



May 9, 2017

**TO:** Park Board Chair and Commissioners  
**FROM:** General Manager - Vancouver Board of Parks and Recreation  
**SUBJECT:** Cetaceans in Vancouver Parks By-law Amendment

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## RECOMMENDATION

- A. THAT the Vancouver Park Board approve the repeal and replacement of the sections of the Parks Control by-law regarding the importation and display of live cetaceans in Vancouver parks as set out in Appendix A of this report;
- B. THAT the Director of Legal Services be instructed to immediately bring forward a by-law for enactment by the Board generally in accordance with Appendix A.

## OVERVIEW

At a Special Board meeting held on March 8 and 9, 2017, to discuss the matter of "[Cetaceans at the Vancouver Aquarium](#)", Park Board Commissioners unanimously passed a motion directing staff to report back by May 15, 2017, with an amendment to the Parks Control By-law regarding the importation and display of cetaceans in Vancouver parks. After reviewing legal considerations in relation to the proposed by-law changes and canvassing the Commissioners' goals regarding the existing cetaceans, by-law amendments have been prepared for the Board's consideration (attached as Appendix A).

## BOARD AUTHORITY

Under the Vancouver Charter (s.491), the Board of Parks and Recreation is authorized to pass, amend, and repeal by-laws to be observed in parks for control, regulation, protection and government.

The Parks Control By-law sets the conditions under which cetaceans (whales, dolphins, and porpoises) can be acquired and kept in parks. Under section 9(e), the current by-laws state that no person shall bring into any park, or otherwise keep or maintain in any park, any cetaceans, including baleen whales, narwhals, dolphins, porpoises, killer whales and beluga whales, which have been captured or taken from their wild habitat except:

- i) Captive cetaceans caught from the wild prior to September 16, 1996, and cetaceans born into captivity at any time;
- ii) Cetaceans which are already being kept or maintained in a park as of September 16, 1996;
- iii) A member of an endangered cetacean species, provided that approval for bringing it into a park has first been obtained from the Park Board; and
- iv) An animal that has been injured or is otherwise in distress and in need of assistance to survive or rehabilitation, whether or not the intention is to release it back into its natural wild habitat.

## BACKGROUND

On January 23, 2017, the [motion titled “Cetaceans at the Vancouver Aquarium”](#), which supported inclusion of an assent question on the 2018 Municipal Election ballot to determine if Vancouver residents support keeping cetaceans at the Vancouver Aquarium, was referred to staff to outline other options for the Board to consider before making a decision.

On March 8 and 9, 2017, a Special Board meeting was held for staff to [report back on the “Cetaceans at the Vancouver Aquarium” referred motion](#) and for the public to have an opportunity to speak on the topic. Staff presented the Board with four (4) options to address the matter of cetaceans at the Vancouver Aquarium, including an option to amend the Parks Control By-law, with a recommendation to direct staff to further investigate and report back on the Board’s preferred option. Following the staff presentation, representatives from the Vancouver Aquarium provided a presentation and answered questions from the Board.

Commissioners then heard from a total of 44 speakers over two evenings, with the meeting reconvened on March 9, 2017 to ensure all registered delegations had an opportunity to speak. After careful consideration of all correspondence, speakers, and the options before them, the Board introduced the following motion which was carried unanimously:

THAT the Vancouver Board of Parks and Recreation direct staff to bring forward for enactment by the Board an amendment to the Parks Control By-law to prohibit the importation and display of live cetaceans in Vancouver parks and report back not later than May 15, 2017.

## DISCUSSION

While the March 2017 Special Meeting motion provided clear direction to prepare a by-law amendment regarding importation and display for Board enactment, it was silent on the three cetaceans currently housed at the Vancouver Aquarium. As such, on March 27, 2017, an In-Camera Board meeting was held with legal counsel to canvas the Board’s goals regarding the existing cetaceans at the time it passed the motion. Staff prepared three draft by-law options for discussion at the meeting in order to illustrate the range of legal options available to the Board in addressing this complex issue.

The possible by-law options discussed were:

1. Not allowing any cetaceans in the park, with an effective date set to allow time for compliance (i.e. requiring the existing cetaceans to be moved to another facility);
2. Allowing the existing cetaceans in the park but prohibiting display;
3. Allowing the existing cetaceans to remain on display, but prohibiting performance.

In addition, the Board was provided with the following considerations regarding the three existing cetaceans at the Vancouver Aquarium, compiled after staff visited the Aquarium and had further discussions with their staff:

- All three are rescues and considered non-releasable
- All are on display and used for promotional, educational and research purposes
- No suitable facilities observed at the Vancouver Aquarium that are not on display
- The smaller cetaceans have expected lifespans under 5 years; the false killer whale is expected to live another 15 years and grow to 6 meters in length.

The Board adopted a motion at the In Camera meeting recommending that a proposed by-law be prepared for consideration at a public meeting that reflects the third option, which would allow the three existing cetaceans to remain at the Vancouver Aquarium, but with performances prohibited. The recommended by-law amendment is attached as Appendix A.

### **Parks Control By-law Amendment - Cetaceans in Parks**

In response to the direction provided by the Board at the March 2017 Special Meeting, with considerations given to the three cetaceans currently housed at the Vancouver Aquarium, the following amendments to the Parks Control By-law regarding cetaceans in Vancouver parks are recommended:

1. An expanded definition for “*cetacean*” to be added to the definitions in Section 1.  
The current bylaw has a definition embedded in Section 9. The proposed change would provide consistency with the rest of the Parks Control By-law.
2. That “*no person shall bring a cetacean into a park*”.  
The current by-law included this provision; however, it contained exceptions that allowed for importation under certain circumstances. The proposed amendment will not allow any cetacean importation into Vancouver parks - no exceptions.
3. That “*no person shall keep a cetacean in a park*”, except for “*cetaceans already in a park*” as of the date of enactment.  
Similar to the existing by-law, the proposed change considers the three existing cetaceans at the Vancouver Aquarium and enactment will not require their removal.
4. That “*no person shall produce or present in a park a show, performance, or other form of entertainment, which includes one or more cetaceans*”.  
The current by-law does not include any display regulations. This new clause is proposed in consideration of the three cetaceans at the Vancouver Aquarium and the limited options currently available for housing them, while also supporting the Board’s intent regarding display. The three cetaceans can remain on display; however, they cannot be included in shows or performances of any kind.

### **NEXT STEPS**

The proposed by-law amendments, attached as Appendix A, reflect the goal of banning cetaceans in Vancouver parks while also acknowledging the need to address the current cetaceans already living at the Vancouver Aquarium. If approved after public debate and discussion, these proposed amendments can be brought forward for immediate enactment by the Board.

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**Parks Control By-law Amendment: Cetaceans in Parks**

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BY-LAW NO. \_\_\_\_\_

**A By-law to Amend the Parks Control By-law Regarding  
Cetaceans in Parks**

THE PARK BOARD OF THE CITY OF VANCOUVER, in public meeting, enacts as follows:

1. This By-law amends the indicated provisions of the Parks Control By-law.
2. In Section 1, the Park Board:
  - (a) adds in alphabetical order:

““CETACEAN” means a marine mammal belonging to the Cetacean order and includes, but is not limited to, baleen whales, narwhals, dolphins, porpoises, killer whales and beluga whales.”; and
  - (b) re-numbers the definitions in Section 1 in alphabetical order.
3. The Park Board repeals section 9(e) and substitutes:
  - “(e) no person shall bring a cetacean into a park.
  - (f) no person shall keep a cetacean in a park, except that this prohibition does not apply to cetaceans already in a park on [*date of enactment*].
  - (g) no person shall produce or present in a park a show, performance, or other form of entertainment, which includes one or more cetaceans.”
4. A decision by a court that any part of this By-law is illegal, void, or unenforceable severs that part from this By-law, and is not to affect the balance of this By-law.
5. This By-law is to come into force and take effect on the date of its enactment.

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Chair, Park Board

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General Manager