



CITY OF HAMILTON
Public Health Services
Healthy Living Division

TO:	Mayor and Members Board of Health
COMMITTEE DATE:	September 19, 2016
SUBJECT/REPORT NO:	Sale and Display of Drug paraphernalia in Convenience Stores Licensed as Food Premises (BOH16022) (City Wide)
WARD(S) AFFECTED:	City Wide
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RECOMMENDATION

- (a) That the upcoming Business Licensing By-law 07-170 rewrite will include an amendment banning the visual display and promotion of drug paraphernalia and also prohibiting the sale of these items to anyone under the age of 19 years in convenience stores, licensed as food premises; and,
- (b) That this item be removed from the Outstanding Business List.

EXECUTIVE SUMMARY

The purpose of the recommendation is to address the cultural normalization of drug paraphernalia sold alongside everyday items such as milk and bread at convenience stores. Children and adolescents frequently enter convenience stores to purchase candy or other items that appeal to young people, and see visible displays of drug paraphernalia. This display of drug paraphernalia beside products such as candy, milk and bread suggests to young people that water pipes and bongs are a normal part of life. Geographic Information System (GIS) mapping shows that many of the convenience stores in the City of Hamilton are within walking distance (1.6km) of elementary and secondary schools (Appendix A).

Public Health Services (PHS) recommends this amendment banning the visible display and promotion of drug paraphernalia and also prohibiting the sale of these items to anyone under the age of 19 years (consistent with prohibition of tobacco sales to minors).

The primary objective of this report is to refer the regulatory amendments surrounding the sale and display of drug paraphernalia, specifically water pipes and bongs to the Licensing Division to incorporate during the review and rewrite of Food Premises (Schedule 21) of the Business Licensing Bylaw 07-170. PHS will work with the Licensing Division to ensure that the proposed amendment addresses both the visible display of drug paraphernalia and sales to minors under the age of 19. Focus in the first year will be on creating education and awareness among convenience store owners, including the delivery of educational information packages. This report and recommendation are in response to Part (a) of the Board of Health motion dated September 18, 2014. Part (b) of the motion is addressed in report BOH16021 which notes that a local communication strategy may be needed as part of the cannabis legalization process the federal government is committed.

Alternatives for Consideration – See Page 6

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: The recommendation has no financial implications.

Staffing: The recommendation has no staff implications. Enforcement will be done by Licensing Division on a complaint basis, within their usual business.

Legal: The City has authority to regulate businesses through licensing under the *Municipal Act, 2001*

HISTORICAL BACKGROUND

Previous Reports:

Report PED09240 to the Economic Development and Planning Committee in 2009 reported on “the issue of regulating and licensing establishments selling non-prescription drug equipment”. The report recommended no further action be taken with respect to the regulation of drug equipment. The rationale was that a similar by-law amendment concerning the regulation of drug paraphernalia passed by the Town of New Tecumseth, Ontario had proven to be too broad and ultimately unenforceable. On September 18, 2014, Board of Health endorsed the following Motion:

Regulation of Drug Paraphernalia

That Public Health Services (Healthy Living) and the Planning Department

(Licensing, Municipal Law Enforcement) be directed to report to the Board of Health on the following:

- (a) regulating, under the Food Premises Schedule of the Business Licensing By-law, convenience store sales of devices such as bongs which facilitate the smoking of drugs by:
 - (i) restricting the display of the devices
 - (ii) prohibiting the sale of the devices to persons under 18 years of age; and
- (b) opportunities for educating young people and their parents about the dangers of illicit drug use.

Business License Bylaws in other municipal jurisdictions:

Since the 2009 City of Hamilton report, three other jurisdictions in Canada have amended municipal business by-laws to regulate sales of drug paraphernalia. Table 1 below summarizes each of the by-laws and their respective restrictions.

Table 1: Comparison of Business Licence By-Laws in other Canadian Municipal Jurisdictions

Jurisdiction	By-Law Restrictions
**St. Albert, Alberta (2012) (Population: 64, 000)	<ul style="list-style-type: none"> • Regulations on visible display inside and outside the store • Businesses limited to offering no more than three “types” of restricted items • No sales of restricted items to those under age 19
Township of Esquimalt, British Columbia (2013) (Population: 16,000)	<ul style="list-style-type: none"> • Regulations on visible display outside the store • No sales to those under age 19 • Businesses cannot be located within a 0.5 km radius of a school • Restriction to hours of sale (only between 8 a.m. and 6 p.m.)
White Rock, British Columbia (2014) (Population: 20, 000)	<ul style="list-style-type: none"> • Regulations on visible display inside and outside the store • No sales to those under age 19 • Regulations on advertising, promotion and signage

**In St. Albert, the by-law was struck down after a court challenge from a business owner; the ruling found the by-law to be outside the powers of the City. The City appealed this decision and the by-law was upheld and found to be valid and enforceable by the Alberta Court of Appeal.

In all three municipalities, the bylaw amendments apply to all businesses, not solely convenience stores.

At the time of this report, a search of the database of 420 Ontario municipalities through the Association of Municipal Managers, Clerks and Treasurers of Ontario (AMCTO) indicates that there are no other Ontario municipalities with a business license by-law to regulate the sale of drug paraphernalia.

Relevant Legislation:

Provincial Legislation

The sale of devices for smoking-type activities, such as water pipes and bongs is not covered by provincial legislation, although there is legislation regulating the sale of tobacco and e-cigarettes. The Smoke-Free Ontario (SFO) Act of 2008 banned the visible display of tobacco in stores. In 2015, Bill 45, an amendment to the SFO Act was passed to include a ban on the sale of flavoured tobacco and regulations on the sale of e-cigarettes.

Federal Legislation

Canada's Criminal Code section 462.2 prohibits the sale of "instruments for illicit drug use", which are defined as "anything designed primarily or intended under the circumstances for consuming or to facilitate the consumption of an illicit drug".

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The proposed by-law amendment will require owners and employees of convenience stores to conceal inventory of drug paraphernalia and to ask for identification from customers purchasing these items that appear to be under the age of 25. These two requirements are similar to current requirements for tobacco sales.

RELEVANT CONSULTATION

The following have provided consultation for this report:

- City of Hamilton Legal Services researched this issue, made recommendations on what was considered enforceable based on legal experiences in other jurisdictions, drafted language for the proposed by-law amendment, and reviewed this report.
- City of Hamilton Licensing Division provided alternatives for implementation, recommended the amendment be considered in the upcoming business by-law rewrite, was present at the public consultation with convenience store owners, and reviewed this report.

- Consultation with the Hamilton Police Service is in progress.
- Public Consultation on June 14, 2016. Letters were mailed to every convenience store owner to advise them of the proposed by-law amendment and invite them to a public meeting. Thirteen members of the public, eleven being convenience store owners, attended the meeting. The meeting summarized the proposed amendment, its rationale and its impact on convenience store owners. Meeting participants could ask questions and make either verbal or written comments. Comments and questions centred on two main themes: understanding the rationale behind the proposed by-law amendment, and concerns that the proposed change will lead to a loss of customers and revenue. Other comments indicated concern that convenience stores are being treated unfairly in comparison to other businesses that sell drug paraphernalia, such as head shops which are specialty stores that almost exclusively sell drug paraphernalia. Head shops are not included in this recommendation since children and youth do not typically enter those stores to buy food items. Concern was expressed about the operational impact of concealing the visual display. There was no opposition to the proposed changes to restrict sales of drug paraphernalia to individuals aged 19 and over.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Current Landscape of Convenience store sales

At the time of this analysis, there were 450 licensed convenience stores in the City of Hamilton; many of these stores sell drug paraphernalia. Most stores selling these devices have them openly displayed. The devices are often found at eye level near the cash register, or are visible through the outside window. GIS mapping (Appendix A) shows many convenience stores are located within walking distance (1.6 km) of Hamilton schools.

Ontario Statistics on Youth Water pipe Use

According to the most recent Ontario Student Drug Use and Health Survey (2015), 8% of students in grades 7 to 12 have ever used a water pipe. Water pipe use significantly increases as students progress through high school. For grade 9 students, 5% report using a water pipe and the figure rises to 14% by grade 12.

Purpose of the Proposed By-law Amendment: Denormalization

The purpose of this recommended by-law amendment is to address the social normalization that occurs when water pipes and bongs are displayed beside everyday items like bread and milk in convenience stores. Regulating the visible display of water pipes and bongs, and restricting sales to minors is consistent with a public health strategy known as “denormalization”, which has been a successful approach in the area of tobacco control.

Anne Lavack (2001) defined denormalization as it applies to tobacco in her research:

“Denormalization of tobacco can be described as all the programs and actions undertaken to reinforce the fact that tobacco use is not (and should not be) a mainstream or normal activity in our society. (p.3)”

Denormalization strategies aim to influence social norms and bring community members together to reinforce social norms. Applying the principles of denormalization to the sales of water pipes and bongs in convenience stores will make them less visible and therefore reduce the social acceptability of them.

Convenience stores are the setting for the proposed by-law amendment because children and youth often go to a local corner store to buy candy or similar items that have particular appeal to young people.

If this amendment is included in the rewrite of Business Licensing By-law 07-170, the anticipated timing of the rewrite is in mid-2017.

ALTERNATIVES FOR CONSIDERATION

Board of Health could recommend expansion of this amendment to include head shops.

Pros: Consistency of practices for all businesses that sell and display drug paraphernalia.

Cons: This is not aligned with the purpose of the denormalization strategy. Head shops are not licensed as food premises and would require a different strategy for implementation, enforcement and would require additional resources.

ALIGNMENT TO THE 2016-2025 STRATEGIC PLAN

Healthy and Safe Communities

Hamilton is a safe and supportive city where people are active, healthy, and have a high quality of life.

APPENDICES ATTACHED

Appendix “A” to Report BOH16022 - Hamilton schools located within 1.6 km of a convenience store

REFERENCES

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