



**CITY OF HAMILTON
PUBLIC HEALTH SERVICES
Healthy Environments Division**

TO:	Mayor and Members Board of Health
COMMITTEE DATE:	May 13, 2019
SUBJECT/REPORT NO:	Amendments to By-Law No. 11-080 To Prohibit Smoking Cannabis and Vaping Within City Parks and Recreation Properties (BOH07034(m)) (City Wide) (Outstanding Business List Item)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Heidi McGuire (905) 546-2424 Ext. 6170
SUBMITTED BY:	Kevin McDonald Director, Healthy Environments Division Public Health Services
SIGNATURE:	

RECOMMENDATION(S)

That City of Hamilton Legal Services, in consultation with Public Health Services, prepare a by-law for the Board of Health’s consideration, to amend City of Hamilton By-Law No. 11-080 Prohibiting Smoking Within City Parks and Recreation Property in order to include additional prohibitions on the smoking of cannabis and vaping within City-owned parks and recreation properties.

EXECUTIVE SUMMARY

City of Hamilton By-Law No. 11-080 To Prohibit Smoking Within City Parks and Recreation Property currently applies only to smoking tobacco in and on City-owned parks and recreational properties. The *Smoke-Free Ontario Act, 2017*, which prohibits smoking of tobacco and cannabis and vaping any substance, already applies to some of the locations covered by By-Law No. 11-080. Amending the By-law to incorporate smoking of cannabis and vaping would create a uniform approach in all parks and recreation properties in Hamilton, which would assist with communications and enforcement. The City of Hamilton has the authority to amend By-Law No. 11-080 to include these additional prohibitions under the *Municipal Act, 2001, s.115*.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

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Public Health Services staff conducted a public consultation to obtain feedback from sports organizations and residents who use recreation facilities regarding amendments to Hamilton's by-law. Preliminary results from 991 residents show that there is 62–78% support for a prohibition on smoking cannabis and vaping at parks and recreational facilities, depending on type of facility. Survey results for sports organizations will be presented to the Board of Health in June 2019.

Alternatives for Consideration – See Page 5

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: There are no financial implications at this time. However, should by-law amendments be introduced, there may be associated costs for education and signage. Any potential cost implications would be brought forward to the Board of Health for consideration with draft by-law amendments.

Staffing: Existing Tobacco Enforcement Officers will be utilized for enforcement of any amendments to By-Law No. 11-080.

Legal: The *Municipal Act, 2001* empowers municipalities to pass by-laws with respect to the health, safety and well-being of persons, and particularly *s.115* as amended by the *Restoring Trust, Transparency and Accountability Act, 2018*, provides that municipalities may prohibit or regulate the holding of lit tobacco and cannabis, as well as consumption of tobacco or cannabis through an electronic cigarette. In considering a by-law under this authority, municipalities may define “public place” for the purposes of the by-law.

HISTORICAL BACKGROUND

Hamilton's By-Law No. 11-080 To Prohibit Smoking Within City Parks and Recreation Properties came into effect on May 31, 2012. It prohibits smoking of tobacco in City of Hamilton outdoor recreational areas (outlined below).

The *Smoke-Free Ontario Act, 2017* came into effect on October 17, 2018. It prohibits smoking of cannabis and tobacco, as well as use of electronic cigarettes containing any substance in a range of locations, including enclosed public places and workplaces and a range of outdoor recreational areas (outlined below).

A motion was introduced at the January 14, 2019 Board of Health meeting requesting that Public Health Services staff, in conjunction with Legal Services, review the feasibility of amending City of Hamilton By-Law No. 11-080 To Prohibit Smoking Within City Parks and Recreation Property to include additional prohibitions on the smoking of cannabis and vaping within City-owned parks and recreation properties; and that public consultation be undertaken in relation to the additional prohibitions.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The City of Hamilton Human Resources policy, Smoke-Free Workplace Policy No. HR-31-10, prohibits employees from smoking tobacco or medical cannabis or using an electronic cigarette within nine metres of another employee or entrance, window, pathway, ventilation area and hazardous storage area in City workplaces. Smoking non-medical cannabis in any City workplace is strictly prohibited.

By-Law No. 11-080 To Prohibit Smoking Within City Parks and Recreation Properties, came into effect on May 31, 2012; any amendments would alter this by-law.

RELEVANT CONSULTATION

Corporate Services, Legal Services Division was consulted in relation to the feasibility of implementing amendments to By-Law No. 11-080.

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

The same considerations for prohibiting smoking of tobacco in outdoor recreational areas apply to smoking cannabis and vaping: health concerns from second-hand smoke and vape, littering, fire safety, role modeling for youth, as well as support for those who have quit smoking. In addition to these considerations, staff reviewed municipal authority, by-laws in other municipalities and gaps in local by-laws.

Authority to enact by-law amendments

Public Health Services consulted with Legal Services and determined that it is feasible to amend By-law #11-080 To Prohibit Smoking Within City Parks and Recreation Properties to include prohibitions for smoking of cannabis and vaping in addition to smoking tobacco, given the amendment the *Municipal Act, 2001*, s.115 in December 2018.

By-laws in other municipalities

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Other municipalities that have incorporated smoking of cannabis and vaping into outdoor recreational spaces by-laws include: Barrie, Brant, Gananoque, Huron County, Kingston, Markham, Norfolk County, Orillia, Ottawa, Peterborough, Prince Edward County, Richmond Hill, Windsor-Essex and others. In addition, the following municipalities are currently considering an amendment to outdoor recreational by-laws through public consultation: Durham Region (Whitby, Oshawa), Guelph, Niagara, Peel Region, and Trenton.

Gaps in local by-law

The following table outlines the differences between Hamilton’s By-Law No. 11-080 and the *Smoke-Free Ontario Act, 2017*. It illustrates the differences in products and locations included, which leads to a patchwork of legislation which is difficult to communicate and enforce.

Table 1: Differences in Products and Locations Included Under By-Law No. 11-080 and the *Smoke-Free Ontario Act, 2017*

	Hamilton’s By-Law No. 11-080	Smoke-Free Ontario Act
Locations Included	Products Included: Smoking of tobacco, waterpipe tobacco	Products Included: Smoking of tobacco, cannabis, shisha containing tobacco Vaping any substance
Parks	Yes – 100% prohibition	Only parks with playgrounds, slides, swings, splash pads, have prohibitions within 20 m of these structures
Sports Fields	Yes – 100% prohibition	Yes – 100% prohibition Also includes within 20 m of sports fields
Recreation Centres & Arenas	Yes – 100% prohibition Includes entire property	Yes – 100% prohibition Includes entire property, and within 20 m of property
Skateboard Parks	Yes – 100% prohibition	Yes – 100% prohibition
Outdoor Pools	Yes – 100% prohibition	Yes – prohibition within 20 m

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Public Beaches	Yes – 100% prohibition	Only beaches with swimming lessons or other activity
Leash-Free Dog Parks	Yes – 100% prohibition	No
Trails	Trails within parks Other trails such as Waterfront Trail	No

Public consultation for amendments

Healthy and Safe Communities staff conducted an online survey with sports associations and City of Hamilton residents who use recreation facilities to obtain feedback on amendments incorporating smoking of cannabis and vaping into By-Law No. 11-080 in March 2019. Results from the consultation with sports associations are currently being analyzed and will be brought forward to the Board of Health in June 2019. Preliminary results from the survey of 991 residents show that:

- 12% smoke tobacco and vape daily or occasionally;
- 32% smoke cannabis daily or occasionally;
- Approximately 78% support a by-law to prohibit smoking cannabis and vaping at playgrounds, splash pads and pools;
- 71% to 75% support a by-law to prohibit smoking cannabis and vaping at sports fields, arenas and community recreational facilities;
- 62% to 64% support a by-law to prohibit smoking cannabis and vaping in parks and beaches; and,
- Approximately 80% would not change their future use of parks and recreational areas if a by-law prohibiting smoking cannabis and vaping were introduced. Of these, 40% would use these areas more often; only 17% indicated they would use these areas less frequently.

ALTERNATIVES FOR CONSIDERATION

The alternative to amending Hamilton’s By-Law No. 11-080 is to leave the by-law as written and maintain status quo. The varying laws and rules for outdoor recreational areas in Hamilton are difficult to communicate and enforce.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Community Engagement and 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.

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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.

Clean and Green

Hamilton is environmentally sustainable with a healthy balance of natural and urban spaces.

APPENDICES AND SCHEDULES ATTACHED

Not Applicable.