

Mayor and Council
Surrey City Hall
13450 – 104 Avenue
Surrey, BC V3T 1V8

Via: Email

clerks@surrey.ca, mayor@surrey.ca, linda.annis@surrey.ca, doug.elford@surrey.ca,
laurie.guerra@surrey.ca, brenda.locke@surrey.ca, jack.hundial@surrey.ca, mandeep.nagra@surrey.ca,
allison.patton@surrey.ca, steven.pettigrew@surrey.ca

Pivot Legal Society acknowledges that the City of Surrey occupies the territories of the Semiahmoo, Katzie, Kwikwetlem, Kwantlen, Musqueam, Qayqayt and Tsawwassen First Nations.

October 21, 2019

Dear Mayor and Council,

RE: Proposed Amendment to the Surrey Highway and Traffic By-law

We are writing on behalf of Pivot Legal Society concerning "Surrey Highway and Traffic Bylaw 1997, No. 13007, Amendment Bylaw, 2019, No. 19944" which seeks to "prohibit large vehicles such as recreational vehicles and campers from being occupied overnight while parked on City roads and to limit the allowable hours that large vehicles may be parked adjacent to businesses, public parks, schools, churches or residences."¹

We request that this correspondence be included in the official record before Council when voting on whether to pass Bylaw 19944 ("the Bylaw"). We recognize that this is a late addition to the official record, but we only recently became aware of this draft Bylaw.

Pivot Legal Society

Pivot Legal Society is a non-profit legal advocacy organization that works to undo the social stigma faced by marginalized people. Pivot's mandate is to take a strategic approach to social change, using the law to address root causes of issues that undermine the quality of life of those most on the margins. Pivot takes a responsive approach to community needs through direct consultation with people most affected by laws and state actions that entrench poverty and stigma.

¹City of Surrey, [Regular Council – Public Hearing Agenda](#) (Surrey: City of Surrey, October 21, 2019)

Our work in relation to homelessness focuses on fighting to end the criminalization of homeless people, challenging discriminatory laws and law enforcement practices that violate human rights, asserting the rights of all to healthy secure housing, and empowering people experiencing homelessness to take steps to improve their lives. We have begun a focused project on the human rights responsibilities of municipalities and how that is reflected in municipal governance. To this end we have a particular interest in any bylaws that are addressed at or impact on people experiencing homelessness.

Proposed ban

The proposed Bylaw would prohibit people from residing in their “large vehicles” in the City of Surrey (“the City”). It clearly targets individuals who rely on public space and regularly dwell in their vehicles due to limited housing options (“vehicle dwellers”). This phenomenon has been described as vehicular homelessness: the situation in which people experiencing homelessness turn to the last refuge they have available, their vehicles, when faced with the possibility of living entirely without shelter.² Vehicle dwellers, who have nowhere else to go, are disproportionately impacted by laws that restrict or prohibit public parking.³

Homelessness in Surrey

It is worth noting that homelessness is increasing in Surrey, and data indicates that homelessness increased 49% in Surrey between 2013-17.⁴ Based on the 2017 Metro Vancouver Homeless Count, 18% of Aboriginal homeless respondents lived in Surrey; furthermore, an Aboriginal person is more likely to be homeless in Vancouver and Surrey than other regions of Metro Vancouver. The City of Surrey’s Affordable Housing Strategy further notes that “the current housing supply is unable to respond effectively to existing and emerging housing demand and the rising cost of housing has made the region unaffordable for low to middle income households.”⁵ Publicly available data shows that the City lacks sufficient, affordable, accessible shelter. This is also evidenced by the response to Extreme Weather Alerts: Options Community Services Society operates shelters available to homeless individuals during instances of severe weather.⁶ Cumulatively, this information sheds light on the lived realities of homeless and precariously housed members of your community - people who are struggling to protect their health and safety on an ongoing basis.

This Bylaw targets everyone who relies on public space to survive, in the midst of a nation-wide housing crisis. The City of Surrey has many other, less intrusive avenues for addressing these concerns, rather than directly punishing and further criminalizing people.

Responsibility of Surrey City Council

As government actors, Section 7 of the *Canadian Charter of Rights and Freedoms* mandates you not take steps that actively undermine the life, liberty and security of members of your community. In the 2015 case of *Abbotsford (City) v. Shantz*, the British Columbia Supreme Court made clear that the municipal

² Jessica So et al., [Living at the Intersection: Laws & Vehicle Residency](#) (Seattle: Seattle University School of Law, 2016)

³ Ibid at page i

⁴ City of Surrey, [Master Plan for Housing the Homeless](#) (Surrey: City of Surrey, 2013)

⁵ General Manager, Planning & Development City, [Surrey Affordable Housing Strategy](#) (Surrey: City of Surrey, April 5, 2018)

⁶ Options Community Services, [Shelters and Housing Services](#) (Surrey: Options Community Services Society, 2018)

responsibility to safeguard Section 7 of the *Charter* includes ensuring there is space where homeless community members can rest and meet their other basic needs.⁷

While the City has some legislative flexibility in determining the location of these spaces, neither the *Charter* nor basic human dignity permit the City to push homeless communities to the literal margins of their community. As the Honourable Chief Justice Hinkson explained in *Shantz*:

*A balanced and minimally impairing approach would take into consideration the proximity of such spaces to services for the City's homeless and whether certain areas should be designated as environmentally sensitive, while ensuring that space exists in which the City's homeless can sleep, rest, shelter, stay warm, eat, wash and attend to personal hygiene.*⁸

In light of the above, the proposed Bylaw would violate Section 7 of the *Charter*. We note that the above considerations are the bare minimum required by law in order to be plausibly *Charter* compliant. They by no means address what is needed to properly safeguard the health, safety and dignity of individuals who are homeless or precariously housed in your community – this includes people living in vehicles and motorhomes.

In addition, the Bylaw is in conflict with the *BC Human Rights Code*. The bylaw clearly targets people who are homeless and therefore will have a disproportionate impact on them. We remind Council that persons who experience homelessness are disproportionately Indigenous. Homelessness amongst Indigenous people is an outcome of histories of land dispossession, trauma from residential schools, and systemic exclusion from mainstream society. Bylaws and policies that negatively impact them serve to exacerbate ongoing harms of colonization.

In addition, a significant number of persons who experience homelessness also live with physical and mental disabilities; British Columbia's 2011 Health of the Homeless Survey Report found that a majority of homeless persons suffered from emotional and physical abuse, brain injuries, and substance use disorders.⁹

The proposed Bylaw targets groups of people who are protected from discrimination under BC's *Human Rights Code*. Rather than attempting to alleviate historical disadvantage or ameliorate the circumstances of people living with disabilities, the proposed Bylaw seeks to punish persons for doing what they can to survive under extreme hardship.

The need to speak with local homeless community

The City of Surrey needs to ensure that bylaws aimed at vehicle dwellers are not endangering the health and safety of community members who are already suffering at the intersections of, racism, mental health challenges and socioeconomic hardship. The City must undertake a systematic stigma audit to ensure this, and future bylaws, do not further harm these members of your community. A stigma audit will identify labels, knowledge gaps, misinformation and prejudices that are driving policies which intensify disadvantage and discrimination for people who rely on public space.¹⁰

⁷ *Abbotsford (City) v. Shantz*, 2015 BCSC 1909.

⁸ *Ibid* at para. 278.

⁹ R. Michael Krausz, [British Columbia Health of the Homeless Survey Report](#) (Vancouver: Centre for Health Evaluation and Outcome Sciences, and Institute of Mental Health - University of British Columbia: Vancouver, 2011)

¹⁰ Darcie Bennett and D.J. Larkin, [Project Inclusion: confronting anti-homeless and anti-substance user stigma in British Columbia](#) (Vancouver: Pivot Legal Society, 2018)

The City needs to take proactive steps to engage with local community members who live and survive in public space and ensure that when they are taking steps to protect public places, they are not only protecting those spaces for people of means and privilege.

Before passing bylaws that will impinge upon the lives of vehicle dwellers, the City of Surrey must engage in meaningful consultation that is informed by the lived realities of the individuals and communities who are most acutely impacted by stigma and criminalization.

Sincerely,

Lyndsay Watson
Legal Director
Pivot Legal Society

Meenakshi Manoe
Manager of Community Education
Pivot Legal Society