



**CITY OF HAMILTON**

**PUBLIC HEALTH SERVICES**  
*Healthy Living Division*

<b>TO:</b> Mayor and Members Board of Health	<b>WARD(S) AFFECTED:</b> CITY WIDE
<b>COMMITTEE DATE:</b> February 28, 2011	
<b>SUBJECT/REPORT NO:</b> Smoking and Second-hand Smoke in Outdoor Municipal Recreational Areas in Hamilton BOH07034(e) (City Wide) (Outstanding Business List Item)	
<b>SUBMITTED BY:</b> Elizabeth Richardson, MD, MHSc, FRCPC Medical Officer of Health Public Health Services Department	<b>PREPARED BY:</b> Megan Lynch: 905 546-2424 ext. 6170 Kevin McDonald: 905 546-2424 ext. 1984
<b>SIGNATURE:</b>	

**RECOMMENDATION**

- (a) That the By-law respecting Regulating and Prohibiting Smoking on City Recreational and Park Properties attached as Appendix “A” to Report BOH07034(e), be approved;
- (b) That the budget associated with education and signage for such a by-law be referred to the City of Hamilton 2011 budget process;
- (c) That the subject matter Smoking and Second-hand Smoke in Outdoor Municipal Recreational Areas in Hamilton be identified as completed and removed from the Outstanding Business List.

**EXECUTIVE SUMMARY**

Smoking is the leading cause of preventable illness and deaths in Canada, resulting in more than 47,000 deaths every year<sup>1</sup>. In 2008, the Board of Health directed Public Health Services (PHS) staff to form a working group with Public Works and Community Services to “review Smoking By-law No. 02-054 with a view to assess tobacco-free parks, playgrounds and beaches in the City of Hamilton in order to protect the health of children”. Due to the number of complaints received by PHS and other City departments regarding smoking in varying outdoor locations in Hamilton, as well as the changing

**SUBJECT: Smoking and Second-hand Smoke in Outdoor Municipal Recreational Areas in Hamilton BOH07034(e) (City Wide) - Page 2 of 16**

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national and provincial landscape on smoking in outdoor spaces, other outdoor municipal recreational spaces are also considered here. The Regulating and Prohibiting Smoking on City Recreational and Park Properties By-law is attached in Appendix "A" to Report BOH07034(e), with a proposed date of implementation on May 31, 2012.

Benefits of enacting legislation to prohibit smoking in outdoor municipal recreational areas include;

- 1) Protecting the health and safety of the community and vulnerable groups such as children from the health effects of second-hand smoke;
- 2) Supporting local groups who use city facilities to promote healthy lifestyles;
- 3) Reducing cigarette butt litter would reduce environmental degradation and improve the image of the city;
- 4) Reducing cigarette butt litter would reduce the risk of fire hazards and health hazards to children from ingestion/choking;
- 5) Positive role-modeling for children and youth would decrease the likelihood of them starting smoking;
- 6) Providing a smoke-free environment would encourage people to quit smoking; and
- 7) Responding to complaints of second-hand smoke and to public and stakeholder support for regulating outdoor smoking in recreational areas would enhance City services in outdoor spaces.

Implementation of a by-law restricting smoking in municipal outdoor spaces would contribute to the improved health and well-being of residents and thereby the wider community. Improved health supports prosperity in the City of Hamilton, and reduces the economic burden of smoking in our community. The proposed By-law and enforcement strategy achieve cost containment by utilizing existing staff for enforcement. A survey of Hamilton residents and other stakeholders who use municipal outdoor recreational areas demonstrated a substantial majority support for regulating smoking in these spaces. Almost 60 municipalities in Ontario have implemented smoke-free outdoor space by-laws and were consulted with respect to implementation, enforcement and legal implications. Part of the implementation plan would include an evaluation after the first year of enforcement, results of which would be reported to the Board of Health.

**FINANCIAL / STAFFING / LEGAL IMPLICATIONS (for Recommendation(s) only)**

**Financial:**

Enforcement: No additional funding is required for enforcement, as it will utilize existing Tobacco Enforcement Officers, who are 100% funded through Smoke Free Ontario.

Signage: A capital budget request for \$116,535.00 was submitted for 2011 to cover the costs of signage. This request was subsequently reduced to \$14, 257 to produce signage in the form of decals, to be adhered to park fixtures and/or waste receptacles

**SUBJECT: Smoking and Second-hand Smoke in Outdoor Municipal Recreational Areas in Hamilton BOH07034(e) (City Wide) - Page 3 of 16**

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by summer student employees, in order to produce significant costs savings. This represents \$5181 for 650 decals and \$9076 for staff wages.

Education: A capital budget request was submitted for \$85,000 for 2011-2012.

**Staffing:**

Existing staff will be utilized for by-law education, implementation, and enforcement. It is anticipated that education and implementation would require a 0.5 FTE in 2011 and 2012 and the FTE assigned would revert back to other mandated activities when completed. It is anticipated that during the first year of the by-law, enforcement will spend approximately 0.1 FTE tracking and responding to complaints related to the by-law. Over time it is anticipated that this will decline.

**Legal:**

Although initial enforcement efforts will take an educational approach, it is possible that in the future, challenges and charges could result for those found to be in violation. Experience with other jurisdictions 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. 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.

The Municipal Act, 2001 empowers municipalities to pass by-laws with respect to the health, safety and well-being of persons, and specifically within s. 115 with respect to smoking. The Municipal Act provides that a municipality may prohibit or regulate the smoking of tobacco in public places and workplaces. In considering a by-law under this authority, municipalities may define “public place” for the purpose of the by-law. The provisions of The Municipal Act do not, however permit the municipality to prohibit smoking on highways which includes a common and public highway, street or avenue and includes the area between the lateral property lines thereof. Public sidewalks are included within the definition of “highway” and as a result, municipalities do not have the authority to implement a by-law that would prohibit smoking on public sidewalks.

**HISTORICAL BACKGROUND** (Chronology of events)

- March 2008 Board of Health directed a review of the Smoking By-law to assess tobacco-free parks, playgrounds and beaches in the City of Hamilton.
- Updates were provided to the Board of Health on November 7, 2008 and May 25, 2010.
- Other outdoor municipal recreational spaces were also considered in addition to parks, playgrounds and beaches due to the number of complaints received by PHS and other city departments.

- Due to changes to national and provincial landscape on smoking in outdoor spaces, other outdoor municipal recreational areas were considered for the proposed by-law including; recreation centre, arena and pool property; parks including playgrounds and splash pads; outdoor pools; skateboard parks; recreational or sports fields; public beaches; festivals and events; parades; recreational trails; and municipal golf courses.

### **Smoking Rates and Exposure to Second-hand Smoke in Outdoor Areas**

In the City of Hamilton, 77% of residents are non-smokers (23% are daily and occasional smokers), according to the 2007 Canadian Community Health Survey (CCHS). The 2009 Canadian Tobacco Use Monitoring Survey (CTUMS) reported that 53% of respondents were exposed to second-hand smoke on a sidewalk or in a park during the past month; and 54% of respondents reported being exposed to second-hand smoke at the entrance to a building in the past month.

### **Legislation and Policies Regulating Smoking in Outdoor Areas**

The Smoke-Free Ontario Act, 2006 (SFOA) prohibits smoking outdoors on properties that contain day nurseries, elementary schools and high schools, but not on other outdoor recreational areas. However, corporate policies exist that regulate smoking in outdoor spaces. Cadillac Fairview has made Sherway Garden's property smoke-free and St. Joseph's Healthcare Hamilton and Hamilton Health Sciences prohibit smoking on all of their hospital properties.

Almost 60 Ontario municipalities have passed by-laws regulating smoking in outdoor recreational areas. Collingwood has had a by-law in place since 2000 making city parks smoke-free, whereas other municipalities such as Barrie, Peterborough, Sault Ste. Marie, Toronto, and Woodstock have more recently implemented such by-laws. Across Canada, the United States, and internationally, legislation governing smoking in outdoor areas is coming into effect. For a brief listing of Ontario municipalities with by-laws governing outdoor recreational areas, see Appendix "B" to Report BOH07034(e).

Many municipalities, provinces and territories have legislation in place to regulate smoking around the entrances and exits of municipal buildings, including recreation centres and arenas. Other corporate policies are also in place for restricting smoking within a certain distance from buildings in public places. Lime Ridge Mall in Hamilton prohibits smoking within 9 metres of the building. The City of Hamilton Human Resources 'Smoke-Free Workplace Policy No. HR-31-10' prohibits employees (but not members of the public) from smoking within nine metres of the entrance or exit to any building where city employees work, including recreation centres and arenas, and within nine metres of outside worksites where employees are performing their duties.

### **Survey of City of Hamilton Residents**

Users of outdoor recreational areas were surveyed in 2009 at locations that were geographically spread across the city. The majority (77%) identified themselves as non-

smokers. The majority of residents who were surveyed supported regulating smoking in outdoor municipal recreational areas. More than half (56%) stated that they usually or always see smoking/smoke in outdoor recreational spaces and 97% often or always notice litter caused by cigarette butts. A summary of results is attached in Appendix "C" to Report BOH07034(e).

### **Survey of Sports Associations in Hamilton**

In 2010, the majority of sports associations that were surveyed supported making recreational areas 100% smoke-free, followed by support for regulating smoking within a certain distance from people and/or equipment. There was no support for allowing smoking throughout recreational and park areas. A summary of results is attached in Appendix "C" to Report BOH07034(e).

### **Survey of Neighbourhood Associations and Other Stakeholders**

The majority of Neighbourhood Associations that responded to Public Health Services' survey supported 100% smoke-free outdoor recreational areas (with the exception of public beaches), followed by support for designated smoking areas. The majority of the principals and vice-principals of The Hamilton-Wentworth Catholic District School Board supported smoke-free outdoor recreational areas with the exception of public beaches. The majority of the Joint Educational Parents Group from the Hamilton-Wentworth Catholic District School Board also supported smoke-free outdoor recreational areas. The Hamilton Wentworth District School Board was consulted, as was the Hamilton Conservation Authority and the Clean City Liaison Committee. A summary of the outcomes of these consultations is attached in Appendix "C" to Report BOH07034(e).

## **POLICY IMPLICATIONS**

The Human Resources 'Smoke Free Workplace Policy No.HR-31-10' prohibits City of Hamilton employees from smoking within nine metres of the entrance and exit to any building where City employees work, including recreation centres and arenas, in addition to within nine metres of outside worksites where employees are performing their duties. The proposed By-law would prohibit employees as well as the public from smoking on recreation centre, arena and pool property as well as in park and recreational areas where city staff are working.

## **RELEVANT CONSULTATION**

- **Corporate Services, Legal Services Division**, Ron Sabo was consulted and provided input regarding the wording and implementation of the By-law including drafting said by-law, listing requirements of public consultations required by legislation for by-law passage including advertising public meetings, provided recommendations for leases of City-owned recreation areas, and listing the role of Legal Services in the by-law.

- **Community Services, Recreation Division**, Joe-Ann Priel, Diane LaPointe-Kay, Greg Maychak, Coralee Secore, Dale Wood and Rob Gatto were consulted regarding their role in developing and proposing the By-law. Recreation staff identified that prohibiting smoking on recreation property was a priority identified as a result of complaints from users of recreational areas. Staff raised concerns regarding Recreation Division staff enforcing the by-law, and it was clarified that Public Health Services will be the primary lead for enforcement.. The Recreation division provided an inventory of outdoor recreation spaces and the number of children/youth who use golf courses.
- **Community Services, Culture Division**, Anna Bradford and Jennifer Kay were consulted regarding their role in developing and proposing the By-law, and by-law content concerning festivals and events operated on City-owned property. They requested/suggested special permissions to allow smoking during festivals and events.
- **Public Works, Operations and Waste Management Division**, Al Dore, Craig Murdoch, H.T. Lam and Lynda MacKay were consulted regarding the role of their Division in the By-law including providing the number of parks in the city of Hamilton, the signage needed being 3 per site and costs of signs being \$85 each including staff time for installation of poles and signs. They were also consulted regarding the cost of cigarette butt receptacles and reported they would not be able to provide equipment or staff for emptying of receptacles. .
- **Planning and Economic Development, Parking and By-law Services Division**, Bill Young was consulted regarding the role of his department in the By-law. He provided specific strategies for consideration of enforcement.
- **Residents of the City of Hamilton** who use outdoor municipal recreational areas were surveyed regarding their opinion on a 100% ban of smoking in outdoor municipal recreational areas, partial ban, or no restrictions. A substantial majority of respondents were in favour of the proposed By-law. See Appendix “C” to Report BOH07034(e) for list of locations surveys were conducted.
- **Sports Associations and Organizations, Neighbourhood Associations and Community Councils** in the City of Hamilton were surveyed regarding their opinion on a 100% ban of smoking in outdoor municipal recreational areas, partial ban, or no restrictions. The majority of sports associations surveyed supported 100% smoke-free recreation areas, with restricting smoking within a certain distance from people or equipment the second most common choice. The majority of Neighbourhood Associations surveyed supported 100% smoke-free recreation properties, with the exception of public beaches. The second choice was split, depending on the specific outdoor space, between providing a designated area for smoking or prohibiting smoking within a certain distance of people or equipment. There was no support for allowing 100% smoking throughout recreational spaces. The majority of Community Councils surveyed supported a 100% ban or designated area to smoke away from people and/or equipment. See Appendix “C” to Report BOH07034(e) for names or organizations, associations and councils.

**SUBJECT: Smoking and Second-hand Smoke in Outdoor Municipal Recreational Areas in Hamilton BOH07034(e) (City Wide) - Page 7 of 16**

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- **Hamilton Conservation Authority**, Steve Miazga and Lisa Burnside were consulted regarding the HCA's interest in implementing a similar by-law and provided written correspondence stating they have initiated plans to implement internal policies restricting smoking. HCA identified specific challenges that would be faced when considering a smoke-free policy, including multi-jurisdictional sites and the large amount of property represented. .
- **Clean City Liaison Committee**, Philip Homerski and members of the committee were consulted regarding their work in relation to the Keep America Beautiful Campaign, specifically reducing cigarette butt litter in three pilot site locations - James and King, Jamesville and Pier 8 waterfront, and opportunities for collaboration with Public Health Services regarding reducing cigarette butt litter.
- **Hamilton Wentworth District School Board (HWDSB)** was consulted through the Public Health Services/School Board Liaison Committee regarding their opinion on a 100% ban of smoking in outdoor municipal recreational areas, partial ban, or no restrictions and declined to provide input.
- **Hamilton Wentworth Catholic District School Board (HWCDSB) – Principals & Vice-Principals Association Executive Committee and Joint Educational Parents Advisory Group** were surveyed through the Public Health Services/School Board Liaison Committee regarding their opinion on a 100% ban of smoking at outdoor municipal recreational areas, partial ban, or no restrictions. They were also surveyed regarding consultations with their members re: opinions of above mentioned restrictions. The majority of principals surveyed supported making outdoor recreational areas smoke-free, with the exception of public beaches, where they supported having smoking in designated areas. The majority of parents surveyed supported making outdoor recreational areas 100% smoke-free.
- **Other Ontario municipalities** that have implemented smoke-free outdoor recreational area by-laws were consulted regarding enforcement, signage, compliance and lessons learned. The vast majority of municipalities report that residents self-enforce the jurisdiction's outdoor smoke-free by-law. Public Health Services was not able to identify one charge across Ontario..
- **Senior Management Team, City of Hamilton** was consulted regarding the major policy direction of the By-law and provided their support.

**ANALYSIS / RATIONALE FOR RECOMMENDATION**

(include Performance Measurement/Benchmarking Data, if applicable)

The Regulating and Prohibiting Smoking on City Recreational and Park Properties By-law attached in Appendix "A" to Report BOH07034(e) proposes prohibiting smoking on or at outdoor municipal recreation and parks property including, but not limited to parks and playgrounds, recreation centre/arena/pool property, outdoor pools, skateboard parks, sports fields, public beaches and stadium property, on May 31, 2012. Recreation

and park areas were prioritized for by-law implementation based on age/demographics of users being primarily children and youth, on the number and density of users, the number of people who smoke that are typically present, the number of complaints received about the areas, the support from Hamilton residents, user groups, and stakeholders for prohibiting smoking in these areas, and the amount of regulation of smoking by other Ontario municipalities.

**Problem: Health Effects from Outdoor Second-hand Smoke**

Second-hand smoke contains more than 4,000 chemicals, about 50 of which are known to cause cancer. Numerous reputable health and scientific agencies have concluded that there is no safe level of exposure to second-hand smoke. Health effects of being exposed to second-hand smoke outdoors have recently been studied in greater detail. There is evidence that outdoor exposure can be substantial, and in some cases, as high as indoor exposure.<sup>2,3</sup> One study found that second-hand smoke odour would be detectable at about seven metres (23 feet) from a lit cigarette with irritating levels at four metres (13 feet)<sup>4</sup>. A study conducted in outdoor locations including public parks, found that outdoor short-term levels of cigarette smoke can substantially exceed typical indoor second-hand smoke levels depending on certain circumstances such as wind conditions and proximity to the person who is smoking.<sup>3</sup> Another study concluded that cigarette smoke can cause more air pollution than a diesel car's exhaust.<sup>5</sup> Recent research conducted at the University of Waterloo also concluded that smoking near doorways negatively impacts air quality indoors.<sup>7</sup>

**Recommended Solution: Create Smoke-Free Outdoor Areas**

The Regulating and Prohibiting Smoking on City Recreational and Park Properties By-law attached in Appendix "A" to Report BOH07034(e) proposes prohibiting smoking on or at outdoor municipal recreation and parks property including, but not limited to parks and playgrounds, recreation centre/arena/pool property, outdoor pools, skateboard parks, sports fields, public beaches and stadium property, on May 31, 2012.

**Benefits of Smoke-Free Outdoor Areas**

1. *Protecting the health and safety of the community and vulnerable groups such as children from the effects of second-hand smoke.* The majority of park users are children who are more susceptible to respiratory infections and asthma and other hazardous effects of cigarette smoke.
2. *Supporting local groups who use city facilities to promote healthy lifestyles.*
3. *Reducing cigarette butt litter would reduce environmental degradation and improve the image of Hamilton.* Cigarette butts and associated products are consistently the most littered item across the globe<sup>7</sup>. Discarded cigarettes and associated products are not biodegradable and cause long-term damage to the environment. The presence of littering in an area has been shown to attract



further litter. Littered butts reduce the appeal of the area to residents, workers and visitors.

4. *Reducing cigarette butt litter would reduce the risk of fire hazards and health hazards to children.* Careless smoking and disposal of burning cigarette butts are a major cause of forest fires. Littered cigarette butts are potentially hazardous to children through ingestion, choking or burning.
5. *Positive role modelling.* Research shows that when children see adults smoking in a family-oriented place such as a park it normalizes smoking, making youth more likely to try tobacco products.
6. *Providing a smoke-free environment would encourage people to quit smoking by providing a smoke-free environment and further reducing the social norm of smoking.*
7. *Responding to complaints of second-hand smoke and to public and stakeholder support for regulating outdoor smoke in recreational areas would enhance City services in outdoor spaces.* (See stakeholder consultations under “Relevant Consultation” and Appendix C).

#### **Current Hamilton Situation with Respect to Smoke-Free Outdoor Areas**

The City of Hamilton has almost 1,200 acres of parkland at 457 locations, as well as approximately 1,600 acres of open space property at more than 200 locations. More than 80% of the parkland have playgrounds, spray pads, wading pools, or sports fields that attract children, youth, families and organized groups. There are 49 recreation centres, pools, arenas and outdoor pools and over 49 kilometres of trails.

There is currently legislation that *partially* regulates smoking in outdoor areas. The Smoke-Free Ontario Act (SFOA) 2006, prohibits smoking outdoors on properties that contain day nurseries, elementary schools and high schools. Many school properties are adjacent to municipal recreational areas that are not under outdoor smoke-free regulation. This results in conflicting messages to youth that may use both the school and recreational facility.

The City of Hamilton’s policy prohibits employees but not members of the public from smoking within nine metres of the entrance or exit to any building where City employees work. There are no-smoking signs posted on the doors of municipal buildings but these signs do not clearly state that the policy only applies to employees, not members of the public. This results in confusion and PHS often receives complaints from the public about people smoking within the nine metres. This policy fails to protect the health of the employees and adds to the confusion and inconsistency of smoke-free policies.

Corporate policies exist that regulate smoking in outdoor spaces. St. Joseph’s Healthcare Hamilton and Hamilton Health Sciences prohibit smoking on their hospital properties. Lime Ridge Mall in Hamilton prohibits smoking within 9 metres of the building. Current legislation and corporate policies provide only partial protection of the

health and safety of residents and employees of the City of Hamilton. The inconsistent policies also send conflicting messages to the children and residents of Hamilton.

### **Experiences in Other Jurisdictions With Respect to Implementation**

Almost 60 Ontario municipalities have passed by-laws regulating smoking in outdoor recreational areas and some were consulted regarding implementation.

#### Compliance and smoking cessation behaviour

Woodstock conducted a survey of residents before and after their smoke-free outdoor By-law was implemented. The percentage of people who smoke that reported smoking in city recreation fields decreased from 33% to 21%. Their support for smoking restrictions in city parks increased to 84% one year after the By-law was implemented. Nineteen per cent of people who smoke reported they were more likely to quit smoking as a result of the By-law and 47% quit after the By-law was passed and reported that the By-law helped them to stay a non-smoker. A further 33% said the By-law helped them cut down on the amount they smoke.<sup>15</sup>

Similarly, Bridgewater, Nova Scotia found high compliance, awareness and support for their smoke-free outdoor spaces By-law as well as similar effects on smoking cessation behaviour.<sup>16</sup> New Zealand and Australia also showed high compliance and positive impacts on smoking cessation with the policy.<sup>14,17</sup>

#### Enforcement

Enforcement of smoking restrictions is often a concern but studies show that concerns about compliance far exceed the number of actual problems. Municipalities in Ontario with smoke-free outdoor legislation were surveyed to determine what their experience has been. Warnings have been issued, but no charges have been laid in areas where By-laws have been in place for two or more years such as Orillia, Belleville, Collingwood, Woodstock, Peterborough or New Tecumseh. Municipalities reported either no increase in complaints, or minimal complaints/inquiries that required a response. Municipalities also reported no impact on the use of city recreational facilities.

### **Unique Issues to Consider in Hamilton**

A large amount of the outdoor recreational space (10,900 acres) in Hamilton is regulated by the Hamilton Conservation Authority (HCA). If the City of Hamilton were to pass a by-law prohibiting smoking in outdoor municipal recreational areas, it will be advantageous for the HCA to also pass a similar policy to a) protect members of the public; b) protect the environment on HCA lands; and c) to avoid confusion among the public by having different rules in different outdoor recreational areas of the city. HCA is currently considering internal policies that would prohibit outdoor smoking.

### **Education, Signage, and Enforcement of the By-law**

Areas that have introduced outdoor spaces legislation have found that it is self-enforcing and witness good compliance from the public.<sup>17</sup> This is a deterrent by-law and

in most instances the peer pressure will, in itself, garner compliance. Past no-smoking By-laws implemented in the City of Hamilton have shown high compliance rates despite initial scepticism.

Signage, education and enforcement are all necessary components to ensure successful implementation of a no-smoking By-law. Previous experience in Hamilton and elsewhere has shown that a comprehensive and broad-reaching media campaign that clearly communicates changes, when used in conjunction with enforcement activities, creates a high level of compliance with no-smoking By-laws. People who understand what the restrictions are and why they are in place are more likely to comply.<sup>11</sup>

### Education

The public education strategy will consist of a variety of paid media such as newspapers, radio, HSR bus advertisements, Facebook advertisements, and posters in addition to earned media. If the requested budget is not approved, the education plan will rely primarily on public relations activities that do not have costs associated with them, and no signage will be posted. When relying on free public relations, we cannot guarantee that the By-law changes will be communicated, or that they will be communicated accurately and in a timely manner. 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 with enforcement.

### Signage

Good signage is likely to be important for a successful smoke-free public places policy. Visible and attractive signage targets people who use recreational areas *at the time* that they use it, maximizing on education and compliance. Signage is also often used by members of the public to reinforce the By-law.<sup>12,13</sup> In New Zealand, 64% of park users who were aware of smoke-free rule found out about the smoking restrictions from the signs in parks and cigarette remnants appeared to be more concentrated where there were no visible signs.<sup>14</sup> In Bridgewater, Nova Scotia, 54% of the residents who complied with the outdoor spaces By-law had seen the signs and 81% said the signs were a useful reminder of the By-law.<sup>15</sup> A capital budget request for signage to be posted in recreational and park areas has been submitted for consideration in 2011.

### Enforcement

The proposed By-law will 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 education, and then move towards warnings and/or charges as appropriate. Without a sufficient education budget, it is anticipated that there would be an increased need for enforcement due to less awareness of the By-law.

### **Evaluation**

An evaluation of the implementation process and outcomes would be conducted in 2013, after the first year of enforcement activities. This timing would be far enough in the future to allow for an assessment of a season of full enforcement, but would come early enough to be useful for adjusting course if necessary in preparation for the 2015 Pan Am events. Preliminary plans for this evaluation include measuring the prevalence of exposure to smoking in parks, the frequency of complaints and the number of tickets issued. This evaluation would be reported to the Board of Health upon completion.

#### **ALTERNATIVES FOR CONSIDERATION**

(include Financial, Staffing, Legal and Policy Implications and pros and cons for each alternative)

Below are alternatives to the suggested recommendations which have been considered;

##### **A. Prohibiting Smoking Within A Certain Distance**

Several other municipalities in Ontario have chosen to designate smoking a certain distance away from either a recreation centre or playground equipment.

*Financial:* There would be additional costs for extra signage to clearly mark distances where smoking would be permitted.

*Staffing:* There would be a need for additional staffing to measure and clearly mark out distance where smoking is permitted. There may be a need for additional staffing for enforcement due to allowing smoking in some areas and not others.

*Legal:* Initial enforcement efforts will take an educational approach, but it is possible challenges and charges could result for those found in violation. 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.

*Policy Implications:* This alternative may cause confusion about where smoking is allowed and where it is not permitted.

*Pros:* Parents who smoke can still observe children playing.

*Cons:* Distance needs to be clearly marked in order for public to understand and comply with the By-law, leading to additional work for city staff. There will also be additional costs for purchasing extra signage and significant enforcement barriers. Decal placement may be difficult or impossible in some places, requiring more expensive signage options. This option may result in residents still being exposed to second-hand smoke and children observing adults smoking.

**B. Allowing Festivals and Events to Apply for Exemption to By-law and Allowing Designated Smoking Areas During Festivals and Events**

*Financial:* There would be additional costs for signs and education to communicate where smoking is permitted. There would also be extra cost for clean-up of cigarette butt and other litter.

*Staffing:* There would be a need for additional staffing to communicate where smoking is permitted, and enforce no smoking in areas outside of the designated smoking areas.

*Legal:* Initial enforcement efforts will take an educational approach, but it is possible challenges and charges could result for those found in violation. 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.

Further, amending by-laws would need to be enacted for specific festivals, setting out areas and terms for public smoking during festival(s) and festival organizers would have to provide their request with sufficient lead time for Council to consider and decide whether to grant such a request.

*Policy Implications:* This alternative would require additional education to communicate the exemption.

*Pros:* Providing exemptions for festivals and events may increase perception of cooperation with festival and event organizers.

*Cons:* Residents are still potentially exposed to second-hand smoke. Additional signage and work necessary to make sure people smoke only in Designated Smoking Areas. Would reduce benefit for festivals and events. Similar to smoking bans in restaurants and bars it is likely that a smoking ban in parks during festivals and events would increase attendance and visitor satisfaction.

**C. Purchasing Ashtrays for Exterior of Outdoor Recreational Areas Where Smoking is Prohibited**

*Financial:* There would be a cost of \$515 per ashtray as well as additional costs for staff to maintenance.

*Staffing:* Additional staffing would be needed to purchase and install ashtrays at the 457 parks, as well as empty and maintain the ashtrays.

*Legal:* Not applicable.

*Policy Implications:* None.

*Pros:* Decreased litter for city staff to clean up. This may discourage other people who smoke from littering and act as a visual reminder for people who smoke to butt out before entering recreation area. Public consultations revealed that there is a large concern regarding the amount of cigarette butt litter at parks. Also aligns with the Clean City Liaison Committees through Keep America Beautiful project to reduce cigarette butt litter.

*Cons:* Cost of units as well as routine maintenance of the units.

**CORPORATE STRATEGIC PLAN (Linkage to Desired End Results)**

Focus Areas: 1. Skilled, Innovative and Respectful Organization, 2. Financial Sustainability, 3. Intergovernmental Relationships, 4. Growing Our Economy, 5. Social Development, 6. Environmental Stewardship, 7. Healthy Community

**Skilled, Innovative & Respectful Organization**

- A culture of excellence
- More innovation, greater teamwork, better client focus
- Protecting employees from second-hand smoke at their work site shows that the City of Hamilton considers their employee's health and safety. A by-law would require teamwork between several city departments. Some other Ontario municipalities have implemented by-laws to protect residents in outdoor spaces, but not all, so Hamilton would be recognized for being leaders in the province.

**Growing Our Economy**

- A visitor and convention destination
- The presence of littered cigarette butts reduces the appeal of the city to residents, workers and visitors. Clean outdoor recreational areas will appeal to visitors who come to our City to enjoy our green space. The Pan Am Games events to be held in Hamilton in 2015 should embrace health and wellness that smoke-free outdoor spaces would promote. It is our opportunity to profile healthy lifestyles and enhance our image to the world by showing that we care for the many athletes and visitors coming to watch and participate in sport.

**Social Development**

- Residents in need have access to adequate support services
- Research has shown that smoke-free environments support people who quit to remain smoke-free; youth are less likely to start smoking if they are not exposed to others role modelling the behaviour; and restrictions on where individuals are permitted to smoke is associated with increased cessation rates.

**Environmental Stewardship**

- Natural resources are protected and enhanced
- Reduced impact of City activities on the environment
- Cigarette butts are the most littered item across the globe, and cause irreparable damage to the environment, as they are not entirely biodegradable. Careless smoking and disposal of burning cigarette butts are a major cause of forest fires.

### **Healthy Community**

- Adequate access to food, water, shelter and income, safety, work, recreation and support for all (Human Services)
- There is no safe level of exposure to second-hand smoke and recent studies have shown that second-hand smoke exposure outdoors can be substantial. One of the guiding principles from The City of Hamilton Public Use Outdoor Recreation Facility and Sports Field Provision Plan is that the City of Hamilton will provide opportunities for sporting, leisure, cultural, health, wellness and social activities (organized and unorganized) in outdoor recreational areas so as to help build healthy communities and improve the quality of life for all, and the proposed By-law follows this principle.

### **APPENDICES / SCHEDULES**

Appendix "A" to Report BOH07034(e)

Appendix "B" to Report BOH07034(e)

Appendix "C" to Report BOH07034(e)

### **References**

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**SUBJECT: Smoking and Second-hand Smoke in Outdoor Municipal Recreational Areas in Hamilton BOH07034(e) (City Wide) - Page 16 of 16**

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**Authority:** Item , Board of Health Committee  
Report:  
CM: Date

**Bill No.**

## **CITY OF HAMILTON**

**BY-LAW NO. 11-\_\_\_\_\_**

### **To Prohibit Smoking within City Parks and Recreation Properties**

**WHEREAS** Council wishes to prohibit tobacco smoking and limit the impact of tobacco smoke on persons using the City's parks and recreational properties, buildings and structures, particularly for the benefit of young persons, for the health of the public generally, to protect and enhance the quality and use of City property, and to improve the environmental and social conditions on City properties, buildings and structures through a by-law which prohibits the smoking of tobacco;

**AND WHEREAS** Council intends to provide for enforcement and to allow prohibitions of use or entry to City property where persons fail to comply with the by-law;

**AND WHEREAS** the City has the capacity, rights, powers and privileges of a natural person, and may pass by-laws for prohibiting or regulating, for purposes considered necessary or desirable including the use and protection of public assets, social and environmental purposes, the delivery of services, and for the health, safety and well-being of persons under the authority of Municipal Act, R. S. O. 1990, c. M.45, including but not limited to sections 8, 9, 10 and 115.

**NOW THEREFORE** the Council of the City of Hamilton enacts as follows:

## **DEFINITIONS AND INTERPRETATION**

1.(1) In this By-law the following terms have the prescribed meanings unless the context otherwise requires:

- (a) “authorized staff” means a Tobacco Enforcement Officer or any staff of the City whose duties include those provided for or assigned under this By-law, and shall include a police officer, a Director or the Medical Officer of Health;
- (b) “Director” means the Senior Director of Recreation or the Director of Environmental Services, and includes a person acting in their capacity during absence or illness, and their designate for the purposes of this By-law;
- (c) “Medical Officer of Health” means the officer appointed to such position by the City of Hamilton, their deputy, and their designate for the purposes of this By-law;
- (d) “police officer” includes an officer of the Hamilton Police Service;
- (e) “recreation property” means a park or place owned or operated by the City of Hamilton for recreational purposes including without limiting the generality of the foregoing a leash-free dog park, pool, recreation center, playground, skate-board park, beach, arena, stadium, sports or playing field, and the list of property, addresses, places and areas in Schedule “A “ attached to and forming a part of this By-law, but does not in any case include a highway;
- (f) “smoking tobacco” includes the holding of tobacco while the product is alight or emitting smoke, and the verb “smoke” shall include a similar meaning;

- (g) “sports field” means a soccer pitch, baseball diamond, tennis court, lawn bowling or football field, and includes their related spectating and players areas and structures; and
  - (h) “tobacco” includes pipe tobacco, water-pipe tobacco, cigarettes, cigars, cigarillo’s or any similar product made with or containing tobacco.
- 1.(2) Subject to subsections (3) and (4), for the purposes of interpretation, a park or recreation property includes all indoor and outdoor areas, buildings and structures on the park or property including those parts covered by water or which are located within the abutting road allowances, and includes the internal trails, paths, walkways, parking lots and lanes for vehicular or pedestrian use, specifically including both public and restricted access portions of such property, and further this By-law applies to a person while they are within or on a vehicle within such areas.
- 1.(3) For the purposes of interpretation the term “recreation area” does not include municipal golf courses including all of their internal playing areas, trails, walkways, parking lots and lanes, namely; (a) Chedoke Golf Course, and (b) King’s Forest Golf Course, nor does the term include a City recreational trail outside of the areas listed in Schedule “A”.
- 1.(4) The use of a portion of a park or recreation property provided for by a written agreement entered, or written permit granted by the City prior to enactment of this by-law, which agreement or permit is for the exclusive use by a private business or to a person for an event, is not subject to this by-law unless the agreement, permit or permit approval process specifies that no smoking is allowed, but regardless of the agreement or permit the Smoke Free Ontario Act, 1994, S. O. 1994, c. 10 applies which Act may require that no smoking occur on some or all of the property.

## **PROHIBITION**

2. No person shall:
  - (a) smoke tobacco on recreation property;
  - (b) fail to leave recreation property after authorized staff has given the person notice or direction to leave for smoking tobacco on recreation property; or
  - (c) enter or use recreation property after authorized staff have prohibited the persons entry or use for smoking tobacco on recreation property.
3. The prohibitions in section 2 above apply whether or not a “No Smoking” sign of any format or content is posted.

## **ADMINISTRATION AND ENFORCEMENT**

- 4.(1) The Medical Officer of Health is responsible for administration and enforcement of this By-law, and may appoint delegates or assign duties to City staff under this By-law.
- 4.(2) A Director may appoint such additional staff or delegates at or for attendance of parks and recreation property for the purposes of this By-law.
5. City staff who carry out any action under this By-law are deemed to be authorized staff for the purposes of this By-law, in the absence of evidence to the contrary.
6. A Director may issue, extend or vary a prohibition of entry or use by a person on park or recreation property under this By-law, including without limiting the generality of the foregoing, making such prohibition applicable to other parks or recreation property or making a prohibition for any term including for longer than one year, in their absolute discretion.

7. Any person who contravenes a provision of this By-law is guilty of an offence and upon conviction is liable to a maximum fine of \$ 10,000.00.

**CONFLICTS, SEVERABILITY AND ENACTMENT**

8. Subject to subsection 13 of the Smoke Free Ontario Act, 1994, S. O. 1994, c. 10 (the "Act"), in the event of a conflict between the provisions of sections 9 and 10 of the Act and this By-law, the provision which is more restrictive of smoking shall prevail.
9. Should a court of competent jurisdiction declare a part of whole of any provision of this By-law to be invalid or of no force and effect, the provision or part is deemed severable from this by-law and it is the intention of Council that the remainder survive and be applied and enforced in accordance with its terms to the extent possible under law.
10. This By-law shall come into force and effect on May 31, 2012.

**PASSED and ENACTED** this                      day of                      , 2011.

Mayor R. Bratina  
MAYOR

Rose Caterini  
CLERK

### Legislation Regulating Smoking in Outdoor Recreation Areas

The following municipalities in Ontario have by-laws regulating smoking in outdoor spaces. For complete details on the outdoor spaces by-laws, please review the tables on the subsequent pages.

<b>Municipality</b>	<b>Date By-law Came Into Effect</b>
Adjala-Tosorontio Township	August 17, 2009
Arnprior	May 25, 2009
Aylmer, Central Elgin	Not available
Barrie	July 1, 2009
Belleville	July 16, 2007
Bradford-West Gwillimbury	April 21, 2009
Brighton	December 2, 2008
Chatham-Kent	November 24, 2009
Clearview Township	Not available
Cobourg	June 28, 2010
Collingwood	July 1, 2000 & June 20, 2005
Cornwall	September 4, 2007 & June 1, 2009
Elliot Lake	Not available
Georgina, York Region	May 11, 2009
Grimsby	June 21, 2010
Haldimand County	November 2002
Halton	February 15, 2010
Huntsville	May 17, 2010
Huron Shores	May 31, 2004
Ingersoll	May 3, 2010
Innisfil	April 1, 2003
Kenora	December 10, 2007
LaSalle	Not available
Central Manitoulin	April 14, 2009
Midland	September 28, 2009
Mildmay, South Bruce	November 10, 2009
Greater Napanee	March 25, 2008
New Tecumseh	September 30, 2002

Municipality	Date By-law Came Into Effect
Niagara	Not available
Nipigon	Not available
North Bay	May 1, 2010
Northeastern Manitoulin & Islands	June 4, 2003
North Grenville	November 26, 2007
North Huron	March 17, 2008
Orillia	June 30, 2008
Ottawa	January 11, 2006
Owen Sound	Not available
Peterborough	December 1, 2007 & May 1, 2009
Port Hope	June 1, 2005
Prescott	November 19, 2007
Quinte West	July 27, 2007 & June 15, 2009
Russell Township	March 8, 2010
Sables – Spanish River	December 27, 2007
Sault Ste. Marie	September 10, 2007 & Spring 2010
Sioux Lookout	March 19, 2003
Smith-Ennismore-Lakefield	Not available
South Bruce	December 10, 2009
St. Thomas	Not available
Thunder Bay	July 1, 2004 & June 1, 2010
Timmins	Approved November 17, 2009
Toronto	January 28, 2009
Uxbridge	Not available
Wasaga Beach	September 9, 2008
Welland	Approved February 9, 2010
Wellington County	Not available
Windsor	May 31, 2006
West Nipissing	February 5, 2008
Woodstock	December 1, 2008

## **Consultations Regarding Outdoor Municipal Recreational Areas**

### City of Hamilton Residents

Intercept interviews were conducted in 18 outdoor recreational areas in the City of Hamilton between July 2 and 20, 2009 to investigate resident attitudes and opinions on smoking and second-hand smoke in outdoor municipal recreational areas in Hamilton. The locations were identified jointly by Public Health Services and Community Services, Recreation Division staff and took into account a geographic spread across the city, with both urban and rural areas. Locations with a mix of playground equipment, arena or recreation centres, splash pads, schools located on adjacent property, skateboard parks, and outdoor pools were visited to ensure a broad representation of residents was obtained. The surveys were conducted by Public Health Services staff.

Interviews were completed in the following outdoor recreational areas:

- Ancaster Community Centre & Rotary Centre
- Bayfront Park & Pier 4
- Bennetto Recreation Centre
- Dundas Driving Park & Dundas Community Pool
- Eastdale Park
- Eastwood Park
- Glanbrook Sports Complex and surrounding area
- Hamilton Amateur Athletic Association Grounds (HAAA)
- Huntingdon Park and Recreation Centre
- King's Forest Golf Course
- Lakeland Centre Pool & Beach
- Mohawk 4 Pad Arena and surrounding sporting fields
- Norman Pinky Lewis Recreation Centre
- Parkdale Park & Arena
- Sherwood Park and Saltfleet Arena
- Turner Park
- Valley Park Arena and Recreation Centre
- Waterdown Memorial Park

Seventy-six per cent of people who were approached agreed to complete the survey for a total of 508 interviews. This is above the recommended sample size of 384 based on calculations for a simple random sample with a 5% margin of error.<sup>1</sup>

Additionally, City of Hamilton residents were given notice regarding the draft By-law in early 2011 via "At Your Service" sections of the Hamilton Spectator and Hamilton Community news and the City of Hamilton Web site.



### **Demographics of Residents Consulted**

Twenty three per cent of Hamilton residents who participated in the survey reported that they smoked, and 77% were non-smokers, which match smoking rates in the general population in Hamilton. Forty five per cent of respondents were male, and 55% female. Those residents who had children under the age of 18 living in their household totaled 51.2%. In terms of age, 19.5% of respondents were ages 18 to 24; 30.9% were ages 25 to 39; 31.3% were ages 40 to 54 and 18.3% were above the age of 55.

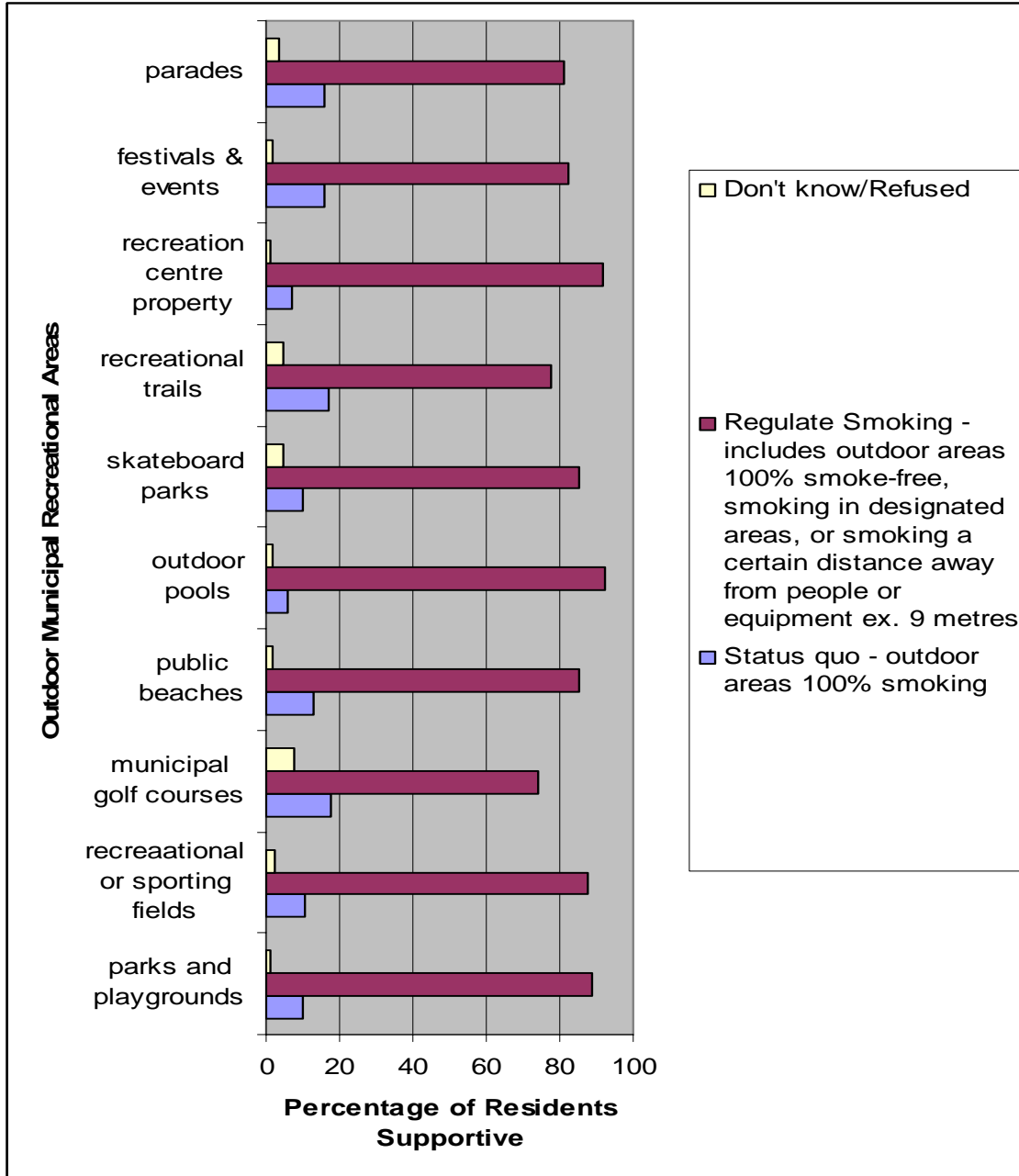
All survey respondents used outdoor municipal recreational areas. Usage of specific areas varied. Parks and playgrounds, recreational or sporting fields and recreation centres were the most frequently used recreational areas.

### **Smoking and Second-hand Smoke in Outdoor Recreational Areas in Hamilton**

When asked in regards to observing smoking or smoking tobacco products themselves in these outdoor spaces, 56.5% of respondents said they usually or always see smoking/smoke in outdoor recreational spaces, 33.5% said they sometimes do, and 8.1% said they never see smoking or they themselves never smoke in outdoor municipal recreational areas. In terms of litter, 97.2% of respondents sometimes, often or always notice litter caused by cigarette butts.

### **City of Hamilton Residents Support for Regulating Smoking in Outdoor Municipal Recreational Areas**

In general, Hamilton residents who did not smoke were more likely to support the outdoor areas being 100% smoke-free, having a designated area for smoking, or having smoking a certain distance from people or equipment. Generally people who smoke supported having smoking within a designated area or smoking a certain distance from people and equipment or allowing smoking throughout outdoor areas. Those with children under the age of 18 living in the household were more supportive of outdoor spaces being entirely smoke-free. As you can see from the chart below, residents clearly support regulating smoking outdoors in municipal recreational areas, but which option is preferred depends on the outdoor area in question. There was the strongest support from residents for having outdoor pools, skateboard parks, recreation centre or arena property, recreational trails, parades, recreational or sporting fields, parks and playgrounds, and public beaches entirely smoke-free.



**Chart 1: City of Hamilton Residents Support for Regulating Smoking in Outdoor Municipal Recreational Areas**

Residents were asked whether their usage of outdoor municipal recreational areas would change if a by-law regulating smoking in outdoor areas was enacted, and 71.3% indicated there would be no change in their usage, 21.7% indicated they would use areas more often, and 5.7% indicated they would use areas less often.

### Sports Associations and Organizations

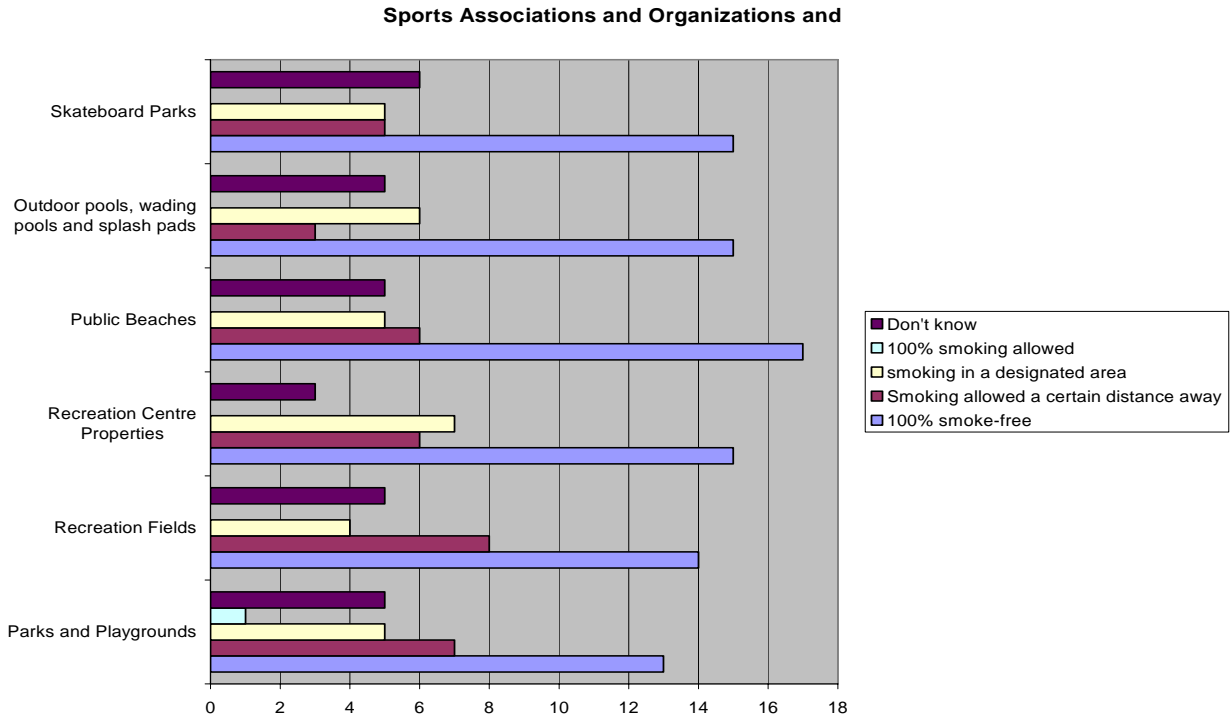
All sports associations and organizations that use municipal recreational areas in Hamilton were sent a survey to determine their opinions on smoking and second-hand smoke in outdoor municipal recreational areas through Community Services, Recreation Division in June 2009 for the first phase of the consultation. For the second phase of the consultation, the same list of 176 sports associations and organizations were sent a survey in July 2010 asking which by-law option they would support for smoke-free outdoor areas. There was an 18% response rate( N= 31).

#### Phase 1, June 2009

For sports associations that responded, 88.9% supported prohibiting smoking in city parks, outdoor pools, city playgrounds, public beaches, skateboard parks, recreational trails and at parades. Additionally, 83.3% supported prohibiting smoking on recreation centre and arena property and recreational or sporting fields and 77.8% supported prohibiting smoking at festivals and events. Of those that responded, 66.1% supported having the outdoor municipal recreational areas entirely smoke-free, 33.3% supported having the areas smoke-free except for designated smoking areas within the location, and 5.6% supported having the areas smoke-free within a nine metre radius from the playground equipment or buildings. None of the groups supported allowing smoking throughout the areas.

#### Phase 2, July 2010

The majority of sports associations supported 100% smoke-free recreation areas, with restricting smoking within a certain distance from people or equipment the second most common choice.



**Chart 2: City of Hamilton Sports Associations and Organizations Support for Regulating Smoking in Outdoor Municipal Recreational Areas**

The majority of sports associations supported 100% smoke-free recreation areas, with restricting smoking within a certain distance from people or equipment the second most common choice.

Neighbourhood Associations

Thirty eight Neighbourhood Associations and Community Councils in Hamilton were sent a survey in July 2010 to assess their support for different by-law options regulating smoking in outdoor spaces. Ten Neighbourhood Associations responded for a 26% response rate.

The majority of Neighbourhood Associations supported 100% smoke-free recreation properties, with the exception of public beaches. The second choice was split, depending on the specific outdoor space, between providing a designated area for smoking or prohibiting smoking within a certain distance of people or equipment. There was no support for allowing 100% smoking throughout recreational spaces.

Hamilton-Wentworth District School Board (HWDSB) and Hamilton-Wentworth Catholic District School Board (HWCDSB)

In June 2010, the Superintendents of both School Boards were consulted. The HWDSB declined to provide input. The HWCDSB Principals and Vice-Principals Association (15 principals) and the Joint Educational Parent Advisory Group (JEPAG) (35 parents) provided comments in September 2010.

The majority of principals supported making outdoor recreational areas smoke-free, with the exception of public beaches, where they supported having smoking in designated areas. The majority of parents supported making outdoor recreational areas 100% smoke-free.

#### Hamilton Conservation Authority

The Hamilton Conservation Authority (HCA) was consulted regarding the proposed By-law and given an opportunity to provide input. HCA has begun to implement internal policies restricting smoking but feel it would be too difficult to enforce a no-smoking By-law on more than 10 000 acres.

#### Clean City Liaison Committee

The Clean City Liaison Committee (CCLC) was consulted in September 2010 regarding their Cigarette Butt Prevention Task Force. They received funding in summer 2010 to install 40 new permanent ashtrays around Gore Park downtown, in Jamesville around James Street North and at the west harbour, in addition to handing out personal ashtrays. A pre and post intervention survey of the cigarette butt litter will be completed. CCLC has requested and obtained permission from their funder to extend the program into 2011.

#### **References**

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