

Economic and Community Development

From: Jonathan Robart <jonathan@equalityrights.org>
Sent: October 9, 2020 4:17 PM
To: Economic and Community Development
Subject: Communications for October 14th Economic and Community Development Committee Meeting
Attachments: R2HTO Encampments Rights Review.pdf
Categories: Communication

Good afternoon,

I am writing on behalf of the Right to Housing in Toronto (R2HTO) network.

I have attached a copy of R2HTO's Encampments Rights Review and we are hoping both this email and the Report can be included in the Communications material for October 14th, 2020 meeting of Economic and Community Development Committee. Specifically, we are hoping it will be included in the Communications materials for Agenda Item EC16.1 - Interim Shelter Recovery and Infrastructure Implementation Plan.

The Report identifies tangible actions the City must take to uphold the rights of those living in encampments, by applying eight human rights principles which have been identified in the UN Special Rapporteur on the Right to Adequate Housing's national protocol for responding to encampments in Canada. For ease of reference, we have included these recommendations below:

1. Recognizing Residents of Encampments as Rights Holders

Principle 1: *All government action with respect to homeless encampments must be guided by a commitment to upholding the human rights and human dignity of their residents.*

What this means for Toronto:

- We commend the City on its inter-divisional approach to encampments, and to the important efforts it has made to ensure that encampment residents are offered indoor shelter prior to the encampment being cleared and the work of Streets to Homes.
- However, the City must immediately cease to treat encampments as by-law infractions or nuisances in the urban landscape. Instead the City must recognize encampments as enactments of human rights claims, in which residents are taking action to safeguard their fundamental human rights to self-determination, dignity, life, and security of the person.
- Further, the City must recognize tents and makeshift dwellings as residents' homes, and exercise the same respect for these homes as for any other. This should include limitations on opening, entering, damaging, destroying, or removing residents' homes without their express permission.
- The City must immediately reinstate the eviction moratorium that was put in place at the beginning of the pandemic to ensure the safety and security of tenure of encampment residents.

- The City must immediately ensure its continued commitment to meaningfully engage with people in encampments to understand their concerns and offer them safe and permanent housing options before asking them to move.
- Especially considering the context of well-documented and serious concerns with police interactions with persons who are Black, Indigenous, those with mental health disabilities, and persons who are homeless, the City must immediately ensure that law enforcement is not present at conversations and interactions between City staff and encampment residents, including relocations and evictions. The complete absence of law enforcement is especially important when these interactions involve people and communities who have been historically, systematically and specifically targeted by police and other law enforcement measures.

In the longer term, in determining its approach to encampments, the City must prioritize the human rights of encampment residents. In particular, it must take into consideration its obligations under international human rights law and treaties that codify the right to adequate housing, Indigenous rights, the human rights decisions by BC courts and the Sustainable Development Goals outlined in the *2030 Agenda for Sustainable Development*.

2. Meaningful Engagement and Effective Participation of Encampment Residents

Principle 2: *Residents are entitled to meaningful participation in the design and implementation of policies, programs, and practices that affect them.*

What this means for Toronto:

- Again, we commend the systematic and thoughtful approach that the City has taken to ensuring residents of encampments are consulted on an individualized basis prior to being offered alternative spaces.
- However, the City must immediately make a greater effort to understand the concerns of residents of encampments, and to provide them with individualized options that would better meet their needs, e.g language, accessibility, timing, harm reduction, location, etc.
- The City must ensure the full engagement of residents and their advocates in developing an urgent winter plan for encampments.
- In the longer term, the City must continue to engage with residents of encampments as its policies develop. The City has a human rights obligation to consult with the residents as its approach evolves and as it continues to make decisions that directly impact their health and safety.
- Engagement efforts by the City should seek to recognize the power imbalance between residents and City authorities and mitigate this power imbalance through a variety of measures, including ensuring encampment residents have access to independent advocates and legal advice.
- In the longer term, the City must make greater efforts to ensure that encampment residents have access to independent legal advice, and the City must better recognize and continue to collaborate with front-line organizations and advocates.

3. Prohibition of Forced Evictions of Encampments

Principle 3: *Human rights law does not permit governments to destroy peoples' homes, even if those homes are made of improvised materials and established without legal authority. Governments may not remove residents from encampments without meaningfully engaging with them and identifying alternative places to live that are acceptable to them.*

What this means for Toronto:

- We appreciate that the City has taken steps to ensure that encampment residents have the time they need to move their items prior to the clearing of encampments.
- We also appreciate the efforts that the City has made in opening facilities to provide greater access to amenities including water, showers, and bathrooms, although this has still not met the needs of encampment residents.
- However, while the City claims to be clearing encampments for the safety of the homeless residents, the City may be jeopardizing the safety of encampment residents for the comfort of other residents of the City. The City should review the rationale for their current approach to ensure it aligns with human rights.
- The City should immediately reinstate its eviction moratorium and ensure that no one is moved from an encampment to a congregate setting during the pandemic.
- The City should immediately suspend inflicting any damage to people's homes and property in encampments, and provide clear and consistent guidelines about the removal, storage, and disposal of property only with residents' consent.

4. Explore All Viable Alternatives to Eviction

Principle 4: *Governments must explore all viable alternatives to eviction, ensuring the meaningful and effective participation of residents in discussions regarding the future of the encampment.*

What this means for Toronto:

- The City must ensure that encampments are protected and made safe for all residents so long as residents feel they must live in encampments.
- The City should immediately focus more attention and resources to its obligation to provide for immediate basic needs in encampments such as water and sanitation, and to acquire permanent, adequate housing for all persons facing homelessness as quickly as possible.
- Should the City consider the provision of sanctioned encampment spaces, it should work with trusted partner organizations, including faith-based organizations, to support independent encampments on partners' land, rather than establishing City-run encampments. Any such programs must be developed with the full engagement of encampment residents in their design and implementation.

5. Ensure that any Relocation is Human Rights Compliant

Principle 5: *Considerations regarding relocation must be grounded in the principle that "the right to remain in one's home and community is central to the right to housing." Meaningful, robust, and ongoing engagement with residents is required for any decisions regarding relocation.*

What this means for Toronto:

- Offers of alternative space to shelter need to take into account community connections, harm reduction and overdose prevention capacities of those spaces to ensure relocation supports, rather than compromises, healthy and human-rights compliant outcomes.
- Until the City can provide housing to encampment residents in locations of their choice, the City should ensure that encampments are safe, have access to the resources and services required.
- The City should recognize encampments as communities, and engage with encampment residents on a collective basis as well as with individual residents.
- Any engagement with encampments should build upon, and respect, existing ground rules and systems that residents have collectively put in place.
- Where residents prefer it, relocation plans should prioritize keeping communities together, and enabling residents to stay close to formal and informal supports.

6. Ensure Encampments Meet Basic Needs of Residents Consistent with Human Rights

Principle 6: *Canadian governments must ensure, at a minimum, that basic adequacy standards are ensured in homeless encampments while adequate housing options are negotiated and secured.*

What this means for Toronto:

- We commend the City for its efforts to open public buildings to residents so that they can access toilets, showers, running water and other amenities, but residents report these amenities are too few and far between, and/or are underserved or lacking in quality. These reports are especially common from encampments residents in Scarborough.
- The City must immediately ensure all residents of encampments have:
 - i. access to safe and clean drinking water
 - ii. access to hygiene and sanitation facilities
 - iii. resources and support to ensure fire safety
 - iv. waste management systems
 - v. social supports and services, and guarantee of personal safety of residents
 - vi. food, and facilities and resources that support food safety
 - vii. resources to support harm reduction
 - viii. rodent and pest prevention
 - ix. access to seasonally-appropriate resources, including provisions like hand/foot warmers, emergency blankets, etc.”
- The City must immediately develop an urgent winter plan for encampments, with the full engagement and participation of encampment residents and their advocates. This plan must include goals and timelines, with accountability for those timelines, for the provision of all necessary survival equipment to encampment residents, and the rapid relocation of all encampments to acceptable housing with all necessary supports.

7. Ensure Human-Rights Based Goals and Outcomes, and the Preservation of Dignity for Encampment Residents

Principle 7: *Governments have an obligation to bring about positive human rights outcomes in all of their activities and decisions concerning homeless encampments.*

What this means for Toronto:

- The City must immediately use all resources at its disposal to ensure encampment residents' basic needs are met, access to amenities and hygiene facilities, and that they are not removed until they can be offered permanent, appropriate and accessible housing options.

8. Respect, Protect, and Fulfill the Distinct Rights of Indigenous Peoples in all Engagement with Encampments

Principle 8: *Governments' engagement with Indigenous Peoples in homeless encampments must be guided by the obligation to respect, protect, and fulfill their distinct rights.*

What this means for Toronto:

- Encampments are located on Indigenous lands, and more than one in three encampment residents are Indigenous.
- The City must immediately ensure that its approaches to encampments are sensitive to the unique needs of Indigenous residents, recognize Indigenous peoples' right to self-determination, and work closely with Indigenous-led organizations in its work and policy development around Indigenous residents of encampments.
- The City must immediately take action to ensure that police officers and law enforcement are not involved in the outreach and relocation of residents of encampments.

On behalf of the Right to Housing in Toronto Network, we thank you for including the above in the Communications for the Economic and Development Committee's October 14th meeting.

Jonathan Robart (he/him)
Senior Advisor – Policy, Litigation & Law Reform
CERA - Centre for Equality Rights in Accommodation
427-192 Spadina Ave
Toronto, ON M5T 2C2

www.equalityrights.org | [@CERAOntario](https://twitter.com/CERAOntario) | facebook.com/CERAOntario

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**Right to
Housing**

in Toronto



Encampments Rights Review

Report on encampments
in Toronto during COVID-19

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Right to Housing in Toronto (R2HTO) is a network of individuals and organizational supporters that are working to ensure that the City of Toronto takes a rights-based approach to its housing planning and policy.

The work of R2HTO is guided by a Steering Committee that consists of ACORN Canada, Advocacy Centre for Tenants Ontario (ACTO), Centre for Equality Rights in Accommodation (CERA), Emily Paradis (Maytree Fellow, Housing and Homelessness Researcher), Federation of Metro Tenants' Association (FMTA), Joy Connelly (Housing Advocate), and Maytree.

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1. Executive Summary

While encampments have existed in Toronto's public spaces for decades, encampment sites have increased across Toronto at a concerning rate since March 2020. The COVID-19 pandemic has exacerbated the housing crisis and the congregate settings in the shelter system have brought on outbreaks, leading more people living in homelessness to seek a safer environment to sleep. Since March 2020, an estimated 1,000 - 2,000 people have been living in encampments across the city, with an over-representation of Indigenous persons among them.

The Right to Housing in Toronto Network (R2HTO) have met with City of Toronto staff and elected officials regarding our concerns with the enforcement of the City's laws and policies that relate to encampments during COVID-19. R2HTO have also met with community workers and grassroots organizations to gather reports from the ground and to understand the impact of the City's approach on encampment residents, the right to housing and human rights principles.

The City's Municipal Code prohibits encroachments, camping, dwelling, lodging and tenting on streets, sidewalks, and in parks. Court decisions with regards to the Canadian Charter of Rights and Freedoms have established that such provisions violate the human rights to life, liberty, and the security of the person.

A somewhat different approach is outlined in the City's Policy on Homelessness and People Living in Poverty, which includes elements to support encampment residents to access shelter, services and assistance prior to enforcing their removal from these sites. When individuals have refused to leave their encampment after shelter is offered – including to shelters which they feel are not safe during the pandemic – they are eventually evicted from the site in line with the Municipal Code. It appears that the City's predominant response to encampments in the past has been to enforce the removal of residents and their belongings from these sites. This has caused heightened anxiety and stress for encampment residents, making it harder for outreach workers to support them.

The City has made some adjustments to its response to encampments during COVID-19, with a temporary moratorium on clearances, and efforts to find temporary or affordable housing options for encampment residents. However, the moratorium was lifted in May, and not all individuals have been relocated. There have also been reports of encampment evictions taking place without consultation or adequate housing options offered, as well as reports from the media and advocates of involuntary clearances involving police, fire services, bylaw officers, Parks Ambassadors, and heavy machinery.

The City of Toronto has officially recognized that housing is a human right and has committed to a rights-based approach to responding to housing and homelessness issues. City staff and public officials have informed R2HTO that they are committed to align their approach with the right to housing and human rights principles, and outlined several actions they have already taken to fulfill this commitment, including engaging and consulting with various stakeholders

and providing services to encampment residents. The COVID-19 Interim Shelter Recovery Strategy adopted by the City's Planning & Housing Committee on 23 September 2020 recommends a human-rights-based response to encampments. City Council has also sought support, cooperation and funding from the Provincial and Federal governments to manage the housing and homelessness crisis, and have established plans to coordinate their responses with community partners. Meanwhile, residents of some encampments report they did not have access to basic services and sanitation, and a lack of access to drinking water has become a major health concern.

In April 2020, the UN Special Rapporteur on the Right to Adequate Housing released a national protocol for responding to encampments in Canada with eight principles to guide cities to uphold the rights of those living in encampments:¹

1. Recognize residents of encampments as rights holders and commit to uphold their human rights and dignity
2. Meaningfully engage encampment residents in the design and implementation of policies, programs and practices that affect them
3. Prohibit forced evictions, and meaningfully engage encampment residents to identify alternative places where they agree to live
4. Explore all viable alternatives to eviction, and meaningfully engage encampment residents in discussions regarding the future of the encampment
5. Comply with encampment residents' right to remain in their home and community by meaningfully engaging them in relocation decisions
6. Ensure that basic adequacy standards are met while adequate housing options are negotiated and secured
7. Ensure positive human rights outcomes and the preservation of dignity for encampment residents
8. Respect, protect, and fulfill the distinct rights of Indigenous peoples in all engagement with encampments

Drawing on evidence from City officials and advocates working with encampment residents, this report identifies tangible actions the City must take to apply these human rights principles in its approach to encampments.

¹ Leilani Farha & Kaitlin Schwan (2020). *National Protocol for Homeless Encampments in Canada: A Human Rights Approach* <http://www.unhousingrapp.org/user/pages/07.press-room/A%20National%20Protocol%20for%20Homeless%20Encampments%20in%20Canada.pdf>

2. Introduction

In December 2019, the City of Toronto took the historic step of recognizing housing as a human right in its HousingTO 2020-30 Action Plan. Since March 2020, the COVID-19 epidemic has exacerbated the housing crisis in Toronto and rendered many people housing insecure and homeless. Toronto's shelter system, comprised primarily of congregate settings, has experienced COVID outbreaks in dozens of shelters, resulting in 647 cases² and four deaths³ as of September 22, 2020. As a result, over the past few months, encampments have appeared across the City at an unprecedented rate. Many residents of encampments say that they are there because they feel safer in this environment than in the shelter system during COVID-19; others simply can't access shelter space.

In considering the City's human rights obligations in relation to encampments, it is important to understand that encampments are by no means an adequate response to homelessness and the housing crisis. In fact, the very existence of encampments is indicative of the failure to respect, protect, and fulfill the human right to adequate housing. However, in the context of this failure, encampments represent residents' best effort to claim their rights to self-determination, security of the person, and dignity within a range of deeply inadequate options.

This report is based on discussions R2HTO has conducted with staff and elected officials at the City of Toronto, as well as with community workers and grassroots organizations serving encampment residents. It also reviews the City of Toronto's policies on encampments, jurisprudence from Charter cases on urban encampments, and human rights documents including the *National Protocol for Homeless Encampments in Canada: A Human Rights Approach*, developed by Leilani Farha and Kaitlin Schwan.

Drawing on all of these sources, this report provides tangible recommendations about how the City can ensure that its approach to encampments adheres to human rights principles. While we heard many differences between the perspectives of the City, front-line workers, encampment residents, and human rights instruments, there is one consistent point of agreement: the proliferation of encampments across Toronto is unacceptable and requires an urgent and coordinated response. This is all the more pressing with cold winter weather only weeks away. In order to be successful, this response must be founded on human rights principles, and must uphold human rights in every aspect of its implementation.

² City of Toronto, "COVID-19: Status of Cases in Toronto" (30 August 2020), online: <<https://www.toronto.ca/home/covid-19/covid-19-latest-city-of-toronto-news/covid-19-status-of-cases-in-toronto/>>.

³ Toronto Drop-In Network, "COVID-19 Guidance and Resources for Drop-Ins" (12 March 2020), online: <<https://tdin.ca/announcement.php?id=2127#covidstatus>>.

3. The City of Toronto's policies and actions regarding encampments

Encampments in Toronto have increased significantly in the context of COVID-19. Estimates of the number of residents of encampments in Toronto vary between 1000-2000.⁴ Between late April 2020 and September 21, 2020, City staff reported having relocated 845 individuals, living in more than 300 tents, from 59 encampment sites into shelters, hotels, and other interim housing.⁵ But the issues surrounding encampments in Toronto long predate the pandemic. A March 2018 report found that the City had removed more than 300 encampments in the previous year.⁶

Also significant to any discussion of encampments and human rights is the over-representation of Indigenous persons among those sleeping outside. According to the 2018 Street Needs Assessment, Indigenous persons make up 2.5% of the general population in Toronto, 16% of persons facing homelessness, and 38% of those sleeping outside.

3.1. Municipal Code

Section 743 of Toronto's Municipal Code prohibits encroachments ("any device, equipment, object, structure or vegetation") on streets or sidewalks and sets out processes for remedial action, including giving written notice, impounding, and disposing of seized objects. Camping, dwelling, lodging, and tenting in parks is prohibited under Sections 608-13 and 14 of the Toronto Municipal Code.

BC court decisions in Charter challenges on similar anti-camping bylaws (e.g. *Victoria v. Adams* 2008⁷ / 2009⁸, *Abbotsford v. Shantz* 2015⁹, *BC v. Adamson* 2016¹⁰) establish that such

⁴ Muriel Draaisma, "City in Talks to Move Homeless People Out of Tents in 2 Parks As Nearby Residents Say They Feel Unsafe", *CBC News* (28 June 2020), online: <<https://www.cbc.ca/news/canada/toronto/city-mayor-george-hislop-park-sanctuary-homeless-encampment-residents-1.5630356>>.

⁵ Consultation with City Staff – 27 August 2020

⁶ Liam Casey, "Encampments in Toronto Ravines Paint Bleak Picture of City's Struggle with Homelessness", *The Canadian Press* (16 March 2018), online: <<https://cfox.com/news/4087051/toronto-ravines-encampments-homeless/>>.

⁷ *Victoria(City) v. Adams* (2008, BCSC 1363). Online: <https://www.canlii.org/en/bc/bcsc/doc/2008/2008bcsc1363/2008bcsc1363.html?resultIndex=1>

⁸ *Victoria(City) v. Adams* (2009, BCCA 563). Online: <https://www.canlii.org/en/bc/bcca/doc/2009/2009bccca563/2009bccca563.html?resultIndex=1>

⁹ *Abbotsford (City) v. Shantz* (2016 BCSC 2437). Online: <https://www.canlii.org/en/bc/bcsc/doc/2016/2016bcsc2437/2016bcsc2437.html?resultIndex=1>

¹⁰ *British Columbia v. Adamson* (2016 BCSC 1245). Online: <https://www.canlii.org/en/bc/bcsc/doc/2016/2016bcsc1245/2016bcsc1245.html?resultIndex=1>

provisions violate rights under Section 7 of the Charter, which guarantees life, liberty, and security of the person.

In particular, these decisions have found:

- In places without enough shelter beds for all people facing homelessness, some people have no choice but to sleep outside;¹¹
- Sleep is necessary to human life and the ability to sleep outside with adequate shelter therefore engages the rights found in the Canadian Charter of Rights and Freedoms (s. 7);¹²
- Collective encampments provide for the safety and security of their inhabitants;¹³
- Encampments cannot be removed if occupants have no place else to go;¹⁴
- Availability of adequate alternatives cannot be established simply by counting shelter beds, because options must be accessible to the needs of the person; and
- Inadequate shelter conditions, such as mats on the floor, are not considered adequate alternatives.¹⁵

3.2. Parks and Recreation Policy on Homelessness and People Living in Poverty (2005)

While the Municipal Code provisions are enforced by bylaw officers and police, the City of Toronto Parks and Recreation Policy on *Homelessness and People Living in Poverty* (2005) outlines a somewhat different approach, in which City staff are directed to provide information and supports to residents prior to enforcement actions. Elements of this policy include:

- identifying opportunities for shelter, improving access to community services, and promoting safe environments to people who are homeless;
- promoting and delivering human services prior to any enforcement activities, with these services delivered on a case-by-case basis with a site-specific approach;
- ensuring Shelter, Support and Housing outreach staff accompany enforcement officers and continue providing supports to individuals who have refused to accept outreach services when public space enforcement activities are initiated by a City division;
- making every effort to provide assistance, call 211, or refer homeless people to services;

¹¹ *Supra* note 7 at para 166.

¹² *Ibid.* at para 74.

¹³ *Vancouver (City) v. Wallstam* 2017 BCSC 937 at para 60. Online: <https://www.canlii.org/en/bc/bcsc/doc/2017/2017bcsc937/2017bcsc937.html?resultIndex=1>

¹⁴ *Supra* note 8 at para 124-126.

¹⁵ Pivot Legal Society "Tent Cities: Fighting displacement when there's nowhere else to go" Online, http://www.pivotlegal.org/tent_cities_fighting_displacement_when_there_s_nowhere_else_to_go

- Providing training for its staff and volunteers focused on developing sensitivity to issues relating to homelessness and people living in poverty.

Parks and Recreation has also implemented the Parks Ambassador program which aims to “ensure the city’s parks are accessible, equitable, and safe places for all.” A mobile crew of Parks Ambassadors promote “passive and recreational use” of parks and work to resolve conflicts between park patrons.¹⁶

Notwithstanding the supportive approach outlined in the policy, if individuals refuse to leave their encampment, the encampment will be cleared in line with bylaws: after a 72-hour period, and at the discretion of the General Manager, they will provide Police the Trespass to Property Act Police Letter, which gives the Police authority to remove both the individual(s) and their belongings from the park.

Shelter, Support and Housing Administration staff began updating the Parks and Recreation Policy on Homelessness and People Living in Poverty before the COVID-19 pandemic began, but that work was paused as a result of the City's response to the COVID-19 Pandemic, including the redeployment of SSHA policy staff. Work on these updates will continue throughout the remainder of 2020.

3.3. Response to COVID-19

Since March 2020, the number and visibility of encampments have significantly increased, both downtown and in the inner suburbs. Early in the pandemic, in accordance with broad public health guidance from the US Centres for Disease Control, the City issued a moratorium on encampment clearances, but this moratorium was lifted in May. The City announced plans to provide residents with temporary housing in hotels and apartment buildings, as well as some permanent affordable housing options. At the same time, news media reported involuntary clearances of large encampments involving police, fire services, and heavy machinery. Residents and advocates interviewed in these reports said that not all residents had been relocated into temporary or permanent housing. In late April, the City was subject to a lawsuit alleging failure to adhere to physical distancing guidelines in shelters, respite centres, and refugee settlement centres. Since the first outbreak in a City shelter in April, to date there have been 647 cases of COVID in Toronto shelters, resulting in four deaths.

R2HTO has been monitoring this situation and meeting with staff and officials regarding our concerns over the handling of encampments. In these discussions, City staff and public officials have told us they are committed to ensuring their dealings with encampments are aligned with the right to housing and human rights principles.

¹⁶ <https://www.toronto.ca/311/knowledgebase/kb/docs/articles/parks,-forestry-and-recreation/parks/parks-ambassadors.html>

Actions the City has taken in order to fulfill this commitment include:

- establishment of an intergovernmental and sectoral response to COVID-19 involving the city, provincial/federal government, provincial healthcare sector, and community non-profits.
- establishment of an interdivisional working group and steering committee to assess the encampment sites, and to consider the need for social distancing, access to facilities and drinking water, the size of the sites, and the fire risks.¹⁷
- engagement with community-based organizations to address issues in the encampments and understand how to strategically work with people living in the encampments
- deployment of integrated teams of outreach workers, fire services, and Parks Ambassadors to perform wellness checks at sites.¹⁸
- enhancing street outreach efforts by focusing on safety of encampments including:
 - Increased cleaning and garbage removal
 - Active screening for COVID-19 symptoms, referral to testing and isolation
 - Provision of information on physical distancing strategies for encampments
 - Provision of hygiene kits and information to prevent transmission¹⁹
- providing Streets to Homes outreach teams to work with community partners to provide individuals residing outdoors, especially those in encampments, with offers of alternative housing.²⁰
- not clearing an encampment without making everyone an offer of shelter, which includes congregate shelter and respites sites, transitional housing, and/or permanent housing, but may not be “an offer of their choice.”²¹
- ensuring there is space for individuals inside the shelter system before clearing an encampment.²²
- deploying Toronto Fire Services for public education and prevention measures, such as education around smoking in tents and flammable materials, negotiating the voluntary surrender of fuel sources, and working with encampment residents to reduce fire risks in encampments.

¹⁷ Comments from City Staff, 26 May 2020.

¹⁸ Comments from City Staff, 26 May 2020.

¹⁹ City of Toronto, Backgrounder. *City of Toronto COVID-19 Response for People Experiencing Homelessness* (27 August 2020), online: <<https://www.toronto.ca/news/city-of-toronto-covid-19-response-for-people-experiencing-homelessness/>>. (hereinafter: *Backgrounder*)

²⁰ City of Toronto, News Release, “City of Toronto Taking Action to Fight COVID-19 by Providing Interim Housing to People Sleeping in Encampments” (29 April 2020), online: <<https://www.toronto.ca/news/city-of-toronto-taking-action-to-fight-covid-19-by-providing-interim-housing-to-people-sleeping-in-encampments/>>.

²¹ Comments from City Staff, 26 May 2020. Liam Casey, “City Clearout of Toronto Homeless Encampments Leads to Standoff with Residents”, *The Canadian Press* (15 May 2020), online: <<https://www.cp24.com/news/city-clearout-of-toronto-homeless-encampments-leads-to-standoff-with-residents-1.4941548>> [Casey].

²² Joanna Lavoie, “Don’t Clear Out Moss Park’s Homeless Encampment, Toronto Advocates Say”, *Toronto.com* (18 June 2020), online: <<https://www.toronto.com/news-story/10036541-don-t-clear-out-moss-park-s-homeless-encampment-toronto-advocates-say/#.XuvpZbPUojQ.twitter>> [Lavoie].

- opening City-operated facilities with showers, washrooms, and drinking water for individuals experiencing homelessness.²³
- ongoing acquisition of temporary units in hotels and motels to provide single dwelling spaces to residents of encampments and exploring opportunities to acquire properties in order to provide long-term housing for those relocated to these buildings.²⁴
- opening temporary sites including hotel programs, community centres and others to move people indoors.
- enhancement of the Rapid Housing initiative
- increasing City of Toronto staff's efforts to bring bottled water to encampments.
- deploying portable washrooms with hand washing stations at some large encampment sites for 24 hour access to sanitation services.

On June 29-30, 2020 City Council passed a motion to call upon Provincial and Federal governments to immediately create an intergovernmental emergency response to Toronto's housing and homelessness crisis. The City will also call upon the Governments to immediately provide funding and resourcing for services used by homeless individuals, as well as to take action by coordinating with community partners in managing the crisis. The motion indicated that managing the crisis requires providing an adequate supply of water and sanitation at encampment sites until adequate indoor accommodation is available. Councillor Wong-Tam, who moved the motion, noted the considerable time involved in moving individuals from encampment sites, and that people are living in poor conditions in the meantime including lacking access to running water and sanitation facilities and an increase in overdose deaths, violence, and fires.

The COVID-19 Interim Shelter Recovery Strategy adopted by the City's Planning & Housing Committee on 23 September 2020 recommends a human-rights-based response to encampments. Recommendations include:

- Addressing safety threats, racism, transphobia, and other issues in shelters that cause people to seek shelter in encampments;
- Ensuring the safety and survival of encampment residents;
- Creating a transparent and accountable plan to move residents into housing;
- Recognition of encampment residents as rights-holders, and measures to ensure their ongoing meaningful engagement and participation in decisions regarding encampments.

²³ *Backgrounder*, supra note 19.

²⁴ *Ibid.*

4. Reports from the ground: what the community is saying about the City's approach to encampments

EVICITION, RELOCATION, AND OFFERS OF SHELTER

- City staff have said encampment residents are being offered indoor space before being asked to move. However, if an encampment resident does not accept alternative housing they will eventually be evicted from the encampment site.²⁵
- Outreach workers report that encampment evictions have heightened anxiety and stress for residents, have made it harder for outreach workers to maintain contact with people living outside, to connect with residents, who are dispersing and moving out of fear, and to provide critical supports and services.²⁶ Support workers have identified an increase in overdoses on and immediately before eviction day.²⁷
- Outreach workers report that people are not being offered single dwelling spaces, they are being removed from encampments without consultation, and their belongings are being forcibly removed.
- The location of the alternative spaces being offered to encampment residents often does not keep them within the same neighbourhoods and near the services they need.
- Front-line workers report being unable to access shelter space for encampment residents who opt to enter a shelter due to shelters being at capacity.
- People are reported to be returning to encampments in the downtown core from shelter hotels in the inner suburbs because they are unable to access formal and informal supports in those locations. Meanwhile, residents of encampments in Scarborough and other inner suburbs report not having access to nearby shelter hotels because residents of downtown encampments are prioritized for relocation by the City.
- Outreach workers and encampment residents have expressed that isolating in place is a better option than going to a shelter, and say that some residents of encampments are offered spaces in hotel rooms, while others are being sent to shelters, which are seen as unsafe due to COVID-19.²⁸
- Inadequate information regarding shelter hotels, including the rules for these spaces and the length of stays that are permitted, are creating anxiety and confusion for encampment residents who are offered shelter. This is also creating reluctance among residents to move from an encampment to a new (unknown) situation for potentially a short period of time.
- Advocates state that a moratorium on encampment evictions would relieve fear and anxiety for residents, reduce negative health impacts of frequent moves, and enable health providers and outreach workers to better maintain contact with residents.²⁹

²⁵ Comments from City Staff, 26 May 2020.

²⁶ Comments from Toronto Drop-In Network meeting, June 2020.

²⁷ Comment from encampment support worker, August 27 2020.

²⁸ Miller, *supra* note 13.

²⁹ Comments from Toronto Drop-In Network meeting, June 2020.

ENCAMPMENT CONDITIONS

- Residents of the Moss Park encampments had reported that they did not have access to clean drinking water. Some residents of the encampments felt the encampment was not safe, but expressed worry that shelters were less safe during the pandemic.³⁰
- Many encampment residents have expressed their preference to remain outside due to concerns about contracting COVID-19 in a shelter. Encampment residents may also avoid shelters because they experience these environments as unsafe, inaccessible, harmful to their mental health, or restrictive of their autonomy.³¹
- Front-line workers and encampment residents report frustration with the City's lack of response to homelessness in the suburbs, especially regarding the lack of reasonable access to washrooms.
- Encampment residents are reporting little to no access to basic services such as washrooms and showers, and that encampments are not adequately equipped with hygiene resources.
- Lack of access to drinking water in encampments has come to the fore as a major health concern, especially during heat alerts. In the absence of City action, a volunteer network has initiated and continues a donation-based program to deliver drinking water to some encampments.
- Drop-in workers report safety concerns for women in encampments, including sexual assault.

INTERVENTION BY POLICE, FIRE SERVICES, BYLAW ENFORCEMENT AND PARKS AMBASSADORS

- Toronto Police Services continue to be present during efforts to evict encampment residents and in response to 311 based “nuisance” calls. There have been reports from encampment residents of harassment and assault by the police.³²
- Social media accounts of outreach workers, Toronto Drop-In Network, Shelter and Housing Justice Network, Encampment Support Network and other authoritative sources have shared photos of police at encampment sites on Twitter.
- In May, advocates reported witnessing police and City engagement with people at encampments under the Gardiner, noting that law enforcement and bulldozers were being used to clear encampments and police have threatened to clear the belongings of residents from encampments.³³

³⁰ Lavoie, *supra* note 12.

³¹ Casey, *supra* note 11.

³² Communication from advocate, September 15, 2020.

³³ Mira Miller, “Activists in Toronto Unite to Stop Clearing of Homeless Encampments Under Gardiner”, *blogTO* (May 2020), online: <<https://www.blogto.com/city/2020/05/advocates-toronto-unite-stop-city-clearing-homeless-encampments-under-gardiner/>> [Miller].

- Advocates report that Toronto Fire Services is used more for enforcement than proactive safety and fire prevention. Encampment residents report the need for fire safety equipment and there are reports that Toronto Fires Services have removed resident's cooking equipment from encampments.

5. Recommendations: How the City can uphold its human rights obligations

Leilani Farha and Kaitlin Schwan's *National Protocol for Homeless Encampments in Canada: A Human Rights Approach* (2020)³⁴ provides the City with clear direction about what can and should be done to uphold the rights of those living in encampments.³⁵ Below R2HTO has provided some key recommendations about actions the city must take to adhere to its human rights obligations.

1. Recognizing Residents of Encampments as Rights Holders

Principle 1: *All government action with respect to homeless encampments must be guided by a commitment to upholding the human rights and human dignity of their residents.*

What this means for Toronto:

- We commend the City on its inter-divisional approach to encampments, and to the important efforts it has made to ensure that encampment residents are offered indoor shelter prior to the encampment being cleared and the work of Streets to Homes.
- However, the City must immediately cease to treat encampments as by-law infractions or nuisances in the urban landscape. Instead the City must recognize encampments as enactments of human rights claims, in which residents are taking action to safeguard their fundamental human rights to self-determination, dignity, life, and security of the person.
- Further, the City must recognize tents and makeshift dwellings as residents' homes, and exercise the same respect for these homes as for any other. This should include limitations on opening, entering, damaging, destroying, or removing residents' homes without their express permission.

³⁴ The report was published during Leilani Farha's tenure as UN Special Rapporteur on the Right to Adequate Housing

³⁵ <http://www.unhousingrapp.org/user/pages/07.press-room/A%20National%20Protocol%20for%20Homeless%20Encampments%20in%20Canada.pdf>

- The City must immediately reinstate the eviction moratorium that was put in place at the beginning of the pandemic to ensure the safety and security of tenure of encampment residents.
- The City must immediately ensure its continued commitment to meaningfully engage with people in encampments to understand their concerns and offer them safe and permanent housing options before asking them to move.
- Especially considering the context of well-documented and serious concerns with police interactions with persons who are Black, Indigenous, those with mental health disabilities, and persons who are homeless, the City must immediately ensure that law enforcement is not present at conversations and interactions between City staff and encampment residents, including relocations and evictions. The complete absence of law enforcement is especially important when these interactions involve people and communities who have been historically, systematically and specifically targeted by police and other law enforcement measures.
- In the longer term, in determining its approach to encampments, the City must prioritize the human rights of encampment residents. In particular, it must take into consideration its obligations under international human rights law and treaties that codify the right to adequate housing, Indigenous rights, the human rights decisions by BC courts and the Sustainable Development Goals outlined in the *2030 Agenda for Sustainable Development*.

2. Meaningful Engagement and Effective Participation of Encampment Residents

Principle 2: *Residents are entitled to meaningful participation in the design and implementation of policies, programs, and practices that affect them.*

What this means for Toronto:

- Again, we commend the systematic and thoughtful approach that the City has taken to ensuring residents of encampments are consulted on an individualized basis prior to being offered alternative spaces.
- However, the City must immediately make a greater effort to understand the concerns of residents of encampments, and to provide them with individualized options that would better meet their needs, e.g language, accessibility, timing, harm reduction, location, etc.
- The City must ensure the full engagement of residents and their advocates in developing an urgent winter plan for encampments.
- In the longer term, the City must continue to engage with residents of encampments as its policies develop. The City has a human rights obligation to consult with the residents as its approach evolves and as it continues to make decisions that directly impact their health and safety.

- Engagement efforts by the City should seek to recognize the power imbalance between residents and City authorities and mitigate this power imbalance through a variety of measures, including ensuring encampment residents have access to independent advocates and legal advice.
- In the longer term, the City must make greater efforts to ensure that encampment residents have access to independent legal advice, and the City must better recognize and continue to collaborate with front-line organizations and advocates.

3. Prohibition of Forced Evictions of Encampments

Principle 3: *Human rights law does not permit governments to destroy peoples' homes, even if those homes are made of improvised materials and established without legal authority. Governments may not remove residents from encampments without meaningfully engaging with them and identifying alternative places to live that are acceptable to them.*

What this means for Toronto:

- We appreciate that the City has taken steps to ensure that encampment residents have the time they need to move their items prior to the clearing of encampments.
- We also appreciate the efforts that the City has made in opening facilities to provide greater access to amenities including water, showers, and bathrooms, although this has still not met the needs of encampment residents.
- However, while the City claims to be clearing encampments for the safety of the homeless residents, the City may be jeopardizing the safety of encampment residents for the comfort of other residents of the City. The City should review the rationale for their current approach to ensure it aligns with human rights.
- The City should immediately reinstate its eviction moratorium and ensure that no one is moved from an encampment to a congregate setting during the pandemic.
- The City should immediately suspend inflicting any damage to people's homes and property in encampments, and provide clear and consistent guidelines about the removal, storage, and disposal of property only with residents' consent.

4. Explore All Viable Alternatives to Eviction

Principle 4: *Governments must explore all viable alternatives to eviction, ensuring the meaningful and effective participation of residents in discussions regarding the future of the encampment.*

What this means for Toronto:

- The City must ensure that encampments are protected and made safe for all residents so long as residents feel they must live in encampments.
- The City should immediately focus more attention and resources to its obligation to provide for immediate basic needs in encampments such as water and sanitation, and to acquire permanent, adequate housing for all persons facing homelessness as quickly as possible.
- Should the City consider the provision of sanctioned encampment spaces, it should work with trusted partner organizations, including faith-based organizations, to support independent encampments on partners' land, rather than establishing City-run encampments. Any such programs must be developed with the full engagement of encampment residents in their design and implementation.

5. Ensure that any Relocation is Human Rights Compliant

Principle 5: *Considerations regarding relocation must be grounded in the principle that “the right to remain in one’s home and community is central to the right to housing.” Meaningful, robust, and ongoing engagement with residents is required for any decisions regarding relocation.*

What this means for Toronto:

- Offers of alternative space to shelter need to take into account community connections, harm reduction and overdose prevention capacities of those spaces to ensure relocation supports, rather than compromises, healthy and human-rights compliant outcomes.
- Until the City can provide housing to encampment residents in locations of their choice, the City should ensure that encampments are safe, have access to the resources and services required.
- The City should recognize encampments as communities, and engage with encampment residents on a collective basis as well as with individual residents.
- Any engagement with encampments should build upon, and respect, existing ground rules and systems that residents have collectively put in place.
- Where residents prefer it, relocation plans should prioritize keeping communities together, and enabling residents to stay close to formal and informal supports.

6. Ensure Encampments Meet Basic Needs of Residents Consistent with Human Rights

***Principle 6:** Canadian governments must ensure, at a minimum, that basic adequacy standards are ensured in homeless encampments while adequate housing options are negotiated and secured.*

What this means for Toronto:

- We commend the City for its efforts to open public buildings to residents so that they can access toilets, showers, running water and other amenities, but residents report these amenities are too few and far between, and/or are underserved or lacking in quality. These reports are especially common from encampments residents in Scarborough.
- The City must immediately ensure all residents of encampments have:
 - i. access to safe and clean drinking water
 - ii. access to hygiene and sanitation facilities
 - iii. resources and support to ensure fire safety
 - iv. waste management systems
 - v. social supports and services, and guarantee of personal safety of residents
 - vi. food, and facilities and resources that support food safety
 - vii. resources to support harm reduction
 - viii. rodent and pest prevention
 - ix. access to seasonally-appropriate resources, including provisions like hand/foot warmers, emergency blankets, etc.”
- The City must immediately develop an urgent winter plan for encampments, with the full engagement and participation of encampment residents and their advocates. This plan must include goals and timelines, with accountability for those timelines, for the provision of all necessary survival equipment to encampment residents, and the rapid relocation of all encampments to acceptable housing with all necessary supports.

7. Ensure Human-Rights Based Goals and Outcomes, and the Preservation of Dignity for Encampment Residents

***Principle 7:** Governments have an obligation to bring about positive human rights outcomes in all of their activities and decisions concerning homeless encampments.*

What this means for Toronto:

- The City must immediately use all resources at its disposal to ensure encampment residents’ basic needs are met, access to amenities and hygiene

facilities, and that they are not removed until they can be offered permanent, appropriate and accessible housing options.

8. Respect, Protect, and Fulfill the Distinct Rights of Indigenous Peoples in all Engagement with Encampments

***Principle 8:** Governments' engagement with Indigenous Peoples in homeless encampments must be guided by the obligation to respect, protect, and fulfill their distinct rights.*

What this means for Toronto:

- Encampments are located on Indigenous lands, and more than one in three encampment residents are Indigenous.
- The City must immediately ensure that its approaches to encampments are sensitive to the unique needs of Indigenous residents, recognize Indigenous peoples' right to self-determination, and work closely with Indigenous-led organizations in its work and policy development around Indigenous residents of encampments.
- The City must immediately take action to ensure that police officers and law enforcement are not involved in the outreach and relocation of residents of encampments.