

**An Interdepartmental Protocol for
Responding to Encampments of People
Experiencing Homelessness on
Municipal Property in Chatham-Kent
("Encampment Response Protocol")**

INTRODUCTION

Encampments of people experiencing homelessness on public lands are a reality in Chatham-Kent. This protocol is intended to provide a general framework for managing encampments on municipal property.

For clarification, encampments on non-municipal land are not subject to this protocol. Legal measures already exist to respond to encampments on private properties, and it is the responsibility of the landowner to have people vacate their property if so desired by the landowner or necessary by law. Please see Appendix A for specifics related to encampments on Private Property.

Encampments on municipal land can present various issues for a municipality, including but not limited to:

- Encampments may result in public spaces being perceived of or made unusable by other citizens.
- Encampments may have open fires, resulting in dangers to persons and damaged property.
- Encampments can result in garbage issues that are unsightly or pose potential health or safety risks.
- Encampments can result in human waste requiring clean up by public sector staff or contractors.
- Encampments, when occupied by people who inject substances or insulin-dependent people, can result in discarded needles causing potential health risks.

Experiencing homelessness is not a crime. Except in rare circumstances, people experiencing homelessness cannot be forced to accept services. The fact that people live in encampments does not affect their right to dignity or detract from the Charter Rights that all citizens enjoy.

While the location or activities of an encampment may violate local by-laws, any measure of enforcement must be done in a manner consistent with all laws. Just because an encampment generates complaints from housed residents or businesses, or is thought to be unsightly, such complaints are insufficient legal justification for the encampment to be removed. There must be a real, violation of a specific law or by-law, or significant safety issues, and the removal must not breach Charter Rights of citizens, to justify the removal of an encampment. It is also often necessary that adequate shelter space or other accommodation be accessible to people that are living in the encampment.

The right to housing has been declared a human right in both Ontario and Canada. People who are unhoused, may not have other options for accommodations and an encampment may be a housing solution for unhoused persons. Other relevant protected grounds in the human rights code of Ontario are disability, gender identity, ancestry, colour and race. For the purposes of the code, mental illness and substance use disorder are considered disabilities. In the unhoused population, racialized groups, people with mental illnesses and/or substance use disorders are overrepresented. It is the responsibility of all levels of government, including the municipality, to consider the human rights of unhoused people who are often part of these vulnerable groups.

Early in 2023, Ontario Superior Court Justice Valente ruled that Waterloo Region could not evict and dismantle an encampment on municipal property. The court decision is quite detailed, and the particular facts of that case are relevant to the ruling. But put succinctly, the Justice indicated that removing the encampment would be a violation of Charter Rights of the encampment residents. The Justice focused on the residents' rights to life, liberty and security of the person because of the lack of shelter space. In summary, it was insufficient that there may be a shelter bed available on paper on any given day. The shelter bed had to be operational, available for the specific population group seeking shelter, and accommodating for the individual seeking shelter. The Justice determined shelter spaces must not split couples, must provide supports, must not “impose rules that cannot be followed due to addiction,” and must accommodate mental or physical disability.

The implications for Chatham-Kent, and other Ontario jurisdictions, are significant. Removal of encampments from public spaces, regardless of whether there is a by-law that restricts that type of activity on the space, may not be possible without ensuring there is adequate shelter space for the people living in the encampment. Furthermore, the shelter spaces or other living arrangements must be sensitive to accommodating couples, must be accommodating of people with disabilities, and must operate in a manner that a person with an addiction can use and be supported by the shelter. Simply, it is not just a matter of adding more shelter beds in Chatham-

Kent to respond to encampments, potentially, it is examining the type(s) of beds and how they operate.

Removal of an encampment must be a last resort. It can have serious consequences on the wellness of the person living in the encampment and be traumatizing. It can result in loss of documents, medications, and personal effects. It can make it much more difficult to assist the person affected by the closure by eroding trust or resulting in the person retreating further to locations that make it more difficult to be found and assisted by social service professionals.

In November 2023, a similar case took place in Kingston, Ontario when the municipality brought forward a court injunction to remove the inhabitants of an encampment within a city park based on a city bylaw. The bylaw was deemed breached but unconstitutional in its application to unhoused persons and the case failed. The Court found that overnight camping could not be prohibited, due to the impacts on citizens' Charter Rights.

There is a shortage of emergency housing in Chatham-Kent forcing even those who wish to be sheltered with no where else to go to reside and sleep outside.

Definitions (for the purposes of this document):

- Encampment - An outdoor location with a visible structure that can take many forms, such as tents, shanties, lean-tos, or shacks, where one or more people of no fixed address live. Also referred to as persons or individuals camping.
- Outreach workers – refers to individuals trained and experienced in helping people who are unhoused that are employed or contracted by the Municipality of Chatham-Kent's Housing Services division.
- Diversion – is a series of questions to assess the persons who are camping with other options for accommodations.
- HIFIS – Homeless Individuals and Families Information System, developed by the government of Canada and used by Chatham-Kent for a decade. It is used by several community partners to support coordinated case management and data collection of homeless individuals in our community.

CORE PRINCIPLES

1. All people of Chatham-Kent, including people experiencing homelessness, should be able to reasonably use public spaces.

2. A social service response to meet the needs of people living in an encampment on public lands is preferable to an enforcement response.
3. If reasonable social service offers are repeatedly rejected, and the criteria as established in Ontario courts are satisfied as it relates to offers of accommodation, then enforcement can be considered as a last resort.
4. It is the responsibility of the Municipality to plan and enforce policy that is in compliance with the Charter, the human rights code, as well through the lens of diversity, equity, inclusion and justice.

ENCAMPMENT RESPONSE PROTOCOL

1. Upon any municipal division becoming aware of an encampment on public land, the Program Manager of Homeless Prevention or designate is notified. If an after-hours response is required by Housing Operations, the Homeless Response Line may be called and an on-call supervisor dispatched.
2. Once the Program Manager is notified of the location of an encampment an email will be sent within 1 business day to the homeless outreach provider and the supervisor of the emergency housing program to attend the site and offer services including shelter.
3. Outreach and the supervisor will determine who is visiting within the 5 business days, and then the emergency housing diversion process will commence (ie: call to Homeless Response Line etc.)
4. Outreach will work to identify individuals and complete initial conversations to build rapport and identify encampment residents needs and goals. Consenting information will be documented in the Homeless Individuals and Families Information System (HIFIS per HIFIS guidelines).
5. Outreach will continue to engage with individuals in the encampment on a weekly basis and will collaborate with Housing Services on referrals, admissions, and housing plans. This will continue to be documented in HIFIS as per HIFIS guidelines.
6. Municipal legal services will review any enforcement decision provide advice to involved municipal divisions and advise if the matter meets the tests for enforcement based on existing legal precedents, or whether an application to Court is required before any

enforcement actions are taken. The Outreach provider and Housing Services will be notified of the final decision on any enforcement steps.

- a. If the final decision is to not enforce removal. The Outreach provider and Housing Services will continue to engage with the eventual goal of connecting to housing and identified support services.
 - b. If the final decision is enforcement. The procedures continue below.
7. Orders will be posted by the governing division of the site (ie: Parks, Facilities, Public Works, Fire, Police) outlining the decision and reason. A minimum of 7 days will be given for Outreach provider and Housing Services to engage with and provide individualized plans for encampment residents, whenever possible. Certain safety or other compelling reasons may necessitate shorter notice.
8. The person(s) living in the encampment will be engaged by the Outreach provider and Housing Services and provided the opportunity to voluntarily dismantle the encampment, collect their belongings, and vacate the site to alternate accommodations (including but not limited to emergency housing options). The Outreach provider and Housing Services will advise what could happen if enforcement occurs specifically with respect to their items. Efforts will be made to identify items of value and importance to the individual to prevent further loss. At least 7 business days will be provided to do so, unless there are significant safety issues that need to be addressed on a shorter timeframe.
 - a. Should Fire or Police departments identify a criminality or arrestable breach of Provincial or Federal Statutes they will become lead in the removal of encampment. The Outreach provider and Housing Services will assist as per the above protocol.
9. Should the individual(s) refuse all reasonable offers of service, an enforcement body within Chatham-Kent takes over providing instructions on any enforcement activity and citing the appropriate and applicable by-laws or other laws that are in violation. The Outreach provider and Social Services have no enforcement powers and are not responsible for enforcing a removal of the encampment. They will assist by offering support services.
10. Once the individual(s) has vacated the site, whether voluntary or under enforcement actions, if there are any items or structures remaining the site will be reviewed by Outreach or Housing Services, following which relevant municipal departments or their contractors may clean the site of all remaining items and debris.

11. The Outreach provider and Housing Services will continue to attempt to engage with the individuals in voluntary support plans. Our goal remains to provide services and supports that are person-centered to reduce the impacts of poverty.