

## **Strategies to Address Panhandling Within Specified Areas of the City**

<b>Date:</b>	May 14, 2007
<b>To:</b>	Executive Committee
<b>From:</b>	City Manager and City Solicitor
<b>Wards:</b>	All
<b>Reference Number:</b>	

### **SUMMARY**

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This report examines the authority of the City to enact and enforce a by-law to prohibit panhandling within specified areas of the City. The report proposes the formal documentation of identified concerns related to panhandling. The report also outlines the difference between panhandling and homelessness together with alternate responses to address passive panhandling.

### **RECOMMENDATIONS**

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In response to complaints about the negative impact of panhandling on specific tourist destinations and recognizing the City authorities to enact and enforce a by-law to prohibit panhandling, the City Manager and the City Solicitor propose two parallel initiatives and recommend:

1. the General Manager, Shelter, Support and Housing Administration, conduct a pilot project from July 3 until September 17, 2007 in the area bounded by Spadina, Dundas, Jarvis and Queens Quay in order to:
  - a. engage passive panhandlers who are housed and work to assess and address their needs including assistance accessing services to help address their poverty and health issues;
  - b. document the characteristics and needs of the passive panhandlers encountered; and

- c. inform business owners and their employees, members of the general public and others on ways to address panhandling without requiring enforcement;
2. the General Manager, Economic Development, Culture and Tourism, be directed to engage with the Toronto Association of Business Improvement Areas (TABIA), Toronto Entertainment District Association (TEDA), and other associations and operators of major attractions in order to determine the extent to which panhandling has impacted their business including documenting financial impacts, loss of repeat customers and other indicators relevant to the impact that panhandling has on the economic well being of the City and to develop strategies to mitigate any identified impact;
3. the Police Services Board be requested to provide Council with an assessment of their experience in enforcing the *Safe Streets Act*, including effectiveness in addressing aggressive panhandling; and
4. the City Manager report back to Executive Committee in the spring of 2008 on the results of the pilot in recommendation 1.

## **Financial Impact**

There are no financial implications as a result of this report.

## **ISSUE BACKGROUND**

At its meeting of January 24, 2007, the Economic Development Committee had before it a communication from Councillor Ootes recommending that appropriate staff report “on how the City of Toronto, working with the Toronto Police Service, can implement and enforce a by-law that would prohibit panhandling within the officially designated tourist areas.” This recommendation was referred to the City Solicitor for a report to the appropriate standing committee. An electronic copy of the communication from Councillor Ootes can be found at:

<http://www.toronto.ca/legdocs/mmis/2007/ed/bgrd/backgroundfile-635.pdf>

The City Solicitor has previously submitted a report dated September 6, 2006 to the Policy and Finance Committee which addresses various issues relating to panhandling. An electronic copy of the report can be found at:

<http://www.toronto.ca/legdocs/2006/agendas/committees/pof/pof060918/it040.pdf>

Due to the broad policy matters addressed, this report is provided by the City Manager and the City Solicitor in consultation with the Police Chief, General Manager of Economic Development, Culture & Tourism and General Manager, Shelter, Support and Housing Administration.

## COMMENTS

In this report, “panhandling” refers to the act of soliciting something of value, including money, whether or not goods or services are offered in exchange.

The first section of this report identifies the legal considerations should Council wish to implement and enforce a municipal by-law that would prohibit panhandling within officially designated tourist areas. The second section proposes the formal documentation of identified concerns related to panhandling. The third section of the report identifies specific initiatives to address passive panhandling that do not involve new enforcement mechanisms.

### 1. **City Authorities to Enact and Enforce a By-law to Prohibit Panhandling**

#### a. **Authority of the City to Enact a By-law Relating to Panhandling**

The City’s broad powers under the *City of Toronto Act, 2006* to enact by-laws relating to the “economic, social and environmental well-being of the City”, the “health, safety and well-being of persons” or the “protection of persons and property” may provide authority to enact by-laws relating to panhandling and associated behaviours.

In order to rely on one of the previously mentioned powers, the City must demonstrate that there is a connection between the activity sought to be regulated or prohibited and the power on which it relies. For example, if the City wished to regulate or prohibit panhandling on the basis of its authority to enact by-laws for the “economic, social and environmental well-being of the City”, the City would have to demonstrate that any limitations it imposes on panhandling enhance the economic, social or environmental well-being of the City.

As well, it should be noted that different powers will authorize different types of restrictions on panhandling. For example, the City would have difficulty relying on its powers in respect of the “health, safety and well-being of persons” to address passive panhandling as it would be difficult to demonstrate that passive panhandling affects the health, safety and well-being of persons. However, this power may provide sufficient authority to address panhandling that is conducted in an aggressive or intimidating manner.

#### b. **Charter Considerations**

In addition to ensuring that it has statutory authority to enact a by-law relating to panhandling, the City would have to ensure that any such by-law did not infringe rights guaranteed under the Charter.

The recent decision of the Ontario Court of Appeal in *R. v. Banks*, involving a challenge to the *Safe Streets Act, 1999* (the “SSA”) is informative in this regard. Broadly speaking, the SSA prohibits panhandling in an aggressive manner or to certain “captive audiences” such as persons in cars. In *Banks*, the Court upheld a section of the SSA which prohibits a person on a roadway from soliciting a person who is in a stopped, standing or parked vehicle. In its decision, the Court found that begging is expressive conduct which conveys meaning relating to a person’s impoverished condition and need for assistance and as such is protected by the Charter’s guarantee of freedom of expression. The Court also found that although begging is protected under the Charter’s guarantee of freedom of expression, a government could enact legislation that has an incidental impact on begging if the legislation had another purpose which was sufficiently important to warrant overriding one’s freedom of expression and if the legislation’s effect on begging had a minimal impact on freedom of expression.

The findings of the Court outlined above suggest that any attempt by the City to simply prohibit panhandling would not survive a challenge based on the Charter. However, restrictions on panhandling may be upheld if it can be demonstrated that the legislation in question is not enacted for the purpose of preventing people from conveying information about their impoverished condition but instead, the restrictions are aimed at another important governmental objective.

c. **Restrictions on the Time and Location of Panhandling**

In light of the current case law, it would appear that broad restrictions on panhandling based on time and location are unlikely to be upheld. Broad restrictions are more likely to be construed by the courts as an attempt to legislate against panhandling itself, which is beyond the scope of authority of the City. Indeed, due to the impact of the Charter, it is unlikely that any order of government would have authority to legislate against panhandling itself.

Various courts have found that expressive behaviour such as panhandling may be limited in public places if the restrictions are aimed at forms of expression which are inconsistent with the principal function or intended use of a place. Thus, any by-law limiting panhandling in public places will ultimately involve a consideration of the use of a place and a balancing of the rights of panhandlers with the rights of other users of the place in question.

There have been cases where municipal or provincial restrictions on the location of panhandling have been upheld. In those cases, the courts have

clearly been influenced by the fact that the restrictions were framed narrowly and were found to be enacted for valid municipal or provincial purposes such as the maintenance of public safety or ensuring the efficient and safe use of public sidewalks.

For example, a Vancouver by-law relating to this matter has been challenged and upheld. Vancouver's by-law prohibits soliciting "in a manner which causes an obstruction and also includes geographic restrictions similar to those found in the Province of Ontario's *Safe Streets Act*. The Court's decision to uphold the by-law was based on its findings that a) Vancouver was entitled to pass by-laws to ensure the safe and efficient use of its roads and sidewalks, b) the by-law did not cover all types of panhandling (passive panhandling was excluded), and c) the by-law did not limit the expressive content of panhandling but instead was directed at the negative consequences of certain forms of panhandling, such as obstructive or threatening panhandling.

There are no cases which have directly dealt with challenges to by-laws which impose broad limits on the time in which panhandling can be conducted. However, in a case involving Vancouver, the judge commenting on a broad time restriction (i.e. no panhandling between sunset and sunrise) in a repealed Vancouver by-law, expressed the opinion that such a provision would inevitably be struck down in the event of a Charter challenge.

Based on the above, it appears that it may be possible for the City to enact a by-law which imposed some limited restrictions on the time and location of panhandling. The ability of the City to defend such a by-law, should it be challenged, would depend on the strength of the evidentiary basis put forward by the City in support of the by-law. For example, if the City wished to enact a by-law restricting panhandling in areas frequented by tourists based on the "economic, social and environmental well-being of the City" sphere of jurisdiction, the City would need to present clear evidence that panhandling in such areas has a negative impact on the City's economic, social or environmental well-being as well as evidence that the restrictions imposed by the by-law were aimed at reducing that negative impact. In addition, the City will be required to demonstrate that restrictions on panhandling based on time and location are as limited as reasonably possible in light of the City's objectives in passing the by-law.

d. **Designation of Tourist Areas**

The City does not have any specific authority to designate tourist areas. The City may be able to rely on several of its powers in order to designate tourist areas depending on the purpose underlying the designation. Because the City does not have authority to simply regulate or prohibit

panhandling, it would not be able to designate an area as a tourist area for the sole purpose of regulating or prohibiting panhandling within that area.

Earlier this year, Council authorized the enactment of Municipal Code Chapter 510, Holiday Shopping. Chapter 510 was enacted because the *Retail Business Holidays Act* ceased to apply to the City once the *City of Toronto Act, 2006* came into effect. Chapter 510 generally prohibits retail business establishments from opening on certain specified holidays. There are several exemptions to the general prohibition including exemptions for retail business establishments located within a certain distance from specified tourist destinations such as Queens Quay West and the Distillery Historic District. Except for the purposes of Chapter 510 the City has not designated any areas of the City as tourist areas.

e. **Obstruction**

The obstruction of streets and sidewalks is a behaviour that is commonly associated with panhandling although the activities are not always carried out in conjunction with one another. The City clearly has authority to enact by-laws to prevent the obstruction of its streets and sidewalks so long as it does not do so for a purpose outside the scope of its jurisdiction and does not violate the Charter.

Currently, the issue of the obstruction of streets and sidewalks is addressed in by-laws of the former municipalities. Each of these by-laws contains different language and is therefore, subject to varying interpretation. The process of harmonizing these by-laws is currently underway, and the General Manager, Transportation Services, will bring forward the harmonized by-laws to Council for consideration in the fall of 2007.

f. **Enforcement of City By-laws**

The City can enforce its by-laws in various ways including, for example, the creation of offences and the charging of fines. The City does not have authority to enforce its by-laws in a way that "affects one's person," such as arrest, detention or use of force. With limited exceptions, it is the police that have authority to take action that affects one's person. It is important to recognize that the police, in enforcing municipal by-laws, have no greater authority than the City's own enforcement staff which means that they too cannot arrest, detain or use force as a way of enforcing the by-laws. Accordingly, if the police wish to arrest, detain or use force against a person who has violated a municipal by-law, the authority to do so must be found in other legislation or the common law rather than in municipal by-laws.

## Summary of Legal Considerations:

The City does not have authority to enact a by-law solely for the purpose of prohibiting or regulating panhandling. The City may be able to pass by-laws which impose some restrictions on panhandling if the City can establish that the by-laws are enacted in furtherance of an important municipal objective. These restrictions could include restrictions on the time, place and manner in which panhandling is conducted. Any restrictions would have to be carefully framed to ensure that Charter rights are not unduly affected. As well, the City should be able to provide clear evidence to establish that any infringement of Charter rights is minimal and necessary to promote valid City objectives. Enforcement of any by-law affecting panhandling would not involve arrest, detention or use of force regardless of whether the by-law was enforced by City staff or the police.

## 2. **Documenting Impacts of Panhandling**

As noted in Section 1 of this report, the *City of Toronto Act 2006* provides the City with broad powers to enact by-laws relating to the “economic, social and environmental well being of the City”, the “health, safety and well-being of persons” or the “protection of persons and property”. In order to rely on one of these powers to enact a by-law relating to panhandling and associated behaviours the City must demonstrate that there is a connection between the activity sought to be regulated or prohibited and the power on which it relies.

While the City has received numerous complaints from business associations, entertainment establishments and other major attractions related to panhandling, these complaints are often anecdotal and have not been tracked in any systematic way. Also, to date there has not been purposeful consultation with the business and entertainment community to document the ways in which panhandling has impacted them financially, or to discuss strategies to mitigate any negative impact.

Formal documentation of the impact of panhandling is essential if any by-law related to panhandling is to be considered in the future. At the present time, there is little evidence that could be relied upon if a by-law regulating or prohibiting panhandling was challenged to show that panhandling impacts the economic, social and environmental well being of the City, the health, safety and well-being of persons, or that panhandling impacts the protection of persons or property. The absence of such information means the City would be susceptible to legitimate challenges should it enact a by-law to regulate or prohibit panhandling.

It is because of the absence of this documented information that it is recommended that the General Manager, Economic Development, Culture and Tourism, be directed to engage with TABIA, TEDA and other associations and

operators of major attractions in order to determine the extent to which panhandling has impacted their business including documenting financial impacts, loss of repeat customers and other indicators relevant for the purpose of assessing the impact panhandling has on the economic well being of the City. Once the City has such information, the City will be able to determine whether it is appropriate and defensible to enact a by-law to restrict panhandling.

### 3. **Social Service Strategies to Address Passive Panhandling**

“Panhandling” refers to soliciting something of value, including money. It is begging, and occurs for a number of reasons. People who are housed may beg because they do not have enough money to bridge the gap between other sources of income, such as social assistance, and the cost of daily living. People who are homeless may beg to scrounge together enough money to rent a private room for a night to get off the street. People may beg because they are hungry. People may beg to be able to support loved ones. People may beg to support drug and/or alcohol addictions. This list is by no means exhaustive, but demonstrates the range of reasons why an individual may choose to panhandle.

Panhandling is often confused with homelessness. Phone calls and emails to City staff from the general public, the business community and tourists alert City staff to panhandlers who are thought to be homeless. When street outreach workers investigate, frequently the person panhandling is housed. Even some individuals with signs indicating they are homeless turn out to be housed. The findings of the April 2006 Street Needs Assessment show that fewer than one in five homeless people panhandle.

The confusion between panhandling and homelessness can result in a belief that the City is not doing enough to address homelessness – when homelessness really is not the issue. The issue is poverty and, in some cases, addiction(s).

As noted in the previous section, a distinction is made between passive and aggressive panhandling. People give money to aggressive panhandlers often out of fear for their personal safety. Aggressive panhandling is a police matter and the purview of the *Safe Streets Act*. This report recommends that the Police Services Board be requested to provide Council with an assessment of their experience in enforcing the *Safe Streets Act*, including effectiveness in addressing aggressive panhandling.

Toronto is a major urban centre that believes strongly in social inclusion, and as such needs to invest additional time and energy to assist those individuals whose poverty and/or addiction(s) drive them to begging on the street. The time has come to consider strategies to assess and address the needs of passive panhandlers who are housed. If the panhandler is homeless, there exists a response - Streets to Homes - to assist with ending their homelessness and moving into housing.



However, more can be done to better understand and test service responses to assist passive panhandlers who are housed.

a. **Current Strategy to Assist Homeless People Living Outdoors: Streets to Homes**

Streets to Homes and its partnering non-profit street outreach providers currently have neither the mandate nor the resources to address the needs of panhandlers who are housed. These organizations are very effective at housing people who are homeless and living outdoors. In just over two years the Streets to Homes strategy has assisted over 1,000 homeless people in moving directly from the street into homes. 87% of those housed remain housed.

Streets to Homes has also proven that an intensive social service response is an effective alternative to enforcement activities in many cases. For example, Streets to Homes has been effective in addressing homeless encampments without the use of enforcement. Streets to Homes coordinates the implementation of the Council approved “Interdepartmental Protocol for Homeless People Camping in Public Spaces”, a copy of which is attached as Appendix A. The Protocol outlines how City Divisions work co-operatively to achieve positive outcomes for homeless persons living in encampments in the event of a potential enforcement activity on the part of Transportation, Parks, Forestry and Recreation or Facilities and Real Estate. The Protocol stipulates that Shelter, Support and Housing Administration staff conduct a needs assessment of the individuals camping at each location and exhaust all service options before a decision to exercise by-law enforcement powers occurs.

Since February 2005, 223 homeless encampments have been investigated by Streets to Homes in 27 different wards (2, 5, 6, 7, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 32, 34, 36, 44). In 79% of the cases, the needs of the homeless individuals were met and the encampment was vacated without by-law enforcement. Supports continue to be provided even in situations where by-law enforcement is required. The Protocol demonstrates that in most instances an intensive social service response is an effective tool for addressing an issue rather than immediately implementing an enforcement response.

Further evidence of an effective social service response rather than an enforcement response can be found in the work of Streets to Homes at Nathan Phillips Square. Before Streets to Homes it was not uncommon for more than 90 homeless people to be sleeping on the Square nightly. Presently there are around a dozen people sleeping on the Square nightly. This reduction has been achieved through a social service response, not an

enforcement response. Facilities and Real Estate staff advise that they have not needed to enforce the Nathan Phillips Square by-law with respect to persons sleeping at the square since it was approved in February 2005.

b. **Pilot Project to Assess and Address the Needs of Passive Panhandlers**

As previously noted, some individuals who are housed and passively panhandle do so for economic reasons. The cost of their housing may be excessive relative to their income, and this limits their ability to access food or other basic needs. They may also passively panhandle to support drug and/or alcohol addictions. City staff may be able to help them access resources that address their needs. This may include assistance finding housing that is more affordable; locating community food programs; connecting to other activities that decrease social isolation or reconnect with employment, training, education or needed health services; or help navigating available social assistance benefits.

This report, therefore, recommends that a pilot project be launched from July 3 until September 17, 2007 in the area bounded by Spadina in the west, Jarvis in the east, Dundas to the north and Queens Quay to the south to test a new model of providing supports to individuals who are housed and passively panhandling. Just as Streets to Homes has demonstrated that a social service response can resolve homeless encampments without enforcement, the purpose of this pilot would be to see if passive panhandling can be reduced with an intensive social service response.

As a compassionate city, Toronto can provide assistance that is more appropriate than punishing people for their poverty and need.

c. **Public Education**

There is an opportunity to address the perception that all panhandlers are homeless, and to help citizens and visitors understand the plight of poor people struggling to make ends meet. There is an opportunity to highlight the work the City and its community partners are doing to end street homelessness. There is also an opportunity to share educational tools and strategies that business owners and their employees, members of the general public and others can use to address panhandling without requiring enforcement. To this end, staff will be developing and implementing a program to inform the general public, businesses, tourists and visitors to the City about the work the City is doing to end street homelessness and the differences between homelessness and panhandling.

People provide money to passive panhandlers by personal choice out of a sense of compassion. The contributor is sometimes unaware of the network of services available to marginally housed, low-income and

homeless people throughout the City. Staff will be exploring ways in which people may contribute funding to assist marginally housed, low-income and homeless people without giving money directly to passive panhandlers. This could include such things as collection boxes in business establishments; online donations through the City website; and/or other approaches that seem viable after research and consultation. Funds collected through any of these approaches will be reinvested into addressing the needs of people who are homeless on the street and passive panhandlers.

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## **SIGNATURE**

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## **ATTACHMENT**

Appendix A - Interdepartmental Protocol for Homeless People Camping in Public Spaces

## Appendix A

### City Of Toronto Interdepartmental Service Protocol For Homeless People Camping In Public Spaces

This document sets out the interdepartmental protocol intended to guide City staff in providing outreach services to homeless individuals camping outside in public spaces to assist them access permanent solutions, prior to the enforcement of City by-laws which may cause their displacement and the removal of their belongings.

#### Outreach Services to Assist Homeless People in Public Places: Overview and Goals:

The goal of the City outreach initiative is to assist and encourage people currently camping in public spaces to access safer and healthier alternatives to living outside, including housing, support services and shelter. The initiative also seeks to balance the need to provide appropriate supports to vulnerable individuals camping in public spaces with the civic responsibility of maintaining the use of public spaces for public use.

The outreach initiative to homeless persons provides a more intensive, proactive and coordinated effort among City departments. Outreach efforts to the homeless also include connecting and co-ordinating the activities of relevant community and government agencies to access a mix of supports and resources, streamline access to services, and avoid duplication of effort.

The outreach initiative provides the co-ordination and delivery of human services prior to any enforcement activities related to public spaces, such as removal of unauthorized structures, personal goods and debris. In many circumstances it is anticipated that given the appropriate outreach and supports over time, individuals will be assisted in securing better alternatives than sleeping outside and will voluntarily vacate public spaces making enforcement unnecessary.

To respond to the needs of homeless individuals, the outreach initiative is delivered on a case-by-case basis and focused on a site-by-site approach. Staff efforts will focus on larger sites where more people are in need of assistance, where there are encampments, and where there are safety concerns. Staff efforts will also seek to address the needs of single individuals camped in parks, public transit shelters and city streets.

#### City Service Principles:

The following five principles guide the initiative:

- (1) The City is committed to working with homeless individuals living outside to respond to their individual needs on a case-by-case basis by assisting them access services and supports, including permanent housing.

- (2) The City will use a co-ordinated approach between City departments in responding to the needs and issues related to homeless people camping outside. Activities will also be co-ordinated with community agencies to access a mix of supports and resources, streamline access to services, and avoid duplication of effort.
- (3) The City will engage in ongoing proactive communication with homeless individuals, the public, service providers, community agencies and other groups to assist in the successful implementation of the protocol.
- (4) The City priority is to assist homeless people access safer, sustainable, and healthier alternatives than living outside, not enforcement. Enforcement will occur after all support efforts have been attempted without success, provided that the individual has been notified that he or she is required to vacate a public space. In the event of exceptional circumstances, however, intervention may be required to address immediate public safety concerns.
- (5) The City acknowledges that homeless individuals cannot be forced to accept services and supports. However, the refusal of an individual to accept services and supports is not sufficient reason to prevent the enforcement of City by-laws prohibiting camping in public places and erecting structures.

#### Program Delivery:

The outreach initiative provides intense street outreach supports to homeless people and, only when necessary, enforcement and removal activities.

City departments involved in human service programming such as Shelter, Housing and Support, Social Services and Public will participate in the outreach initiative, with SHS having the lead role. As part of this process the initiative will focus and prioritize the provision of human services including street outreach, drop-ins, shelters, income support, housing access, and related support services.

City departments with enforcement responsibilities include Works and Emergency Services, Parks and Recreation, and Facilities and Real Estate. Enforcement activities will depend upon the success of outreach activities, the need for such services, the location of the site, and the department responsible.

#### Focused Outreach:

- (1) The City will be proactive in responding to the needs of homeless people living outside. Locations where outreach services are needed will be identified by Shelter, Housing and Support, Works and Emergency Services, Parks and Recreation and other City departments and agencies.

- (2) The Shelter, Housing and Support Division will co-ordinate the delivery of outreach services and conduct needs assessments of individuals who are sleeping outside at specific sites. The needs assessment will include identification of community agencies working with the individual or who should be requested to assist.
- (3) Each individual will be offered assistance, as required, to access health, mental health, addiction and family reunification services, income support, housing and supportive housing options, and shelter and outreach services.
- (4) Through the work of Shelter, Housing and Support staff and other community support agencies, homeless individuals will be offered personal, timed and regular street outreach to assist in moving from living outside and securing better alternatives in advance of any enforcement activities.

#### Notification and Enforcement of Public Space:

- (1) Shelter, Housing and Support will coordinate efforts to provide services for homeless people provided by community agencies and other City departments, including Public Health and Social Services and will work closely with Works and Emergency Services, Parks and Recreation, Facilities and Real Estate and other departments to ensure that the timing of enforcement activities does not conflict with the outreach efforts.
- (2) Works and Emergency Services, Parks and Recreation, Facilities and Real Estate and other City departments and agencies are responsible for providing notice to individuals that camping is to be discontinued and that personal goods, debris and structures are to be cleared from a public space or right of way.
- (3) Notices will be given to individuals in advance. The timing of issuing notices will be determined in consultation with Shelter, Housing and Support staff. Formal enforcement notices will provide relevant and clear communication to the individual. In addition, site specific information notices for each location will be attached to provide a list of resources to provide individuals with information regarding access to housing, support services and shelter in the area.
- (4) When public space enforcement activities are initiated by a City department. Shelter, Housing and Support outreach staff will at all times accompany enforcement officers to continue providing supports to individuals who up to that point had not accepted outreach services.
- (5) Where deemed necessary, by-law enforcement officers will co-ordinate activities with the Toronto Police Service to maintain the safety of staff and individuals still at the site.