life when her father kicked her and her (now former) spouse out of his house in 2019. Without shelter space for her and her spouse as a couple, they erected a tent by the Urban Core Encampment where they could remain together and close to healthcare, food and supports.

(hh) Christine prefers to stay in a shelter but is not always able to access it because they are usually full. She was able to access the City's temporary hotel program with her spouse. However, the City accused them of domestic violence based on a verbal argument, and immediately kicked them out and onto the street without alternative shelter, and without an opportunity to challenge the decision. In February 2021, and while pregnant, she was kicked out of another hotel due to a false accusation of selling drugs.

(ii) In order to access an overflow bed at Carol Anne's Place, she lines up for entry hours before the 10:00 pm entry time. She was successful on some nights, and unsuccessful on other nights. When she is unable to access shelter and is not able to erect a tent, she stays in corridors, couch surfs, sleeps in the open with a sleeping bag, finds a parking garage to hide in and sleep, or wanders the streets without sleeping.

(jj) When there is not a space in shelter, a tent offers Christine protection from the elements, privacy and some degree of safety. Being in a tent eases her mental and emotional wellbeing compared to without because she is more sleep deprived without a tent.



Jahmel Lopierre

(kk) Jahmel Lopierre ("Jammy") is a 32 year old black transgender woman in receipt of OW. She has been diagnosed with PTSD, anxiety, depression and substance abuse disorder. She has been homeless one and off for about three years.

(ll) Most recently, Jammy became homeless after being evicted from the Transitional Living Program at the YWCA.

(mm) Jammy has been kicked out of the temporary hotel program for missing curfew. She fled a women's shelter after being threatened with being issued a form under the *Mental Health Act*.

(nn) Jammy has been denied access to women's shelters when they are full. In some cases, Jammy will change her clothing to present as a male in order to get into men's shelters. Having to change her gender expression and identity in order to access a shelter bed is degrading and harmful to her wellbeing.

(oo) It is difficult for Jammy to function in the congregate shelter system because she feels anxious around large groups of strangers and has trouble sleeping. She has experienced theft in shelters and feels that she has no control over her life.

(pp) Jammy has experienced routine evictions from encampments by police and has been ticketed repeatedly while homeless. She never has a good night's sleep because of a lack of a stable and secure place to stay overnight and feels safer in a tent because she has control over who is around her.

(qq) Jammy no longer erects a tent when she is outside of shelter because of the City's increased enforcement measures. She knows she will just be told to move.

Darrin Marchand

(rr) Darrin Marchand has chosen to live in an encampment because he has had negative experiences in shelters, including witnessing a fellow resident being attacked with a machete by another resident in December 2020. Darrin has also been service-restricted,

or banned, from various shelters at different times, which means that even when he wants to secure shelter where he was not victimized, he is unable to. Darrin has been service restricted from all shelters for long periods, including several consecutive months, leaving him with no option but to sleep on the street.

(ss) Darrin would suffer adverse emotional and physical impacts such as significant levels of stress if he were to be displaced from his encampment. Darrin receives medical care and food support in the encampments.

(tt) At times, Darrin has slept out in the open in the streets for months without a tent. Darrin was the victim of a random shooting while sleeping without a tent on the stairs of a church and believes that he would not have been shot had he been in a tent. It was only when he was shot that a shelter lifted a restriction allowing him to enter, but he was kicked out mid recovery.

#### Ashley MacDonald

(uu) Ashley MacDonald ("Ashley") is a homeless Indigenous woman, and she has had no other option but to live in an encampment for several reasons, including the ongoing shortage of shelter beds for women in the City, being repeatedly service restricted, or banned, from shelters. Ashley has a substance use disorder and other mental health issues and has faced discrimination in the shelter system. Ashley has also been denied access to supportive and transitional housing programs because of her high acuity needs. Being able to remain in one encampment would allow Ashley the stability she needs to maintain ongoing and recurrent street outreach healthcare, and pursue treatment for her mental health and substance use.

#### Shawn Arnold

(vv) Shawn Arnold ("Shawn Arnold") chose to live in an encampment because he feels unable to access shelter spaces because he is recovering from past substance use, and reasonably fears that the rampant substance use in shelters is a threat to his sobriety. Shawn was also assessed under the *Encampment Protocol* as being high acuity, and as such was permitted to remain at the J.C. Beemer Park Encampment. While an encampment resident,

Shawn was able to benefit from a nearby methadone treatment program, receive meal support and connect with other social supports including a housing worker that secure his current housing. The stabilized encampment location was critical to securing housing, illustrated by the fact that he almost lost a housing offer after being evicted from his encampment, causing him to lose contact with his housing worker.

### Gord Smyth

(ww) Gord Smyth (“Gord”) chose to live in an encampment because there is a shortage of affordable housing in the City that has been exacerbated by the COVID-19 pandemic.

(xx) Gord cannot live in a shelter. He has mental health disabilities, including a personality disorder, which make it difficult for him to be around groups of people for sustained periods. Gord also has a dog who would not be allowed in shelters and separating from his pet would have a significant impact on his mental health.

(yy) When living in encampments, Gord has had regular access to community agencies and volunteers who deliver meals, hygiene products, and medical supports.

(zz) Gord was repeatedly evicted from encampments in breach of the *Encampment Protocol*. He was only given 7 days’ notice to move. He also was required to move without having had a VISPDPT assessment completed. On one occasion, Gord was evicted from an encampment within three hours of having been evicted from another encampment. During the course of his encampment evictions, the City did not offer him alternatives to congregate shelter options that accommodate his disability related needs. The constant evictions and the threat of evictions from encampment were mentally and emotionally draining and demoralizing.

(aaa) After several evictions, a paramedic administered Gord a Service Prioritization Decision Assistance Tool (“VISPDPT”), the results of which qualified him to remain in his encampment indefinitely. However, the City refused to accept these results. Although the City presented Gord with rental options, none of them were affordable. Gord was finally

offered a unit with City Housing Hamilton that was subsidized and moved into it on November 27, 2021.

Mario Muscato

(bbb) Mario Muscato ("Mario") is a severely disabled 48 year old Indigenous man who has been homeless since 2017. He was evicted from his accommodation due to an administrative error with Ontario Works. He has resided in encampments when he cannot access shelters.

(ccc) Mario has had negative experiences in the shelter system, including: being unable to access shelter because they are full; being service restricted and routinely being kicked out; having his personal items stolen; experiencing discrimination as a person living with disabilities; and experiencing discrimination as an Indigenous person on the basis of race and creed.

(ddd) Mario does not have the use of his hands and is an amputee. He is a victim of childhood abuse. He has also been diagnosed with opioid use disorder, stimulant use disorder, HIV, post-traumatic stress disorder, major depressive disorder, acquired brain injury, extensive burn injury from neck to face causing chronic pain, severe neuropathy to both upper extremities, and right forearm amputation.

(eee) Mario relies on other encampment residents to assist him with his activities of daily living because he does not have functioning hands. Encampment evictions deny him access to assistance from other residents and friends, for example, to erect a tent, change his clothes, open doors, and cover himself. He cannot erect and dismantle a tent or carry all of his possessions on his own due to his disabilities.

(fff) He has been evicted from encampments and lost his tent on numerous occasions. Evictions are very physically taxing, and this adds to his depressive state where he feels like he would prefer to die.

(ggg) When Mario is forced to sleep in the open, he experiences sleep deprivation, feels unsafe, is not able to meet his basic needs because of a loss of support from other

encampment residents and friends, experiences a deterioration in his mental health and greater sleep deprivation.

(hhh) Although Mario strives to remain connected with medical and housing supports, his constant transiency makes it exceedingly difficult.

### Linsley Greaves

(iii) Linsley Greaves (“Linsley”) is a 52 year old black man in receipt of OW.

(jjj) Linsley has had periods of homelessness for over ten years. His most recent housing ended two years ago, after his roommates did not pay their share of the rent. Since Linsley’s name was on the lease, he was evicted.

(kkk) Linsley has stayed in men’s shelters on and off during his periods of homelessness. He has had several negative experiences, including theft, being incited to fight, and having trouble sleeping. Linsley has had several experiences of racism while in shelter, including being repeatedly subjected to the use of the “N” word, being racially profiled, and lacking a sense of community with other Black Canadians.

(lll) Linsley has difficulties functioning in a shelter environment because of his substance use disorder. He is dependent on substances which are not permitted in shelters. This requires him to both hide his drug use and frequently leave. He knows that every time he is absent from the shelter, he risks not being allowed back in.

(mmm) Linsley stayed in a tent in one encampment for almost two years, including during the time the *Encampment Protocol* was in force. During this time, he developed a community. Three women lived beside him for safety and would call out to him if they needed protection.

(nnn) Linsley stopped putting up a tent after his eviction because he knew it would not take long for the City to evict him again. Although he tried to use tarps to provide some protection against the elements, he developed frostbite in his left toes in or about March 2022 when he was sleeping outside with just a blanket. Linsley is slowly losing one of his big toes, and the tips of his other toes.



(ooo) Linsley finds it difficult to sleep in the open because he constantly moves around trying to stay warm and safe. Even without a tent, the City tells him to move along. The constant moving worsens his anxiety. As a result of being unable to sleep properly at night, Linsley falls asleep during the day whenever possible, and has trouble concentrating.

Brad Caldwell

(ppp) Brad Caldwell ("Brad") is a 57 year old homeless man in receipt of the ODSP. He has been homeless for roughly three years. His loss of housing coincided with his wife's passing.

(qqq) Brad has had negative experiences from staying in shelters. He had his possessions stolen more often in shelters than on the street. He has been kicked out of shelter for not securing housing on time, which he could not do because accommodation was not unaffordable. Brad has found the shelter system unreliable. He has been unable to get into shelter because it is full, and he has been kicked out during his stays.

(rrr) When the men's shelter hotel program ended, he was kicked out without a transition plan to alternative shelter. He was forced to sleep on the street.

(sss) Brad has been evicted from various encampment. In some instances he has only received 24 hour notice. He has witnessed evictions where dump trucks and garbage disposal attend and load up residents' tents and possessions. He had not been offered guaranteed shelter prior to eviction.

(ttt) Brad has also been issued roughly fifty to sixty tickets for either sleeping in a public space or in a tent in an encampment. He will comply with a direction to move to avoid escalating the situation, and because of the fear of charges.

(uuu) Brad has difficulty managing his diabetes while homeless because he does not have proper refrigeration to store insulin, and his glucose meter has been stolen from him because it has been mistaken for a digital scale to measure drugs.

(vvv) For Brad, the benefits of staying in a tent include being able to enhance safety through community with other encampment residents, staying warm together to avoid

freezing to death, remaining close to services, and lessening sleep deprivation by stabilizing his immediate environment.

(www) Brad has suffered from infections which have required hospitalization. Because he has been discharged into homelessness where he is exposed to the elements, experiences sleep deprivation, and needs to move, he cannot fully recover and remain healthy.

(xxx) When sleeping in the open, Brad is so physically taxed and tired that his body gives up on him, and he is forced to sleep where his body stops him.

### Corey Monahan

(yyy) Corey Monahan ("Corey") is 45 years old, has been homeless for the majority of his life. He is an ODSP recipient.

(zzz) Corey has been diagnosed with fetal alcohol syndrome, attention deficit hyperactivity disorder, and substance abuse disorders. He receives healthcare through the Shelter Health Network and has reported distress sleeping outside, and frustration in not being able to access shelter despite advocacy efforts due to restrictions. His state of homelessness causes mental distress and the stress of it has negatively impacted his mental health.

(aaaa) Despite Corey's best efforts to reside in shelters, he cannot so do so. Space is not always available. Moreover, staying in shelters has significant adverse effects on his mental health, because he does not function well in congregate settings. In some cases, he has had physical altercations with other shelter residents, which have led him to be service restricted.

(bbbb) Corey sleeps in a tent in an encampment. Evictions displace him from encampment to encampment. This has been very destabilizing, psychologically draining and traumatizing. He usually cannot remove all of his possessions and tent in advance of an eviction. He avoids watching City officials tear down his tent because it is traumatizing for him.

Patrick Ward

(cccc) Patrick Ward ("Patrick") is 59 year old man with disabilities. He is an ODSP recipient.

(dddd) Patrick became homeless for the first time in 2017, when the residential care facility that he was renting a room from was abruptly and without notice closed.

(eeee) Upon eviction, he went to a shelter but found was the victim of assaults and theft. The shelter space was detrimental to his mental and emotional wellbeing. He has chosen to erect a tent in an encampment.

(ffff) Patrick has repeatedly been evicted from encampments, and moved along by By-law officers from various locations to other locations, even though those officers are aware that he continues to violate the *Parks By-law* in those new locations. To avoid confrontation with authorities, he has moved to less visible public spaces and into the escarpment.

(gggg) A tent offers Patrick protection from intruders and shields him from animals and the weather. Being routinely evicted from encampments is physically and psychologically draining.

Ammy Lewis

(hhhh) Ammy Lewis ("Ammy") is a 43 year old Indigenous woman. She is an ODSP recipient.

(iiii) Ammy was victim to her landlord's predatory advancements whereby he attempted to extort sex from her. She felt so unsafe that she left her accommodation with her dog who is her constant companion and main source of emotional support. Ammy has been homeless for five months and she has not been accepted into shelter because of her dog.

(jjjj) Ammy relies on her dog for emotional support as well as keeping her safe while she remains without shelter on the street. She sleeps in underground parking lots,

abandoned cars, dumpsters when she does not have a tent. Even without a tent, Ammy is routinely forced to move from where she is in public regardless of the time of day. She has also been assaulted while homeless.

Julia Lauzon

(kkkk) Julia Lauzon ("Julia") is a 24 year old Indigenous woman who is homeless.

(llll) Julia suffers from significant mental health issues and has not been able to get the medical help that she needs because of a lack of phone and a lack of fixed address, which are all related to her homelessness status. As such, she has not been able to follow through on referrals, she has been cut off from ODSP and has no income at all. There have been multiple unsuccessful attempts to get her help for her addictions, but it is difficult to get a hold of her. She has been to the hospital for suicidal ideations.

(mmmm) Julia has stayed on and off in a tent while homeless because she has been denied access to shelter due to a lack of capacity, however she is occasionally able to get into the overnight drop in center at Carol Anne's Place.

(nnnn) Being displaced from her tent and its location results in operating in a constant survival mode that results in her inability to focus on other things such as getting to appointments, including medical appointments because of a lack of concentration due to lost sleep and being in survival mode. Julia has been assaulted while living outside without a tent.

(oooo) Julia has a housing worker from the Hamilton Regional Indian center and is on a waitlist for housing.

Glenn Gnatuk and Taylor Gogo-Horner

(pppp) Glenn Gnatuk ("Glenn") and Taylor Gogo-Horner ("Taylor") are a disabled couple in receipt of ODSP. They became homeless five years ago after being evicted from their rental unit. They began couch surfing with friends and family but that was time limited, and they had a negative experience where Taylor was assaulted by one the friends that they stayed with.

(qqqq) They were once able to remain as a couple in the hotel shelter program, but this was short lived after they were falsely accused of domestic violence and banned for one year.

(rrrr) Taylor has stayed in shelter on only a few occasions and found her separation from Glenn too difficult, causing so much anxiety that she left to return to stay with him in an encampment.

(ssss) They have been routinely evicted from several different locations throughout Hamilton. They have since begun to erect their tents in less visible places to stay hidden and avoid enforcement. Sometimes they pre-emptively move to avoid conflict. The constant movement has been destabilizing for them.

(tttt) When they were without a tent in the winter, they slept on the grounds of the Children's Museum, only with blankets. They feel that they are always on the run which causes them stress. They hardly sleep because they are worried about their safety. They have experienced severe frostbite, causing their fingers to crack and lose sensation.

#### Chronology and procedural history

(uuuu) On April 18, 2020, residents of a longstanding encampment located at the Sir John A. MacDonald School ("Sir John A. MacDonald Encampment") in Hamilton advised Hamilton Harm Reduction Action League ("KeepingSix") that they had been given notice to dismantle their tents and move within a week. KeepingSix is a community-based organization that defends the rights, dignity, and humanity of people who use drugs. KeepingSix works closely with the Hamilton Social Medicine Response Team ("HAMSMaRT"), an organization made up of physicians, midwives, and peer workers that provides clinical care to individuals who have difficulty accessing the traditional medical system, primarily the homeless and people who use drugs.

(vvvv) On April 21, 2020, KeepingSix and HAMSMaRT attended a regular weekly meeting with the City of Hamilton ("City") to discuss encampment management and raised concerns about the eviction notice provided to the Sir John A. MacDonald Encampment.



(www) On April 25, 2020, the City evicted the residents of the Sir John A. MacDonald Encampment. KeepingSix and HAMSMaRT attended the eviction. Several residents moved to the encampment at Jackie Washington Park (“Jackie Washington Park Encampment”), because they had been advised that the City could better support individuals on municipal property.

(xxxx) On April 27, 2020, the City provided an eviction notice to the residents of the Jackie Washington Park Encampment.

(yyyy) On May 6, 2020, the City evicted the residents of the Jackie Washington Park Encampment. In the course of the eviction, residents’ belongings were destroyed.

(zzzz) On June 4, 2020, legal counsel from the Hamilton Community Legal Clinic (“HCLC”) and Ross and McBride LLP wrote the City Manager, the General Manager of Healthy and Safe Communities and the Director of Housing Services, setting out legal arguments against encampment evictions based on the harm they caused to health and wellbeing, in the context of the COVID-19 pandemic and a shortage of viable alternatives for shelter. They also requested a meeting.

(aaaaa) On June 26, 2020 legal counsel from the HCLC and Ross and McBride LLP, members of HAMSMaRT and Keeping Six met with legal counsel for the City and representatives from the City’s housing and Community and Social Services departments. During this meeting, they asked the City to pause on the encampment evictions pending a satisfactory resolution of the shelter needs of encampment residents and provided notice to the City that any further eviction would be challenged in the courts.

(bbbbb) On July 7, 2020, the parties met again to further discuss solutions to encampments in Hamilton. The City was again asked to pause encampment evictions pending resolution and reminded that news of any new evictions would lead the parties into litigation.

(ccccc) On July 10, 2020, the City provided notice of an imminent “clean up” (i.e., eviction) to the residents of the York Encampment and Bay Encampment. Within a day, KeepingSix and HAMSMaRT worked with the residents to remove larger items from the

site, which led the City to decide not to bring heavy equipment to clear the two encampments.

(ddddd) On July 13, 2020, Councillor Narinder Nann proposed a motion at a meeting of the Emergency and Community Services Committee of Hamilton City Council to request the City analyze the *National Protocol for Homeless Encampments in Canada* (“*National Encampments Protocol*”) proposed by the United Nations Rapporteur for Housing. The motion carried, with Councillor Terry Whitehead voting against.

(eeeeee) On July 22, 2020 legal counsel from HCLC and Ross and McBride LLP wrote a second letter to the City, that alleged that the removal of items necessary for an individual to exist in an encampment, such as a tent or bed, was in effect an eviction.

(fffff) On July 20, 2020, Councillor Jason Farr wrote in an email: “To sum up, I am supportive of dismantling the tents and if staff do not act soon, I will have Council order it.”

(ggggg) On July 28, 2020, the City provided notice that it intended to dismantle encampments on July 31, 2020. The City would not commit to refrain from the involuntarily removal of encampment residents.

(hhhhh) On July 29, 2020, counsel for a subset of the current Applicants, KeepingSix and HAMSMaRT commenced proceedings in this Honourable Court for an injunction prohibiting the City from dismantling encampments.

(iiiiii) On July 30, 2020, this Honourable Court issued a 10 day interim injunction, in *Bailey et al. v. City of Hamilton*, Hamilton Court File No. CV-20-73435.

(jjjjj) On August 7, 2020, the 10 day injunction was extended on consent to a court date set for September 2020.

(kkkkk) On September 30, 2020, the parties executed a settlement agreement, which consisted of: an *Encampment Protocol* which required the City to assess and accommodate individual needs before evicting encampment residents, which in some cases resulting in residents remaining in certain sanctioned encampments indefinitely, and which established

rules around the permissible size and locations of encampments; and a confidential Letter of Understanding, which included a term that the City could remove the largest Ferguson Encampment.

(lllll) Between September 30, 2020 to August 2021, HCLC, KeepingSix and HAMSMaRT had many disagreements with the City over its failure to comply with the *Encampment Protocol* as a result of the perception that the City was not applying the *Encampment Protocol* in the spirit in which it was negotiated. HCLC repeatedly requested a meeting with the City to discuss possible solutions, to no avail.

(mmmmm) On August 9, 2021, Hamilton City Council voted to repeal the *Encampment Protocol* in an emergency meeting, without notice to, or consultation with, the parties to the settlement agreement who had negotiated the *Encampment Protocol* or encampment residents.

(nnnnn) The City delayed new encampment evictions until August 30, 2021.

(ooooo) On September 9, 2021, a peaceful protest of the revocation of the *Encampment Protocol* took place outside City Hall. Representatives from HCLC, HAMSMaRT, Keeping Six, the YWCA, Hamilton Regional Indian Centre, and the Wesley Day Centre all decried the sudden decision taken without consultation, and implored the City to sit down with stakeholders to develop a new approach to encampments. On the same day, the City released a "Six Step Encampment Response" at a meeting of Hamilton City Council. This policy framework does not adhere to or align with the *National Encampments Protocol*. At the same Council meeting, Dr. Jill Wiwcharuk from HAMSMaRT and Marcie McIlveen from KeepingSix addressed the Council, and informed them of the issues with shelter shortages, and harm to encampment residents from evictions. Stephanie Cox, counsel in the within Application, addressed the Council meeting to raise legal concerns.

(ppppp) On September 17, 2021, the City engaged in encampment evictions at the Durand Encampment and Wellington Park Encampment. On September 20, 2021, a further eviction took place at the J.C. Beamer Park Encampment. On these occasions, the City only provided two hours verbal notice to encampment residents to vacate. The City did not

provide written notice of a By-law infraction. The City did not offer appropriate indoor shelter options prior to the eviction. Subsequently, By-law officers and Hamilton Police Services have regularly attended various encampments and only given verbal notice to vacate.

(qqqqq) On October 4, 2021, the Applicants issued this Notice of Application, and brought a motion for an *ex parte* injunction against the City to prohibit it from using its By-laws to evict encampment residents. This Honourable Court directed that the City refrain from encampment evictions pending its ruling.

(rrrrr) On October 13, 2021, the Manager of Housing Service's reported to City Council that: there was not enough shelter space for encampment residents to move into; the system cannot accommodate all unsheltered person's needs; that "the suitability of those [shelter] beds it needs to be discussed as much as the availability of those beds"; that it was "unconscionable to put these individuals into beds or units without the right supports because it creates in many instances, more stress on the individual, whether it's through isolation, whether it's through not meeting their needs"; that there was nowhere else for people to go than to sleep in encampments; that Hamilton has always had people "sleeping rough even in the winter"; and that during the operation of the *Encampment Protocol*, "many [encampment residents] have had weeks or months potentially of stability which no longer the case, because this has been a tremendous traumatic experience for everybody involved."

(sssss) On November 2, 2021, this Honourable Court dismissed the motion for an interim injunction, in *Poff v. City of Hamilton*, 2021 ONSC 7224.

(ttttt) The City of Hamilton immediately recommenced encampment evictions, notwithstanding the City's awareness that many encampment residents had no indoor shelter options. In some cases, shelters were full at the time of eviction. In other instances, the evicted encampment residents were service restricted from shelter. On November 6, 2021, Councillor Nann Tweeted: "I'm here at Woodlands Park to observe an encampment clearing. I have been informed HPS on-site whom have been providing direct engagement that there are no shelter spaces for the couples nor the individuals remaining here."

(uuuuu) On December 9, 2021, Councillor Nann proposed a motion to the Emergency and Community Services Committee of Hamilton City Council for a human rights based approach to encampment evictions. This motion passed. To date, the approach to responding to encampments outlined in this motion has not come to fruition.

(vvvvv) On March 22, 2022 Councillor Farr proposed a motion that was adopted by City Council, which directs City staff to expedite encampment evictions, and specifically to: issue a Trespass Notice within 12 to 72 hours after staff receive the first complaint regarding unauthorized camping a City or public place; immediately notify the Hamilton Police Service of the Trespass Notice for enforcement purposes; and enforce the By-laws against encampments 24 hours a day, seven days a week. The City of Hamilton allocated \$416,673.73 to hire four new By-law officers to ensure that tents were removed from parks within 12 to 72 hours.

(wwwww) In response to Councillor Farr's motion, City staff stated the following at the Council Meeting: "there is currently no capacity for families or couples in the shelter system, but between 15 and 20 spaces each in the men's and women's systems"; "even when there is space available, some people can't access it due to issues such as having a pet or having had past behavioural issues at the shelter that can lead to barred access"; "we do not have enough housing"; and "we do not have enough beds".

(xxxxx) Since the adoption of Councillor Farr's motion, the eviction against encampment residents has dramatically increased, with evictions taking place continuously. Some former encampment residents have gone deeper into hiding to avoid enforcement, making them more vulnerable and disconnected from supports. Individuals are now "sleeping rough" without even a tent to protect them from the elements and provide a basic level of personal security. Some individuals use a patchwork of tarps, blankets and sheets in a desperate attempt to recreate the protection offered by tents.

### Causes of homelessness

(yyyyy) Individuals become homeless for a number of different reasons.



(zzzzz) A major reason for homelessness is the housing precarity has become an unfortunate reality in Hamilton.

- (i) The costs of rental accommodation have increased sharply, and in some cases has become completely unaffordable.
- (ii) ODSP and Ontario Works benefit levels are insufficient, even with a housing allowance.
- (iii) Since poverty intersects with, race, indigeneity, and disability, housing precarity is experienced disproportionately by those groups.

(aaaaaa) Another cause of homelessness is the breakdown of relationships.

- (i) Women may become homeless when fleeing domestic abuse at the hands of male partners.
- (ii) Individuals may also become homeless if they are forced to leave accommodation shared with family or friends.

(bbbbbb) Some individuals with complex mental health, addiction and/or trauma cannot function in independent living.

(cccccc) Chronically homeless individuals may become trapped in a vicious cycle of homelessness they cannot escape.

*Why homeless individuals do not go to shelter*

(dddddd) Homeless individuals do not enter shelters for many reasons.

(eeeeee) The demand for shelter spaces often exceeds supply, as the Applicants' firsthand experiences attest to. Moreover, aggregate supply and demand mask inequalities in the availability of shelter for different groups:

- (i) There is a dramatic undersupply of shelter space for women, which reflects underfunding that is a product of the hidden nature of

homelessness for women and a hierarchy of deservingness that systematically devalues the need of women for shelter.

- (ii) There is a shortage, and often a complete absence, of shelters which permit couples to stay together.
- (iii) Although Hamilton has a shelter for indigenous women fleeing domestic violence, it does not have a shelter for indigenous men, couples, youth, or Two Spirit individuals.

(fffff) There are structural barriers in the design of shelters that prevent individuals from using them:

- (i) Admission to shelters is on a first come, first served basis, without any prioritization based on need.
- (ii) Shelters impose a limit to the number of nights that individuals can stay – they are at best temporary and are never a permanent accommodation solution.
- (iii) The design of the shelter system also discriminates on the basis of disability.
  - (1) Shelters cannot meet the needs of individuals with complex mental health, addiction and/or trauma, who therefore decided not to enter them;
  - (2) Some disability-related behaviours conflict with shelter policies. Individuals with substance dependencies can neither use them while in shelter, nor bring harm reduction materials into shelters to help them recover from addiction;
  - (3) Individuals have mental health disorders which may trigger disruptive behaviour in the congregate setting of a shelter; and

- (4) It is physically taxing for some disabled individuals with mobility issues to enter and leave shelters every day.
  - (iv) Shelters do not accommodate Indigenous cultural practices. In addition, the design of shelters may reinforce intergenerational trauma and the lack of trust in institutions arising from the systemic abuse of Indigenous children in residential schools.
  - (v) Shelters are congregate settings where individuals who have been victims of assault and theft and are unwilling to enter shelter to face that risk again.
  - (vi) Shelters are congregate settings that create the risk of infectious disease spread, as became apparent during the COVID-19 pandemic.
  - (vii) Shelters do not permit pets, which provide important emotional support to individuals.
  - (viii) Shelters do not permit individuals to keep personal items with them, beyond their immediate personal effects.
  - (ix) Shelter rules afford individuals little or no control over their living space and micromanage them. For example, shelters impose a strict curfew. Moreover, these institutional rules can elicit a trauma response.
  - (x) Shelters may be situated in remote locations which are hard to reach on foot.
- (gggggg) Finally, there is a risk to women queuing to enter shelters from male sexual predators who loiter in the vicinity to target victims who are unable to access shelters.

Why homeless individuals who do not go to shelter erect tents in encampments

(hhhhhh) Homeless individuals who do not shelter for any of the reasons above may choose to erect tents in encampments instead of sleeping on the street, for a number of reasons.

(iiiiii) Encampments give rise to communities that provide individuals with safety:

- (i) They function as mutual aid societies, where residents share food, blankets, and even huddle together to stay warm in the cold weather.
- (ii) They provide a buffer that mitigates the risk of rape and sexual assault, theft and assault for residents from non-residents.
- (iii) They mitigate the risk of overdosing, because of the presence of peers.
- (iv) They provide an emotional support system for residents.
- (v) They provide physical support and care for disabled residents.

(uuuuu) Encampments provide health benefits to their residents compared to living in the open :

- (i) They provide shelter 24 hours a day, 7 days a week. By contrast, shelters only provide accommodation in the evenings.
- (ii) They mitigate the risk of hypothermia, by providing protection from the wind, rain, snow, and cold.
- (iii) They mitigate the risk of sunburn, heatstroke, and dehydration, by providing protection against the sun.
- (iv) They make life less physically taxing for residents because they are less transient than if they lived in shelters on the street.

- (v) They enable residents to exert control over substance use – either to use it, or to avoid them – by enabling them to choose their peer group.
- (vi) They promote mental health, by providing a feeling of safety for individuals who distrust institutions, based on negative experiences.
- (vii) They provide a sense of community and reduce social isolation.
- (viii) They enable residents to attend to their wellness beyond basic survival.

(kkkkkk) Encampments enable their residents to live with greater dignity compared to living in the open:

- (i) They provide a modicum of privacy and solitude, essential for many basic functions including sleep.
- (ii) They enable couples to live together in the same tent.
- (iii) They enable residents to have pets that provide them with emotional support.
- (iv) They enable residents to keep personal possessions beyond their immediate personal effects.
- (v) They enable residents to come and go as they please without a curfew.
- (vi) They enable residents to plan their lives, because they know where they will be sleeping at night.
- (vii) They enable residents to satisfy their desire for autonomy.
- (viii) They enable residents to build stable relationships with other residents.



(IIIIII) Encampments enable residents to live continuously in a single location, which enhances their access to:

- (i) medical care;
- (ii) social workers or other system navigators who can help residents access social programs (e.g. the Ontario Disability Support Program, Ontario Workers, and public housing), and apply for government issued identification;
- (iii) harm reduction supplies and treatment;
- (iv) medication delivery;
- (v) food donations; *and*
- (vi) donations of blankets, clothing, and mobile phones.

*Harms from encampment eviction*

(mmmmmm) Encampment evictions harm residents in many ways.

(nnnnnn) Evictions deprive former encampments residents of the safety that comes from the encampment community:

- (i) They face additional hurdles to sharing food and blankets and huddling together to stay warm.
- (ii) They lose the buffer that mitigates the risk of rape and sexual assault, theft and assault for residents from non-residents.
- (iii) They lose the peer group that mitigates the risk of overdosing.
- (iv) They lose the emotional support system provided by other residents.
- (v) Disabled residents lose the physical support and care they receive from other residents.

(oooooo) Evictions force former encampment residents to live in the open, which is harmful to their health:

- (i) They face a greater risk of hypothermia because they are exposed to the wind, rain, snow, and cold.
- (ii) They face a greater risk of sunburn, heatstroke, and dehydration because they are exposed to the sun.
- (iii) They face a life that is more physically taxing because their lives are now transient.
- (iv) They lose the ability to exert control over substance use, because they can no longer choose their peer group.
- (v) They may suffer worsened mental health because they lose a feeling of safety.
- (vi) They lose a sense of community and experience increased social isolation.
- (vii) They cannot attend to their wellness beyond basic survival.

(pppppp) Evictions undermine the dignity of former encampment residents:

- (i) They lose all privacy and the ability to seek solitude.
- (ii) Couples face greater hurdles in living together in the same tent.
- (iii) They lose the ability keep personal possessions beyond their immediate personal effects.
- (iv) They lose the ability to plan their lives, because they no longer know where they will be sleeping at night.
- (v) They lose the ability to build stable relationships with other residents.

(qqqqqq) Evictions impede the access of former encampment residents to:

- (i) medical care, including the diagnosis and treatment of medical conditions, and treatment for normal life conditions such as pregnancy;
- (ii) social workers or other system navigators;
- (iii) housing supports and connections;
- (iv) harm reduction supplies and treatment;
- (v) medication delivery;
- (vi) food donations; *and*
- (vii) donations of blankets, clothing, and mobile phones.

(rrrrrr) In addition, former encampment residents may move to remote locations to avoid further evictions, which put them at a greater geographical distance from the services and supports listed in the previous paragraph.

(ssssss) The process of eviction harms former encampment residents:

- (i) They lose their possessions.
- (ii) They experience dislocation.
- (iii) They experience emotions of fear, loss, and grief
- (iv) They may experience the exacerbation of pre-existing mental health conditions.
- (v) They may lose trust in authority in the police, governments and other public institutions.

Section 7

(ttttt) Sections 3 (hours of entrance), 12 (encroachment), 17 (camping and lodging) and 18 (tents and structures) of the *Parks By-Law*, and section 16(12) of the *Streets By-Law*, violate section 7 of the *Charter*, because they deprive homeless individuals of their liberty and/or security of the person, in a manner that is not in accordance with the principles of fundamental justice.

(uuuuuu) These violations of section 7 cannot be justified under section 1 of the *Charter*.

(vvvvvv) The eviction of the Applicants from encampments violated section 7 of the *Charter*, because those evictions deprived them of their liberty and/or security of the person, in a manner that was not in accordance with the principles of fundamental justice.

(wwwww) These violations of section 7 cannot be justified under section 1 of the *Charter*.

(xxxxxx) The interpretation of section 7 of the *Charter* must comply with Canada's international legal obligations under the *International Covenant of Economic, Social and Cultural Rights*, including (but not limited to) Article 11(1), the right to adequate housing.

Section 15

(yyyyyy) Sections 3 (hours of entrance), 12 (encroachment), 17 (camping and lodging) and 18 (tents and structures) of the *Parks By-Law*, and section 16(12) of the *Streets By-Law*, violate section 15 of the *Charter*, because they discriminate on the basis of race and/or indigeneity, sex, disability, and marital status, either separately or in combination (i.e., intersectional discrimination).

(zzzzzz) These violations of section 15 cannot be justified under section 1 of the *Charter*.

(aaaaaa) The eviction of the Applicants from encampments violated section 15 of the *Charter*, because those evictions discriminated against them on the basis of race and/or

indigeneity, sex, disability, and marital status, either separately or in combination (i.e., intersectional discrimination).

(bbbbbbb) These violations of section 15 cannot be justified under section 1 of the *Charter*.

(ccccccc) The interpretation of section 15 of the *Charter* must comply with Canada's international legal obligations under the *International Covenant of Economic, Social and Cultural Rights*, including (but not limited to) Article 11(1), the right to adequate housing.

**3. The Applicant relies on the following legal instruments:**

- (a) The *Canadian Charter of Rights and Freedoms*.
- (b) The *Constitution Act, 1982*.
- (c) *International Covenant on Economic, Social and Cultural Rights*.
- (d) City of Hamilton *By-Law No. 01-129 ("Parks By-Law")*.
- (e) City of Hamilton *By-Law No. 86-077* as amended by *By-Law No. 97-162 ("Streets By-Law")*.
- (f) City of Hamilton *By-Law No. 11-285 ("Noise Control By-Law")*.
- (g) City of Hamilton *By-Law No. 20-077 ("Public Nuisance By-Law")*.
- (h) Such further and other grounds as counsel may advise and this Honourable Court may permit.

**4. The following documentary evidence will be used at the hearing of the Application:**

- (a) Affidavit of Kirsten Heegsma.
- (b) Affidavit of Darrin Marchand.



- (c) Affidavit of Gord Smyth.
- (d) Affidavit of Mario Muscato.
- (e) Affidavit of Shawn Arnold.
- (f) Affidavit of Bradley Caldwell.
- (g) Affidavit of Christine Delorey.
- (h) Affidavit of Glenn Gnatuk and Taylor Gogo-Horner.
- (i) Affidavit of Cassandra Jordan.
- (j) Affidavit of Julia Lauzon.
- (k) Affidavit of Ammy Lewis.
- (l) Affidavit of Ashley Macdonald.
- (m) Affidavit of Corey Monahan.
- (n) Affidavit of Misty Marshall.
- (o) Affidavit of Sherri Ogden.
- (p) Affidavit of Jahmal Pierre.
- (q) Affidavit of Linsley Greaves.
- (r) Affidavit of Patrick Ward.
- (s) Affidavit of Audrey Davis.
- (t) Affidavit of Leilani Farha.
- (u) Affidavit of Stephen Gaetz.
- (v) Affidavit of Kate Hayman.

- (w) Affidavit of Stephen Hwang.
- (x) Affidavit of Ameil Joseph.
- (y) Affidavit of Olivia Mancini.
- (z) Affidavit of Lisa Nussey.
- (aa) Affidavit of Andrea Sereda.
- (bb) Affidavit of Kaitlin Schwan.
- (cc) Affidavit of Medora Uppal.
- (dd) Affidavit of Ruth Toskas.
- (ee) Such further and other evidence as counsel may advise and this Honourable Court may permit.

June 15, 2022

**HAMILTON COMMUNITY LEGAL  
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**Lawyers for the Applicants**

KRISTEN HEEGSMA ET AL

- AND -

CITY OF HAMILTON

A4609

Applicants

Respondent

Court File No. CV-21-00077817-0000

ONTARIO  
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT  
HAMILTON

**FRESH AS AMENDED**

**NOTICE OF APPLICATION**

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Lawyers for the Applicants

A325

Ashley Poff, Darrin Marchand, Gord Smyth,  
Mario Muscato and Shawn Arnold  
**Applicants**

-and-

The City of Hamilton.  
**Respondent**

**Court File No. CV-21-77187**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
PROCEEDING COMMENCED  
AT HAMILTON**

**ORDER**

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Hamilton, ON L8P 1A4

**Lawyers for the Applicants**



Poff et al. v. City of Hamilton

77187/21 HAMILTON

Sujit Choudhary            for Applicants

Wade Poziomka

Lee O'Keefe

Jordan Dacur            for Respondent

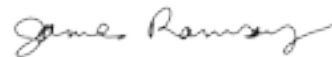
Bevin Shores

**Case conference endorsement**

February 23, 2023 teleconference 4:30 pm

The Respondent's evidentiary motions will precede their filing of responding materials on the Application.

Respondents will file their motion materials within a month. The Applicants will respond within a further month. Applicants will file their motion under s.12 of the *Evidence Act* within a month. The Respondents will file their response within a further month. The hearing will be set for a date after the deadline. The t/c is asked to set one day for a long motion.

A handwritten signature in cursive script, appearing to read "Jane Ramsey".

Court File No. CV-21-77187

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR  
JUSTICE J.A. RAMSAY

)  
)  
)

SEPTEMBER 28, 2023

BETWEEN:

KRISTEN HEEGSMA, DARRIN MARCHAND, GORD SMYTH,  
MARIO MUSCATO, SHAWN ARNOLD, BRADLEY CALDWELL,  
CHRISTINE DELOREY, GLEN GNATUK, TAYLOR GOGO-HORNER,  
CASSANDRA JORDAN, JULIA LAUZON, AMMY LEWIS,  
ASHLEY MACDONALD, COREY MONAHAN, MISTY MARSHALL,  
SHERRI OGDEN, JAHMAL PIERRE, LINSLEY GREAVES and PATRICK WARD

Applicants

and

CITY OF HAMILTON

Respondent



**ORDER**

**THIS MOTION**, made by the Respondent (moving party) for an Order striking certain affidavit evidence of the Applicants was heard this day by videoconference at the courthouse, 45 Main Street East, Hamilton, Ontario, L8N 2B7.

**ON READING** the Motion Record and Factum of the Respondent (moving party), the Responding Record and Factum of the Applicants (responding party), and upon being advised of the parties' agreement to resolve this motion upon the terms set forth herein:

1. **THIS COURT ORDERS** that, without prejudice to the Respondent's position with respect to relevance or admissibility of the evidence upon which the Applicants may seek to rely, the Applicants shall not rely on the affidavit of Ruth Toskas sworn June 15, 2022, the Affidavit of Audrey Davis sworn June 13, 2022, the Affidavit of Medora Uppal sworn June 14, 2022, the Affidavit of Lisa Nussey sworn June 14, 2022, Affidavit of Olivia Mancini sworn June 14, 2022, the Affidavit of Medora Uppal sworn March 3, 2023, and the Affidavit of Lisa Nussey sworn March 10, 2023.
2. **THIS COURT ORDERS** that the issue of costs of this motion shall be deferred to the hearing of this Application.



---

Electronically Issued and Entered

Dikena Skendaj

Digitally signed by Dikena  
Skendaj  
Date: 2023.11.30 10:05:05  
-05'00'

Local Registrar  
45 Main St. E.  
Hamilton, ON L8N 2B7

KRISTEN HEEGSMA et. al.

Plaintiffs

- and - CITY OF HAMILTON et al.

Court File No. 21-77187

Defendants

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
HAMILTON

**ORDER**

**GOWLING WLG (CANADA) LLP**

Barristers & Solicitors

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*bevin.shores@gowlingwlg.com*

**Jordan Diacur (LSO#65860E)**

Tel: 905-540-2500

*jordan.diacur@gowlingwlg.com*

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**Email for parties served:**

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Sharon Crowe: *sharon.crowe@yr.clcj.ca*

Sujit Choudhry: *sujit.choudhry@hakichambers.com*

Ashley Wilson: *awilson@kastnerlam.com*

File No. H227899

Hamilton

Short title of proceeding  
*Intitulé abrégé de l'instance*

Heegsma v. Hamilton (City)

Appearances  
*Comparaissent*

For the Applicants:

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For the Respondent:

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Jordan Diacur (LSO#65860E)  
[jordan.diacur@gowlingwlq.com](mailto:jordan.diacur@gowlingwlq.com)

☐ Order to go in accordance with draft filed /  
*Ordonnance conforme à l'ébauche déposée.*

October 30, 2023

The Applicants move for leave under s.12 of the *Evidence Act* to call more than three expert witnesses. They want to call eight experts. The Respondent is opposed.

The Applicants are homeless individuals in Hamilton. They have commenced the underlying Application to challenge the constitutional validity of certain City of Hamilton by-laws, which prohibit the erection of encampments on public property. The Applicants submit that both the impugned by-laws, and the enforcement of those by-laws against them to evict them from encampments they created, violate their rights under sections 7 and 15 of the Charter in a manner that cannot be justified under section 1. They seek relief under section 24(1) of the Charter (including damages) and section 52 of the Constitution Act, 1982.

In brief, they have to prove that the by-law contravenes s.7 of the Charter in that it deprives the applicants of life or security; it is overbroad, compared to its purpose, and the law goes further than reasonably necessary to achieve its legislative goals.

With respect to s.15, they have to prove that the law creates a distinction in its impact on a listed or analogous group. A4616

There is not a great deal of jurisprudence on s.12 of the *Evidence Act*. The parties agree that the factors to be considered include those set out by D.S. Ferguson J. in *K.N.B. v. Wu*, 2005 CanLII 5874:

- a. Whether the opposing party objects to leave being granted;
- b. The number of expert subjects in issue;
- c. The number of experts each side proposes to have opine on each subject;
- d. How many experts are customarily called in cases with similar issues?
- e. Will the opposing party be disadvantaged if leave is granted because the applying party will then have more experts than the opposing party?
- f. Is it necessary to call more than three experts in order to adduce evidence on the issues in dispute?
- g. How much duplication is there in the proposed opinions of different experts?
- h. Is the time and cost involved in calling the additional experts disproportionate to the amount at stake in the trial?

The factors are not exhaustive and it is not a question of completing a checklist. I have to look at the case as a whole, as far as I can at this stage, the issues raised by the pleadings and the proposed evidence, and decide whether the proposed evidence is necessary, or whether more than three experts would amount to unnecessary “piling on.”

Leilana Farha is a lawyer with expertise in international human rights law and Canada’s international obligations.

Stephen Gaetz is a professor of education. He conducts research on solutions to homelessness.

Kate Hayman is an emergency physician who has been providing health care to unhoused and precariously housed individuals.

Stephen Hwang is a specialist in general internal medicine with training in public health and epidemiology .

Ameil Joseph is professor of social work.

Aaron Orkin is a physician and epidemiologist.

Kaitlin Schwan is a social scientist.



Andrea Sereda is a physician practicing at London Intercommunity Health Centre in London, Ontario. Her practice focuses on homeless people and others.

A4617

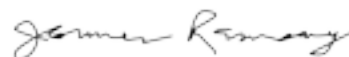
The table of experts provided by the Applicants in their factum shows that all topics are covered by three of their experts. In the other encampment cases, no more than three experts were called. In those cases the applicants were not successful, but the various reasons for judgment suggest that it was not because the applicants did not have enough experts. The Applicants propose to call one lawyer (Farha), three researchers on homelessness (Gates, Joseph, Orkin), two physicians who treat homeless persons (Hayman, Sereda) and two physicians who are epidemiologists and who conduct research on homelessness (Hwang, Orkin).

There is some duplication in the affidavits, for example, as to the reasons individuals might prefer an encampment to a shelter. For a further example, essentially Dr Hwang says that living without shelter is bad for your health, compared to living in a tent. Dr Hayman and Dr Sereda could easily provide the same evidence and could even refer to Dr Hwang's books in support. So could Dr Orkin. There are more experts than are necessary to advance the Applicants' case.

Based on their own summary and the areas of expertise of each expert, I conclude that the Applicants need four experts to prove their case – one lawyer, one expert who researches homelessness, one medical doctor who treats the homeless and one epidemiologist. If this had been a trial, I would have limited them to that number. On an application, however, I think that the disadvantage caused by the excessive number of experts is outweighed by the interest in letting the parties fashion their own case.

I grant leave to the Applicants to call eight expert witnesses. If the parties cannot agree, the Respondents may move to strike portions of affidavits that are duplicated in other affidavits.

Having heard submissions on costs, I fix the costs of this motion at \$5,000 and reserve them to the Application judge.



SUPERIOR COURT OF JUSTICE  
HAMILTON, ONTARIO

CIVIL FILE NO: CV-21-77187  
(NON-JURY)

ENDORSEMENT

HEEGSMA et al V City of Hamilton  
(Plaintiff) (Defendant)

Counsels for the Plaintiffs: CHOUDHRY, Sujit

Counsel for the Defendant: SHORES, Bevin

DATE

May 29, 2024

**Case management conference.**

On consent, the following timetable is ordered:

Applicants’ evidence filed: June 7

Intervenors motions for leave to intervene filed: July 12

Parties’ responding materials to motions for leave to intervene filed: July 19

Respondent’s evidence filed: August 1

Applicants’ reply evidence filed: August 9

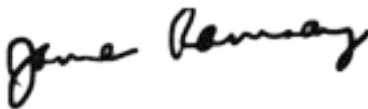
Cross-examinations conducted: August 14 to 30

Applicants’ Factum filed: September 20

Intervenors’ Facta filed: September 27

Respondent’s Factum filed: October 9.

Motions for leave to intervene will be filed in writing in the form of a factum not exceeding 15 pages in length. Mr Choudry has kindly agreed to let the Canadian Civil Liberties Association, the British Columbia Civil Liberties Association and LEAF know about the timetable and this direction.



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Justice J. RAMSAY

**SUPERIOR COURT OF JUSTICE  
HAMILTON, ONTARIO**

CIVIL FILE NO: CV-21-77187  
(NON-JURY)

**ENDORSEMENT**

HEEGSMA et al V City of Hamilton  
(Plaintiff) (Defendant)

Counsel for the Plaintiffs: Sharon Crowe

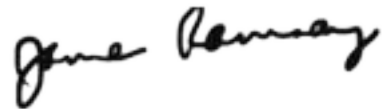
Counsel for the Defendant: Bevin Shores

DATE

October 3, 2024

**Conference call**

1. Cross-examinations are to be completed by October 15, 2024.
2. The hearing of October 16 is vacated. New hearing date is December 16, 2023 – 3 days set aside.
3. Factums are due on November 22 (Applicant) and December 6 (Respondent).
4. Both parties may file a factum not exceeding 45 pages in length.
5. Parties may arrange a further case conference with the trial coordinator in Hamilton to discuss a preliminary evidentiary question.



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Mr Justice J.A. RAMSAY

**SUPERIOR COURT OF JUSTICE  
HAMILTON, ONTARIO**

CIVIL FILE NO: CV-21-77187  
(NON-JURY)

**ENDORSEMENT**

HEEGSMA et al V City of Hamilton  
(Plaintiff) (Defendant)

Counsel for the Plaintiffs: Sharon Crowe, Wade Poziomka

[wpoziomka@rossmcbride.com](mailto:wpoziomka@rossmcbride.com)

Counsel for the Defendant: Bevin Shores

[bevin.shores@gowlingwlg.com](mailto:bevin.shores@gowlingwlg.com)

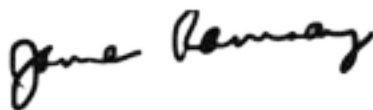
DATE

October 25, 2024

**Conference call**

If the parties cannot resolve the issue of admissibility of opinion evidence of treating experts, they may file a motion in writing. Moving party's materials, consisting of the affidavits in question plus a factum, by November 4 next, responding party's factum by November 8.

If they cannot resolve the admissibility of two affidavits that were filed after cross-examination, they may file a motion in writing on the same terms with the same timetable.





---

Mr Justice J.A. RAMSAY

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
HAMILTON**

CIVIL FILE NO: CV-21-77187  
(NON-JURY)

**ENDORSEMENT**

HEEGSMA et al. v. City of Hamilton  
Applicants Respondents

Counsel for the Plaintiffs: Sharon Crowe, Wade Poziomka

[wpoziomka@rossmcbride.com](mailto:wpoziomka@rossmcbride.com)

Counsel for the Defendant: Bevin Shores

[bevin.shores@gowlingwlg.com](mailto:bevin.shores@gowlingwlg.com)

**DATE**

November 12, 2024

1. The Applicant moves for leave to file two affidavits containing transcripts of statements of City officials at two meetings of committees of council. The transcriptionists listened to the meetings on YouTube. They are not admissible at this late stage of the proceedings, nor would they be at any stage. First the transcripts purport to record utterances of employees, not debates of council. Debates of council would be of limited use in any event. Second a private transcription is not as reliable as Hansard. Finally, at this stage admission of the transcriptionists' affidavits would require the Respondent to make inquiries about the accuracy of the transcription which might interfere with the scheduled hearing date. Leave to file the affidavits is refused.
2. The Applicant moves to admit four affidavits of treating physicians who are offered as participant experts, and not as expert opinion witnesses, as in *Westerhof v. Gee Estate*, 2015 ONCA 206. In each case the affiant deposes that his or her report is true and attaches the report or reports as exhibits. The Respondent objects to the admissibility of much of the evidence. The Applicant concedes that some of the evidence is inadmissible and has submitted the reports with portions struck through. The parties do not agree with which portions should be struck through. A quick ruling is required, so I shall proceed with my own strikethroughs, in addition to the material struck through by the Applicant, accompanied by brief reasons. I have used a wavy line to strike through to distinguish my redactions from those of the

Applicant, who used a straight line. The reports are contained in the Schedule to this endorsement.

In the case of Dr Lamont, she confirmed in cross-examination that she was not a treating physician in the case of Arnold, Monahan, Ogden and Greaves. She met them once for the purpose of an assessment with a view to providing a report, I infer for the litigation. Her reports on those four persons are not admissible.

In general I have proceeded on the basis that participating doctors can tell us what is in the medical records. They are also entitled to recite the history given by the patient, to the extent that it is relevant to diagnosis and treatment, but its reliability depends on the reliability of the patient. Psychiatrists have a broader use for history than doctors who treat physical ailments. Participant experts are not entitled to give opinions outside the scope of their diagnosis and treatment.

Wiwcharuk reports:

- A. Monahan: The first words at the beginning of page 2 quote the patient on a subject not related to medical treatment.
- B. Jordan: no additional redaction.
- C. Ogden: no additional redaction.
- D. Ward: no redaction.
- E. Pierre: The last sentence of the second paragraph is opinion that does not relate to the patient's treatment.
- F. Muscato: The seventh and eighth sentences of the first paragraph are hearsay that is unrelated to treatment. The second and third sentences of the first full paragraph on page 2 relate effects of brain injury on other people, not the patient. The second full paragraph on page 2, after the word "prosthesis" contains opinion outside the scope of treatment. Likewise the fourth and following sentences of the fourth paragraph of page 2. And the second and following sentences of the last paragraph on page 2. And the first full paragraph of page 3. The second full paragraph consists of utterances of the patient that are not related to treatment.
- G. Marshall: no additional redaction.
- H. Arnold: no additional redaction.

O'Shea reports:

- A. Heegsma: no additional redaction.
- B. Lewis: The second and third sentences of the third paragraph of page 1 contain opinion beyond the scope of a treating physician.

Bodkin report:

A. Greaves: no additional redaction.

Lamont reports:

A. Heegsma: no additional redaction.

B. Marchand: no additional redaction.

C. Lewis: no additional redaction.

D. Pierre: no additional redaction.

The Applicant has leave to file affidavits amended as set out in this ruling.

Costs of both motions are reserved.



Mr Justice J.A. RAMSAY

# SCHEDULE

A4627



82 Stinson St  
Hamilton, Ontario  
L8N 1S2  
Phone: 905-526-7137  
Fax: 905-526-7969  
Shelterhealthnetwork.ca

May 31, 2022

Hamilton Community Legal Clinic

100 Main St. E. Suite 203

Hamilton ON L8N 3W4

ATTN: Sharon Crowe and Stephanie Cox

RE: Cory Monahan, dob: April 26, 1976

This is Exhibit "A" referred to in the  
affidavit of J. W. Wincham  
sworn before me, this 1  
day of June 2022  
Sharon Crowe  
Sharon Crowe, Notary Public, STONER, ETC.

I am a physician with the Shelter Health Network in Hamilton, Ontario. The Shelter Health Network provides healthcare to people who are homeless or precariously housed. Mr Monahan has accessed medical care through the Shelter Health Network since April, 2020. Throughout this time, notes indicate that this gentleman has been homeless and has commonly been sleeping rough (ie: not accessing shelters and instead sleeping outdoors). One note dated March 9, 2022 outlines his distress at sleeping outside in the cold and wishing for help accessing a shelter bed. He had been trying to access a men's shelter bed and had been unable to do so. He notes he "is frustrated he can't get into a shelter" and that he "just wants to feel warm again." At that time, the health care practitioner who saw him advocated for agency staff to use the HIFIS system to check on whether there were service restrictions in place. She was able to help secure a bed for him at Mission Services Men's Centre on that occasion.

~~As is common in the homeless population who often only access healthcare episodically,~~ We do not have in depth medical records available for this gentleman. I do know that this gentleman suffers from opioid use disorder, stimulant use disorder and I am convinced that he has undiagnosed mental health issues. He has had near fatal opioid overdoses which required multiple doses of naloxone (opioid antidote) and emergency care. Mr Monahan has mostly made contact with the SHN looking for help with acute skin infections. On July 28, 2020 he saw us with infected bites on his body. Note was made that he was sleeping outside and had no access to a tent. ~~It is likely that if Mr Monahan had had access to a tent, he would have had fewer bug bites resulting in infection.~~

A343

I have spoken to Mr. Monahan about his homeless status and he has shared the mental distress this causes him. He has broken down in tears on occasion when he speaks to me about his desperate desire to be housed. I believe that his homeless state causes him deep, ongoing stress that negatively impacts his mental health. This increased state of anxiety is often cited as a reason why people use illicit substances, to cope with stressors that feel insurmountable.

I hope this is helpful. Please let me know how I can be of further assistance.



Dr. Jill Wiwcharuk, MD, CCFP (EM)





**Shelter  
Health  
Network**

82 Stinson St  
Hamilton, Ontario  
L8N 1S2  
Phone: 905-526-7137  
Fax: 905-526-7969  
Shelterhealthnetwork.ca

Hamilton Community Legal Clinic  
100 Main St. E. Suite 203  
Hamilton ON L8N 3W4

This is Exhibit <sup>RB</sup> referred to in the  
affidavit of Dr. Wincham  
sworn before me, this 1  
of June 2021  
Sharon Crowe M.D., ETC.

June 1, 2022

ATTN: Sharon Crowe and Stephanie Cox

RE: Cassandra Jordan, dob: April 29, 1983

I am a physician with the Shelter Health Network in Hamilton, Ontario. The Shelter Health Network provides healthcare to people who are homeless or precariously housed. Ms Jordan has accessed medical care sporadically through the Shelter Health Network since October, 2020.

~~As is common in the homeless population who often only access healthcare episodically,~~ We do not have in depth medical records available for this woman. I do know that she suffers from opioid use disorder, stimulant use disorder, chronic pain and a recent acetabular fracture and hip dislocation requiring surgery. I am also certain she has significant undiagnosed mental health issues.

On November 24, 2021, I provided medical care to Ms Jordan in her tent at JC Beemer Park. She had sustained a significant burn to the back of her leg two days prior. This was a partial thickness burn that encompassed ¼ of her back upper thigh and was causing her significant pain. If she had presented to hospital, she would likely have been admitted to a specialized burn unit.

While I was assessing her and providing care, there was a large police presence who were engaged in clearing this encampment. Ms Jordan was very distressed in that she had no appropriate options available to her with regards to where she could go. She had a large tent

with significant possessions and was totally overwhelmed as to how to keep her possessions safe.

Follow-up for high quality wound care was paramount to treating this burn. I tried my best to organize follow up for her but it was essentially impossible because she had no idea where she was going to be the following day. She did end up accessing the Barrett Centre (a crisis shelter that is only for short stays up to 5 days usually) and was seen the following day by a nurse practitioner from the SHN. Unfortunately, she left the Barrett Centre after a few days and did not receive any other care for her burn that I am aware of. I saw her two months later in January and her burn had healed by that time.

Given the severity of her injury, if Ms Jordan had not been evicted from her encampment, I would have made it a priority to see her daily for wound care. As it played out, being evicted from the encampment while in the midst of a significant medical issue like that made it impossible for me to follow up with her on an ongoing basis. Her priorities in this case were far more focused on keeping her tent and her possessions and finding a new place to stay than on her medical care. ~~This is a common hierarchy of priorities among people who are homeless.~~

More recently, I saw Ms Jordan during her stay at the Hamilton General Hospital after she sustained an acetabular fracture and hip dislocation secondary to an altercation with police on May 6, 2022. She required surgery at that time. I was involved in providing addiction related care for her during her inpatient stay. She had significant pain from this injury and is likely to develop chronic pain in this hip in the future.

I hope this is helpful. Please be in touch if I can be of further assistance.



Dr Jill Wiwcharuk, MD, CCFP (EM)



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Hamilton ON L8N 3W4

*This is Exhibit .....<sup>"c"</sup> referred to in the  
affidavit of ..... Jim Whitchamke  
sworn before me, this .....  
day of ..... June ..... 20<sup>24</sup>  
.....  
Sharon Crowe ..... ONER, ETC.*

June 2, 2022

ATTN: Sharon Crowe and Stephanie Cox

RE: Sherri Ogden, dob: July 31, 1993

I am a physician with the Shelter Health Network in Hamilton, Ontario. The Shelter Health Network provides healthcare to people who are homeless or precariously housed. Ms Ogden has accessed medical care through the Shelter Health Network since 2010 when she was 17 years old. Initially she was seen infrequently but she has been seen regularly since September 2020. I am certain she has been homeless since 2020 and I suspect she has been in and out of homelessness her entire adult life.

Ms Ogden has a family physician outside of SHN whom she sees sporadically. She has only ever seen SHN practitioners for issues related to contraception, poor sleep or aches/pains and various rashes. I am certain that she has very significant undiagnosed mental health illness. Many people who are homeless are unable to access specialized medical care as they have so many competing priorities in their lives. Medical records do not always capture all the conditions that a homeless individual struggles with, because they access care so sporadically and often do not have the time or inclination to address some of the underlying issues.

For the majority of the last two years, Ms Ogden has been sleeping rough. At one point she was sleeping in a tent in her mother's back yard. Other times she sleeps outside of the Wesley Day Centre. On November 11, 2021 she came to see me and stated that she wanted to get inside from the cold and asked for help getting into a shelter. I asked Wesley staff to help her with this process. To my knowledge she did not end up securing a shelter bed at that time.

Ms Ogden would often see me with complaints of poor sleep and being tired. Although she would sometimes have a tent, many other times she was sleeping entirely unsheltered. This can result in a lot of anxiety and stress and a feeling of constantly having to be on the lock-out. Women in particular

~~describe feeling unsafe sleeping unsheltered outside~~ I would often see her sleeping in the Wesley Day Centre during the day, simply exhausted from having slept so poorly outside the night before.

Hospital records indicate that Ms Ogden has accessed the emergency department on 10 occasions since the fall of 2020. I notice that all of these visits were for functional pain. Functional pain diagnoses are things like headaches and abdominal pain that can often be related to stress and anxiety but have no underlying pathology and is not associated with any abnormal labwork or imaging. This would be in keeping with the extraordinarily stressful situation that Ms Ogden has been in as she continues to remain homeless, often unsheltered and at times unable to access a shelter bed when she feels she needs one.

I hope this is helpful. Please let me know if I can be of further assistance.



Dr Jill Wilcharuk, MD, CCFP (EM)





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*This is Exhibit "D" referred to in the  
affidavit of J. W. W. W. W. W.  
sworn before me, this 7  
day of June 2024  
Sharon Crowe  
Sharon Crowe, PROFESSIONER, ETC.*

June 3, 2022

ATTN: Sharon Crowe and Stephanie Cox

RE: Patrick Ward, dob: Dec 17, 1963

I am a physician with the Shelter Health Network in Hamilton, Ontario. The Shelter Health Network provides healthcare to people who are homeless or precariously housed. Mr Ward has accessed medical care sporadically through the Shelter Health Network since February, 2014. I have provided care for him quite regularly since late 2014.

Mr Ward has a past medical history that includes alcohol use disorder, stimulant use disorder, peptic ulcer disease, pancreatitis, hepatitis C, major depressive disorder, osteoarthritis causing chronic pain, previous fractures in spine, pelvis, wrist causing chronic pain and substance-induced psychosis.

According to my notes, Mr Ward has been homeless continually since 2019. Earlier on in this stretch of homelessness, he was couch surfing but for at least the past two years Mr Ward has been sleeping rough.

I have spoken to Mr Ward on numerous occasions about his lack of housing. He was unable to tolerate the close quarters of homeless shelters and all of the stress that these can incur on individuals. He found all the mental health acuity very distressing.

He has done much better from a personal mental health perspective when he was sleeping outside. He has had elaborate set-ups with a tent and a camp which he took great pride in. Even during the coldest winter months, I would see him dressed in layers at a drop-in centre and he would assure me that he had a heating system that was keeping him warm. He would also spend most of the day inside at the drop-in to stay warm during the daytime hours.

I asked where his tent was and he would tell me how he had chosen a location that was deep in the woods on the escarpment or by the railway where people couldn't find him. He was trying hard to avoid detection so that he wouldn't be told he had to pack up his camp and leave. Eventually he would be found and would have to move his tent. Sometimes he would just be moving it a couple hundred meters away. When he had his full camp set-up, he would be able to tell me in detail all the ways he had to stay warm, that he was safe even in the bitter cold and that I should not worry. When he was having to set everything back up in a new location, he would inevitably lose some of the safeguards he had in place to stay warm and he would be extremely cold at night. This constant fear of being detected and having to move his tent was very distressing to Mr Ward and caused him a significant amount of stress.

I hope this is helpful. Please be in touch if I can be of further assistance.

Sincerely,



Dr Jill Wiwcharuk, MD, CCFP (EM)





**Shelter  
Health  
Network**

This is Exhibit "E" referred to in the  
affidavit of Jill Wiwcharuk

sworn before me, this 7

day of June 2024

Sharon Crowe NOTAR, ETC.

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June 8, 2022

ATTN: Sharon Crowe and Stephanie Cox

RE: Jahmal (Jammy) Pierre, dob: Dec 20, 1989

I am a physician with the Shelter Health Network in Hamilton, Ontario. The Shelter Health Network provides healthcare to people who are homeless or precariously housed.

Ms Pierre is a trans woman who suffers from stimulant use disorder and opiate use disorder. She has rarely sought help through the Shelter Health Network so the medical history I can provide is very limited. She has only been seen on three occasions and these were all related to opiate overdoses in 2020. On one occasion in August she had an unintentional opiate overdose and was hospitalized in the Intensive Care Unit for a period of time. She was encouraged to follow up with doctors at the YWCA after that incident and that is when she saw my SHN colleagues. Ms Pierre described this overdose as entirely unintentional. She had used a contaminated supply of methamphetamine and did not know that there was street fentanyl in the supply that she had received. Ms Pierre was lucky to have survived as I have had had many opiate-naïve patients in the exact same situation who have died in this scenario.

In November of 2020, I was doing outreach work and saw Ms Pierre slumped over on the sidewalk. I approached her and quickly recognized that she had suffered an opiate overdose. It required many doses of the opiate antidote naloxone to get her to start breathing spontaneously on her own. Once again, she was very lucky to survive. I saw her later that day in the emergency department where she had been brought by EMS. Unfortunately, she was not at a point where she was ready to engage with treatment for her substance use disorders. Given this, she continues to be at an extremely high risk of overdose in the future.

I hope this is helpful. If there is any way I can be of further assistance, please let me know.

Sincerely,

Dr Jill Wiwcharuk, MD, CCFP (EM)



**Shelter  
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This is Exhibit <sup>"F"</sup> referred to in the  
affidavit of Dr. W. W. W. W. W.  
sworn before me, this 7  
day of June 2024  
Sharon Crowe COMMISSIONER, ETC.

June 9, 2022

ATTN: Sharon Crowe and Stephanie Cox

RE: Mario Muscato, dob: Oct 31, 1973

I am a physician with the Shelter Health Network in Hamilton, Ontario. I also practice addiction medicine at The Hamilton Clinic. I regularly provide healthcare to people who are homeless or precariously housed. Mr Muscato has been a patient of mine since early 2019 and I see him both at SHN clinics and at The Hamilton Clinic. I often see him several times a week for medical care. Mr Muscato has been homeless the entire time I have cared for him. He is often unable to access shelter beds due to service restrictions and shelters being at capacity. For this reason, he often ends up sleeping rough. Despite Mr Muscato's very significant disabilities, he has never been prioritized for housing in an effective way.

Mr Muscato has very significant disabilities. He suffers from opioid use disorder, stimulant use disorder, HIV, post-traumatic stress disorder, major depressive disorder, acquired brain injury, left partial forearm amputation, extensive burn injuries to neck and face resulting in chronic pain, severe neuropathy to both upper extremities, right forearm amputation, tendon and nerve grafts to left forearm resulting in severely compromised use of this arm.

Mr Muscato suffered a near fatal electrocution in 2018 which resulted in the partial amputation of his left forearm. He also had severe burn injuries to his right forearm and there was extensive grafting that needed to be done to try to salvage any use of this hand/arm. Unfortunately, the grafting was only partially successful. So Mr Muscato now has extremely limited use of his right forearm. He is unable to fully extend the arm, and his fingers are

permanently fixed in a claw-like grip. He has no sensation to any of these fingers which puts him at a constant risk of further injury. For example, he has seen me for burns to these fingers from the top of an electric stove that he was cleaning and he didn't even know that the stove was hot. In the winter, he has suffered frostbite injuries to this hand due to an inability to feel the cold.

When he suffered this near fatal electrocution, he also ended up with a bleed in his brain. This eventually improved with time, but I believe he has been left with a significant acquired brain injury. People with acquired brain injuries struggle with things like memory, mood lability (ie: are often quick to anger and have difficulties with their emotions), chronic headaches, etc. They will have a harder time managing psychiatric diagnoses such as anxiety and depression and have a high propensity for addictions.

Mr Muscato would be eligible for a right arm prosthesis but the process to obtain one requires multiple appointments and fittings. His precarious housing situation, rarely having reliable access to a phone, his acquired brain injury and the chaotic lifestyle that ensues due to his unstable addictions have made it impossible for him to follow up as is necessary to obtain a prosthesis.

Mr Muscato's mental health has suffered. As I mentioned, he has posttraumatic stress disorder both from adverse events in childhood (physical and sexual abuse) as well as from the electrocution injury in 2018. In order to use drugs intravenously, he relies on other people to inject him due to his disability. He has spoken to me on numerous occasions of feeling so depressed that he would like to die by overdose and to do that he feels he would need to trick someone into injecting too much fentanyl.

Another significant health issue of Mr Muscato's is that he has untreated HIV. In order to benefit from medications for HIV, an individual has to be able to take medications consistently. If this is not possible, it is highly likely that the virus will become treatment-resistant and therefore harder to treat. Because Mr Muscato's lifestyle is so chaotic, he has never been able to access medications consistently. He is a target on the street due to his disability and often, has his belongings stolen. So When he does have medications on him, more often than not, they are lost or stolen within a few days. From a practical standpoint, it would be near impossible for him to even open a standard pharmacy bottle of pills on his own. Given his untreated HIV, he is at risk of developing AIDS down the road if he does not find enough stability to start accessing medications regularly.

Mr Muscato sees me regularly in most part for addictions related care. He wants to access opioid replacement therapy and stop using street drugs. To get to a therapeutic dose of opioid replacement therapy (ie: methadone), he needs to access a pharmacy every day to receive his dose. This consistency has been his biggest struggle. His housing instability is the main factor behind this inability to access a pharmacy daily. Because he bounces between shelters, encampments and couch surfing, he can rarely count on being able to access medications from



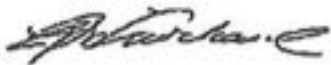
one geographic location every day. For example, someone that is housed knows that they will wake up in the same place every day and can simply build a routine of waking up and walking to a nearby pharmacy for their daily dose of medication. Mr Muscato does not have this luxury.

On April 11, 2019, note is made in Mr Muscato's chart that "this patient needs housing above all else" and this is reiterated in his medical chart over the subsequent years. This is specifically because his most critical medical issues are simply not being effectively treated while housing is so unstable. There were times when he would receive two weeks of opioid agonist therapy consistently but then he would be service restricted from a shelter or moved from an encampment and he would lose that stability and have to restart again down the road.

Mr Muscato has spoken to me on numerous occasions about difficulties that he encounters in the shelter system. He has cited racism as one of the issues that he faces. He feels that he is commonly discriminated against due to his Indigenous status. He also has difficulty in congregate settings because his physical needs are so different than others. For example, he needs much more time to eat a meal due to his compromised ability to manipulate utensils. He also often needs much longer in bathrooms or other hygiene facilities due to his disability. He has people getting angry at him when he cannot complete tasks in the same time that it takes an able-bodied individual to do so.

I hope this has been helpful. Please be in touch if there is any further way I can be of assistance.

Sincerely,



Dr Jill Wiwcharuk, MD, CCFP (EM)



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*This is Exhibit "G" referred to in the  
affidavit of J.M. Winchester  
sworn before me, this 7  
day of June 2024  
Sharon Crowe  
Sharon Crowe, CO-DEFENDANT, ETC.*

June 9, 2022

ATTN: Sharon Crowe and Stephanie Cox

RE: Mysty Marshall, dob: Dec 18, 1991

I am a physician with the Shelter Health Network in Hamilton, Ontario. The Shelter Health Network provides healthcare to people who are homeless or precariously housed. I first met Ms Marshall when she was living in a tent on Ferguson Avenue in the summer of 2020. Since that time she has remained homeless. Prior to that, she was couch surfing or staying in budget motels (which is also a form of homelessness). I am unsure how long she was in that position.

To my knowledge, Ms Marshall has a past medical history of opiate use disorder, stimulant use disorder, major depressive disorder with suicidal ideation and asthma. She has a history of abuse in childhood and has been in abusive relationships throughout her adult years.

I saw Ms Marshall initially for asthma exacerbations when she was homeless and living in a tent on Ferguson Avenue. The heat and humidity were very oppressive and this often exacerbates asthma in people who are unable to access cooler indoor air. I saw her on October 1<sup>st</sup> and was able to reassess her the following week. I noted that her asthma had worsened and she needed some emergency treatment at that time. I was glad that she was in the same area because knowing that she was at risk of deteriorating medically, I was able to reassess her and provide the emergency treatment when it was needed.

In September, 2021, I again saw Ms Marshall at a drop-in centre for individuals experiencing homelessness. She was extremely disheveled, had dirty clothes and extensive matting of her

hair with a severe case of head lice that was causing underlying cellulitis (skin infection) to her scalp and ears. She also had an extensive body rash that was likely caused by scabies. ~~it was clear she had had no access to shower or laundry facilities for a long period of time.~~ I suspected that she was profoundly depressed as well.

Despite having an addiction to opioids, she has not been ready to engage with treatment. Nor does she readily engage with anyone regarding her mental health. It is noted that she does not accept help from people readily. ~~This is not at all uncommon in the Indigenous population who face systemic racism in many colonial institutions, often preferring to avoid these institutions altogether.~~

~~In instances like this, what is needed above all else is regular contact with someone to slowly build trust over time. Once Ms Marshall was evicted from the encampment on Ferguson Avenue, I did not see her for a year and when I did finally see her again, she had drastically decompensated physically and mentally. When I knew where she was living, I was able to follow up with her from a medical perspective and treat the issues that were surfacing. It is my opinion that if she had remained in one place, she would not have decompensated to the extent that she did. I would also have had a chance to build more of a relationship with her and help build the trust that many people require to start engaging in addictions and mental health treatment.~~

I hope this is helpful. Please be in touch if I can be of further assistance.

Sincerely,



Dr Jill Wiwcharuk, MD, CCFP (EM)





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This is Exhibit H referred to in the  
affidavit of Dr. W. W. W. W. W.  
sworn before me, this 7  
day of June 2022  
Sharon Crowe J.S.R. ETC.

June 10, 2022

ATTN: Sharon Crowe and Stephanie Cox

RE: Shawn Arnold, dob: July 23, 1969

I am a physician with the Shelter Health Network in Hamilton, Ontario. The Shelter Health Network provides healthcare to people who are homeless or precariously housed. I am also a physician with The Hamilton Clinic which is an addiction medicine clinic. Mr Arnold has been a regular patient of mine both through the SHN and The Hamilton Clinic since 2020 although I sporadically provided care to him since 2018. His past medical history is significant for opiate use disorder, stimulant use disorder, attention deficit hyperactive disorder, hepatitis C (recently treated) and chronic left shoulder pain.

I saw Mr Arnold regularly during 2021. He was living in a tent at JC Beemer Park in the winter of 2020/21. Prior to that time, he only came to see me sporadically but would always talk about his desire to treat his opioid use disorder and get on opioid agonist therapy (ie: methadone). However, he was unable to follow up regularly enough to do so. Getting to a therapeutic dose of methadone requires attending a pharmacy daily for doses and not missing appointments. From at least the summer of 2020 (and possibly earlier), Mr Arnold was homeless and regularly sleeping outside. He found the crowded conditions in shelters too hard to manage and he would end up sleeping outside or couch surf somewhere.

Once he was settled at JC Beemer Park, Mr Arnold was able to see me regularly and attend a pharmacy daily. He was able to stay on a methadone maintenance program for well over a year and used much less illicit street drugs than he had ever used previously. Because of his

consistency, I was also able to treat his hepatitis C. He followed through on the entire two month program of anti-virals and is now cured from hepatitis C. This is something that can only be achieved when people are able to take their medications daily. Otherwise, treatment resistant strains of hepatitis can develop.

~~If Mr Arnold had been forced to move from place to place the entire winter, it is clear to me that he would not have reached the level of stability he did with regards to treatment of his addiction and his hepatitis C. He was able to engage with housing workers who ultimately knew where to find him and were able to follow up with him because he was in one place. This led to him becoming housed later in 2021.~~

I hope this is helpful. Please let me know if I can be of further assistance.

Sincerely,



Dr Jill Wiwcharuk, MD, CCFP (EM)



TIMOTHY O'SHEA, BSc, MD, MPH, FRCPC  
Internal Medicine, Infectious Diseases, Medical  
Microbiology  
Associate Professor, Department of Medicine  
Faculty of Health Sciences  
McMaster University



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June 13, 2022

To Whom It May Concern:

Hamilton Community Legal Clinic  
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Attention: Sharon Crowe and Stephanie Cox

Re: (Kristen Heegsma, DOB 1990/10/20)

I am a physician with the Shelter Health Network (SHN) and the Hamilton Social Medicine Response Team (HAMSMaRT), two organizations that provide medical care to individuals affected by homelessness or housing precarity. I have worked with the SHN since its inception in 2007, and similarly joined HAMSMaRT at its formation in 2016. I first met Ms. Heegsma in July of 2021 and have been seeing her on average once every two weeks since then. To the best of my knowledge, Kristen has been homeless for at least the past 4 years.

Kristen has the following medical conditions:

- 1) Crohn's disease
- 2) Opioid Use Disorder
- 3) Stimulant Use Disorder
- 4) Attention Deficit Hyperactivity Disorder
- 5) Post-traumatic stress disorder

~~It is my opinion that each of Ms. Heegsma's medical conditions have been negatively impacted by her lack of access to stable housing. Due to her lack of housing Kristen has enormous barriers to accessing consistent medical care, leading to a pattern of starting and stopping treatments which has been in some cases counterproductive to her goal of improving her overall wellbeing. Furthermore the trauma that she has experienced (outlined below) as a direct result of her lack of housing has further exacerbated her underlying mental health conditions to a severe extent. Despite her being able to see me on a fairly regular basis over the past six months Kristen's overall condition continues to fluctuate, and our progress has been far below what I would expect if she were stably housed.~~

It is important to note that Ms. Heegsma's health status has fluctuated in concert with the degree to which her shelter status has been stabilized or destabilized. There have, for example, been short periods of time when Ms. Heegsma has been able to access shelter within the city's hotel shelter program, and briefly through a transitional housing program run by the YWCA. ~~Although in no ways ideal,~~ These brief sojourns allowed Kristen some space to focus more on her health needs, and allowed,

for instance, time to more effectively titrate medications for the treatment of opioid use disorder and for some of her mental health concerns. However, for the majority of the last year Kristen has lived outside. She has stayed both within small formal encampments and when forced to has sought shelter elsewhere, including sleeping in stairwells and seeking shelter in situations which put her physical safety in jeopardy. Again, although it is clear that sleeping in a tent in a park is not a desired outcome, ~~Kristen's health was dramatically better in this situation than when she was in less safe, less stable, settings.~~ Kristen described feeling safe in the most recent park where she sought shelter due to the presence of others that looked out for her, and as well secondary to the fact that those involved in caring for her, including my clinic, knew where to find her if we needed to. Shortly after this small encampment was cleared Kristen began alternating her time sleeping outside on park benches, stairwells and abandoned buildings with staying inside with a male acquaintance who assaulted her multiple times physically and emotionally. As a result her mental health has significantly deteriorated, and her stability with respect to her opioid use disorder has dramatically worsened.

~~Due to the profound impact of Kristen's housing status on her physical and mental health~~ much of our appointments end up focusing on securing a more stable housing arrangement. Kristen is often reluctant to access shelter beds, with the primary reason being that she is fearful of her physical safety in a congregate shelter setting, after suffering physical assaults within shelter previously. Kristen has also previously been restricted from accessing shelter space due to behaviours related to her underlying mental health and substance use disorders, leading to a lack of trust with the shelter system. Nevertheless we have attempted on multiple occasions to secure shelter space for Kristen particularly through the cold winter months between December 2021 and March 2022. On at least three occasions we called multiple shelters for women from my clinic office and on each occasion were told that there was no shelter space available for Kristen; on each occasion we were asked to check back the following day.

Kristen's health has clearly suffered to a significant extent due to her homelessness and housing precarity. She has several medical conditions which in ideal circumstances could be managed effectively, however given her circumstances we have struggled to make consistent progress in terms of improving her health. ~~Furthermore her health status has been negatively impacted by policies which have led to her displacement from settings in which she has managed to achieve some degree of stability.~~

I would be happy to answer further questions as required.

Sincerely



Timothy O'Shea, BSc, MD, MPH, FRCPC  
Internal Medicine, Infectious Diseases, Medical Microbiology  
Associate Professor, Department of Medicine  
Consultant Physician – Inpatient Addiction Service  
Faculty of Health Sciences  
McMaster University





TIMOTHY O'SHEA, BSc, MD, MPH, FRCPC  
Internal Medicine, Infectious Diseases, Medical  
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Hamilton Community Legal Clinic  
100 Main St. E. Suite 203  
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Attention: Sharon Crowe and Stephanie Cox

Re: (Ammy Lewis, DOB 1978/07/04)

I am a physician with the Shelter Health Network (SHN) and the Hamilton Social Medicine Response Team (HAMSMaRT), two organizations that provide medical care to individuals affected by homelessness or housing precarity. I have worked with the SHN since its inception in 2007, and similarly joined HAMSMaRT at its formation in 2016. I first met Ms. Lewis in March of 2021 and have been seeing her on average once every two weeks since then. To the best of my knowledge, Kristen has been homeless for at least the past 3 years.

Kristen has the following medical conditions:

- HIV infection
- Opioid Use Disorder
- Stimulant Use Disorder
- Post-traumatic stress disorder

~~It is my opinion that each of Ms. Lewis' medical conditions have been negatively impacted by her lack of access to stable housing. Due to her lack of housing Ammy has faced enormous barriers to accessing consistent medical care. As well Ammy's search for housing has been all consuming for her, making it very difficult to act upon recommendations from her health care team with respect to her chronic medical conditions. Furthermore the trauma that she has experienced (outlined below) as a direct result of her lack of housing has further exacerbated her underlying mental health conditions to a severe extent. Despite her being able to see me on a fairly regular basis over the past six months Ammy's overall condition has overall deteriorated, and our progress has been far below what I would expect if she were stably housed.~~

I first met Ammy when she was briefly housed in a rooming house in Hamilton. Ammy had been released from detention centre and was initially homeless, seeking shelter in a local park with her dog in the spring of 2020. She was able to access housing from this location, however she was unfortunately assaulted by the landlord at that location and evicted shortly thereafter. Since that time Ammy has been homeless and sleeping rough. Ammy was able to find some relative stability while staying at a park which she chose due to its proximity to her pharmacy. Overall she stayed in this location for about two months, during which time she was able to get her medications daily and attend clinic visits with me. Furthermore she was able to engage with city housing workers during this time, in large part thanks to her being in a reliable place where she could be tracked down. Ammy was evicted from this park in late summer of 2021, and has been moving from place to place since. This most recent period of Ammy's life has been characterized by extreme instability. She has lost all of her belongings on multiple occasions, been subjected to verbal harassment and has on at least two occasions been physically assaulted at her camping site. Ammy has become increasingly desperate to find shelter due to the trauma that she is suffering on a day to day basis. Unfortunately, despite engagement with my clinic and city housing workers, suitable inside accommodation has not been found. Barriers to this include shelters being full when we have attempted to call, and Ammy's devotion to her dog, who she does not want to leave despite the fact that shelters have refused to admit her with her dog. ~~With all of the above contributing, Ammy's mental and physical health have suffered severely.~~

~~Ammy's health has clearly suffered to a significant extent due to her homelessness and housing precarity. She has several medical conditions which in ideal circumstances could be managed effectively, however given her circumstances we have struggled to make consistent progress in terms of improving her health. Furthermore her health status has been negatively impacted by policies which have led to her displacement from settings in which she has managed to achieve some degree of stability.~~

I would be happy to answer further questions as required.

Sincerely,



Timothy O'Shea, BSc, MD, MPH, FRCPC  
Internal Medicine, Infectious Diseases, Medical Microbiology  
Associate Professor, Department of Medicine  
Faculty of Health Sciences  
McMaster University

TO/lb



A4647

## To Whom It May Concern

I assessed Linsley Greaves on December 15 2022 in my outpatient clinic. He was brought in my paramedics, and presented with 2 weeks of worsening left foot infection and worsening right soft tissue injury. He had been repeatedly evicted from his encampment locations by the City of Hamilton in the few weeks prior, and his belongings kept getting wet, while the weather was fluctuating above and below freezing. This had led to tissue injury and infection of both feet.

On examination of the left foot, there was extensive skin sloughing/desquamation of ankle and hindfoot on dorsal side with capillary bleeding across ulcerated area; skin more intact midfoot then more sloughing forefoot. The first toe was autoamputated, with ulceration in this area, then other toes insensate and gangrenous without signs of circulation. There was an intensely foul odour.

On examination of the right foot, there was edema and erythema over midfoot and forefoot, and gangrenous blackened toes with loss of sensation and no evidence of circulation.

I was concerned for osteomyelitis (bone infection), dry gangrene (dead or necrotic tissue), wet gangrene (dead or necrotic tissue with superimposed bacterial infection of the dead tissue), and cellulitis (skin infection). I sent him immediately to the emergency department, where he was admitted, and ultimately underwent amputation of his left leg below the knee.

~~It is my medical opinion that the repeated eviction of Mr. Greaves from his encampment during wet weather with temperatures around 0 degrees celsius resulted in repeated freezing and thawing of tissue, and this directly caused frostbite and subsequent wet gangrene requiring amputation of his left leg below the knee, leaving him permanently disabled.~~



Claire Bodkin MD CCFP

A363



June 20, 2023

ATTN: Sharon Crowe

RE: Heegsma, Kristen DOB: 1990-10-20

I am a psychiatrist with both the Hamilton Social Medicine Response Team and the Shelter Health Network in Hamilton, Ontario. Both services provide health care to people who are unhoused or precariously housed.

I have been Ms. Heegsma's treating psychiatrist since November 2021 and can confirm that she has diagnoses of Post-Traumatic Stress Disorder (PTSD), Borderline Personality Disorder, Generalized Anxiety Disorder, Depression, and Opioid and Stimulant use disorders (severe).

When I first met with Ms. Heegsma, another physician providing care to her had expressed significant concern for mental health and referred her to me. Ms. Heegsma had just been evicted from a tent in Corktown neighbourhood by the City of Hamilton. She had been repeatedly evicted from encampments previously. Following this particular eviction, she experienced an exacerbation of PTSD symptoms as well as severe suicidal ideation and described feeling the most desperate she had in her entire life. Additionally, because her tent had been destroyed, she was sleeping on a park bench in the days following the encampment eviction. Despite daily attempts to get into shelter, there were no spaces available. A few days after the eviction from her tent in Corktown neighbourhood and while she was sleeping on the park bench, she was the victim of a violent sexual assault. This caused additional severe worsening of her mental health conditions and substance use. She also had her belongings stolen repeatedly.

Ms. Heegsma has since spent brief amounts of time in shelter and in YWCA transitional housing, though has also been asked to leave those spaces due to her complex health needs and those services being unable to offer the required level of support. She has thus continued to spend most of her time living outside. When she is living in a tent and surrounded by community, there is notable improvement in her sense of personal safety, and we are able to initiate treatment for her conditions, and members of our team are able to reliably locate Ms. Heegsma for follow-up. Unfortunately, she is unable to remain in one place for very long due to ongoing pressure from By-Law officers and Police to move repeatedly. While Ms. Heegsma has identified goals of working toward stabilization of her mental health and substance use, her ongoing experiences of being unhoused and focus on day-to-day survival have made it very difficult for the focus of any appointments to move beyond trying to help her find ways to have her most basic survival needs met. As a result, her mental health conditions and substance use disorders have remained under-treated and continue to cause her immense suffering.



~~It is my opinion that repeated encampment evictions, and in particular the encampment eviction in November 2021 and subsequent sexual assault, have been a major contributor to the ongoing instability in Ms. Heegmsa's mental health and worsening of her substance use disorders over the past three years. This has been exacerbated by the ongoing lack of available, suitable shelter spaces or permanent housing options.~~

Please feel free to contact me should any further information be required.

Sincerely,

Dr. Rachel Lamont, MD, FRCPC  
Psychiatrist, Hamilton Social Medicine Response Team and Shelter Health Network  
Assistant Professor  
Department of Psychiatry and Behavioural Neurosciences  
McMaster University  
Email: lamonr@mcmaster.ca  
Phone: 1-833-426-7678  
Fax: 1-833-563-2210



Dec 14, 2023

ATTN: Sharon Crowe

RE: Darrin Marchand (DOB Oct 15 1966)

I am a psychiatrist with both the Hamilton Social Medicine Response Team and the Shelter Health Network in Hamilton, Ontario. Both services provide health care to people who are unhoused or precariously housed.

I have known Mr. Marchand since May 2023 and can confirm that he has diagnoses of Psychosis (substance-induced vs. schizophrenia), and opioid and stimulant use disorders (severe).

Mr. Marchand has shared his story with me, dating back prior to my involvement with him. He has endured numerous traumas in his life which impact the way he views himself, regulates his emotions, and relates to other people. In the summer of 2021, he was evicted from an encampment along Strachan St in Hamilton and again from an encampment on Rebecca St during that summer. Following this, he gave up on trying to stay in a tent and slept outside in the open. He describes feeling a sense of hopelessness and despair following these encampment evictions, and that his substance use escalated. For Mr. Marchand, there is a direct link between his substance use (particularly that of stimulants) and symptoms of psychosis. As his substance use escalated and mental health declined further, he continued on a downward trajectory in terms of his wellbeing. Additionally, while sleeping out in the open in Dec 2021, he was shot by a gun in the shoulder, which has contributed to additional ongoing trauma symptoms. Mr. Marchand said that he felt much more secure in a tent with community who looked out for each other, something that is not possible when sleeping alone outside, as he had resorted to doing because of repeated evictions.





RE: Darrin Marchand (DOB Oct 15 1966)

Mr. Marchand shared that he has avoided living in encampment because of the toll eviction has taken on his well being. He said he feels like he is losing his mind because he cannot function living outside; he has been repeatedly kicked out of and service-restricted from shelters in the city. At present, he contemplates suicide regularly because he cannot stay in shelter, he cannot stay in a tent, and staying outside is becoming unbearable. He cannot sleep for long for fear of being assaulted or having his possessions stolen, leading to profound sleep deprivation. This sleep deprivation has further destabilized his mental health condition as well as contributed to escalation in substance use. The last time Mr. Marchand was housed was in 2017.

~~It is my opinion that repeated encampment evictions have been a major contributor to the deterioration in Mr. Marchand's mental health and worsening of his substance use disorders over the past 3 years.~~

Please feel free to contact me should any further information be required.

Sincerely,

Dr. Rachel Lamont, MD, FRCPC

Psychiatrist, Hamilton Social Medicine Response Team and Shelter Health Network

Assistant Professor

Department of Psychiatry and Behavioural Neurosciences

McMaster University

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May 11, 2023

ATTN: Sharon Crowe

RE: Jahmal (Jammy) Pierre, DOB Dec 20, 1989

I am a psychiatrist with both the Hamilton Social Medicine Response Team and the Shelter Health Network in Hamilton, Ontario. Both services provide health care to people who are unhoused or precariously housed.

I have known Ms. Pierre since fall 2021 and can confirm that she has diagnoses of PostTraumatic Stress Disorder (PTSD), generalized anxiety disorder, depression, and opioid and stimulant use disorders (severe).

Ms. Pierre has shared her story with me, prior to my involvement with her. In March 2019, she was evicted from her apartment at 881 King St and had nowhere to go, as she had a dog, and shelters do not accept pets. Her income is through OW and thus did not have enough to cover rent for a new apartment. Thus, she went and bought a tent for herself and her dog. Due to repeated evictions from the city over the course of several months in 2019, she had to move her tent once every few days. At one point, several months into living outside, her tent was taken down and thrown out as part of a city-led encampment eviction, while she was away at a store. She had left her dog in the tent and her dog was gone when she returned.

~~Individuals suffering from complex mental health conditions and substance use disorders, in particular individuals who have suffered repeated traumatic events, commonly experience a marked decline in their mental health and substance use following repeated traumatic events.~~ Ms. Pierre describes the repeated forced movement of her belongings and particularly the loss of her dog as highly traumatic. Following this, she suffered worsening PTSD symptoms, depressive symptoms, and anxiety disorder symptoms. As is common with individuals who have comorbid substance use disorders, the worsening of her mental health conditions drove increased substance use. She has subsequently suffered multiple overdoses from the toxic street drug supply, which include an ICU admission in August 2020 as well as ER visit in November 2020.

Given ongoing severe mental health symptoms, high levels of substance use, and lack of appropriate housing options for Ms. Pierre, ~~as well as the constant threat of being forced to move,~~ she continues to spend most of her time living outside, and has largely given up on trying to set up a tent because of the trauma that repeated evictions cause. She is thus living rough, and ~~forced to~~ stay awake for prolonged periods to protect her personal safety. This has led to





profound sleep deprivation, which further exacerbates her underlying mental health conditions and substance use. She has had brief times in shelter and in the YWCA but has also been asked to leave those spaces due to her complex health needs and those services being unable to offer the required level of support.

~~It is my opinion that repeated encampment evictions have been a major contributor to the profound deterioration in Ms. Pierre's mental health and worsening of her substance use disorders over the past four years. This is due to the profound stress caused by the constant threat of encampment eviction, the impact of eviction itself, encampment eviction causing the loss of a beloved pet, and the resultant need to live outside without the protection a tent can afford, causing extreme sleep deprivation, which further exacerbates symptoms of her mental health conditions.~~

Please feel free to contact me should any further information be required.

Sincerely,

Dr. Rachel Lamont, MD, FRCPC  
Psychiatrist, Hamilton Social Medicine Response Team and Shelter Health Network  
Assistant Professor  
Department of Psychiatry and Behavioural Neurosciences  
McMaster University  
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Fax: 1-833-563-2210



October 5, 2023

ATTN: Sharon Crowe

RE: Lewis, Ammy (1978-07-04)

I am a psychiatrist with both the Hamilton Social Medicine Response Team and the Shelter Health Network in Hamilton, Ontario. Both services provide health care to people who are unhoused or precariously housed.

I have been Ms. Lewis' treating psychiatrist since October 2021 and can confirm that she has diagnoses of Post-Traumatic Stress Disorder (PTSD), Borderline Personality Disorder, Generalized Anxiety Disorder, Depression, and Opioid and Stimulant use disorders (severe).

Ms. Lewis was referred to me in October 2021 by another physician providing care to her, who noted significant concern for her mental health. Ms. Lewis had recently been released from a federal penitentiary and had returned to Hamilton in late 2020. She was briefly housed after her release, though reports having suffered sexual assault from her landlord and she left that residence. Ms. Lewis lived outside for the latter part of 2021 and most of 2022 in a tent with her dog. She was evicted by the city from a tent in November 2021 which led her to have to return to an abusive living situation, causing considerable decline in her mental health. She then returned to living outside because of the harm of that situation. Ms. Lewis suffered chronic severe suicidal ideation, an exacerbation of symptoms of Post-Traumatic Stress Disorder and Depression, and worsening of her substance use disorders while living outside. She would regularly report to me her intense fear of having her tent taken down and belongings stolen. She was unable to go to shelter because of her dog, as her dog was her main source of support and companionship.

~~It is my opinion that encampment evictions and the threat thereof repeated threat have been major contributors to the ongoing instability in Ms. Lewis' mental health and worsening of her substance use disorders from 2021-2022.~~ Due to considerable support from our team and outside agencies, Ms. Lewis was able to secure housing in 2023.



DEPARTMENT  
OF PSYCHIATRY  
AND BEHAVIOURAL  
NEUROSCIENCES



Please feel free to contact me should any further information be required.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Lamont".

Dr. Rachel Lamont, MD, FRCPC

Psychiatrist, Hamilton Social Medicine Response Team and Shelter Health Network

Assistant Professor

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## ENDORSEMENT SHEET FOR CIVIL MOTION/APPLICATION

**ACTION COMMENCED AT:** Hamilton Superior Court of Justice

**SHORT TITLE OF PROCEEDINGS:** Heegsma et al v. City of Hamilton

**COURT FILE NO.:** CV-21-00077187-0000

**BEFORE:** Justice Ramsay

**HEARD ON:** November 19, 2024

**COUNSEL:**

Sharon Crowe, Sujit Choudhry, Wade Poziomka, Curtis Sell and Michelle Sutherland for the plaintiff

Bevin Shores and Jordan Diacur – Gowlings LLP for defendant

**MOVING PARTY** ☒ Plaintiff ☐ Defendant ☐ Other

**RELIEF REQUESTED:** Further Amendments to the Fresh as Amended Notice of Application

☐ ORDER SIGNED ☒ ON CONSENT

☐ UNOPPOSED ☐ NO ONE APPEARED

☐ ADJOURNED TO [Click here to enter a date.](#)

**ENDORSEMENT:**

Order to go in terms of draft on consent.

**Date:** November 19, 2024

Mr Justice J.A. Ramsay

	<p><b><i>Ontario</i></b> <b>Superior Court of Justice</b></p> <p>PROCEEDING COMMENCED AT HAMILTON</p>
	<p><b>APPLICANT’S APPLICATION RECORD VOLUME 1</b> <b>TABS 1-18</b></p>
	<p><b>COMMUNITY LEGAL CLINIC OF YORK REGION</b> 21 Dunlop Street, Richmond Hill, ON L4C 2M6 Sharon Crowe (LSO# 47108R) sharon.crowe@yr.clcj.ca</p> <p>Michelle Sutherland (LSO# 70159T) michelle.sutherland@yr.clcj.ca</p> <p>Curtis Sell (LSO # 84128A) curtis.sell@yr.clcj.ca</p> <p><b>HÁKI CHAMBERS</b> 319 Sunnyside Avenue, Toronto, ON M6R 2R3 Sujit Choudhry (LSO# 45011E) sujit.choudhry@hakichambers.com</p> <p><b>ROSS &amp; MCBRIDE LLP</b> 1 King Street West, 10th Floor, Hamilton, ON L8P 1A4 Wade Poziomka (LSO# 59696T) wpoziomka@rossmcbride.com</p> <p><b>Counsel to the Applicants</b></p>