"No Skateboarding Allowed": Municipal Bylaws, Urban Common and Public Property, and the Regulation of “Undesirable” or “Disruptive” Use

Sara Gwendolyn Ross
"NO SKATEBOARDING ALLOWED": MUNICIPAL BYLAWS, URBAN COMMON AND PUBLIC PROPERTY, AND THE REGULATION OF "UNDESIRABLE" OR "DISRUPTIVE" USE

Sara Gwendolyn Ross

The mechanics of daily local inequality and marginalization can be readily observed within the language of local bylaws that govern urban spaces and places and their use — whether these govern the hours and types of use that can be made of local "public" parks, spaces where loitering is identified as unwelcome, or how and where certain activities can take place. While affinity spaces can be, on the one hand, welcomed and celebrated for the mentorship of youth, extracurricular activity, environmentally friendly transportation, or as a skill-building goal-oriented endeavour, the language of bylaws creates an ecosystem equally predisposed to prohibiting certain activities within the public spaces and common spaces of many cities. But how does this reality meet up with public policy efforts and documents that identify the importance of encouraging youth inclusion for more comprehensive denizen participation within urban dialogue and sustainable development? What about initiatives towards sustainable alternatives to urban transportation and commuting? The uses of space in the city for these communities are oftentimes equally welcome and unwelcome within official policy. This Article will approach these questions through an in-depth case study of local skateboarding communities, notably that of Halifax, Nova Scotia. Through the lens of affinity spaces, it will take up the relevant bylaws, municipal signage, provincial legislation, and police enforcement procedures regarding skateboarding. In doing so, the Article focuses on the lack of clear legislation, rules, and policies regarding skateboarding as a use of space in the city. These gaps are also a symptom of marginalizing

* Dr. Sara Ross is an Assistant Professor at the Schulich School of Law of Dalhousie University. In 2021 she was named one of the Top 25 Most Influential Lawyers in Canada by Canadian Lawyer magazine. She would like to thank the attendees of panels where she presented earlier versions of this paper, including the 2022 conference of the Association of Law, Property & Society, as well as the 2022 Global Meeting on Law & Society. She would also like to thank Chelsea Brussard for her excellent research assistance.
treatment of certain kinds of spatial use in the city. Here the Article will examine these gaps within the different kinds of shared urban property found within the city — public, common, and quasi-public. The Article will also compare the treatment of bicycles and electric scooters to skateboarding within these same urban legal frameworks, examining where the grey areas and gaps have been filled in regarding the wearing of protective gear, such as helmets.

Introduction ........................................................................................ 29
I. Skateboarding Community as Affinity Space .............................. 33
II. The Legislative and Policy Framework: Public, Common, and Quasi-Public Spaces ............................................................. 37
   A. Public Space – Skateboarding and Cycling ...................... 38
   B. Quasi-Public Space – Skateboarding and Cycling .......... 41
   C. Common Property/Spaces in Halifax, the Halifax
      Common, and the New Common Master Plan ............... 43
      1. Local Skateboarding Community Engagement
         in Halifax .................................................................... 45
III. Halifax and Helmets: Controversies, Legislation, and Context ... 48
IV. Local Microbility and Shared Microbility Initiatives, Policies, And Legislation ............................................................. 52
Conclusion .......................................................................................... 55
Appendix ............................................................................................ 56
   Figure A – Local Bylaws and Regulations Affecting
   Skateboarding ........................................................................... 58
INTRODUCTION

The stairs that greet you as you approach the Weldon Law building of the Schulich School of Law on the Dalhousie University campus in Halifax, Nova Scotia are divided down the center by decorative tiered concrete squares filled with assorted shrubbery and other greenery. Four brightly colored Adirondack chairs — yellow, red, blue, and green — usually sit off to the side (sometimes chained together due to a summertime “borrowing” incident by nearby residents). More importantly, though, if you are a skateboarder, each segment of stairs is also characterized by steel railings along the sides and down the middle of each set of stairs. As you cross the expanse of concrete between the stairs, glass doors, and windows of the front entrance, a plain white 8.5 x 11-inch sheet of paper with large black letters in bold font has been taped to one of the glass windows. The makeshift sign, identified in Figure 2, declares that no skateboarding is allowed. The sheet of paper appeared at some point after the summer of 2021. The previous summer, while staff and students were not on campus and would not be on campus for the foreseeable future as the university entered the first full year of online classes due to COVID-19, staff had noted that skateboarders were using the railings for tricks. Skateboards can cause damage to metal railings and publicly accessible private property, raise nuisance complaints within public and common property, and can prompt signage, regulations, and bylaws that restrict their use within these spaces.
There are a variety of justifications for rules forbidding skateboarding and "no skateboarding" signs in public spaces and on private property. One justification is safety, i.e., skateboarding is banned in these areas because it is categorized as dangerous.\footnote{NOVA SCOTIA LEGISLATURE, 60TH LEG., Hansard Debates, at 1904–16 (1st Sess. 2006) [hereinafter Hansard Debates].} Another justification stems from complaints relating to the use of property by skateboarders (such as was the case with the railings on the stairs leading to Weldon), specifically regarding the potentially disruptive or destructive practices of skateboarders outside of spaces sanctioned for or dedicated to skateboarding.\footnote{See John Carr, Legal Geographies – Skating Around the Edges of the Law: Urban Skateboarding and the Role of Law in Determining Young Peoples’ Place in The City, 31 URB. GEOGRAPHY 988, 994–95 (2010) (“As with graffiti artists, urban skaters transform the built environment in ways that are unsettling to property owners — marking and chipping concrete and marble surfaces with their ‘grinds,’ putting dark ‘curb wax’ on favored features, and displacing other more conventional users who are averse to the physical danger, noise, and disorder of a skate ‘session.’”).} A third arises from the noise created by a skateboard as well as those using a skateboard,\footnote{See, e.g., Hansard Debates, supra note 1, at 1904–16; see also An Act to Amend Chapter 293 of the Revised Statutes, 1989, the Motor Vehicle Act, Bill 86, 60th Gen. Assemb., 1st Sess. (Nova Scotia 2006) [hereinafter Bill 86] (proposing amendments pertaining to helmet wearing for skateboarders). While skateboarding is often perceived as a dangerous activity, there is a difference between minor injuries such as a broken wrist, twisted knee, or rolled ankle due to, for example, a failed trick, and more serious injuries that are likely to require emergency medical attention. According to a number of reports (but depending on the year in question), skateboarding can be less likely or not much more likely to lead to these serious injuries when compared to other more mainstream sports or recreational activities such as football, soccer, baseball, and cycling. See, e.g., 2013-2021 Injury Statistics by Group: Sports and Recreational Injuries, US NAT’L SAFETY COUNCIL, https://injuryfacts.nsc.org/home-and-community/safety-topics/sports-and-recreational-injuries [https://perma.cc/4L95-7FRA] (last visited Sept. 15, 2022). Note here, however, that U.S. statistics indicate an upward trend in skateboarding injuries resulting in emergency room visits within the 25–64 age group over the past few years. See id; see also Skateboard Injury Statistics (Updated 2020), SAFETY FIRST – SKATEBOARDING SAFETY, https://skateboardsafety.org/injury-statistics [https://perma.cc/5NW4-HWEL] (last visited Sept. 15, 2022); Ulfin Rethnam et al., Skateboards: Are They Really Perilous? A Retrospective Study from a District Hospital, 1 BMC R SCH. NOTES 59 (2008), https://bmcresnotes.biomedcentral.com/articles/10.1186/1756-0500-1-59 [https://perma.cc/9E74-WZZ5]; Skateboarding Dangerous? It’s Not That Bad, SKATEBOARDERSHQ, https://www.skateboardershq.com/is-skateboarding-dangerous [https://perma.cc/SQ2Q-4QNG] (last visited Sept. 16, 2022); KRISTEN MOORE, NOVA SCOTIA DEP’T OF HEALTH PROMOTION & PROT. & HEARTWOOD CTR. FOR CMTY. YOUTH DEV.,} and other generalized nuisance complaints. However, while skateboarding injuries are a real possibility, this rhetoric of safety, especially without clear correlative statistics,\footnote{See, e.g., Hansard Debates, supra note 1, at 1904–16; see also Bill 86.} can conceal other reasons why cities and/or businesses ban skateboarding.
A “no skateboarding” sign does not necessarily only signal what activities are not allowed in a space, but also what types of people are unwelcome, less accepted or valued, or excluded from a space. Here, skateboarding regulations, bans, or lack of a clear regulatory framework can illustrate one site where the mechanics of daily local inequalities and marginalization can be observed and experienced. Legislation, the language of local bylaws that govern urban space, and their accompanying city signage dictate how shared public space, such as roads, can be used and by whom. These elements of the urban legal frameworks that shape a denizen’s experience of the city appear via signs detailing the hours of access and types of use that can be made of local “public” parks or other spaces, the kind of personal devices for transportation that can be used on sidewalks or roads, areas where loitering is prohibited, and how and where skateboarding can take place — the list of potentially disruptive or less than desirable uses of urban space can be lengthy.

Where local rules and regulations, such as those pertaining to skateboarding, can result in the marginalization of certain kinds of property use and of particular groups of people, marginalizing treatment these kinds of property use and space in a city can also result from an underdeveloped legislative framework that results in gaps and grey areas. These gaps and grey areas create a fertile environment for differential enforcement of rules and regulations that can amplify existing prejudice or perceptions: in this case, negative stereotypes regarding skateboarding and skateboarders. As one example of how this is experienced, conversations within skateboarding communities often reveal permutations of the following:

Not sure what to tell you. Cops have been giving people a hard time for this type of thing for literally decades. You’ll likely get in trouble for being on the sidewalk too. I’ve been skating for well over 20 years and have dealt with bullshit and double standards like this countless times. Throw the warning into the garbage and forget about it. One cop will ticket you for this while another cop won’t. It’s pretty much random.

This differential and incongruent treatment, as well as unclear rules more generally, can further alienate members of affinity communities, such as youth, despite other local efforts towards youth inclusion.


6. @buckyfellini, Comment on Skateboard use in hrm, REDDIT (2018), https://www.reddit.com/r/halifax/comments/9740b/skateboard_use_in_hrm [https://perma.cc/4ZXV-WB54].
Central to the everyday governance and experience of urban property are: the ways in which the common and public spaces of the city can be permissibly shared, passed through, and enclosed; the kinds of use and behaviour that are welcome or unwelcome, included or excluded, or tolerated; and how urban rules and regulations are structured to accomplish these ends. The frameworks that regulate property use and behaviour within a city are usually shaped by the kinds of property being regulated — private, public, quasi-public, or common property. While the terms “public,” “shared,” or “common” space tend to import ideas of inclusion, cooperation, or, even, equality, all too often these spaces are regulated in a manner that excludes or marginalizes members of the so-called “public” based on prohibitive rules that target undesirable or less desirable uses of urban space, or as a result of exceedingly vague rules that render use difficult and create an environment for differential or disproportionately targeted enforcement of these rules. As this Article examines, one example of these kinds of marginalizing processes are the ways in which certain municipalities, such as this Article’s central case study of Halifax, Nova Scotia, continue to regulate skateboarding in a manner that is both vague and prohibitive.

Through the lens of affinity spaces, Part I begins by touching on the “why” of skateboarding and skateboarding communities, alongside a brief discussion of their characteristics, significance, and the value of such communities for the inclusion, vitality, development, and sustainability of diverse communities, including youth, in cities. After establishing this context, Part II of this Article will then examine the existing and developing legislative and policy frameworks that apply to skateboarding, as well as the gaps and grey areas within these frameworks. In so doing, this Article turns to different kinds of shared property in Halifax — public, quasi-public, and (purported) common property. Here, the Article contrasts the urban legal frameworks that apply to bicycles and cyclists with those that govern skateboarding. Part III proposes that while the urban legal frameworks that will be examined may be underdeveloped in providing effective guidance for permissible use that the skateboarding community advocates for, the same is not true of helmet rules and regulations that apply to skateboarders. Finally, Part IV turns to recent legislative developments that provide new guidelines

7. This Article will not deal directly with skateboarding in the context of private property, although much of the underlying logic and mechanisms that can exclude or restrict skateboarding from public or shared common spaces in a city are couched within common law (and civil law) frameworks for private property rights and the right to exclude. See, e.g., Carr, supra note 2, at 988–93. See generally Nicholas Blomley, Law, Property, and the Spaces of Violence, 93 ANNALS ASS’N AM. GEOGRAPHERS 121, 121–41 (2003); NICHOLAS BLOMLEY, UNSETTLING THE CITY: URBAN LAND AND THE POLITICS OF PROPERTY xv (Routledge, 2004); Jill Grant & Andrew Curran, Privatized Suburbia: The Planning Implications of Private Roads, 34 ENV’T & PLANNING B: PLANNING & DESIGN 740, 746–48 (2007).
surrounding the use of electric scooters (e-scooters) within the shared public and common spaces of Halifax, emerging largely in response to local shared-microbility initiatives that have led to a significant increase of these devices on the streets of Halifax.

I. Skateboarding Community as Affinity Space

While the increasing popularity of skateboarding has been growing for some time, the most recent surges in its popularity should come as no surprise due to a number of factors, not least of which comprises the inclusion of skateboarding in the 2020 Tokyo Summer Olympics held in 2021 — a testament to the rising popularity of skateboarding as a legitimate sport, as well as ongoing initiatives to find and encourage environmentally-friendly commuting options. However, skateboarding communities and their use of urban space in many cities nonetheless remain an example of a particular group that frequently encounters signs, laws, regulations, and policies that specify the unwelcome nature of their chosen use of space. Yet, as a community activity for a diverse community, skateboarding can provide an important extracurricular space, a safe space, a competitive space, a mental health outlet, an escape from everyday experiences of exclusion or marginalization, and a way to engage and interact creatively with the built environment of the city that may otherwise provide little in the way of access or engagement opportunities.

Local skate groups in cities such as Halifax and Vancouver describe the mentorship that takes place within the skateboarding community or communities as well as the youth-adult partnerships where youth bring new


9. There are certainly many examples where the treatment of skateboarding in this manner has shifted or is shifting significantly, such as in Vancouver, Portland, San Diego, and so on.

10. See, e.g., Fang & Handy, supra note 8; Carr, supra note 2; Jenna Aujla, Skateboarders and the City: Public Space and Beyond, SIMON FRASER UNIV., https://www.sfu.ca/publicsquare/events/2021/innovations-in-research/skateboarders-and-the-city.html [https://perma.cc/UK7W-ZP6M] (last visited Oct. 16, 2022) (“Skateboarders exhibit innovative ways to use public and private space in the city that extends beyond the space allocated to them in the form of the skatepark. Through my research, I have gained insight about how the urban activity of skateboarding transcends race, age, and class, and promotes positive mental health, especially during a global pandemic.”); Jenna Aujla, Skateboarders and the City: Public Space and Beyond, YOUTUBE (Mar. 25, 2021), https://youtu.be/y1s2v5k4bBM [https://perma.cc/K3E7-4VAC].
energy and fresh perspectives to the community. Whether these relationships and partnerships are centered on privately operated skateboarding spaces and half pipes or unsanctioned DIY (Do-It-Yourself) or DIT (Do-It-Together) skateparks or city-sanctioned skateparks, communities describe the role of older, more senior, more advanced skaters in mentoring and helping newer, oftentimes younger, community members, and the space this can create for community members who may lack parental figures, and so on, in their lives. Skateboarding community members also describe how the community can provide a safe space to break down barriers between age, race, class, and hate, build strong relationships, freely express themselves without any judgment, and to face and move beyond fears of failure.

Beyond the public, common, and private spaces where skateboarding takes place, the role that community plays can also be observed in local skate shops where owners, those who work in the shop, customers and friends who have been skateboarding for many years, youth, those newer to skateboarding, and kids can hang around talking shop, practice tricks if there is enough room, share knowledge, learn more about various aspects of skateboarding, and generally spend time in the shop without necessarily purchasing anything. Or, as it might be perceived if this kind of behaviour


occurred in a public, common, or quasi-public space such as a shopping mall food court or parking lot, there can be a significant amount of permitted and encouraged “loitering.”

Observing these sites of gathering — whether private skate shops, gatherings in skateparks, or in other spaces of a city’s built environment — the skateboarding community can be theorized or understood as an affinity space.

Drawing on the work of James Paul Gee on affinity spaces, the common characteristics of affinity spaces that apply to skateboarding communities include some or all of the following:

- a strong uniting common interest or endeavour in how people relate to each other that transcends gender, race, class, disability, etc.;
- a lack of differential treatment with regard to newcomers and a lack of status attached to levels of participation or roles within the space in question where there is an orientation towards accommodating all within a common shared space, while also providing space for individuals to define their own involvement and what they seek to derive from involvement within the space, depending upon their own personal choices, interests, or identities;
- a valuing of diverse kinds of knowledge (from individual to distributed, dispersed, or tacit knowledge, and so on), and the sharing of both specialized (intensive) and less specialized (extensive) knowledge that reinforces the engagement of all within the space in whatever way they are able, comfortable, or inclined to participate;
- a fluidity over time in the form, level, and route to individual status and participation within the space; and
- a non-hierarchical flexible leadership structure where leaders are viewed as resources.

13. An affinity space can also be seen as the site of, or for, a community/cultural normative system. See, e.g., Sara Gwendolyn Ross, From the Octagon to the Courtroom: The Right to Fight, Subaltern Cosmopolitanism, and Public Interest Litigation as a Tool for Mixed Martial Arts as Community/Cultural Normative System, 11 DEPAUL J. SPORTS L. & CONTEMP. PROBS. 91, 93–94 (2015); Brian Z Tamanaha, Understanding Legal Pluralism: Past to Present, Local to Global, 30 SYDNEY L. REV. 375, 399 (2008).

14. See also Sara Ross, Transgressive DIY (“Do-It-Yourself”) Spaces, Mixed Virtual/Physical Spaces, and Building Code Vigilantism, 13 ALBANY GOV’T L.J. 233, 233 (2019); Holly Kruse, Subculture Identity in Alternative Music Culture, 12 POPULAR MUSIC 33, 39 (1993); James Paul Gee, Semiotic Social Spaces and Affinity Spaces: From the Age of Mythology to Today’s Schools, in BEYOND COMMUNITIES OF PRACTICE 214 (David Barton & Karen Tusting eds., Cambridge Univ. Press 2005).
The notion of affinity spaces, which focuses specifically on the space(s) of community use and gathering, provides perspective in examining local legal governance of the use of urban space, since these municipal legal complexes are a frequent source of unequal treatment of groups, individuals, and communities in a city. While affinity spaces created by the skateboarding community can be, on the one hand, welcomed and celebrated for the mentorship of youth and as a skill-building goal-oriented endeavour, as this Article explores, the language of bylaws creates an ecosystem equally predisposed to prohibiting the behaviour of skateboarders within the public spaces and common spaces of many cities.

This disjunctive treatment is further amplified by public policy efforts and documents that identify the importance of encouraging youth inclusion and civic responsibility and engagement for more comprehensive denizen participation within urban dialogue and sustainable development. As the

---


16. For example, in terms of existing supportive policies or initiatives to encourage skateboarding in Halifax, in addition to the current skatepark in the Halifax Common and numerous other outdoor community skateparks in other communities included within the Halifax Regional Municipality, there has been ongoing support in Halifax for the building of an indoor skatepark and further outdoor parks in order to create a more inclusive variety of skatepark options to meet different skill level needs. The sanctioned skatepark in the Dartmouth Common, for example, is seen by some as too advanced, while the skatepark in the Halifax Common is often too busy for someone to work on new tricks. See, e.g., Zane Woodford, City Looking at Legitimizing Downtown Dartmouth Skateboarding Spot, HALIFAX EXAMINER (Apr. 23, 2021), www.halifaxexaminer.ca/city-hall/city-looking-at-legitimizing-downtown-dartmouth-skateboarding-spot [https://perma.cc/GP73-LKA6].

17. In contrast to cities such as Halifax, other cities, such as Vancouver, have shown that implementing a long-range strategic plan can meet the rising demand for skate amenities in the city by the growing skateboarding community that now includes a greater diversity of ages and genders. The inclusion of skateboarding and skateboarders in the urban landscape has put additional pressure on the existing aging and overcrowded skateboarding infrastructure. See Skateboard Amenities Strategy (CitySkate), VANCOUVER BD. OF PARKS & RECREATION (May 2022), parkboardmeetings.vancouver.ca/2022/20220606/REPORT-SkateboardAmenitiesStrategy-CitySkate-20220606.pdf [https://perma.cc/SDS5-RF4H]. Note that Canada’s oldest surviving skatepark, Seylynn Skatepark, was built in 1978 in the City of North Vancouver. See Seylynn Skatepark North Vancouver BC, CANADIAN SKATEPARK DIRECTORY, https://skateparktour.ca/skateparks/seyllynn-skatepark-north-vancouver-bc/ [https://perma.cc/47CB-8KXX] (last visited Oct. 4, 2022). Some cities have also, outside of skatepark facilities, developed skateboard-friendly spaces that facilitate the co-existence of skateboarders and pedestrians within these spaces, and which include built features such as, for example, skateboard-friendly benches that can weather the effects of skateboarding. See Moore, supra note 4, at 13.

II. THE LEGISLATIVE AND POLICY FRAMEWORK: PUBLIC, COMMON, AND QUASI-PUBLIC SPACES

How urban denizens share common space, pass through private and public space, and ultimately live together in a community is central to the regulation of urban property and the everyday experience of a city. Skateboarding in Halifax, Canada provides an example of how differential treatment within the shared spaces of a city can result through the choice of a particular kind of personal transportation device over another, and how this differential treatment can sometimes be the result of underdeveloped legislation and policies pertaining to a particular use or activity, which can ultimately create an unwelcome environment that discourages the use or activity in question.20 Skateboarding in Halifax, for example, as opposed to other personal transportation devices, illustrates this scenario. The lack of legal and regulatory clarity surrounding skateboarding as a use of city space and choice of personal transportation device is a significant source of frustration within Halifax’s skateboarding community(s) who engage in skateboarding for a variety of reasons and/or objectives, some of which includes, as referred to above, affordable and environmentally conscious commuting, recreation, youth programs and urban inclusion initiatives for youth, mentorship programs, and, of course, fun.21

---

19. MOORE, supra note 4.
20. See Feleshia Chandler, Halifax E-Scooter Enthusiast Hopes More People Hop on Microbility Trend, CBC N. S. (Apr. 8, 2022, 6:00 AM), www.cbc.ca/news/canada/nova-scotia/e-scooters-nova-scotia-legislation-1.6410004 [https://perma.cc/J56C-XW5Z] (identifying similar concerns pertaining to microbility devices and shared microbility initiatives that involve e-scooters, but which have recently received different treatment through amendments to the Motor Vehicle Act).
21. See, e.g., Jillian Ellsworth & Kieran Leavitt, Skateboarders in Halifax are Fed up with a Lack of Clarity, SIGNAL (Jan. 18, 2017, 11:52 AM), https://signalhfx.ca/skateboarders-in-halifax-are-fed-up-with-a-lack-of-clarity/ [https://perma.cc/U96S-Y6RC]; see also Fang & Handy, supra note 8, at 270–71, 276–77, 281 (surveying and interviewing skateboard commuters within an urban center featuring a large community of skateboard commuters). In addition to the convenience of skateboarding as a transportation device, skateboarders...
While skateboarding and skateboarders may be officially allocated space in the city through the provision of a city-sanctioned skatepark, which this Article will examine shortly, skateboarders nonetheless utilize the private, public, and common space beyond the bounds of the skatepark — whether this is the reconfiguring and reimagining of city space and its stairs, handrails, benches, and ramps as a vast urban playground or whether it is simply the space through which they travel and commute via skateboard, longboard, or cruiser. The site, or kind of property, within which skateboarding, as a use of space, takes place usually has a profound effect on how it is perceived and regulated and, oftentimes, the clarity of existing or non-existing skateboarding-related rules and regulations.

This Section will next examine the rules and regulations, or lack thereof, within the different kinds or categories of shared public or common property in Halifax. Additional frustration for skateboarders also surrounds the blanket rules governing the wearing of protective gear, such as helmets, which will be touched on here but canvassed in greater detail in a later section.

A. Public Space – Skateboarding and Cycling

Public spaces in a city — as “social spaces” — are often theorized as essential to the functioning of societies and communities. Public spaces utilizing skateboards as their travel device of choice frequently noted the elements of fun, positive mental health benefits, and the challenge of developing skills needed to use a skateboard in comparison to other modes of transport, such as bicycling or walking, as motivating factors behind their choice of transportation device. See id. 22. Moore describes the following:

As boldly stated in the Skaters for Public Skateparks website: ‘If your city doesn’t have a skatepark, your city is a skatepark’ (Skaters For Public Skate Parks, No date). It is usually not the preference of a community’s non-skateboarding members to have streets filled with skateboarders riding down ledges and performing tricks on the urban landscape. Of course, without the development of a facility, the draw of these public places to young people wishing to skateboard is far too great. They skate not to annoy, nor to aggravate, but simply because it is their form of recreation and play. Without a skatepark, streets became their playground.

MOORE, supra note 4; see also id. at 13; Skatepark Project, supra note 3; Christopher D. Giamarino, Spatial Ethno-geographies of ‘Sub-cultures’ in Urban Space: Skateboarders, Appropriative Performance, and Spatial Exclusion in Los Angeles 22–51 (May 2017) (M.S. thesis, Columbia University) (on file with Columbia University); Chiu Chihsin, Street and Park Skateboarding in New York City Public Space, 12 SPACE & CULTURE 25, 26–27 (2009).

23. See also Chihsin, supra note 22, at 26.

24. See, e.g., Nathalie Des Rosiers, Public Space, Democracy and the Living Law, 42 PLAN CAN. 22, 22–24 (2002); MARGARET KOHN, BRAVE NEW NEIGHBORHOODS: THE PRIVATIZATION OF PUBLIC SPACE 147–59 (Routledge, 2004); see also Sally Engle Merry,
are also seen as important for formation and maintenance of healthy, inclusive, and vibrant communities. Yet the promise implied by the description of these spaces as “public” or “common” can fail to provide meaningful inclusion — governed in large part by the applicable municipal governance via bylaws and so on that regulate their everyday use by the public. The hierarchizing of the so-called “public” through the regulation of the use of space and, often more importantly, the enforcement of these regulations, results in certain uses — meaning, certain people — ultimately becoming regulated out of their use of “public” and “common” space.

Skateboarding is one example of the kind of use that is often regulated out of public space, or at least highly regulated in terms of how this use of public space may be deemed as acceptable or isolated within a particular portion of the public or common space. Where skateboarding tends to be a proportionally more common activity amongst youth within urban populations, this can lead to comparative regulatory hostility, and enforcement of such, towards youth and communities involved in skateboarding activities within the realm of public and common space.

According to the provisions of the Province of Nova Scotia’s Motor Vehicle Act, skateboarding is not permitted on city roads unless the skateboard is being used to cross the road on a crosswalk or if it is being used on a roadway authorized by the Minister. The Act also mandates that all skateboarders wear a helmet while riding a skateboard, and to skateboard without a helmet constitutes an offence with an imposed fine. The Motor Vehicle Act permits municipalities to enact their own bylaws pertaining to skateboarding and, while other Nova Scotian municipalities have done so, Halifax to date has not. Nova Scotia’s Summary Offence Ticket Booklet details the provincial bylaws pertaining to skateboarding on roadways, municipal sidewalks, streets, curbs, Commission property (in the case of Halifax-Dartmouth Bridge Commission), parks, parking lots, and other public spaces, as well as the steps or entrances of specific buildings in

---

26. See Des Rosiers, supra note 24; see also Mariana Valverde, Everyday Law on the Street: City Governance in an Age of Diversity 150 (Univ. of Chi. Press, 2012); Taking Land Use, supra note 15.
27. See, e.g., Des Rosiers, supra note 24, at 22; Valverde, supra note 26, at 49; Valverde, supra note 15, at 35; see also Chihsin, supra note 22, at 26.
28. See Carr, supra note 2, at 995.
29. See, e.g., id. at 996; Chihsin, supra note 22, at 37.
30. Motor Vehicle Act, R.S.N.S., 1989, c 293 (Can.).
31. Id. s 170(B)(1).
32. See infra Appendix, Figure A.
“prohibited areas.” It also details bylaws regarding the non-wearing of a helmet while skateboarding, and the associated fines to be paid by offenders ticketed under these bylaws for the offence.\textsuperscript{33}

The existing reality of underdeveloped or unclear Halifax Regional Municipality laws and regulations surrounding skateboarding and the use of shared public city space for skateboards has had some interesting — assumedly unanticipated — effects for skateboarding outside of the sanctioned and regulated space of the Halifax Common Skatepark. For example, the Motor Vehicle Act prohibition against skateboarding on the road has resulted in some skateboarders nonetheless choosing to skate illegally on the road due to safety concerns since being forced to skate on comparatively narrow city sidewalks shared with pedestrians is seen by some as carrying an increased risk of accidents and injury.\textsuperscript{34} The Halifax skateboarding community has continued to advocate for clearer laws pertaining to the use of skateboards within the city and one of the central arguments put forward is that skateboarders should be allowed on the road in the same manner as cyclists.\textsuperscript{35}

Where the current lack of regulatory clarity is problematic for skateboarding communities in Nova Scotia, the new Traffic Safety Act, passed by the Province of Nova Scotia in 2018 but not yet in force, will eventually replace the Motor Vehicle Act in the coming years. One of the objectives of the soon to be introduced act is to enable greater flexibility in addressing future changes and developments in the permissible use of roads in Nova Scotia.\textsuperscript{36} The new Act will permit municipalities to regulate the use of transportation devices on sidewalks, bike lanes, and trails as well as highways via bylaws.\textsuperscript{37} This is already the case for skateboarding and e-scooters under recent amendments to the Motor Vehicle Act, but the new Act has yet to be proclaimed into force, likely will not for a few years, and related regulations have yet to be developed.\textsuperscript{38}

\textsuperscript{33} See infra Appendix, Figure A; Off-Highway Vehicles Act, 2011–22 SUMMARY OFFENCE TICKET BOOKLET, Schedule 5, at 1 (updated Aug. 10, 2022).

\textsuperscript{34} Id.

\textsuperscript{35} Id.

\textsuperscript{36} See, e.g., Taryn Grant, As the Nova Scotia Motor Vehicle Act Finally Reaches the End of the Road, Cyclists Hope for a Kinder Replacement, TORONTO STAR (May 14, 2018), http://www.thestar.com/halifax/2018/05/14/as-the-nova-scotia-motor-vehicle-act-finally-reaches-the-end-of-the-road-cyclists-hope-for-a-kinder-replacement.html [https://perma.cc/PRY7-KB57].

\textsuperscript{37} Id.

\textsuperscript{38} Calls for public engagement and feedback regarding “Weight and Dimensions,” for example, closed on March 31, 2022. Even though the Motor Vehicle Act has been amended numerous times, it has not been rewritten since the 1920s. See Bill 86, supra note 4; An Act Respecting Highways and Traffic Safety, S.N.S., 2018, c 29 (Can.) (yet to come into force); Traffic Safety Act: Public Engagement, NOVA SCOTIA, https://novascotia.ca/traffic-safety-act-
B. Quasi-Public Space – Skateboarding and Cycling

The ongoing shrinking of public space due to privatization and replacement with expansive privately owned public spaces is an urban reality in many, if not most, cities.\textsuperscript{39} While public spaces and common spaces are governed by a host of municipal regulations, privately owned public spaces regulated by private businesses and corporations that can create their own rules and regulations and employ their own private security officers, can present an entirely different set of use parameters for those within the space.\textsuperscript{40} While these spaces are not “public” spaces, the everyday experience of using and passing through a privately owned public space is unlikely to reveal significant differences from a “true” public or common urban space. However, where a denizen or their use of space is subject to a high degree of regulation within actual public or common space, this treatment is likely to be replicated or, indeed, amplified within privately owned public spaces.\textsuperscript{41} As Margaret Kohn notes, “privatization reinforces existing patterns of segregation. It makes it easier to ensure that business people do not encounter street people, consumers do not confront citizens, and the rich do not see the poor.”\textsuperscript{42} Additionally, whether a space is defined and understood as private, public, or quasi-public can result in significant legal ramifications in terms of who has a right to be, or is permitted to be, within the space in question, and whether individuals or groups can be excluded from the space.\textsuperscript{43}

The current differential treatment of skateboarders versus cyclists, and the comparatively underdeveloped governance guidelines for skateboarders versus cyclists is also observable, but arguably amplified, in the rules governing quasi-public space in Halifax. As one example, on Dalhousie University’s campus, while there are assorted informal ways that different spaces, facilities, buildings, and so on, can seek to limit skateboarding on their premises, such as posting signs announcing that no skateboarding is allowed.

\textsuperscript{40} See, e.g., Des Rosiers, supra note 24, at 23.
\textsuperscript{41} See Taking Land Use, supra note 15, at 34–35; Kohn, supra note 24, at 6, 59.
\textsuperscript{42} Kohn, supra note 24, at 6.
\textsuperscript{43} Id. at 10–11.
permitted, or anti-skateboarding guards for railings and other skateboard deterrents, the Dalhousie Safe Commuting Policy lays out the following:

**Policy Statement:**

Improper operation of vehicles on University property presents clear risks for students, employees, and visitors. To minimize the likelihood of accidents and injuries, Dalhousie University has adopted the following rules regarding vehicle operation, roller or in-line skating, and skateboarding on University property.

[...]

**Roller or In-line Skating and Skateboarding:**

Roller or in-line skating and skateboarding are not permitted on University property roads, sidewalks, pathways, or in University buildings.

This blanket prohibition of skateboarding as one form of commuting, without reference to the Nova Scotia Motor Vehicles Act or Regulations, can be contrasted to the comparatively more developed regulations pertaining to the use of and existence of bicycles on Dalhousie’s campus, notably where some aspects of the use of the bicycle, bicycle parking, and so on, are acknowledged as a form of commuting to and around campus:

**Operation of Bicycles on University Property:**

Those operating bicycles on University property (including roadways and parking lots) are required to do so in a safe manner and in accord with the requirements of the Nova Scotia Motor Vehicles Act, and Regulations made under the Act.

Cyclists are required to dismount and push bicycles while travelling on University sidewalks or pathways.

Bicycles are normally to be parked at bicycle racks located across campus. Except with the permission of the dean, director, chair, or manager, bicycles are not permitted to be brought into Dalhousie buildings. Where the dean, director, chair, or manager has given permission for a bicycle to be brought indoors, the bicycle may not be stored in a hall or other “public” area of the building. Bicycles may not be chained to trees, poles, railings, fences, or structures on University property.

Bicycles parked in contravention of these regulations will be removed and fines may be levied. If necessary, locks will be cut in order to remove improperly parked bicycles.

---

44. See supra Figure 1.
45. Dalhousie University, Safe Commuting 1 (2020), cdn.dal.ca/content/dam/dalhousie/pdf/dept/university_secretariat/policy-repository/SafeCommutingPolicy.pdf [https://perma.cc/L9C4-RFQN].
46. Id. at 2.
47. Id. at 1–2.
The difference between these two sets of regulations is significant in that the underdeveloped treatment of skateboarding, especially when compared to cycling within this quasi-public space replicates and, indeed, amplifies the gaps and grey areas described previously regarding the regulation of skateboarding within Halifax’s shared public spaces.

C. Common Property/Spaces in Halifax, the Halifax Common, and the New Common Master Plan

As Sarah Hamill theorizes regarding the disintegrating distinction between common property and public property, in theory, “[c]ommon property is property which is collectively owned and from which ‘outsiders’ can be excluded, while public property is ‘a special form of common property supposedly owned by all the citizens, but typically controlled by elected officials or bureaucrats.’” 48 Hamill further observes that “[t]he right not to be excluded [from common property] rests on the importance that common property has in the successful functioning of a society and of an individual in that society.” 49

It is worth narrowing in on the location where skateboarding has been allotted a sanctioned outdoor space in Halifax proper 50 — the Halifax Skatepark in located in the Halifax Common. As the new Halifax Common Master Plan succinctly describes the land encompassed within the Common space, “[l]and in the Halifax Common is managed through a hierarchical framework that provides users different levels of access to its spaces.” 51 The categories comprising this hierarchical framework include municipal lands, which are the “recreational green spaces, cultural landscape sites, and streets,” and institutional lands. 52

Today, the Halifax Common consists of the land bordered by Robie Street and Cunard Street on its north side, and the corner of South Park Street and South Streets on its south side. Previously much larger than it is today, the

49. Id. at 373; see also Kohn, supra note 24, at 7, 9.
50. Note that there is also an outdoor skatepark across the bridge from Halifax in Dartmouth (the Dartmouth Common Skatepark in the Dartmouth Common) along with numerous other outdoor community skateparks in the communities included within the Halifax Regional Municipality.
52. Id.
Common initially consisted of 235 acres of land granted by King George III in 1763 “for the use of the inhabitants of the Town of Halifax forever.”\textsuperscript{53} Its use originally consisted of pasture land for grazing cattle and horses, military grounds, and, more broadly, an open public space. But, over time, other public uses for the “public good” were deemed to be appropriate for the land, which led to the building of public institutions on the southern side of the land including hospitals, high schools, public television studios, a cemetery, Dalhousie University’s Medical Campus (Carleton Campus), the Halifax Public Gardens and Victoria Park, the Museum of Natural History, a cathedral, and so on.\textsuperscript{54} Some of it the Common is also dedicated to parking.\textsuperscript{55}

As the newly developed Halifax Common Master Plan describes the shifts in use and shape of the Halifax Common over time, it has been “transformed from a boggy pasture to a Victorian pleasure ground, to a military parade ground, to a temporary housing site after the Halifax Explosion, and through a period of urbanization and encroachment in the last century, to the mixed-use green space of today.”\textsuperscript{56} Since the use of the northern half initially consisted primarily of military use, this portion of the Common remained as a public park and eventually became a center for outdoor sports activities and gatherings.\textsuperscript{57}

Today the central and northern portions of the Common remain as contiguous open public space and consist of an assortment of purpose-built active recreation areas and recreational facilities that include tennis courts, baseball diamonds, a swimming pool and splash pad, a fountain, football and soccer fields, a cricket field, a playground, and the Emera Oval for skating in the winter and rollerblading and bicycling in the summer.\textsuperscript{58} The central and northern portions of the Common are “where some of the boldest actions are proposed, and also where the broad-reaching revitalization concepts touch on most of the Master Plan guiding principles.”\textsuperscript{59} This is also where the Halifax Skatepark is located.

The new Halifax Common Master Plan was developed to replace the initial 1994 Halifax Common Plan, and was approved, in principle, with the


\textsuperscript{54} See History, supra note 53.

\textsuperscript{55} See HALIFAX COMMON MASTER PLAN, supra note 51, at 79.

\textsuperscript{56} Id. at 68.

\textsuperscript{57} Id. at 106; see also History, supra note 53; Nova Scotia Sport Hall of Fame & Ashley MacKinnon, supra note 53.

\textsuperscript{58} See HALIFAX COMMON MASTER PLAN, supra note 51.

\textsuperscript{59} Id. at 106.
motion being passed in full by Halifax Regional Council on February 8, 2022. The Plan is intended to guide future development and management of the Common as well as open space planning and programming more broadly. The Plan is currently undergoing further review by staff and an implementation plan is being developed. One of the key elements of the new Plan is a “Movement toward Less Structured Recreation” and more “passive recreation areas.” This includes a recommendation to, for example, decrease the amount of ball diamonds in order to consolidate or relocate “over represented sports and structured recreation . . . to make room for other more unstructured activities” in order to create a better balance between space for structured and unstructured play, gathering, and recreation areas. As it relates to the future of skateboarding spaces, spaces like the skatepark fall within the category of “active recreational activities, which require special facilities, as opposed to “passive areas.”

1. Local Skateboarding Community Engagement in Halifax

Even though skateboarding guidelines and inclusion in other spaces in the city remains underdeveloped despite ongoing advocacy, the skateboarding community has been consulted regarding the new Halifax Common Master Plan. This consultation is mostly in relation to the design and structural needs of the skatepark, but also contemplates additional infrastructure developments necessary for events and competitions; some concern for additional safety requirements, such as lighting to improve visibility during evening use, park repair, and monitoring needs with regard to surface pavement cracking; the provision of drinking water via water bottle filling stations; Wi-Fi access; and waste and recycling receptacles. As the Halifax

60. Id.

61. As a part of this process, the Halifax Regional Municipality is seeking feedback (until February 28, 2023) on the Plan which, along with potential amendments and recommendations, will be shared with Regional Council once this engagement phase is completed. The engagement phase is intended to span several seasons in order facilitate “time for residents to thoughtfully review the Master Plan and provide feedback about how the Halifax Common is used over different seasons.” Halifax Common Master Plan Feedback Survey, Halifax, www.shapeyourcityhalifax.ca/halifax-common-master-plan/survey_tools/master-plan-feedback?bclid=lwAR0gulBkZDYwFW9i_NmJ-Tj5k9QYuza-vxx5JYu-7D3TjLjNvcQydYTWNk [https://perma.cc/9V7E-RVDB] (last visited Oct. 4, 2022).

62. See Halifax Common Master Plan, supra note 51.

63. See, e.g., id. at 5, 31, 33, 90, 107.

64. See id. at 115, 117. This is the Recommendations for Recreation and Programming for the Plan’s “Design and Programming Guidance” for the North and Central Common (section 5.1):

5.1.79 Keep the skatepark in its current location on the Central Common.
Skateboard Association noted in encouraging the community to provide their input, “make your voice heard,” and participate in the Halifax Common

5.1.80 Redesign the older asphalt section of the skatepark to provide more low impact features for beginners, scooters, bmx riders and skaters wishing to develop skills. Replace with better materials and construction techniques.

5.1.81 In the new design, retain and restore the heritage masonry wall that was part of the original Egg Pond.

5.1.82 Provide more shaded areas adjacent to the skatepark using shade structures, tree planting, and variety of seating options.

5.1.83 Incorporate the public art piece “Octagonal Posts” into the redesign of the area around the skatepark.

5.1.84 Upgrade the facility lighting to improve visibility and safety during evening use.

5.1.85 Address surface water drainage and erosion issues.

5.1.86 Consider additional infrastructure requirements for hosting skateboarding events and competitions, such as electrical service and space for temporary staging and viewing areas.

5.1.87 Continue to monitor the facility for repairs and safety, particularly for surface pavement cracking.

[...]

5.1.109 Provide drinking water at several locations within the North and Central Common through a distributed system of water bottle filling stations collocated with public washroom buildings and in high activity areas, such as the tennis courts, playground and skatepark.

5.1.110 Provide public Wi-Fi access at concentrated gathering spaces and high activity areas, such as the skating oval plaza, new aquatic area, playground and skatepark.

5.1.111 Provide a distributed system of waste and recycling receptacles, collocated at park entrances and high activity areas, such as the skating oval, skatepark, playground and aquatic area.
Master Plan feedback and engagement survey, as shown in Figures 3 and 4: “[o]ur feedback is in the plan, we just need to be loud and get prioritized.”

For example, the Common Master Plan explains that “[s]kateboard facility users expressed a need to update and improve the design of the skateboard park and ensure that it can accommodate a variety of ages and activities.” The Plan also includes the description of the two built phases of the existing skatepark where the first phase comprises the “asphalt section built within the walled area of the former Egg Pond” and the more recently built second phase constructed in the early 2000s “consists of concrete bowls and street elements.” The Plan notes that “[t]he site of the first phase is

67. Id. at 108. Egg Pond (initially known as Black Duck Pond) was once a popular destination for swimming, punting, and skating during the nineteenth and early twentieth centuries. Friends of the Halifax Common, Celebrate the Common 250 2, 23 (2013), www.halifaxcommon.ca/wp-content/uploads/Common-250-catalogue-FINAL-lowres.pdf
outdated and showing signs of deterioration including damaged skate elements and cracked surfaces.”68 However, while the inclusion of skateboarding treatment within this city document pertaining to the Common space of the city differs from the gaps in treatment in other official bylaws, policies, and legislation regarding the other public and quasi-public spaces of Halifax, due to the nature and purpose of the Common Master Plan, this document still does not fill the overarching municipal and provincial gap of underdeveloped use guidelines, regulations, or treatment.

III. HALIFAX AND HELMETS: CONTROVERSIES, LEGISLATION, AND CONTEXT

In contrast, examining the bylaws surrounding the wearing of mandatory protective gear, such as helmets, while utilizing personal transportation devices, bikes, skateboards, e-scooters, and so on, provides another perspective on the grey areas and gaps that exist in the urban legal frameworks governing skateboarding within Halifax’s public, common, and quasi-public shared spaces.

Within the relevant texts that currently govern the ability to skateboard in the city and use city-owned spaces, the matter of helmets is front and center. In 2006, the passing of Bill 86 amended the Province of Nova Scotia’s Motor Vehicle Act and mandated the wearing of helmets for persons operating or riding a skateboard.69 Compared to the lack of a developed regulatory framework around the permissibility of skateboarding in the city in general, the rules and regulations for helmets that came about through Bill 86 are significantly more developed and clear.70 Unlike other provisions and guidelines (or lack thereof) regarding skateboarding, the legislative provisions surrounding helmets while skateboarding and the consequences of not wearing a helmet are similar to those for cyclists and microbility devices such as e-scooters, which the subsequent section will explore further.71

A survey of helmet bylaws for skateboarding and tickets around the province reveals a significant level of deterrence from many, if not most, public shared common spaces in a city for those who choose not to wear a

68. HALIFAX COMMON MASTER PLAN, supra note 51, at 112, 115 (s 5.1.81).
69. Bill 86, supra note 4; see also Helmets, NOVA SCOTIA, novascotia.ca/dhw/healthy-communities/helmets.asp [https://perma.cc/7UD6-V2N9] (last visited Sept. 25, 2022).
70. See, e.g., infra Appendix.
71. Cf. e.g., Motor Vehicle Act, R.S.N.S., 1989, c 293, ss 170A, 170B (Can.).
For example, helmet regulations can affect the ability of skateboarders to use the city-sanctioned Halifax Common skatepark if they choose not to wear a helmet. While the skatepark in the Halifax Common provides a city-sanctioned space for skateboarding, the permissibility of its use is accompanied by a significant amount of regulation and conditions of use, such as the wearing of a helmet.

There is also concern within the skateboarding community that the enforcement of helmet-wearing, and the regulation of skateboarding more broadly, can at times be subjective and prompted by negative opinions of skateboarders and skateboarding. Interestingly, the policy report developed after the introduction of helmet legislation pertaining to skateboarding notes:

Potential negative outcomes may include reduced participation in some activities simply because the athlete may not want to wear a helmet to participate in their sport of choice. This negative aspect is of great concern, as the authors of the paper want everyone to remain active throughout their life participating in the sport or activity that they enjoy.

Where youth inclusion and mentorship within the city can be viewed as a positive benefit of sanctioning more spaces for skateboarding and encouraging it within the shared public and common spaces of the city, the potential singling out of young skateboarders for helmet and other skateboarding-related property and use related infractions only serves to worsen distrust among youth with local law enforcement.

While skateboarders may choose to wear a helmet based on their own risk analysis and safety concerns, despite potentially negative consequences, many other skateboarders decide not to wear a helmet for a variety of reasons. Some, for example, advocate strongly that helmet-wearing should remain a personal choice and not be mandated through a law that imposes fines and other legal consequences on skaters. Whether or not current rules...
mandate that one should or must wear a helmet, there are numerous reasons why the mandatory wearing of helmets is resisted, often within the context of those who have been skateboarding for some time, who are adults, and have (at least to some extent) mastered the basic elements of skateboarding in order to be able to skateboard safely and thus advocate for the ability to conduct their own personal risk assessment.⁷⁸

While skateboarding tends to fall comparatively into the category of “hazardous recreational activity” requiring protective gear, the matter of helmets extends beyond whether they should be worn when skateboarding to a wider conversation about the effectiveness, rationale, and freedom of choice surrounding helmets and protective gear more generally.⁷⁹ Mandatory helmets for skateboarders might also, for example, be contrasted with other sports that could arguably benefit from the use of helmets and other protective gear. After the implementation of legislation related to skateboarding, the “Nova Scotia Non-Legislated Sport and Recreation Helmet Policy Paper” was published in January 2008 in order to “review the potential effectiveness of wearing a helmet in a variety of other sports and recreational activities that are not included [in recent] legislation.”⁸⁰ This report notes that “[t]he research is clear on the benefits of helmet use in skiing, snowboarding, equestrian activities and ice-skating, and recommendations have been made on how to increase helmet use in these activities.”⁸¹ But, as one Halifax mother of skateboarders observed regarding perceptions of skateboarding and the comparative treatment of other kinds of sports: “I think [that figure skating is] a really good comparison to make . . . . No one is ever going to force a figure skater to wear a helmet. And that’s because it’s different people attached to that.”⁸²

---

⁷⁸. See, e.g., Lowe, supra note 75.
⁷⁹. See Giamarino, supra note 22, at 8–9 (making observations regarding city and state ordinances in the U.S., such as Los Angeles and California).
⁸⁰. ROBERTS & WALLING, supra note 74, at 6.
⁸¹. Id. at 34.
⁸². Lowe, supra note 75. Note, however, that figure skaters, children especially, are now often required to wear (specifically) hockey helmets. See, e.g., Safe Sport Guide, Helmet Use – Information for Clubs, Coaches and Parents, SKATE CANADA INFO CTR. (July 20, 2022), info.skatecanada.ca/index.php/en-ca/guides/50-guide-to-safe-sport.html [https://perma.cc/9XBK-T6HX] (“On July 1, 2011 Skate Canada implemented a Helmet Use policy. This policy was implemented as a proactive safety measure to help protect members in the early stages of the CanSkate program that are learning how to skate. Skate Canada believes it is an appropriate time to implement such a policy to help prevent future injuries to its members that are learning how to skate.”). The Nova Scotia Department of Education and Early Child Development also mandates helmets for ice-skating, in-line skating, and skateboarding activities (among numerous other activities). NOVA SCOTIA, DEP’T OF EDUC. & EARLY CHILDHOOD DEV., PHYSICAL EDUCATION SAFETY GUIDELINES GRADES PRIMARY–12 190–96 (2021), curriculum.novascotia.ca/sites/default/files/documents/resource-files/Physical%20Education%20Safety%20Guidelines%202021%29%20EN.pdf
While existing helmet legislation applies to all public and common spaces in Halifax, the level of enforcement can shift over time and depend on the space in question. Considering the views on helmet-wearing held by some and any corresponding refusal to wear a helmet, the skatepark can become a concentrated space for the targeting of regulation-avoiding behaviour — such as the non-wearing of helmets.

With the passing of Bill 86, the skateboarding community noticed that the local enforcement of helmet provisions has sometimes meant increased police presence and surveillance at the skatepark. Some members of the Halifax skateboarding community sensed an uptick in surveillance and helmet ticketing at the Halifax Commons skatepark after the initial passing of Bill 86. Skateboarders caught riding without a helmet were (and are) ticketed, and some have their skateboards confiscated or are temporarily banned from the skatepark under the Protection of Property Act following Bill 86. These actions have had the effect of forcing some skateboarders in the community to leave the Common and has also led others to choose to leave the Common of their own volition. Departure from the sanctioned space for skateboarding in the city has by no means meant that these individuals stopped skateboarding but that they instead opted for “street skating” within the city — meaning the use of various architectural structures of the city’s public, common, private, and quasi-public spaces such as the stairs, railings, and other built features of the urban landscape to transform these spaces into an urban skatepark as a means of adapting to a shifting legal landscape and to attempt to maintain a claim to space within cities such as Halifax despite ongoing processes that entirely exclude or highly regulate skateboarding within public, private, and common urban spaces.

There was a sense amongst skateboarders at the time that the enforcement of this law and the regulation of skateboarders in general was (and is) fueled by negative opinions held by police (and those who are not part of the skateboard community) of skateboarders that can lead disproportionately to targeted enforcement practices. Another sentiment expressed by skateboarders has been that they felt that police enforcement of helmet-
wearing was not only a waste of resources, but that this surveillance and ticketing would only serve to worsen distrust among youth with local law enforcement.\textsuperscript{88} The Hansard Debates, which provide a further window into the issues, disagreements, and arguments within the House of Assembly as Bill 86 was considered, reveal some concern as to the presence of police officers or other supervisory entities at playgrounds and the placing of local youth under surveillance.\textsuperscript{89}

Nonetheless, as time has gone by, others in the skateboarding community have noticed a shift away from disproportionately high levels of enforcement and have observed the opposite. For example, as one skateboarder observed about a decade later:

Skateboards not being allowed on sidewalks was the norm when I was a kid and there were no skate parks or anything, so the only place I could skateboard was my driveway. Cops shouldn’t be telling people they can’t skateboard on the sidewalk unless they’re not wearing a helmet, but then they should be clear about why they’re not being allowed to skateboard. Not sure what’s going on with the skate parks because the cops used to show up there to enforce helmets, but now it seems to be the one place they allow skateboarders to skate without helmets like they’re afraid they’ll drive the skateboarders out onto the streets and create a public nuisance if they don’t just let them skate at the skate park in peace.\textsuperscript{90}

Regardless of stances on whether helmet-wearing should be mandated, the question of differential enforcement, and where and how it takes place, remains a significant source of frustration for Halifax’s skateboard community.

\section*{IV. LOCAL MICROBILITY AND SHARED MICROBILITY INITIATIVES, POLICIES, AND LEGISLATION}

This Section turns to the broader lens of microbility transportation devices, policies, initiatives, and legislation under which skateboards, bikes, electric scooters (e-scooters) fall in order to examine the comparative treatment of e-scooters and skateboarding.

A number of key trends came out of the 2020 Shared Microbility Readiness study commissioned by the Halifax Regional Municipality:\textsuperscript{91} a

\textsuperscript{88} See Lowe, supra note 75; see also Chihsin, supra note 22, at 38.

\textsuperscript{89} See Hansard Debates, supra note 1. The Hansard Debates also demonstrated concern about the lack of funding and support for local skateparks. Id.

\textsuperscript{90} See, e.g., mlmcclure, Comment to Skateboard use in hrm, REDDIT (Aug. 14, 2018, 12:04 PM), www.reddit.com/r/halifax/comments/974i0b/skateboard_use_in_hrm [https://perma.cc/CH9V-XKWS].

\textsuperscript{91} ALTA PLANNING + DESIGN FOR HALIFAX REGIONAL MUNICIPALITY, SHARED MICROBILITY READINESS STUDY – WHAT WE HEARD REPORT 4 (2020), https://ehq-
desire for transportation options in the HRM that would address the ongoing climate crisis especially with regard to transportation options not involving cars; the need for “low-stress infrastructure” through features such as bike lanes and paths in order to feel safer using shared microbility; some support for existing mandatory helmet requirements alongside others who did not support the continued helmet requirement; and concern for how sidewalks would be shared between electric microbility vehicles and pedestrians.92

Like skateboards, other microbility devices like electric scooters (e-scooters) also used to fall into a legislative “grey area” due to an unclear regulatory framework.93 However, unlike laws pertaining to skateboards, recent amendments to the Nova Scotia Motor Vehicle Act have responded by providing greater clarity with regards to microbility devices like e-scooters.94 Even though the Province had indicated that the new Traffic Safety Act should include treatment of e-scooters, there remained a lack of certainty or clarity as to what these rules would be, thus, it was thought, necessitating these further amendments to the existing Motor Vehicle Act.95

The additional clarifications and guidance regarding legally permissible use are viewed as an important development in terms of supporting local shared mobility initiatives, as well as encouraging environmentally-friendly transportation alternatives to cars, other than bikes.96 The Motor Vehicle Act had not previously included e-scooters within the types of vehicles and devices used on public streets and sidewalks, did not address how they were to be regulated, and e-scooters did not fall within the narrow
definition for “personal transporter.”97 The new amendments address this definitional gap, include a definition for “electric kick-scooter,” and further clarify the term by adding “electric scooter” (and bicycle) to the former exclusion of only “personal transporters” from the definition of “motor vehicle.”98

There are many other detailed clarifications in the new amendments as well. For example, the amendments include a mandatory minimum operating age of fourteen for e-scooters,99 a maximum speed limit of either 32 km/h or a lower limit prescribed at the discretion of a municipality via municipal bylaw,100 and the mandatory wearing of a helmet that (as is the case with bicycles and skateboards) conforms to applicable regulations and standards, which include the secure fastening of the helmet underneath the chin.101 Where e-scooters are operated on a road, “the operator of the electric kick-scooter is deemed to be a cyclist” and must follow the provisions that apply to cyclists — similar to what the Halifax skateboarding community has been unsuccessfully advocating for in the treatment of skateboarding for many years.102 The Act now also provides detailed rules and instructions as to how an e-scooter should be operated — down to the details of what an operator should do if the e-scooter does not have turn signal lights,103 how

97. Transp. Pub. Works, supra note 93. A “personal transporter” is defined by the Act as “a self-balancing electric vehicle with two side-by-side wheels and designed for the personal transportation of a single person and, for greater certainty, includes a Segway.” Id. at 2–3.
98. Bill 134 at s 1–2; see also Motor Vehicle Act, R.S.N.S., 1989, c 293, s 2(ad), (mb)(i–v) (Can.).
99. Motor Vehicle Act, c 293, s 69(5).
100. Id. at s 106(4).
101. Motor Vehicle Act, c 293, s 170A(1)–(2).
102. Id. at s 85B(1); Ellsworth & Leavitt, supra note 21.
103. Motor Vehicle Act, c 293, s 85B(5).

The operator of an electric kick-scooter shall
(a) where the electric kick-scooter is not equipped with turn signal lights, signify
   (i) a left turn by extending the person’s left hand and arm horizontally from
       the electric kick-scooter, and
   (ii) a right turn by either
        (A) extending the person’s left hand and arm out and upward from the
            electric kick-scooter so that the upper and lower parts of the arm are at right
            angles, or
        (B) extending the person’s right hand and arm out horizontally from
            the electric kick-scooter;
(b) where the electric kick-scooter is equipped with red, white, yellow or amber turn
    signal lights that are visible from behind and in front of the electric kick-scooter, signify a
    right or left turn by either
    (i) activating the appropriate turn signal light, or
    (ii) extending the person’s hand and arm as described in clause (a); and
an operator should ride the e-scooter on a highway, and what behaviour should be avoided, including the clarification that a rider should not “practise any trick or fancy riding on a highway."  

CONCLUSION

As this Article canvasses, skateboarding in Halifax, Canada provides an example of how differential treatment within the shared spaces of a city — public, common, quasi-public spaces — can result through the choice of a particular kind of personal transportation device over another, despite policies to encourage environmentally-friendly, sustainable transportation and commuting options. This Article further explores how this differential treatment is sometimes due to grey areas and gaps created by underdeveloped legal frameworks pertaining to a particular property use or activity. The frustration that exists within Halifax’s skateboarding community regarding the failure of adequately developed legal frameworks for permissible skateboarding use within the city’s shared spaces is in stark contrast to bicycling and cyclists and persists despite the ongoing advocacy of the skate community, which is even more surprising considering recent amendments to the Motor Vehicle Act to include e-scooters (a much more recent trend in microbility options) generated in response to similar gaps regarding the permissible use of e-scooters within Halifax’s shared common and public spaces.

An overarching question linked to the material canvassed in this Article is the reality of current structures and understandings of “common” property in a city. If common property is property that is collectively owned but where “outsiders” can be excluded, then new questions arise. Who or

---

(c) signify a stop or decrease in speed by extending the person’s left hand and arm out and downward from the electric kick-scooter so that the upper and lower parts of the arm are at right angles, unless the electric kick-scooter is equipped with a visible red light at the rear that is activated when the person operating the electric kick-scooter applies the brakes.

104. Id. at s 172C.

(1) An operator of an electric kick-scooter shall not remove both hands from the handlebars while riding the electric kick-scooter nor practise any trick or fancy riding on a highway.

(2) Where a roadway has a bicycle lane for bicycles travelling in the same direction that a cyclist is travelling, the operator of an electric kick-scooter shall ride in the bicycle lane unless it is impracticable to do so.

(3) An operator of an electric kick-scooter who is not riding in a bicycle lane shall ride as far to the right side of the roadway as practicable or on the right-hand shoulder of the roadway unless the operator is

(a) in the process of making a left turn in the same manner as a driver of a motor vehicle;

(b) travelling in a rotary or roundabout;

105. Hamill, supra note 48, at 372.
what constitutes an “outsider”? What uses of common space or behaviours within common spaces are coded as “outsider” use or behaviour? When are such spaces and behaviors then excluded through either blanket prohibitions or vague rules and regulations, making it difficult to engage in a use of space without any kind of certainty as to whether the applicable rules and regulations are being followed and penalization is avoided? As the experiences of the skateboarding community in Halifax are a testament to, it seems difficult to avoid differential or disproportionately targeted enforcement of these vague rules. But where those involved within the affinity space(s) of skateboarding represent portions of a city’s population that policies noted previously seek to include for the sake of equitable urban participation, consultation, inclusion, and civic engagement, then avoidable differential treatment that leads to distrust, disaffection, and exclusion within such a community is a disjunctive problematic cog in the successful creation and meaningful implementation of inclusive urban sustainable development processes.

APPENDIX

Motor Vehicle Act, R.S.N.S., c 293, s 170B (1989) (Can.)

170B: Helmet for scooter, skate board, in-line skates, roller skates, etc.

(1) No person shall ride on or operate a scooter, skate board, inline skates, roller skates or other device prescribed by the regulations unless the person is wearing a helmet that complies with the regulations and the chin strap of the helmet is securely fastened under the chin.

(2) No parent or guardian of a person under sixteen years of age shall authorize or knowingly permit that person to ride on or operate a scooter, a skate board, in-line skates, roller skates or other device prescribed by the regulations unless the person is wearing a helmet as required by subsection (1).

(3) For greater certainty, nothing in this Section authorizes any person to ride on or operate a scooter, a skate board, in-line skates, roller skates or other device prescribed by the regulations if otherwise prohibited by this Act or another enactment.

(4) Every person who is sixteen years of age or older who violates a provision of this Section is guilty of an offence and liable on summary conviction to a fine of not less than twenty-five dollars.

(5) A peace officer may seize and detain, for a period not to exceed thirty days, a scooter, a skate board, in-line skates, roller skates or other device prescribed by the regulations that is being ridden on or operated by a person not wearing a helmet as required by subsection (1).

(6) The Governor in Council may make regulations

(a) prescribing standards and specifications for helmets;
(b) providing for and requiring the identification and marking of helmets;

(c) prescribing devices for the purpose of this Section;

(d) exempting any person or class of persons from the requirements of this Section and prescribing conditions for exemptions.

(7) The exercise by the Governor in Council of the authority contained in subsection (6) is regulations within the meaning of the Regulations Act, 2002, c. 20, s. 3; 2006, c. 37, s. 2.

[...]

172 Roller skates or skate board

(1) Subject to subsection (2), it shall be an offence for a person upon roller skates or a skate board to go on a roadway except while crossing on a crosswalk or unless on a roadway authorized by the Minister.

(2) The council of a city or an incorporated town may exempt from subsection (1) any roadway within that city or town that is not a highway to which the Public Highways Act applies. R.S., c. 293, s. 172.

Summary Offence Tickets Regulations, N.S. Reg. 281/2011 (Can.)

Schedule 4, Motor Vehicle Act

<table>
<thead>
<tr>
<th>No.</th>
<th>Offence</th>
<th>Section</th>
<th>Out of Court Settlement</th>
</tr>
</thead>
<tbody>
<tr>
<td>306</td>
<td>Person 16 or older riding or operating scooter, skateboard, in-line skates, roller skates or other prescribed device (specify) without wearing helmet complying with regulations or with chin strap of helmet not securely fastened under chin (specify)</td>
<td>170B(4)</td>
<td>$151.25</td>
</tr>
</tbody>
</table>

[...]

<p>| 314 | Roller skating or skateboarding (specify) on roadway | 172     | First offence: $151.25 | Second offence: $180.00 |</p>
<table>
<thead>
<tr>
<th>No.</th>
<th>Offence</th>
<th>Section</th>
<th>Out of Court Settlement</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Third or subsequent offence: $237.50</td>
</tr>
</tbody>
</table>

**Figure A – Local Bylaws and Regulations Affecting Skateboarding**

<table>
<thead>
<tr>
<th>Schedule &amp; Region</th>
<th>Offence</th>
<th>Section</th>
<th>Out of Court Settlement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schedule 19 Bylaws and Regulations made under the Halifax-Dartmouth Bridge Commission Act</td>
<td>Roller skating or skateboarding on Commission property</td>
<td>26(a)</td>
<td>First offence: $151.25</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Second offence: $180.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Third or subsequent: $237.50</td>
</tr>
<tr>
<td>Halifax-Dartmouth Bridge Commission By-law No 2007-1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Schedule M-14 Region of Queens Municipality By-laws</td>
<td>Skateboarding, in-line skating, roller-blading or roller-skating (specify) in or on any part of Fort Point Lighthouse Park or parking lot to east of Liverpool Visitor Information Centre or sidewalk or curb thereof (specify location)</td>
<td>2</td>
<td>$134.00</td>
</tr>
<tr>
<td>Skateboarding By-law - No. 12</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Skateboarding, in-line skating, roller-blading or roller-skating (specify) in or on any part of municipal sidewalk, street or curb in Liverpool on Main Street from Union Street to Court Street (specify location)</td>
<td>3(a)</td>
<td>$134.00</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>3(b)</td>
<td>$134.00</td>
</tr>
<tr>
<td>Schedule &amp; Region</td>
<td>Offence</td>
<td>Sect ion</td>
<td>Out of Court Settlement</td>
</tr>
<tr>
<td>------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>----------</td>
<td>-------------------------</td>
</tr>
<tr>
<td></td>
<td>Skateboarding, in-line skating, roller-blading or roller-skating (specify) in or on any part of municipal sidewalk or street or curb in Liverpool on Market Street from Main Street to Water Street (specify location)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Schedule M-15</td>
<td>Using skateboard, roller blades or roller skates (specify) on street, sidewalk or parking area (specify) in prohibited area</td>
<td>3</td>
<td>$151.25</td>
</tr>
<tr>
<td>Town of Antigonish By-laws</td>
<td>Skating By-law</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Using skateboard, roller blades or roller skates (specify) on or about the steps or entrances of any building in prohibited area</td>
<td>4</td>
<td>$151.25</td>
</tr>
<tr>
<td>Schedule M-19</td>
<td>Skateboarding, roller blading, using scooter or roller skating (specify) in or on area specified in by-law (specify)</td>
<td>9(8)(a)</td>
<td>$273.50</td>
</tr>
<tr>
<td>Town of Digby By-laws</td>
<td>Public Places By-law—No. 2009-05</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Bicycling, skateboarding, in-line skating, roller blading, roller skating or using scooter (specify) on sidewalk or curb in area specified in by-law (specify)</td>
<td>9(8)(b)</td>
<td>$237.50</td>
</tr>
<tr>
<td>Schedule &amp; Region</td>
<td>Offence</td>
<td>Sect ion</td>
<td>Out of Court Settlement</td>
</tr>
<tr>
<td>-------------------</td>
<td>---------</td>
<td>----------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>Schedule M-22</td>
<td>Skateboarding on sidewalk</td>
<td>3</td>
<td>$151.25</td>
</tr>
<tr>
<td>Town of Lunenburg By-laws</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Skateboarding and In-line Skating By-law - No. 53</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Schedule M-26</td>
<td>Using skateboard on sidewalk</td>
<td>2</td>
<td>$237.50</td>
</tr>
<tr>
<td>Town of Windsor By-laws</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Skateboarding By-law</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Schedule M-27</td>
<td>Using or operating skateboard or scooter (specify) in Prohibited Area 1</td>
<td>2</td>
<td>$180.00</td>
</tr>
<tr>
<td>Town of Wolfville By-laws</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Skateboarding By-law</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Operating a skateboard or scooter (specify) in Prohibited Area 2</td>
<td>2</td>
<td>$180.00</td>
</tr>
</tbody>
</table>