

Smoking Bylaw 18-2018**Report Purpose**

To provide information to Council to make a decision on first, second, and third readings of the Smoking Bylaw 18-2018.

Recommendation

1. THAT the Smoking Bylaw 18-2018 be given first reading.
2. THAT Bylaw 18-2018 be given second reading.
3. THAT Bylaw 18-2018 be considered for third reading.
4. THAT Bylaw 18-2018 be given third reading.

Council History

April 17, 2018 – Priorities Committee was provided with an update on the Smoking Bylaw.

February 6, 2018 – Council approved “THAT Administration prepare a bylaw that would prohibit smoking of tobacco or cannabis as well as vaping in areas not addressed by provincial legislation (such as, but not limited to, playgrounds, sports fields, outdoor recreation facilities, school grounds, outdoor events, outdoor markets and hotel guest rooms); and that a non-statutory public hearing, in accordance with Strathcona County’s public hearing procedures, be held on May 8, 2018 so that Council may consider the proposed bylaw and any related public input.”

Strategic Plan Priority Areas

Economy: n/a

Governance: n/a

Social: A bylaw regulating smoking may help support the social outcome of making people feel safe living, gathering, and moving about.

Culture: n/a

Environment: n/a

Other Impacts

Policy: n/a

Legislative/Legal: The Municipal Government Act, RSA 2000, c M-26 provides that municipalities may pass bylaws for municipal purposes respecting matters such as the safety, health and welfare of people and the protection of people and property (s. 7); Tobacco and Smoking Reduction Act and regulations; Building Code Regulation AR 31/2015. Interdepartmental: Legislative and Legal Services has worked with Enforcement Services; Recreation, Parks and Culture; Intergovernmental Affairs; and Communications on this matter.

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Summary

Council directed administration to prepare a bylaw that would prohibit smoking of tobacco or cannabis as well as vaping in areas not addressed by provincial legislation. Administration prepared a draft of the bylaw and presented the draft to the Priorities Committee in April to obtain input prior to presentation at the May 8, 2018 public hearing.

STRATHCONA COUNTY BYLAW 18-2018

SMOKING BYLAW

Pursuant to:

Sections 7, 8, and 545 of the *Municipal Government Act*, RSA 2000 c m-26, Council may pass bylaws for municipal purposes as set out in section 3 of the *Municipal Government Act* including bylaws relating to matters including the safety, health and welfare of people, the protection of people and property and people, activities and things in or near public places or places open to the public, nuisances, the creation of offences, prescribe fines and penalties and order compliance with orders or directions of the municipality;

Parts 2 and 3 of the *Provincial Offences Procedure Act*, RSA 2000 c P-34, municipal bylaws may be enforced by way of violation tickets issued in accordance with the Act and the *Procedures Regulation*, AR 63/2017;

Section 10 of the *Tobacco and Smoking Reduction Act*, SA 2005 c T-3.8, and the *Tobacco and Smoking Reduction Regulation* AR 240/2007, municipalities may make bylaws to regulate, restrict or prohibit smoking, notwithstanding anything in the *Tobacco and Smoking Reduction Act*, and if there is a conflict between it and a municipal bylaw, the more restrictive provision prevails;

PART 1 – CITATION, PURPOSE, INTERPRETATION AND DEFINITIONS

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|----------------|--|
| Citation | 1. This bylaw shall be cited as the Smoking Bylaw. |
| Purpose | 2. The purpose of this bylaw is to establish prohibitions and prescribed penalties in relation to the smoking and vaping of tobacco or other substances within Strathcona County. |
| Interpretation | 3. This bylaw shall be interpreted in accordance with the following rules: <ul style="list-style-type: none">a. The preamble, headings and side bar titles in this bylaw are for ease of reference only;b. References to an enactment, which includes a bylaw, means the most current version of the enactment, and includes the provisions in any related regulations, orders, or other legislative instruments;c. The singular shall include the plural, and feminine include the masculine, as the context requires;d. If any part of this bylaw is determined to be unenforceable, the remainder shall remain in force and be interpreted as if the offending portion had never been part of the bylaw; |

- e. If an enactment contains prescriptive provisions that are less restrictive than the ones in this bylaw, or exceptions that are less prescriptive than the ones in this bylaw, the provision in this bylaw governs.

Definitions

4. Words in this bylaw have the meanings set out in this section:

- a. “Building Code” means the *Building Code Regulation*, AR 31/2015, enacted under the authority of the *Safety Codes Act*, RSA 2000 c S-1;
- b. “Chief Commissioner” means the County’s chief administrative officer or delegate;
- c. “County” means the specialized municipality and municipal corporation of Strathcona County, established under Order 761/95 pursuant to the Municipal Government Act;
- d. “designated officer” means the Chief Commissioner, a peace officer or any other designated officer of the municipality appointed by bylaw in accordance with the Municipal Government Act;
- e. “electronic cigarette” means a handheld device containing a liquid such as nicotine or other substance that is vaporized and inhaled to simulate the experience of smoking;
- f. “enactment” has the same meaning as it does in the *Interpretation Act*, RSA 2000, c I-8, and includes statutes, regulations and bylaws;
- g. “hotel” includes any premises offering sleeping accommodation rooms on a temporary basis such as a motel, inn, bed and breakfast, or other similar accommodation, but does not include lodging or accommodations where a person maintains his or her private residence;
- h. “manager” has the same meaning as in the Tobacco and Smoking Reduction Act;
- i. “Municipal Government Act” means the *Municipal Government Act*, RSA 2000 c M-26;
- j. “municipal tag” means a ticket issued under the authority of a bylaw that provides a voluntary payment option without a court process;
- k. “outdoor recreation area” means any County owned or managed lands and parks open to members of the public engaging in outdoor sporting or recreation activities including, but not limited to, camping, canoeing, snowshoeing, skiing, golfing, and hiking, but does not include any other place defined as a public place under this bylaw that is located within an outdoor recreation area;

- l. “park” means County owned or managed lands as described in the County’s Parks Bylaw, Bylaw 21-2013;
- m. “patio” means an outside area intended for the consumption of food and beverages by persons patronizing a business that provides food and beverages;
- n. “peace officer” has the same meaning as it does in the *Peace Officer Act*, SA 2006, c P-3.5;
- o. “person” includes an individual, an incorporated entity, partnership or other form of business form or organization that operates as an entity distinct from the individuals operating the business;
- p. “playground” means an area designated for the recreation of children located on sand, rubber crumb or other soft material and containing wooden, metal or plastic children’s play structures;
- q. “private residence” means the place where a person ordinarily and habitually resides and intends to return to if temporarily absent;
- r. “Provincial Offences Procedure Act” means the *Provincial Offences Procedure Act*, RSA 2000 c P-34;
- s. “public place” means any building, structure or other indoor space, or a designated outdoor space, whether publicly or privately owned or controlled, to which members of the public have access as of right, or are expressly or impliedly invited to use the space, with or without payment, and includes:
 - i. all locations defined as a public place under the Tobacco and Smoking Reduction Act, and any other enactment that prohibits smoking or vaping of tobacco or other substances;
 - ii. school buildings or structures, parking areas or lots, and school grounds;
 - iii. playgrounds;
 - iv. spray parks;
 - v. skateboard or bicycle parks;
 - vi. skating rinks;
 - vii. sports fields;

- viii. outdoor recreation areas;
- ix. swimming pools;
- x. theatres;
- xi. patios;
- xii. zoos or animal conservation areas; and
- xiii. events and markets operating under County licences, permits or approvals, including, but not limited to, holiday celebrations, concerts, parades, organized sporting events, and farmers markets;

but does not include a highway as defined under the *Traffic Safety Act*, RSA 2000 c T-6, or a person's private residence;

- t. "skating rinks" means a structure bounded by fencing or natural boundaries into which water is poured or is naturally occurring, and on which the public is permitted to skate, but may be used for other recreational purposes in non-winter months;
- u. "skateboard or bicycle park" mean a place dedicated to the use of skateboard or bicycle recreation;
- v. "smoke" means to inhale or exhale, hold or control, tobacco or another burning or lit substance, contained in paper, a receptacle or other transfer mechanism, that emanates vapours, emissions, or odours when the substance is burned or lit;
- w. "smoking permitted hotel guest room" means a room in a hotel used by a registered hotel guest and any invitees of that guest that:
 - i. was designated as a smoking permitted room in accordance with the Tobacco and Smoking Reduction Act prior to the passage of this bylaw; and
 - ii. is maintained and operated by the hotel in compliance with the Building Code clean air and ventilation requirements, and any other applicable enactments;
- x. "sports field" means any area designed or designated as an area for playing organized outdoor sports such as football, soccer, baseball, tennis, pickleball, volleyball or basketball;
- y. "spray park" means a recreational area with features and structures that spray or release water;

- z. “subsequent offence” means an offence committed by a person within one year from the date on which a person was convicted of, or voluntarily paid a fine for the same offence;
- aa. “Tobacco and Smoking Reduction Act” means the *Tobacco and Smoking Reduction Act*, SA 2005, c T-3.8;
- bb. “tobacco” has the same meaning as it does under the Tobacco and Smoking Reduction Act;
- cc. “vape” means to inhale or exhale nicotine or other substance that is vaporized and emanates vapours, emissions or odours, including the use of electronic cigarettes; and
- dd. “violation ticket” has the same meaning as it does under the Provincial Offences Procedure Act.

PART 2 – OFFENCES

Prohibitions and Exceptions

- 5. No person may smoke or vape in, at or on a public place, except for the following locations:
 - a. an outdoor recreation area designated as a dog off leash park;
 - b. an outdoor recreation area that is not signed as a non-smoking area;
 - c. golf courses;
 - d. smoking permitted hotel guest rooms; or
 - e. any other location where smoking or vaping is permitted by an enactment.

Prescribed Distances

- 6. No person may smoke or vape within 10 metres of the boundaries of:
 - a. a playground;
 - b. a spray park;
 - c. a sports field;
 - d. a swimming pool;
 - e. a skating rink, even if it is temporarily designated as a dog off leash area;
 - f. a skateboard or bicycle park;

g. an outdoor event or market; or

h. a doorway, window, or air intake or a public place or workplace.

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|------------------------------|---|
| Parking Lots and Restrooms | 7. No person may smoke or vape in, at or on parking or public restroom areas that are adjacent to, or used in conjunction with a public place. |
| Signed Areas | 8. No person may smoke or vape in, at or on any place the Chief Commissioner has signed as a non-smoking area. |
| Hotels | 9. The manager of a hotel may not suffer or permit any person to smoke or vape in an area where smoking or vaping is prohibited under this bylaw. |
| False Information | 10. No person may provide false information to a peace officer. |
| Obstruction and Interference | 11. No person may interfere with or obstruct a peace officer performing the peace officer's duties under this bylaw. |

PART 3 – ENFORCEMENT

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| Offence | 12. A person who contravenes this bylaw is guilty of an offence. |
| Continuing Offence | 13. If an offence is of a continuing nature, each day or part thereof that a person fails to comply with the requirements of this bylaw constitutes a new offence. |
| Vicarious Liability | 14. If a person other than an individual commits an offence, every principal, partner, director, officer, manager, employee, agent, contractor or representative who expressly or impliedly authorized or acquiesced in the offence, is guilty of an offence. |
| Voluntary Payment | 15. A person guilty of an offence is liable to not more than the maximum penalty for the offence prescribed by the Tobacco and Smoking Reduction Act, or any other applicable enactment, but if a voluntary payment option is offered, the following fine amounts shall be stated and imposed on a municipal tag or violation ticket:

a. \$250.00 for a first offence;

b. \$500.00 for a second offence within one (1) year of the first offence; and

c. \$750.00 for a third and any subsequent offence. |
| Peace Officer Discretion | 16. Nothing in this bylaw precludes a peace officer from issuing a violation ticket without a voluntary payment option, or taking any other enforcement measure prescribed by this bylaw, or another bylaw or enactment, in addition to issuing a municipal tag or violation ticket for an offence under this bylaw. |

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| Power to Inspect and Remedy | 17. A peace officer is a designated officer of the municipality and has the power to conduct inspections, take enforcement action, and order any person to remedy a contravention of this bylaw in accordance with the Municipal Government Act, or as provided for in any other enactment or bylaw. |
| Municipal Tags and Violation Tickets | <p>18. If a peace officer has reasonable and probable grounds to believe that a person has committed an offence under this bylaw, a peace officer may issue and serve:</p> <ul style="list-style-type: none"> a. a municipal tag on the person by: <ul style="list-style-type: none"> i. Personally serving a municipal tag on the person; or ii. Mailing a copy of a municipal tag by pre-paid post to the person's last known postal address; or b. a violation ticket on the person, with or without a voluntary payment option, in accordance with the requirements and procedures under the Provincial Offences Procedure Act. <p>19. A peace officer may, in the peace officer's sole discretion, elect to issue and serve a violation ticket, with or without a voluntary payment option, without first issuing a municipal tag.</p> <p>20. If a municipal tag is issued to a person, the person may within the time specified on the municipal tag, voluntarily pay the specified fine to avoid prosecution for the offence, but if the person fails to pay the specified fine within the time specified for voluntary payment, a peace officer may proceed to issue and serve a violation ticket for the same offence, with or without a voluntary fine payment option.</p> <p>21. A municipal tag shall be in a form approved by the Chief Commissioner, and must state the fine amount established for the offence under this bylaw.</p> <p>22. A violation ticket will be in the form prescribed in the Provincial Offences Procedure Act and will specify whether a voluntary payment option is available or require the person to appear at Provincial Court on a specified date.</p> |
| Orders | <p>23. In addition to any other enforcement measures in this bylaw, if the Chief Commissioner or other designated officer of the municipality believes on reasonable grounds that a person is contravening a provision of this bylaw, the Chief Commissioner or other designated officer may in accordance with the authority and procedures under the Municipal Government Act, by written order direct that person to, within a specified period of time:</p> <ul style="list-style-type: none"> a. Cease contravening the bylaw; and b. Take any action or measure necessary to cease the contravention of this bylaw and to prevent a recurrence of such contravention. |

24. Service of a written order shall be effected on a person in accordance with the rules for service provided for in Part 11 of the Alberta Rules of Court.

25. If a person fails to comply with a written order to comply with this bylaw, the municipality may undertake any action or measure necessary to secure compliance in accordance with the requirements and procedures in the Municipal Government Act.

PART 4 – ABORIGINAL RIGHTS

26. Nothing in this bylaw abrogates or derogates from the rights of persons of aboriginal ancestry from participating in their cultural or spiritual practices.

PART 5 – GENERAL MATTERS

Chief
Commissioner
Powers /
Delegation

27. Nothing in this bylaw fetters or impairs the Chief Commissioner's power to exercise the Chief Commissioner's powers under any bylaw or an enactment, and the Chief Commissioner may delegate any of the Chief Commissioner's powers under this bylaw to a County employee or designated officer.

Evidence of
Substance

28. In a prosecution under this bylaw, a witness is not required to identify the substance smoked or vaped to make out the offence.

Onus for
Exceptions

29. The onus of proving an exception applies in a particular case is on the person alleging the exception on a balance of probabilities.

Certified Copies

30. A copy of a County record certified by the Chief Commissioner as a true copy of the original record shall be admitted in evidence as prima facie proof of the facts stated in the record, absent proof to the contrary, without proof of the signatory's authority or appointment.

First reading: _____

Second reading: _____

Third reading: _____

Date signed: _____

Mayor

Director, Mavis Nathoo
Legislative and Legal Services

Background

Tobacco is regulated by the province under the Tobacco and Smoking Reduction Act and related regulations. This Act permits municipalities to pass bylaws containing more restrictive provisions than the provincial regime. Possession or consumption of cannabis is currently an offence governed by federal controlled substances legislation. When cannabis ceases to be a controlled substance and becomes a regulated commodity - which is expected to occur before fall of 2018 - both the federal and provincial levels of government will pass enactments to regulate the growing, possession and consumption of cannabis. The province has passed, but not proclaimed, draft legislation that amends the provincial Gaming and Liquor Act, which will be renamed the Gaming, Liquor and Cannabis Act. Section 90.28 of the amending legislation prohibits the smoking of cannabis in any location where tobacco consumption is prohibited by an enactment or bylaw, and on hospital property, school property, child care facility property, playgrounds, sports or playing fields, skateboard or bicycle parks, zoos, outdoor theatres, outdoor pools or splash pads, and at any other location prescribed by future regulations.

Proposed Smoking Bylaw

The proposed bylaw, see Enclosure 1, relies upon the municipality's power to regulate activities and nuisance and therefore, the municipal offence created in the bylaw is not tied to the actual substance smoked or vaped - just the activity of smoking or vaping any substance that could create nuisance (in terms of odour, vapours or emissions) to other persons. Tobacco and the Tobacco and Smoking Reduction Act are referenced, but the offence extends to any substance that is smoked or vaped in a public place.

The proposed bylaw provides for extensive prohibition of smoking within the County. Under the bylaw, smoking or vaping is prohibited in public places. The only exceptions are: off-leash dog parks (except skating rinks that are used as off-leash dog parks in the summer); golf courses; certain outdoor recreation areas; and hotel guest rooms that were already designated as smoking rooms under the Tobacco and Smoking Reduction Act, and that comply with the Alberta Building Code clean air and ventilation regulations.

The Hotel Association advised that there does not seem to be a demand for additional smoking hotel rooms within most municipalities. In light of the current requirements under the Building Code, hoteliers do not consider it worthwhile to install new smoking areas or rooms. Accordingly, the proposed bylaw prevents hotels from developing smoking guest rooms in future, even if the owner was to comply with the Building Code and other legislative requirements.

The proposed bylaw also permits the Chief Commissioner to designate specific areas as non-smoking by installing signage to that effect.

The proposed bylaw requires a 10 metre non-smoking set back from areas where children are more likely to congregate such as playgrounds, spray parks, skate and bicycle parks, pools, skating rinks, and sports fields, and from doorways and air intake areas.

Communication Plan

Provided that the bylaw receives three readings, Administration will make the bylaw available on the County public website and issue a media release.

Enclosure

- 1 Smoking Bylaw 18-2018
- 2 Smoking Bylaw Presentation

DRAFT SMOKING BYLAW DISCUSSION

Bylaw 18-2018

Direction

“Prepare a bylaw that would prohibit smoking of tobacco or cannabis, as well as vaping, in areas not addressed by provincial legislation (such as, but not limited to, playgrounds, sports fields, outdoor recreation facilities, school grounds, outdoor events, outdoor markets and hotel guest rooms).”

- Council motion, February 6, 2018

Assumptions

- Smoking and vaping should be treated the same
- Cover all substances, including cannabis
- Enforceability is important
- Cost of implementation is a consideration
- The bylaw should fill any gaps in current legislation
- Focus on protection of health, and especially of children
- Public education and awareness is important
- Respect the individual's right to consume legal substances

Overview

- Current legislation
- Smoking/vaping
- Anticipated legislation
- What would the draft bylaw do?
 - Prohibited areas
 - Distances
 - Exceptions
 - Penalties
- Cost considerations
- Next steps
- Public Hearing

Current state

2006

Alberta passed the *Tobacco and Smoking Reduction Act and Tobacco and Smoking Reduction Regulation*

Present day

- Cannabis is currently a controlled substance (expected to become regulated before the fall of 2018)
- Awaiting provincial proclamation on amendments to the provincial *Gaming and Liquor Act* that will prohibit smoking of cannabis in any area tobacco is prohibited, and additional specified locations
- Strathcona County does not have a bylaw to address smoking or vaping.



Tobacco smoking: provincially prohibited



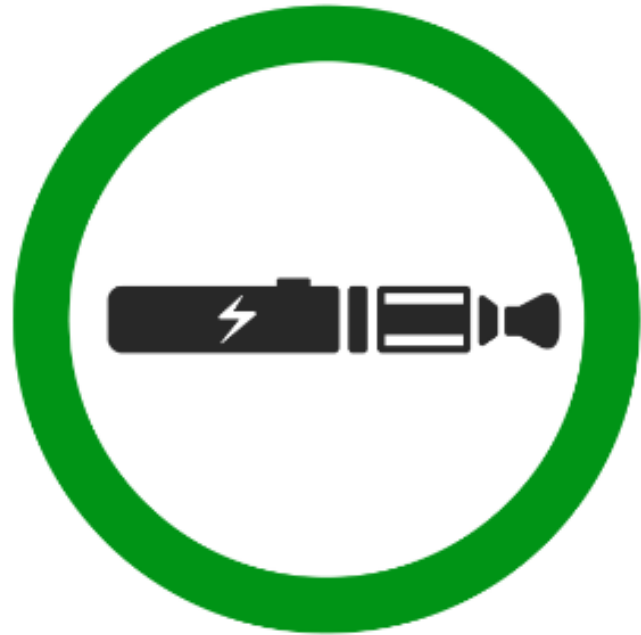
- Public buildings/enclosed areas
- Building common areas
- Group living facilities
- Outdoor bus or taxi shelters
- Licensed premises and restaurants
- Hotels
- Workplaces
- Vehicles where minor is present
- Public vehicles
- Within 5 m of public doorway/window/air intake

Tobacco smoking: provincial exceptions



- Private residences (except for designated workplace areas)
- Registered/invited guest in hotel guest room
 - Designated smoking room by manager
 - Floor to ceiling walls and doors to separate room
 - Alberta Building Code requirement of separate ventilation per smoking unit
- Resident of group living facility/lodge accommodation in separate room
 - Designated smoking room by facility manager
 - Floor to ceiling walls and doors to separate room
 - Separate ventilation system

Vaping: provincial



- Tobacco vaping, or vaping of substances that are not controlled or illegal, is currently not prohibited.

Expected provincial smoking/vaping prohibited areas



Once amendments to *Gaming and Liquor Act* are proclaimed, cannabis smoking or vaping will be prohibited in:

- Any location where tobacco smoking is prohibited under:
 - *Tobacco and Smoking Reduction Act*
 - Any other enactment
 - Municipal bylaws
- Hospital/school/childcare facility property
- Within a prescribed distance from:
 - Playgrounds
 - Sports or playing fields
 - Skateboard or bicycle parks
 - Zoo
 - Outdoor theatres
 - Outdoor pool or splash pads



Draft bylaw

Intent:

- Prohibit smoking or vaping: ***regardless*** of substance used
- Prevent nuisance and adverse health impacts to others (authority under *Municipal Government Act*)



Draft bylaw: prohibit smoking



- Anywhere prohibited by *Tobacco and Smoking Reduction Act*
- Events and markets operating under County licences, permits or approvals
- Hotel guest rooms
- School buildings, structures, parking lots and grounds
- Playgrounds
- Skateboard/bike parks
- Skating rinks/sports fields
- Signed outdoor recreation areas
- Swimming pools/spray parks
- Theatres
- Patios

Draft bylaw: prescribed distances

- No smoking or vaping within 10 metres of:
 - Places frequented by children (playgrounds, spray parks, skateboard or bike parks, skating rinks, sports fields, swimming pools)
 - Doorway or fresh air intake



Draft bylaw: exceptions



- Private residences
- Highway (sidewalks, boulevards, ditches, trails)
- Off-leash dog parks (not including temporary off-leash areas in skating rinks)
- Unsigned outdoor recreation areas (unless otherwise prohibited)
- Golf courses
- Existing guest rooms in hotels designated as smoking rooms, in compliance with building code regulations

Draft bylaw: enforcement fines

- Voluntary payment ticket option
 - \$250 to \$750
- No voluntary ticket payment option (*Tobacco and Smoking Reduction Act*)
 - Smoking where prohibited: not more than \$1,000 for first offence; not more than \$5,000 for subsequent offence
 - Minor offending: not more than \$100
 - Manager allowing smoke in non-smoking area/failure to post signage: not more than \$10,000 for first offence; not more than \$100,000 for subsequent offence



Draft bylaw: cost considerations

Enforcement Services	Signage	Education
Complaints based enforcement model	Estimated cost per sign: \$300 Estimated cost per temporary sign: \$200	Estimated cost for public education campaign: \$8,000

County parks



150 parks with over 450 amenities such as:

- Playgrounds (147)
- Sports fields (108)
- Ball diamonds (90)
- Courts (50)
- Rinks (27)
- Spray parks/decks (6)

*does not include green spaces/natural areas that have trail connections and storm water management facilities

Draft bylaw signage – cost options

Option #1 (recommended)	Option #2	Option #3
Sign six regional parks and event specific signage (Centennial Park, Strathcona Athletic Park, Emerald Hills Regional Park, Sherwood Heights, Ardrossan Park, Broadmoor Lake Park)	<ul style="list-style-type: none"> • Sign 150 parks that have amenities such as courts, fields and diamonds. • Average of four signs at park entrances. 	Event specific temporary signage
(\$1,800 for 6 signs/park) x 6 parks (\$200 per sign) x 10 signs	(\$1,200 for 4 signs/park) x 150 parks	(\$200 per sign) x 10 signs
Est total: \$12,800	Minimum est. total: \$180,000	Est total: \$2,000

Community Considerations

- Impacts to business
- Special permits

Next steps

- Non-statutory public hearing
- Consider bylaw readings
- Public education program, if the bylaw is passed

*bylaw amendments/resources may be required based on federal and provincial legislation



Questions?



Public Hearing

