



July 7, 2020

TO: Park Board Chair and Commissioners
FROM: General Manager – Vancouver Board of Parks and Recreation
SUBJECT: Parks Control By-law Updates – Temporary Shelter in Parks

RECOMMENDATION

- A. THAT the Vancouver Park Board approve amendments to the Parks Control By-law regarding temporary shelter in parks as set out in Appendix A of this report; and
- B. FURTHER 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.

REPORT SUMMARY

The ongoing homelessness crisis in Vancouver has resulted in rising numbers of people seeking temporary shelter in public spaces and parks. When tents and other temporary structures that provide shelter accumulate or remain in place for extended periods of time, they can impact public access to park space and amenities and result in a strain on staffing and resources. Although the Parks Control By-law does not permit people to remain in parks overnight, or to erect temporary structures, these by-laws have not been enforced as the BC Supreme Court ruled that any bylaws prohibiting homeless people from erecting temporary shelters and sleeping in city parks would be a Charter right violation given the lack of adequate shelter capacity for individuals experiencing homelessness.

In order for the Board to deliver on its mission to provide, preserve, and advocate for parks and recreation services to benefit all people, communities, and the environment, the Parks Control By-law must be updated so that it recognizes the needs of all park users, including those currently experiencing homelessness. As such, staff have prepared by-law amendments to address these needs, while also including provisions to more effectively manage temporary structures and tents for those seeking shelter in parks. Additionally, ongoing collaboration with all involved will be required to ensure the resources and services needed to support this marginalized community are provided.

BOARD AUTHORITY, POLICY, & RELATED DECISIONS

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 the control, regulation, protection, and government of the parks and of persons who may be therein.

The [Parks Control By-law](#) states the following with respect to temporary overnight shelter in parks:

Section 3(b): *“No person shall enter or remain in a park except during the hours posted”;*

Section 10: *“No person shall... loiter or take up a temporary abode overnight in any place on any portion of any park, or obstruct the free use and enjoyment of any park or place...”*; and

Section 11: *“No person shall erect, construct or build or cause to be erected, constructed or built in or on any park any tent, building, shelter, pavilion or other construction whatsoever without the permission of the General Manager”*.

On July 23, 2018, the Park Board approved the first two reports of [VanPlay](#), Parks & Recreation Services Master Plan: [Inventory and Analysis](#) & [10 Goals to Shape the Next 25 Years](#). The 10 goals are intended to guide provision of more equitable, accessible, inclusive, and resilient parks and recreation, with Goal 8 supporting a core value to “foster a system of parks and recreation spaces that are safe and welcoming to all”.

On October 9, 2019, the Park Board approved the final two reports of [VanPlay](#), Parks & Recreation Services Master Plan: [Strategic Bold Moves](#) & [The Playbook, Implementation Plan](#). The [Strategic Bold Moves](#) presents tools to create a more connected and equitable future for parks and recreation amenities, with the Equity Bold Move highlighting that “all people and communities in Vancouver, regardless of their ethnicity, gender, religion, race, financial status, sexual orientation, abilities, or age deserve the right to access quality parks, recreation and nature, and the opportunity to partake in social, cultural and recreational activities to acquire physical literacy skills, to express and enjoy culture, and to connect with community”.

At an In Camera meeting held on July 15, 2019 ([decision](#) released September 5, 2019), the Board directed staff to review the Parks Control By-law and report back on options to enable more effective management of camping and encampments in parks.

On December 10, 2019, a media statement was released announcing that the Park Board had directed staff to work with partners to meet a number of conditions to further the voluntary decampment plan at Oppenheimer Park and provide recommendations to enhance safety, provide support, and seek appropriate shelter for people in the park. The conditions included engaging a third party to conduct an independent assessment of the situation in Oppenheimer Park, and for staff to revise the current bylaw, in accordance with other municipal models, to meet legal precedent. The General Manager was authorized to seek an injunction to support the decampment once these conditions were met.

On February 24, 2020, a Special Board meeting was called for Thursday, March 19, 2020, to discuss proposed amendments to the Parks Control By-laws regarding temporary shelter in parks, however this meeting was postponed due to the COVID-19 pandemic.

On March 18, 2020, in response to the global COVID-19 pandemic, the Province of British Columbia declared a province-wide state of emergency.

On May 8, 2020, in recognition of the significant threat the COVID-19 pandemic poses to public health, safety and welfare, particularly to vulnerable segments of society, the Province of BC issued Ministerial Orders [M150](#) and [M152](#) under the Emergency Program Act, for the immediate evacuation of the encampment in Oppenheimer Park. A variety of housing and shelter options were provided to camp residents, with a few choosing to relocate to a waterfront lot owned by the Vancouver Port Authority, which is adjacent to CRAB (Portside) Park.

On June 10, 2020, the BC Supreme Court granted the Port Authority an injunction requiring the camp members to vacate the land next to CRAB Park, citing concerns that the growing size of the encampment would lead to the same health and safety concerns seen at Oppenheimer Park.

On June 16, 2020, Vancouver Police enforced the court ordered injunction to clear the camp from Port Authority land; the camp subsequently relocated to Strathcona Park.

BACKGROUND

Canada is in the midst of a homelessness crisis, with urban centres being the epicentres of this crisis. With the rising need for affordable housing and often limited availability of low barrier shelter options, many people experiencing homelessness are sleeping outside in tents and other makeshift structures in public spaces and parks.

A series of British Columbia court decisions, starting with [Victoria \(City\) v. Adams 2009 BCCA 563](#), have established that homeless people have a constitutional right to erect temporary overnight shelters on public lands in circumstances where there are insufficient appropriate housing options. In subsequent decisions, including the [Abbotsford \(City\) v. Shantz case](#) the Courts have struck down municipal bylaws that prohibited homeless people from erecting temporary shelters and sleeping in city parks.

In recognition of the case law, the Vancouver Park Board directed staff to review the Parks Control By-laws and report back with proposed amendments to address the constitutional rights of those experiencing homelessness, while also allowing for more effective management of shelters and encampments in parks. Staff had planned to present proposed by-law amendments at a Special Board meeting in March 2020; however this meeting was delayed due to the COVID-19 pandemic.

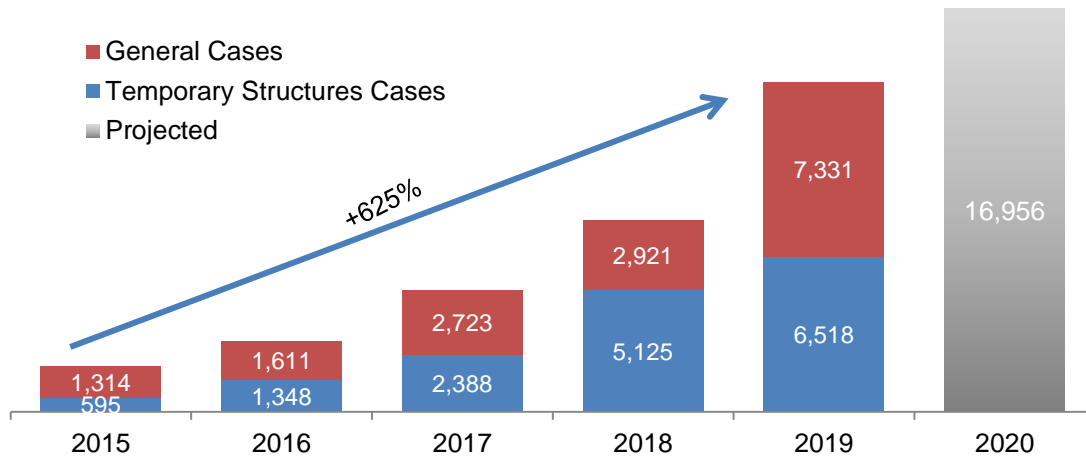
In the interim, any by-laws that would be in violation of Charter rights have not been enforced. Those experiencing homelessness have been able to seek temporary overnight shelter in parks, with Park Rangers requesting tents be removed each morning and only intervening if there is a concern around safety, park access, or impacts to other park uses.

Homelessness in Vancouver Parks

Over the past several years, Vancouver's rise in social issues such as the opioid crisis and homelessness have significantly impacted the use, safety, and cleanliness of many urban parks on a year round basis. The growing number of temporary structures being erected in parks due to homelessness, combined with urban densification putting more demands on limited green space, has resulted in increased conflicts requiring more attention from Park Rangers.

The growing demand for Park Ranger services is evident in the increased case volumes received during patrols, via 311 calls and VanConnect. As shown in Figure 1 below, there has been a 625% increase in total cases from 2015 to 2019. Most notably, cases related to temporary structures in parks saw significant increases year over year from 2017 to 2019. Based on current case trends, the total number of cases in 2020 is expected to continue to increase at a similar pace to previous years. As of the end of May, the total number of cases for 2020 was 7,065; if cases continue to increase at this rate it is anticipated that 2020 would see approximately 17,000 cases -- a 22% increase compared to the 13,849 cases seen in 2019.

Figure 1: Park Ranger Case Volumes 2015-2020



In October 2019, Park Rangers undertook a citywide audit of all Vancouver parks to assess and identify all temporary homeless shelter activity occurring in parks. In addition to the 107 structures erected in the large encampment that was situated in Oppenheimer Park at that time (see Appendix B for more background on this encampment), they counted a total of 405 different occurrences within 116 parks distributed in all areas of the city. Of that total, 179 were deemed to be active (33 of which were in Stanley Park), with 226 appearing to be abandoned (no one present at that time) and requiring varying degrees of clean-up and debris removal.

When temporary structures erected as shelters remain in parks for extended periods of time, particularly if in concentrated numbers, the resulting encampments can impede community use of much needed public green spaces; result in the accumulation of debris and human waste; and create opportunities for increased violence and health risks. Depending on location, large encampments can also impact community programming, support services and events, and can result in significant damage to sport fields, playgrounds, park facilities, and natural habitats.

Currently about 85% of available ranger resources are required for monitoring and managing homeless shelter activity in parks. Due to the complexity of managing the associated issues, the rangers work closely with other city departments as well as community partners: the Vancouver Police (VPD) when dealing with public safety issues, with Park Operations and City of Vancouver Engineering when dealing with site management and clean-up, and with the City of Vancouver Homelessness Services Outreach Team and other community health teams when providing and facilitating support services to those experiencing homelessness and sheltering in parks.

In order for the Board to deliver on its mission, the Parks Control By-law must be updated to ensure it is enforceable and that it recognizes the needs of all park users, including those currently experiencing homelessness. The new by-laws outlined in this report have been developed based on the experience and knowledge staff have gained over the past few years, particularly in relation to the wide-reaching impacts large encampments can have on individuals experiencing homelessness and sleeping in parks, as well as on the communities and businesses surrounding them. Although encampments may provide a sense of safety and community for those that live within them, they often end-up disrupting and displacing much needed community services and access to green space, and can negatively impact the health and safety of neighborhood businesses and residents when illicit activities become established

within and around the encampment. The goal of the proposed by-law amendments is to support those experiencing homelessness, but also to minimize impacts to parks and the community by limiting the potential for encampments to become established.

DISCUSSION

In response to the *Adams* case law, several BC municipalities have updated their bylaws to allow for temporary overnight shelter in parks. To help inform the development of new by-laws to support Vancouver's needs, Park Board staff reviewed other by-law updates, including those enacted by [Abbotsford](#), [Kelowna](#), [Nanaimo](#), and [Victoria](#), and also consulted with other municipal staff to learn more about how these new by-laws have been operationalized.

Consistent across most of the by-law updates were provisions for:

- areas that temporary structures providing shelter may, or may not be, erected;
- hours when the structures providing shelter may be erected; and
- regulations around fire, alcohol use, litter, and smoking.

Some municipalities identified entire parks where temporary structures for shelter are prohibited (e.g. Victoria), and others already included areas designated for overnight camping (e.g. Nanaimo).

Based on this research, and through discussions with various Park Board and City of Vancouver teams (Rangers, Park Operations, Planning, Policy & Environment, Arts, Culture & Community Services, Legal Services, etc.), proposed amendments to the Parks Control By-law were developed to protect the Charter rights of people experiencing homelessness when they are seeking temporary shelter in parks.

Parks Control By-law – Proposed Amendments regarding Temporary Shelter in Parks

Why Changes are Needed

As a result of the case law, preventing a person experiencing homelessness from erecting a temporary structure to provide overnight shelter is a breach of their constitutional rights. Therefore, sections of the Vancouver Park Board's by-laws that are currently unconstitutional include the provisions that prohibit:

- remaining in a park after posted hours (section 3b);
- taking up temporary abode overnight (section 10); and
- erecting any tent or shelter without permission (section 11).

As such, it is proposed that the Parks Control By-law be amended to allow people to erect temporary overnight shelter in a park when they have no other housing or shelter options. The proposed amendments, attached as Appendix A, include adding two new sections (11A & 11B) that outline the conditions that apply to seeking temporary shelter in parks, along with some new definitions and minor revisions to other sections to support these added provisions. The key changes with rationale are outlined below.

What Changes are Needed

As noted above, there are three sections in the by-law that require amendments to support those experiencing homelessness when erecting temporary structures to provide overnight shelter in parks. To clarify the meaning and intent of language included in the new sections, three new definitions have been added:

“HOMELESSNESS” means the state of having no access to permanent or temporary housing, accommodation, or shelter.

“NATURAL AREAS” are those areas of parks that are managed to retain their natural ecosystem attributes, are relatively undisturbed in an urban context, contain native or naturalized non-native plant species, and provide wildlife habitat, stormwater retention, and other ecosystem services; these include forests, ponds, wetlands, stream riparian zones, coastal environments, meadows, treed areas without mown understory, and unmanicured sections of golf courses.

“TEMPORARY SHELTER” means a tent or other temporary structure that provides shelter to a person experiencing homelessness and that is capable of being dismantled and moved, but does not include a vehicle.

There are two sections that currently prohibit when parks can be accessed. The first section requiring revision is Section 3(b), which states: “No person shall enter or remain in a park except during the hours posted”. With the posted hours at most parks being from 6am to 10pm, in order to allow people experiencing homelessness to sleep overnight in parks, it is recommended that this section be amended to: “*Except as provided in section 11A*, no person shall enter or remain in a park except during the hours posted.”

The second section requiring revision is Section 10, which states:

No person shall conduct himself or herself in a disorderly or offensive manner, or molest or injure any other person, or loiter or **take up a temporary abode overnight in any place on any portion of any park**, or obstruct the free use and enjoyment of any park or place by any other person, or violate any by-law, rule, regulation, notice or command of the Board, the General Manager, Peace Officer, or any other person in control of or maintaining, superintending, or supervising any park of or under the custody, control and management of the Board; and any person conducting himself or herself as aforesaid may be removed or otherwise dealt with as in this by-law provided.

To allow a person experiencing homelessness to sleep overnight in a park, it is recommended that the phrase “except as provided in section 11A” be added after “or take up a temporary abode in any place on any portion of any park”.

The third section requiring revision is Section 11, which currently states: “No person shall erect, construct or build or cause to be erected, constructed or built in or on any park any tent, building, shelter, pavilion or other construction whatsoever without the permission of the General Manager”. It is recommended that this clause be amended to add at the end: “, except that this provision does not apply to a temporary shelter that complies with the provisions of this by-law”.

This revision will then support the recommended two new temporary shelter sections:

- Section 11A - includes provisions for allowing a “person experiencing homeless to take up temporary abode in a park” as long as the shelter complies with the provisions outlined in Section 11B.
- Section 11B – outlines where temporary shelters are prohibited, when they can be erected, what restrictions apply, and how the space can be used.

Where Temporary Shelters are Allowed

In recognition of Vancouver’s vast and diverse park system, staff determined that rather than identifying specific parks or areas within parks where temporary shelters would be permitted, it would be more helpful to identify the types of places and areas where they would not be permitted (see Appendix A, Section 11B). Some of the factors considered when determining what areas would not be suitable for erecting temporary shelters included:

- mitigating risk to children & youth by requiring a 25 metre buffer around playgrounds and schools; e.g. the current opioid crisis often intersects with the homelessness crisis, resulting in the possibility of used needles and other debris found around temporary shelter sites;
- protecting sensitive environments of natural areas such as forests, meadows, wetlands, ponds, streams, and beaches; e.g. trampling and compaction of forest undergrowth and soils by temporary shelters can cause significant harm to these important ecosystems;
- reducing risk of fire and injury; e.g. setting-up temporary shelters in forested areas, such as those found in Stanley Park, can make detecting wildfires difficult and challenging to access by fire and emergency crews, putting both the person seeking shelter and the surrounding forest at risk, especially with the increasing seasonal periods of drought;
- ensuring access for all; e.g. keeping roads, pathways, trails, facilities, and entry points unimpeded is required for the use and safety of all parks and recreation patrons, staff, contractors, and emergency personnel;
- protecting gardens and horticultural displays; e.g. community gardens, flower beds, and display gardens require regular maintenance and can be easily damaged if not protected or kept accessible;
- supporting parks & recreation for all; ensuring the community has access to safe and well-maintained greenspace, community gardens, fieldhouses, and recreation amenities (sports courts & fields, pools & spray parks, skate parks, fitness equipment, playgrounds, etc.), is a primary function of the Park Board.

When Temporary Shelters are Allowed

It is recommended that temporary shelters only be erected overnight and that they be removed each morning (dusk to 7am). In determining when temporary shelters could be erected in parks, some of the considered factors included:

- temporary shelters that remain in place for extended periods can impede public access to parks and facilities, cause damage to fields, gardens, and natural areas, and result in an accumulation of waste and debris;

- setting-up temporary shelter in the dark is challenging and since daylight hours change with the seasons, allowing for set-up at dusk provides for flexibility without requiring specific knowledge of the actual time of day;
- dismantling a temporary shelter requires a little time, so an hour buffer (to 8am) is provided to allow for packing-up in the morning; and
- a specific provision has been added to provide the General Manager the authority to designate areas for temporary daytime shelter on a situational basis if needed.

How Temporary Shelters are Allowed

It is recommended that temporary shelter sites be contained within a 3 metre by 3 metre area, not impede access or use of a park or facility, and not present a public safety or health risk. When determining how temporary shelters could be erected in parks, some of the considered factors included:

- a maximum footprint would help contain the amount and spread of items, which supports the need for daily removal of any structures;
- several temporary shelters concentrated in a specific area are more likely to impact access;
- use of open flame or other heating devices presents a safety concern;
- shelters should not be left unattended.

The primary intent of the proposed by-law changes is to ensure the Park Board has the tools needed to protect the park assets within its jurisdiction, while balancing the needs and rights of all park users. It is recognized that these amendments will not address the larger issue of homelessness, and that ongoing collaboration with all involved is required to ensure the resources and services needed to support this vulnerable community are provided.

NEXT STEPS

Subject to Board approval, the proposed by-law amendments would be presented for enactment at a subsequent Regular Board meeting. Once enacted, plans to operationalize the new by-laws will be developed, including the development of monitoring and wrap-around support services, in consultation and partnership with key stakeholders and service providers.

Development of these plans will include reviewing the Park Rangers role in encampment monitoring, management, and by-law enforcement, with a separate report back to the Board on the overall ranger service model, as well as considering the various health, safety, and support needs of those experiencing homelessness and seeking shelter overnight in parks (clean water, washrooms, storage, etc.).

CONCLUSION

Staff recommend that the Parks Control By-law be updated with the amendments proposed in Appendix A to ensure that its provisions do not infringe upon the constitutional rights of park users, and that it specifically protects the rights of those seeking overnight shelter in parks when they have no other suitable housing or shelter options available to them.

Park Board staff are committed to continuing to work with community and government partners to support ongoing efforts to address the homelessness crisis in Vancouver, recognizing that additional resources and services are required to more effectively serve the needs of this marginalized population. Subject to Board approval, this by-law amendment will provide a clearer framework for staff to deliver on the Board's mandate to provide, preserve, and advocate for parks and recreation services to benefit all people, communities, and the environment.

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/clc/sw

Temporary Shelters in Parks – Proposed By-law

**DRAFT By-law to Amend the Parks Control By-law
Regarding Temporary Shelters in Parks**

Note: A By-law will be prepared generally in accordance with the provisions listed below, subject to change and refinement prior to posting.

1. This By-law amends the indicated provisions of the Parks Control By-law.
2. In section 1, the Board:
 - (a) inserts the following definitions in the correct alphabetical order:

“HOMELESSNESS” means the state of having no access to permanent or temporary housing, accommodation, or shelter.”;

“NATURAL AREAS” are those areas of parks that are managed to retain their natural ecosystem attributes, are relatively undisturbed in an urban context, contain native or naturalized non-native plant species, and provide wildlife habitat, stormwater retention, and other ecosystem services; these include forests, ponds, wetlands, stream riparian zones, coastal environments, meadows, treed areas without mown understory, and unmanicured sections of golf courses.”;

“TEMPORARY SHELTER” means a tent or other temporary structure that provides shelter to a person experiencing homelessness and that is capable of being dismantled and moved, but does not include a vehicle.”; and
 - (b) renumbers the existing subsections accordingly.
3. The Board strikes out subsection 3(b) and substitutes “Except as provided in section 11A, no person shall enter or remain in a park except during the hours posted.”.
4. In section 10, the Board adds “except as provided in section 11A” after “or take up a temporary abode in any place on any portion of any park”.
5. In section 11, the Board adds “, except that this provision does not apply to a temporary shelter that complies with the provisions of this by-law” after “without the permission of the General Manager”.
6. The Boards adds the following new sections:

“11A. A person experiencing homelessness may take up temporary abode in a park if that person:

 - (a) is in a park or a specified area of a park in which a temporary shelter is not prohibited by this by-law;

Temporary Shelters in Parks – Proposed By-law

- (b) erects a temporary shelter that complies with the provisions of this by-law; and
 - (c) dismantles and moves the temporary shelter in accordance with the provisions of this by-law.
- 11B. A temporary shelter:
- (a) must not be erected:
 - i. within 25 metres of a playground or school;
 - ii. in, on or within a:
 - A. beach, pond, lake or dock;
 - B. trail, bridge, seawall, roadway or park entrance;
 - C. natural area;
 - D. flower bed or horticultural display area;
 - E. pool or water park;
 - F. sports field, sports court or golf course;
 - G. community centre or fieldhouse;
 - H. bleacher, stage, gazebo, public monument, picnic area, picnic shelter or washroom;
 - I. designated off-leash dog area; or
 - J. designated special event area for which permission has been given in accordance with this by-law;
 - (b) may only be erected from dusk until 7:00am the following day, unless in an area designated by the General Manager as acceptable for temporary daytime shelter;
 - (c) must be dismantled and moved by 8:00am each day, unless in an area designated by the General Manager as acceptable for temporary daytime shelter;
 - (d) must not impede public use of, or access to, a park or facility;
 - (e) must not hinder or interrupt the ability of staff or contractors to perform their work, as set out in section 14(a) of this by-law;
 - (f) must not exceed a maximum footprint of 9 square metres (3m x 3m), with all belongings contained within that space;
 - (g) must not contain any campfire, lighted candles, propane lanterns or stoves, or other similar devices;

Temporary Shelters in Parks – Proposed By-law

- (h) must not be used to sell goods or conduct business without the permission of the Board, as set out in section 4(a)(i) and 4(a)(ii) of this by-law; and.
- (i) must not be left unattended.

7. In section 13, the Board adds “, temporary shelter,” after “any obstruction, vehicle”.

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Oppenheimer Park Homeless Encampments - Background

Oppenheimer Park Encampments

In 2014, Oppenheimer Park was the site of a large encampment (over 100 temporary structures). Upon the application of the Park Board, the BC Supreme Court granted an injunction to enforce an Order from the Park Board General Manager for the removal of all tents and structures. This injunction was granted on the basis that conditions in the camp had deteriorated and that there was a significant danger to the inhabitants and the public.

In October 2018, another large homeless encampment developed at Oppenheimer Park until mid-May 2020 when the Province ordered it be evacuated due to COVID-19 related public health concerns. During the nearly 20 months that this encampment was in place, Park Board supported taking a different approach from prior years. As Vancouver is in the midst of an ongoing homelessness crisis and seeking an injunction would simply displace the camp residents to other public spaces, the Board passed motions directing staff to work collaboratively with the community and key stakeholders to address the immediate health and safety needs of the camp residents, while also identifying longer term solutions to provide adequate housing and support services.

Due to the duration and size of the Oppenheimer encampment, concerns around the health and safety of this already vulnerable population arose, with VPD reports of increasing violence and criminal activity in the area. Additionally, community programming and outreach services that were traditionally delivered through the park fieldhouse were suspended due to staff access and safety concerns. Several regular community events were cancelled or relocated, and the park in general was not available to the local community, which is an area already identified as not having equitable access to parks and green space.

On August 19, 2019, an Order from the General Manager of the Park Board was issued, requiring the removal of all tents and structures by 6:00pm on August 21, 2019. Prior to issuing the General Manager's Order, there was extensive collaboration with the City of Vancouver's Homelessness Services Outreach Team and BC Housing to provide alternate safe, secure, and stable accommodation for those experiencing homelessness and living in the park at that time. While 130 individuals accepted the available housing and shelter offered, several others remained in the park citing a lack of suitable housing options. The Park Board did not seek a Court injunction to clear the remaining tents and campers from Oppenheimer Park.

In May 2020, the Provincial Government used its emergency powers to order that the encampment at Oppenheimer Park be cleared. Some of the Oppenheimer Park campers moved to a lot owned by the Port of Vancouver near CRAB (Portside) Park. A subsequent injunction obtained by the Port forced the removal of that encampment and some campers have since moved to Strathcona Park.

Now that Oppenheimer Park has been cleared, staff are working to restore the space for the local community. The new encampment at Strathcona Park and the collaborative work to address the larger homelessness issues continues.