



**CITY OF HAMILTON**  
**PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT**  
**Licensing and By-law Services Division**

<b>TO:</b>	Chair and Members Planning Committee
<b>COMMITTEE DATE:</b>	February 20, 2018
<b>SUBJECT/REPORT NO:</b>	Comprehensive Review of Discharge of Firearms By-law 05-114 (PED16107(a)) (City Wide) (Outstanding Business List Item)
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Robert Ustrzycki (905) 546-2424 Ext. 4721
<b>SUBMITTED BY:</b>	Ken Leendertse Director, Licensing and By-law Services Planning and Economic Development Department
<b>SIGNATURE:</b>	

**RECOMMENDATION**

That the Licensing and By-law Services staff be directed to consult with Legal Services and develop and bring forward to the Planning Committee an updated By-law to repeal and replace City of Hamilton Discharge of Firearms By-law 05-114 that incorporates the recent and future urban developments in the City and includes the key aspects generated by the public engagement process as contained in Report PED16107(a).

**EXECUTIVE SUMMARY**

The City Solicitor, through Report LS15020 (Regulating Guns and / or Ammunition) dated August 10, 2015, informed the General Issues Committee that the Discharge of Firearms By-law is in need of updating. As a result, staff was directed to undertake a comprehensive review of the Discharge of Firearms By-law, including stakeholder consultation, for recommendations for an effective, updated By-law that incorporates the recent and future urban developments in the City.

This Report provides the results of the work done to date including public engagement, consultations, and the establishment / review of a Working Group as part of the comprehensive review of the Discharge of Firearms By-law.

***Alternatives for Consideration – Not Applicable***

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## **FINANCIAL – STAFFING – LEGAL IMPLICATIONS**

Financial / Staffing / Legal: N/A

## **HISTORICAL BACKGROUND**

The City of Hamilton Discharge of Firearms By-law, enacted on May 11, 2005 regulates where firearms may be discharged in the City for the safety of the inhabitants. The current By-law is a compilation of the former Municipalities of the City (Report PD05119, Harmonization of Discharge of Firearms By-law, dated April 15, 2005) with no revision since its day of passing.

On August 10, 2015 General Issues Committee received Report LS15020 (Regulating Guns and / or Ammunition) regarding options with respect to the City's authority over guns and / or ammunition. General Issues Committee was informed by the City Solicitor that the Discharge of Firearms By-law is in need of updating, that would require consultation with the stakeholders, and be modified to clearly reinforce the Federal and Provincial regulation of firearms.

At its meeting of September 23, 2015, Council approved information item h(ii) of Planning Committee Report 15-014 which reads as follows:

- (a) That Municipal Law Enforcement (MLE) staff, in consultation with Legal Services and Planning staff as well as the Hamilton Police Service, undertake a comprehensive review of the Discharge of Firearms By-law No. 05-114, including stakeholder consultation; and,
- (b) That staff be directed to report back with recommendations for the most effective Discharge of Firearms By-law including, but not limited to, consideration of where the discharge of firearms is permitted.

On May 25, 2016 City Council approved Item 8.1 of Planning Committee Report 16-010 to receive staff Discharge Firearms Report (PED16107) informing Members of Council that more analysis is needed to update the substantive provisions of the By-law, and outlining the process intended by staff to:

- Establish a working group to review public comments, the overlapping jurisdictions, respective roles, safety issues, criteria for high risk areas, strategies and tasks necessary for an enforcement/administration/ communication plan;
- Consult with City Councillors representing rural Wards;
- Consult with the numerous stakeholders and property owners having interest; and,
- Conduct a broader research of best practices in other jurisdictions.

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## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

The City of Hamilton Discharge of Firearms By-law 05-114.

Staff considered the following applicable Provincial and Federal legislation:

- *Fish & Wildlife Conservation Act, 1997, S.O. 1997, c. 41;*
- *Conservation Authorities Act, R.S.O. 1990, c. C.27;*
- *Protection of Livestock & Poultry from Dogs Act, R.S.O. 1990, c. L.24;*
- *Animal Health Act 2009, S.O. 2009, c. 31;*
- *Trespass to Property Act, R.S.O. 1990, c. T.21;*
- *Occupiers Liability Act, R.S.O. 1990, c. O.2;*
- *Municipal Act, 2001, S.O. 2001, c. 25;*
- *Heritage Hunting and Fishing Act, 2002, S.O. 2002, c. 10;*
- *Criminal Code, R.S.C., 1985, c. C-46;*
- *Firearms Act, S.C. 1995, c. 39; and,*
- *Migratory Birds Convention Act, 1994, S.C. 1994, c. 22.*

## **RELEVANT CONSULTATION**

### Public Engagement

City staff hosted public consultations with stakeholders and affected persons to gain community feedback (detailed in “Analysis and Rationale” section of this Report).

Councillors for Wards 11, 12, 14 and 15 were consulted in this review and facilitated arrangements for the Open Public Meetings in the rural community.

The following internal departments were consulted in preparation of this Report:

- Planning;
- Legal Services;
- Public Works (Parks);
- Community and Emergency Services (Recreation);
- Senior Project Manager for Indigenous Community Affairs; and,
- Agricultural / Rural Affairs Sub-committee.

A Working Group (advisory group) was established from key professionals with extensive experience and knowledge in the administration, enforcement, education and use of firearms and public safety from the following agencies:

- Hamilton Municipal Law Enforcement;
- Hamilton Police Services;

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- Hamilton Conservation Authority;
- Ontario Federation of Anglers and Hunters; and,
- Ministry of Natural Resources (declined involvement).

## **ANALYSIS AND RATIONALE FOR RECOMMENDATION**

The goal and objective of the comprehensive review of the Discharge Firearms By-law is:

1. Update the Schedule map(s) where the discharge of firearms is prohibited, to incorporate recent and future urban development; and,
2. Determine if the current provisions provides clear understanding of its provisions, balances the varied needs of the community, maintains public safety, and reinforces Federal / Provincial firearm regulations.

Staff incorporated the recent and future development into the Discharge of Firearms By-law Schedule Map(s) for public consultation. The consultation map, attached as Appendix "A: to this Report, provides clear, well defined identification of the areas where the discharge of firearms is currently prohibited, and denoting the proposed expanded prohibited areas for public consultation.

### Public Consultation

Staff research identified 43 stakeholders (Associations, Organizations, Clubs and Agencies) linked to the discharge of recreational firearms / bows within the City of Hamilton. Invitations to a meeting of stakeholders at City Hall on January 26, 2017 provided the opportunity for comment and questions to City staff (Stakeholders List and Summary of Meeting is attached as Appendix "B" to this Report).

Following the stakeholders meeting, arrangements for open public meetings were made for the general public to comment to City staff on boundary changes and any proposed By-law changes. Notice was provided through media releases, public notices, and personal invitation for persons on record with the City as having interest to attend. A total of three open public meetings were held from February 13, 2017 to March 1, 2017 in Glanbrook, Rockton and Ancaster (Summary of Meetings is attached as Appendix "C" to this Report).

In addition to providing a platform for public comment, the open public meetings and consultation allowed participants the opportunity to seek clarification and to ask questions relating to the administration and enforcement of the Discharge Firearms By-law. Appendix "C" to this Report provides summaries of the three open public meetings.

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Approximately 85 citizens attended the meetings. The public consultations provided a broad and diverse outlook to examine the current By-law and formulate the following fundamental improvements to the By-law:

- Simplify the overall structure of the By-law and mapping;
- Provide better wording and understanding;
- Eliminate any ambiguity;
- Provide separate regulations for archery;
- Improve public education and communication; and,
- Improved and unified enforcement.

#### Key Aspects of the Comprehensive Review

The Working Group considered carefully all of the comments, recommendations and concerns received through the public consultation / engagement process. The minutes of these meetings are attached as Appendix “D” to this Report. The review analyzed the boundary expansion, the substantive issues and any changes to the Discharge Firearms By-law. To balance the overall needs of the community the Working Group also examined:

- Overlapping jurisdictions of MLE, Police, MNR their respective roles;
- Safety issues;
- Criteria for high risk areas;
- Best practices of 23 Ontario municipalities; and,
- Strategies for an enforcement and communication plan.

#### Boundary Changes

The use of maps is the best tool to direct / assist and meet the visual needs of the reader to identify the areas prohibited in the By-law. It was realized that without an intimate knowledge of the geography of the City of Hamilton the current By-law maps offered little assistance to the reader. Members of the Working Group agreed with public comments that the current maps are unclear and confusing, and that the boundaries are in need of updating to reflect the recent and future urban developments.

Members of the Working Group concluded that details denoting the prohibited areas need to be accurate, with identifiable physical boundaries. Any expansion or reduction of existing prohibition boundaries should be reasoned; reflect the principles of public safety, and evidence based upon:

- Urban development;
- Density threshold;
- Type / use of buildings and property (e.g. dwelling, commercial, institutional);

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- Population density;
- Number of incidents / complaints;
- Public roads / trails; and,
- Volume of traffic.

The consultation maps in Appendix “A” to this Report represent those areas where the discharge of firearms is currently prohibited and includes the current and future development in the City. The current By-law recognizes most recent urban development and with the exception of the City rural settlements requires little modification to capture the recent and future urban expansion. The present By-law map identifies five of the 17 rural settlements in the City. The property density of the rural settlements merits the inclusion of all 17 rural settlements to the boundary maps as prohibited.

The majority of public opinion supports:

1. Extending the prohibited areas as denoted in the consultation maps, with minor adjustments for borderlines to follow identifiable physical boundaries (i.e. public roads, watercourses); and,
2. Including all seventeen rural settlement areas as prohibited.

### Scope and Exceptions

The primary issue for a Discharge of Firearms By-law is public safety in the discharge of recreational firearms / bows. To consider what is in the best interest of all the inhabitants, the By-law must be easily understood and enforceable, and fair to all persons by not being too restrictive or more lenient. Users of recreational firearms / bows undertake extensive training / education, and must adhere to stringent rules in order to maintain permits. The criminal, unsafe, careless, or illegal use / activities involving firearms is properly dealt with under the *Criminal Code*, *Firearms Act* and other applicable Federal / Provincial legislation. It was abundantly clear from the consultation meetings that the general intent and purpose of the By-law underscore the recreational use of firearms in the preamble and Short Title name of the By-law.

The present By-law exempts the following lawful and sanctioned uses:

- Farmers (protection of crops, livestock);
- Police agencies;
- Educational institutions (archery);
- National Defence; and,
- Shooting ranges, gun / skeet clubs, and similar organizations regulated by the *Firearms Act* and approved through the Chief Firearms Office where the regulations and level of inspection exceeds any municipal By-law.

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Meetings with stakeholders and public consultation identified the following potential additions to the general exemptions provided in the current By-law:

- Licensed trappers;
- Starter pistols;
- Ceremonial (memorial services, funerals and military services);
- Theatrical props (blanks);
- Military re-enactments (blanks);
- Indoor use of archery, paintball and airguns;
- Dog trials; and,
- Sanctioned events.

Considering the demographics of the City, there was consensus that the exemption permit process currently in place is the best solution dealing with extraordinary circumstances where the general provisions may not be reasonable. Although no application has come forward since the passing of the By-law, continuing this practice allows for specific exceptions not envisaged by the general provisions of the By-law or the Schedule maps. MLE staff recognizes and acknowledges that the current permit application process requires improvement. Adopting the same criteria used by the Working Group for high risk areas improves the approval procedure, and delegating permit appeals to the appropriate Committee relieves Council of that function.

#### General Provisions (Buffer Zones)

The current By-law requires a distance of 100m for the discharge of firearms and bows from specified high risk or populated locations. Public opinion favoured a reduced limit of 50m for bows / archery while maintaining the current 100m distance for firearms. Adopting both limits is consistent with best practices in other jurisdictions as an appropriate distance from the following settings:

- Dwelling, building or structure (express permission of owner);
- Schools;
- Parks;
- Public trails;
- Churches;
- Community Centres;
- Cemetery;
- Hospitals;
- Urban properties / subdivisions / settlement areas;
- Private / public golf courses (except season closures);
- Private / public campgrounds / picnic areas (except season closures); and,
- Conservation lands and areas.

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The current By-law is silent to airports and registered aerodromes in the City of Hamilton. Staff research to best practices in other municipalities suggests a distance of 300m. There was no challenge or concern to adding this requirement to the By-law.

Highways and railway lands are suitably dealt with under the applicable laws, and the current provision in the By-law regarding direction of discharge (ensure projectiles remain on site).

### Definitions

The various definitions of a firearm from other legislation / jurisdictions were examined. There was agreement that bow / archery remain outside the definition of firearm; and that any reference to a firearm as a weapon be removed.

There was no contrary argument that the expressed verbal or written permission of the property owner was required for each person discharging a firearm. There was consensus that the express permission of the owner of a dwelling / building / structure was required for the discharge of any firearm within 100m (50m for bows) thereof.

Conservation Authorities are considered a private landowner and the express permission of the Authority is required allowing these agencies the flexibility to regulate their respective lands accordingly.

There must be clarity in describing locations / settings to recognize the diverse uses therein. As example, camp sites or walking / public trails are better described as 'managed' areas; or buildings / structures that are 'occupied'.

### Enforcement

Four enforcement agencies (MNR, Police, City By-law, Conservation Authorities) have overlapping responsibilities and obligations to enforce 11 applicable (3 Federal, 8 Provincial) legislations relating to the activities surrounding the recreational use of firearms.

The general public has a misunderstanding of the By-law and are frustrated by the lack of response, public education, and disconnect of the enforcement agencies. There is need for the related enforcement agencies to meet and discuss solutions for calls to be directed to the correct service for action or information. Improved service levels are provided through partnerships, sharing of information and contacts. MLE staff are continuing to engage in discussions and consultation with other enforcement agencies and authorities to develop an effective Enforcement Strategy.

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MLE staff concludes that enforcement of the Discharge of Firearms By-law may be improved with the issuance of Municipal Orders to the property owner / lessee to discontinue allowing or permitting the discharge of firearms from their property. The Municipal Order is an educational tool issued in the first instance before taking enforcement steps. Once issued, having presumed knowledge of the By-law, a charge would follow for disobeying the order.

### Communication

An effective communication plan is the best tool available to inform the public of their legal obligations and prevent contraventions of the By-law. Members of the public are seeking accurate information in a user friendly format. Most prefer the creation of an information pamphlet containing maps, excerpts from the By-law and related legislation, and contact information for enforcement agencies. This information may be posted on the City's website, along with hard copies available at strategic locations for public viewing.

To summarize, Report PED16107(a) represents the key aspects of the comprehensive review with the reasonable due diligence of the Working Group to review the public comments and take into account conditions for public safety. MLE staff will continue consultation with the related enforcement agencies and authorities to:

- Establish an effective communication strategy;
- Develop pamphlets and handouts of the Discharge Firearms By-law and Schedule maps; and,
- Research the use of on-line interactive maps on the City's website.

### **ALTERNATIVES FOR CONSIDERATION**

N/A

### **ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN**

#### **Community Engagement & Participation**

*Hamilton has an open, transparent and accessible approach to City government that engages with and empowers all citizens to be involved in their community.*

#### **Economic Prosperity and Growth**

*Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.*

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**Healthy and Safe Communities**

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

**Culture and Diversity**

*Hamilton is a thriving, vibrant place for arts, culture, and heritage where diversity and inclusivity are embraced and celebrated.*

**APPENDICES AND SCHEDULES ATTACHED**

- Appendix "A": Consultation Maps
- Appendix "B": Stakeholders List and Summary of Meeting
- Appendix "C": Summaries of Open Public Meetings
- Appendix "D": Minutes of Working Group Meetings

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