



CITY OF HAMILTON
PUBLIC HEALTH SERVICES
Healthy Environments Division

TO:	Mayor and Members Public Health Committee
COMMITTEE DATE:	September 8, 2023
SUBJECT/REPORT NO:	Hamilton Waterpipe By-law (BOH23017(a)) (City Wide)
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

That the By-law to regulate waterpipe smoking in public places and workplaces in the City of Hamilton, attached as Appendix "A" to Report BOH23017(a), which has been prepared in a form satisfactory to the City Solicitor, be enacted.

EXECUTIVE SUMMARY

This report is further to the February 21, 2020 Board of Health and February 26, 2020 Council requests that Hamilton Public Health Services report back to the Board of Health with recommendations for implementation of a by-law to regulate the smoking of non-tobacco combustible substances in public places and work places by June 2020. An update was provided to the Public Health Committee on May 1, 2023 (Report BOH23017).

The Provincial government enacted the *Smoke-Free Ontario Act, 2017* to prohibit the smoking of tobacco and cannabis and the use of vapour products in enclosed public places and workplaces and in prescribed outdoor recreation spaces. The *Smoke-Free Ontario Act, 2017* permits non-tobacco or herbal waterpipe smoking but prohibits tobacco waterpipe smoking. Hamilton's Prohibiting Smoking within City Parks and Recreation Properties By-law (By-law No.11-080) came into effect on May 31, 2012 and was subsequently amended on July 12, 2019. The By-laws expand on the *Smoke-Free Ontario Act, 2017* by prohibiting the smoking or vaping of tobacco, cannabis, or any other substance in public parks and recreation areas.

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The proposed Hamilton Waterpipe By-law would generally prohibit waterpipe smoking where vaping or smoking is prohibited under the *Smoke-Free Ontario Act, 2017* and By-law No. 11-080. Public Health Ontario's recent evidence brief on the health impacts of waterpipe smoking found that all waterpipe smoke contains harmful toxins and chemicals and is associated with multiple adverse health outcomes including respiratory diseases, lung cancer, heart disease, and dental disease, similar to impacts of smoking tobacco.

An evidence-informed approach was followed to draft the proposed Waterpipe By-law in Hamilton, which included an environmental scan of municipal by-laws in Ontario, literature review, consultation with other health units that have implemented a similar by-law, review of charges and enforcement at Hamilton waterpipe establishments, and consultation with current waterpipe establishment owners.

Alternatives for Consideration – See Page 8

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Not Applicable.

Staffing: Not Applicable.

Legal: Although initial enforcement efforts will take an educational approach, it is possible that in the future, challenges and charges could result. Experience with other legislation indicates that if there is adequate enforcement accompanied by an education campaign that compliance with the by-law will be high and charges will be minimized.

In Ontario, municipalities are granted authority under the *Municipal Act, 2001* to enact by-laws respecting the health, safety and well-being of individuals within its jurisdiction. By-laws prohibiting waterpipe smoking in enclosed public places and workplaces have been challenged in court in Toronto, Peel Region and Vancouver, but have all been upheld.^{1,2,3} This sets a precedent that municipalities have the authority to pass such by-laws and reinforces the validity of such by-laws.

HISTORICAL BACKGROUND

On October 17, 2018, the Provincial government enacted the *Smoke Free Ontario Act, 2017* to protect workers and the public from second-hand smoke and vapour. The *Smoke Free Ontario Act, 2017* prohibits tobacco and cannabis smoking, and the use of

¹ 2386240 Ontario Inc. v. Mississauga (City), 2019 ONCA 413.

² 232169 Ontario Inc. (Farouz Sheesha Café) v. Toronto (City).

³ 2017 ONCA 484; Vancouver (City) v. Abdiannia, 2015 BCSC 1058.

vapour products in prescribed places such as enclosed public places, workplaces, restaurants and bars (including within nine metres of patios), as well as prescribed outdoor recreation spaces. Smoking of waterpipes that contain tobacco is prohibited in enclosed public spaces and outdoor spaces under the *Smoke Free Ontario Act, 2017*; however non-tobacco or herbal waterpipe smoking is permitted, due to a gap in the provincial regulatory framework.

While Hamilton City Council partially closed the gap in 2012 through the introduction of Hamilton's Prohibiting Smoking Within Parks and Recreation Properties By-law, banning the use of non-tobacco products (including waterpipes) on outdoor municipal recreation property, such activity continues to be permitted in indoor public spaces. Enforcement challenges remain for these indoor premises. Ontario Ministry of Health protocol requires Enforcement Officers to obtain shisha samples at waterpipe establishments for laboratory testing to determine if it contains nicotine (tobacco) before laying charges, which takes a considerable amount of time and is expensive to complete.

In the city of Hamilton, there are approximately nine waterpipe establishments operating at present. Most shisha samples tested since 2018 from Hamilton waterpipe establishments were found to contain nicotine, which is an indicator for tobacco in the product (>80%). Public Health Services laid its first charges against a waterpipe establishment in August 2018 under the *Smoke Free Ontario Act, 2017* resulting in convictions for a total fine of \$3,000. Warnings and charges by Public Health Services, Municipal Law Enforcement, and Hamilton Police Services have continued since that time at premises found to permit illegal smoking.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

In Ontario, single tier municipalities are granted authority under section 10(2) of the *Municipal Act, 2001* to enact by-laws respecting the health, safety and well-being of individuals within their jurisdiction. Section 115 of the *Municipal Act, 2001* further permits municipalities to prohibit or regulate the smoking of tobacco or cannabis in public places and workplaces.

By-laws prohibiting waterpipe smoking in enclosed public places and workplaces have been challenged in court in Toronto, Peel Region, Durham Region, and Vancouver but were upheld. This sets a precedent that municipalities have the authority to pass such by-laws to protect the health of residents and reinforces the validity of the by-laws. The courts also found that the by-laws did not violate the Canadian Charter of Rights and Freedoms.

RELEVANT CONSULTATION

- Corporate Services, Legal Services Division;
- Planning and Economic Development, Licensing and By-law Services;

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- Hamilton Police Services, Vice & Human Trafficking;
- Other Ontario municipalities that have implemented waterpipe by-laws; and,
- Waterpipe establishment owners in Hamilton.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Waterpipe

A waterpipe (or hookah) is a device used to smoke moist tobacco and/or non-tobacco herbal products. The substance that is smoked in a waterpipe is often referred to as shisha. The ingredients in shisha vary and may include dried plants, herbs, tobacco leaves, preservatives and flavourings mixed with molasses or honey.⁴ A waterpipe uses charcoal to heat shisha to produce smoke, which is drawn into water, cooled, and inhaled by an individual using a hose and a mouthpiece.⁵

Health and Safety Concerns

Waterpipes filled with tobacco and/or herbal shisha contain harmful toxins and chemicals, including particulate matter, polycyclic aromatic hydrocarbons, carbon monoxide, and heavy metals.⁴ With the exception of nicotine, all toxicants measured in herbal smoke equal or exceed those found in tobacco waterpipe smoke.^{4,5} Waterpipe smoking has been linked to the same diseases as cigarette smoking, with multiple harmful health outcomes including lung cancer, heart disease, negative respiratory effects (including reduced lung function), dental disease, and negative pregnancy outcomes.^{4,6} A waterpipe session takes between 20 to 80 minutes, putting others at risk due to the high levels of toxic compounds in second-hand smoke, irrespective of whether tobacco is contained within the waterpipe.⁴ Multiple studies have demonstrated hazardous occupational exposures in hookah bars,^{7,8,9,10,11} with higher levels of

⁴ Ontario Agency for Health Protection and Promotion (Public Health Ontario). (2021). Evidence brief: health impacts of waterpipe smoking and exposure. Toronto, ON: Queen's Printer for Ontario.

⁵ Non-Smokers Rights Association. (2012). Waterpipe smoking in Canada: New trend, old tradition. Ottawa, ON: Non-Smokers Rights Association.

⁶ Waiziry R, Jawad M, Ballout RA, et al. (2017). The effects of waterpipe tobacco smoking on health outcomes: an updated systematic review and meta-analysis. *International Journal of Epidemiology*, 46(1), 32-43. doi: 10.1093/ije/dyw021.

⁷ Cobb CO, Vansickel AR, Blank MD, Jentink K, Travers MJ, & Eissenberg T. (2013). Indoor air quality in Virginia waterpipe cafes. *Tobacco Control*, 22(5), 338-43. doi: 10.1136/tobaccocontrol-2011-050350.

⁸ Misek R & Patte C. (2014). Carbon monoxide toxicity after lighting coals at a hookah bar. *Journal of Medical Toxicology*, 10, 295–298. doi: 10.1007/s13181-013-0368-x.

⁹ Torrey CM, Moon KA, Williams DAL, Green T, Cohen JE, Navas-Acien A, & Breyse PN. (2015). Waterpipe cafes in Baltimore, Maryland: Carbon monoxide, particulate matter, and nicotine exposure. *Journal of Exposure Science and Environmental Epidemiology*, 25(4), 405-410. doi: 10.1038/jes.2014.19.

nicotine, carbon monoxide, tar and heavy metals compared with cigarettes^{7,12} and indoor levels of Particulate Matter 2.5 fine air pollutant particles, carbon monoxide and air nicotine that are hazardous to human health.¹³ Waterpipe smokers often share a hose/mouthpiece in a communal environment, putting users at risk of contracting viruses and respiratory infections such as meningitis, tuberculosis, hepatitis, herpes, influenza, COVID-19, and oral diseases.⁴

Jurisdictional Scan

Approximately 35 communities in Ontario have created by-laws to prohibit or control the use of (tobacco and non-tobacco/herbal) waterpipe smoking within indoor and/or outdoor settings including Barrie, Durham Region, Halton Region, Niagara Region, Orillia, Ottawa, Peel Region, Peterborough, and Toronto. In addition, five provinces in Canada regulate waterpipe smoking in public spaces: Quebec, Alberta, Nova Scotia, New Brunswick, and Prince Edward Island. Many jurisdictions across Canada, the United States, and the Middle East - where traditional use of waterpipes historically occurred such as Egypt, United Arab Emirates, Turkey, Syria, and Kuwait - have passed laws prohibiting waterpipe smoking in public places and workplaces.

Prevalence and Usage

Although prevalence of waterpipe smoking is low compared with other forms of tobacco use, there is a concern with prevalence among youth, leading to future addiction. Past year use for waterpipe smoking in 2019 was approximately 10% for Grade 12 Ontario students, with use decreasing by age.¹⁴ Studies link hookah tobacco smoking to subsequent cigarette smoking.¹⁵ Peel Region Public Health identified that 72% of waterpipe establishment patrons were between ages 18 and 24 and Niagara Region

¹⁰ Zeidan RK, Rachidi S, Awada S, et al. (2014). Carbon monoxide and respiratory symptoms in young adult passive smokers: A pilot study comparing waterpipe to cigarette. *International Journal of Occupational Medicine Environmental Health*, 27, 571–82. doi:10.2478/s13382-014-0246-z

¹¹ Zhou S, Behrooz L, Weitzman M, et al. (2017). Secondhand hookah smoke: An occupational hazard for hookah bar employees. *Tobacco Control*, 26, 40-45.

¹² Shihadeh A, Schubert J, Klaiany J, et al. (2015). Toxicant content, physical properties and biological activity of waterpipe tobacco smoke and its tobacco-free alternatives. *Tobacco Control*, 24(Suppl 1), i22-i30.

¹³ Zhang B, Haji F, Kaufman P, Muir S, & Ferrence R. (2015). 'Enter at your own risk': A multimethod study of air quality and biological measures in Canadian waterpipe cafes. *Tobacco Control*, 24(Suppl 2), 175-181.

¹⁴ Boak A, Elton-Marshall T, Mann RE, & Hamilton HA. (2020). Drug use among Ontario students, 1977-2019: Detailed findings from the Ontario Student Drug Use and Health Survey (OSDUHS). Toronto (ON): Centre for Addiction and Mental Health.

¹⁵ Yu Z, Wang M, Fu J. (2023). Association between waterpipe use and susceptibility to cigarette smoking among adolescents and young adults who never smoked: A systematic review and meta-analysis. *Tobacco Induced Disease*, 21, 29.

Public Health found that waterpipe use was highest among those aged 17 to 24 years.^{16,17}

In 2022, Niagara Region community members reported most commonly using waterpipes at waterpipe establishments (68.7%), at home (59.6%), or at someone else's home (55.6%).¹⁶ Primary reasons to visit waterpipe establishments were identified: to socialize (34.5%), for food and drink (26.7%), and to smoke (21.6%).¹⁶ Thirty one per cent of Niagara Region survey respondents used waterpipes for cultural reasons.¹⁶ There was no reportable difference in terms of waterpipe use among youth by ethnicity according to the Youth Smoking Survey.¹⁸

Consultation with Waterpipe Establishment Owners

Public Health Services designed and executed an engagement plan specific to waterpipe establishment owners and operators to determine sources of revenue, expected impacts on businesses and opinions on proposed waterpipe restrictions. A survey was distributed to all known Hamilton waterpipe establishments (n=10) in the following ways: direct mail, phone calls including voicemail messages, and hand-delivery to establishments. Only two establishments provided feedback by completing and submitting the survey regarding the proposed by-law. Both businesses that completed and submitted the survey have operated for more than three years; serve food, drinks and hookah/shisha to customers; and permit hookah smoking indoors anywhere in the establishment. Protection for employees from the harmful effects of waterpipe smoke was not identified at either location. Suggestions to lessen the impact of a waterpipe by-law were not received from either establishment. With the low participation/response rate to the survey, differences between the two establishments cannot be shared without ethical impacts.

In comparing survey results to Niagara Region, which recently enacted a waterpipe by-law, revenue from waterpipe sales ranged from three to 15%, while two of the five establishments did not expect a prohibition to have a significant impact on their business.¹⁶ A common concern among businesses is that smoke-free regulations can cause financial loss. However, studies conducted on the economic impacts of smoke-free environments demonstrate that the hospitality industry has not been impacted financially by smoke-free regulations.^{19,20,21} The goal is to protect people, including workers and vulnerable populations, from second-hand smoke exposure.

¹⁶ Smith J & de Villa E. (2016). Prohibiting waterpipe smoking in specified public areas: Regional report. Mississauga, ON: Peel Regional Council.

¹⁷ Grewal, K. (2022). Waterpipe smoking by-law. Niagara, ON: Niagara Region Council.

¹⁸ Chaiton, M & Luk, R. (2014). Waterpipe use in Ontario. Toronto, ON: Ontario Tobacco Research Unit.

¹⁹ Scollo M, Lal A, Hyland A, et al. (2003). Review of the quality of studies on the economic effects of smoke-free policies on the hospitality industry. Tobacco Control, 12,13-20.

Recommended By-law

The proposed by-law, if enacted, will prohibit the use of waterpipes in and on:

- Enclosed public places;
- Enclosed workplaces;
- Outdoor patios; and,
- City-owned outdoor sports and recreation areas.

In addition to making it an offence for anyone to use a waterpipe in the above places, the by-law also makes it an offence for a person in charge of one of the places listed above to allow any person to use a waterpipe in the area. The proposed by-law generally applies to any enclosed public places and workplaces, including public transportation vehicles. Although the majority of premises covered by the by-law are likely to be hookah restaurants and cafes, this by-law ensures there are no regulatory gaps and that use of waterpipes is generally prohibited in the same public places and workplaces where smoking of tobacco is prohibited. The recommended approach is intended to align City by-laws with those in comparator municipalities in Ontario and to be compatible with provincial legislation.

Education and Enforcement

Comprehensive education is fundamental to ensuring successful implementation. Tobacco Enforcement Officers will use a phased in progressive enforcement approach when addressing non-compliance; this may include education, warnings, tickets and summons. There will be a four-month education phase when the by-law comes into effect. During this time, Tobacco Enforcement Officers will work with establishments to ensure they are aware of the by-law and provide consultation to assist them in bringing their establishments into compliance. After the education phase has ended, there will be a warning phase, followed by an enforcement phase where charges will be considered for continued non-compliance. Public Health Services may consult with Licensing and By-law Services should establishments hold a City of Hamilton business license as an additional level of enforcement action. Continued violations of City of Hamilton by-laws may affect the status of a business license. There are no specific signage requirements under the Hamilton Waterpipe Smoking By-law.

²⁰ Melberg HO, Lund KE. (2012). Do smoke-free laws affect revenues in pubs and restaurants? *European Journal of Health Economics*, 13(1), 93-9. doi: 10.1007/s10198-010-0287-6.

²¹ International Agency for Research on Cancer. Evaluating the effectiveness of smoke-free policies. *IARC handbooks of cancer prevention: tobacco control*. Vol. 13. Lyon, France: World Health Organization, International Agency for Research on Cancer; 2009. Available from: <http://www.iarc.fr/en/publications/pdfs-online/prev/handbook13/handbook13.pdf>.

ALTERNATIVES FOR CONSIDERATION

Considering the health concerns for children and employees due to second-hand smoke, difficulty with enforcement, equity concerns for young, lower-income employees, and previous experience with similar alternatives when prohibiting indoor smoking, Public Health Services recommends moving forward with restricting waterpipe use at all locations within the *Smoke Free Ontario Act, 2017*.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" to Report BOH23017(a)

Draft By-law to Regulate Waterpipe
Smoking in Public Places and
Workplaces in the City of Hamilton