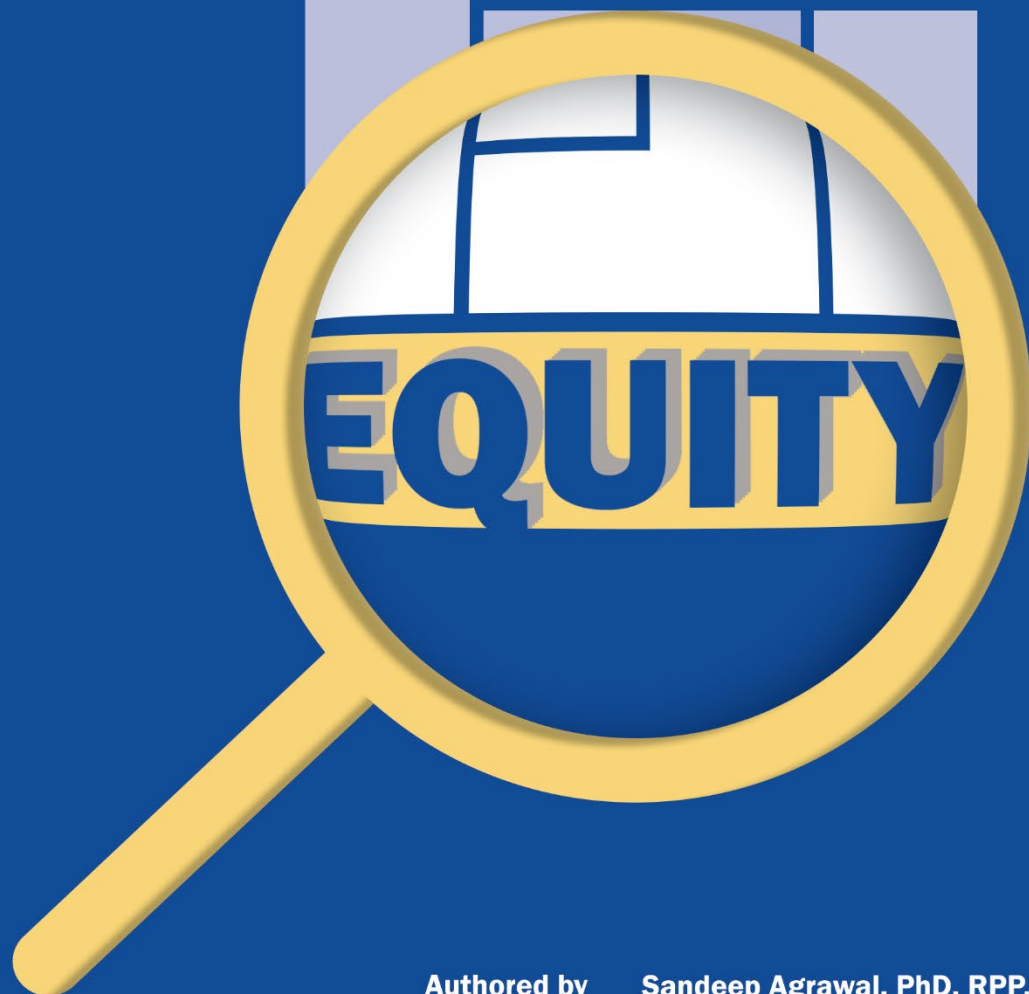


EDMONTON'S ZONING BYLAW UNDER THE LENS OF



EQUITY

Authored by



Sandeep Agrawal, PhD, RPP, AICP

Professor and Director
School of Urban and Regional Planning
University of Alberta

With assistance from

Elisabeth Hill,
Jill Lang,
Pradeep Sangapala,
Hayley Wasylcyia, and
Neelakshi Joshi, PhD

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EXECUTIVE SUMMARY

Edmonton's Zoning Bylaw is a complex and lengthy document consisting of 46 zones, 127 uses, 13 overlays, and 1100+ Direct Control (DC) zones that have accrued over time. It often results in inequitable outcomes and prevents desired change as envisioned by Edmontonians and articulated in *The City Plan*. The Zoning Bylaw has not undergone an extensive review since 1961. The most recent significant update was in 2001, with the purpose of harmonizing five different land use bylaws carried over from annexations in 1982. Without a comprehensive update in the last several decades, the Bylaw¹ no longer reflects current City policies and often creates inequitable barriers. The Zoning Bylaw Renewal Initiative (ZBRI) is an opportunity to advance equity in the city.

This report, led by a multidisciplinary research team² at the University of Alberta, aims to inform the City of Edmonton's (CoE) ZBRI through scholarly and academic research, by identifying inequities generated by the current Zoning Bylaw and exploring equity measures that have been or can be taken. To achieve this, we employed a mixed-methods approach, which included multiple data sources: the CoE's permitting database system, zoning amendments of the past five years, Edmonton's Subdivision and Development Appeal Board (SDAB) decisions, and best practice examples from other Canadian cities and other parts of the world. We also listened to the CoE's technical experts and key community stakeholders. Lastly, we theorized equity from academic literature and legal jurisprudence.

In light of the time constraints, this study does not encompass an exhaustive evaluation of the entire Zoning Bylaw and the associated permitting and appeals processes. Instead, we focused on the most salient issues that surfaced from our findings. Certainly, other issues may remain, buried in aspects of the Bylaw and the permitting process that we did not examine.

The study found that inequities exist not only in Edmonton's Zoning Bylaw but also in public consultation and decision-making processes. The CoE has made strides in bringing equity considerations into the Zoning Bylaw. Some of these measures have had limited effects and others have occurred too recently to provide a robust commentary on their impacts. The study argues that changes to zoning alone will not be able to solve all equity issues in the city or achieve a key priority of *The City Plan*—that is, to become an inclusive and compassionate city. Hence, a holistic approach is needed to achieve the multiple dimensions of equity.

Our recommendation for the CoE is to tackle issues specific to the Zoning Bylaw, as well as pursue city-wide action on broader structural and procedural challenges to equity. The latter will require further exploration around jurisdiction and applicability. These recommendations are meant to inform the ongoing ZBRI and to introduce long-term system-wide reforms to infuse equity and human rights in other parts and processes of the CoE's operation and administration. Our recommendations are divided into two groups: (1) Recommendations for the ZBRI; and (2)

¹ Bylaw is short for Zoning Bylaw in this report.

² Elisabeth Hill, Jill Lang, Pradeep Sangapala, Hayley Wasylycia, and Neelakshi Joshi.



Recommendations for administrative, procedural, and governance changes for the CoE and the Edmonton SDAB.

The three most significant changes proposed to the Zoning Bylaw are the following:

1. *Replace the discretionary use system with a conditional use system.* A permitted–conditional use means a building or land use that is generally consistent with other uses in the zone, but may be unique in its characteristics or operation, which could have an impact on adjoining properties. Conditional uses are proposed to be permitted in a given zone provided an additional set of regulations are met. If the regulations are met, the development permit is granted and notification to the surrounding neighbourhood is not required. If the proposed development does not meet the regulations related to the conditional use, the development authority could either refuse the permit or approve the necessary variances based on a set of established criteria. Any approval to vary the additional regulations would be subject to notification and appeal to the SDAB.

The conditional use system proposed above would ensure greater consistency, clarity, and predictability in the Bylaw. It will reduce unnecessary delays in the development of multiple housing types, and address the impacts of controversial or high-impact uses through clear and specific regulations.

2. *Make the Bylaw more accessible by simplifying the language and creating a citizens' guide.* Because of years of additions and attrition, the Bylaw has become cumbersome and is filled with legalese. To overcome this, the Bylaw must be drafted in plain language that is certain, predictable, transparent, accountable, and easy to understand, while meeting the legal requirement for clear and precise legislation. As well, an accompanying citizens' guide (a non-operative part of the Bylaw), also written in accessible language and providing graphic illustrations, should explain the purpose of each zone and use, the function they serve, the reasons for creating each zone and use, and the rationale for any conditions attached to the use. Making the Bylaw accessible and user-friendly to average Edmontonians in these ways is key to its effectiveness.
3. *Reduce the number of zones, overlays, and uses:* The Zoning Bylaw has become unnecessarily complex over the years. Zones and land uses need to be simplified, based on their intensity of impacts. Many low-rise, low-intensity residential zones seem similar in terms of permitted and discretionary uses and other development regulations. They can be merged into fewer zones that allow for the most permissible forms of housing. Similarly, many uses can be consolidated and should be subject to similar regulations based on their consistency with other uses in the zone and how much they affect adjoining properties.

We also suggest the following administrative and procedural changes:

4. *Conduct the ZBRI with clarity of purpose and a clear focus on land use impacts.* The ZBRI is an opportunity to consolidate uses and zones, since multiple low-rise, low-intensity residential zones are presently still maintained as separate zones—even though they are



almost identical in many respects. A better approach is to create regulations based on impact rather than building type. Direct Control zones should be amended to implement changes as per the CoE's strategic direction, especially to provide more affordable housing choices to Edmontonians.

5. **Apply human rights and equity tests to the Zoning Bylaw:** The renewal of the Zoning Bylaw can be bolstered further by adapting the two tests—human rights and equity—developed by Agrawal, the Principal Author, in his previous writings. The tests will act as a “quality control” measure, built into the CoE's GBA+ (Gender-Based Analysis Plus) and Equity Toolkit, to review the most contentious portions of the Bylaw. Utilizing these two analytical frameworks will also help in assessing the Bylaw's congruence with the *Canadian Charter of Rights and Freedoms* and the *Alberta Human Rights Act*.
6. **Reform the SDAB's appeals process and diversify the community consultation process.** At the moment, discriminatory use of the appeals system, in particular, impedes developments that can further equity goals, such as effective housing choices and affordability. Such usages undermine the CoE's strategic direction to become more equitable and inclusive; thus, appeals at the SDAB on grounds that undermine human rights should be discouraged. Instead, pre-hearing consultations and mediations should be offered to parties involved, to amicably resolve their concerns. Reaching out to equity groups includes engaging with Indigenous and other minority groups, to enhance both cultural diversity and inclusion.

Finally, the following governance changes are suggested as part of our recommendations:

7. **Develop an Edmonton Charter to guarantee certain rights.** This can be modelled after the *Charter of Ville de Montréal* and the *Montréal Charter of Rights and Responsibilities*, and include the right to initiate public consultation on issues important to Edmontonians. This charter would facilitate the creation of the two offices named below.
8. **Establish two new offices:** (1) an Ombudsman's Office, to find remedies for complaints about inequitable or unjust treatment by the city administration, and (2) an Office of Public Consultation, mandated to carry out public consultation regarding planning matters and to promote public participation in urban and land use planning matters. These arms-length agencies would collectively work to uphold the CoE's goals to create an equitable, inclusive, and compassionate city.



CONTENTS

Executive Summary1

Contents4

Figures and tables7

Abbreviations8

Introduction9

 Research Methodology: Data Collection10

 POSSE Data10

 Subdivision and Development Appeal Board Decisions11

 Zoning Bylaw Amendments11

 Municipal Plans11

 Interviews Conducted by the Research Team12

 Interviews Conducted by the CoE Staff13

 Research Methodology: Data Analysis13

Literature Review and Conceptual Framework14

 What is Equity?14

 Equity as Encapsulated in Human Rights15

 Equity and Human Rights Law16

 Equity in Urban Planning18

 The Conceptual Framework: Four Categories Of Equity19

 Distributional Equity20

 Recognitional Equity21

 Procedural Equity21

 Regulatory Equity22

 Best Practices: National and International22

 Brazil’s *City Statute* of 200122

 The UK’s *Localism Act 2011*23

 The *Mexico City Charter for the Right to the City* of 201023

 The Montréal Charters24

 Summary24

Findings27

 POSSE Data27

 Minor Development Permit Appeals Have Increased Over Time28

Development Permit Appeals Occur Frequently Within the MNO.....	29
Development Types and Related Appeals	30
Permit Appeals and Land Use Zones.....	31
Development Permit Appeals Focused on Infills	32
Class A (Permitted) vs. Class B (Discretionary) Permits & Appeals	32
Summary	33
Subdivision and Development Appeal Board Decisions.....	34
Housing	34
Accessible Parking.....	35
Cannabis Locations	36
Religious Assembly.....	36
Summary	36
Zoning Amendments	37
Parking	37
Infill	37
Garage, Garden, and Secondary Suites, and Tiny Homes.....	38
Mature Neighbourhood Overlay (MNO).....	38
Urban Agriculture	39
Supportive Housing.....	39
Context-based Design for New Development.....	39
Summary	40
Municipal Plans	40
Approach to Equity.....	40
Housing and Homelessness	41
Single-detached Residential Zone	42
Seniors, Children, and Persons With Disabilities.....	42
Cultural Diversity.....	43
Summary	44
Interviews Led by the City of Edmonton.....	44
What Does Equity Entail?	45
Where Does Inequity Occur in the Current Zoning Bylaw?.....	45
Where Else Does Inequity Occur in the City of Edmonton?.....	46
What are the Necessary Improvements for the Bylaw?	47



Summary	47
Interviews Conducted by the Research Team	47
Bylaw Characteristics.....	48
Bylaw Sections: Zones, Overlays, and Uses	51
Development Permit Approval Process and Community Consultation.....	60
Other Findings	65
Summary and Discussion	65
Conclusion	70
Recommendations for the Zoning Bylaw Renewal Initiative	70
Overall Changes	70
Changes Specific to Zones	71
Changes Specific to Land Use	73
Recommendations for Procedural, Decision-making, and Structural Changes	73
For the Edmonton SDAB (in consultation with the Province).....	73
For the City of Edmonton	74
<i>References</i>	75
Legal Cases	75
Legislation	75
City of Edmonton Documents	76
Municipal Plans	77
Publications.....	78
<i>Appendix 1</i>	85
<i>Appendix 2</i>	86



FIGURES AND TABLES

Figures

Figure 1: Minor Development Appeals by Year	28
Figure 2: Major Development Appeals by Year	28
Figure 3: Appeals of Minor Permits in the MNO by Year	29
Figure 4: Three-Year Running Average of Minor Development Appeals in the MNO	30
Figure 5: Three-year Running Average of Infill	32

Tables

Table 1: Attributes in Development Permit Appeal in the Subset of POSSE	11
Table 2: The Four Categories of Equity	20
Table 3: Summary of All Appeals	33



ABBREVIATIONS

AG	Attorney General
BIPOC	Black, Indigenous, and people of colour
CanLII	Canadian Legal Information Institute
CoE	City of Edmonton
CRU	Commercial Retail Units
CS	Community Services
DCZ	Direct Control Zones
GBA	Gender-Based Analysis
MGA	Municipal Government Act
MDP	Municipal Development Plan
MNO	Mature Neighbourhood Overlay
NIMBY	Not In My Back-Yard
OCPM	Office de Consultation Publique de Montréal
POSSE	Public One Stop Service
SCC	Supreme Court of Canada
SDAB	Subdivision and Appeal Board
SSHRC	Social Sciences and Humanities Research Council
TTRC	Truth and Reconciliation Commission
ZBRI	Zoning Bylaw Renewal Initiative
ASP	Area Structure Plan
EPCOR	Edmonton Power Corporation
MDP	Municipal Development Plan
MGA	Municipal Government Act
NSP	Neighbourhood Structure Plan
RF	Residential Single-detached (Zone)
RLD	Residential Low Density (Zone)
RMD	Residential Mixed Dwelling (Zone)
RPL	Planned Lot Residential (Zone)
RSL	Residential Small Lot (Zone)
UCRH	Urban Character Row Housing (Zone)
UK	United Kingdom
US	Urban Services
ZBRI	Zoning Bylaw Renewal Initiative



INTRODUCTION

This report is part of a project jointly funded by the Social Sciences and Humanities Research Council (SSHRC) and the City of Edmonton (CoE). The project aim is to provide a scholarly thrust to the CoE’s current efforts to undertake the first comprehensive overhaul of its Zoning Bylaw in two decades, using an equity lens. The CoE believes that the current Bylaw no longer reflects current CoE policies and often creates inequitable barriers, such as restrictions in locating social and affordable housing across the city.

However, applying the relatively broad concept of equity to a legal and regulatory tool like zoning is challenging. Recognizing that planning too often places unfair burdens on certain segments of the population through zoning, planners are increasingly seeking to incorporate equity—the “just and fair inclusion into a society in which all can participate, prosper, and reach their full potential”³—into all aspects of planning practice. Notably, many intersectional factors, such as race, socioeconomic status, gender, religion, and ability have an impact on equity.

In a regulatory environment, taking “a human rights perspective can provide a universal frame of reference for identifying inequitable conditions.”⁴ The idea of “substantive equality” in the Canadian jurisprudence on human rights encapsulates the notion of equity. Most importantly, a human rights perspective forces issues of equity into the same legal realm as land use regulation.⁵ Therefore, this report also examines equity considerations in land use regulations through a human rights perspective.

This project addresses a series of related questions; some are related to broader understandings of equity issues in zoning while others pertain more specifically to the CoE’s Zoning Bylaw:

- What are the inequities created by land use regulations—both generally, and in the case of Edmonton, specifically?
- What human rights and equity issues should be considered when drafting land use regulations?
- How can we apply and promote equity considerations in zoning—both generally, and in the Edmonton case, specifically?

The report comprises four sections. The remaining introduction describes the methods employed, including all the data sources. Section two presents a review of the relevant literature, which largely constitutes our theoretical framework of social equity. We also use this to develop our taxonomy of equity, which we then invoke as an analytical framework, analyzing case law related to equity, human rights, and associated legal tests. In section three, we present our findings—the bulk of the report—by eliciting key patterns and themes emerging from the data sources. In the discussion that closes this segment, we employ our equity classification to analyze the patterns derived in the section. In the fourth and final section, we tie all the parts of

³ American Planning Association, 2019, p. 3.

⁴ Braveman & Gruskin, 2003, p. 540.

⁵ Agrawal, 2014, 2020.



the report together and offer a set of recommendations for possible amendments to the current Zoning Bylaw, which could be carried over in the new version of the Bylaw as well as in system-wide reforms.

RESEARCH METHODOLOGY: DATA COLLECTION

Integrating and recognizing multiple dimensions, perspectives, and voices are significant actions in building equity and inclusivity. Here, we employed multiple methods to learn how different land use regulations and bylaws promote or impede equity in the city. This approach also helps to “triangulate” our data to shape subsequent findings, thereby improving the reliability and validity of the results. Along with conducting semi-structured interviews and reviewing several institutional and legal materials related to planning and bylaws, we invoked a broad range of data to identify the equity considerations of the existing Zoning Bylaw. The following six data sources played a crucial role in our analysis:

1. CoE’s POSSE (Public One Stop Service) data—which pertain to development applications and appeals
2. Decisions rendered by Edmonton’s Subdivision and Development Appeals Board (SDAB) in the past three years
3. CoE’s Zoning Bylaw amendments in the past five years
4. Municipal plans of 11 select cities and towns in Canada
5. Semi-structured interviews we conducted with both CoE zoning staff and community stakeholders
6. Interviews conducted by the CoE planning staff with key informants

POSSE Data

POSSE is the CoE’s centralized storage system, housing all its development permits, licences, and development fees. Our research team had access to a subset of data from the POSSE system, which was an important source for eliciting any trends that supported or refuted the patterns emerging from our qualitative data. This subset included development permits that were appealed to the CoE’s SDAB between the years 2001 to 2019 (inclusive).

This dataset consisted of information about 1983 development permit appeals,⁶ categorized into three “subtypes” of permit appeals, as follows:

- *Major*: This encompassed residential, commercial, and industrial developments of a significant nature, such as high-rise condominiums, nearly all industrial, and large-scale commercial.
- *Minor*: This included a variety of smaller impact uses, primarily residential, and small-scale commercial.
- *House-combo*: This covered routine housing developments, such as new home builds.

Each development permit appeal in the dataset had multiple attributes, shown in Table 1.

⁶ The exact number of permits may vary slightly, as several permit IDs were repeated across each of the three “subtypes” of permits. For our dataset, we removed the duplicate permits so they did not count twice towards the total number of appealed permits.



Attribute	Description
Year	The year the appeal was <i>filed</i> (not the year that the appeal was heard or a decision issued).
Zoning	The zoning of the property to which the appealed permit pertained.
Infill	Whether or not the permit appealed was an “infill” ⁷ related development.
Overlay or Plan Area	Whether a statutory plan or overlay was in place for the area the permit pertained to it.
Neighbourhood Classification	The type of neighbourhood the appealed development was located in.

Table 1: Attributes in Development Permit Appeal in the Subset of POSSE

Subdivision and Development Appeal Board Decisions

We undertook a high-level scan of the Edmonton SDAB decisions, looking for any decisions based strictly on human rights or equity. In the Canadian Legal Information Institute (CanLII) database, we searched SDAB decisions using the terms “equity,” “discrimination,” “human rights,” “Charter [of Rights and Freedoms],” “disability,” “accessibility,” “wheelchair,” and “crime.” We scanned decisions from February 2018 until the present (the years available on CanLII) using further keywords generated by the search. We then reviewed a sample, 15 of the 81 cases found, pulling out the relevant equity themes and grouping them according to the issues at the heart of the appeals.

Zoning Bylaw Amendments

Our data source included 146 entries of Zoning Bylaw text amendments and reports presented at City Council Public Hearing, Executive Committee, or Urban Planning Committee between January 2015 and February 2020. The CoE provided us with a summary spreadsheet of these documents, comprising a list of text amendments and reports along with hyperlinks to background staff reports, Council’s Executive Committee and Urban Planning Committee decisions and requests, and parts of the Bylaw in question. We flagged those amendments where equity issues formed the basis of changes to the Zoning Bylaw and further examined them by collecting related background reports and the portions of the Bylaw. We conducted a content analysis of the documents to determine the key equity issues considered, sorting them into themes.

Municipal Plans

We collected the municipal plans⁸ of 11 cities: Edmonton, Victoria, Winnipeg, Toronto, Ottawa, Québec City, Halifax, Calgary, Truro (N.S.), Vancouver, and Kelowna. This selection is based on Agrawal’s (the Principal Author) previous research, which suggests that these municipalities

⁷ According to IDEA (n.d.), infill is the process of developing vacant or under-used land within existing urban areas that are already developed. Edmonton’s residential infill policy focuses on residential infill in the development of new housing—suites, apartments, houses—in established neighbourhoods. It aims to add small-scale and medium-scale and laneway housing.

⁸ A municipal plan, which outlines the community’s vision and high-level policies to achieve the vision, is referred to with different names in different cities. For instance, in Toronto, it’s called an Official Plan while in Edmonton and Calgary, it’s a Municipal Development Plan.

offer some lessons in crafting equity-related policies. The analysis consisted of a scan of each city’s municipal plan (or equivalent, including drafts of new plans) using specific keywords compiled in previous research.⁹

We used keywords already identified by Agrawal to extract relevant policies from the plans, specifically the following (though we occasionally used synonyms as necessary): universal, equit(y)(able), just, right, community, diversity, disadvantaged, inclusion, poverty, assistance, access(ible), Indigenous, First Nation, Aboriginal, cultur(al) (e), newcomer, minority, housing, home, homeless(ness), family, group home, care facility, subsidize, special, owner, renter, youth, senior, gender, food (security), religion, worship and public transit. Key themes and equity-related categories were then determined and grouped under the four categories of equity (discussed later in this report), as well as equity issues and groupings, such as housing, Indigenous, or disabled people.

Interviews Conducted by the Research Team

We conducted 24 semi-structured interviews over Zoom with key actors from within the CoE and the wider community—comprising 12 CoE staff and 12 representatives from community organizations. Our questions differed for each group, which acknowledged their diverse levels of technical knowledge about planning, zoning, and Edmonton’s Zoning Bylaw . Our research was approved by the University of Alberta’s Research Ethics Board. As a part of the approval process, we promised to anonymize the identity of the study participants.

With assistance from the Zoning Bylaw Renewal Initiative (ZBRI) team, we selected 12 CoE staff from across the Urban Planning and Economy department. They ranged in seniority from planners to directors and the department leadership, with experience in approvals, compliance, and policy, as well as in specialized areas like housing and homelessness. We also included some informants from the client liaison team. Interviews with all these individuals were 40 to 60 minutes, during which they were asked to respond to six open-ended questions (see Appendix 1).

The first couple of questions established the interviewee’s role at the CoE, their experience with the Zoning Bylaw, and what aspects of the Bylaw they regularly deal with. Subsequent key questions focused on eliciting specific aspects of the Zoning Bylaw and regulations in Edmonton that create inequities and how the Bylaw can be made more equitable in its application or revised to promote equity. Agrawal, the Principal Author, who interviewed all the study participants, asked interviewees about past or ongoing changes they felt were improvements, and if they had any recommendations for the new Zoning Bylaw. The interviews also touched on potential challenges and compromises that could be expected in drafting and implementing a more equitable land use bylaw and in addressing inequity in Edmonton more broadly.

The 12 community key actors interviewed for the study represent 10 organizations (as two community organizations brought two representatives to the interview) with experience with Edmonton’s land use bylaw—specifically religious institutions, housing providers, multicultural

⁹ Agrawal, 2020; Agrawal, forthcoming.

community service providers, community leagues, business and industry associations, and Indigenous organizations. Agrawal approached these community-based interviews from a higher-level perspective, on the understanding that interviewees would have less technical knowledge of planning and zoning than the CoE interviewees. These interviews lasted 30 to 40 minutes and consisted of four open-ended questions.

The first couple of questions established the interviewee's role with their organization, and whether or how they had dealt with the CoE's development permit system or Zoning Bylaw. The subsequent questions focused on eliciting the interviewee's thoughts on if and how the Zoning Bylaw creates inequities and exclusions in Edmonton, as well as their recommendations for how the CoE can promote equity and inclusion in its draft of a new land use bylaw.

Interviews Conducted by the CoE Staff

While our interviews with key stakeholders to learn their perceptions about making Edmonton an equitable city were a central component of this study, we also received access to the transcripts of discussions and meetings led by the CoE's planners variously working on the ZBRI, District Planning, mobility, and universal design. In late 2020, this team interviewed 22 key informants from the CoE and the community at large to obtain their perspectives for the planned Bylaw revision and to generate their own findings. As part of this research, we reviewed and incorporated those interviewees' perspectives into our study, but the findings of our analysis are independent of those from the CoE project team.

RESEARCH METHODOLOGY: DATA ANALYSIS

We used the qualitative data analysis software NVivo to code transcripts of both sets of interviews, which allowed us to identify and classify emergent themes and key issues across the interviews. In analyzing the interviews conducted for this study, we focused on equity problems identified by interviewees, recent or ongoing changes identified as positive, and recommendations offered to improve equity in the land use bylaw. Expected challenges for developing and implementing an equitable land use bylaw also emerged as a theme in this analysis. Within each area of focus, we looked for both specific examples and broader themes.



LITERATURE REVIEW AND CONCEPTUAL FRAMEWORK

In the face of socioeconomic shifts in cities, equity remains a critically contested notion. As these urban centres increasingly move towards greater diversity, with the expansion of ethnic and cultural identities and economic disparities, they must also become equitable and inclusive spaces that acknowledge these differences. However, what exactly equity is and what it entails are unclear. Nevertheless, it is crucial to learn how equity can benefit cities' residents and planners.

Against this background, in this section we discuss the theoretical and pragmatic concept of equity, beginning by elaborating on the meaning of equity and how it is encapsulated in the concept of human rights. We then consider how equity became a primary interest in planning and the particular social and political movements that laid the foundation for equitable planning. In doing so, we introduce the study's conceptual framework—our study's theoretical backbone—which revolves around four significant aspects: distributional equity, recognitional equity, procedural equity, and regulatory equity. Finally, we look at best practice examples of equitable urbanism worldwide. We discuss how different countries and cities attempt to link equity into their municipal planning and regulations, all useful reference points that will benefit the ZBRI.

WHAT IS EQUITY?

Equity is a multi-faceted concept, with associated meanings and purposes determined by several factors, such as cultural standards, historical transformations, geopolitical measures, and socioeconomic values.¹⁰ While there is no one clear definition of equity, many scholars agree that equity stands for the justice and fair treatment of individuals in society regardless of their social, economic, and political placements in the community.¹¹ Yet, equity is different from the notion of equality, even though both concepts promote fairness and the necessary means of justice. Equity guarantees equal opportunities for everyone according to their needs and potentials, whereas equality stands for treating everyone equally, irrespective of their needs. Contemplating the broader scope that equity brings, in this study, we consider that it is not a given condition or an outcome of a single event. Instead, equity is a more comprehensive process of ensuring fair distribution of opportunities, recognition in public realms and institutional practices, and inclusion in decision-making processes that confront prejudices.

We can trace the core philosophical values of equity, such as equal treatment, fairness, and justice, to the work of Enlightenment thinkers who laid the foundation for modern institutional and political practice.¹² For instance, John Locke's¹³ and Jean-Jacques Rousseau's¹⁴

¹⁰ Gardner, Garcia, & Costello, 2019

¹¹ See Frederickson, 1990, 2010; Guy & McCandless, 2012; Pitts, 2011; Putnam-Walkerly & Russell, 2016; Wooldridge & Gooden, 2009

¹² Freeman, 1995.

¹³ Locke, 1689.

¹⁴ Rousseau, 1762.



intellectual contributions on individuals' rights, freedom, and private property, based on these values, have substantially stimulated the modern discourse of fairness and justice. The contemporary thinker John Rawls¹⁵ conceptualization of "justice" is also significant in the theoretical development of equity. Invoking utilitarianism principles of governing, Rawls claims that fairness delivers justice to the community.

In this context, we can observe that equity is a meaningful principle implicated in improving people's lives and strengthening their societies. Also, equity is not an isolated social phenomenon but profoundly linked to the notions of justice, rights, and the fair distribution of opportunities and resources in society. Significantly, equity is a fundamental value of modern democratic social, political, and institutional traditions, like human rights and liberties.

EQUITY AS ENCAPSULATED IN HUMAN RIGHTS

Human rights and equity are closely related concepts, but they are not precisely synonymous. Human rights refer to recognized norms that ensure equality for all people; they are universal "rights that we each possess by virtue of being human, based on our inherent dignity and equal worth as human beings."¹⁶ Braveman and Gruskin¹⁷ define equity through the principle of distributive justice, however, focusing on those who are or have been socially disadvantaged or marginalized. Equity can therefore reflect core human rights principles,¹⁸ but not every aspect or instance of social, economic, or political inequity is compatible with recognized or codified human rights. Nevertheless, the two concepts overlap in their focus on equal opportunity for all people.¹⁹

Many intersectional factors have an impact on equity. Using human rights norms can address some of these by prohibiting "discrimination on the basis of such factors as gender, racial or ethnic group, national origin, religion, disability, sexual orientation and gender identity." Further, using human rights standards can help define existing inequities and participate in attempts to remedy them.²⁰ Additionally, human rights principles can be used to help prohibit discriminatory practices since they can show how the design of policies, programs, and practices may promote or violate rights.²¹

Recently, Agrawal examined intersections of municipal planning policies and human rights,²² including how discriminatory aspects of land use regulations have successfully been challenged under Canadian human rights legislation. As well, studies in health equity have explored the nexus of equity and human rights.²³ For example, the World Health Organization is attempting

¹⁵ Rawls, 1999, 2001.

¹⁶ Agrawal, 2020, p. 1.

¹⁷ Braveman & Gruskin, 2003.

¹⁸ Braveman, 2010.

¹⁹ Braveman & Gruskin, 2003.

²⁰ Gruskin & Braveman, 2019, p. 469.

²¹ Gruskin & Braveman, 2019.

²² Agrawal, 2014, 2018, 2020.

²³ see Braveman, 2010.



to mainstream gender, equity, and human rights across the organization, enabling the development of programs that “are gender-responsive, enhance equity and promote rights.”²⁴

An equitable human rights framework thus enables public policy administrators to become sensitized to diverse groups and their needs, readying them to implement socially equitable policies.²⁵ As well, invoking a human rights lens avoids insular perspectives, while legitimizing changes in administrative updates.²⁶ Thus, human rights can be used as a guide and a corrector to promote equity and inclusion in society.

EQUITY AND HUMAN RIGHTS LAW

The team relied on 12 relevant academic sources from 1989 to 2020, focused on the concept of substantive equality within the Canadian legal system. This is largely the legal meaning of equity. The exercise captured how the courts are interpreting section 15 of the *Canadian Charter of Rights and Freedoms*²⁷ to determine substantive equality.

The Supreme Court of Canada (SCC) defines substantive equality as the fair distribution of resources, opportunities, and choices, which is the purpose of section 15.²⁸ The literature suggests that the SCC’s jurisprudence on substantive equality under section 15 often lacks coherence and is vague and even divisive in Canadian courts.²⁹ Over the past 30 years, the SCC test for substantive equality that is used in section 15 claims has undergone numerous changes, beginning with *Andrews*³⁰ in 1989. The *Andrews*’ case was the first in which the SCC laid down a three-part test for substantive equality claims:

1. Has there been differential treatment?
2. Is this treatment based on enumerated or analogous grounds?
3. Does this cause an imposed burden?

The 1990s saw inconsistent application of section 15 in a variety of SCC cases.³¹ In the *Law*³² case, however, SCC focused on human “dignity” as a factor in discrimination. It raised the question of whether the differentiated treatment has the effect of perpetuating or promoting the individual as less capable or worthy of recognition or value as a human being or as a member of

²⁴ World Health Organization, 2016, p. 8.

²⁵ Alvez & Timney, 2008.

²⁶ Alvez & Timney, 2008.

²⁷ *Canadian Charter of Rights and Freedoms*, s 15, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11. Section 15 of the *Charter* reads:

(1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

(2) Section (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability. [*Charter*].

²⁸ Greschner, 2001.

²⁹ Flader, 2020; Hughes, 2012; Koshan & Hamilton, 2013.

³⁰ *Andrews v Law Society*, [1989] 1 S.C.R. 143/1989, SCC. [*Andrews*].

³¹ Koshan & Hamilton, 2013.

³² *Law v Canada (Minister of Employment and Immigration)*, [1999] 1 SCR 49. [*Law*].



Canadian society: that is, are they equally deserving of concern, respect, and consideration?

In *Law*, the SCC instituted a revised three-part test, fleshing out the third part of the test to ascertain whether the law's effect was, in fact, discriminatory. Since then, three other cases have been decided: *R v Kapp*,³³ *Québec v A*,³⁴ and *Kahkewistahaw First Nation v Taypotat*.³⁵ The latter two cases used a more flexible approach to prove disadvantage (beyond just stereotype and prejudice). Indeed, *Taypotat*, which focused on adverse discrimination where a seemingly neutral law has discriminatory effects, has only a two-part test:

- Does the law create a distinction based on race, age, sex, religion, or on an analogous ground?
- Does the law impose burdens or deny benefits in the context of disadvantage and discrimination?

These tests are works in progress, with *Fraser v. Canada (AG)*³⁶ the most recent case to apply this test. The trend seems to be towards a less formalistic and less onerous standard for claimants.

To establish substantive equality, we have developed the following four-part legal test, derived from the *Andrews*, *Law*, and *Kapp* cases, further refining Agrawal's test³⁷:

1. Does the impugned law draw a formal distinction between the claimant and others, based on one or more personal characteristics?
2. Does the law impose on the claimant (directly or indirectly) a disadvantage in the form of a burden or withheld benefit in comparison to other comparable persons (through the perpetuation of prejudice or stereotyping)?
3. Is the disadvantage based on a ground listed in or analogous to a ground listed in section 15?
4. Does the disadvantage constitute an impairment of the human dignity of the claimant?

Human dignity here refers to feelings of “self-respect” and “self-worth.” Human dignity is harmed whenever a law attaches stigma, treats people unfairly based upon “personal traits or circumstances which do not relate to individual needs, capacities, or merits,” or when people are “marginalized, ignored, or devalued.”³⁸ Discrimination under section 15 means perpetuation of disadvantage and stereotyping, preexisting disadvantage because of race, and so forth, as well as whether the law has a remedial purpose.

The CoE could adopt or adapt the above test to determine if its Bylaw can withstand legal challenges on equity grounds, given its comprehensive approach to understanding how equity circulates and functions within a legal framework.

³³ *R. v. Kapp*, 2008 SCC 41. [*Kapp*].

³⁴ *Québec (Attorney General) v. A*, 2013 SCC 5. [*Québec v A*].

³⁵ *Kahkewistahaw First Nation v. Taypotat*, 2015 SCC 30. [*Taypotat*].

³⁶ *Fraser v. Canada (Attorney General)*, 2020 SCC 28. [*Fraser*].

³⁷ Agrawal, 2014.

³⁸ *Law* at para 53.



EQUITY IN URBAN PLANNING

Equity is a prominent theme in many scholarly debates over the fundamental goal and purpose of planning. The equity matter revolves around whether planners should serve the interests of (a) the state, such as politicians and decision-makers; (b) capital, such as corporations, landowners, and real estate developers; or (c) the public. The spatial justice and inclusion scholars argue that planning should overcome social and economic inequalities and serve the needs of socially and economically disadvantaged communities in cities.³⁹ Therefore, establishing and propagating equity, and making cities inclusive, are fundamental tasks in planning.

The discourse about equity and inclusive planning originated in the mid-20th century when the civil rights and antiwar movements of the 1960s created the demand for an inclusive social system—one that would accommodate and appreciate the growing ethnic, racial, religious, and social diversities at the time. Along with the social tensions surrounding racial discrimination, urban communities also sought to minimize economic prejudices in their cities, which mandated a new planning approach.⁴⁰ In this context, many thinkers, activists, and professionals from within and outside the planning discourse challenged conventional planning practice and knowledge.

Jane Jacobs⁴¹ is one such well-known activist who engaged with urban planning policy and practice in the mid-20th century. She advocated mixed land uses and diversity in human lives and building forms in municipalities as a critical measure of urban inclusion. Additionally, many critical geographies approached planning and urban inequalities from a Marxist perspective. They argued that urban disparities are caused by dominant political-economic forces that serve the desires of the dominant class.⁴² To eliminate inequalities in cities, they suggested a broader urban social movement to achieve a fundamental structural change of space.

Introducing the “advocacy planning” approach, Paul Davidoff⁴³ reminded us that planners are responsible for eliminating urban inequalities. Their professional obligation is to advocate for marginalized and disadvantaged communities, those that could not afford equal representation in the city’s decision-making process, unlike wealthy and influential individuals. Davidoff’s work laid the foundation for an equity planning approach to building a better relationship with the planners and people in a city. Norman Krumholz⁴⁴ stated that the planners who stand for an equitable and inclusive system in urban and regional planning are “equity planners.” In the context of today’s global neoliberal tendencies, Susan Fainstein⁴⁵ argues that equity, justice, and inclusion have been marginalized in cities through their political policies marked by a pro-

³⁹ Brenner, Marcuse, & Mayer, 2012; Fainstein, 2010; Forester, 1999; Krumholz, 1990, 2018; Meerow, Pajouhesh, & Miller, 2019; Reece, 2018; Sandercock, 2009; Sandercock & Cavers, 2009.

⁴⁰ Krumholz, 2018; Metzger, 1996; Reece, 2018.

⁴¹ Jacobs, 1992.

⁴² Brenner, 2004; Castells, 1977; Harvey, 1973, 1985; Smith, 1996, 2008; Soja, 1989.

⁴³ Davidoff, 1965.

⁴⁴ Krumholz, 1990, 2018.

⁴⁵ Fainstein, 2010.



economic growth agenda. For her, a democratic and rights-based planning approach for planners and urban policymakers is much needed to achieve equity and justice.

Numerous related studies⁴⁶ have also shown how various municipal planning policies and, in particular, zoning bylaws have been or can be discriminatory, as they produce deeply inequitable outcomes for different population groups. These results highlight the increasingly important role that municipal governments can play in developing intervention strategies to ameliorate inequities as populations continue to urbanize.⁴⁷ Unfortunately, despite this need, the actual position of municipal governments in this pursuit has not been adequately investigated.⁴⁸ This knowledge gap underscores the need in this discipline and profession for further exploration of the tools and actions municipalities can use to contribute effectively to equity.

Zoning, the primary legal tool deployed by municipalities to control land use and manage land development, is widely accepted as inherently exclusionary and discriminatory in the academic literature.⁴⁹ It typically separates land uses—such as industrial, residential, and commercial—as well as regulates built form details like lot sizes, setbacks, and building forms and heights. While discriminating between potentially incompatible land uses is generally accepted as appropriate, contributing to the public good, zoning has been shown to be discriminatory towards specific segments of the population in numerous cases. For example, the CoE, in its report on the history of zoning, states that “Zoning Bylaw regulations requiring very large minimum lot and house sizes, and specifying a narrow range of housing types, often limited choices and kept low-income populations from certain areas.”⁵⁰ Striving for equity in zoning means removing discrimination against those who have experienced such forms of marginalization.

Applying the relatively broad concept of equity to a legal and regulatory tool like zoning is challenging, however. Hence, taking “a human rights perspective can provide a universal frame of reference for identifying inequitable conditions” in a regulatory environment.⁵¹ In Canadian jurisprudence, substantive equality achieves this concept of equity; in fact, a human rights perspective forces equity into the same legal realm in which land use regulation lies.⁵²

THE CONCEPTUAL FRAMEWORK: FOUR CATEGORIES OF EQUITY

Our study uses an interdisciplinary theoretical framework to delve into equity concerns in planning and zoning. Based on the various intellectual debates on equity, justice, and human rights, we developed our own conceptual framework for the study. As equity is situated within broader political and social phenomena, we identified four aspects of equity to consider in this

⁴⁶ For example see, Lens & Monkkonen, 2016; Maantay, 2001; Rodriguez-Pose & Storper, 2020; Skelton, 2012; Whittemore, 2017; Wilson et al., 2008.

⁴⁷ Collins, 2014.

⁴⁸ Collins, 2014; Collins & Hayes, 2010.

⁴⁹ Hodge & Gordon, 2008; Skelton, 2012; Tagtachian et al., 2019.

⁵⁰ City of Edmonton, n.d., p. 2

⁵¹ Braveman & Gruskin, 2003, p. 540.

⁵² Agrawal, 2014, 2020.



study—namely, distributional equity, recognitional equity, procedural equity, and regulatory equity. They form the basis of our framework and are outlined in Table 2.

Types of Equity	Description
Distributional Equity	Equitable distribution of goods, services, and opportunities
Recognitional Equity	Acknowledgement of and respect for diverse intersecting identities
Procedural Equity	Decision-making processes that encapsulate distributional, recognitional and/or regulatory equity
Regulatory Equity	Zoning and other regulations crafted in such a way that they do not lead to differential treatment, hardship, or disadvantage to some people

Table 2: The Four Categories of Equity

The first three aspects of this conceptual framework are substantially shaped by the existing debates on the meanings of equity in several disciplines, such as environmental and climate justice, legal studies, political theory, and urban studies.⁵³ They are a means to explore how the concepts of equal distribution, recognition, and participation in the procedural practices (like a city’s decision-making) matter to establishing an equitable and inclusive atmosphere in cities. The fourth aspect, regulatory equity, is our contribution to the current debates on equity in municipal planning. It is unique in that it focuses on how the specific court decisions and legal practices manifest equity in local regulations. The four elements collectively provide a holistic framework for this study.

Distributional Equity

The idea of equal distribution of social goods, including resources and opportunities, has been recognized as the core of justice. As Rawls⁵⁴ mentioned, the fair distribution of goods and access to freedoms are the main determinants of a just society. He argues that justice is “a standard whereby distributional aspects of the basic structure of society are to be assessed.”⁵⁵ According to him, justice is the fair distribution of social advantages. Accordingly, equity in allocating material and social goods to all society members is now the most popular interpretation of equity among both scholars and practitioners.

Moreover, scholars, mainly in environmental justice and resilience urbanism, suggest that equity goes beyond the distribution of material goods.⁵⁶ Meerow, Pajouhesh, and Miller posit that distributional justice is the “equitable access to goods and infrastructure, environmental amenities, services, and economic opportunities.”⁵⁷ Along with these benefits, a just environment and inclusive urban system depend on establishing a fair way to distribute environmental risks and responsibilities.⁵⁸

⁵³ Meenow et al., 2019.

⁵⁴ Rawls, 2001.

⁵⁵ Rawls, 1999, p. 9.

⁵⁶ Bulkeley, Edwards, & Fuller, 2014; Meerow et al., 2019; Schlosberg, 2004, 2007.

⁵⁷ Meerow et al., 2019, p. 797.

⁵⁸ Schlosberg, 2007.



In sum, distributional equity is not merely about delivering the same thing(s) for everyone. Instead, it is a process to ensure people’s rights and freedoms by addressing their basic needs—such as food, water, housing, education, and healthcare—through the fair allocation of resources and responsibilities. Distributional equity, ultimately, aims to guarantee equal prospects for every individual to attain the relevant goals in comparable domains.

Recognitional Equity

While distributive equity is a critical element in a just society, fair distribution alone cannot achieve equity. Schlosberg⁵⁹ thus argues that recognition is a primary concern of justice and equity in both personal and public realms; unquestionably, recognition or acknowledgement are central to inclusiveness. While recognition is related to individuals’ access to decision-making processes,⁶⁰ it is fundamentally a “relationship, a social norm embedded in social practice,”⁶¹ which cannot be gained through the fair distribution of materials and services. Recognitional equity, therefore, represents the equal acknowledgement, dignity, and respect of different identities and personalities, and their associated social status. Land acknowledgement to commemorate Indigenous peoples’ principal kinship to the land is a good example.

A rich discourse exists in urban planning that delves into recognitional equity in the urban development process. In particular, Davidoff’s⁶² advocacy planning, Krumholz’s⁶³ reminder about equity planning as a critical professional duty of planners, and Fainstein’s⁶⁴ concept of the just city are three key strands within this discourse, although many others also participate.

Procedural Equity

This third facet refers to formal and institutional recognition in the decision-making process. Further elaborating the concept, Schlosberg⁶⁵ argues that procedural justice is the “fair and equitable institutional processes of a state.” Unfortunately, equity is disregarded when neoliberal governing regimes operate, since they privilege economic growth.⁶⁶ Therefore, formal recognition of communities’ expressions within their city, through procedural equity, is essential for a just city.

Importantly, procedural equity is an integral part of democracy, as it acknowledges the peoples’ right to make decisions about their political systems and settlements. In urban planning, multiple mechanisms can enhance equity through participation in the decision-making process. Among them are public engagement sessions for development plans and zoning and municipal governing operations, such as public forums and town hall meetings. Through such actions, people are invited and enabled to entertain their rights and freedoms to produce and reproduce their spaces.

⁵⁹ Schlosberg, 2004.

⁶⁰ Schlosberg, 2004.

⁶¹ Schlosberg, 2007, p. 23.

⁶² Davidoff, 1965.

⁶³ Krumholz, 1990.

⁶⁴ Fainstein, 2010.

⁶⁵ Schlosberg, 2007, p. 5.

⁶⁶ Fainstein, 2010.



Regulatory Equity

This fourth dimension of this study is unique in its focus on the legal nature of equity as it exists in the constitutional and quasi-constitutional obligations of the local government, as well as in the local regulations (in a few instances). This approach is new to the literature and expands on previous work done by Agrawal.⁶⁷ It uses a human rights regulatory approach, similar to that used in the Canadian legal system, with its particular approach to equity. Namely, it is guided by and informed by a rich legal jurisprudence on section 15 of the *Canadian Charter of Rights and Freedoms*. This constitutional provision provides the regulatory human rights framework used to promote equity through the courts and other government agencies, through the protection of enumerated and analogous grounds.

In human rights law, substantial equality means equity, as noted. In human rights law, substantive equality opens up understanding of what lies outside legal equality, by determining if the law or policy makes “disparities and inequalities worse, or better,”⁶⁸ and offers an avenue to remedy disputes and inequities. However, the legal test for substantive equality is a work in progress, as discussed before. Regardless, it demonstrates the usefulness of a regulatory framework for equity. Agrawal, the Principal Author, has previously used this approach to examine the discriminatory aspects of zoning.⁶⁹

BEST PRACTICES: NATIONAL AND INTERNATIONAL

In the pursuit of equity, city administrators, local political authorities, and planners confront many challenges. Significantly, ensuring fairness and justice in urban development is not an isolated achievement of planning, as many actors and processes are involved. Given such complexity, countries like Brazil and the UK, and municipalities like Montréal in Canada and Mexico City in Mexico, have introduced some progressive measures to embrace equity in their planning and urban development processes. We aim to identify the potential of these approaches in revising the CoE’s Bylaw. To this end, we focus on four principal urban rights and inclusion movements and their legal and institutional establishments: the *City Statute* of 2001 in Brazil, the *Localism Act 2011* in the UK, the *Mexico City Charter for the Right to the City* of 2010 in Mexico, and the Montréal Charters in Canada.

Brazil’s *City Statute* of 2001

Brazil’s *City Statute* was introduced as a constitutional reform to ensure access to lands and equity in the nation’s cities. It was one of the critical urban initiatives inspired by the *Right to the City* concept introduced by French Philosopher Henry Lefebvre. Lefebvre⁷⁰ argues that the conventional ideas of humanism and the city are no longer valid in a world determined by capitalist economic values. Instead, the *Right to the City* recognizes the need to move towards a new humanism and new urbanity by producing new spaces.⁷¹

⁶⁷ Agrawal, 2013, 2014, 2020.

⁶⁸ Greschner, 2001, p. 304.

⁶⁹ Agrawal, 2014.

⁷⁰ Lefebvre, 1996.

⁷¹ To learn more details about the concept of the *Right to the City*, see Lefebvre, 1996; Mitchell, 2003; Harvey, 2008; and Purcell, 2014.



Inspired by this conception of cities, the *City Statute* of 2001 recognized the citizens' right to "make" their cities, without the influence of the state and capital.⁷² By passing this statute, the Brazilian government introduced a new legal framework, one that included the needs and voices of the vast population of slum-dwellers. Also, it enabled the municipalities to prioritize the "social function" of the lands and buildings in the cities, instead of their market value.⁷³ One aim of the statute is to guarantee the use-values of existing properties, such as communities' historical relationship with their lands, in opposition to these properties' commercial value, which is determined by market forces.

The UK's *Localism Act 2011*

The British Parliament introduced the *Localism Act* in 2011 to address diverse issues and matters in urban planning, social housing, and local governance.⁷⁴ The act's main objective is to facilitate the devolution of decision-making powers by decentralizing authority—from the central government to municipalities and communities,⁷⁵ thereby balancing the power between these levels of governments. The act also intended to reduce the conflicts between developers and citizens, as well as the corresponding development approval time, by building consensus at an early stage of planning.⁷⁶

The act further empowers communities in other ways. For instance, it requires that the adoption of neighbourhood plans be subject to a local referendum. Any municipal tax increases that are considered "excessive" can also be subject to a local referendum. As such, residents can lead their cities' development by building new homes, businesses, shops, playgrounds, or meeting halls—according to their needs. The act also prioritizes social housing and allows more decisions about housing to be made locally, making the system fairer and more effective. Mainly, it frees local governments to introduce their own measures and eligibility criteria for social housing in their area, while granting flexibility for people to enter social housing programs in their municipalities.

The *Mexico City Charter for the Right to the City of 2010*

Like the Brazilian *City Statute*, the Mexican Charter was also inspired by the *Right to the City*. The charter aims to make Mexico City an inclusive, equitable, and livable space for its inhabitants—without discrimination and prejudices.⁷⁷ It recognizes the residents' rights and responsibility to participate in the city-building process as a critical, equitable, and just urban development measure. The charter also promotes an inclusive and equitable urban economic approach so that every citizen can experience the benefit of their city's growth.⁷⁸ However, recent debates indicate that the implementation of the charter's principles will require a more sustained mobilization effort; this underlines the importance of social movements in democratizing city planning and governance.

⁷² Fernandes, 2007; Friendly, 2013.

⁷³ Friendly, 2013.

⁷⁴ Gallent, 2013; Layard, 2012; Tait & Inch, 2016.

⁷⁵ The UK Ministry of Housing, Communities & Local Government, 2011.

⁷⁶ Brownill & Bradley, 2017.

⁷⁷ Adler, 2015; Mexico City, 2010; Wigle & Zarate, 2010.

⁷⁸ *Mexico City Charter for the Right to the City*, 2010.



The Montréal Charters

Two city charters, instituted over the course of about five years in the early 2000s, are unique on the Canadian municipal landscape.

Charter of Ville de Montréal of 2002

The *Charter of Ville de Montréal*, introduced in 2002, is another milestone legal framework to enhance Montréal's autonomy and power to make decisions that affect the city. It recognizes the city as a legal entity with rights, obligations, and charges of its community and neighbouring municipalities. This charter identifies Montréal as the primary metropolis of Québec, with a significant role in the region's economic development. It also claims that Montréal is a cosmopolitan urban centre, which accommodates Québec's unique intercultural relations, and recognizes and respects diverse social identities.

Under the charter, the Office of Public Consultation—the Office de Consultation Publique de Montréal (OCPM)—was established as an independent body to link representative politics and public participation in the city. The OCPM facilitates Montrealers to participate in urban planning and development-related matters. It identifies and analyzes the concerns expressed by the citizens about their city's development, such as bylaws, plans, and urban improvement initiatives. In doing so, the OCPM assists the city's elected officials in gathering a complete understanding of the citizens' perceptions regarding different urban development projects.

Montréal Charter of Rights and Responsibilities of 2006

First in North America, the *Montréal Charter of Rights and Responsibilities* of 2006 is shaped by international, national and provincial human rights laws and the nation's democratic political tendencies.⁷⁹ The “right of initiative” is a key element of the Montréal Charter, protected by the Ombudsman's Office, which allows citizens to pursue public consultations regarding any matter that could affect their lives (apart from a few exceptions such as the city's staff or budget).⁸⁰ Of significance is that this right enables citizens to share their innovative projects and constructive solutions for urban development through a public consultation approach. Through this avenue, the public can positively influence their common urban future and strengthen the fundamental values of municipal democracy. The Ombudsman's Office resolves the conflicts and concerns raised when citizens believe the city's decisions have violated their rights.⁸¹ The ombudsman can investigate citizens' complaints, operating as a mediator between the city and the public in such situations.

SUMMARY

Clearly, the concept of equity is a contested notion. However, bundling the various perspectives together yields an understanding of equity as profoundly linked to the notions of equality, justice,

⁷⁹ Frate, 2016; *Montréal Charter of Rights and Responsibilities*, 2006.

⁸⁰ *Montréal Charter of Rights and Responsibilities*, 2006.

⁸¹ *Montréal Charter of Rights and Responsibilities*, 2006.



rights, and the fair distribution of opportunities and resources in society. It is about providing more resources to those who need it, proportionate to their own circumstances, to ensure that everyone achieves equality through similar opportunities. Perhaps equity can be best understood by comparing it against equality. Both equity and equality promote fairness and the necessary means of justice; equality achieves this by treating everyone the same *regardless* of their need, while equity achieves this by treating people differently *depending* on their needs.

Equity is a bedrock value of contemporary political and institutional practices, decisively intersecting with the modern political principles of human rights, justice, and fairness. It is an essential consideration in any just social system that guarantees inclusivity and fairness for every individual, without prejudice and discrimination. Equity ensures fairness in distributing resources and opportunities, while also acknowledging and safeguarding the people's right to contribute to the well-being of their communities.

In urban planning, equity has been an influential matter since the mid-20th century. The equity planning approach has emerged as a reminder to planners of their professional obligation as representatives of economically and socially disadvantaged communities. Planners' roles as mediators who can make cities inclusive and equitable are even more relevant today, given the proliferation of social and cultural diversities, economic disparities, and the continuous pressure from neoliberal economic trends. However, city residents can also express their rights and participate in their city's decision-making, becoming collective allies of equitable planning approaches. Equity, inclusivity, and fairness intrinsically demand that cities employ a human rights-based development framework—this will help to address concerns and promote positive urban futures. A robust relationship between planning, municipal regulations, and human rights is a necessary change to build inclusive and just urban communities.

This context supports the concept of the *Right to the City*—a notion with more currency in the urban inclusion movements in the Global South, such as in Brazil and Mexico, than in the movements in Canada and the UK. This may be related to the unique political and economic conditions in Brazil and Mexico, such as the large number of slum-dwellers in cities, economic disparities in urban living, and the socialist tendencies in national politics. Undoubtedly, achieving equity in cities, as well as instigating measures to evaluate such success, are heavily context-based.

Nonetheless, these examples can be informative for the ZBRI in the CoE. For instance, from Mexico City and Montréal we can draw the following resources and ideas for implementation:

1. *Montréal*: The Ombudsman's Office protects citizens' human rights and the right to be treated equitably at the local level. It handles citizens' complaints about being treated unjustly by the Montréal administration. The Office of Public Consultation promotes public engagement in land use planning matters and ensures public consultation is credible and transparent.
2. *Mexico City*: The notion of the *Right to the City* is implemented in the charter. Importantly, this should not be conflated with human rights, even though the two concepts have recently been used interchangeably.



Under Canadian federalism, any constitutional change, like that in Brazil and the UK, requires federal and all provincial governments to be on board. They must agree to the idea of distributional and other forms of equity; further, they must be willing to empower citizenry at the local level by first recognizing cities, perhaps as a principal part of federalism. However, this is a politically charged and challenging exercise.

Canadians' human rights are vigorously protected by the Constitution, human rights legislation, and a solid and active judiciary system. Therefore, merit resides in building local policies and regulations on human rights grounds like those of Montreal. Embracing equity and human rights values in all parts and processes of the CoE will help complement a revised and refined Zoning Bylaw.



FINDINGS

This section contains findings gleaned from our analyses of the multiple methods and data sources employed in the study, in this order: POSSE data, SDAB decisions, Zoning Bylaw amendments, municipal plans, interviews conducted by the research team, and interviews conducted by the CoE. We analyzed the CoE-conducted interviews independently from the interviews conducted by our team, using these findings to complement and validate our own findings.

Each section contains a subsection summarizing the key findings and lessons learned from that data source. Analysis of multiple data sources allows us to triangulate our findings; we also highlight connections between each analysis and dataset at the close of this section.

POSSE DATA

The analysis of this dataset identified several trends related to development permit appeals in the CoE. We limited our analysis of the POSSE data to the three sub-categories it was already divided into when we received it—major, minor, and house-combo—analyzing each category separately.

Several limitations with the dataset restricted our analysis, related to the following few factors:

- Missing and incomplete information, which was most likely due to shifting practices of entering data over the years.
- Duplicate permit IDs existed across multiple categories.
- The subset only included appeals, which did not allow comparisons with parts of the complete data.
- Specific pieces of information, such as who lodged an appeal, or on what grounds, were suppressed, in part due to the *Freedom of Information and Protection of Privacy Act (FOIP)* restrictions.

Based on our descriptive statistical analyses focusing mainly on major and minor development appeals, we found four distinct trends in this data, detailed below.



All Development Permit Appeals Have Increased Over Time

We noticed an increase in appeals related to both minor and major development permits in the past two decades (see Figure 1 and 2 in which the blue line represents number of appeals and the pink is the increase in appeals over the years). The house-combo appeals increased as well. This gross overall increase should be expected, as the number of permits in the CoE increases alongside the population growth. However, this trend is still significant. If reducing the *gross* number of development permit appeals is the aim, a year-over-year increase in appeals still means the current Zoning Bylaw or the amendments did not work.

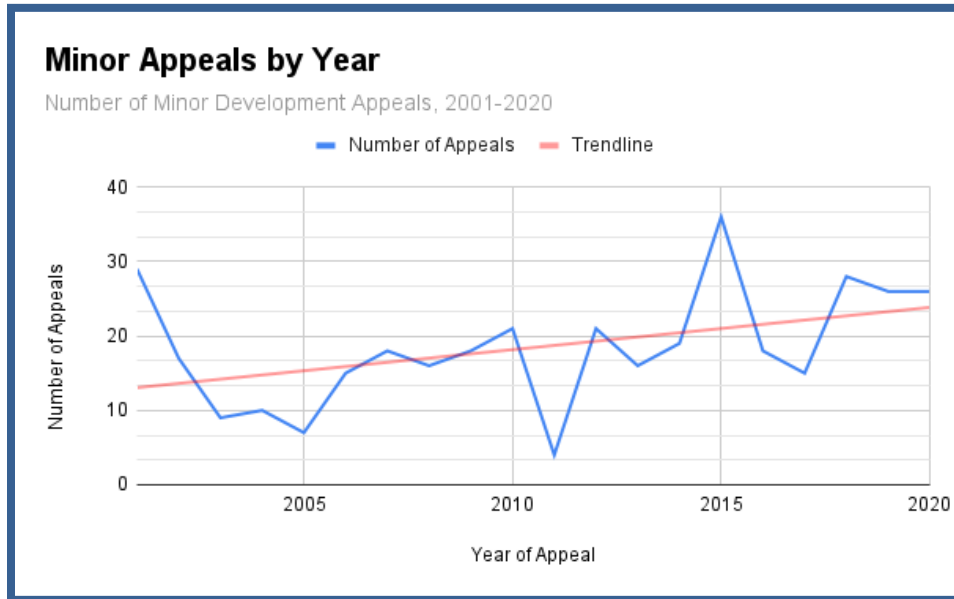


Figure 1: Minor Development Appeals by Year

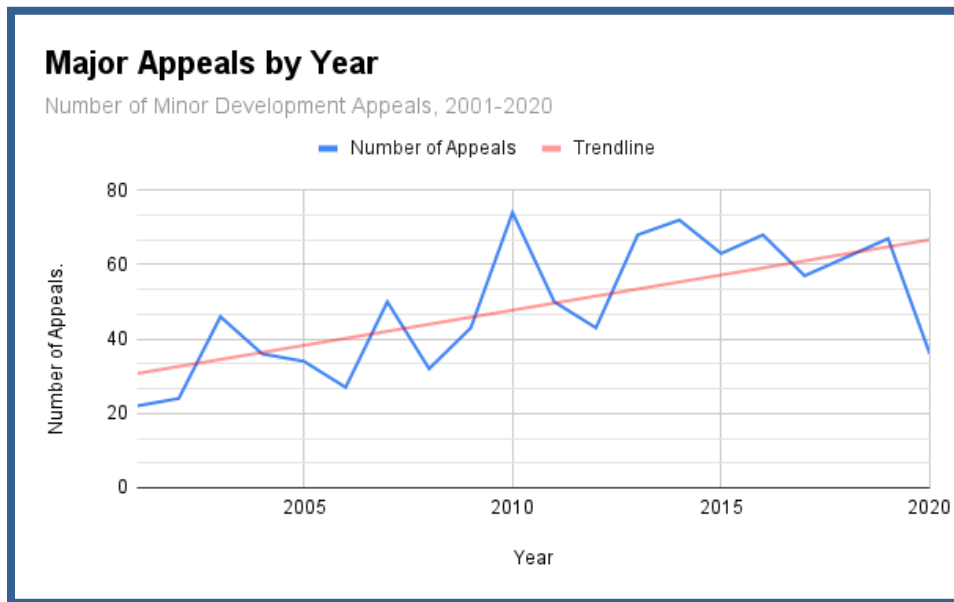


Figure 2: Major Development Appeals by Year



Development Permit Appeals Occur Frequently Within the MNO

A large proportion of both minor and major development appeals occurred in the Mature Neighbourhood Overlay (MNO) areas. The house-combo appeals were also significant in the MNO. The MNO regulates development in Edmonton's mature residential neighbourhoods, which requires strict adherence to the context of the surrounding development and consultation with the affected parties on the impact of any proposed variance to the MNO regulations.

Of note is that a significant majority (72%) of minor development permit appeals occurred in the area overlaid by the MNO, which mostly covers RF1 and RF3 zones. The other overlay areas, such as the secondhand and pawn stores, and others, collectively accounted for less than 1% of the appeals. This suggests that the MNO has been a major issue for Edmontonians and has significantly influenced development permit appeals.

The CoE's MNO has been amended several times, presumably to resolve some frequently raised issues. Based on this, we investigated the frequency of variances since major amendments to the MNO in 2017. Our analysis shows that appeals as well as their yearly rate have continued to increase in the MNO areas since 2017 (shown in Figure 3; the red diamond indicates the year 2017 and the pink line shows the trend). This rise demonstrates that the amendments have had little effect.

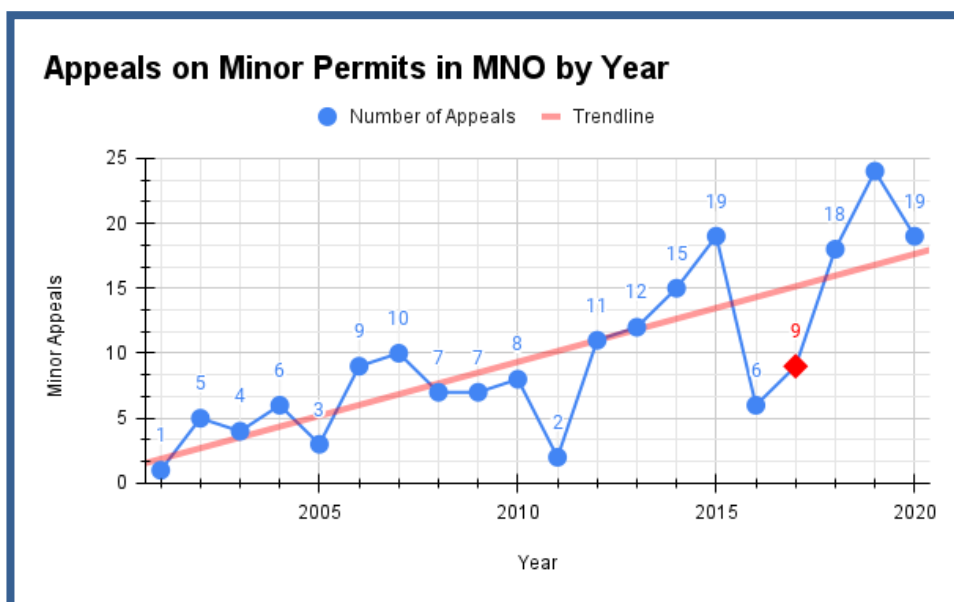


Figure 3: Appeals of Minor Permits in the MNO by Year

Figure 4 graphs the three-year running average for appeals, to better reflect year-over-year changes that may be affected by external factors (such as COVID-19 or economic decline). Still, we see an increase in MNO appeals, and even further, a clear increase since 2017.

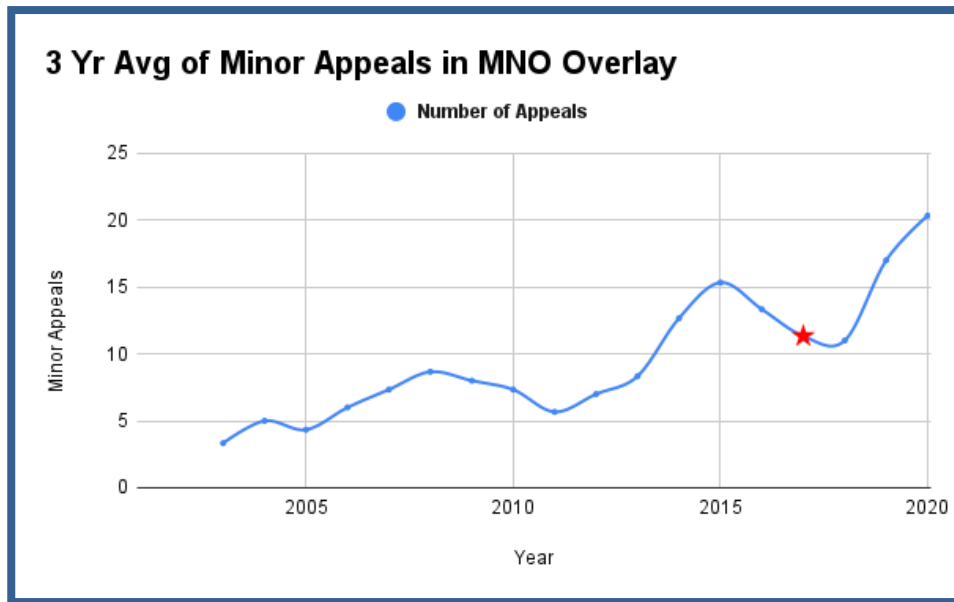


Figure 4: Three-Year Running Average of Minor Development Appeals in the MNO

The largest portion of appeals (11.6%) of major development permits also occurred within the MNO areas. This number is significant—though not as significant as the nearly three quarters of appeals that occurred in the MNO in the minor permit appeals. In the major category, 73% of the MNO permits either did not have a value (i.e. data was missing) for the overlay or were not within an overlay area. Data following 2017 is somewhat limited in the major permit category, making it difficult to assess the impacts of the 2017 Bylaw amendments.

Development Types and Related Appeals

Of the minor development permit appeals, four specific use types (of approximately 30 distinct uses)—residential house addition, exterior alterations—residential, secondary suite, and semi-detached houses—account for 67.2% of all appeals. Of these types, “house additions” accounted for the greatest portion (27.5%) of minor development permit appeals, with exterior alterations (13.9%), secondary suites (13.2%), and semi-detached houses accounting for similar proportions (12.6%).

Major development permit appeals were assigned different attributes than minor permit appeals, making it somewhat more difficult to compare these two datasets. For major development permit appeals, certain labels of development types included many subtypes of development (for example, one category was “Commercial, Ind, etc. Major Project” which would include a broad variety of development types within it). Four such broad categories accounted for a total of approximately 80% of all *major* permit appeals, as outlined below:

- Commercial, Industrial, etc., major projects (21.2%)
- Multi-Unit Housing with 5+ dwellings (20.5%)
- Discretionary Change of Use (20.5%)



- Permitted and Continuation of Use (17.7%)

All house-combo appeals were to do with single-detached dwellings or garage suites.

Permit Appeals and Land Use Zones

Most permit appeals occurred in the RF1 and the RF3 zones. Collectively, these two zones account for approximately 75% of all minor development permit appeals over the past two decades, with RF1 zone appeals at nearly half of this (49.5%) and RF3 zone appeals at just under a quarter (23.5%) of all appeals. These two zones, most of which encompass mature neighbourhoods, have had the most issues related to house additions, alterations, secondary suites, or semi-detached homes. In fact, our analysis shows that 60% of minor development appeals have occurred in mature neighbourhoods. The two zones are similar in terms of permitted and discretionary uses, and associated regulations, although RF3 also allows multi-unit housing as a permitted use, and fraternity and sorority housing as a discretionary use.

Since these zones and neighbourhoods are covered by the MNO, the overlay was a factor in these appeals as noticed earlier. The major permit appeals, unlike the minor permit appeals, showed a weaker linkage between specific districts and appeal frequencies. While the RF3 (small-scale infill development) zone was still the zone with the double-digit percentage of appeals (at 13% of total major appeals), this was significantly lower than the RF3 proportion in the minor development permit appeals (at 23.5%). Several other commercial and residential zones had varying levels of appeal.



Development Permit Appeals Focused on Infills

Our analysis shows that 87% of all minor permit appeals are related to “infill” applications, closely followed by major permit appeals at 74%. The house-combo development, which includes the construction of single-detached dwellings and garage suites, accounted for 86% of permit appeals among infill-type permits. Further, our review of infill-type appeals year over year shows an increasing trend. Figure 5 shows this, along with the running three-year averages of minor infill-type appeals. Reviewing this trend may “smooth” the data and correct for outliers that may be connected to events isolated to a single year. We noted that even the three-year averages of infill-type appeals show a significant rate of increase year over year. This trend—perhaps the most consistent across all three datasets—is indicative of the barriers that infill development faces.

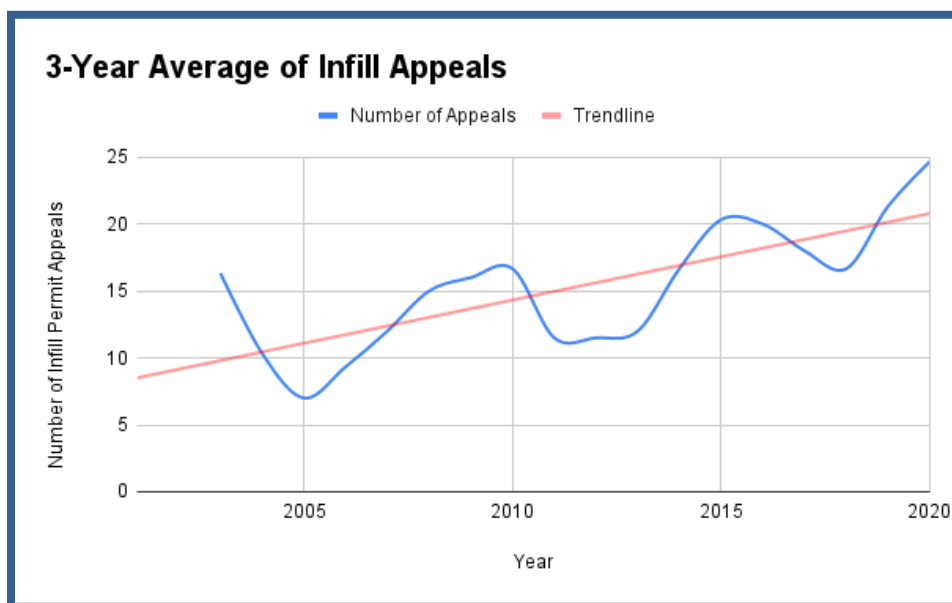


Figure 5: Three-year Running Average of Infill

Class A (Permitted) vs. Class B (Discretionary) Permits & Appeals

It was difficult to assess whether the minor development appeals were for permitted or discretionary uses, as 58% of the permit IDs in this dataset were missing this attribute. However, for those that did have enough attributes attached, 29% were discretionary and 10% permitted, indicating a tendency towards a higher frequency of appeals for discretionary uses.

A majority (58%) of major-type appeals were found to be “Class B” permits (otherwise known as discretionary permits). In part, this is unsurprising, given the public notifications and consultations associated with Class B permits. Nonetheless, this highlights that distinctions between Class A (permitted) or Class B (discretionary) in the Zoning Bylaw may not be that useful if the aim is to reduce [overall] appeals.

Minor Development Appeals	Major Development Appeals	House-Combo
Increased over time	Increased over time	Significantly increased over time
67.2% account for 4 development types	80%	All were single-detached dwellings or garage suites
75% occurred in the RF1 and RF3 zones	13% in RF3	33%– 61% RF1 * 10–19% RF3 * 4–7% RF2*
72% within the MNO areas	11.6% in the MNO	72%–82% * in the MNO
60% in mature neighbourhoods	42% in mature neighbourhoods	65.6 % in mature neighbourhoods
87% infill types	70% infill types	85.8% infill types
Increases in appeals in the MNO since 2017	Increases in appeals in the MNO areas since 2017	Increases in appeals in the MNO areas over data timespan (2001–2018 ⁸²)

Table 3: Summary of All Appeals (* due to data limitations)

Summary

Four key trends emerged from the POSSE data analysis (see Table 3).

1. Appeals in all three type of development permits – minor, major and house-combo – increased steadily over the past two decades. This could be due to the increase in permit applications; regardless, the continued growth of appeals can be potentially problematic when the aim is to resolve these matters through appropriate amendments.
2. Most minor permit appeals and house-combo permit appeals occur in the RF1 (single-detached residential zone) or RF3 zones (small-scale infill development zone), with almost half in RF1 and just under a quarter in RF3, which tends to be more permissive of different housing types. Most of these zones are covered by the MNO.
3. Many minor permit appeals and house-combo-type appeals did occur within the MNO area. Also, the appeals continued to increase despite the Council-approved amendments in 2017; interestingly, fewer major appeals occur in the MNO (although they were still a significant proportion).
4. A large percentage of each of the three development appeals is infill-type development.
5. Most minor and major development appeals were for discretionary uses.

⁸² In 2018, the house-combo category was merged with the minor development category.

SUBDIVISION AND DEVELOPMENT APPEAL BOARD DECISIONS

We analyzed the decisions made by the CoE's SDAB, looking at selected cases—specifically, those appeals based on a human rights or equity issue. We discovered that none of the appeals or SDAB decisions was based strictly on equity alone.

As per the *Municipal Government Act* (MGA),⁸³ the SDAB, as a quasi-judicial appeals body, must (a) apply the applicable planning framework and policies to the appeals that come before it and (b) use planning rationale as a basis of their decision-making. It can grant variances if it follows the parameters enshrined in the MGA.⁸⁴ The board's decision-making must ensure that the proposed development, even when it does not comply with the Zoning Bylaw, will not unduly interfere with the neighbourhood amenities or materially interfere with or affect the use, enjoyment, or value of neighbouring parcels of land.

Additionally, the board must not infringe on the rights of individuals, unless the greater public interest demands it.⁸⁵ However, this reference to the "rights of individuals" is not clear. Neither does the board allude or directly reference the *Charter* or any provincial legislation, such as the *Alberta Human Rights Act*⁸⁶ or the *Alberta Bill of Rights*.⁸⁷ Nevertheless, the SDAB has the authority to make decisions and grant variances to the Zoning Bylaw in cases where a strict application of the regulations would lead to undue "hardship," as determined in a recent court case.⁸⁸ The Zoning Bylaw defines "hardship" as practical development difficulties based on the use, character, or situation of the lot or building that are not experienced by others in the same zone.⁸⁹ However, the SDAB did not cite this test or the section of the Bylaw to provide a base for their decisions either for or against the "hardship" cases.

The 15 cases we analyzed had to do with housing, accessible parking, cannabis store locations, and religious assembly use. In each case, arguments brought forward by the appellants and/or decisions made by the SDAB touched on equity considerations.

Housing

We noted three types of housing and related issues in the appeals we examined, described below.

Temporary Homeless Shelter

In the *L. Boчек* case,⁹⁰ multiple residents of Ritchie appealed the CoE's approval of a temporary homeless shelter in their neighbourhood. Their argument was founded on the prevailing crime and safety in their neighbourhood, as well as the saturation of support services

⁸³ *Municipal Government Act*, RSA 2000, c M-26. [MGA].

⁸⁴ MGA at s 687 (3) (d).

⁸⁵ Government of Alberta, 2018, p.20.

⁸⁶ *Alberta Human Rights Act*, RSA 2000, c A-25.5.

⁸⁷ *Alberta Bill of Rights*, RSA 2000, c A-14.

⁸⁸ *Thomas v Edmonton (City)*, 2016 ABCA 57 at para 29. [Thomas].

⁸⁹ City of Edmonton, Zoning Bylaw 12800, s. 11.4(1)(a).

⁹⁰ *L. Boчек v Development Authority of the City of Edmonton*, 2020 ABESDAB 10164. [L.Boчек].



within the community. The Ritchie Community League, along with another neighbour, however, supported the shelter. This group stated that “there is a significant unhoused population in the Ritchie community and adequate housing is a fundamental human right.”⁹¹ The CoE’s reasoning for approval was that the proposed development was deemed to be a “special event” as the homeless shelter was to be short-lived, which is a permitted use within the Medium Industrial Zone, where the development was to be located. The SDAB agreed with the CoE and denied the appeal on the grounds that the proposed development was indeed temporary in nature and was needed to house homeless people during the rising COVID-19 pandemic.

Apartment (Rental Units)

In the *Yakimowich*⁹² case, the CoE granted variances for four apartment buildings, which were a permitted use. The appellant, Kirsten Yakimowich, and her neighbours opposed the development. They cited the potential decrease in property values and privacy, and the potential increase in crime, traffic, and parking as a result of the new development. Because the apartments were a permitted use, the SDAB’s task was not to decide on the development itself, but rather to assess the impact of the variances granted by the CoE. The SDAB denied the neighbours’ appeal and upheld the CoE’s decision, stating that the concerns brought forward by the neighbours were not related to the variances in question.

Row Housing

In the *Suchora* case,⁹³ the developer appealed the CoE’s refusal of a permit to build a four-dwelling row house with underground parking and rear uncovered decks. The CoE’s reason for refusal was the non-compliance with the MNO, which requires a greater rear setback than that required for the RF3 zone. The developer argued that the MNO “results in an unfair and ironic hardship on the developer because [of the size and shape of] the lot.”⁹⁴ Further, the MNO requirements may work for individual single-detached homes but not for row housing development. The SDAB agreed with the developer and granted the permit, stating that the orientation of the proposed development could be viewed as hardship due to the nature of the site. It also reasoned that the CoE’s denial “does not support the policies of the Jasper Place Area Redevelopment Plan to promote redevelopment, strong neighbourhood frontages, and multifamily housing.”⁹⁵

Accessible Parking

The search terms “accessibility/accessible/disability/disabled” led us to multiple cases related to parking requirements. Interestingly, we noticed that the SDAB frequently attached a provision of disabled parking as a condition of approving variances in multiple cases that were unrelated to parking. For example, in one case, the SDAB granted a change in use (discretionary); as part of the conditions for the approval, the board stated that the business must provide parking for the

⁹¹ *L. Bocek* at para 39.

⁹² *Kirsten Yakimowich v Development Authority of the City of Edmonton*, 2019 ABESDAB 10008. [*Yakimowich*].

⁹³ *B. Suchora v Development Authority of the City of Edmonton*, 2019 ABESDAB 10026. [*Suchora*].

⁹⁴ *Suchora* at para 18.

⁹⁵ *Suchora* at para 58b.



disabled as per *Alberta Building Code* standards.⁹⁶ In another case where a change of use was also granted, the SDAB made parking for the disabled a condition for the approval.⁹⁷

Cannabis Locations

The issue of locating cannabis stores came up frequently at the SDAB, but the board decisions lacked consistency. In the *Alberta Ltd* case, the cannabis store owners asked for a variance from the requirement of maintaining a 200-metre distance between stores,⁹⁸ arguing undue hardship. The appeal was denied on the grounds that breaking the 200-metre rule could cause the clustering of cannabis businesses, leading to decreased diversity of other businesses in the area. In contrast, in two other cases, the SDAB granted the appeals for a variance to this same distance regulation.^{99,100} For instance, in *Green Mountain*, the SDAB allowed the appeal based on “a hardship situation [caused to the appellant] due to the unique nature of the lot.”¹⁰¹

Religious Assembly

In the *Celestial Church of Christ*¹⁰² case, the appellants asked to change the use of a property from household repair to a religious assembly (minor). The CoE refused this discretionary use change, but the SDAB overturned this permit refusal. After ascertaining that the parking and landscaping were adequate, the board determined that the conversion of a vacant property to a community-oriented use, such as a church, would be a positive change to the neighbourhood.

Summary

All in all, we find that the SDAB strictly limits itself to the powers granted in the MGA. The board also follows a recent court decision, which clarified that the SDAB could consider undue “hardship” caused to the affected party in following the regulation in its decision-making. The variety of cases we analyzed, although not brought forward strictly on human rights or equity grounds, showed that the SDAB demonstrates its commitment to allowing a variety of housing options, mandates accessible parking in new developments, and allows change of use to religious assembly or temporary homeless shelter as per the intent of CoE’s policies and plans.

⁹⁶ *Agrola Inc v Development Authority of the City of Edmonton*, 2019 ABESDAB 10195, at para 17.

⁹⁷ *Flowers by Merle v Development Authority of the City of Edmonton*, 2019 ABESDAB 10033, at para 54.

⁹⁸ *2101242, Alberta Ltd v Development Authority of the City of Edmonton*, 2018 ABESDAB 10193 at para 15.

⁹⁹ *Uncle Sam's Cannabis v Development Authority of the City of Edmonton*, 2021 ABESDAB 10050.

¹⁰⁰ *Green Mountain Cannabis Inc. v Development Authority of the City of Edmonton*, 2018 ABESDAB 10133. [*Green Mountain*].

¹⁰¹ *Green Mountain* at para 64.

¹⁰² *Celestial Church of Christ, Gathering of the Saints Parish Edmonton v Development Authority of the City of Edmonton*, 2018 ABESDAB 10014. [*Celestial Church of Christ*].



ZONING AMENDMENTS

In the past five years, major changes to the Zoning Bylaw based on equity considerations encompassed the following: reductions in and the removal of minimum parking requirements; allowance of garage/garden/secondary suites; MNO; urban agriculture; infills; supportive housing, and context-based design. Collectively and individually, these amendments all touch on equity as they aim to increase housing choices, affordability, and food security in Edmonton.

Parking

In the past few years, the CoE identified excessive parking requirements as a barrier—an equity issue—to locating supportive housing in residential neighbourhoods, religious assemblies, or childcare operations in the downtown area.^{103,104,105} It also found that Edmonton had one of the highest minimum parking requirements.¹⁰⁶ These parking requirements created barriers for homeowners and businesses, as parking is expensive to develop and turns much land into asphalt, which impedes walkability and creates serious environmental issues.¹⁰⁷

Eventually, these context-specific amendments that increased parking flexibility over many years led to the current CoE’s “Open Option Parking” policy, approved on July 2, 2020. Open-option parking removes minimum parking requirements and allows homeowners and businesses to decide how much parking to provide on their properties. Accessible parking regulations, however, remained comparable to what they were before the Bylaw change: a minimum specified number of universal barrier-free parking stalls are still required. Maximum parking requirements have also been added for specific areas, such as downtown, transit-oriented development areas, and main streets.¹⁰⁸

Infill

The 2018 *Infill Roadmap*¹⁰⁹ looked at increasing infills to allow for more housing diversity and options throughout mature neighbourhoods, with a target to add 25% of new housing annually. The subsequent Zoning Bylaw amendments covered several aspects, such as the following:

- Reducing the lot width of single-detached housing to 7.5 metre,¹¹⁰ which allows more lots to be subdivided into “skinny” lots.
- Allowing diversity of housing, such as semi-detached, duplex, multi-unit housing, and basement and garden suites in RF1 and RF2 zones, adding to the housing options.

¹⁰³ City of Edmonton. (2015). *Text Amendment to Zoning Bylaw*.

¹⁰⁴ City of Edmonton. (2017). *Text Amendment to Zoning Bylaw 12800 to Update Parking for Religious Assemblies*.

¹⁰⁵ City of Edmonton. (2016). *Text Amendment to Zoning Bylaw 12800 to Facilitate the expansion of childcare facilities in the city*.

¹⁰⁶ City of Edmonton. (2017). *Text Amendment to Zoning Bylaw 12800 to Reduce minimum parking requirements in low density residential areas*.

¹⁰⁷ City of Edmonton. (n.d.). *Parking Rules for New Homes and Businesses*.

¹⁰⁸ City of Edmonton. (n.d.). *Parking Rules for New Homes and Businesses*.

¹⁰⁹ City of Edmonton. (2018). *Infill Road Map*.

¹¹⁰ City of Edmonton. (2017). *Text Amendment to the Edmonton Zoning Bylaw 12800 -7.5 Metre Minimum Lot Width for Single-detached Housing*.



- Allowing stacked row and apartment housing to be condensed into the category of “multi-unit housing”.¹¹¹
- Allowing semi-detached and duplex housing as permitted uses, with no restrictions placed on their locations in RF1 and RF2 zones.¹¹² Previously, any housing type other than single-detached was considered discretionary in RF1 zones and permitted in RF2, but limited by location. These changes reduce development barriers to this type of housing form, thus increasing individuals’ housing choices.

Garage, Garden, and Secondary Suites, and Tiny Homes

Garage and garden suites, and other forms of housing, are housing options available to all Edmontonians. Any barriers to developing such housing forms are equity issues that the CoE took seriously. Over time, it worked to make such housing types more accessible, allow seniors to age in place, or provide shelter to the homeless.

As a start, back in 2007–2008, the CoE added these housing types as a discretionary use to the Zoning Bylaw. In 2013–2014, its infill policy sought to make garage and garden suites readily available within mature neighbourhoods.¹¹³ In 2016, the CoE found that many zoning aspects constituted barriers to these new forms of affordable housing, such as the following:¹¹⁴

- Inflexibility in the Zoning Bylaw, such as discretionary use status
- Rigid, sometimes excessive, requirements for height and massing, site area, floor area, site coverage, and parking

In 2019, the CoE amended the Bylaw again to improve accessibility factors,¹¹⁵ aiming for better access and inclusive design standards that help people age in place and allow for better access for seniors and those with disabilities (for example). Tiny homes were allowed on foundations that are less than 5.5 metres wide, to be developed under single-detached housing and garden suite usages.¹¹⁶ This change provides another housing option and increases the diversity of housing types in all communities.

Mature Neighbourhood Overlay (MNO)

Since its inception in 2001, the MNO has undergone numerous amendments. However, as noted, major changes occurred in 2017, to support infill developments in mature neighbourhoods that previously only allowed traditional single-detached units. This reduced the need and notification for variances for secondary suites or other varied types of housing in these

¹¹¹ City of Edmonton. (2019). *Text Amendment to Zoning Bylaw 12800 to Enable Missing Middle Housing*.

¹¹² City of Edmonton. (2018). *Text Amendment to the Edmonton Zoning Bylaw 12800 to Allow Additional Opportunities for Semi-detached and Duplex Housing in the RF1 and RF2 Zones*.

¹¹³ City of Edmonton. (2017). *Text Amendment to Zoning Bylaw 12800 Improving the Buildability and Quality of Garage and Garden Suites*, p. 1.

¹¹⁴ City of Edmonton. (2017). *Text Amendment to Zoning Bylaw 12800 Improving the Buildability of Garage and Garden Suites*.

¹¹⁵ City of Edmonton. (2019). *Text Amendment to Zoning Bylaw 12800- Garden Suites*.

¹¹⁶ City of Edmonton. (2019). *Text Amendment to Zoning Bylaw 12800 for Tiny Homes on Foundations*.



neighbourhoods.¹¹⁷ The other changes to the MNO included simplified calculations for front setbacks, a tiering of the consultation process, and other changes to side setbacks, facades, and driveway access.¹¹⁸

Urban Agriculture

Urban agriculture is important to improving access to food and increasing food security within an urban area, a key factor in supporting equity in food accessibility. Food security is an equity issue; having the ability and option to grow or raise their own food helps urban residents to manage food options and mitigate food supply issues. Between 2015 and 2017, the Council approved multiple amendments^{119,120, 121} that increased agriculture uses within the city and facilitated local food infrastructure, including clarifying regulations for hen and bee-keeping. These amendments enable flexible adaptations to changes in the food system and supply, clarify urban agricultural activity regulations that foster a resilient food system, contribute to the local economy, and support sustainability.¹²²

Supportive Housing

In its continuing effort to allow diversity of housing across the entire city and reduce the prevailing chronic homelessness, the Council removed regulations across the city that restricted developments of affordable and supportive housing, such as group homes, lodging housing, and fraternity and sorority housing.¹²³ In 2020, City Council created the new supportive housing use which encapsulates the (a) temporary shelter services, (b) seniors' housing and hospice care, (c) group homes, and (d) limited group home uses—allowing them as permitted use in many zones across the city.¹²⁴

Context-based Design for New Development

The CoE's 2018 *Context-based Design for New Development* report,¹²⁵ presented to the Urban Planning Committee, examined the effectiveness of the context-specific design approach to guide architectural design for infill development in low-density areas, outside of the MNO amendments approved in 2017.

¹¹⁷ City of Edmonton. (2017). *Text Amendment to Zoning Bylaw 12800 to Amend the Mature Neighbourhood Overlay*.

¹¹⁸ City of Edmonton. (2017). *Mature Neighbourhood Overlay Regulations*.

¹¹⁹ City of Edmonton. (2015). *Text Amendments to Zoning Bylaw 12800 To Add Several Urban Agriculture Uses and Regulations*.

¹²⁰ City of Edmonton. (2016). *Text Amendment to Zoning Bylaw 12800 to add Urban Agriculture uses to additional zones*.

¹²¹ City of Edmonton. (2017). *Text Amendments to Zoning Bylaw 12800 to Update Urban Agriculture Regulations*.

¹²² City of Edmonton. (2017). *Text Amendment to Zoning Bylaw 12800 to Update Urban Agriculture Regulations*.

¹²³ City of Edmonton. (2019). *Text Amendments to Zoning Bylaw 12800 to reduce barriers to Collective and Permanent Supportive Housing*.

¹²⁴ City of Edmonton. (2020). *Text Amendments to Zoning Bylaw 12800 to Enable Supportive Housing Developments*.

¹²⁵ City of Edmonton. (2018). *Approaches to Context-based Design for New Development*.



The report supports keeping the MNO, as it consolidated the multiple overlays of diverse neighbourhoods that were in place before its inception in 2001, each with different regulations and height limits. It argues that these multiple overlays potentially created “inequity in land use by choosing certain areas of the city for more liberal or more restrictive requirements.” The report highlights the advantage of the MNO over the former context-based design approach:

The CoE instead addresses context through the regulations in the Mature Neighbourhood Overlay and other sections of the Zoning Bylaw. In other words, it regulates through zoning, guidelines, design review and heritage designation.¹²⁶

We agree that a strict design regime is unnecessary, but our view is that the MNO, as a blanket approach, created equality across a large portion of the city while exacerbating inequities, especially by restricting Edmontonians’ housing choices. Our analysis finds that most of the appeals emanate from the areas under MNO. The frequency of appeals did not slow down despite the 2017 amendments. As described later in the report, our study participants resoundingly found the MNO to be consistently problematic, causing friction among residents.

Summary

To summarize, amendments over the past five years attempted to accomplish multiple goals:

- Align the Zoning Bylaw with Edmonton’s *The Way We Grow*¹²⁷ (the previous MDP) and other policy documents
- Respond to emerging issues on a piecemeal basis
- Set the stage for the new incoming MDP that purports to promote equity

Changes approved provided greater housing options, allowed intensifications in both existing and new neighbourhoods, enhanced options for urban agriculture, and removed parking barriers. Equity considerations formed part of the foundations of such changes, even if this was not made explicit in every instance.

MUNICIPAL PLANS

To get a rough idea about how Canadian municipalities are approaching equity in their plans, we looked at the official plans of 11 cities and towns across Canada,¹²⁸ a few in various stages of development. For instance, Vancouver has multiple community plans covering sections of the city, but no single overarching plan. This is currently in development, as is Kelowna’s plan, while Ottawa’s new official plan is in draft form. At the time of writing, Winnipeg was awaiting the third Council reading of its plan.

Approach to Equity

Each city’s municipal plan takes a unique approach to equity. In cities like Winnipeg and Edmonton, equity is one main objective, while in others like Calgary and Toronto the term is not

¹²⁶ City of Edmonton. (2018). *Approaches to Context-based Design for New Development*, p. 3.

¹²⁷ City of Edmonton. (2006).

¹²⁸ Edmonton, Victoria, Winnipeg, Toronto, Ottawa, Québec City, Halifax, Calgary, Truro (N.S.), Vancouver, and Kelowna.



explicitly mentioned. For example, Winnipeg's draft plan *Our Winnipeg 2045*¹²⁹ lists “social equity” as one of its objectives, discussed throughout the document. In Edmonton's *City Plan*,¹³⁰ equity is also at the root, linked to its goal of being an “inclusive and compassionate” city. Ottawa's draft plan takes a more direct approach to equity by including targeted regulatory directives. For example, the plan explains how zoning would allow housing for vulnerable and low-income groups.

Overall, the themes pertaining to equity focused on housing and homelessness, seniors, children, and persons with disabilities; cultural diversity included BIPOC (Black, Indigenous, and people of colour) individuals and women. These themes are outlined below.

Housing and Homelessness

Housing is a major concern of equity, which each city approached in its own way. The City of Winnipeg takes a distributional equity approach to housing, as it defines affordable and supportive housing spread throughout the city as a “fundamental human right.”¹³¹ Calgary's plan mentions housing considerations for older adults, making provisions for their special housing needs, noting that they “may require additional or separate facilities in order to take full advantage of their desired lifestyles...[and] that communities meet the needs of all residents.”¹³² The plan thus takes a procedural approach to acknowledge that equity means certain groups—in this case, older adults—who need special accommodations or assistance to ensure they can participate equally in society.

Québec City uses mapping and statistical data of the population to determine their future housing needs.¹³³ On the other hand, Victoria's plan mentions taking a housing first approach that supports public, private, and non-profit agencies to address homelessness.¹³⁴ All these approaches recognize the general need for housing.

Ottawa's draft city plan¹³⁵ stands out for us because it focuses on housing for vulnerable groups. It takes a regulatory equity approach by laying out the planning specifics. The plan states that a policy statement will inform zoning and realize the objective on the ground. For instance, it recognizes shared accommodation, group homes, and transitional housing as key components of the housing continuum; it intends to make them permitted use. The plan also states that the city will “not establish restrictions, including minimum separation distances or caps, whose effect is to unreasonably limit the opportunity to provide such housing forms.”¹³⁶

¹²⁹ City of Winnipeg. (2021). *Our Winnipeg 2045*.

¹³⁰ City of Edmonton. (2020). *The City Plan*.

¹³¹ City of Winnipeg. (2021). *Our Winnipeg 2045*, s.5.2.

¹³² City of Calgary. (2018). *Calgary Municipal Development Plan*, s.3.3.6.

¹³³ Québec City. (2019). *Schema D'aménagement et de développement*.

¹³⁴ City of Victoria (2012; 2020), *Official Community Plan*, s.13.36.

¹³⁵ City of Ottawa. (2020). *New Official Plan (Draft)*.

¹³⁶ City of Ottawa. (2020). *New Official Plan (Draft)*, s.4.2.4.



Single-detached Residential Zone

A somewhat contradictory, yet bold approach is taken by the Town of Truro regarding its single-detached home zones. Its *Municipal Planning Strategy*,¹³⁷ the Town's Official Plan, specifically acknowledges the town residents who wish to preserve the sanctity of the single-family residential zone, promising to keep the designation because of the demand from town residents.

The *Municipal Planning Strategy* states the following:

Many residents in these areas [single-family residential designation] regard multiple unit developments and other more intensive land uses as incompatible... generally [they] do not contribute to a sense of community and often have negative land use impacts such as traffic, noise, and intrusive lighting.¹³⁸

This document refutes residents' view that this approach does not support the Town's approach to intensification and community sustainability. It goes on to note that since demand for such designation exists, it will ensure that certain areas get it. Interestingly, it also demonstrates an ongoing tension—the clash of views between the residents and the municipal administration—publicly acknowledging the divergent views of residents. In response to this debate, the municipal planners articulated their reasons for leaving the single-detached residential designation intact:

Ignoring this demand and adopting policies that favour only mixed-use development would drive this type of development outside of the Town's boundaries. Not only would this lead to urban sprawl on a regional level, it would also deny the Town the benefits associated with new residential development and increased population. This would have a negative impact on the economic sustainability of the community.¹³⁹

Seniors, Children, and Persons With Disabilities

Older adults and children also appeared in the plans. For example, Toronto takes a distributional approach to children with its *Children's Charter*, which summarizes all the rights and freedoms children are entitled to in the city, remarking that it is “the City's responsibility to ensure that its most vulnerable residents have access to a fair share of society's resources.”¹⁴⁰ Both Calgary and Victoria address the older adult demographic directly and have policies to ensure that seniors' housing and care homes are close to amenities. For example, Calgary's plan states that seniors' care facilities are to be integrated into communities, be close to green space and transit, and be provided in a variety of forms.¹⁴¹ Victoria mentions locating seniors' housing close to services.¹⁴²

¹³⁷ Town of Truro. (2018). *Municipal Planning Strategy*.

¹³⁸ Town of Truro. (2018). *Municipal Planning Strategy*, p.4–10.

¹³⁹ Town of Truro. (2018). *Municipal Planning Strategy*, p. 4–12.

¹⁴⁰ City of Toronto. (2019). *Toronto Official Plan*, p.3.27.

¹⁴¹ City of Calgary. (2018). *Calgary Municipal Development Plan*, s.3.

¹⁴² City of Victoria. (2012, 2022). *Official Community Plan*, s.13.15.



Edmonton's *City Plan* notes that universally accessible spaces and services would help to advance equity.¹⁴³ In addition, the plan emphasizes that persons with disabilities be given equitable opportunities to access services and amenities.¹⁴⁴ These approaches have potential to break the singular mold of “who” a city is planned for; this helps create equity among different demographic groups, enacting both distributional and recognitional equity.

Cultural Diversity

Cultural diversity, by definition, comes in various forms. We focus here on Indigenous city-dwellers, as well as BIPOC residents and women.

Indigenous Peoples

Most cities, though not all, included Indigenous peoples in their plans. In Winnipeg's draft plan, Indigenous issues hold a prominent place, addressed throughout. The City takes a recognitional approach, using an Indigenous lens,¹⁴⁵ and making accommodations for consultation and ceremony. It also mentions reconciliation with Indigenous peoples¹⁴⁶ and seeks to prioritize municipal responsibilities set out in *the United Nations Declaration on the Rights of Indigenous Peoples*, *The Truth and Reconciliation Commission (TTRC)*, and the *National Inquiry into Missing and Murdered Indigenous Women and Girls*.¹⁴⁷

In contrast, Truro's plan does not mention them at all, and Calgary's plan limits commentary to consultation only on historical or cultural sites and preservation, as does Toronto's plan.¹⁴⁸ Edmonton's plan also mentions that it must keep responding to the tasks the TTRC associates with municipalities, including using the UN declaration as a framework¹⁴⁹ and maintaining efforts to mitigate violence against Indigenous women and girls.¹⁵⁰

BIPOC Individuals and Women

Multiple city plans in our sample explicitly recognize the contributions of BIPOC individuals in their city-building activities and commit to redressing historical prejudices. Some also specifically single out newcomers to the city, as well as women, commenting on how to make their city more welcoming and easier for them to navigate. Halifax's plan,¹⁵¹ for instance, takes a procedural equity stance in encouraging people to settle there: “The Immigration Action Plan shall provide guidance to identify the outcomes and measures to achieve success in integrating and retaining newcomers and creating a welcoming and friendly community for all.”¹⁵²

¹⁴³ City of Edmonton. (2020). *The City Plan*, s.4.1.

¹⁴⁴ City of Edmonton. (2020). *The City Plan*, s.4.1.3.5.

¹⁴⁵ City of Winnipeg. (2021). *Our Winnipeg 2045*, s.5.5.

¹⁴⁶ City of Winnipeg. (2021). *Our Winnipeg 2045*, s.5.4.

¹⁴⁷ City of Winnipeg. (2021). *Our Winnipeg 2045*, s.5.4.

¹⁴⁸ City of Calgary. (2018). *Calgary Municipal Development Plan*, s. 4.3(f); City of Toronto. (2019). *Toronto Official Plan*, s 3.1.5.

¹⁴⁹ City of Edmonton. (2020). *The City Plan*, s.3.1.2.4.

¹⁵⁰ City of Edmonton. (2020). *The City Plan*, s.1.1.3.2

¹⁵¹ City of Halifax. (2014). *Halifax Regional Municipal Planning Strategy*.

¹⁵² City of Halifax. (2014). *Halifax Regional Municipal Planning Strategy*, p.64.



Ottawa has an intersectional view to its goal of inclusive communities, focusing on social categories like age, ability, gender, and culture, and noting how they create overlapping and interdependent systems of discrimination or disadvantage.¹⁵³ Ottawa’s gender equity policy aims to improve housing and access for women and gender-diverse persons.¹⁵⁴ Edmonton similarly uses a gendered lens when approaching policy—specifically, Gender-based Analysis Plus (GBA+)¹⁵⁵, which it applies to the design and application of services, programs, and policies.¹⁵⁶ Edmonton also looks to address systemic racism and acknowledge the historical trauma experienced by people in the community.¹⁵⁷

Summary

This scan of the municipal plans provides insights into how municipalities across Canada approach equity in their plans. The most prominent themes are housing and homelessness; single-detached residential zones; seniors, children, and persons with disabilities; Indigenous people; and BIPOC individuals. Embedded in these themes were the four categories of equity, although approaches varied. Broadly speaking, the newer plans address equity more directly and increasingly acknowledge intersectionality.

A few lessons can be gleaned from our analysis of the 11 municipal plans:

- Municipal plans and policies must be explicit about equity, diversity, and inclusion as key principles behind their vision, as well as consider all four forms of equity—distributional, recognitional, procedural, and regulatory.
- Municipal plans and policies must connect and clearly inform the regulatory regime about how to include approaches to allow more housing choices.
- Municipal plans should make direct reference to how equity considerations may translate into or inform zoning and other bylaws.
- Municipal plans and strategic documents should acknowledge the divergent views that may exist within the city on an issue—and respond by explaining how and why planners arrived at a policy or Bylaw decision, or a future course of action.

INTERVIEWS LED BY THE CITY OF EDMONTON

As a part of the research, we accessed the interview transcripts from the CoE ZBRI group to engage those interviewees’ perspectives in our analysis. As noted earlier, this group interviewed 22 individuals in late 2020. Our findings are organized under the following four themes:

1. What does equity entail?
2. Where does inequity occur in the current Zoning Bylaw?
3. What are the different forms of inequity in the CoE?

¹⁵³ City of Ottawa. (2020). *New Official Plan (Draft)*, s.2.2.4.

¹⁵⁴ City of Ottawa. (2020). *New Official Plan (Draft)*, s.2.2.5.

¹⁵⁵ Gender-based Analysis Plus (GBA+) is an analytical tool often used with the intention of advancing gender equality. The “plus” in the name highlights that Gender-based Analysis goes beyond gender to include the examination of a range of factors, such as age, education, race, language, geography, culture, and income. (City of Edmonton, 2017).

¹⁵⁶ City of Edmonton. (2020). *The City Plan*, s.1.2.2.5.

¹⁵⁷ City of Edmonton. (2020). *The City Plan*, s.1.1.2.2.



4. What are the necessary improvements for the Bylaw?

What Does Equity Entail?

The respondents identified that equity could be achieved by embracing the existing diversity within the city. They believe that equity and inclusiveness only exist when the CoE appreciates and supports social and cultural differences within communities. They were confident that the CoE could accommodate its citizens' differences without prejudices, such as avoiding the "not in my back-yard" (NIMBY) syndrome. The distributional equity approach was recognized as the central mechanism to make Edmonton a more inclusive space, by providing the necessary services and spaces. One participant made this comment:

The majority of the conversation about equity [in cities] is about distribution or access...I think it's referred to as distributional equity and I think distributional equity is extremely important.

In an inclusive city, what matters is that citizens feel welcome in public space, without embarrassment related to their social, economic, or political stances. They also have the right to participate at different venues regardless of any such differences.

To significantly move towards inclusion, accommodating ethnic and cultural diversities can be complemented by introducing multiple social and economic options, such as allowing small businesses in neighbourhoods. As well, recognizing the local knowledge and community expertise in urban development is essential to citizens feeling heard. Inclusion and equity will not be achieved until communities believe they are included in city-building.

Where Does Inequity Occur in the Current Zoning Bylaw?

Several factors contributed to inequity, which are grounded in the Bylaw.

Inaccessible Presentation

The technical and specialized nature of the Bylaw was identified as a significant challenge to accessibility. Without plain language, these regulations are too complicated for people to have meaningful access to them. It is especially inaccessible to those with lower educational backgrounds and to non-native English speakers.

Prescriptive and Inflexible Nature

Zoning is often prescriptive and rigid. Some interviewees expressed that the rules and regulations are founded on an assumption about an idealized form of existence, which is characterized as a normative lifestyle. Eventually, the zoning authorities become disciplinarians, tasked with serving these normative persons' needs and expectations in everyday life, through stricter rules and regulations that target control of those outside these norms. For instance, establishments like soup kitchens, which are meant to help disadvantaged people, cannot operate in many parts of the city because of the strict zoning codes. Also, the Zoning Bylaw limits the construction of most new public housing projects that serve low-income tenants.

Another example is that religious assemblies are restricted in most city areas. While they are discretionary uses in 15 zones, including most residential zones and some commercial zones, they are only permitted uses in two zones: Urban Services (US) and Community Services 1



(CS1). Religious assemblies are neither discretionary nor permitted in RPL and RMD, which lends support the respondent who suggested that it is particularly hard to develop such a use in new neighbourhoods (explained in the next section). Also at issue is the current definition of “religious assembly,” which fails to tackle the diverse needs of such institutions—as they are of various shapes and sizes, even within the same denomination.

Inability to Address the Needs of Socially and Economically Vulnerable Communities

This factor creates a barrier to equity for Indigenous people and members of some minority ethnic and racial groups. Indigenous respondents believed that the current regulations are created from a “Eurocentric” perspective. One of them explained how the current Bylaw does not acknowledge their values;

Zoning is kind of a Eurocentric way of doing things—chopping up our land into these parcels and things like that. That, I think, would go against [Indigenous] sensibilities or values.

Overlooking Indigenous Communities' Cultural and Spiritual Values

This oversight is clear in some of the racially biased land use regulations. For example, Indigenous communities’ experience challenges in conducting collective gatherings and traditional ceremonies in the city, since some of the CoE’s bylaws restrict the accessibility of public spaces for such activities. Some of the issues may not be entirely within the purview of the Zoning Bylaw. Nevertheless, the CoE needs to continue to make progress in allowing for a healthy Indigenous cultural life to flourish within the city.

Discrepancies Promote Discrimination

Gaps and inconsistencies in the Zoning Bylaw and building codes create challenges for some minority groups, reflecting an inadequate understanding of their needs. For example, an interviewee explained that the existing codes present challenges to fulfilling the Black communities’ needs, such as conducting small-scale or home-based businesses like hair salons.

Where Else Does Inequity Occur in the City of Edmonton?

In addition to issues related to the current Bylaw, interviewees brought up concerns about other barriers to accessing the CoE’s decisions and services. We identified them as other forms of inequities that citizens experience in their everyday lives, which weaken their relationship with the CoE.

Accessibility and Mobility

Several issues affect finding accessible housing in the CoE. In particular, interviewees identified difficulties related to age or disabilities—people encounter challenges in finding housing in mature communities because of poor disability access in old apartments, inadequate sidewalks for use of mobility aids, and insufficient designated disability parking for the residents.



Opposition by the Residents

Another key equity barrier is driven by NIMBYism. The interviewees noted that supportive housing and assisted living are the most common initiatives to attract local objections.

What are the Necessary Improvements for the Bylaw?

Our analysis focused finally on constructive suggestions the CoE could consider in the ZBRI, to ensure inclusiveness and equity. Most interviewees recommended the following:

1. *Make the Bylaw more approachable and understandable:* Average users need more user-friendly materials; the existing content is difficult to interpret for lay readers. Some respondents also mentioned the need for the Bylaw to be available in multiple languages as Edmonton is a multi-ethnic city. As well, the purpose and the rationale of the Bylaw should be explained explicitly to the public.
2. *Integrate inclusive housing policies into the Bylaw and planning approach:* The Bylaw should make room to accommodate new housing solutions such as tiny homes and mobile homes.
3. *Make the Bylaw content flexible and responsive:* Most interviewees recognized that current Bylaw contents are often prescriptive, but they also emphasized the importance for greater flexibility and responsiveness in the face of changing times and emerging social demands.
4. *Introduce mixed-use zones:* Many respondents believe that promoting mixed uses will allow residents to blend activities and functions in close proximity.
5. *Introduce a new health measure component to the Bylaw.* This will improve community health and well-being. For example, Detroit, Michigan, has regulations prohibiting fast food outlets in the immediate vicinity of schools.
6. *Align the Zoning Bylaw with human rights:* Municipal bylaws, the Zoning Bylaw in particular, must show they also respect the *Alberta Human Rights Act*.

Summary

Finding ways to acknowledge and promote Edmonton's social and cultural multiplicity is the most significant way to achieve equity. The CoE's Zoning Bylaw and other land use regulations and codes should therefore be responsive to sensitive social and cultural identities, and allow diverse communities to responsibly participate in decision-making. This in turn will make the zoning document more accessible to the average Edmontonian.

Also, the absence of a robust relationship between the Bylaw and human rights separates and victimizes people, based on their racial, ethnic, and sexual orientations. Thus, linking the Bylaw and human rights is essential for the CoE to overcome discrimination and prejudice, and build inclusive communities.

INTERVIEWS CONDUCTED BY THE RESEARCH TEAM

We conducted 24 interviews with 12 CoE staff selected from across the Urban Planning and Economy department and 12 key informants from the community. This provided us with diverse representation of groups and sectors affected by the Zoning Bylaw. Interview analysis focused on equity issues, recent or ongoing positive changes, and recommendations. This approach allowed us to identify specific problems in the Bylaw as well as their possible solutions.



Our findings are organized below according to the types of issues identified by respondents: Bylaw characteristics, including overall impact of the Zoning Bylaw and issues with definitions and types of uses; parts of the Bylaw, such as specific zones, uses or regulations, which are inequitably regulated or produce inequitable outcomes; and decision-making associated with the development permitting process through which inequities play out. Each section incorporates the relevant solutions that interviewees mentioned in relation to the key issues.

Bylaw Characteristics

The following subsections elicit the characteristics of Edmonton's Zoning Bylaw as noted by the study participants.

History and Inherent Nature of Zoning

A quarter of all respondents articulated that zoning was an exclusionary and discriminatory tool developed to discriminate and exclude incompatible uses from zoned areas. The historic and ongoing tendency to prioritize landowners, protect wealth, and reinforce patterns of segregation through zoning were noted in particular. From an Indigenous perspective, zoning is a historical "exercise in conformity."¹⁵⁸ These observations align with criticisms by several Canadian planning scholars¹⁵⁹ who have argued that zoning is exclusionary, rigid, overly technical, and even irrelevant in modern cities. While these comments do not necessarily suggest more equitable land use bylaws are impossible, they do provide context for the limitations of zoning as a tool for equity. They also situate the following findings within a cultural perspective.

Inaccessible and Complex

Regulatory complexity, poor user interface, and technical language make Edmonton's Zoning Bylaw difficult for non-experts to navigate. Both CoE staff and community interviewees identified these issues as barriers in the Zoning Bylaw. These concerns are especially acute for those whose first language is not English or others who are unfamiliar with development regulations and processes. One interviewee summed up the difficulty of accessing and understanding the Bylaw for applicants:

There's also the problem of the way our Zoning Bylaw is written and the way we access it. It's much easier to access it over the Internet than it is... in a physical form, so you need to have access to the Internet, you need to be able to use the Internet, and then it's very [jargon-laden] and legally written ... And we're asking people... to be able to understand that and wade through all those rules and regulations and click to 17 different pages to make sure they have it exactly right.

Even when incentives are in place to bring about equity in a given use, if they are too difficult to take advantage of, their purpose is undermined. A respondent gave the example of a regulation intended to incentivize accessible garden suites by allowing additional square footage for such suites that met a standard of accessible design for people with physical disabilities. However, to achieve this required a more detailed application—thus, more work for the applicant—compared to an application for a typical garden suite. In focusing on the outcome of incentivizing more accessible garden suites, the respondent argued this:

¹⁵⁸ Key informant, 2021.

¹⁵⁹ Finkler & Grant, 2011; Hodge & Gordon, 2008; Skelton, 2012.

The process needs to be considered in the outcome, because the person's experience of the process ... isn't fair and it's not equitable in the way they want it to be. They're trying to give it [accessible housing] a boost, but they actually give it a drag.

Use Definitions

Several key informants commented that the Bylaw contains many, often narrowly defined, uses. Narrow definitions separate uses even if they have similar functions and land use impacts (and possible externalities), creating inconsistent results. For example, the Bylaw distinguishes between nightclubs and pubs, but the only real difference between them is that nightclubs dedicate more than 10% of floor area to entertainment facilities (pubs do not). Similarly, supportive housing and lodging houses are separated from other residential uses. The distinction between these uses may be based on implicit negative beliefs or perceptions of some users. In the same vein, numerous narrowly differentiated and defined commercial uses¹⁶⁰ present a challenge for commercial development and a barrier to new ideas that do not fit easily within existing uses.

A comparable problem lies in overly broad defined uses. One such problem is the “general industrial” use, which covers activities ranging from processing of raw materials to repair shops to personnel training. This broad definition provides few parameters for approving permits, giving the development authority discretionary power to determine appropriateness for this use classification, potentially resulting in inequitable regulation based on differing interpretations of the category. However, the looseness of the category also enables flexibility in siting uses, which could be challenging to locate elsewhere. For instance, it allowed the CoE to permit temporary homeless shelters in industrial areas under “special events,” facilities that were in high demand due to the COVID-19 pandemic, as also explained earlier in the Bocek case under the SDAB decisions section.

All in all, while broad use definitions introduce some flexibility in the use, when devoid of clear guidelines by which the development agency can make decisions, they potentially introduce personal biases and thus inconsistency in the permitting process. At the same time, narrowly defined uses pose problems for equitable regulation by overly differentiating between similar uses. These two opposing problems suggest that a balance must be struck in creating uses to avoid the pitfalls of both overly specific and overly broad definitions. We also surmise from this discussion that there is merit in broadening the use definitions, but it must be coupled with clearer parameters to facilitate the work of the development authority.

Discretionary Uses

“Discretionary uses” are permitted in a given zone at the discretion of the development authority, as opposed to “permitted uses,” which are permitted as a right if the application meets all applicable regulations. Discretionary uses, while allowing more notifications to affected neighbours and community consultations, are open to appeal by affected parties. Issues with

¹⁶⁰ Edmonton's Zoning Bylaw lists 52 commercial uses.



discretionary uses came up several times in our discussions, with respondents focusing on two problems:

- Such uses have few parameters for adjudicating the appropriateness of a discretionary use, so offer little to guide the development authority's decisions.¹⁶¹ This then introduces greater space for interpretation, making room for bias in the permitting process.
- They enable NIMBYism and provide a venue for voicing prejudices against equity groups.
- Furthermore, additional notification and community involvement are required in the areas covered under the MNO.

One respondent summarized the challenges dealing with discretionary use in the following words:

We have all these discretionary uses, but there's no real criteria for when they should be allowed or under what circumstances they shouldn't, so it's completely at the discretion of the [development authority].

A few respondents spoke about the discretionary use system as an avenue for inequitable regulation. Designating a use as discretionary makes it more difficult to obtain a permit and introduces opportunity for community prejudice to influence development outcomes, through expanded notification and opportunity for appeal. One participant explained the impact of the discretionary use status on residential-related uses, such as group homes and lodging houses in the following way:

If that use is listed as a discretionary use, it gives people ... an opportunity to appeal a decision for grounds not related to [the] land use.¹⁶²

Discretionary use status can be, therefore, a form of discrimination when applied to a particular use in all or most zones.

Our interviews, as well as in our analysis of recent Zoning Bylaw amendments (in the earlier Zoning Amendment section of this report), revealed that the list of discretionary uses in various uses is shortening. Most new use classes, such as “limited supportive housing” or “cannabis retail,” are permitted in most zones; existing uses, such as “garden or secondary suites” are now permitted in most residential zones. However, the problem persists.

Respondents proposed these solutions:

- Further reduce the number of discretionary uses.
- Create clearer parameters or guidelines to adjudicate on discretionary use applications.
- Replace discretionary uses with permitted–conditional uses. The meaning of conditional use varies from one jurisdiction to the other, although some definitions are very similar to the CoE's discretionary use.

On this topic, we draw the following insights from respondents' comments:

¹⁶¹Statutory plans can provide *some* guidance for the development authority on discretionary uses, but it was evident from our interviews that, overall, clear parameters are lacking for deciding discretionary-use applications.

¹⁶² More detailed findings on the appeals process and community opposition are explained later.



1. *A permitted “conditional” use permits certain uses because they reflect other uses in the zone*; nonetheless, they require that a set of conditions be met because of potential externalities attached with the use. For instance, if a group home is a permitted–conditional use in the RF1 zone, then it must comply with specific regulations attached to that use, such as parking. A permit could be issued with certain conditions to initiate the development—but a full permit is to be issued, if and when the conditions are met. We support this view, but articulate it further later in the report.
2. *Conditional use offers several benefits*. Conditional use focuses on the actual development and its impacts on the surrounding area, rather than the type of use. It would also bypass the expanded notification and appeal opportunity required by the discretionary use system, resulting in and perpetuating the NIMBYism sentiments. Certainly, limiting the ability to consult or appeal may somewhat inhibit community voices, so that affected residents may feel they are losing out on the opportunity to appeal or challenge that use.
3. *A conditional system may have limited use*. It could work for certain kinds of uses, like residential uses, but is less effective in a zone, such as commercial, where the development officer may need more information before issuing a conditional permit. Respondents felt that the CoE must have better oversight and the ability to effectively enforce the requirements—especially pertaining to commercial zones where the variety of commerce and their individual requirements increases complexity.

Bylaw Sections: Zones, Overlays, and Uses

The following subsections describe the portions of the Zoning Bylaw that are contentious and are problematic from the equity point of view.

Residential Zones

The legacy of historically low-density, primarily single-detached residential zones—such as RF1, RF2, and others—inhibits housing diversification and densification, and hence curtails access and affordability to housing for all. The following comments from two of the participants elicit the impacts in Edmonton of single-detached zoning and the historical prioritization of single-detached housing over other forms:

Edmonton has a very long history of just building more and more single-detached housing that becomes less and less affordable because... you’re having to buy your entire home and lot, but then also factor in transportation costs. Even if the home was affordable, if it’s an hour-drive from your source of employment, the ultimate result is not affordable.

By designating large swaths of land or a neighbourhood or a residential area only for a single-family, that only allows a certain segment of society, whether that’s [differentiated] by income or other means. So that would, I think, be the most blatant and obvious [inequity].

The low-rise, low-density RF zones have preserved single-detached housing as the norm in Edmonton at the expense of diverse and more affordable housing forms.



One interviewee suggested that separating residential use classes into uses such as “single-detached, row housing, and semi-detached” has implications for equitable access to housing:

Even though the built form could be exactly the same and have the same actual impact ... [such separation] embeds discrimination against multi-unit housing into our lower-density zones.

This observation intersects with the broader emergent theme—that separation of similar uses into many narrow uses enables discrimination.

A few respondents were especially bothered by Edmontonians’ fascination with single-detached homes, characterizing it as a classist bias against multi-unit housing, a view that has been further perpetuated and reinforced by zoning practices that prioritize and protect single-detached housing. The following comments from two different participants describe the cultural and other biases that shroud various zones, especially single-detached and multifamily:

“Multifamily” is a bit of a euphemism, in the same way that “inner city” ... or “urban” is a euphemism in the States. Multifamily is a softer dog whistle here.

The idea of the single-family lot being the primary aspiration ... That is a very ... elitist way of thinking.

Another person noted that the Zoning Bylaw and planning documents contain “little things that reinforce a hierarchy of value and class,” giving the example of clustering high-density residential uses along major arterial roads. This is done to place more people in proximity to transit, but also has the effect of placing single-detached and lower-density residential—and thus fewer people—in the more desirable locations in the interior of neighbourhoods.

The RF zones are described as problematic, but the CoE has taken numerous steps to address this through the following changes:

- The Missing Middle Zoning Review, which consolidated a variety of residential uses into multi-unit housing.
- A February 2021 omnibus text amendment, which allowed the conversion of single-detached housing into duplex or semi-detached housing.
- Reduced regulations preventing garden and secondary suites.
- Amending regulations that prevented building of mobile or manufactured homes in standard residential zones.
- A 2018 amendment to the RF1 zone, allowing semi-detached and duplex housing, and garden and secondary suites on the same lot.



Although newer zones, such as RPL¹⁶³ or RMD,¹⁶⁴ may be more permissive in terms of regulations for setbacks, site coverage, and height and types of housing, they are definitely not an all-encompassing solution. A secondary suite *and* a garden suite may be developed in RF1, RF2, and RF3, but only one or the other in all other zones; semi-detached housing is permitted in RF1 and RF2 but is discretionary in the new zones, such as RSL¹⁶⁵ and RPL (see Appendix 2 for further details). In fact, the RSL zone seems to be an adaptation of the RF1 zone that restricts infills further, through larger minimum lot sizes and discretionary applications of semi-detached and duplex housing. Furthermore, it seems to run counter to *The City Plan's* intentions to provide more housing opportunities in the city.

The RMD zone was created to allow more housing diversity in new neighbourhoods, but the inclusion of row housing as a permitted use resulted in EPCOR requiring higher service levels, making these zones more costly to develop. The RLD zone was then created to address this issue by removing row housing. It provides for zero-lot line developments among more conventional parcels, easily discernible within all small-scale zones.

The creation of new zones does not necessarily make them more permissible or equitable. For example, none of the small-scale residential zones, old or new, permit childcare services as a right. In fact, barring a few, almost all low-intensity residential zones are similar, with relatively minor variations. RF3 is the only zone that stands out for providing a wide variety of housing: duplex, single-detached, semi-detached, suites (garden and secondary), and multi-unit housing. RF6 allows for the highest density, but does not allow single dwellings and semi-detached dwellings; as of February 9, 2021, it still disallows duplexes.

Mature Neighbourhood Overlay

Multiple respondents thought the MNO, which overlays much of the RF zones discussed above, continues to be the primary barrier in the CoE's quest to densify single-detached neighbourhoods and allow more housing choices in all parts of the city. The MNO also produces many appeals and triggers community consultation for variances on practically any use other than single-detached homes. These consultations often reveal NIMBYism. The MNO was described by one respondent like this:

[It's] a regulation that's driven primarily ... [by] "I really like my neighbourhood, I've been here for a long time, I don't want anything to change' perspective."

This description suggests that the MNO is an example of how the Zoning Bylaw protects and prioritizes the single-detached, single-unit ideal spoken about more broadly. However, like the

¹⁶³ RPL is the abbreviation of Planned Lot Residential. This zone is intended to provide for small-lot, single-detached housing, serviced by both a public roadway and a lane, including zero-lot-line development.

¹⁶⁴ The RMD zone stands for the Residential Mixed Dwelling zone, intended to provide for a range of dwelling types and densities, including single-detached, demi-detached, and row housing in developing neighbourhoods.

¹⁶⁵ The RSL zone stands for Residential Small Lot zone, intended to provide for smaller lot single-detached housing with attached garages in a suburban setting.



underlying RF zones, the MNO has been subject to several amendments intended to increase density and housing diversity. A key change amended the notification requirements on variances, intended to reduce appeals and make the MNO more flexible. However, our analysis of the POSSE data shows the continuing increase in appeals (vs. a reduction) in the MNO areas, even after the 2017 amendments. Clearly, they were not effective even though we lack precise data to establish a direct correlation between appeals and MNO. Respondents suggested removing the MNO by either integrating it into the underlying zones or eliminating it completely, along with most other overlays.

Minimum Lot Sizes and Design Regulations

Other barriers to affordable housing include regulation of design and materials, and minimum lot sizes and widths. Both types of regulation increase development costs, and thus housing costs. A couple of interviewees suggested eliminating lot size minimums in all zones, and one noted that the RLD zone was an experiment in eliminating lot size minimums. Another advocated reducing architectural standards, to build more housing more quickly and with less cost. One respondent countered this idea and advocated for higher architectural standards for affordable housing, to ensure equal quality by eliminating any distinctions between affordable and market housing.

Supportive Housing

Almost half of all respondents cited as a positive change the recently introduced use class for supportive housing and limited supportive housing. This new use brings “group homes,” and “temporary shelter” uses together under a broader definition. More importantly, “limited supportive housing” is now a permitted use in not just all residential zones¹⁶⁶ but also in commercial and urban service zones, which shields it from NIMBYism and appeals. “Supportive housing,” on the other hand, is now permitted in commercial and US zones but remains a discretionary use in residential zones.

A respondent working for supportive housing attributed four recent successful rezoning applications for supportive housing to this change, noting that “the argument that ‘we don't want it in our back-yard’ doesn't work [now].” However, a few other interviewees felt that separating supportive housing from other residential uses, based on residents’ required care, was still discriminatory and an example of regulating users rather than use. They also pointed out that as a separate use, “supportive housing” can still be excluded from Direct Control zones.

Lodging Houses

Lodging houses are a counterexample to the positive changes made with supportive housing. Like supportive housing, “lodging houses” are a residential-related use defined by congregate living. Unlike supportive housing, lodging houses remain a discretionary use in all zones where they are allowed. Several interviewees mentioned them as an example of the problematic separation of residential-related uses, constituting a use that is discriminated against. The following effectively captures the essence of the problem:

¹⁶⁶ Limited supportive housing has no more than six residents, whereas supportive housing allows more than six residents.



You have these [uses], like the lodging and the group homes, that are speaking to the types of people that might be living in those dwellings... It feels uncomfortable because... what sort of impacts are we trying to regulate [that are associated with that]?"

If appropriately regulated, lodging houses could fill an important affordable housing gap. However, because of a higher number of people occupying the lodging housing, it could lead to unintended outcomes. Some cities like Toronto have permitted lodging housing in many of their residential zones but placed them under their municipal licensing system because of the land use impacts associated with them, and to keep the occupants safe and healthy.

Household

The Bylaw defines “household” in terms of formal familial relationships (relation by blood, marriage, adoption, or foster care); specifically, a household may be one or more related persons or a maximum of three unrelated persons. This definition is problematic, as this respondent clarified:

You cannot live with yourself and [three] other people who are not related to you, because if you do that, then you get pushed into the definition of lodging housing.

According to one respondent, this definition of household “attempt(s) to regulate living arrangements and the relationships that people have to each other and how they choose to live together.” Another interviewee questioned, “Does that even belong in the Bylaw and ... is that even something that we could even practically regulate?”

The current definition of household in the CoE’s Bylaw seems very close to a definition of “family” and presents a potential legal tension: It could be conflated with the definition of family and construed as regulating users instead of use. However, regulating the number of occupants may be justified because of potential impacts on them.¹⁶⁷ Interestingly, both Toronto and Calgary do not restrict the number of occupants; they also do not mention “household” or “family” at all.

An amendment to the "household" definition is being considered at the June 23, 2021 public hearing. The proposed new definition of household is: “one or more individuals living together as a single housekeeping group.”¹⁶⁸ The newly proposed definition simplifies the existing definition and removes language that distinguishes individuals based on their relationships. This change also removes the cap on the number of unrelated persons living together as a single housekeeping unit. Taken together, these changes recognize diverse household compositions and remove inequitable and potentially discriminatory language. This change will also necessitate administrative amendments to secondary suite, garden suite, and Blatchford Lane Suite regulations.

Our cursory scan of the CoE’s Bylaw shows a limited use of the term “household.” It is mainly used to define “dwelling” or to regulate garden or secondary suites. A bylaw regarding

¹⁶⁷ see Agrawal, 2014, 2013

¹⁶⁸ City of Edmonton, *Charter Bylaw 19679*, scheduled for public hearing on June 23 2021



secondary suites in the Municipality of Delta, BC, which allowed these suites only when occupied by members related by blood, was quashed by the Supreme Court of BC.¹⁶⁹ A logical move would be to remove the term “household” altogether from the CoE’s Bylaw.

Religious Assemblies

Several issues related to siting religious assemblies were highlighted by our respondents, linked to several factors: the narrow definition of the use, excessive parking requirements, inadequate allocation of land for this use in the newer developments, and classification as discretionary use in Industrial–Business and in RF1 zones.

Another challenge mentioned frequently regarding places of worship is that the Zoning Bylaw takes a “one size fits all” approach under the religious assemblies use. Under this approach, all religious assemblies of different denominations are treated equally, which fails to account for their different forms, functions, and impacts. The definition of Religious Assembly does not accurately capture this diversity; this conflation is partly responsible for frequent tension and conflict between religious assemblies and adjoining communities. For example, a church was denied a development permit upon appeal on the grounds that many of the services and activities they provided showed they were operating community recreation services.

A related issue is the parking challenges faced by religious assemblies and the communities in which they are located. The minimum required parking was originally based on the number of seats—a guideline for religious assemblies that is effective for those with pews or seating, but not for those that typically lack seating, such as mosques. In response to this issue, regulations were adjusted to focus on a combination of floor area and neighbourhood type. However, one community interviewee expressed that having parking regulated at the discretion of the development authority was problematic and wanted to see clearer regulation. Furthermore, many religious assemblies operate a variety of other functions, like running daycares or language classes, or hosting wedding receptions. When parking for these secondary functions are factored into the required parking for the development as a whole, the proportion of the lot dedicated to parking can become impractical and unaffordable. Open Option Parking is now available, but it was too soon for the respondents to gauge its effects.

Interviewees also raised the issue of insufficient suitable land, in size or appropriate zone, in newer developments. One respondent pointed out that new ASPs¹⁷⁰ or NSPs¹⁷¹ often set aside little or no land for places of worship, as is done for schools, stormwater ponds, or amenities, likely because developers wish to maximize their development. Our respondent hypothesized that this is why religious institutions often move into industrial areas, where more land and plenty of parking are available. However, religious assembly is a discretionary use in an Industrial–Business area, which ensues a long-drawn process of approval. A similar situation arises in RF1, where religious assembly is also a discretionary use. Many neighbourhood

¹⁶⁹ *Tenants’ Rights Action Coalition v Delta (Corporation)*, [1997] BCJ No 2070.

¹⁷⁰ ASP stands for Area Structure Plan. An ASP is a long-range planning document, prepared as the first step in obtaining planning approval for a new community.

¹⁷¹ NSP stands for Neighbourhood Structure Plan. A NSP describes the general pattern of development and subdivisions in a new residential neighbourhood in more detail than an ASP.



churches are located in mature neighbourhoods, zoned RF1. If they wish to expand, redevelop, or renovate their facility and maximize the use of their site, which is often quite constrained, they often must go through a rezoning process.

This challenge is more pronounced for faith groups that face community opposition motivated by prejudice. One respondent reported that after two experiences establishing a religious school (which required rezoning) and a mosque (which did not require rezoning) they and their community are concerned about future challenges:

[We are] always seeking to expand and build ... but the minute we see a good piece of land [where we would] have to go through the rezoning, we get scared ... and then we just keep waiting and keep searching for a parcel or a building that is already rezoned, so that we can bypass that community engagement ... because ... it could damage lots of people during that process.

To address the issues associated with religious assemblies, the respondents' suggested the following:

- Amend the "Religious Assembly" use.
- Allocate land in ASPs and NSPs to religious assemblies as is done for schools and other amenities.
- Broaden the religious assembly definition to encompass the diversity of functions performed by places of worship, while differentiating between the impacts of different types of religious assemblies.
- Monitor if the Open Option Parking is making a difference.

Commercial Uses

Respondents found commercial uses to be numerous and narrowly defined, as in the nightclub/pub example cited above. According to our respondents, NIMBYism, morality, and misconceptions shaped the commercial regulations regarding locations of such places as pawn stores, body-rub centres, or adult mini-theatres. They also commented on using the Bylaw as a lever to regulate sex and sexuality, through permissions for gay bathhouses and adult fetish stores. Most problematic were mechanisms to manage secondhand stores and pawn shops, as the overlay applies additional regulations to these businesses in zones where they are listed as discretionary uses. Specifically, they require notification of neighbours, community leagues, and business improvement area associations prior to the development authority's decision. We noted that these businesses are indeed discretionary use in several commercial zones—in particular, CB1, CB2, and CB3.

One participant noted that when an overlay limits use, it contravenes the city-wide master overlay, describing the impact on businesses as follows:

It gives communities the opportunity to oppose a pawn store almost immediately, before it's even been reviewed [by the CoE]... In working on a project related to this overlay we heard that pawn stores generate crime, [as] it's thieves who come and use it for quick cash, but in doing research into the project, we couldn't find any direct evidence related to that [supposition].



The Bylaw's City-wide Master Overlay makes it clear that the "overlay shall not be used to alter Permitted or Discretionary Uses, Floor Area Ratio or Density." The Secondhand and Pawn Stores Overlay, on the other hand, states that its purpose is "to supplement the regulations of Commercial Zones regarding Secondhand Stores and Pawn Stores." Secondhand and pawn stores are discretionary use in several commercial zones but are specifically singled out in the overlay to be subject to additional notification requirements.

Another respondent described pawn shops—alongside pharmacies, cash stores, and liquor stores—as the types of businesses opposed by neighbours, a perspective the overlay exacerbates. This negative attitude affects not only the businesses themselves, but their clients as well, who are often low income:

Those are services that exist to serve people who don't have access to typical banks or ... they have to go thrifting... not because it's fun, but because that's the most affordable way to clothe their family and there's sort of a fundamental challenge around that, with how we realize these outcomes.

One other participant opined that pawn shops along with body-rub centres and other uses "make people uncomfortable." This person elaborated:

[It] gets really tricky to start using the Bylaw to regulate things associated with morals and that sort of thing, and although it creates some uncomfortable tensions for people ... if it's a legal activity happening in Canada, then we have to be careful about how we're regulating it.

Another concern was how the minimum floor areas for commercial retail units (CRUs) promote large-scale businesses, which then creates challenges for smaller or new businesses to find affordable and appropriately sized locations. One respondent suggested a required floor area maximum or a certain proportion of small-scale CRUs in a commercial or mixed-use development.

Parking

Minimum parking requirements were mentioned as a burden on businesses and a barrier to affordable housing, which one respondent articulated like this:

We had parking minimums previously [that] were really astronomical ... certain businesses ... wouldn't have been able to open up ... due to not being able to provide enough parking.

Although Open Option Parking, introduced in 2020, addresses these issues, some respondents expressed concerns about the Open Option Parking policy. One person noted that Edmonton is an auto-centric city, so the policy might pose equity problems in and of itself. Another participant working in the housing sector thought Open Option Parking is particularly good for affordable housing developments, as occupants of such housing typically use less parking than the required allotment. Thus, Open Option Parking could allow them to save significant costs. This person also predicted, however, that Open Option Parking will create more challenges at community engagements, where parking is often the first concern; further, providing ample parking has been an important factor in gaining community buy-in.



Direct Control Zones

Direct Control (DC) zones are site-specific zones that give City Council detailed control of development, uses, siting, and design of buildings on a site. They are often used to allow and regulate development that cannot be accommodated by a standard zone. DC zones are used frequently in Edmonton—with close to 1,300 currently designated. Respondents characterized them as politically-motivated, and difficult to administer and to develop. They also create barriers to changes intended to promote equity. A respondent explained the challenges for developers and administration in these terms:

They're a convenient political tool to navigate the opposition that comes up in constituencies ... and so DC zones are very, very fraught and they create a lot of problems downstream ... They're so particular that to get a DC should also be a permit ... Sometimes we'll do a DC and then inevitably there's iterative concept drift and [the development permit application] doesn't match with what was approved [for rezoning].

The many DC zones, which must be individually amended, limit the CoE's ability to make across-the-board changes to parts of the Bylaw. For example, the amendments to permit limited supportive housing in all standard residential zones do not apply to DC zones.

Recommendations from respondents included reducing the use of DC zones, as well as consolidating the rezoning and development permitting processes for DC zones. Unfortunately, since almost all DCs were created prior to *The City Plan*, many may not align with the new strategic direction.

Inclusionary Housing

According to the MGA, inclusionary housing requires new developments or subdivisions to provide a certain amount of dwelling units or land (or money in place of either) for affordable housing—a condition of subdivision or development permit approval. The MGA enables municipalities to implement this type of inclusionary housing,¹⁷² although the CoE has not yet taken any steps to develop the Bylaw to realize such developments.

In general, those who spoke about inclusionary housing favoured the concept and suggested it would be useful or even necessary to achieve affordable housing targets. However, they also warned that it may be challenging to implement in Edmonton due to considerable political resistance from the development industry and community members, who do not want affordable housing in their neighbourhoods. Regional buy-in would also be necessary to avoid a scenario in which the CoE adopts inclusionary housing and drives development to neighbouring municipalities.

One respondent who had deeper knowledge of the affordable housing was also hesitant about inclusionary housing, expressing that providing affordable housing is not just about price point, but also concerns how providers work with their tenants and the community; further, private developers and landlords may not be equipped to play that role. Other participants spoke about

¹⁷² *Modernized Municipal Government Act*, SA 2016, c 24, s 91 (d) (h.1).

incentives as an effective way to achieve outcomes compared to regulation, but recognized that resources are limited.

In sum, our view is that the benefits of inclusionary housing generally outweigh its drawbacks, based on studies from Toronto and Vancouver.¹⁷³ Whether Edmonton is prepared for it depends on the political will *and* support from the development industry. To bring the development industry on board and to incentivize such development, the CoE could choose to allow density bonusing¹⁷⁴ and/or offer a government subsidy to offset some or all of developers' costs in the initial stages of implementing the concept.

Development Permit Approval Process and Community Consultation

Interviewees identified appeals and community consultation associated with the permit approval process as fraught with the social inequities and prejudices held in the wider community. Community consultation can be triggered at different points in the permitting process depending on the type of development. For instance, a rezoning application requires a public hearing at City Council and may involve public meetings to engage with the community and gain feedback. Development permits require different forms of notifications and community involvement, depending upon their type (Class A or B).

For example, approved development permits require signs be posted on properties where either Class A or B development permits have been issued. Class B discretionary permits require notification of the community leagues, business improvement associations, and landowners within 60 metres of the site, which can be increased at the discretion of the development authority, but rarely used in practice. Affected parties have 21 days to appeal the development authority's decision at the SDAB.

Notification and consultation requirements are different in the areas that fall under the MNO. The public consultation requirement is much higher—so much so that the development authority cannot come to a decision about a variance unless it hears back from the affected community. Several overlays (including the MNO) require that, in addition to Class B notification, owners of neighbouring properties be notified of any development application that does not comply with the regulations of the overlay. This is to solicit their feedback on the variances prior to issuance of a development permit. The development authority must wait 21 days from the notification of neighbours before rendering a decision. Following this process, the Class B notification occurs, again notifying neighbours of the development and providing 21 days to appeal the application to the SDAB Board.

¹⁷³ Mah, 2009; Pomeroy, 2019.

¹⁷⁴ Density bonusing, also known as incentive zoning, typically refers to allowing a density that surpasses either what is currently allowed or what is currently in place on the site, in exchange for the developer providing amenities or benefits needed by the community (Government of Alberta, n.d.). This enables the developer to recoup more profit from their investment in an area, in exchange for the cost of providing community benefits.



Community Engagement

Issues with community consultation are not unique to Edmonton. They appear in almost every municipality in Canada and beyond. The problem in Edmonton appears to be that consultation typically engages only one demographic group, whose members oppose any development even slightly different from the ones prevailing in the particular neighbourhood. The following remark captures this sentiment:

I feel like oftentimes the loudest voices at the Council, or Urban Planning Committee or public hearing, it's usually of a similar demographic. And you know we're not hearing what everyone wants all the time; it's just usually the same loud voices, so there's some challenges with that.

Interviewees identified some barriers to participation in community engagement and public hearings, which contribute to this relatively homogeneous voice, as these two speakers explain:

I always struggled with expanding beyond the typical stakeholders that come to the table because they know to, and they want to, whereas others maybe don't know that they can ... How do we communicate to different groups to let them know that this is something that we want? We want to hear different perspectives.

Community engagement is an activity for the leisure class, and you know you're not going to engage the Somali mom with five kids and three jobs because, frankly, they just don't have time.

One of the problems is that outreach and notification often focus on a list of regular “frequent flyer” stakeholders, such as community leagues and business improvement area associations. Stakeholders other than property owners, such as tenants in a building or clients of a business or organization, are not given the same priority as the interests of the landowners involved.

Respondents recommended measures to improve the diversity and representativeness of community engagement, including diversifying the list of “go to” organizations for consultation. “Insight surveys”¹⁷⁵ is a consultation tool currently used by the CoE that may be a more broadly accessible form of engagement. However, the surveys are not currently weighted as heavily in decision-making as consultation with formal organizations and the statements of those who attend public hearings in person.

Speaking about consultation with Indigenous groups, one interviewee raised the importance of accountability and transparency:

For me, it comes down to the true spirit of intent and communication. It may be that the City is doing all kinds of thing—workshops, surveys—but how much of that is actually being communicated back to the participants? And are we given

¹⁷⁵ Insight surveys are surveys on CoE policy, initiatives, and issues that are regularly sent to the “Edmonton Insight Community,” a list of residents who subscribed to receive the surveys and provide their feedback, primarily online. The Edmonton Insight Community is open to all residents of Edmonton and Edmonton property owners over 15 years of age.



any idea about what was considered, used, and what wasn't and why? I hear this often with the Indigenous clients that I work with: "How will my knowledge or my input be used?" So, I'm not so sure that we're doing a very good job of demonstrating how that wisdom is being exercised in our day to day, and then, you know, to truly make a difference on the policies, the procedures, and the way we do things, comes down to a one-on-one relationship.

The study participants also spoke about approaching land use regulation from the perspective of Treaty relationships. They stressed that although the legal obligations of municipalities are unclear, consultation of Indigenous groups is of a different nature than cultural inclusion and diversity more broadly. The collective rights of Indigenous peoples and municipal obligations have not been well understood (Agrawal, forthcoming).

NIMBYism

"Not In My Back-Yard"—"NIMBY"ism refers to resistance to new development considered to be undesirable. The term emerged in the 1970s, and is typically used to describe reactionary, self-interested resistance to development, often based in class and/or racial prejudice or concerns about quality of life or property value impacts.

NIMBYism and community opposition based on prejudice, misconception, and fear was a recurring theme in the interviews. Discretionary use is the most problematic, partly because it makes a development more vulnerable to appeals and creates opportunity for opposition. This is an equity concern because community opposition can be motivated by prejudice and racial biases, rather than legitimate land use concerns. The overlays in the Bylaw also link to NIMBYism, specifically the MNO and the Secondhand Store and Pawnshop overlay.

Community consultation on a variance elicits responses focused on the *opposition* to the permitted use, rather than the variance in question. Community leagues were identified as one influential source of NIMBYism, due to mandated consultation and frequent appearances in front of SDAB. Public opposition can slow or even prevent particular kinds of development, such as higher-density housing, supportive housing, and affordable housing, and uses such as multi-unit housing and higher-density development, group housing, supportive housing, and home-based businesses. Several respondents mentioned parking and traffic impacts as the basis for prejudicial complaints and appeals.

Two interviewees recounted multiple instances in which community opposition to a project they or their organization were involved in was troubling and even traumatic. Despite ultimately being successful in their development applications and appeals, these study participants and their communities were affected in a lasting way because of the racist tone and hostile motivations of the opposition they faced, reliving historical trauma.

One interviewee reflected on community opposition to rezoning and development in terms of values:

Fundamental to those arguments around zoning is a values clash. It's a value clash perhaps about what builds diverse and vibrant communities and our



responsibility to people who need extra support to contribute to those communities. And so, to me, zoning is about values usually, and people want to influence the values.

Another spoke about opposition being rooted in fear:

Generally speaking, what's often underneath that initial reaction is fear of the unknown and usually a negative experience they've had that they've translated and ascribed to supportive housing. So, for example... social disorder is often a symptom of homelessness and poverty, and not criminality ... which is what people are reacting to.

One respondent wanted the CoE to place clear limits on what constitutes acceptable comments at public hearings and community engagements to prevent prejudiced discourses from entering into consideration. An Indigenous respondent shared a positive example of the CoE supporting equity and inclusion in the community by facilitating a ceremony:

We have had some really good discussions with the City about the ability to have ceremonies in the city proper ... We were using city land to erect 10 Teepees on the school green space, which we had to work with the City to do and we had a really good experience ... There was a real willingness for all the departments that were involved to work with us, and I think it came from... the Community Service Reps... We had no problems ... [which] shows progress.

Education, marketing, and storytelling were also mentioned as important tools. They help (a) overcome misconceptions and prejudices that motivate resistance to certain uses like supportive housing, (b) shift ingrained attitudes and values such as the preference for low-density housing, and (c) drive support for changes that improve equity. Education can also support underrepresented groups in advocating for their interests and participating in planning and development processes.

Appeals

Interviewees identified barriers to accessing and benefiting from the appeals process, out of which emerged three intertwined, but contradictory, issues with this process:

- Only the well-off have access to the appeals process
- The appeals process is too legalistic
- Easy access to the appeals process results in frivolous appeals

One interviewee summarized a fundamental issue: “In theory, anyone can appeal something, but in reality ... it’s people who have social, financial, political capital that are able to make use of the appeals process.” Another made the following observation:

The wealthier communities are a lot more organized. They're able to hire a lawyer and then sometimes [the applicant doesn't] have the resources to hire their own lawyer and fight this really organized community opposition. And I think the same kind of thing happens with rezoning at the Council as well. Certain communities [have]the knowledge and the resources to fight against changes.



One participant complained that, compared to other municipalities, the SDAB in Edmonton has a strongly legalistic tone and focus. Others noted that it is advantageous to have legal representation at SDAB, which is not accessible to all parties, as the comment above highlights. The legalistic nature makes SDAB proceedings more intimidating and less accessible, and the emphasis on case law and legal minutiae can come at the expense of broader planning principles.

Contradicting the previous claim, another respondent expressed concern that SDAB has a low test for evidence in relation to its relatively high level of authority; indeed, it tends to take neighbours' opinions at face value as evidence of impacts. The overrepresentation of lawyers on the Edmonton SDAB was brought up as a contributing factor to its legalistic approach, along with the absence of diverse representation on the board. Several respondents attributed the lack of diversity on the board to its demanding and inflexible schedule, and the time commitment it required, which makes it challenging for most working individuals to participate as board members. They assumed lawyers are more likely to be given time off from work to pursue public functions such as sitting on the SDAB, thus making them more available for this role.

Edmonton has a low appeal fee, which does ensure equitable access to the appeals process for would-be appellants. However, this low appeal fee was also identified as problematic. One respondent said this:

The cost per appeal is insanely low. It's so nominal that it basically encourages any development decision that has a variance to be appealed ... We should be discouraging frivolous appeals.

Evidently, this low fee presents little financial boundary to the appeals process, enabling "frivolous appeals." This makes it possible for an individual to delay or prevent a development—particularly if they have resources that enable them to put forth a strong presentation to the SDAB.

As one interviewee pointed out, depending on the development in question, this is not just a matter of weighing the individual's right, but also the public interest and broader municipal goals for matters like affordable housing and the missing middle:

My neighbour can stop the development, but I can also advance the development that is beyond the Bylaw. It just depends on whose argument sways the day. And so, in this example... there may not be a greater benefit, but when we start talking about "What if the appeal is based on adding more density to deliver more affordable units"? Well, that's something that we're striving to achieve as a city, so should that big city goal [hold] sway over the immediate adjacent properties, concerned that it will be loud or that their sun is going to be blocked out?



Other Findings

One additional change that was mentioned positively is the GBA+ and Equity toolkit¹⁷⁶ created by the CoE staff to guide the ZBRI. The tool builds into the zoning process an opportunity for planners to pause and reflect specifically on equity implications, and it enables documentation of this process. The respondents expressed that this will be a helpful tool, and that GBA+ training and discussions of equity more broadly will contribute to a more equitable Zoning Bylaw—increasing awareness and understanding of the relevant issues and making equity a priority. The need for increased diversity in the CoE administration was also mentioned. One interviewee noted the limit of the tool by arguing that lived experience is often required to recognize where and how to apply the GBA+ lens.

Interviewees also recommended that the ZBRI ensure the Bylaw is flexible enough to adapt to ongoing changes and new trends and strengthened by strong links to higher-level policy. They also noted the importance of regular review of any changes to mitigate unintended consequences.

Summary and Discussion

Our analysis reveals regulatory, procedural, recognitional and distributional inequities in the Bylaw:

- *Regulatory inequity* is embedded in specific parts of the Bylaw, such as certain uses, zones, and overlays, and is enabled by a variety of factors, such as the use of many narrowly defined uses and the discretionary use system.
- *Procedural inequity* pervades the appeals and community consultation processes. The Bylaw's inaccessibility, given how it is written and presented, is also a form of procedural inequity, as it inhibits well-informed participation in the development permit process.
- *Recognitional inequity* is evident in the lack of diversity in community consultation, the one-size-fits-all approach to regulating religious assemblies, and the definition of a household, which is currently in the process of amendment. These issues are also intertwined with procedural and regulatory inequity.
- *Distributional inequity* occurs largely in the Zoning Bylaw, which provides limited housing choices to Edmontonians. This is caused by narrowly crafted zones, multiple housing types classified as discretionary uses, overlays demanding more public notifications and consultations and Direct Control zones, which are mostly devoid of any form of supportive housing.

The findings point to equity issues related to specific parts of the Bylaw. Examples abound: the limits on types of developments in single-family zones, the restrictions under the MNO and the Secondhand and Pawn Stores Overlay, a long list of discretionary uses, the proliferation of DC zones, and the problematic definitions of certain terms and uses like household, religious assembly, and group homes. The associated community consultation and appeals process, particularly in the areas covered by the MNO, amplifies these issues. It is important to note that the “group homes” definition was changed to Supportive Housing in November 2020 and limits

¹⁷⁶ The toolkit is currently under development by the ZBRI team.



to supportive housing on a block were removed in June 2019. It is possible that the respondents were not aware of these recent changes at the time of our interviews.

Some recent concrete steps have been taken to address these issues, mostly through amendments to allow multiple forms of housing in single-family and other zones, Open Option Parking, and shortening the list of discretion uses. To date, however, these changes have not had the desired impacts in achieving the equity goals. Perhaps it is too soon to tell.

Regulatory Changes

The ZBRI is an opportunity to consolidate and streamline the 46 current zones and 127 uses into zonal categories with simplified uses focused on land use impacts. This will help address issues of inequitable regulation and cases of narrowly differentiated zones and uses. In streamlining the content of the Bylaw, zoning based on building typology (such as single-detached zoning) and creation of multiple, similar uses should be avoided.

Our analysis shows that many of the low-rise residential zones now look very similar (some more similar than others; see Appendix 2), though this outcome has evolved over the years through a series of amendments that encouraged this homogeneity. As an example, RF1, RF2, RF3, and RF4 are nearly identical because of mostly the same permitted uses (except for multi-unit housing in RF3) and discretionary uses (fraternity and sorority housing in RF3 but limited to the Garneau area)—even though their stated purposes may be different. The RF3 zone contains only one more permitted and one more discretionary use than most other RF zones. Even many basic regulations like height and site coverage, key components of the impact on architecture and neighbourhood contexts, are also the same across these zones. Other examples are RF5 and UCRH,¹⁷⁷ and RF1 and RSL, which are almost identical. RF3 appears to be the most permissible among all 11 low-rise and low-intensity residential zones. Unquestionably, consolidating these zones is necessary.

In commercial zones, we agree that the discretionary use in an underlying zone is restricted further by an overlay. This approach singles out one type of use as subject to multiple sets of additional regulations—an approach best avoided, as it undermines efforts towards consistency and clarity across the Bylaw. Several times, respondents brought up the Secondhand and Pawn Stores Overlay as an issue that exemplifies this concern.

On balance, we think the discretionary use needs to be replaced by a permitted–conditional use system, which will encapsulate any additional regulation in a much-simplified way. Such permitted–conditional use would mean that conditions attached to these uses will be clearly defined in the Bylaw itself, providing certainty about the Zoning Bylaw. If the applicant requests a variance to the extra conditions applicable in the Bylaw, that action will trigger notifications to the affected parties, making them open to appeal as is the case now with discretionary uses. Granted, the system may take some of the community voices out from the development process. However, this deficit may be offset through implementation of our recommendation for

¹⁷⁷ UCRH stands for Urban Character Row Housing. The purpose of this zone is to provide for medium-density multi-unit housing that is ground-oriented, which is characteristic of urban settings in Edmonton.



the creation of the Ombudsman Office and the Office of Public Consultation, where Edmontonians can raise any issue regarding public consultation and ask for a remedy.

Broadening zone and use class definitions has some merit, but it must be coupled with clear guidelines and parameters to the development authority; this supports appropriate interpretations and subsequent decisions. A clearer guide to the public is needed that explains prescriptions and proscriptions about what is appealable and on which specific grounds. Any grounds with an undertone of racism and prejudice or that undermine the *Canadian Charter of Rights and Freedoms*, the *Alberta Human Rights Act*, or the CoE's Equity Diversity and Inclusion and human rights policies must be prohibited.

Going forward, the creation of DC zones should be limited, since they promote excluding particular uses and create administrative barriers to implementing changes. Current DCs must be assessed to ensure they align with *The City Plan*.

Certain definitions (such as for “household”) require change beyond the broader changes outlined above. Problematic definitions in the Bylaw could pose problems, despite recent amendments made by the CoE on equity grounds. Given that the Bylaw does not frequently use “household,” for example, could be removed altogether.

Lodging housing is currently discriminated against in the discretionary use system and would be more equitably regulated under the proposed permitted–conditional use system, subject to municipal licensing. The licensing system will mitigate the land use impacts associated with the use and will improve the health and safety of the occupants.

The definition of Religious Assembly also requires amendment to (a) more accurately reflect the diversity of functions fulfilled by places of worship, (b) address the varying impacts of different types of religious assemblies, and (c) better support integration into the surrounding neighbourhood. ASPs and NSPs should also allocate appropriate parcels of land for religious assemblies.

Inclusionary housing to provide affordable housing can be explored as an option in Edmonton. As of 2016, the MGA has instituted enabling legislation allowing municipalities to develop bylaws that require new developments to provide affordable housing. An effective strategy would be to couple inclusionary housing with density bonusing, which creates both an incentive and a deterrent. In other words, when the CoE requires certain units of a development to be made affordable (which could be construed as a deterrent by developers), they can choose to offer higher density than stipulated in the Bylaw. The inclusionary housing approach will have to be phased in over time. As a start, it requires consultation with the development industry, assessment of the prevailing economic conditions, and, of course, availability of government subsidies or density bonusing to defray the extra cost to the developer in the initial stages of introducing this approach.



Procedural Changes

For over 50 years, community consultation and participation have been quintessential elements in the practice of rational comprehensive planning. One of the key deficits of this process is that it brings out underlying prejudices and biases. This includes NIMBYism, and Edmonton is no exception to this. It is possible, though, that these issues are amplified since community engagement often elicits involvement largely from one demographic group. The CoE must therefore reach out to more diverse groups of Edmontonians, which may require innovative strategies while more effectively using existing tools like the Edmonton Insight surveys.

Further, discretionary uses in the Zoning Bylaw also trigger notifications and then public consultations; a long list of such uses then keep the incessant cycle of consultation going, fanning prejudice and even xenophobia in some instances. In some cases, these engagements turn adversarial and end up at the SDAB. One potential solution is to reduce the list of discretionary uses, instead turning them into permitted–conditional use, along with clear, precise, and quantifiable conditions.

The SDAB appeals process needs some reforms given the prevailing dissatisfaction with how it currently operates. These reforms may require consultations with the Province. Facilitating pre-appeal consultation with the development authority and other parties involved will tone down the adversarial and legalistic nature of the process, while offering and encouraging mediation for the affected parties to resolve matters before the hearing. This intervention will have to be gauged against potential impacts on project timelines. The CoE and the SDAB will need to come together to design what the pre-appeal consultation may look like and who it would involve. The SDAB needs to get clarity from the Province about how to discourage appeals that undermine the *Charter* and the *Alberta Human Rights Act*.

The CoE also needs to ensure that the Bylaw itself is accessible so that city residents can participate in the development process in an informed manner. The Bylaw needs redrafting in plain, transparent language that lay readers can easily understand, while providing clear and precise legislation. A citizens' guide could further support the Bylaw by explaining its purpose, function, and rationale for each zone and use. Pre-application consultation on all types of permit applications could also make the development process more accessible for new or inexperienced applicants.

Structural and Systemic Changes

Specific recommendations were offered by the study participants to address other structural and systemic issues. Recommendations to address regulatory inequities include the following: consolidating uses into broader use classes, reforming the discretionary use system or replacing it with a conditional use system, reducing the use of DC zones, and reassessing the current overlays. In particular, the MNO was identified as a key barrier to the CoE's efforts to densify and diversify mature neighbourhoods. As we saw in the POSSE data, incremental amendments to the MNO have not achieved desired outcomes. The changes outlined in the two sections above will also address recognitional inequity.



Finally, it is evident that the CoE has shown progress and taken sincere steps to ease bureaucratic barriers in facilitating Indigenous ceremonies in public spaces. However, a fundamental conflict remains between zoning, and Indigenous ways and perspectives, on land use and management. Although the legal obligations of municipalities are not clear,¹⁷⁸ an equitable approach to land use regulation should keep Treaty relationships at the forefront. Following the essence of TTRC's *Calls to Action* and the *United Nations Declaration on the Rights of Indigenous Peoples*, the CoE's land use regulation should make appropriate accommodations for Indigenous people to practice their cultural traditions freely. The strategy of "reasonable accommodation"¹⁷⁹ can be institutionalized to mitigate any adverse impact of the Bylaw on Indigenous peoples. The legal "duty to accommodate" a person's needs based on the protected grounds is well established in federal and provincial human rights law, including the *Alberta Human Rights Act*.

Drafting, Amending, and Implementing the New Bylaw

The renewed Zoning Bylaw must be adaptive and responsive to change, while safeguarding unforeseen inequities. To that end, we propose several approaches and practices in addition to the specific changes outlined above. The new Bylaw must also align with *The City Plan's* strategic direction. This will ensure consistency and clear purpose. Potentially contentious parts of the Bylaw should be reviewed and tested for equity and substantive equality, to proactively identify problems.

Going forward, new policies and Zoning Bylaw amendments with potential for significant impacts should be phased in over time and be tested in the most appropriate parts of the city—before large-scale application—to help all involved better understand the impacts. Staff reports to City Council on future Zoning Bylaw amendments could include a section on equity and human rights impacts of the proposed changes to ensure these concerns are considered in all future changes to the Bylaw. To address bias in the decision-making process, the officers in the development authority should receive training in equity, diversity, inclusivity, and human rights that specifically speaks to how those issues relate to the permitting approval process. More broadly, the creation of the offices for human rights and equity, an ombudsman, and public consultation would systematically promote equity and human rights considerations in regulations and processes across the CoE.

¹⁷⁸ Agrawal, forthcoming.

¹⁷⁹ The strategy of reasonable accommodation has not been formally defined in planning, but it is implicit in planning practice and now increasingly referred to in planning reports. It is based on long-practiced legal and public policy doctrines, but it is a contested concept. Reasonable accommodation means that a demand from an individual or a group may be accommodated if it does not cause undue hardship, unreasonable cost, the disruption of an organization or institution's operations, infringement on other people's rights, or the undermining of security or public order (Bouchard & Taylor, 2008, p. 19). See Qadeer and Agrawal, 2011 for details.



CONCLUSION

This study was commissioned because the CoE's current Zoning Bylaw is outdated and fails to align with the current long-term strategic goals. The CoE has made strides in bringing equity considerations into the Zoning Bylaw. Some of these measures have had limited effects and others have occurred too recently to provide a robust commentary on their impacts. This study intended to identify potential inequities created by the Zoning Bylaw and find means to address them.

The study found that inequities exist not only in Edmonton's Zoning Bylaw but also in public consultation and decision-making processes. It argues that changes to the Zoning Bylaw alone will not be able to solve all equity issues in the city or achieve a key priority of *The City Plan*—that is, to become an inclusive and compassionate city. Hence, a holistic approach is needed to achieve all multiple dimensions of equity (of which regulations are a part) and introduce reforms across the entire city operation and administration.

Thus, the approach must introduce equity and human rights considerations not just in the Zoning Bylaw, but also in plans and policies, and in decision-making processes above all. We must recognize that working with zoning, a tool which is historically Eurocentric and inherently discriminatory, has limited capacity to propagate equity in every sphere of Edmontonians' lives. Still, it is key to ensuring that the Zoning Bylaw is rid of entrenched overt *and* covert discriminatory elements.

Our analyses of multiple sources of primary and secondary data lead to the recommendations below. They are divided into two sections, reflecting these two goals:

- To help in the ZBRI currently underway
- To affect procedural, decision-making, and structural changes across the entire CoE administration

RECOMMENDATIONS FOR THE ZONING BYLAW RENEWAL INITIATIVE

Overall Changes

1. Ensure the new Zoning Bylaw fully aligns with the strategic direction of *The City Plan*.
2. Enable incentives in the Bylaw to achieve the desired development results, such as density bonusing.
3. Explore inclusionary housing as an option to allow more affordable housing in the city, using density bonusing or government subsidies to initially encourage this type of development.
4. Allow supportive housing as a permitted use in DC zones and the few remaining localized zones.
5. Expand community consultation to include Indigenous, ethno-cultural, and other equity groups.
 - a. Use social media in innovative ways to reach out to Edmontonians.
 - b. Use the Edmonton Insight surveys more effectively.



6. Review potentially contentious parts of the Zoning Bylaw using an adaptation of the following test developed by Agrawal (2014), making it a part of the GBA+ and Equity Toolkit:
 - a. Is the purpose of the Bylaw rationally connected to the function being performed?
 - b. Was the Bylaw adopted in good faith, with the intention to fulfill the purpose?
 - c. Is the Bylaw necessary to accomplish that purpose?
7. Adapt the four-part test of substantive equality (the points below) to examine a select portion of the Zoning Bylaw. Consider integrating it into the GBA+ and Equity Toolkit.
 - a. Does the impugned law draw a formal distinction between the affected person or group and others, based on one or more personal characteristics?
 - b. Does the law impose on the affected person or group a disadvantage in comparison to other comparable persons?
 - c. Is the disadvantage based on a ground listed in or analogous to a ground listed in section 15 of the *Charter*?
 - d. Does the disadvantage constitute an impairment of the human dignity of the affected person or group?
8. Simplify language in the Zoning Bylaw, providing unambiguous direction that it is not open to multiple interpretations by the public or in the courts.
 - a. Draft a plain language Bylaw that is easy to understand, unambiguous, predictable, transparent, and accountable, while meeting the legal requirement for clear and precise legislation.
 - b. Create a citizens' guide to explain the Bylaw: its purpose, function, and a brief rationale for each zone and use.
 - Use simple, accessible language, free of jargon as much as possible, interspersed with visual graphic
 - Produce the guide in English, French, and other languages used by Edmonton residents
 - Align the purpose of the various parts of the Bylaw with the policies contained in the CoE's MDP
9. Offer pre-application consultation meetings before formal submission of all permit application types.
10. Explore the idea of "reasonable accommodation" to make room for Indigenous peoples' cultural needs.
11. Arrange equity, diversity, inclusivity, and human rights–training for officers in the development authority to cover issues related to the following:
 - a. Conscious and unconscious biases.
 - b. Morality, sexuality or faith as a factor incongruent with the permitting approval process.

Changes Specific to Zones

1. Consolidate and streamline 46 zones and 127 uses into fewer zones and uses, under the following zonal categories:
 - a. Residential
 - b. Commercial



- c. Industrial
 - d. Institutional
 - e. Agriculture, open space, and reserve
 - f. Utility and transportation
 - g. Specialty, including DC and special areas
2. Include mixed-use in each zonal category, based on those uses most predominant in that area.
 3. Employ only two types of uses in each zone: “permitted” and “permitted conditional.”(that is, permitted with conditions).
 4. Simplify zones and land uses, after consulting with various stakeholders—in particular, the development industry, infrastructure, and service providers, such as EPCOR.
 - a. Consolidate uses based on how much they affect a zone. For instance, all low-rise, low-intensity residential zones can be merged into fewer zones, like RF3, which is the most permissible of all housing forms.
 - b. Avoid creating zones based on building typology alone, unless certain typologies have a significant, measured impact.
 - c. Avoid creating multiple uses and subject them to different regulations when the impacts are similar.
 5. Replace discretionary use with permitted–conditional use:
 - a. Permitted–conditional use means a building or land use that is generally consistent with other uses in the zone, but may be unique in its characteristics or operation, which could have an impact on adjoining properties.
 - b. Clearly define the conditions of use—which must be reasonable for and related to the appropriate use of the land—and meet the following criteria:
 - Be specified upfront in *The City Plan* and the Bylaw
 - Avoid conflicts with federal and provincial statutes and regulations
 - Have imposed conditions that are clear, precise, and quantifiable
 - c. The development authority should use the following criteria when considering a variance to permitted–conditional use:
 - Is it consistent with *The City Plan* and any other applicable plan(s)?
 - Is it generally compatible with the area in which the affected property is situated?
 - Does it avoid creating a substantial adverse effect on the amenities, use, safety, and convenience of the adjoining property and adjacent area?
 - d. The development authority may ask the applicant for more information or allow further modification of conditions, beyond those defined in the Bylaw. The aim here is to relieve the possible injurious effect (such as hardship) of the Zoning Bylaw on the applicant’s property or to mitigate the possible impacts.
 - e. The development authority’s decision may be appealed to the SDAB if the officer varies the conditions in the Bylaw, and if the grounds of appeals are strictly planning-related within the framework of the MGA and/or CoE’s policies, plans, and bylaws.



- f. Affected property owners will be notified when the development authority decides to vary the conditions as listed in the Bylaw.
6. Modify overlays:
 - a. Eliminate the MNO and the Secondhand and Pawn Stores Overlay. Instead, merge some of their features into the respective underlying zones, where needed and demonstrably justified.
 - b. Retain existing overlays only where justified—such as the Floodplain Protection Overlay, High Rise Residential Overlay, and Major Commercial Corridor.
 - c. Create new ones only where justified—based on criteria such as the environment, heritage, neighbourhood character, economic, or other special reasons.
 7. Limit the creation of new DC zones and review existing DCs to ascertain if they align with *The City Plan*.

Changes Specific to Land Use

1. Allay Indigenous concerns: Allow traditional rituals, ceremonies, gatherings, and spiritual practices—including smudging, and erecting teepees and sweat lodges in city parks and other public lands, as long as the venue is considered safe and secure to engage in Indigenous practices and activities.
2. Revise the following definitions:
 - a. Household: Remove this term from the Bylaw and revise those regulations where it appears.
 - b. Religious assembly: Expand the definition of Religious Assembly to include ancillary facilities, such as dwelling units, day nursery, libraries, and so on, in consultation with faith groups. Alternatively, allow addition of ancillary facilities as permitted—conditional use.
3. Lodging houses: Treat them as permitted—conditional use, subject to municipal licensing.

RECOMMENDATIONS FOR PROCEDURAL, DECISION-MAKING, AND STRUCTURAL CHANGES

For the Edmonton SDAB (in consultation with the Province)

1. Provide opportunities for parties to resolve differences prior to a SDAB hearing by offering one or both of the following:
 - a. a pre-appeal consultation with the development authority and/or other parties involved
 - b. a mediation opportunity to seek an amicable resolution.
2. Discourage appeals to the SDAB that have no legal merit or that proffer grounds outside of the planning framework.
3. Discourage appeals to the SDAB that undermine the *Canadian Charter of Rights and Freedoms*, the *Alberta Human Rights Act*, or the CoE's equity, diversity, and inclusion policies.



For the City of Edmonton

4. Run a pilot on future city-wide policies or Zoning Bylaw amendments in select parts of the city; if successful, phase them in overtime on a larger scale.
5. With new ASPs and NSPs, persuade developers to allocate appropriate parcel(s) of land for institutional use— specifically, religious assembly.
6. Develop an Edmonton Charter to guarantee certain rights, particularly the right to initiate public consultation on issues important to Edmontonians. This charter would facilitate the creation of the two offices proposed below.
7. Create the *Ombudsman's* and *Public Consultations Offices*, which will act as mediators between the public and the CoE. These offices can ensure the public is properly consulted on important municipal decisions, especially land use matters. They can also protect Edmontonians' equitable access to municipal goods, services, and accommodations.
8. Continue to make progress on Indigenous land use and other concerns, using the TTRC of Canada—*Calls to Action* and the *United Nations Declaration on the Rights of Indigenous People* as guides.
9. Include a section that assesses how proposed changes affect the CoE's equity goals in staff reports to City Council about future zoning amendments.



REFERENCES

LEGAL CASES

2101242, Alberta Ltd v Development Authority of the City of Edmonton, 2018 ABESDAB 10193.

Agrola Inc v Development Authority of the City of Edmonton, 2019 ABESDAB 10195.

Andrews v Law Society, [1989] 1 S.C.R. 1431989, SCC.

B. Suchora v Development Authority of the City of Edmonton, 2019 ABESDAB 10026.

R v Bell, [1979] 2 SCR 212.

Celestial Church of Christ, Gathering of the Saints Parish Edmonton v Development Authority of the City of Edmonton, 2018 ABESDAB 10014.

Flowers by Merle v Development Authority of the City of Edmonton, 2019 ABESDAB 10033.

Fraser v Canada (Attorney General), 2020 SCC 28.

Green Mountain Cannabis Inc. v Development Authority of the City of Edmonton, 2018 ABESDAB 10133.

Kahkewistahaw First Nation v Taypotat, 2015 SCC 30.

Kirsten Yakimowich v Development Authority of the City of Edmonton, 2019 ABESDAB 10008.

L. Bocek v Development Authority of the City of Edmonton, 2020 ABESDAB 10164.

Law v Canada (Minister of Employment and Immigration), [1999] 1 SCR 49.

Québec (Attorney General) v A, 2013 SCC 5.

R. v Kapp, 2008 SCC 41.

Smith et al. v. Township of Tiny (1980), 27 O.R. 690 (Div. Ct.); leave to appeal refused (1980), 29 O.R. (2d) 661n (Ont. C.A.).

Tenants' Rights Action Coalition v Delta (Corporation), [1997] BCJ No 2070.

Thomas v Edmonton (City), 2016 ABCA 57.

Uncle Sam's Cannabis v Development Authority of the City of Edmonton, 2021 ABESDAB 10050.

LEGISLATION

Alberta Bill of Rights, RSA 2000, c A-14.



Alberta Human Rights Act, RSA 2000, c A-25.5.

Canadian Charter of Rights and Freedoms, s 15, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11.

Modernized Municipal Government Act, SA 2016, c 24.

Municipal Government Act, RSA 2000, c M-26.

CITY OF EDMONTON DOCUMENTS

City of Edmonton. (2006). *The Way We Grow*,
https://www.edmonton.ca/city_government/documents/PDF/MDP_Bylaw_15100.pdf

City of Edmonton. (n.d.). *Parking Rules for New homes and Businesses*,
https://www.edmonton.ca/city_government/urban_planning_and_design/comprehensive-parking-review.aspx

City of Edmonton. (2015). *Text Amendment to Zoning Bylaw 12800*,
<https://drive.google.com/file/d/0Bycnea94aQQPWk15dVhvd3hSdWc/view>

City of Edmonton. (2015). *Text Amendment to Zoning Bylaw 12800 to Add Several Urban Agriculture uses and Regulations*,
<https://drive.google.com/file/d/1QoOfiMTMONw6nJ9orRoZ0RZU2IHE0e22/view>

City of Edmonton. (2016). *Text Amendment to Zoning Bylaw 12800 to Add Urban Agriculture Uses to Additional Zones*,
https://drive.google.com/file/d/1L3LhrArZ_IV3HOjnfjWUM1Mds1MW8Isf/view

City of Edmonton. (2016). *Text Amendment to Zoning Bylaw 12800 to Facilitate the Expansion Of Childcare Facilities in the City*,
<https://drive.google.com/file/d/1VVunRfc6tDOPFU4N0Isiy4TvbktCa5rH/view>

City of Edmonton. (2017). *Mature Neighbourhood Overlay Regulations*,
https://www.edmonton.ca/city_government/documents/PDF/MatureNeighbourhoodOverlayRegulationsEffectiveSept2017.pdf

City of Edmonton. (2017). *Text Amendment to Zoning Bylaw 12800 to Amend the Mature Neighbourhood Overlay*, <https://pub-edmonton.escribemeetings.com/filestream.ashx?DocumentId=17470>

City of Edmonton. (2017). *Text Amendment to Zoning Bylaw 12800 – Improving the Buildability and Quality of Garage and Garden Suites*,
<https://drive.google.com/file/d/0Bycnea94aQQPbTdLX0dJTGgzOVE/view>

City of Edmonton. (2017) *Text Amendment to Zoning Bylaw 12800 to Reduce minimum parking requirements in low density residential areas*,
<https://drive.google.com/file/d/0Bycnea94aQQPbTY0MmN4Y2w4TnM/view>



City of Edmonton. (2017). *Text Amendment to Zoning Bylaw 12800 to Update Parking for Religious Assemblies*, <https://drive.google.com/file/d/0Bycnea94aQQPekFINnRONVVGb1U/view>

City of Edmonton. (2017). *Text Amendment to Zoning Bylaw 12800 to Update Urban Agriculture Regulations*, <https://drive.google.com/file/d/0Bycnea94aQQPdW1vTml4eTNYSXM/view>

City of Edmonton. (2017) *Text Amendment to Zoning Bylaw 12800 – 7.5 Metre Minimum Lot Width for Single Detached Housing*, <https://drive.google.com/file/d/1-rizchi2VgRw1bP5EFB2npyRqzPkjQfv/view>

[City of Edmonton. \(2017\). Gender-based Analysis Plus \(GBA+\).
https://webdocs.edmonton.ca/siredocs/published_meetings/120/677815.pdf](https://webdocs.edmonton.ca/siredocs/published_meetings/120/677815.pdf)

City of Edmonton. (2018). *Approaches to Context-based Design for New Development*, <https://drive.google.com/file/d/1VaGP66xCYUlj08pEOWF-j5JM8DbBppOv/view>

City of Edmonton. (2018). *Infill Road Map*, https://www.edmonton.ca/city_government/documents/PDF/InfillRoadmap2018.pdf

City of Edmonton. (2018). *Text Amendment to Zoning Bylaw 12800 to Allow Additional Opportunities for Semi-detached and Duplex Housing in the RF1 and RF2 Zones*, <https://drive.google.com/file/d/1iimgyD6GZ6TEEEs8K8-h0MDZjk7s4rhe/view>

City of Edmonton. (2019). *Text Amendment to Zoning Bylaw 12800 to Enable Missing Middle Houses*, <https://pub-edmonton.escribemeetings.com/filestream.ashx?DocumentId=6776>

City of Edmonton. (2019). *Text Amendment to Zoning Bylaw 12800 – Garden Suites*, https://drive.google.com/file/d/1TWYWgOsaSezbTCfqQ1_jNlmkGbw7eUUX/view

City of Edmonton. (2019). *Text Amendment to Zoning Bylaw 12800 to Reduce Barriers to Collective and Permanent Supportive Housing*, https://drive.google.com/file/d/1rEx_49_uCG1N8ZT9KH8U7N0Ineg2jYwY/view

City of Edmonton. (2019) *Text Amendment to Zoning Bylaw 12800 for Tiny homes on Foundations*, https://drive.google.com/file/d/1p33_lp1IS8LcQD1jy1D5zkMSzvJp2LN-/view

City of Edmonton. (2020). *Text Amendment to Zoning Bylaw 12800 to Enable Supportive Housing Developments*, <https://pubedmonton.escribemeetings.com/filestream.ashx?DocumentId=69270>

MUNICIPAL PLANS

City of Calgary. (2018). *Calgary Municipal Development Plan*, <https://www.calgary.ca/pda/pd/municipal-development-plan/municipal-development-plan-mdp.html>

City of Edmonton. (2020). *The City Plan*, https://www.edmonton.ca/city_government/documents/PDF/City_Plan_FINAL.pdf



City of Halifax. (2014). *Halifax Regional Municipal Planning Strategy*, <https://www.halifax.ca/sites/default/files/documents/about-the-city/regional-community-planning/RegionalMunicipalPlanningStrategy-20Nov07-Case21162-TOCLinked.pdf>

City of Ottawa. (2020). *New Official Plan (Draft)*, [City of Ottawa - Draft New Official Plan \(ehq-production-canada.s3.ca-central-1.amazonaws.com\)](http://production-canada.s3.ca-central-1.amazonaws.com)

City of Toronto. (2019). *Toronto Official Plan*, https://www.toronto.ca/wp-content/uploads/2019/06/8f06-OfficialPlanAODA_Compiled-3.0.pdf.

City of Victoria. (2012, 2020). *Official Community Plan*, https://www.victoria.ca/assets/Departments/Planning~Development/Community~Planning/OCP/Up~to~date~OCP~and~Design~Guidelines/OCP_WholeBook.pdf

City of Winnipeg. (2021). *Our Winnipeg 2045*, <http://clkapps.winnipeg.ca/DMIS/ViewDoc.asp?DocId=20698&SectionId=589800&InitUrl=>

Town of Truro. (2018). *Municipal Planning Strategy* <https://www.truro.ca/pln/815-municipal-planning-strategy-jun-18/file.html>

Québec City. (2019). *Schema D'aménagement et de Développement*, https://www.ville.quebec.qc.ca/apropos/planification-orientations/amenagement_urbain/sad/docs/SAD-12-2019.pdf

PUBLICATIONS

Adler, D. (2015). Do We Have a Right to the City? *Jacobin*. Retrieved from <https://www.jacobinmag.com/2015/10/mexico-city-df-right-to-the-city-harvey-gentrification-real-estate-corruption/>

Agrawal, S. (2013). Opinion on the Provisions of Group Homes in the City-wide Zoning By-Law of the City of Toronto. Report submitted to the City Solicitor's Office. <https://www.toronto.ca/legdocs/mmis/2013/pg/bgrd/backgroundfile-56473.pdf>

Agrawal, S. (2014). Balancing Municipal Planning with Human Rights: A Case Study. *Canadian Journal of Urban Research*, 23(1), 1–20.

Agrawal, S. (2018). *Human Rights and Alberta Municipalities*. University of Alberta. https://cms.eas.ualberta.ca/UrbanEnvOb/wp-content/uploads/sites/21/2018/05/Report-to-AHRC_Agrawal-1.pdf

Agrawal, S. (2020). Human Rights and the City: A View From Canada. *Journal of the American Planning Association*, 1–8. <https://doi.org/10.1080/01944363.2020.1775680>

Agrawal, S. (forthcoming). *Rights and the city: problems, progress, practice*. Edmonton: University of Alberta Press.

Alberta Government, (2018). *Subdivision and development appeal board training guidebook*.



<https://open.alberta.ca/dataset/75cd7ff7-410f-4619-bc65-40d2f00bc52c/resource/55c717ae-2400-42fc-98ef-33f8d86dbecc/download/sdab-training-guidebook-version-7-2018.pdf>

Alvez, J. D. S., & Timney, M. (2008). Human Rights Theory as a Means for Incorporating Social Equity into the Public Administration Curriculum. *Journal of Public Affairs Education*, 14(1), 51–66. <https://doi.org/10.1080/15236803.2008.12001509>

American Planning Association (APA) (2019). *Planning for equity: Policy guide*. https://planning-org-uploaded-media.s3.amazonaws.com/publication/download_pdf/Planning-for-Equity-Policy-Guide-rev.pdf

Braveman, P. (2010). Social conditions, health equity, and human rights. *Health and Human Rights*, 12(2), 31–48.

Braveman, P. & Gruskin, S. (2003). Poverty, equity, human rights and health. *Bulletin of the World Health Organization*, 81, 539–545.

Brenner, N. (2004). *New State Spaces : Urban Governance and the Rescaling of Statehood*. Oxford: Oxford University Press.

Brenner, N., Marcuse, P., & Mayer, M. (2012). Cities for people, not for profit: An introduction. In N. Brenner, P. Marcuse, & M. Mayer (Eds.), *Cities for People, Not for Profit: Critical Urban Theory and the Right to the City* (pp. 1–10). New York: Routledge.

Brownill, S., & Bradley, Q. (2017). *Localism and neighbourhood planning: Power to the people?* (1st ed.). <https://doi.org/10.2307/j.ctt1t89h5j>

Bulkeley, H., Edwards, G. A. S., & Fuller, S. (2014). Contesting climate justice in the city: Examining politics and practice in urban climate change experiments. *Global Environmental Change*, 25(1), 31–40. <https://doi.org/10.1016/j.gloenvcha.2014.01.009>

Castells, M. (1977). *The Urban Question: A Marxist Approach*. Cambridge: The MIT Press.

City of Edmonton. (n.d.). *History of Zoning in Edmonton. Zoning Bylaw Renewal Report #1, Attachment One*. City of Edmonton. https://www.edmonton.ca/city_government/documents/PDF/HistoryofZoninginEdmonton.pdf

Collins, P. A. (2014). Examining Municipal Government Uptake of Health Inequities Discourse. *Canadian Journal of Urban Research*, 23(1), 21–45.

Collins, P. A., & Hayes, M. V. (2010). The role of urban municipal governments in reducing health inequities: A meta-narrative mapping analysis. *International Journal for Equity in Health*, 9(1), 13. <https://doi.org/10.1186/1475-9276-9-13>

Davidoff, P. (1965). Advocacy and Pluralism in Planning. *Journal of the American Planning*



Association, 31(4), 331–338. <https://doi.org/10.1080/01944366508978187>

Fainstein, S. S. (2010). *The Just City*. Ithaca: Cornell University Press.

Fernandes, E. (2007). Constructing the “right to the city” in Brazil. *Social and Legal Studies*, 16(2), 201–219. <https://doi.org/10.1177/0964663907076529>

Finkler, L. & Grant, J. (2008). Minimum separation distance guidelines for group homes: The negative side of planning regulation. *Canadian Journal of Urban Research*, 20(1) 33-56.

Flader, S (2020). Fundamental rights for all: Toward equality as a principle of fundamental justice under section 7 of the *Charter*. *Appeal*, 25, 43-60

Forester, J. (1999). *The Deliberative Practitioner: Encouraging Participatory Planning Processes*. Cambridge: MIT Press.

Frate, B. (2016). Human rights at a local level: the Montréal experience. In B. Oomen, M. F. Davis, & M. Grigolo (Eds.), *Global Urban Justice* (pp. 64–80). <https://doi.org/10.1017/CBO9781316544792.005>

Frederickson, H. G. (1990). Public Administration and Social Equity. *Public Administration Review*, 50(2), 228–237.

Frederickson, H. G. (2010). *Social Equity and Public Administration: Origins, Developments, and Applications*. New York: Routledge.

Freeman, M. (1995). Are there Collective Human Rights? *Political Studies*, 43(1), 25–40.

Friendly, A. (2013). The right to the city: theory and practice in Brazil. *Planning Theory and Practice*, 14(2), 158–179. <https://doi.org/10.1080/14649357.2013.783098>

Gallent, N. (2013). Re-connecting “people and planning”: Parish plans and the English localism agenda. *Town Planning Review*, 84(3), 371–396. <https://doi.org/10.3828/tpr.2013.20>

Gardner, G., Garcia, I., & Costello, P. (2019). *Expanding equity and inclusion in urban development through transatlantic exchange*. Retrieved from <https://www.gmfus.org/publications/expanding-equity-and-inclusion-urban-development-through-transatlantic-exchange>

Government of Alberta (n.d). *Efficient use of land implementation tools and compendium*. <https://open.alberta.ca/dataset/88087a00-d3ee-4572-b6fe-daaa601e4be2/resource/eabc-bd6f-e972-4348-8309-d361741dea86/download/6679118-2014-efficient-use-land-implementation-tools-compendium.pdf>



- Greschner, D. (2001). Does law advance the cause of equality. *Queen's Law Journal*, 27(1), 299-318.
- Gruskin, S., & Braveman, P. (2019). Addressing Social Injustice in a Human Rights Context. In B. S. Levy & H. L. McStowe (Eds.), *Social Injustice and Public Health* (pp. 465–479). Oxford University Press.
- Guy, M. E., & McCandless, S. A. (2012). Social Equity: Its Legacy, Its Promise. *Public Administration Review*, 72(1), 5–13.
- Harvey, D. (1973). *Social Justice and the City*. Athens: University of Georgia Press.
- Harvey, D. (1985). The Geopolitics of Capitalism. In D. Gregory & J. Urry (Eds.), *Social Relations and Spatial Structures* (pp. 128–163). London: Macmillan.
- Harvey, D. (2008). The Right to the City. *New Left Review*, 53(53), 23–40.
<https://doi.org/10.1080/13604819608713449>
- Hodge, G. & Gordon, D. (2008). *Planning Canadian Communities: An Introduction to the Principles, Practice and Participants*. Nelson, Toronto.
- Hughes, P. (2012). Supreme Court of Canada equality jurisprudence and “Everyday Life”. *The Supreme Court Law Review: Osgoode’s Annual Constitutional Cases Conference* 58.
- IDEA (n.d.) <https://www.infilledmonton.com/>
- Jacobs, J. (1992). *The death and life of great American cities*. New York: Vintage Books.
- Koshan, J. & Hamilton, J. (2013). The continual reinvention of section 15 of the *Charter*. *University of New Brunswick Law Journal*, 64, 19-53.
- Krumholz, N. (1990). *Making Equity Planning Work : Leadership in the Public Sector (Conflicts in Urban and Regional Development)*. Philadelphia: Temple University Press.
- Krumholz, N. (2018). Introduction. In N. Krumholz & K. W. Hexter (Eds.), *Advancing equity planning now* (pp. 1–20). Ithaca: Cornell University Press.
- Layard, A. (2012). The *Localism Act 2011*: What is ‘Local’ and How Do We (Legally) Construct It? *Environmental Law Review*, 14(2), 134–144.
<https://doi.org/10.1350/enlr.2012.14.2.152>
- Lefebvre, H. (1996). *Writings on Cities* (E. Kofman & E. Lebas, Eds.). Hoboken: Blackwell.
- Lens, M. C., & Monkkonen, P. (2016). Do Strict Land Use Regulations Make Metropolitan Areas



- More Segregated by Income? *Journal of the American Planning Association*, 82(1), 6–21.
- Locke, J. (1689). *Two Treatises of Government*. Scotts Valley: CreateSpace Independent Publishing Platform.
- Mah, J. (2009). Can Inclusionary Zoning Help Address the Shortage of Affordable Housing in Toronto? <http://inclusionaryhousing.ca/wp-content/uploads/sites/2/2009/12/Mah-Can-IZ-HElp-2009.pdf>
- Maantay, J. (2001). Zoning, Equity, and Public Health. *American Journal of Public Health*, 91(7), 1033–1041.
- Meerow, S., Pajouhesh, P., & Miller, T. R. (2019). Social equity in urban resilience planning. *Local Environment*, 24(9), 793–808. <https://doi.org/10.1080/13549839.2019.1645103>
- Metzger, J. T. (1996). The Theory and Practice of Equity Planning: An Annotated Bibliography. *Journal of Planning Literature*, 11(1), 112–126. <https://doi.org/10.1177/088541229601100106>
- Mexico City (2010). *Mexico City Charter for the Right to the City*. https://uclg-cisd.org/sites/default/files/Mexico_Charter_R2C_2010.pdf
- Mitchell, D. (2003). *The Right to the City: Social Justice and the Fight for Public Space*. New York: The Guilford Press.
- Montréal Charter of Rights and Responsibilities*., Pub. L. No. by-law 05–056 (2006).
- Pitts, D. W. (2011). A Little Less Conversation, a Little More Action: Using Empirical Research to Promote Social Equity. *Journal of Public Administration Research and Theory*, 21(1), 177–i82.
- Planning for Equity Policy Guide*. (2019). Retrieved from <https://planning.org/publications/document/9178541/>
- Pomeroy, S. 2019. Examining the feasibility and options for an inclusionary zoning policy in Toronto. <https://maytree.com/publications/examining-the-feasibility-and-options-for-an-inclusionary-zoning-policy-in-toronto/>
- Purcell, M. (2014). Possible worlds: Henri Lefebvre and the right to the city. *Journal of Urban Affairs*, 36(1), 141–154. <https://doi.org/10.1111/juaf.12034>
- Putnam-Walkerly, K., & Russell, E. (2016). *The Road to Achieving Equity Findings and Lessons from a Field Scan of Foundations That Are Embracing Equity as a Primary Focus*. Retrieved from



- Qadeer, M. & Agrawal, S. 2011. The Practice of Multicultural Planning in American and Canadian Cities. *Canadian Journal of Urban Research*. 20 (1). 131-155.
- Rawls, J. (1999). *A Theory of Justice: Revised Edition*. Cambridge: Harvard University Press.
- Rawls, J. (2001). *Justice as Fairness: A Restatement* (E. I. Kelly, Ed.). Cambridge: Harvard University Press.
- Reece, J. W. (2018). In Pursuit of a Twenty-first Century Just City: In Pursuit of a Twenty-first Century Just City: The Evolution of Equity Planning Theory and Practice. *Journal of Planning Literature*, 33(3), 299–309. <https://doi.org/10.1177/0885412218754519>
- Rodriguez-Pose, A., & Storper, M. (2020). Housing, Urban Growth and Inequalities: The Limits to Deregulation and Upzoning in Reducing Economic and Spatial Inequality. *Urban Studies*, 57(2), 223–248.
- Rousseau, J.-J. (1762). *On the Social Contract* (Dover Thri). New York: Dover Publications.
- Sandercock, L. (2009). Towards a Cosmopolitan Urbanism: From Theory to Practice. In L. Sandercock & G. Attili (Eds.), *Where Strangers Become Neighbours: Integrating Immigrants in Vancouver, Canada* (pp. 193–229). https://doi.org/10.1007/978-1-4020-9035-6_1
- Sandercock, L., & Cavers, V. (2009). The Story of the Collingwood Neighbourhood House: A Unique Gathering Place. In *Where Strangers Become Neighbours: Integrating Immigrants in Vancouver, Canada* (pp. 123–157). https://doi.org/10.1007/978-1-4020-9035-6_5
- Schlosberg, D. (2004). Reconceiving environmental justice: Global movements and political theories. *Environmental Politics*, 13(3), 517–540. <https://doi.org/10.1080/0964401042000229025>
- Schlosberg, D. (2007). Defining Environmental Justice: Theories, Movements, and Nature. In *Defining Environmental Justice: Theories, Movements, and Nature* (Vol. 9780199286294). <https://doi.org/10.1093/acprof:oso/9780199286294.001.0001>
- Skelton, I. (2012). *Keeping Them at Bay: Practices of Municipal Exclusion*. Canadian Centre for Policy Alternatives, Manitoba Office.
- Smith, N. (1996). *The New Urban Frontier : Gentrification and the Revanchist City*. New York: Routledge.
- Smith, N. (2008). *Uneven Development : Nature, Capital, and the Production of Space*. Athens:



University of Georgia Press.

Soja, E. W. (1989). *Postmodern Geographies : The Reassertion of Space in Critical Social Theory*. New York: Verso.

Tagtachian, D. A., Barefoot, N. N., & Harreveld, A. L. (2019). Building by Right: Social Equity Implications of Transitioning to Form-Based Code. *Journal of Affordable Housing & Community Development Law*, 28(1), 71–115.

Tait, M., & Inch, A. (2016). Putting Localism in Place: Conservative Images of the Good Community and the Contradictions of Planning Reform in England. *Planning Practice & Research*, 31(2), 174–194. <https://doi.org/10.1080/02697459.2015.1104219>

[The UK Ministry of Housing, Communities & Local Government \(2011\). A plain English guide to the Localism Act.](#) (2011). Retrieved from <https://www.gov.uk/government/publications/localism-act-2011-overview>

Whittemore, A. H. (2017). Racial and Class Bias in Zoning: Rezoning Involving Heavy Commercial and Industrial Land Use in Durham (NC), 1945–2014. *Journal of the American Planning Association*, 83(3), 235–248.

Wigle, J., & Zarate, L. (2010). Mexico City Creates Charter for the Right to the City. Retrieved May 17, 2021, from Planners Network website: <https://www.plannersnetwork.org/2010/07/mexico-city-creates-charter-for-the-right-to-the-city/>

Wilson, S., Hutson, M., & Mujahid, M. (2008). How Planning and Zoning Contribute to Inequitable Development, Neighborhood Health, and Environmental Injustice. *Environmental Justice*, 1(4), 211–216.

Wooldridge, B. & Gooden, S. (2009). The Epic of Social Equity: Evolution, Essence, and Emergence. *Administrative Theory & Praxis*, 31(2), 222–234.

World Health Organization. (2016). A Foundation to Address Equity, Gender and Human Rights in the 2030 Agenda: Progress in 2014-2015 (WHO/FWC/GER/16.1). World Health Organization. <http://www.who.int/gender-equity-rights/knowledge/equity-gender-and-human-rights-in-2030-agenda/en/>



APPENDIX 1

Interview questions - For the CoE staff

- What aspects of zoning do you deal with in your current role at the City?
- Can you elaborate on what specific parts of the Zoning Bylaw and other land use regulations of the City of Edmonton create inequities? (such as denying individuals' access to housing, transit, employment, commerce, and public space; Indigenous or minority groups)
- How can we promote equity and inclusion in drafting zoning bylaws? What specific human rights and equity issues should be considered when drafting land use regulations? (explore inclusionary housing)
- What are the key challenges we should expect when addressing equity and inclusion in the City of Edmonton?
- Are there any zoning amendments done that you think brought more equity in the bylaw?
- When looked at through the equity lens, what would be your observation and/or advice in regards to the appeals process?

Interview questions - For others

- Please describe your current responsibilities. In your role, how or even whether you had to deal with the City's development permit or Zoning Bylaw.
- What aspects of the City's Zoning Bylaw and other regulations did you engage with recently?
- In your view, does the zoning bylaw create inequities and exclusions in Edmonton? (such as denying individuals' access to housing, transit, employment, commerce, and public space)
- What does the City need to consider in promoting equity and inclusion in drafting their new Zoning Bylaw?



APPENDIX 2

Final Zones Analysis

Keys to access the document

COLOUR GROUPINGS are used to indicate how similar/dissimilar different zones are to each other.

BLACK texts = The same

BLUE texts = Marginally different

RED texts = Substantially different

Baseline = RF1

GREEN = RF1 and RSL are similar to each other

TURQUOISE = RF3 and RF2 are similar to each other

PINK = RF4 and RLD are somewhat similar.

BLACK/GRAY = coloured zones are distinct and not particularly similar to any other zone

ORANGE = coloured zones are similar to each other.

RF1		Single Detached Residential Zone
RSL		Residential Small Lot Zone
RF2		Low Density Infill Zone
RF3		Small Scale Infill Development Zone
RF4		Semi-Detached Residential Zone
RLD		Residential Low Density Zone
RMD		Residential Mixed Dwelling Zone
RF5		Row Housing Zone
UCRH		Urban Character Row Housing
RF6		Medium Density Multiple Family Zone
RPL		Planned Lot Residential Zone



