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RE: 100 Victoria Street encampment and proposed bylaw amendments

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The Region’s latest proposed amendments for 100 Victoria Street remain legally fragile and procedurally unsound. Council should pause, return to a court-supervised path, and align its approach with clear judicial guidance while advancing the Kitchener Central Transit Hub (KCTH) on a realistic, rights-compliant timeline.

First, the drafting record is internally inconsistent in ways that undermine legality and enforceability. Earlier iterations toggled between December 1, 2025 and April 1, 2026 for vacant possession and the commencement of occupancy prohibitions, and carried duplicate “Resident” definitions pegged to a “Public Notice Date,” including a fixed April 16, 2025 date. These conflicting timelines and duplicative provisions create uncertainty about rights, obligations, and enforcement. The text also reflected competing transition/enforcement clauses with differing end-dates and conditions, signaling unresolved policy choices embedded in the by-law text itself. While the January 9, 2026 amendments attempt to consolidate to an April 1, 2026 vacant possession date, delete the offence provision, and codify a transition policy, they simultaneously leave material references (such as the deleted “section 4”) unexplained within the four corners of the enactment, inviting avoidable interpretive disputes.

Second, the courts have already intervened—twice—and their guidance must anchor the Region’s next steps. In 2023, Justice Valente declared the earlier by-law inoperative at this site when accessible shelter capacity is insufficient, and expressly invited the Region to return to court when compliance could be shown. In 2025, Justice Gibson granted an interlocutory injunction staying enforcement of the site-specific by-law, identifying serious issues about notice, consultation, and potential bad faith under the Municipal Act, and emphasizing that enforcement could not proceed on an incomplete record where s. 7 interests are engaged. The 2025 decision underscored two core defects: the Region did not post physical notice at the encampment, and the regime permitted eviction regardless of whether alternative accommodation had been secured. That judicial roadmap points toward a court-supervised, evidence-based plan linked to proven accessible shelter availability—not unilateral by-law enforcement.

Third, procedural fairness remains paramount. Tying “Resident” status to a website agenda posting date, without site-level notice, was a central fairness failure the court highlighted. Future measures must ensure meaningful, accessible notice and engagement that reflect the realities of unsheltered residents, including persons with complex health, capacity, and disability needs. A fair process requires transparent criteria, individualized planning, and verifiable offers of

accommodation before any removal, with independent oversight available to resolve disputes quickly and humanely.

Fourth, constitutional compliance is not optional. The 2025 record showed a stark capacity gap—377 emergency shelter spaces against need estimated in the thousands—and serious suitability barriers that render many beds not truly accessible. On that evidence, the court found that enforcing a prohibition on sheltering at the site would engage and risk violating s. 7 rights. Until the Region can demonstrate sufficient, truly accessible alternatives—measured by actual availability for the affected individuals—blanket prohibitions or site fencing are constitutionally vulnerable.

Fifth, the KCTH timeline does not justify procedural shortcuts. Project milestones have repeatedly shifted: initial start dates moved from 2020 to 2021 to 2023 to 2025, with Metrolinx now expected to begin on-the-ground work in March 2026, following rail works and a diversion track behind 100 Victoria Street North. The Region now pegs vacant possession to April 1, 2026, with the by-law coming into force February 1, 2026. Where construction dependencies remain elastic, the public interest favours careful, court-guided sequencing rather than rushed enforcement—especially given the court’s recognition that remediation dates and contractor timing may be adjusted.

Sixth, align the by-law to the Region’s own transition commitments—and make them enforceable. The Region says it has “greatly expanded” accessible shelter beds and will provide accommodation for current residents, and the Transition Protocol promises Individual Housing Plans, Alternative Accommodation (including emergency shelter, transitional and supportive housing, a motel program, or other agreed options), transportation, and six months’ storage. The January 2026 amendments improve matters by deferring removals until April 1, 2026 absent risks or declined written offers, with a March 31, 2026 acceptance date. To satisfy constitutional and fairness concerns, these commitments must be implemented under court supervision, with proof of actual, suitable placements for each resident before any displacement, and with clear recourse if accommodations are lost due to non-compliance. The Region should also ensure that non-Residents are offered pathways into the housing stability system, without the qualifier “subject to resources,” where Charter rights are at stake.

A better path is available now:

- Return to court with a compliance plan. Seek directions that condition any phased site remediation on verified, individualized placements, with reporting to the court. This directly implements the 2023 declaration’s invitation and respects the 2025 injunction’s concerns.
- Cure procedural defects. Provide robust, on-site notice and engagement; document offers and refusals; and ensure procedural accommodations for

capacity-related impairments, so that “Resident” status and transition opportunities turn on reality, not website posting formalities.

- Tie any enforcement to demonstrable accessibility. No resident should be required to vacate without a confirmed, suitable, accessible alternative—consistent with the courts’ s. 7 analysis of life, liberty, and security of the person.
- Sequence KCTH activities to minimize displacement risk. Use the court process to align remediation windows with Metrolinx’s actual mobilization and rail works, avoiding premature evictions.
- Make the Transition Protocol justiciable. Incorporate it into consent orders or undertakings filed with the court, ensuring enforceability and transparency regarding Alternative Accommodation, supports, transportation, and storage.

The Region can achieve its transit objectives while upholding constitutional rights and procedural fairness. It should abandon a by-law-first strategy in favour of a court-supervised, rights-aligned plan that delivers real housing solutions before removals, and schedules site access to match actual construction needs. That is how to build the Kitchener Central Transit Hub and public confidence at the same time.