

**Report to  
Rapport au:**

**Community and Protective Services Committee  
Comité des services communautaires et de protection  
17 September 2020 / 17 Septembre 2020**

**and Council  
et au Conseil  
23 September 2020 / 23 Septembre 2020**

**Submitted on September 8, 2020  
Soumis le 8 Septembre 2020**

**Submitted by  
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**Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE      File Number: ACS2020-EPS-GEN-0006**

**SUBJECT: Amendments to enhance the enforcement of the Smoking and  
Vaping By-law (No. 2019-241)**

**OBJET: Modifications visant à faciliter l'application du *Règlement municipal  
sur l'usage de produits à fumer ou à vapoter* (n° 2019-241)**

## **REPORT RECOMMENDATIONS**

**That the Community and Protective Services Committee recommend that Council approve the proposed amendments to the Smoking and Vaping By-law (No. 2019-241), all in the general form set out in Document 1, and as described in this report.**

## **RECOMMANDATIONS DU RAPPORT**

**Que le Comité des services communautaires et de protection recommande au Conseil d'approuver les modifications proposées au *Règlement municipal sur l'usage de produits à fumer ou à vapoter* (n° 2019-241) dans la forme générale du document 1 et de la façon décrite dans le présent rapport.**

## **EXECUTIVE SUMMARY**

### **Assumption and Analysis**

Smoking regulations have been in place in Ottawa since 2001 to protect the public and employees working in establishments from practices that are adverse to health and to the public interest. As an ongoing effort to prevent the public use of tobacco and various smoking and vaping products, By-law and Regulatory Services (BLRS) has been proactive and consistent in addressing non-compliance issues of these regulations by continuously enforcing restrictions imposed by the by-laws and the *Smoke-Free Ontario Act, 2017* ("SFOA, 2017").

The SFOA, 2017 prohibits the smoking of tobacco, the use of electronic cigarettes (e-cigarettes) to vape any substance, and the smoking of cannabis in enclosed workplaces and enclosed public places, as well as other designated places in Ontario, to protect workers and the public from second-hand smoke and vapour.

The Smoking and Vaping By-law (No. 2019-241) harmonized and replaced the City's previous smoking regulations by prohibiting smoking and vaping of any and all substances in places where smoking tobacco has traditionally been prohibited. However, some establishments continue to operate in violation of the by-law, particularly with respect to water pipe use, and present significant enforcement challenges. Therefore, this report proposes amendments to the Smoking and Vaping By-law (No. 2019-241) to include property owners under the chargeable provisions of the by-law. Enhancing existing policies to include "property owners" is a step forward in ensuring tenants of all public enclosed establishments conducting activities associated with smoking and vaping products are responsible for knowing and complying with the

legislation. These proposed amendments would assist in the enforcement of establishments that have been convicted and continue to be non-compliant.

This report also fulfills the direction to staff from the [June 20, 2019](#) meeting of Community and Protective Services Committee to address unlicensed water-pipe establishments.

## **BACKGROUND**

### **Authority**

Currently, smoking prohibitions in effect in Ottawa are imposed by both by-laws and through the Provincial SFOA, 2017, depending on the specific area or activity that is regulated.

The authority for municipalities to enact smoking and vaping regulations is derived from the *Municipal Act, 2001*. In particular:

- Subsection 10(2) paragraphs 6 and 8 authorize the municipality to pass by-laws respecting the health, safety, and well-being of persons and the protection of persons and property;
- Section 115 of the Act further authorizes municipalities to prohibit or regulate smoking and vaping tobacco and cannabis in public places and workplaces excluding the roadway and sidewalk, in addition to allowing municipalities to define “public places” for the purposes of these prohibitions, to require appropriate signage on site, and to generally require the owners or occupiers of these places to ensure compliance;
- Section 128 of the Act authorizes a municipality to prohibit and regulate with respect to public nuisances and allows municipal councils to determine what is, or could become, a public nuisance for the purpose of those prohibitions.

Under the SFOA, 2017, municipalities are specifically authorized to enact smoking and vaping regulations in by-laws, which are permitted to be stricter than the regulations found in the SFOA, 2017.

### **Legislative History**

In 2016, Council enacted the Water Pipes in Public Places and Workplaces By-law (By-law No. 2016-303, as amended) which prohibited the use of water pipes in enclosed public places, enclosed workplaces, and on outdoor restaurant and bar patios (Ref No: ACS2016-OPH-BOH-0004). These regulations were based on the growing evidence of harmful health effects of herbal water pipe smoking and on second-hand smoke

exposure to workers and the public, and that water pipe smoke contains many of the same toxins known to cause cancer, heart disease, and lung disease.

On December 13, 2018, Council directed staff to review the City's smoking-related by-laws and harmonize the regulations to include cannabis and vaping (Motion No. 3/6, ACS2018-EPS-GEN-0011). As part of that same motion, staff were also directed to consult with Ottawa Public Health and any other affected City departments to make any recommendations for other amendments to the smoke-free regulations as an outcome of those consultations, if any.

The Public Policy Development branch within the Emergency and Protective Services Department (EPS) reviewed the various smoking prohibitions in the City of Ottawa's by-laws and recommended amendments to ensure a harmonized approach in terms of the smoking and vaping of tobacco, cannabis, and other substances, and to generally align with the Provincial SFOA, 2017.

On June 26, 2019, Ottawa City Council approved report number ACS2019-EPS-GEN-0008, which recommended the harmonization of the smoking prohibitions previously found throughout several City of Ottawa by-laws so that they consistently prohibit smoking and vaping of tobacco, cannabis, and any other substance. This resulted in the harmonized Smoking and Vaping By-law (No. 2019-241) which replaced the previous smoking regulations, including the Water Pipes in Public Places and Workplaces By-law (By-law No. 2016-303, as amended), and came into effect on November 1<sup>st</sup> 2019. This harmonized approach provided clarity for the public as well as ease of enforcement for By-law and Regulatory Services.

### **Enforcement**

City of Ottawa By-law Enforcement Officers, may at any reasonable time and without prior notice, enter any public place or workplace to ensure compliance with the by-laws. Upon enactment of the Water Pipes in Public Places and Workplaces By-law in 2016, a progressive enforcement approach was taken starting with education, and moving to warnings and ultimately, fines.

The warning phase commenced in December 2016, the year the new water pipe regulations took effect, and the public awareness campaign continued throughout the winter. During this time, Ottawa Public Health staff and By-law Enforcement Officers conducted joint educational visits in water pipe establishments to ensure they were aware of the new regulations.

In spring of 2017, By-law Officers began issuing charges to any business owners who did not take all reasonable steps to prevent the use of water pipes within their

establishment. Additionally, charges were issued to any person(s) found using a water pipe within an enclosed public place or workplace.

By-law and Regulatory Services also began revoking food premise licenses of water pipe establishments found to be in non-compliance of the by-law, in addition to working in conjunction with the Alcohol and Gaming Commission of Ontario (AGCO) to revoke liquor licenses. However, as some of these establishments do not serve food or alcoholic beverages, this enforcement method is not always possible.

In 2019 BLRS conducted 367 inspections of water pipe establishments, which resulted in 315 charges. As a result of the global pandemic (COVID-19), the number of inspections undertaken in 2020 is lower than usual as Officers were not attending these establishments. Despite the decline in inspections this year, 78 inspections have been conducted, resulting in 58 charges.

The number of known establishments has increased from 17 to 20 from 2016 to date. This demonstrates that despite the current regulations, enforcement efforts and steep fines imposed by the Courts, the owners of water pipe establishments continue to flout the law by continuing to operate.

The enforcement of the smoking and vaping restrictions in privately owned establishments designated as public places has remained a struggle for By-law and Regulatory Services as it mainly relies on employer, proprietor, or other person in charge to ensure people refrain from smoking on their property. The existing definitions in the Smoking and Vaping By-law (No. 2019-241) do not include "property owner", nor do the chargeable provisions of the by-law include "property owner" which have contributed to the reduced efficacy of enforcement efforts and resultant continued violations.

## **DISCUSSION**

The Smoking and Vaping By-law regulations are in place to protect both the public and employees in public places and workplaces, and the use and display of water pipes are both contrary to municipal law and adverse to the public interest.

By-law and Regulatory Services is proposing amendments to include a reference to the "property owner" of the premises as being responsible, in addition to the employer or proprietor. These amendments to the Smoking and Vaping By-law (No. 2019-241) to include "property owners" as accountable under the chargeable provisions of the by-law would permit By-law and Regulatory Services to implement new sanctions on establishments allowing the continuation and repetition of offences. This approach of

holding various relevant parties accountable is consistent in its effect with comparable by-laws, such as the Noise By-law (No. 2017-255) and the Property Standards By-law (No. 2013-416), where both tenants and property owners can be held responsible if deemed necessary.

If approved, the proposed amendments will facilitate enforcement of the requirements of the Smoking and Vaping By-law as they will allow for issuance of charges against the property owner as well as the employer/proprietor of the business contravening the regulations, thus holding all parties accountable. Furthermore, the amendments would also facilitate the property owner's awareness of, and potentially prevent, illegal activity taking place on their property.

### **Recommendations**

Staff is recommending amending Section 1 of the Smoking and Vaping By-law (No. 2019-241) to include the definition of "property owner" as "registered owner on title of the property; the person, for the time being, managing or receiving the rent of the land or premises in connection with which the word is used, whether on the person's own account or as agent or trustee of any other person, or who would receive the rent if the land and premises were let; and, the lessee or occupant of the property".

Staff is also recommending repealing and replacing Sections 4, 5, 6, and 7(1) to reflect the "property owner" in addition to the employer, proprietor, or other person in charge of an enclosed public place, enclosed workplace, outdoor restaurant or bar patio, a ByWard Market stand, or a Parkdale Market stand, as being responsible for:

- ensuring no smoking or vaping in the enclosed public place, enclosed workplace, outdoor restaurant or bar patio, or stand;
- ensuring no display of a water pipe or component of a water pipe;
- ensuring no ashtrays are placed or remain in any place where smoking and vaping are prohibited;
- and ensuring signs are posted indicating that smoking and vaping are not permitted.

Amending the Smoking and Vaping By-law to include "property owner" gives By-law and Regulatory Services the tools needed to improve the efficacy of enforcement by being able to charge not only the owner of the establishment, but the property owner as well, should it be deemed necessary.

The proposed amendments are consistent with Council's intent with respect to smoking and vaping regulations and support public health policies.

### **RURAL IMPLICATIONS**

There are no rural implications associated with this report, as the by-law applies city-wide.

### **CONSULTATION**

On May 28, 2020, By-law and Regulatory Services (BLRS) staff sent a letter to property owners of seventeen (17) locations that have been investigated in relation to violations of the Smoking and Vaping By-law (No. 2019-241), specifically the display and use of water pipes in an enclosed public space. This letter outlined BLRS' intentions to propose to Committee and Council amendments to the Smoking and Vaping By-law to include a reference to the "property owner" as being responsible to ensure that the use and display of smoking devices such as water pipes, within an enclosed public place or enclosed workplace are not permitted. A copy of this letter is attached to this report as Document 2.

Staff received eight calls supporting the proposed amendments and one letter was received opposing the amendments. Overall, property owners understood the need for additional enforcement measures and wanted their premises to be in compliance with all laws and regulations.

### **COMMENTS BY THE WARD COUNCILLOR(S)**

Not applicable as this is a City-wide report.

### **ADVISORY COMMITTEE(S) COMMENTS**

No advisory committees were consulted in preparation of this report.

### **LEGAL IMPLICATIONS**

There are no legal impediments to implementing the recommendations of this report. As cited under the discussion section of this report the authority under which the by-law was enacted by Council and the proposed amendments are under the Municipal Act, 2001 and the Smoke-Free Ontario Act, 2017 (the "SFOA, 2017"). Pursuant to paragraph 6 of Section 10(2) of the Municipal Act, 2001, Council may enact by-laws respecting health, safety, and well-being of persons, and pursuant to Section 115 Council may enact by-laws to prohibit or regulate smoking and vaping tobacco and cannabis in public

places and workplaces that may be stricter than the provisions of the SFOA, 2017. The recommended amendments to the Smoking and Vaping By-law 2019-241 hold a broader category of persons accountable for activities prohibited under the By-law that occur at a premises. Both lessor and lessee and any individual person or corporation that is managing or receiving rent may be charged should water pipes (hookahs) be used in certain places including enclosed public places and workplaces and restaurant and bar patios. This approach is similar to the current provisions of the Ontario Cannabis Control Act, 2017, which provides that “no person shall knowingly permit a premises of which he or she is a landlord to be used in relation to an activity prohibited by section 6”, being the sale or distribution of cannabis by a person who is not an authorized cannabis retailer. It is notable that the maximum fines and penalties set out in the Cannabis Control Act, 2017 are the same for a person conducting the prohibited activity, as for the landlord. Similarly, the offence provisions of the Smoking and Vaping By-law set out maximum fines that would apply equally to any person convicted of an offence under the By-law, including a property owner and tenant.

### **RISK MANAGEMENT IMPLICATIONS**

There are no risk management implications associated with this report.

### **FINANCIAL IMPLICATIONS**

There are no direct financial implications associated with this report.

### **ACCESSIBILITY IMPACTS**

There are no direct impacts on persons with disabilities or older adults associated with the contents of this report. All information is available in accessible formats.

### **TERM OF COUNCIL PRIORITIES**

The recommendations of this report support the 2019-2022 Term of Council Priority of Thriving Communities: Promote safety, culture, social and physical well-being for our residents.

### **SUPPORTING DOCUMENTATION**

Document 1: Proposed Smoking and Vaping Amending By-law

Document 2: Letter to Property Owners



**DISPOSITION**

By-law and Regulatory Services, in conjunction with any other relevant Branches/Departments, will implement Council directions emanating from this report, as appropriate.

Upon approval, By-law and Regulatory Services, in conjunction with Legal Services, will prepare the required by-law amendments for enactment by Council.