

Comprehensive Rationale for Fine Changes and Significant Policy Directions

1. Rationale for Proposed Fines in Bylaw 20700 - Public Spaces Bylaw

Fines for regulatory offences are a sentence for non-compliance with a legal rule. At law, a sentence serves as a consequence for unlawful conduct and balances various public purposes. These include denouncing unlawful conduct, deterrence to the offender and others from committing offences, the rehabilitation of offenders, reparation to the community, and to promote a sense of responsibility in offenders and acknowledge the harm done to the community.

In Alberta, the maximum fine for a bylaw offence is \$10,000. As most bylaw prosecutions are commenced by a Part 3 Ticket under the *Provincial Offences Procedure Act*, and most bylaw offences are relatively minor in severity and impact, the consequence for a bylaw contravention in Alberta is usually a fine of \$1,000 or less.

The jurisdictional scan provided in Attachment 6 demonstrates that the recommended fine amounts in the proposed Public Spaces Bylaw are generally less than, or aligned with, fine amounts for similar offenses in Calgary and Winnipeg.

Offenses in the proposed Public Spaces Bylaw that are more serious, lead to public safety concerns, or demand higher levels of deterrence have the highest proposed fine amounts. The highest fine amount in the proposed bylaw is set at \$1,000 and is associated with an impactful offense requiring deterrence - discharging fireworks without a permit. This offence can lead to noise disturbance to nearby residents or in the worst cases, significant property damage or injury. The discharge of fireworks generally occurs in an intentional manner, and is unlikely to occur due to inadvertence or necessity. The next highest fine amount, \$500, is generally associated with a set of offenses throughout the proposed bylaw that have a high potential to risk the health and safety of others, and a fine amount of \$250 is generally associated with behaviours throughout the bylaw that may result in medium-low risk of injury to others, property damage, nuisance, or risk of self-injury. Other fine amounts of \$150 and \$100 are associated with offenses that are less serious but still require a marginal consequence to deter the behaviour.

Finally, three offenses are proposed to have a nominal fine amount of \$25. This fine amount is being recommended for offenses where both of the following factors exist: (a) based on research, Administration believes that the offence

could particularly impact vulnerable, unhoused or marginally-housed individuals, and (2) where the primary regulatory aim is to ensure the prompt cessation of the activity, not penalizing the offender. These offences are discussed below in section 2 of this attachment.

Regulatory fines should not be expressly or implicitly tied to revenue generation and this consideration has not factored into Administration's fine recommendations. Legal academic literature¹ identifies concerns which can result from the use of enforcement as a revenue-generating tool, such as: abusive enforcement tactics arising from the desire to raise revenue; decreased public confidence in enforcement officers and public institutions; the over extension of law enforcement's institutional function and purpose which is to prevent crime, maintain public order, and protect people and property from harm; the disproportionate impact on racialized or equity-deserving individuals; and the constraining effect that regulatory offence quotas can have on police discretion.

For these reasons, Administration's fine recommendations in Attachment 1 are premised on the various relevant considerations discussed throughout this report - the need to maintain safe and viable public spaces, the need to deter conduct that impacts the safety and viability of these spaces, a recognition of the challenges faced by vulnerable and equity-deserving people using these spaces, comparable fines in other municipalities, and the range of penalties authorized at law for bylaw offences.

2. Rationale for Significant Policy Recommendations

A. Public Gatherings and Amplification

i. *Recommended Policy Approach*

Administration recommends that the Public Spaces Bylaw event or large gathering permit provisions be modified from the recommendation advanced in 2024.

During the public hearing on the February 2024 Draft Bylaw, Council heard from speakers concerned with the idea that a permit process might be used to deter lawful protest if permits were to be arbitrarily refused. The 50-person gathering permit requirement in the initial draft was not intended to be a policy change, but policy carried over from s. 15 of the Parkland Bylaw 2202. Given the

¹Terry Skolnik, The Regulatory Offence Revolution in Criminal Justice: The Expansive Role of Regulatory Offences, 2024 61-4 Alberta Law Review 777, 2024 CanLIIDocs 2266, <<https://canlii.ca/t/7nfpx>>, retrieved on 2025-01-06.

concerns raised by speakers, Administration has carefully evaluated the legality and implications of a proposed permit requirement for events and gatherings.

While case law confirms that municipalities may lawfully require permits for large gatherings in public spaces, caution must be taken to ensure that the requirements do not unreasonably interfere with fundamental legal rights. For this reason, Administration recommends that the threshold for permit requirements be increased to 100 persons from the current threshold of 50 found in Bylaw 2202 and the proposal included in the February 2024 Draft Bylaw. This larger threshold helps ensure that small community gatherings, spontaneous activism, or most grassroots-type events are not captured by the permit requirement. Re-characterizing these as “special events” also better reflects the pressing and substantial concern this regulation seeks to address: as events attract greater numbers of attendees, there is greater impact on public assets and public services.

The draft bylaw clarifies that a permit will not be unreasonably refused or withheld, but that conditions may be placed on the permit to address the public and municipal impacts of a large event. This helps ensure that the bylaw balances the public’s ability to use public spaces while mitigating the safety, security, financial and logistical impacts of large events and gatherings. It also provides assurances that a permit cannot be arbitrarily refused to prevent a protest or public gathering.

Administration does not recommend the regulation of sound amplification through the Public Spaces Bylaw. A prohibition on amplification was included in the February 2024 Draft Bylaw, but feedback shared at the public hearing and identified by the GBA+ Report notes that amplification is often used by groups engaging in protest and lawful expression to share messages that may otherwise not be heard. Feedback noted that amplified music can add to community vibrancy and should not be prohibited. Public feedback on amplification as a concern is sharply divided; the What we Heard Report indicated that 35 per cent of respondents were either “Extremely” or “Very” concerned with amplification in public spaces, while 29 per cent were “Not Very Concerned” or “Not Concerned at All”. While some feedback observed that amplification can be used to propound controversial, harmful or divisive messages, Administration also notes that municipalities are limited in the ability to regulate the content of otherwise lawful speech. Speech that is objectively harassing will continue to be regulated under the draft Harassment provision, regardless of whether it is amplified. As such, a prohibition on amplification in the Public Spaces Bylaw is not recommended at this time.

ii. Alternative Policy Approaches

No legal requirement exists for a municipality to establish a permit process for special events and large gatherings, but it is practically advisable to ensure some level of oversight can occur when events and gatherings could impact municipal assets and operations. While Administration is of the view that a 100-attendee threshold is an ideal number to reflect a large enough crowd of persons to impact City assets and operations, Council may determine that this number should be adjusted upwards or downwards.

Amplification can be regulated if City Council determines that it is warranted. The Supreme Court of Canada and the Alberta Court of Appeal have upheld legal challenges to municipal amplification prohibitions, and have observed that such bylaws can serve to regulate excessive noise in an urban environment. However, the purpose of an amplification bylaw is not to regulate messages that may be amplified. For this reason, Administration does not recommend an amplification bylaw that addresses specific types of amplified content or messaging.

B. Visible Drug Use in Public Spaces

i. *Recommended Policy Approach*

Administration recommends that the bylaw maintain a regulatory prohibition on drug use in public spaces in the City of Edmonton that was first proposed in the February 2024 Draft Bylaw.

In Canada, the possession of controlled substances is criminalized pursuant to the *Controlled Drugs and Substances Act*. Drug use in public spaces impacts the safety and well-being of both people who use drugs and the well-being and viability of the broader community. Addressing the public safety and public space impacts associated with the use of drugs in public places fall within the scope of municipal jurisdiction. While Federal law prohibits the possession of the controlled substances themselves, municipalities take authority from provincial jurisdiction to regulate “the safety, health and welfare of people and the protection of property”, and “people, activities and things in, on or near a public place or place that is open to the public”. The latter aspects are the purposes of the proposed municipal regulation. Where different orders of government with overlapping jurisdiction attempt to address different aspects of the same policy concern, it is referred to as a “double aspect”.

Administration has considered how public space drug use regulation would impact people who use drugs, particularly those who are unhoused. The GBA+ Report (Attachment 4) notes that drug prohibitions disproportionately impact drug users who do not have access to private spaces. Yet, as long as drug possession remains a criminal offence in Canada, any person who uses drugs in a public space remains vulnerable to criminal charges. Addressing public drug

use through *regulation*, as opposed to *criminalization*, offers peace officers a less punitive tool to lawfully intervene when drug use occurs in public spaces.

Administration recommends that the fine for this offence is limited to \$25 (or other nominal amount), demonstrating that the primary rationale for the prohibition is to regulate the localized public space impacts of drug use while ensuring that peace officers are lawfully placed to intervene, and apply discretion on the appropriate steps, when the conduct occurs. Administration heard concerns that public space drug regulation could drive some to use drugs in unsafe private spaces, enhancing the risks of poisoning or overdose. The GBA+ Report recommendations support a public health approach to drug use, and cites evidence on the relative safety offered by supervised consumption sites. Edmonton has three supervised consumption sites, including one accessible site open 24 hours a day and seven days a week. For unhoused people in particular, these spaces provide a safer alternative location to use drugs than unmonitored public spaces.

The draft bylaw also includes a new provision that authorizes an enforcement officer to issue a “Direction to Stop” to a person observed visibly possessing or consuming a controlled substance in a public space. This provision is intended to serve as an additional compliance option that allows for a more graduated enforcement process.

The What We Heard Report (Attachment 3) indicates that drug use is the top public space concern for Edmontonians. Eighty-nine per cent of Edmontonians surveyed indicate they are “extremely concerned” or “very concerned” at the use of drugs in public spaces. Balancing the relevant policy-making considerations, Administration believes that an additional tool is required for peace officers to respond to the use of drugs in public spaces and address the municipal issues created by this conduct.

ii. Alternative Policy Approaches

Administration has identified two alternative policy approaches that could be adopted. One alternate approach considered limiting drug use regulation to locations where smoking is already prohibited. This would include indoor public spaces, transit property, playgrounds, schools, adjacent doorways, and other high-impact areas. When evaluating this option and consulting with enforcement personnel, it was determined that this approach would cause challenges for persons trying to comply with the bylaw and enforcement personnel looking to enforce. Location-based regulation could lead to uncertainty, and a difference in enforcement options on two persons engaged in the same conduct standing only meters apart. Concerns were also raised that given the unique double aspect of public space drug regulation, some might erroneously believe that the

City authorizes or permits drug use in locations not specifically identified in the bylaw.

A second alternative considered is for public drug use to remain outside the bylaw and for enforcement officers in Edmonton to use the criminal law if intervention is needed when persons are seen possessing or using drugs. Currently, the City's Peace Officers do not have authority to enforce the *Controlled Drug and Substances Act*. When a person is using drugs in a public space, and where a voluntary request to discontinue the conduct is not heeded, City Peace Officers must engage the Edmonton Police Service for assistance. This is not seen as an effective use of police resources, particularly where the conduct interferes with the use of the public space (i.e. a person smoking drugs in a confined space) but where criminal enforcement is seen as an undesirable enforcement approach.

C. Temporary Outdoor Sheltering

i. *Recommended Policy Approach*

Administration does not recommend changes to temporary sheltering policy within the context of the new Public Spaces Bylaw. Work is continuously ongoing to refine the City's response to temporary shelters and encampments, but this work is outside the scope of the Public Spaces Bylaw project.

Persons who may seek to erect a temporary outdoor shelter are among the most vulnerable Edmontonians. Administration's recommendation to maintain a broad prohibition on outdoor temporary sheltering is premised in data and lived experiences demonstrating that outdoor sheltering in Edmonton consistently leads to negative - or tragic - outcomes. Edmonton-specific evidence has shown that encampments lead to the victimization of vulnerable people, are negatively impactful to communities, and create substantial and continual emergency response demands (including EFRS, EMS, EPS). While this may not be the experience in all Canadian communities, nearly all information available demonstrates that outdoor sheltering in Edmonton is extremely hazardous. In the colder months, it is life-threatening. As such, it is not possible to effectively delineate situations (or exceptions) that might constitute a safe outdoor sheltering option with any legislative certainty.

Research and literature indicate that people experiencing houselessness:

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- Are particularly vulnerable to health risks and cold-related injuries during low temperatures.^{2,3,4,5,6}
- Are at higher risk of suffering burn injuries, carbon monoxide poisoning, smoke inhalation or death due to burning fuels in temporary structures.⁷
- May have mental health conditions and/or use substances that can impact their ability to cope or react to environmental threats, such as fires or extreme weather.⁸

People experiencing houselessness will often attempt to cope and adapt during very cold nights; however, their efforts have been found to be unsuccessful,⁹ leading to increased harm and possible death within the houseless community.^{10, 11}

A literature search performed by Administration found no evidence in relation to any mitigating effects against cold provided by tents during extreme weather. One source looked at designs for a specialty four-season tent for refugees and people experiencing houselessness. They observed a 6-degree temperature difference between the interior and exterior of the tent in winter; however, this tent was specifically built for purpose and used materials not likely to be available to unhoused individuals¹². It is unlikely that this level of insulation would be achieved using found materials used to create most makeshift shelters.

² Anthonj, C.; Mingoti Poague, K.I.H.; Fleming, L.; Stanglow, S. Invisible Struggles: Wash Insecurity and Implications of Extreme Weather among Urban Homeless in High-Income Countries—A Systematic Scoping Review. *Int. J. Environ. Res. Public Health* **2024**, *255*, 114285. [[Google Scholar](#)] [[CrossRef](#)] [[PubMed](#)]

³ Gronlund, C.J.; Sullivan, K.P.; Kefelegn, Y.; Cameron, L.; O'Neill, M.S. Climate Change and Temperature Extremes: A Review of Heat- and Cold-Related Morbidity and Mortality Concerns of Municipalities. *Maturitas* **2018**, *114*, 54–59. [[Google Scholar](#)] [[CrossRef](#)]

⁴ Pendrey, C.G.A.; Carey, M.; Stanley, J. Impacts of Extreme Weather on the Health and Well-Being of People Who Are Homeless. *Aust. J. Prim. Health* **2014**, *20*, 2–3. [[Google Scholar](#)] [[CrossRef](#)] [[PubMed](#)]

⁵ Cusack, L.; van Loon, A.; Kralik, D.; Arbon, P.; Gilbert, S. Extreme Weather-Related Health Needs of People Who Are Homeless. *Aust. J. Prim. Health* **2013**, *19*, 250–255. [[Google Scholar](#)] [[CrossRef](#)] [[PubMed](#)]

⁶ Sheckter, C.C.; Radics-Johnson, J.; Pham, T.N. Fire and Ice—Demands for Thermal and Frost Injury Care from Extreme Weather. *Burns* **2022**, *48*, 1766–1768. [[Google Scholar](#)] [[CrossRef](#)]

⁷ Public Health Recommendations to Reduce the Impacts of Exposure to Winter Weather on People Experiencing Homelessness in British Columbia, **2023** [[bccdc.ca](#)]

⁸ Gronlund, C.J.; Sullivan, K.P.; Kefelegn, Y.; Cameron, L.; O'Neill, M.S. Climate change and temperature extremes: A review of heat- and cold-related morbidity and mortality concerns of municipalities. *Maturitas* **2018**, *114*, 54–59. [[Google Scholar](#)] [[CrossRef](#)]

⁹ Cronley C, Fackler A, First JM, Lee S, Tsouris I. Persons Experiencing Homelessness during Extreme Temperatures: Lessons for Promoting Socially Inclusive Adaptive Capacity. *International Journal of Environmental Research and Public Health*. **2024**; 21(8):984. [[doi.org](#)]

¹⁰ Brown, A.J.; Goodacre, S.W.; Cross, S. Do emergency department attendances by homeless people increase in cold weather? *Emerg. Med. J.* **2010**, *27*, 526–529. [[Google Scholar](#)] [[CrossRef](#)]

¹¹ Cusack, L.; Van Loon, A.; Kralik, D.; Arbon, P.; Gilbert, S. Extreme weather-related health needs of people who are homeless. *Aust. J. Prim. Health* **2013**, *19*, 250–255. [[Google Scholar](#)] [[CrossRef](#)]

¹² Alhaddad, Madina R.; Alshammari, Alaa K.; Dashti, Duaa J. 4 Seasons Tent Kuwait University Department of Mechanical Engineering, **2020** [[ResearchGate](#)]

An outdoor sheltering prohibition cannot practically or legally succeed without a robust framework to support unhoused persons who might seek to shelter outdoors. To ensure that an outdoor sheltering prohibition is compliant with relevant case law and practically viable, the City of Edmonton has worked alongside social agencies and the Government of Alberta to ensure that no unhoused person in Edmonton is left without access to indoor shelter. The Government of Alberta has provided funding to ensure that there are sufficient shelter spaces in Edmonton to accommodate the demand for indoor shelter spaces. Edmonton now has a diverse array of shelter options, including Indigenous-led shelter spaces, women-only spaces and spaces earmarked for couples. Indoor spaces in Edmonton are accessible to people who use drugs, 2SLGBTQ+ persons, youth, and persons uncomfortable with religious or spiritual programming.

Given that persons who contravene this provision are generally among the most vulnerable, a prohibition on outdoor sheltering should not be punitive. The cessation of dangerous conduct is the primary rationale for this prohibition. For this reason, Administration recommends that the specified fine under the bylaw be listed at \$25 (or another nominal fine amount).

ii. Alternative Policy Approaches

Some Canadian municipalities have engaged in pilot projects or have passed bylaws that permit outdoor sheltering in designated spaces or during the overnight hours. Where a community does not have adequate indoor shelter spaces, or spaces are not accessible to persons with enhanced needs, legal constraints may exist and municipalities may have limited regulatory options to prohibit outdoor sheltering. Examples of municipalities with time and space regulations include Abbotsford, British Columbia and Hamilton, Ontario. Given the Government of Alberta's commitments on funding to provide sufficient indoor shelters, the accessibility, quality and diversity of Edmonton's shelter spaces, Edmonton's climate and the inherent dangers of outdoor sheltering, Administration does not recommend incorporating time or location parameters into the Public Spaces Bylaw.

D. Use of Transit Spaces and Physical and Psychological Safety

Transit safety in Edmonton continues to remain a priority for Council and Administration. Research undertaken by the City of Calgary in support of its recent Transit Bylaw modernization demonstrated that 77 per cent of those surveyed considered their personal safety when deciding whether to take transit.¹³

Ensuring that transit spaces remain safe and functional aligns with The City Plan's target of 50 per cent of trips made by public or active transportation by

¹³ <https://pub-calgary.escribemeetings.com/filestream.ashx?DocumentId=300768>

2040, and is identified in both the GBA+ Report (Attachment 4) and the Environment and Climate Review (Attachment 5) as public policy that furthers equity and climate goals.

The February 2024 Draft Bylaw included a provision deeming it to be improper use of transit where a person remained on a transit vehicle while the vehicle passes the same destination more than once, or remaining in a transit station while more than one transit vehicle operating on the same route enters and exits the transit station. Administration is no longer recommending that this provision be included in the bylaw. Public feedback expressed concerns that this provision was overbroad and could capture unintended conduct (for example, a person who has inadvertently missed their bus or correct stop). As such, the revised draft no longer includes this provision.

The rules developed for transit spaces prohibiting behaviours that may cause damage to property or interfere with the safe and comfortable use of public spaces by all users, including City employees, are included in Bylaw 20700 and expanded to all public spaces. Behaviours that interfere with the safe use of public spaces by all users are not appropriate in any public space and are contrary to the goal of promoting safe and viable communities. To clarify the intent of these provisions, the revised bylaw incorporates the terms “physical or psychological safety” as opposed to “safe and comfortable use”, and enumerates specific examples of situations where physical or psychological safety are presumed impacted. This change in verbiage is a response to feedback that the idea of “comfortable use” of space is a concept that could be unintentionally applied to target vulnerable people using public spaces. Conversely, all persons should be assured physical and psychological safety if public spaces are to remain vibrant and equitable.

E. Bicycle Riding on Sidewalk

Administration’s recommendation is that bicycle riding on sidewalks should remain prohibited in the City of Edmonton. While sidewalk riding regulations were considered at the February 2024 Public Hearing, and direction was provided by Council on this issue, Administration has now had an opportunity to undertake a thorough technical review of the implications of allowing bicycles to be used on sidewalks adjacent to roadways. Technical studies suggest that riding a bicycle on a sidewalk creates an increased crash risk when compared with riding on the roadway. A detailed data-informed explanation of this recommendation is provided in Attachment 8.

The recommended regulation in the draft bylaw prohibits a person from riding a bicycle on a sidewalk in Edmonton unless that person is under the age of fourteen years old. This is aligned with the approach taken by the City of Calgary.

F. Panhandling

Unlike other municipalities, Edmonton does not significantly regulate panhandling, except where the behaviour becomes aggressive. Based on the balancing of considerations (including the GBA+ Report), Bylaw 20700 proposes to continue to regulate aggressive panhandling, and includes a restriction against panhandling in or adjacent to a roadway to ensure the safety of those making requests and roadway users. The latter offence is proposed to carry a fine of \$25, recognizing that the priority of the policy is deterrence of a dangerous activity with an enforcement mechanism to cease the prohibited conduct - as opposed to penalizing the likely vulnerable individual undertaking the unsafe behaviour. Other than the proposed change to the fine amount, this is not a policy change from the February 2024 Draft Bylaw.

F. Life Jackets

Federal water safety regulations require water users to have life jackets present in a vessel; however, they do not require them to be worn. Bylaw 20700 enhances the federal requirement by requiring users to wear life jackets at all times when engaging in water vessel activities on the North Saskatchewan River, similar to Calgary's requirement for activities on the Bow River. This change is proposed to increase safety for all river users, especially in light of the considerable growth in river use in the last five years. This is not a policy change from the February 2024 Draft Bylaw.

G. Closure of Public Spaces

The current Parkland Bylaw closes all parkland spaces between the hours of 11 p.m. and 5 a.m. to all users, and also contains restrictions on establishing temporary abodes in parkland. The broad closure is not included in proposed Bylaw 20700; however, it will remain an offence to enter or remain in any area that has been specifically closed, such as entering a locked building or a gated or fenced area. The intention with this policy recommendation is to recognize that not all parkland serves the same use and purpose, and there may be valid public uses for certain spaces during the hours of 11 p.m to 5 a.m. This policy direction enables more flexibility in the use of parkland spaces. This is not a policy change from the February 2024 Draft Bylaw.

H. Temporary Signs

Placement of temporary signs on road right of way, such as boulevards, is currently prohibited without specific permission. Using bylaws from other municipalities as a guide, Bylaw 20700 proposes a set of requirements that signs must comply with, which will allow for signs to be placed in limited locations without permission. Signs that cause damage to public land, or create hazards or

safety concerns for pedestrians, roadway users, or any other person will continue to be prohibited. Any sign that does not comply with these proposed regulations, or interferes with roadway operations or City maintenance, such as snow clearing or mowing, can be removed. These updated regulations are consistent with those found in other municipalities. Administration's recommended approach considers that signage is a form of expression, but that unconstrained use of public lands for signage can create operational concerns and hazards, visual clutter, and interfere with the use of roads and sidewalks. This is not a policy change from the February 2024 Draft Bylaw.

I. Harassment

Engaging in communications, including harmful and objectionable speech and display of harmful and objectionable symbols, that causes other public space users to feel harassed continues to be prohibited. Bylaw 20700 strives to promote the equitable and safe use of public spaces by all Edmontonians and retaining this provision supports that objective. The purpose of this provision is to ensure that public spaces remain psychologically safe and enjoyable for all. The offence seeks to provide objectivity by providing examples of unacceptable conduct and include a threshold of reasonableness to ensure that the regulated conduct is objectively harassing. This is not a policy change from the February 2024 Draft Bylaw.

J. Smoking

Edmonton's current rules regarding smoking and vaping are generally consistent with provincial legislation. Exceptions include increasing the required distance between smoking and doorways and windows from five metres to 10 metres, including non-tobacco products, such as shisha, in the definition of smoking, and prohibiting smoking in certain outdoor venues, such as William Hawrelak Park, Sir Winston Churchill Square and the Edmonton Valley Zoo. As Edmonton's current rules do not conflict with provincial legislation and reflect previous direction from Council, no changes are proposed.

The draft bylaw also includes a new provision that authorizes an enforcement officer to issue a Direction to Stop. This could be used in a case where a person is found smoking but the location is not locationally prohibited in the bylaw.