



**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>	May 14, 2019
<b>SUBJECT/REPORT NO:</b>	Comprehensive Review of Discharge of Firearms By-law (PED16107(b)) (City Wide) <b>(Outstanding Business List Item)</b>
<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(S)**

- (a) That the by-law attached as Appendix "A" to Report PED16107(b), which repeals and replaces the Discharge of Firearms By-law 05-114, that incorporates the recent and future urban developments in the City and that includes key aspects of a comprehensive review and public consultation process, and which has been prepared in a form satisfactory to the City Solicitor, be enacted;
- (b) That a new exemption permit application fee of \$100 and renewal fee of \$20 for the discharge of recreational firearms or bows be approved, and that the User Fees and Charges By-law be amended accordingly;
- (c) That the item respecting the Comprehensive Review of the Discharge Firearm By-law be considered complete and removed from the Planning Committee Outstanding Business List.

**EXECUTIVE SUMMARY**

City staff was directed to undertake a comprehensive review of the Discharge of Firearms By-law 05-114, including public consultation, for recommendations to an effective and updated by-law that incorporates the recent and future urban

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developments in the City. Staff Report PED16107(a) dated February 20, 2018 provided Committee the results of the comprehensive review, including a summary of the public and stakeholder consultations, and the analysis of a Working Group examining the comments and input from the public engagement process.

Licensing and By-law Services staff were 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).

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

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

Financial/Staffing: The cost of the proposed by-law in Planning Committee Report PED16107(b) (Attached as Appendix “A”) would not have an impact on current Licensing and By-law Services (LBS) resources or change the annual operating budget.

While no applications or exemption permits have been issued under the current Discharge Firearm By-law 05-114, LBS staff recommend an application fee of \$100 and renewal fee of \$20 to reduce the administrative costs for receiving, processing and approving exception permit applications.

Legal: Public Notice was provided to consider the permit fees proposed in Report PED16107(b), as required by the City of Hamilton Public Notice By-law 07-351.

### **HISTORICAL BACKGROUND**

The City of Hamilton Discharge of Firearms By-law 05-114, 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 Firearm 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

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consultation with the stakeholders, and be modified to clearly re-inforce 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 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 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 Discharge of Firearms Report (PED16107) informing Members of Council that more analysis is needed to update the substantive provisions of the current 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.

On February 20, 2018 Report PED16107(a) provided the Planning Committee the results of the public consultation and comprehensive review. City Council directed LBS staff to consult with Legal Services to 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.

## **POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS**

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

Staff review considered the following applicable Provincial and Federal Legislation:

*Fish and 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*

*Migratory Birds Convention Act, 1994, S.C. 1994, c. 22*

*Navigable Waters Protection Act (Canada)*

## **RELEVANT CONSULTATION**

### Public Engagement

City staff hosted public consultations with stakeholders and persons having interest to gain community feedback. A meeting of stakeholders was conducted at Hamilton City Hall on January 26, 2017; and a total of 3 Open Public Meetings were held from February 13, 2017 to March 1, 2017 in Glanbrook, Rockton and Ancaster (detailed in Report PED 16107(a)).

An additional Open Public Meeting was held May 15, 2018 inviting the residents from the concession area east of Copetown to re-examine a proposed boundary expansion prohibiting the discharge of firearms. It was the consensus of property owners in attendance that the discharge of recreational firearms remains unchanged to those lands.

Councillors for Wards 11, 12, 14 and 15 were consulted in the comprehensive review and facilitated arrangements for the Open Public Meetings in the rural community. LBS staff updated and consulted with those Councillors not familiar or privy to the results of the comprehensive review in 2018.

The following internal departments were consulted in the comprehensive review:

- Planning;
- Legal Services;
- Public Works (Parks);
- Healthy and Safe Communities (Recreation);
- Senior Project Manager for Indigenous Community Affairs; and,
- Agricultural/Rural Affairs Committee.

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

### **ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)**

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

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

The public consultations provided a broad and diverse outlook to develop the following fundamental improvements to administer and enforce 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,
- Improve and unify enforcement.

The Working Group reviewed and analysed the public and stakeholder comments to the boundary expansion and substantive issues to balance the overall needs of the community that considers:

- applicable legislation;
- current by-law provisions;
- best practices in other jurisdictions;

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- safety issues;
- demographics for boundary changes; and,
- criteria for high risk areas.

Attached as Appendix “A” to Report PED16107(b) is the draft Discharge of Recreational Firearm By-law (Proposed By-law) to repeal and replace the current Discharge of Firearms By-law 05-144. The Proposed By-law reflects the majority of public opinion generated by the public engagement process and key aspects of the comprehensive review in Report PED16107(a). The current Discharge Firearm By-law 05-144 is attached as Appendix “B” to this Report.

The general intent and purpose of the Proposed By-law is public safety in the discharge of recreational firearms/bows which is reflected in the Short Title name of the By-law. The Proposed By-law is prepared in simple, plain text, divided into nine parts. It considers what is in the best interest of all the inhabitants and fair to all persons by not being too restrictive or more lenient.

The preamble specifies the statutory authorities for establishing the Proposed By-law, and deems that the discharge of firearms could create a safety hazard for the public. The city-wide and rural settlement Schedule Maps include the recent and future urban developments, and accurately denote the areas where the discharge of a firearm or bow is prohibited. The Schedule Maps are prepared in PDF format to meet the visual needs of the reader, and may be enlarged to greatly improve the ability to distinguish the prohibited areas.

The following annotations speak to the key aspects or changes in the Proposed By-law.

#### Definitions

The by-laws from other jurisdictions, federal/provincial legislation, and case law were examined in preparation of the definition section. To support the strong public opinion, bows remain and apply outside the definition of firearm and any reference to a firearm as a weapon is removed.

Public centres, parks and trails are better defined to be more inclusive of those locations that may be frequented by the public. Other definitions are modernized or reformed to the outdated current by-law.

#### Application of By-law

To understand the extent or limitations of the Proposed By-law, section 3 clearly identifies those circumstances in which the By-law does not apply, namely the lawful

use of firearms by the military, police agencies, regulated gun clubs/ranges, and the firing of blank ammunition.

### General Prohibitions

The locations that prohibit the recreational use of firearms and bows are provided in sections 4 – 7. The onus remains on the user of recreational firearm or bow to obtain the express consent of the owner of land. Section 8 defines the prohibited areas and provides separation requirements, which reflect the diverse settings in the rural community that would be difficult to accurately plot on a map.

The current 100 m separation maintains as an appropriate distance from public locations and occupied buildings for firearms. Supported by public opinion, the reduced limit of 50 m introduced for bows/archery is consistent with best practices in other jurisdictions. These separation requirements may be relaxed with the express consent of the owner/occupier of the building or structure.

A new separation distance of 300 m is provided for the safety and security of airports and registered aerodromes within the City of Hamilton.

### Exceptions

The exceptions in the Proposed By-law continue to recognize the importance of the discharge of firearms for farmers; and the education for the safe use of recreational firearms and bows. Other uses identified by stakeholder and public consultation as having merit as an exception are added to the Proposed By-law, including the lower risks associated with the use of archery, paintball and airguns within a secure indoor facility.

### Permits and Appeal

Considering the demographics of the City, the exemption permit 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 current Discharge of Firearms By-law, continuing this practise allows for specific exceptions not envisaged by the Proposed By-law or the Schedule Maps.

The LBS Director is authorized to grant, refuse or revoke an exemption permit, and impose conditions specific to the application after having consideration to the negative effects in high risk areas. Appeals to the permit application are made before the Planning Committee, whereas appeals under the current by-law are heard by Council.

### Administration and Enforcement

The LBS Director is authorized to administer and enforce the Proposed By-law, including the authority to prescribe the format and content of any required forms or documents.

### Enforcement and Penalties

The penalty for contravening the Proposed By-law provides for a minimum fine of \$500 and maximum fine of \$100,000, demonstrating the seriousness envisioned by Council. The landowner consenting to the use of their property for the recreational use of firearms may also be charged for knowingly permitting the unlawful activity.

Officers may enter upon land at any reasonable time, without notice, or in conjunction with a person possessing special or expert knowledge for the purpose of carrying out an inspection. This administrative power of entry includes specific inspection powers for the production of documents or information. Obstructing or refusing an Officer exercising a power or performing an inspection is a contravention of the *Municipal Act, 2001*.

Officers generally arrive before or after the discharge of a firearm or bow, and commonly deal with the property owner when unable to locate/identify the suspect(s). Staff experience has been that most offenders are unfamiliar with the provisions of the By-law, or mistake the boundary for prohibited areas. Municipal Orders may be issued to discontinue the activity, or compel the landowner to revoke consent or take actions to bar or prevent the unlawful entry onto the 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 and/or require any remedial action at the property owner's expense.

### Repeal and Enactment

The Proposed By-law, to repeal and replace the current outdated Discharge of Firearms By-law, considers public opinion and the key issues identified from the comprehensive review.

### Enforcement Strategy

The general public has a misunderstanding of the current Discharge of Firearms By-law and are frustrated by the lack of response, public education, and disconnect of the enforcement agencies. There is need for solutions directing calls to the correct service for information or action; and to examine and improve methods to educate the public.

LBS staff consulted with other enforcement agencies and authorities in preparation of the Enforcement Strategy (Attached as Appendix "C" to Report PED16107(b)) and will



continue to engage in discussions to improve service in the administration and enforcement of the Proposed By-law.

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. The Enforcement Strategy includes the creation of an information pamphlet containing excerpts from the Proposed By-law and related legislation, contact information for enforcement agencies, and links to the City website. It is intended that this information, the By-law and Schedule Maps be posted on the City website, along with hard copies available to the public at strategic locations in the City.

## **ALTERNATIVES FOR CONSIDERATION**

N/A

## **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.

### **Economic Prosperity and Growth**

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

### **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.

### **Our People and Performance**

Hamiltonians have a high level of trust and confidence in their City government.

## **APPENDICES AND SCHEDULES ATTACHED**

Appendix “A”: Discharge of Recreational Firearms By-law

Appendix “B”: Discharge of Firearms By-law 05-114

Appendix “C”: Enforcement Strategy

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