



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

<b>TO:</b>	Mayor and Members Board of Health
<b>COMMITTEE DATE:</b>	June 17, 2019
<b>SUBJECT/REPORT NO:</b>	By-law No. 11-080 To Prohibit Smoking Cannabis and Vaping Within City Parks and Recreation Properties (BOH07034(n)) (City Wide) <b>(Outstanding Business List Item)</b>
<b>WARD(S) AFFECTED:</b>	City Wide
<b>PREPARED BY:</b>	Heidi McGuire (905) 546-2424 Ext. 6170
<b>SUBMITTED BY and SIGNATURE:</b>	Jennifer Vickers-Manzin on behalf of Kevin McDonald Director, Healthy Environments Division Public Health Services

**RECOMMENDATION(S)**

- (a) That the by-law attached as Appendix “A” to Report BOH07034(n), being a by-law to amend By-law No. 11-080 to Prohibit Smoking within City Parks and Recreation Properties (the “Amending By-law”), be approved.
- (b) That this subject matter be identified as completed and removed from the Outstanding Business List.

**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

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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.

recreation properties in Hamilton, which would assist with communications and enforcement.

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. Results from a survey of 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 similarly show 60-80% support for the same facilities.

### **Alternatives for Consideration – See Page 6**

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

**Financial:** By-law implementation costs associated with public awareness and education, and signage will be absorbed within Public Health Services' approved 2019 operating budget.

**Staffing:** Public Health Services' Tobacco Enforcement Officers will be utilized for enforcement of the amendments to By-law No. 11-080 as these changes represent an extension of existing enforcement work being conducted against the by-law.

**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.

Although initial enforcement will focus on public awareness and education, it is possible that in the future challenges and charges could result for individuals found to be smoking or vaping within a City-owned park or recreation property. Public Health Services' experience with the existing by-law indicates that adequate enforcement accompanied by an education campaign results in compliance with the by-law being high resulting in minimal charges. Legal Services staff may be required to attend to review lease agreements in place between the City of Hamilton and third parties to advise on legal issues arising from 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 in the table 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 in the table 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; Public Works, Parks and Recreation Division; and, Healthy and Safe Communities, Recreation Division were consulted in relation to the feasibility of implementing the outlined 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 by-laws in other municipalities, gaps in local by-laws and public consultation results.

### **By-laws in Other Municipalities**

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, Stratford, 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 the proposed amendment, Hamilton's current By-law No. 11-080, and the *Smoke-Free Ontario Act, 2017*. It illustrates the differences in products and locations included, which has led to a patchwork of legislation that is difficult to communicate and enforce.

	<b>Proposed Amendment to By-law No. 11-80</b>	<b>Hamilton's Current By-law No. 11-080</b>	<b>Smoke-Free Ontario Act</b>
<b>Products included</b>	Smoking of tobacco, cannabis, waterpipe, other substances Vaping any substance	Smoking of tobacco, waterpipe tobacco	Smoking of tobacco, cannabis, shisha containing tobacco Vaping any substance
<b>Locations Included</b>			
Parks	Yes – 100% prohibition	Yes – 100% prohibition	Only parks with playgrounds, slides, swings, splash pads, have prohibitions within 20m of these structures

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Sports Fields	Yes – 100% prohibition	Yes – 100% prohibition	Yes – 100% prohibition Also includes within 20m of sports fields
Recreation Centres & Arenas	Yes – 100% prohibition  Includes entire property	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	Yes – 100% prohibition
Outdoor Pools	Yes – 100% prohibition	Yes – 100% prohibition	Yes – prohibition within 20 m
Public Beaches	Yes – 100% prohibition	Yes – 100% prohibition	Only beaches with swimming lessons or other activity
Leash-Free Dog Parks	Yes – 100% prohibition	Yes – 100% prohibition	No
Trails	Trails within parks  Other trails such as Waterfront Trail	Trails within parks  Other trails such as Waterfront Trail	No

**Public Consultation for Amendments**

Public Health Services 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 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%-75% support a by-law to prohibit smoking cannabis and vaping at sports fields, arenas and community recreational facilities;
- 62%-64% support a by-law to prohibit smoking cannabis and vaping in parks and beaches;
- 58% support a by-law to prohibit smoking cannabis and vaping on trails; 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.

Results from the survey of 25 sports associations show that:

- 80% support a by-law to prohibit smoking cannabis and vaping at playgrounds and splash pads;
- 76% support a by-law to prohibit smoking cannabis and vaping at pools, arenas and community recreational facilities;
- 60-68% support a by-law to prohibit smoking cannabis and vaping at sports fields, beaches and parks; and,
- 52% support a by-law to prohibit smoking cannabis and vaping on trails.

### **Education, Signage and Enforcement**

Areas that have introduced outdoor spaces legislation have found that it is generally self-enforcing and witness good compliance from the public. In most instances the peer pressure, will itself, contribute to compliance. Past no-smoking by-laws implemented by the City of Hamilton have demonstrated high compliance rates.

A public awareness and education strategy that clearly communicates the changes to the By-law will be used in conjunction with enforcement activities. The public awareness and education strategy will consist of a variety of media. The Tobacco Hotline and City of Hamilton website will be used as a point of access to information and materials about the By-law as well as to report complaints for follow-up from enforcement. Previously existing no-smoking signs will remain in place, with the addition of no smoking/no vaping signs in highly trafficked areas. The By-law will continue to be enforced on a complaint basis by existing Tobacco Enforcement Officers using a risk management model. The initial phase of enforcement will primarily consist of public awareness and education, moving progressively towards warnings and/or charges as appropriate.

### **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. At present, the recently introduced provincial laws and rules for outdoor recreational areas make it challenging 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.

### **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**

Appendix “A” to Report BOH07034(n): Amending By-law No. 11-080