



CITY OF HAMILTON
PUBLIC HEALTH SERVICES
Healthy Environments Division

TO:	Mayor and Members Public Health Committee
COMMITTEE DATE:	December 4, 2023
SUBJECT/REPORT NO:	Hamilton’s Waterpipe By-law Amendment (BOH23017(b)) (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

- (a) That Hamilton Waterpipe By-law 23-170 be repealed; and,
- (b) That the draft Hamilton Waterpipe By-law attached as Appendix “A” to Report BOH23017(b), in a form satisfactory to the City Solicitor, be approved.

EXECUTIVE SUMMARY

The City’s new Hamilton Waterpipe By-law was passed by Council on September 13, 2023. Staff reviewed the By-law while drafting an application for short form wording (to enable writing tickets) and found two inconsistencies, an omission, and some typographical/grammatical errors that should be corrected. As no short form wording has been requested yet, Legal Services staff recommended the By-law be repealed and replaced. This allows staff to have a clean and consolidated By-law rather than having to reference both the By-law and an amendment each time the By-law is used.

Alternatives for Consideration – Not Applicable

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Not Applicable.

Staffing: Not Applicable.

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.

**SUBJECT: Hamilton's Waterpipe By-law Amendment (BOH23017(b)) (City Wide)
- Page 2 of 3**

Legal: Correcting the inconsistencies, omission, and typographical/grammatical errors in the By-law will make it clearer and more enforceable. Making these corrections by repealing and replacing the By-law rather than amending the existing By-law is recommended.

HISTORICAL BACKGROUND

The Hamilton Waterpipe By-law was approved by the Public Health Services Committee on September 8, 2023 and passed by Council on September 13, 2023. Staff reviewed the By-law while drafting an application for short form wording (to enable writing tickets) and found two inconsistencies, an omission, and some typographical/grammatical errors that should be corrected.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The proposed By-law falls within the City's authority under the *Municipal Act, 2001*.

RELEVANT CONSULTATION

Legal Services was consulted and prepared the attached By-law.

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Inconsistency in Places where Waterpipes can be Displayed and Kept

The current Hamilton Waterpipe By-law prohibits the display of Waterpipes and their components in several areas including Patios and Recreational Properties as defined in the By-law. Their display is also prohibited in some Enclosed Public Places, but only those that operate as bars or restaurants.

The By-law was intended to require Operators and Employees to make sure that Waterpipes and similar equipment aren't kept in places where they can't be displayed. However, the By-law inadvertently extended this obligation to all Enclosed Public Places rather than just the ones operating as bars and restaurants.

The By-law also required Operators and Employees to ensure Waterpipes and similar equipment aren't kept in any Enclosed Workplace. The definition of Enclosed Workplaces includes places where Waterpipes are permitted to be displayed and sold.

The result of these inconsistencies is that the By-law prevents Waterpipes from being kept in establishments that are otherwise permitted to display and sell them.

Omission of Requirement for Schools to Notify Individuals of Prohibited Behaviour and Require Offenders not to Remain on School Property

The current By-law prohibits smoking of Waterpipes on School property. However, the By-law failed to require operators of Schools to give notice to employees or other individuals smoking on School Property that the behaviour is prohibited and to ensure that a person who refuses to comply with such notice does not remain on the School property.

New By-law

The attached draft by-law, if passed, will correct the issues identified above. The new By-law will ensure that Waterpipes are not prohibited from being kept in places that are otherwise permitted to sell and display them. The new By-law will also ensure that individuals who smoke on School property are provided notice of the prohibition and not permitted to remain on the property. Additionally, the new By-law corrects some typographical and grammatical errors present in the old By-law.

ALTERNATIVES FOR CONSIDERATION

Not Applicable.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" to Report BOH23017(b)

Draft Hamilton Waterpipe By-law