

BYLAW 20801 - BYLAW AMENDMENTS TO ADDRESS THE SALE OF OLEORESIN CAPSICUM (OC) SPRAY

Recommendation

That Community and Public Services Committee recommend to City Council:

That Bylaw 20801 be given the appropriate readings.

Purpose

To amend Bylaw 20002 - Business Licence Bylaw to regulate the business activities surrounding the sale of Oleoresin Capsicum (OC) spray products to improve public safety and limit the adverse impacts of OC Spray use in public places.

Readings

Bylaw 20801 is ready for three readings. If Council wishes to give three readings during a single meeting, then prior to moving third reading, Council must unanimously agree “That Bylaw 20801 be considered for third reading.”

REPORT

Oleoresin Capsicum (OC) spray, commonly known as bear spray, is a defensive product housed in an aerosol spray canister. According to manufacturers, its intended use is to repel a threat from a bear at a distance of 20 - 30 feet (6 - 10 metres) by spraying an irritant in the bear’s general direction. Although OC spray has a number of variants for different uses, for the purposes of this report the term ‘OC Spray’ refers specifically to the variant that is designed and intended to repel bears. Compared to dog and coyote spray, OC (bear) spray has a higher oleoresin capsicum content, a larger spray range and longer irritancy - all of which increase public safety risks when used inappropriately. Mace and pepper spray, which are designed and intended for use on humans, are not in scope of this report, as they are already prohibited and regulated through the federal Criminal Code.

OC spray is legal for purchase, possession, and use as a pesticide against bears, and is commonly carried in outdoor environments where bears are present. OC spray contains capsaicin, the active

7.3

ROUTING - Community and Public Services Committee / City Council | DELEGATION - T. Pawlyk, L. Peter
June 17, 2024 - Development Services UPE02268

BYLAW 20801 - BYLAW AMENDMENTS TO ADDRESS THE SALE OF OLEORESIN CAPSICUM (OC) SPRAY

component in chili peppers. It can cause intense burning and irritation of the eyes, nose, throat and skin. It can result in pain, difficulty breathing and temporary blindness. OC spray is not intended or permitted to be used on a human, and a person who uses it on another person may be charged under the Criminal Code of Canada.

In February 2023, the Edmonton Police Service (EPS) brought forward a report to Community and Public Services Committee, EXT01614, Possession, Transportation, and Sale of Oleoresin Capsicum Spray Products. The report noted that OC spray canisters are being manipulated and that the safety mechanisms are being disabled by users to allow for quick use for illicit purposes. Data collected by EPS, outlined in Attachment 4, showed that reported occurrences of criminal OC spray use on humans have been trending upwards between 2015 - 2023.

Bylaw 20002 - Business Licence Bylaw establishes the rules and regulations for granting licences to businesses that meet the City's criteria for doing business in Edmonton. One of the objectives of Bylaw 20002 is to align with regulatory and enforcement partners to facilitate timely and effective responses to compliance-related issues. Bylaw 20801 proposes a series of amendments to Bylaw 20002 to regulate the business activities surrounding the sale of OC spray products with the intent to improve public safety and limit the adverse impacts of OC spray misuse. The amending bylaw is provided as Attachment 1, and the redline bylaw is included as Attachment 2.

Administration developed these amendments in cooperation with EPS. These proposed amendments clarify the requirements and responsibilities of vendors who sell OC spray, while also providing important information to the buyers. The proposed amendments support the ConnectEdmonton goal of a healthy city by ensuring that Edmontonians feel safe, empowered and supported as individuals. It also supports The City Plan goal of being inclusive and compassionate by ensuring that Edmontonians feel safe using transit or other public facilities.

Proposed Amendments

New Business Licence Category

Administration is proposing a new Oleoresin Capsicum (OC) Spray Sales business licence category for retailers that sell OC spray. This new category will regulate businesses which choose to sell OC spray products by applying a set of deemed conditions (i.e. operating requirements) for businesses to comply with. Tier 3 of the business licence fee schedule will apply to this category, which is the same fee charged for most businesses, including retail stores. No additional licensing fees will apply.

Sale of OC Spray to Minors

Administration is recommending an amendment to prohibit the sale of OC spray to a person under 18 years of age.

Qualitative data gathered during engagement, outlined in Attachment 3, indicates that the offenders in OC spray incidents are often minors with many respondents stating that they have

BYLAW 20801 - BYLAW AMENDMENTS TO ADDRESS THE SALE OF OLEORESIN CAPSICUM (OC) SPRAY

often seen minors using bear spray in retail centres, libraries and other public areas. Quantitative data provided by EPS, outlined in Attachment 4, shows that victims are also often minors. Administration is also recommending that retail stores be required to have an employee who is at least 18 years of age to oversee OC spray sales, to ensure this requirement is appropriately upheld.

Transaction Recording

Administration is recommending a requirement for businesses to record transactions involving the sale of OC spray, including the serial number if applicable, brand name, quantity sold, date and time of sale, employee's name or an employee ID number facilitating the sale, buyer's name, buyer's photo identification type as provided for verification, and either the buyer's identification number or date of birth. Retailers would be required to keep records for 24 months. Requiring businesses to verify the identity of a purchaser and record transactions is already required by some OC spray labels as a pesticide control, but this regulation has the added benefit of creating consistency across all OC spray products that may help to deter purchasers at the source who intend to use OC spray for harmful purposes.

Secured Products

Administration is recommending a requirement for retailers to secure all OC spray products and prevent the public from accessing them directly - meaning that customers would have to ask an employee to retrieve the product. This is intended to discourage theft or the spontaneous purchase of OC spray for illicit purposes, including the potential for OC spray to be used on employees to burglarize the store. This is consistent with the business practices that several retailers already have in place.

OC Spray Purchaser Guide

Administration is recommending an amendment that would require businesses to provide the buyer with City-approved messaging on appropriate and inappropriate uses of OC spray, and the consequences of using it on another person. Messaging will be made available on the City's website to businesses that sell OC Spray. This ensures that buyers are informed about responsible OC spray use, and understand that they are using a product that is dangerous and could cause significant harm if used incorrectly.

Enforcement

Administration is recommending that fines corresponding to the above deemed conditions be added to Schedule C - Offences and Penalties. Bylaw violations related to transaction recording, product security, and the OC spray purchaser guide would be subject to a fine of \$1,000 for a first offence, and violations of the minimum age requirements for the buyer and seller would be subject to a fine of \$2,000 for a first time offence. As is currently required by the Bylaw, fine amounts would be doubled for subsequent offences.

BYLAW 20801 - BYLAW AMENDMENTS TO ADDRESS THE SALE OF OLEORESIN CAPSICUM (OC) SPRAY

EPS anticipates these changes will help reduce the incidents of OC spray ending up in the hands of people who intend on using it for illegitimate purposes. The bylaw may be used to investigate public complaints about businesses and allegations that their business practices are contributing to public disorder issues. The bylaw creates consistency in what information must be captured by a business during a sale of these products, putting businesses on equal footing, and this consistency may also assist in identifying the purchaser of OC spray where reasonable grounds exist for an investigation.

Enforcement of the deemed conditions would primarily fall to EPS, while Municipal Enforcement Officers may enforce any businesses they identify to be selling OC spray without the required category on their business licence.

There will be education and resources provided to businesses during implementation.

Community Insight

In January 2024, Administration invited retailers to complete a survey about their current practices for selling OC spray products and share their opinions on potential regulations. The survey was also available to the public. The survey received a total of 62 responses, with seven of those being businesses that sell OC spray products.

Most respondents that sell OC spray agreed with the proposed amendments summarized above, with some respondents proposing slight alternatives. In some cases, seller respondents had already voluntarily implemented similar measures as the ones being proposed, including a Notice to Purchaser that contained some educational material, and transaction recording. One business disagreed with any new regulations, suggesting that it will just cost them time and money and that the regulations won't change anything.

The other non-seller respondents were asked a single open-ended question. Many provided feedback on their experiences with OC spray, including being affected by persons using OC spray as a weapon in stores, and witnessing minors buying OC spray and spraying it at people in libraries or shopping smalls. A few respondents suggested the City should not be involved in regulating or restricting sales of these types of items.

Based on the feedback, Administration refined initial drafts of the proposed amendments to better accommodate the needs of businesses:

Feedback on Transaction Recording

During engagement, some retailers that sell OC spray identified privacy concerns with the proposed requirement to record the buyer's identification number, and indicated that some types of OC spray do not contain serial numbers. Based on this feedback, the proposed Transaction Recording requirement was amended to allow the retailer to record one of either the buyer's identification number or date of birth, and to require the serial number to be recorded only where applicable.

BYLAW 20801 - BYLAW AMENDMENTS TO ADDRESS THE SALE OF OLEORESIN CAPSICUM (OC) SPRAY

Feedback on Buyer Education

During engagement with businesses, Administration learned that some retailers currently use a Notice to Purchaser form to provide buyers with manufacturer's information on how to use OC spray. To help minimize the operational impact of implementing this requirement, the City will provide businesses with the option of incorporating the approved text into their existing documentation, or providing buyers with a complete information guide supplied by the City. Administration acknowledges that the costs of providing this material to the customer will be borne by the business - but businesses in turn have the option of adjusting the sale price accordingly.

Additional Feedback

There was additional feedback against the age restrictions on employees selling OC spray and recording the employee name. Administration did not amend the proposed age restriction based on this feedback as this would undermine the intent of the age restriction, which is to limit the availability of OC spray to minors. Administration also did not amend the proposed requirement to record the employee name or identifying number, as this is intended to hold retailers responsible for complying with the regulations.

Further details of the responses are included in the What We Heard Report, Attachment 3.

Jurisdictional Scan

Three cities in British Columbia (Vancouver, Surrey, and Chilliwack) have bylaws that regulate the sale of OC spray products. The Government of Manitoba implemented legislation in 2023 that regulates the sale of OC spray products at the provincial level. Saskatchewan recently introduced legislation regulating possession and use of OC spray in public urban spaces with fines of up to \$100,000, but does not currently regulate the sale of the products.

GBA+

Internal data from EPS shows that between 2015 - 2023, 55 per cent of OC spray occurrences are happening within approximately 100 metres from a bus stop, 28 per cent within 50 metres of a bus stop and 18 per cent within 400 metres of an LRT station. Additional data shows that 46 per cent of all OC spray occurrences were within approximately 400 metres of a school. Bus stops, LRT stations and schools are expected to have higher concentrations of people present. Transit is used by many residents, including many vulnerable groups: seniors, persons with disabilities or other groups who may be more negatively impacted by an OC spray incident. Vulnerable groups may not have an alternative mode of transportation.

Legal Implications

OC Spray is regulated at the federal level through the *Pest Control Products Act* (S.C. 2002, c. 28), and the Provincial level through the *Pesticide (Ministerial) Regulation*, Alta Reg 43/1997 under the

BYLAW 20801 - BYLAW AMENDMENTS TO ADDRESS THE SALE OF OLEORESIN CAPSICUM (OC) SPRAY

Environmental Protection and Enhancement Act, RSA 2000, c E-12 as a pesticide. These pesticide regulations may already require certain transaction recording and tracking mechanisms based on the individual product, but largely for the purpose of pesticide management and health, and not for the purposes of general public safety.

Although OC spray has been used as a weapon, it is not listed as a prohibited weapon like brass knuckles, tasers, or listed firearms and knives, where simple sale or possession is a criminal offence. There are no offences for the non-threatening possession or carrying of OC spray, and when used for the purposes of protection against bears, it is not considered a weapon. When improperly used against humans, existing criminal enforcement powers are available for use by EPS.

Under the *Municipal Government Act*, the City has the ability to “develop and maintain safe and viable communities”, pass bylaws for “the safety, health and welfare of people and the protection of people and property” and pass bylaws to regulate “businesses, business activities and persons engaged in business” (Attachment 5). A bylaw regulating the sale of OC spray provides an opportunity for the City to make expectations clear to businesses and buyers about what the safe operation of OC spray looks like, to limit the opportunity for misuse, and to reduce public safety concerns through higher purchase requirements. Draft amendments prohibiting the visible carrying, discharge or use of OC spray have been proposed in the draft Public Spaces Bylaw, which has been referred back to Administration for further follow up. These amendments will continue to be brought back for consideration when the Public Spaces Bylaw returns back to Council for approval.

Attachments

1. Bylaw 20801- Business Licence Bylaw 20002 Amendment No. 4
2. Bylaw 20002 - Business Licence Bylaw - REDLINE
3. What We Heard Report - Regulating the Sale of Oleoresin Capsicum Spray Products
4. OC Spray Bylaw Proposal Follow-up (Edmonton Police Service)
5. PRIVATE - Confidential Legal Advice

Others Reviewing the Report

- C. Taylor, Acting City Solicitor