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Water Pipes in Public Places and Workplaces By-law

A by-law of the City of Ottawa respecting the use of water pipes in public places and workplaces.

WHEREAS it has been determined that water pipe smoking can negatively affect indoor air quality for indicators including carbon monoxide and particulate matter, which poses health risks to water pipe users and those exposed to the second-hand smoke, vapour, or gas that are associated with or result from water pipe use;

AND WHEREAS paragraph 6 of subsection 10(2) of the *Municipal Act, 2001* provides that a municipality may pass by-laws respecting health, safety and well-being of persons;

AND WHEREAS the Council of the City of Ottawa has the authority to pass by-laws prohibiting and regulating the smoking of tobacco in public places and workplaces within the municipality pursuant to Section 115 of the *Municipal Act, 2001*, S.O. 2001, c.25;

THEREFORE the Council of the City of Ottawa enacts as follows:

Definitions

1. In this by-law:
 - (a) “charcoal” means a combustible substance whose primary purpose is to burn or heat a smoking product;
 - (b) "Council" means the City Council of the City of Ottawa;
 - (c) “employer” includes an owner, operator, proprietor, manager, superintendent, overseer, receiver or trustee of an activity, business, work, trade, occupation, profession, project or undertaking who has control or direction of, or is directly or indirectly responsible for, the employment of a person in it;
 - (d) “enclosed public place” means the inside of any place, building or structure or vehicle or conveyance or a part of any of them that is covered by a roof and to which the public is ordinarily invited or

permitted access, either expressly or by implication, whether or not a fee is charged for entry;

- (e) “electronic cigarettes act” means the *Electronic Cigarettes Act, 2015*, S.O. 2015, c. 7, Sch. 3, as amended, and any regulation passed under it;
- (f) “enclosed workplace” means the inside of any place, building or structure or vehicle or conveyance or a part of any of them that is covered by a roof, and employees work in or frequent during the course of their employment whether or not they are acting in the course of their employment at the time;
- (g) "inspector" means a person appointed by Council as a municipal by-law enforcement officer to enforce this by-law;
- (h) “Municipal Act” means the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, and any regulation passed under it;
- (i) “outdoor patio” means an outdoor area including but not limited to the area subject to a café seating or outdoor patio encroachment permit under Encroachment By-law 2013-446, as amended or any successor by-law, where the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry, or that is worked in or frequented by employees during the course of their employment, whether or not they are acting in the course of their employment at the time, and where food or drink is served or sold or offered for consumption, or that is part of or operated in conjunction with an area where food or drink is served or sold or offered;
- (j) "person" includes a corporation;
- (k) "proprietor or other person in charge" means the person who controls, governs or directs the activity carried on within the premises designated as prohibited areas under this by-law and includes the person who is actually in charge thereof at any particular time;
- (l) “roof” means a physical barrier of any size, whether temporary or permanent, that covers an area or place or any part of an area or

place, and that is capable of excluding rain or impeding airflow, or both;

- (m) “smoking product” means any substance whose primary purpose is to be burned or heated to produce vapours, gases, or smoke, which may be inhaled, and shall include but is not limited to non-tobacco herbal shisha, and other plant material or oils intended for inhalation;
- (n) "use", with respect to a water pipe, includes the carrying of any lighted or heated water pipe as well as inhaling or exhaling vapour, smoke, or gas associated with or resulting from water pipe use;
- (o) “water pipe” means a device, whether called a water pipe, hookah or any other name, that burns or heats a tobacco or non-tobacco substance or a combination thereof, with which the vapor, smoke or gases may pass through liquid prior to being inhaled, and excludes an electronic cigarette as defined under the electronic cigarettes act.

General Prohibitions

2. No person shall use a water pipe in any enclosed public place, enclosed workplace or outdoor patio.

Duties

3. No employer, proprietor or other person in charge of an enclosed public place, enclosed workplace, or outdoor patio shall permit the use of a water pipe in the enclosed public place, enclosed workplace, or outdoor patio.

4. No employer, proprietor or other person in charge of an enclosed public place, enclosed workplace, or outdoor patio shall display or permit the display of a water pipe or component of a water pipe that contains or has on it a smoking product, residue of a smoking product, charcoal, or liquid that smoke or gases may pass through prior to being inhaled.

Offences and Penalties

5. (1) Subject to subsection (2), every person who contravenes any provision of this by-law is guilty of an offence as provided for in subsection 429(1) of the Municipal Act.
- (2) Every person who hinders or obstructs a person lawfully carrying out the enforcement of this by-law is guilty of an offence.
6. A person who is convicted of an offence under Section 5 of this by-law is liable to a minimum fine of \$500.00 and a maximum fine of \$100,000.00 as provided for in subsection 429(3), paragraph 1 of the Municipal Act.
7. A person who is convicted of an offence under Section 5 of this by-law is liable, for each day or part of a day that the offence continues, to a minimum fine of \$500.00 and a maximum fine of \$10,000.00 and the total of all daily fines for the offence is not limited to \$100,000.00 as provided for in subsection 429(3), paragraph 2 of the Municipal Act.
8. When a person has been convicted of an offence under this by-law, the Ontario Court of Justice or any court of competent jurisdiction thereafter, may, in addition to any penalty imposed on the person convicted, issue an order:
 - (a) prohibiting the continuation or repetition of the offence by the person convicted; and
 - (b) requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

Enforcement

9. This by-law is enforced by inspectors.

Inspectors

10. (1) An inspector may, at any reasonable time, enter any enclosed public place, enclosed workplace, or outdoor patio for the purposes of determining compliance with this by-law.
- (2) For the purposes of an inspection under subsection (1), and inspector may,

- (a) require the production for inspection of documents or things relevant to the inspection;
- (b) inspect and remove documents or things relevant to the inspection for the purposes of making copies or extracts;
- (c) require information from any person concerning a matter related to the inspection; and,
- (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.

Exemption

11. This by-law does not apply to any premises used primarily as a private dwelling.

Severability

12. If any section or sections of this by-law or parts thereof are found in any court of law to be illegal or beyond the power of Council to enact, such section or sections or parts thereof shall be deemed to be severable and all other sections or parts of this by-law shall be deemed to be separate and independent therefrom and to be enacted as such.

Effective Date

13. This by-law shall come into effect on .

Short Title

14. This by-law may be cited as the "Water pipes in Public Places and Workplaces By-law".