CHALLENGES & RESPONSES TO HOMELESSNESS DURING PANDEMIC

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CITY OF VICTORIA

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Presentation Outline

- Brief overview of key BC cases
- Case study #1: City of Victoria
- Case study #2: City of Vancouver

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Victoria (City) v. Adams 2009 BCCA 563

-litigation arose in 2005 due to tent city in small urban park in Victoria known as Cridge Park

-the court held that portions of two of City of Victoria's bylaws and its operational policy were overbroad and unconstitutional because they prohibited the erection of any kind of temporary shelter (including tents, tarps or cardboard boxes) overnight in parks when there was a lack of available temporary shelter beds to accommodate the city's homeless population.

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Victoria (City) v. Adams 2009 BCCA 563

-narrow finding, no freestanding right to erect shelter in public parks but case has been used as a building block for future cases.

-as a result of Adams, City amended its parks bylaw to allow for overnight sheltering by homeless persons in certain parks and areas within parks between the hours of 7pm and 7am (8pm-7am when Daylight Savings Time in effect).

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Abbotsford (City) v. Shantz 2015 BCSC 1909

- In 2013 a tent city was established by homeless people in Abbotsford's Jubilee Park.
- In late 2013 Abbotsford obtained an injunction to remove the tent city.
- The tent city was removed

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Abbotsford (City) v. Shantz

The B.C./Yukon Association of Drug War Survivors (DWS) challenged the constitutionality of the Abbotsford:

Parks Bylaw
Good Neighbour Bylaw; and
Street and Traffic Bylaw

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Abbotsford (City) v. Shantz

The Abbotsford decision does not significantly expand the effect of the *Adams* decision.

The DWS sought to expand the right to camp in Parks to daylight hours but were unsuccessful.

Abbotsford decision does accept that there must be sufficient “accessible” shelter spaces.

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British Columbia v. Adamson 2016 BCSC 584 & 2016 BCSC 1245

-Court rejected Province's first application for interlocutory injunction to remove tent encampment on courthouse lawn in Victoria.

-Province failed to demonstrate irreparable harm b/c Province had allowed encampment for several months

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British Columbia v. Adamson 2016 BCSC 584 & 2016 BCSC 1245

-Second application succeeded b/c conditions had deteriorated significantly

-The case reiterates the commentary in *Shantz* about the need not just for an adequate # of shelters, but shelters that are accessible/low barrier

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British Columbia v. Adamson 2016 BCSC 584 & 2016 BCSC 1245

[184] In addition, many of the homeless cannot access those spaces which do exist for variety of reasons. While the new options provided by the Province address some of the identified barriers, they do not make the spaces available to everyone. Individuals who have high needs, or who have had problematic relationships with the staff at the other shelters run by the agencies administering the new options, will not be able to access these spaces even if they do become available. Many of the current residents of the Encampment have had extremely negative experiences in the current shelter system, where large groups of high needs individuals are crowded together with minimal support, and rigid rules regarding attendance make it difficult to secure or maintain a spot.

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After Adamson and Shantz

Saanich (District) v. Brett, 2018 BCSC 164

- Encampment in a public park
- Municipality had adopted a By-law that allowed overnight camping as recommended in Shantz
- Court cited fire safety, impediment to public use, health risks and the effect of the new by-law as factors in favour of the injunction
- Injunction granted

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After Adamson and Shantz

N*anaimo (City) v. Courtoreille,* 2018 BCSC 1629

- Encampment on public lands but not a park
- Occupants had breached a locked fence to gain access
- Municipal By-law allowed camping in Parks pursuant to *Shantz*
- Evidence of both ongoing safety issues, increased crime, and of unused shelter spaces
- Injunction granted

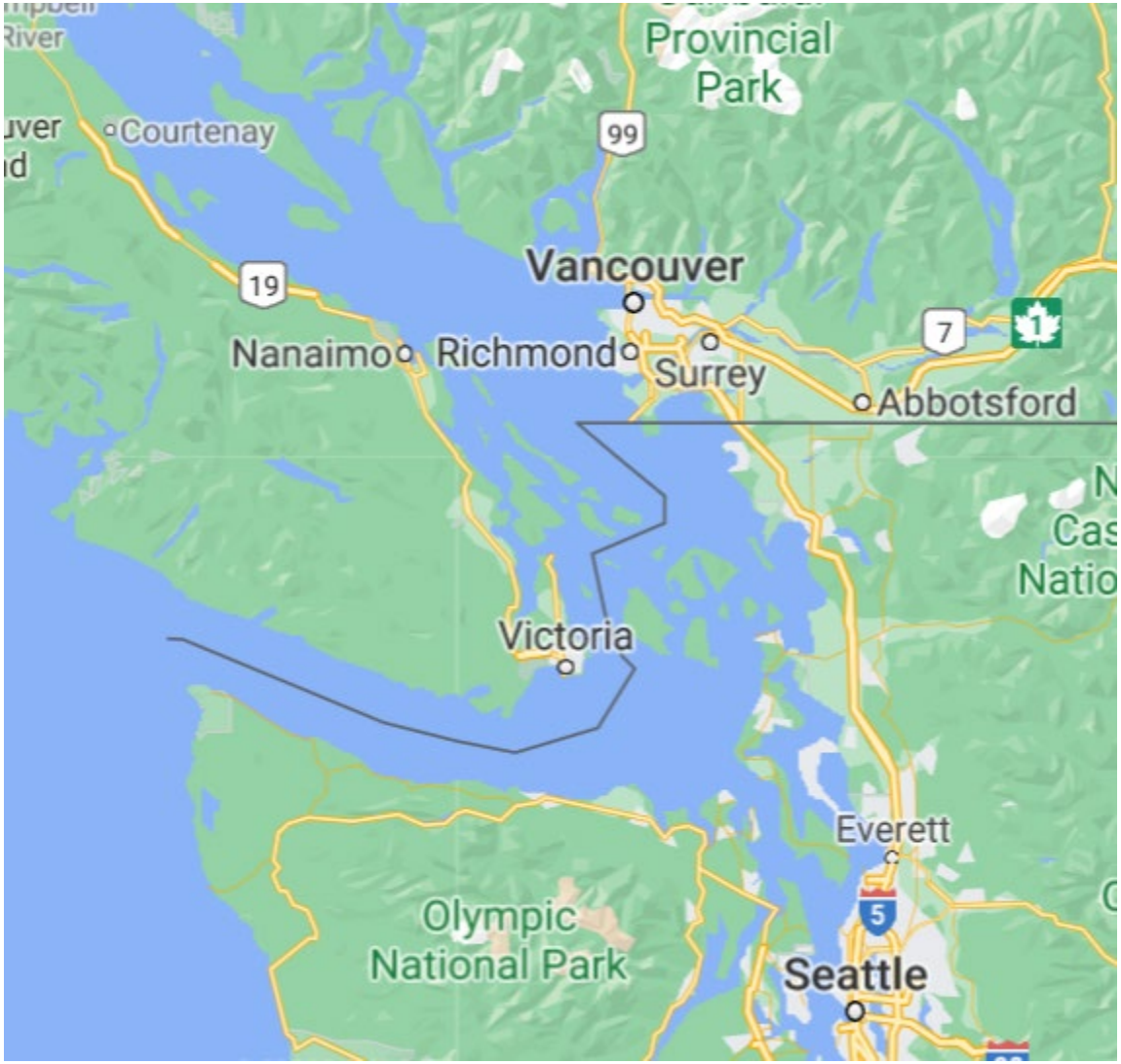
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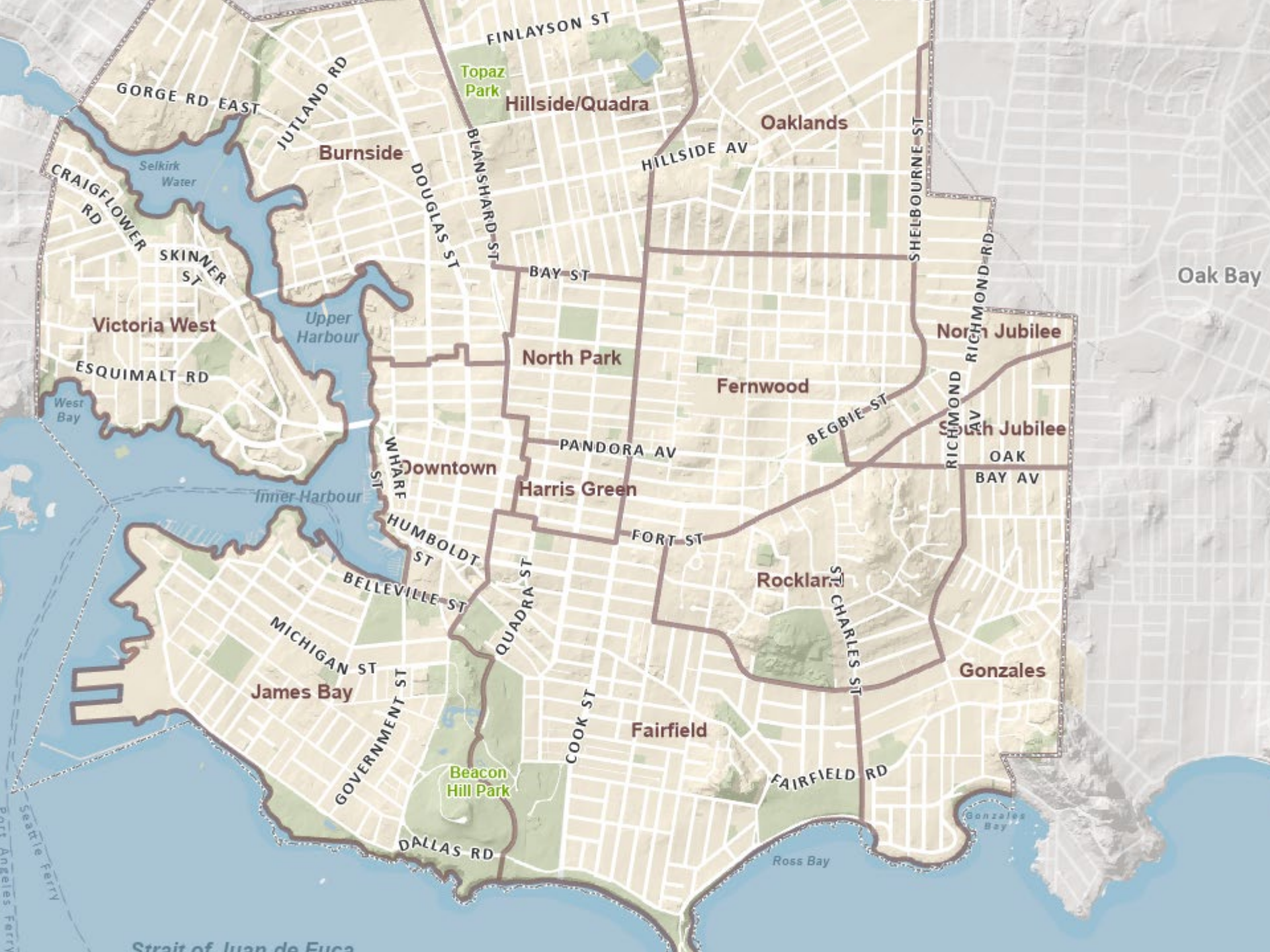
City of Victoria Context

- Capital city of BC located on southern tip of Vancouver Island
- Population size: approx. 86,000 (2016)
- Greater Victoria pop size: 408,883 (2020)
- Sub-Mediterranean climate zone

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Provincial
Park
Courtenay
99
19
Vancouver
Nanaimo
Richmond
Surrey
7
1
Abbotsford
Victoria
Everett
5
Olympic
National Park
Seattle


FINLAYSON ST
Topaz Park
Hillside/Quadra
Oaklands
GORGE RD EAST
JUTLAND RD
Burnside
Selkirk Water
CRAIGFLOWER RD
SKINNER ST
DOUGLAS ST
BLANSHARD ST
HILLSIDE AV
SHELBOURNE ST
RICHMOND RD
Oak Bay
BAY ST
Victoria West
Upper Harbour
North Park
North Jubilee
ESQUIMALT RD
West Bay
Fernwood
BEGBIE ST
South Jubilee
RICHMOND AV
OAK BAY AV
PANDORA AV
WHARF ST
Downtown
Harris Green
Inner Harbour
HUMBOLDT ST
FORT ST
BELLEVILLE ST
QUADRA ST
Rockland
ST CHARLES ST
MICHIGAN ST
James Bay
GOVERNMENT ST
COOK ST
Fairfield
Gonzales
Beacon Hill Park
FAIRFIELD RD
DALLAS RD
Gonzales Bay
Ross Bay
Seattle Ferry
Port Angeles Ferry
Strait of Juan de Fuca

Context

- Prior to March, 2020, approx. 24-35 temporary shelters erected by homeless persons in City parks on a regular basis.

- Provincial state of emergency declared March 18, 2020.

- By April 24th, 2020, the number increased to 465 shelters.

Bylaw Enforcement

- Prohibition on daytime sheltering (between hours of 7am-7/8pm) not enforced by bylaw officers

- City Council endorses non-enforcement by resolution in May and July

- In fall, City Council adopts bylaw to allow for daytime camping in non-prohibited areas, with end day of May 1st.

Topaz Park & Pandora Ave.

- Encampments established in Topaz Park & Pandora Green (and other locations).
- City enters into licence with BC Housing to transfer management of Topaz Park encampment.
- City provides supports incl. showers, washrooms, handwashing stations



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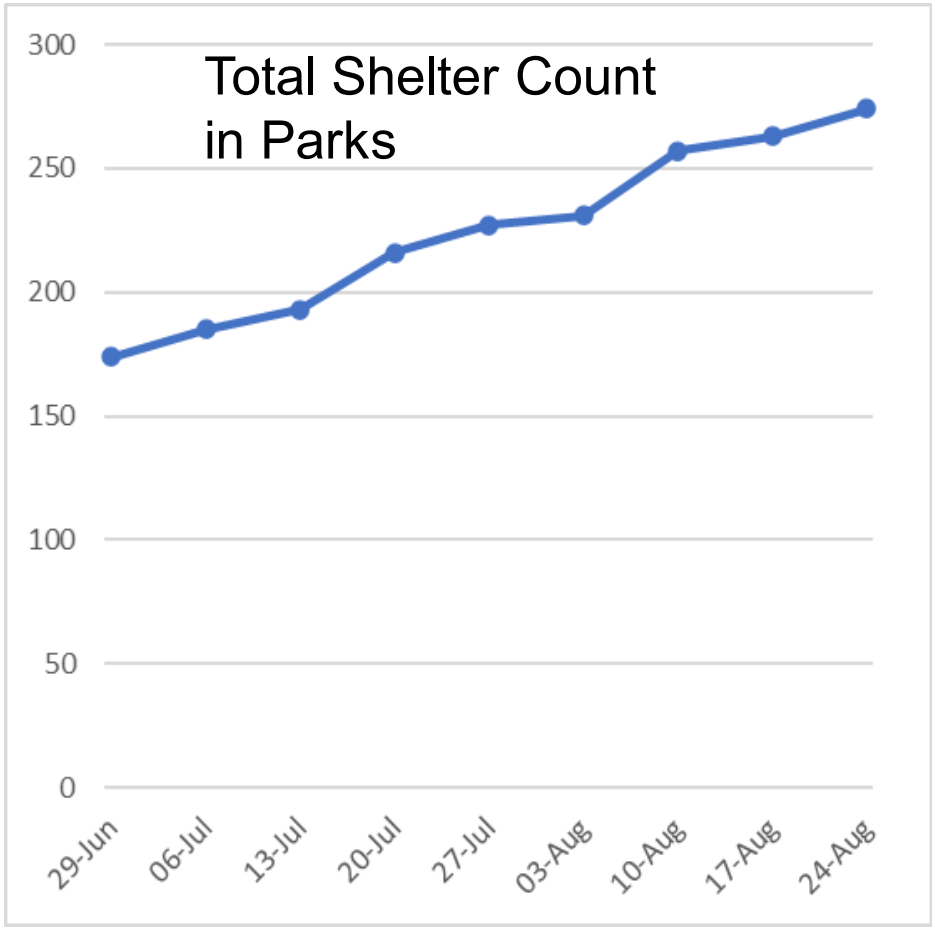
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Topaz Park & Pandora Ave.

- City authorizes use of stadium for sheltering
- BC Housing offers temp housing to 360 people
- Province enacts ministerial order to decamp the two sites. Two additional ministerial orders required for Victoria.

Homeless Sheltering Continues to Increase

Despite the addition of new housing options between April to May 2020, the volume of sheltering activity continued to grow, with significant impacts



Centennial Sq. & Central Park

- Two encampments established in challenging locations:
  - Centennial Square in busy downtown core immediately outside of City Hall offices.
  - Central Park subject to major flooding events in winter.

- Situation became untenable at both locations.











Centennial Sq. & Central Park

- City amends Parks Regulation Bylaw to provide for buffer zones, limit shelter footprint size, regulate use of fire/bbqs etc.

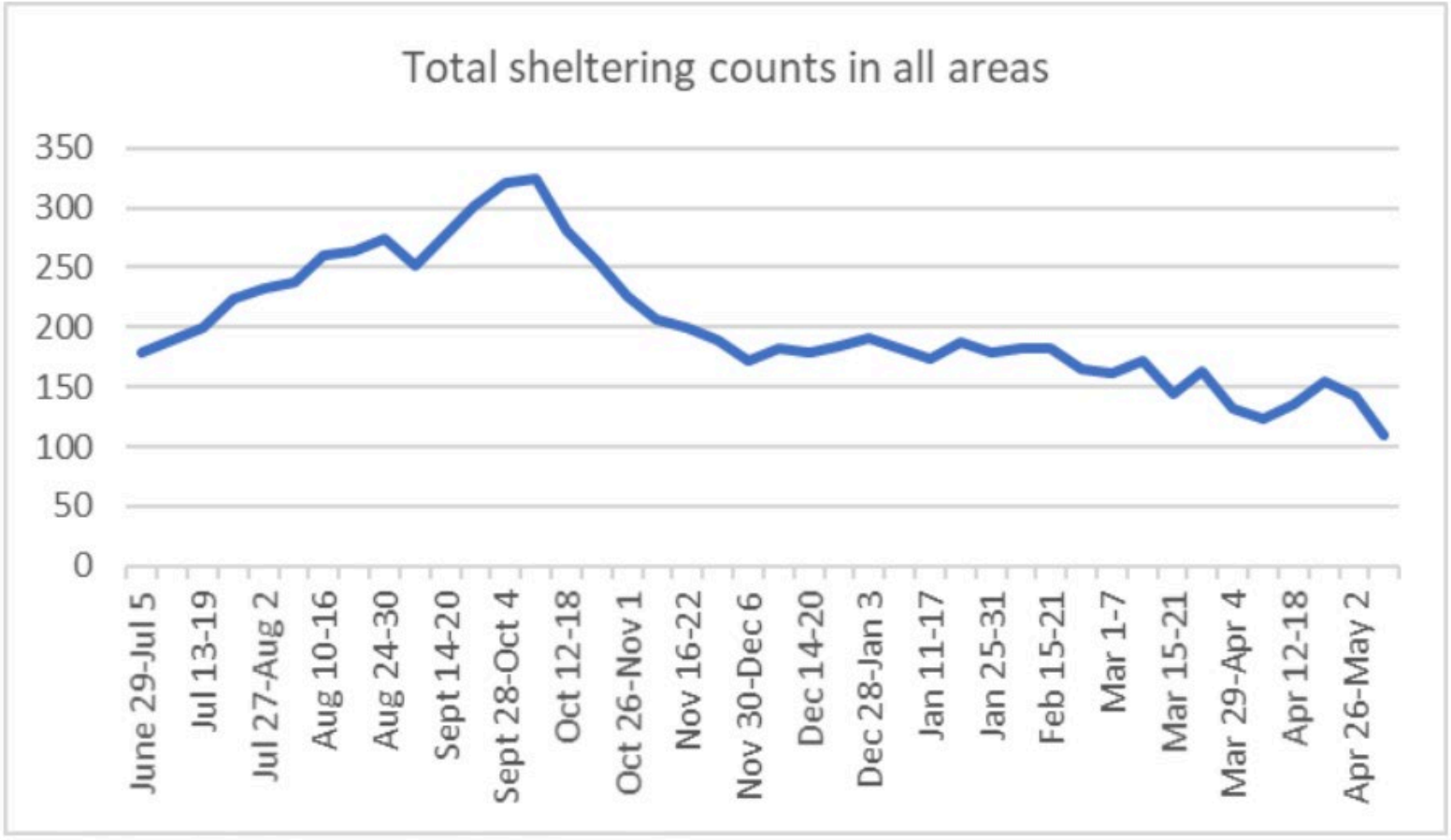
- City adds Centennial Square and Central Park to list of parks where sheltering prohibited at all times.

Beacon Hill Park encampment

Three cases:

- Aug: Interim injunction to move homeless campers out of environmentally & culturally sensitive areas. 2020 BCSC 1173
- Nov: Application to add non-profit to injunction proceeding. 2020 BCSC 2201
- Currently underway: Trust opinion from the court

Homeless Sheltering Numbers



City Budget Increase

Annual budget amount for dealing with the consequences of sheltering in public spaces

2017: $211,900

2018: $300,000

2019: $362,000

2020: $513,884

2021: $1,740,000

City Responses

- Consistent & concerted effort to assist in finding housing solutions
- Collaborative approach, member of multi-agency teams with provincial government reps, Island Health, social service agencies. Daily and weekly calls.
- Offers affordable housing incentives/streamlines process for affordable housing projects
- Sensitive bylaw enforcement approach

Recent Vancouver Encampments

- Oppenheimer Park
- Crab Park
  - *Vancouver Fraser Port Authority v. Brett*, 2020 BCSC 876
- Strathcona Park



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RVs in Vancouver

- Recreational Vehicles as homes



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