



Hamilton

INFORMATION REPORT

TO:	Mayor and Members General Issues Committee
COMMITTEE DATE:	August 10, 2015
SUBJECT/REPORT NO:	Regulating Guns and/or Ammunition (LS15020)
WARD(S) AFFECTED:	City Wide
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SUBMITTED BY:	Janice Atwood-Petkovski City Solicitor Legal Services, City Manager's Office
SIGNATURE:	

Direction to Staff:

Staff were directed to report on options with respect to the City's authority over guns and/or ammunition.

Information:

Federal and Provincial Legislation

The jurisdiction to regulate firearms (including ammunition) falls to Parliament under the federal criminal law power. Parliament regulates firearms under the *Criminal Code* and the *Firearms Act*. Section 4 of the *Firearms Act* sets out the purpose of the Act, which is wide-ranging: to regulate the licensing, possession, sale, manufacture, transfer and importation or exportation of firearms in circumstances that would otherwise constitute an offence under the *Criminal Code*. For example, under the *Firearms Act*, any business (including a museum) that possesses, manufactures or sells ammunition, firearms, restricted or prohibited weapons, or prohibited devices, must have a federal business licence. The federal business licence requirements are comprehensive, covering employee qualifications, inventory and sales reporting, and safe storage, display and transportation.

The Province of Ontario, which has jurisdiction over firearms (again, including ammunition) under its property and civil rights power, has enacted legislation regulating and prohibiting the sale of ammunition, deactivated firearms and imitation firearms to anyone under 18 years of age. In addition, it regulates hunting. The Province under section 119 of the *Municipal Act*, has provided municipalities with the specific and limited jurisdiction to prohibit or regulate the discharge of guns or other firearms, air-guns, spring-guns, cross-bows, long-bows or any other weapon.

Given the extent of federal and provincial legislation, there is little room left for the City to exercise its general jurisdiction to protect persons and property without duplicating or conflicting with that legislation, which would render any by-law ineffective under s. 14 of the *Municipal Act*.

Municipal By-laws

The City does have specific jurisdiction over the discharge of firearms under section 119 of the *Municipal Act*. This jurisdiction is exercised in the Discharge of Firearms By-law No. 05-114 (the “By-law”). The By-law prohibits the discharge of firearms within the City limits with exemptions for military and law enforcement purposes and for shooting ranges and gun shops that are federally regulated. There are also exemptions for hunting and recreational purposes in certain areas of the City and for the protection of livestock and produce on farmlands. The By-law is in need of updating, for example to improve the maps detailing where the discharge of firearms is permitted for hunting purposes. This would require consultation with stakeholders.

In addition to being up-dated, the By-law could be amended to clearly reinforce the federal and provincial regulation of firearms. For example, in regulating the discharge of firearms, the By-law does not currently indicate explicitly that the hunting exemption does not apply to handguns and fully-automatic guns. Handguns are either classified as restricted or prohibited under federal legislation and fully-automatic guns are classified as prohibited under federal legislation. Provincial legislation bars restricted handguns from being used for hunting and, obviously, no prohibited guns of any type can be used for hunting.

In 2008, the City of Toronto amended its zoning by-law to prohibit manufacturing, warehouse or showroom uses involving firearms. This would not have affected such uses if they were legally zoned at the time of the amendment. In addition, as these are not otherwise illegal uses, they could be allowed through a site specific zoning by-law amendment, with the Ontario Municipal Board not the City having the final say on their location. The 2008 amendment also prohibited uses involving the discharge of a firearm except in an enclosed building for military or law enforcement purposes. Again, this would not have affected such uses if they were legally zoned at the time of the amendment and they could be allowed through a site specific zoning by-law amendment.