

## BYLAW 20700 - PUBLIC SPACES BYLAW - ADDITIONAL INFORMATION

### RECOMMENDATION

That Community and Public Services Committee recommend to City Council:

That Bylaw 20700 be given the appropriate readings.

### Purpose

To consolidate and replace the City's three primary public spaces bylaws: Bylaw 2202 - Parkland Bylaw; Bylaw 8353 - Conduct of Transit Passengers Bylaw; and Bylaw 14614 - Public Places Bylaw.

### Readings

Bylaw 20700 is ready for three readings. A majority vote of City Council on all three readings is required for passage. If Council wishes to give three readings during a single meeting, then prior to moving third reading, Council must unanimously agree "That Bylaw 20700 be considered for third reading."

### Position of Administration

Administration supports this Bylaw.

### Previous Council/Committee Action

At the February 14, 2024, City Council meeting, the following motion was passed:

1. That Bylaw 20700 - Public Spaces Bylaw be referred back to Administration to complete further research and analysis and to incorporate the following into the bylaw report, including any potential further recommended amendments for consideration when this report comes back:
  - a. comprehensive GBA+ analysis including data and research including, but not limited to, anti-racism, criminalization of poverty, LGBTQ2S+ specific considerations with public spaces and how these findings were or were not integrated into the proposed bylaw and why;
  - b. a climate review with options to support better environmental stewardship in public spaces, including but not limited to, the River Valley;
  - c. comprehensive rationale for any fine changes in the proposed bylaw;

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- d. a jurisdictional scan of municipal fine amounts for the same infraction where the fine is not the same as current policy or is a new offence; and
  - e. a detailed review of the 50-person gathering permit requirement and amplification systems to ensuring the rights to protest and gather are not infringed through this bylaw.
2. That Administration prepare the following amendments to Bylaw 20700 - Public Spaces Bylaw and return to a future Committee meeting:
- a. clarify that “herbicides” are included in section 44;
  - b. refine the definition of “temporary shelters” in section 46 to include for the purpose of sheltering;
  - c. delete section 54;
  - d. clarify that sidewalk chalk is not included in section 62;
  - e. change all minimum fine amounts to specified fines;
  - f. remove (or modify) reference to “inappropriate use of transit spaces” throughout the bylaw;
  - g. remove the exception for feeding birds and feral cats in public spaces in section 16; and
  - h. clarify that the definition of weapon includes, but is not limited to, the listed items in section 28;
  - i. revise the relevant sections of Part XIV to allow bicycles, e-bicycles, e-scooters, inline skates, roller skates, and skateboards in park spaces provided the use does not cause damage; and
  - j. revise the relevant sections of Part XIV to allow bicycles, e-bikes, scooters, inline skates, roller skates, and skateboards in areas where protected active transportation infrastructure does not exist.

## Report Summary

On February 14, 2024, Administration brought forward a draft Public Spaces Bylaw to City Council (the “February 2024 Draft Bylaw”) to replace the City’s three primary bylaws regulating public spaces and the Conduct of Transit Passengers Bylaw. The February 2024 Draft Bylaw also proposed to incorporate several provisions regulating public space from the Animal Control Bylaw, Traffic Bylaw and Drainage Bylaw. The February 2024 Draft Bylaw was referred back to Administration with a direction for additional supporting information and various specific amendments. Administration has now completed the requested work, and is recommending several changes to the draft bylaw. A revised draft bylaw is now being presented for consideration in Attachment 1.

## REPORT

Safe and welcoming public spaces promote urban vibrancy and equitable outcomes for Edmontonians by enhancing opportunities for social connection, civic engagement, economic activity, cultural expression, recreation, accessibility, health and well-being. Municipal bylaws may

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help address safety concerns and competing uses in public spaces by regulating permissible behaviours, but the regulations must carefully balance the competing needs and interests of diverse users, including those of equity-deserving groups. In an effort to achieve this balance, Administration has developed the revised draft Bylaw 20700 - Public Spaces Bylaw (Attachment 1) and accompanying redline version (Attachment 2), for City Council's consideration.

### Overview of Work Completed

Beginning in June 2022 and as presented to Community and Public Services Committee on September 9, 2022 (Office of the City Manager report OCM01402, Public Spaces Bylaw Review), Administration initiated a public spaces bylaws project, which included a wholesale review and revision of existing bylaws that address enforcement of behaviours in public spaces such as parks, transit, sidewalks and other publicly accessible areas. While most of these public spaces are publicly owned, privately-owned spaces that permit public access, such as non-City owned pedways, are also in-scope for this work.

In preparation for the Special City Council meeting where the February 2024 Draft Bylaw was presented, Administration completed the following activities:

- A mapping of Edmonton's current bylaws and a jurisdictional scan of similar bylaws from comparable Canadian cities. The jurisdictional scan revealed some of Edmonton's current offences are comparable, others are unique to Edmonton, and other cities regulate topics not currently addressed in Edmonton. While none of the cities reviewed have undertaken a project to consolidate public spaces bylaws into a single source, Administration has listed the most comparable provisions from different bylaws in Calgary and Winnipeg in Attachment 6.
- Through the mapping and jurisdictional scan, a list of nearly 250 regulations was created for potential inclusion in a new Public Spaces Bylaw. These regulations were sorted into three categories:
  - those that would be included without significant policy shifts, such as prohibiting the visible carrying of weapons in public spaces,
  - those that required review and adjustment, such as the placement of temporary signs on road right of way, and,
  - those that required engagement to determine the future policy direction.
- As part of the review, engagement was conducted to understand perspectives around how the City regulates behaviour and activities in public spaces. A total of 6,425 people completed an online survey, and one-on-one interviews were conducted with five groups - Homeward Trust, Bissell Centre, Edmonton 2 Spirit Society, Alberta Public Interest Research Group, and the Edmonton Downtown Business Association - providing an opportunity for in-depth review of perspectives on public spaces and how they should be used and regulated. Engagement findings are summarized in a What We Heard Report, which was originally published as an attachment to the February 2024 Employee and Legal Services report ELS02103, Bylaw 20700

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Public Spaces Bylaw. For ease of reference, this document has also been attached to this Council report as Attachment 3.

As directed by the February 14, 2024 Public Spaces Bylaw referral motion above, Administration:

- Undertook a comprehensive gender-based analysis plus (GBA+) review to identify where bylaw regulations could disproportionately impact equity-deserving people and best practices for addressing these policy issues (see Attachment 4).
- Completed an environment and climate review (see Attachment 5).
- Completed a jurisdictional scan of fine amounts (see Attachment 6).
- Provided comprehensive rationale for fine changes and significant policy directions (see Attachment 7).
- Completed a detailed review of the permit requirement for 50-person gatherings and amplification systems.
- Incorporated specific amendments to the proposed bylaw as directed in part 2 of the referral motion, with the exception of 2(j) which is discussed in greater detail in Attachment 8.

In proposed Bylaw 20700 (Attachment 1), Administration has attempted to: maximize the safety and accessibility of public spaces for all; minimize incompatible uses; balance the needs of all Edmontonians to enable equitable outcomes; and avoid the penalization of poverty.

### Inputs for Decision Making

The proposed Bylaw 20700 seeks to balance considerations arising from three primary sources:

- The findings of the GBA+ Report;
- Public feedback and input collected from the approximately 6,500 responses and focused engagement identified in the February 2024 “What We Heard” Report; and
- Practical considerations, legal considerations, Council-approved City policies and best practices identified through consultation with subject-matter experts, jurisdictional scans, the practices and experiences of other large Canadian municipalities, and literature review.



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Through the lens of these inputs, Administration has reviewed the major policy recommendations in the bylaw. While the new draft bylaw maintains most of the proposed content from the February 2024 Draft Bylaw, there are some notable changes to the recommendations. Attachment 7 provides a thorough analysis and rationale of the policy recommendations and identifies alternate policy options. Attachment 7 also provides more information on offences and fine amounts. The key recommendations are summarized as follows:

- Public Gatherings - Administration recommends a permit requirement for large public events be limited only to special events with an expected attendance of 100 or more persons, and the bylaw be clarified to ensure permits will not be unreasonably withheld or refused;
- Amplification - Administration no longer recommends the amplification of sound in public spaces be regulated through this bylaw;
- Visible Drug Use in Public Spaces - Administration continues to recommend the bylaw establish a regulatory prohibition on the visible use of controlled substances in public spaces, but recommends a separate section be added that allows enforcement officers to direct a person to discontinue the consumption of alcohol or a controlled substance or to stop smoking or vaping in a public place;
- Temporary Outdoor Sheltering - Administration recommends no changes to outdoor sheltering provisions from those previously proposed;
- Use of Transit Spaces - Administration no longer recommends that persons are deemed by the bylaw to be using transit for improper purposes if they pass a transit station more than once while riding on a transit vehicle or if they remain in a transit station while two or more transit vehicles for their intended route pass;
- Use of Bicycles on Sidewalks - Administration recommends modification to the regulation of bicycles and e-scooters on sidewalks, in light of the collision risk data associated with the use of bicycles on sidewalks explained in Attachment 8;
- Fines - Administration recommends the fines associated with several offences be reduced to \$25.00 or a nominal amount, for offences where the primary regulatory aim is the cessation of conduct, not penalization or general deterrence;
- Other Provisions - Administration recommends several other changes to better clarify intent, delineate authorities, respond to Council's referral motion, and improve verbiage from the February 2024 Draft Bylaw.

No legislation can perfectly address the enormously diverse needs of Edmontonians in using public spaces. Administration believes that the revised draft Public Spaces Bylaw in Attachment 1 offers a reasonably balanced, simplified, and harmonized set of regulations which, if passed by Council, can be implemented through thoughtful enforcement practices that minimize unnecessary and unintended impacts. This approach will enable public spaces in Edmonton to serve their fullest purposes and be used by all.

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### Public Spaces Bylaw in Context

#### *Alignment with City Policies*

Alignment with City policies was one of the three inputs Administration considered in developing the draft bylaw, and there are numerous Council-approved City policies that have some bearing on the use of public spaces. When developing the draft bylaw, Administration identified ConnectEdmonton, The City Plan, the Community Safety and Well-being (CSWB) Strategy, the Anti-racism Strategy and Anti-Black Racism Action Plan, and the Indigenous Framework as the most relevant overarching City policy documents from which to take direction. While the bylaw content is intended to align with City policies, many of the policy goals are properly pursued through implementation. Each of the above noted City policies was reviewed for relevancy and applicability to the Public Spaces Bylaw, and a summary of the directly and indirectly applicable elements within each policy is provided in Attachment 9.

#### *The Function and Purpose of a Public Spaces Bylaw*

Municipalities can use bylaws as a one tool to regulate and prohibit behaviours. Bylaws are not intended to enable or establish programs. While conduct bylaws are necessary to establish objective community standards, they do not alone serve as effective tools for addressing the root causes of complex social issues. Many of the tools required to address the root cause of core housing needs or the prevalence of mental health and addiction concerns cannot be addressed by a bylaw and often exist outside of the scope of municipal authority. The City of Edmonton continues to advocate for and be a willing partner with other orders of government to advance progress on various root cause issues. Funded programming work to address community safety and wellbeing is captured within the CSWB Strategy.

#### *Enforcement of the Public Spaces Bylaw*

Enforcement of regulatory offences is always informed by discretion. Provincial law<sup>1</sup> specifically notes a Peace Officer's ability to enforce a provincial or municipal law does not preclude them from exercising discretion or taking other steps instead of ticketing. However, when a contravention of a bylaw or law is observed by a Peace Officer, that Peace Officer has lawful placement authority, which specifically refers to the legal capacity of a Peace Officer to engage with an individual.

Lawful placement authority, and the thoughtful and effective use of discretion helps limit the risk of further marginalization of equity-deserving groups. Peace Officers in Edmonton are trained to balance lawful placement with discretionary enforcement, and specifically to follow the "4E" model - engage, educate, encourage and enforce - which prioritizes shared understanding and support over punitive measures. This means that discretionary 'enforcement' by a Peace Officer may include a range of actions including discussion, instruction, referral to a program, issuance of a verbal or written warning or in some cases, ticketing. To ensure public safety, Peace Officers receive ongoing training in cultural competency, implicit bias, and gender sensitivity to increase

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<sup>1</sup>Procedures Regulation, Alta Reg 63/2017, <<https://canlii.ca/t/56cm6>> retrieved on 2025-01-17.

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understanding of historical inequities, foster trust with community members, and effectively exercise discretionary enforcement in a way that does not perpetuate further discrimination or marginalization of equity-deserving groups.

### Next Steps

If Council gives three readings to Bylaw 20700 as presented, it is proposed to come into force on May 13, 2025. This allows time for enforcement officers to receive further training and provide education to public space users on the proposed changes, and the opportunity for specific communications materials to be developed and promoted regarding the changes. Administration will work collaboratively with partners, including the Edmonton Police Service, Business Improvement Areas, and private owners of public spaces to ensure awareness of the new bylaw and its application to their specific scenarios.

## COMMUNITY INSIGHT

The “What We Heard” report (Attachment 3) provides an overview of the public engagement methodology and resulting feedback which was used to develop the February 2024 Draft Bylaw, and was one of three primary inputs for decision making used to inform the current draft. These engagement activities were conducted between May and June 2023. Key themes included safety being the paramount concern, particularly among seniors and those with young children. Other considerations included the enforcement of the bylaw, the need to support Edmontonians in vulnerable circumstances, concern around disruption or prevention of the use of public spaces, and the maintenance and cleanliness of public spaces.

Administration did not conduct further external public engagement following the February 2024 Public Spaces Bylaw referral motion. However, Administration collected and analyzed feedback from three primary streams to help inform the recommendations in the GBA+ Report (Attachment 4), and the bylaw revisions. The findings from this analysis are detailed in Attachment 4, and summarized below:

- The first stream of feedback was gathered from comments and presentations received from speakers at the February 14, 2024 Special City Council Meeting. Over 50 members of the public, representing a diverse range of groups and perspectives, provided feedback directly to City Council. Administration also reviewed the written feedback that was received on this item, which included comments from equity-deserving people with lived experiences, representatives of equity-serving social agencies, union representatives, health care workers, public health subject matter experts, representatives from the business community and persons with legal and academic expertise.
- The second stream of feedback was gathered from public-facing City employees who interact directly with equity-deserving Edmontonians or who would interact with the Public Spaces Bylaw as a routine part of their work. This included, but was not limited to, bylaw enforcement officers, recreation centre employees, Community Safety Liaisons, employees in the

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Indigenous Relations Office, the Affordable Housing and Homelessness Section, Edmonton Fire Rescue Services, Edmonton Transit Service employees (including transit operators). Feedback was collected through information sessions, followed by engagement packages. City employees offered a wide range of lived and professional perspectives depending on the type of service, location and other factors related to their work.

- The third stream included feedback from City-affiliated Council advisory boards, including the City of Edmonton Youth Council, the Accessibility Advisory Committee, Community Services Advisory Committee, the Edmonton Transit Service Advisory Board and the Women's Advocacy Voice of Edmonton. Administration reviewed feedback from these groups for the first draft of the Public Spaces Bylaw, and following the finalization of the second draft of the bylaw, Administration also offered information sessions or followed up with correspondence to these groups. The follow-up information sessions were offered to provide respective groups with an opportunity to ask clarifying questions and promote a shared understanding of Administration's decisions and recommendations, and for Administration to provide rationale for bylaw recommendations.

### GBA+

The GBA+ Report (Attachment 4) took a broad perspective on who may be considered an 'equity-deserving Edmontonian'. People experiencing poverty and homelessness, as well as mental health and addiction issues were identified as groups with the highest vulnerabilities in terms of potential impacts of the bylaw. Racialized people, 2SLGBTQI+, people with disabilities, children and young people, seniors, newcomers and people who rely on public transit as the primary form of transportation were other identity factors which were noted for the potential to be disproportionately impacted. The recommendations in the GBA+ report were one of three primary inputs used to inform revisions in the bylaw, and Administration has provided rationale where recommended bylaw revisions do and do not align with the recommendations in the GBA+ Report in Attachment 7.

### Environment and Climate Review

Administration has prepared an Environment and Climate Review (Attachment 5) which provides details on provisions of the bylaw that have considerations for climate and the environment and in some cases, considerations. Considerations that relate to provisions in the bylaw were reviewed and considered for alignment.

### Legal Implications

Section 3 of the *Municipal Government Act* lists several purposes for Alberta municipal governments, including the mandate to "develop and maintain safe and viable communities". Section 7 of the *Municipal Government Act* authorizes municipalities to pass bylaws respecting (a) the safety, health and welfare of people and the protection of people, and property, (b) people,



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activities and things in, on or near a public place or place that is open to the public, and (...) (d) transport and public transportation systems. To enforce bylaws, municipalities are authorized to identify offences, establish penalties and address ways to remedy the contravention of these bylaws.

Municipal bylaw offences are regulatory offences, not criminal offences. A person convicted of a bylaw offence does not receive a criminal record. Bylaw tickets with specified penalties of \$1,000 or lower are ordinarily issued as Part III Violation Tickets, which do not result in jail or warrants in default of payment. A more detailed analysis of types of offences and fine amounts is set out in Attachment 7.

Alberta municipalities have legal obligations relating to the repair and safety of their public spaces. A Public Spaces Bylaw is a tool used by Administration to enable the efforts to ensure that public spaces are safe and reasonably maintained. While a municipality's specific duties vary depending on the character of the public space, a municipality has a legal obligation to maintain public spaces under its direction, management and control in a reasonable state of repair, and must take reasonable care to provide visitors with a safe premises for the purpose which the space is intended to be used.

The regulation of certain types of conduct can engage constitutional rights and freedoms found in the *Canadian Charter of Rights and Freedoms*. In drafting this proposed bylaw, Administration has attempted to minimize any impact to *Charter*-protected rights and freedoms while fulfilling requirements under the MGA and attempting to provide solutions to concerns impacting the use of municipal public spaces. Specific explanations in relation to various policy issues, and how Administration considered these issues when formulating these recommendations, are explained in further detail in Attachment 7.

## ATTACHMENTS

1. Bylaw 20700 - Public Spaces Bylaw
2. Redline Version
3. What We Heard Report - Public Spaces Bylaw Review<sup>2</sup>
4. Gender Based Analysis Plus (GBA+) Report
5. Environment and Climate Review
6. Jurisdictional Scan of Fine Amounts
7. Comprehensive Rationale for Fine Changes and Significant Policy Directions
8. Safety Analysis: Riding on Sidewalks
9. Alignment with City Policies

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<sup>2</sup>Originally published as an attachment to the February 14, 2024 Employee and Legal Services report ELS02103, Bylaw 20700 Public Spaces Bylaw