



TO: Mayor Anna Allen and Members of Windsor Town Council

SUBMITTED BY: _____
Louis Coutinho, CAO

DATE: 17 October 2018

SUBJECT: First Reading - Amendments to Bylaw 28 Protection From Second Hand Smoke

ORIGIN

In 2009, Council enacted Bylaw # 28 Protection from Second Hand Smoke. At Committee of the Whole on 10 July 2018, Council requested enforcement of the existing Bylaw on our streets and sidewalks; and subsequent request to include cannabis, vapes and other smoking products in the by-law.

LEGISLATIVE AUTHORITY

The Municipal Government Act (MGA), in Section 172(1)(a), (c) and (d) authorizes Council to make bylaws for municipal purposes respecting the health, well-being, safety and protection of persons; persons in public places and places open to the public; and nuisances, including burning, odours and fumes.

Smoke Free Places Act, 2002, c. 12, subsection 16(1) reads as follows:

16 (1) Nothing in this Act affects any other authority to regulate, restrict or prohibit smoking.

BACKGROUND

In 2009, members of Council expressed the need to establish smoke-free public places to encourage cessation of smoking habits and to protect others from the hazards of second-hand smoke. Council also sought to model healthy behaviours for children and youth and asked that the bylaw include all grounds of a town building, playgrounds and town property. The interpretation of these public spaces were also defined in the bylaw.

On November 27, 2017, the House of Commons passed Bill C-45, an Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts (the Cannabis Act). That law that legalizes cannabis use in Canada became effective 17 October 2018, the date of this written report.

At the Committee of the Whole meeting on 10 July 2018, Council directed staff to amend *Bylaw # 28 Protection of Second Hand Smoke* banning smoking on any Town property, public street and sidewalk in Windsor. The amendment would include cannabis and vapors.



DISCUSSION

The requested by-law changes, would require a person who smokes to refrain from doing so on the noted public properties and particularly public streets and sidewalks. The argument made for a complete ban on town-owned properties and public streets continues to be that non-smokers, elderly citizens and children cannot always avoid smoke-filled air at the entrances of public or private buildings, on streets and sidewalks, on parks & recreational facilities and on any town-owned properties including parking lots. The Town is moving towards being a healthy and sustainable community and Council is responding to the requests of citizens who do not wish to be subjected to smoke and vapors that others are free to enjoy but whose lifestyle choice affects those who do not want to be subjected to second hand smoke.

Additionally, the Provincial Smoke Free Places Act, Chapter 12 of Acts of 2002 states that no person shall smoke in an outdoor area within four metres of an intake to a building ventilation system, an open window of a place of employment or an entrance to a place of employment. 2002, c. 12, s. 5; 2005, c. 59, s. 2; 2007, c. 54, s. 1. This Provincial Act has now been amended to include cannabis.

Council has directed staff to bring back an amended policy that is respectful of those who wish to smoke but restrictive of where they can do so.

Staff reached out to Nova Scotia Public Health for information and input into Council's desire to ban smoking outright on public streets, sidewalks and town-owned properties. Attached as Appendix A is the report we have received from Healthy Communities Team, Public Health-Central Zone, NSHA Mental Health & Addictions-Central Zone that speaks to the health issues related to smoking of tobacco and cannabis.

For Council's information, the following facts have been gleaned from the Public Health report provided by Nora Dickson to update Council decision making:

Smoking as a threat to public health – Restricting public consumption of tobacco smoke will enhance ongoing efforts to decrease tobacco smoking which is a public health problem in Nova Scotia.

- *Although smoking rates have declined significantly since 1999, Nova Scotia has the second highest provincial rate of smoking in Canada (17.8%), well above the national average (13%) (Reid JL, 2017).*

Health risks associated with second-hand smoke – Approximately four out of five Nova Scotians (82% of the population) do not smoke tobacco products but are exposed to tobacco via second-hand smoke and the potential negative health risks associated with it. Restricting public consumption of tobacco and cannabis smoke will allow non-smokers greater access to smoke-free environments.

- *The health impacts from the exposure to second-hand tobacco smoke have been well documented. Second-hand smoke contains the same 4000 chemicals as the smoke inhaled by a smoker, with over 70 of those chemicals having been shown to cause cancer. There is no safe level of exposure to second-hand smoke. Non-*



smokers exposed to second-hand smoke have an increased risk of developing lung cancer, heart disease and respiratory illnesses (Health Canada, 2011).

- *There is increasing evidence that second-hand cannabis smoke is harmful. It contains many of the same cancer-causing chemicals as second-hand tobacco smoke such as acetaldehyde, ammonia arsenic, benzene, cadmium, chromium, formaldehyde, hydrogen cyanide, isoprene, lead, mercury, nickel, and quinolone (Moir, 2008).*

Impact of social exposure to smoking/vaping on children and youth – *Restricting social exposure to smoking and vaping helps de-normalize the behaviour and is important in preventing youth initiation of smoking.*

- *Research shows that social exposure to tobacco smoking can normalize smoking and cause non-smokers to start, especially youth. It can also make it harder for smokers to successfully quit (Muir, 2013).*
- *Research continues to emerge on the long term health impacts of vaping. To date, research confirms that e-cigarettes have the potential to:*
 - *Re-normalize cigarette smoking;*
 - *Delay or prevent attempts at smoking cessation;*
 - *Increase youth initiation;*
 - *Cause nicotine addiction for former smokers; and,*
 - *Expose non-users to toxins found in the aerosol (Erikson M, 2015).*
- *E-cigarette use among youth in Nova Scotia is higher than the national average. In 2017, 37% of Nova Scotia students in grades 7-12 reported trying e-cigarettes (23% nationally). Twenty-one per cent (21%) reported using e-cigarettes in the last 30 days (10% nationally), an increase from 8% in 2015 (Health Canada, 2018).*

Effective public policy enforcement – *Including tobacco smoke in the by-law will make effective enforcement easier.*

- *Aside from the fact that tobacco cigarettes and cannabis “joints” look similar, the tobacco and cannabis industries are increasingly investing in the development of vape products and it is becoming more difficult to distinguish between an e-cigarette used for tobacco and a cannabis vaporizer (Cox, 2015). Many vaporizers come with different attachments for vaping “e-liquids, waxes or oils and loose-leaf (or ‘dry herb’)” (Gartner, 2015).”*

Public Health Nova Scotia recommends that the Town and enforcement officers provide information, education, and access to smoking cessation resources. These include:



- 811 for ongoing smoking cessation support with a trained counsellor
- Stop Smoking services through NSHA (1-866-340-6700 to find a local session) which provides support and nicotine replacement therapy for the duration of treatment; and
- Text SMOKEFREE to 902-700-7700 to receive motivational stop smoking text messages from Tobacco Free Nova Scotia.

Staff will begin an education campaign and enforcement of these provincial regulations and have also included amendments to the Town’s existing bylaw to more clearly define vaping and smoking; the definition of “smoke” in By-Law # 28 has also been modified to include cannabis.

There have also been numerous discussions on who is responsible for various aspects related to cannabis. The table below gives Council an overview of jurisdiction and council’s powers.

Federal	Provincial	Municipal
<p>Responsible for:</p> <ul style="list-style-type: none"> • Possession limits • Types of Cannabis products permitted • New criminal offences • Packaging and labelling • Serving Sizes and potency • Ingredients • Production • Advertising • Impaired driving • Medical cannabis • Age limit (Federal) • Public health • Education • Taxation • Home cultivation • Regulatory compliance 	<p>Responsible for:</p> <ul style="list-style-type: none"> • Sale and distribution • Retail model • Retail locations and rules • Possession • Social consumption • Public health and safety • Protecting youth • Deterring unlawful activities • Cultivation, propagation and harvesting • Taxation 	<p>Responsible for:</p> <ul style="list-style-type: none"> • Public safety • Locations of commercial production and testing facilities • Impacts on Neighborhoods • Enforcement • Home cultivation • Social consumption (where cannabis can be consumed) • Education
<p>Regulations:</p> <ul style="list-style-type: none"> • <i>Cannabis Act</i> • Laws for controlling the production, distribution, sale and possession of cannabis across Canada 	<p>Regulations:</p> <ul style="list-style-type: none"> • <i>Cannabis Control Act</i> • <i>Smoke Free Places Act, 2002</i> 	<p>Regulations:</p> <ul style="list-style-type: none"> • By-law amendments • <i>Protection from Second-Hand Smoke By-Law # 28</i> • Land-use By-law(s)



BUDGET IMPLICATIONS

There are no immediate budget implications but enforcement costs are expected to increase as enforcement of the bylaw begins. This will be a budgetary item for review in the 2019-2020 Operating Budget.

RISK IMPLICATIONS

Public Health recommends that the enforcement of this bylaw should consider health equity by ensuring that marginalized persons with limited access to resources (e.g. those who are homeless and precariously housed) are not unfairly penalized. To support this, they recommend taking an approach to enforcement focused primarily on engaging and educating the public on the new regulations, and only applying fines when absolutely necessary.

Staff suggest that we can accomplish the education portion through the process required when passing the proposed by-law amendments which will take several weeks. People smoking on streets and sidewalks and Town owned property will receive notices after Council gives First Reading of the proposed changes to the By-Law. The fine structure proposed in the by-law is reasonably punitive to deter violation of the by-law.

ALTERNATIVES

Option 1

Council could chose not to adopt the amendments to the Second Hand Smoke By-Law as proposed.

Option 2

Council could give First Reading to the revisions proposed to By-Law # 28 Protection From Second Hand Smoke as proposed.

Option 3

Council could give First Reading to the revisions made to By-Law # 28 and also amend the *Second Hand Smoke By-Law* to reflect a name change as proposed by Public Health Nova Scotia. That is, rename it to ***By-Law # 28 Respecting Smoke Free Public Spaces***

ATTACHMENT

Revised By-Law # 28 Protection From Second Hand Smoke

Additional copies of this report, and information on its status, can be obtained by contacting the Coordinator to the CAO at (902) 798-1355 or Fax 798-5679.
Report Prepared by: Louis Coutinho, CAO



TOWN OF WINDSOR BYLAW # 28 PROTECTION FROM SECOND-HAND SMOKE BYLAW

BE IT ENACTED by the Council of the Town of Windsor as follows:

SHORT TITLE

1. This Bylaw shall be known as Bylaw No. 28, and may be cited as the ***Protection from Second-hand Smoke Bylaw***.

BACKGROUND

2. The *Municipal Government Act (MGA)*, in Section 172(1)(a), (c) and (d) authorizes a Council to make bylaws for municipal purposes respecting the health, well-being, safety and protection of persons; persons and activities in public places and places open to the public; and nuisances, including burning, odours and fumes.

INTERPRETATION

3. In this Bylaw:
 - (a) “grounds of a Town building” means the outdoor part of any lot containing a building owned or leased by the Town, and any sidewalk immediately adjacent to the lot.
 - (b) “playground” means any park or recreational area designed in part to be used by youth that has play or sports equipment installed or has been designated or landscaped for play or sports activities, or any similar facility located within the Town.
 - (c) “smoke” “smoke” means smoke, inhale or exhale smoke from, burn, carry, hold or otherwise have control over a lit or heated cigarette, cigar, pipe, waterpipe, electronic cigarette, vape or other device that burns or heats tobacco, cannabis or another substance that is intended to be smoked or inhaled;
 - (d) “street” means a public street, highway, road, lane, sidewalk, thoroughfare, bridge, square and the curbs, gutters, culverts and retaining walls in connection therewith.

- (e) “Town property” means real property owned or leased by the Town, directly or through the medium of a board or commission, and any motor vehicle owned or leased by the Town.

PROHIBITION

- 4. No person shall smoke in any of the following places:
 - (a) a park on Town property or property the Town is licensed to maintain;
 - (b) a playground on Town property;
 - (c) an outdoor recreational facility on Town property, including but not limited to a sports field, grandstand, seating area or bleacher;
 - (d) the grounds of a Town building;
 - (e) the grounds of an event on Town property that is open to the public, including but not limited to a festival, market or concert, whether admittance to the event is gratis or for a fee;
 - (f) a trail or path on Town property or property the Town is licensed to maintain; and
 - (g) a street within Town boundaries.

OFFENCE AND PENALTY

- 5. Anyone who violates any section of this bylaw is guilty of an offence and is liable, on summary conviction, to a fine of not less than two hundred and fifty dollars (\$250.00) for the first offence and to a fine of between two hundred and fifty dollars (\$250.00) and five hundred dollars (\$500.00) for a second or subsequent offence.

SEVERABILITY

- 6. In the event that any provision of this bylaw becomes or is declared by a court of competent jurisdiction to be illegal or unenforceable, the remainder of this bylaw will continue in full force and effect.

FORCE AND EFFECT

- 7. This bylaw has effect from and after _____

Please note *Clerk’s Annotation for Official Bylaw Book* below is from previous approval of Bylaw # 28

Clerk's Annotation for Official Bylaw Book

Date of first reading of Bylaw: **October 27, 2009**

Date of advertisement of Notice of Intent to Consider: **November 5, 2009**

Date of second reading of Bylaw: **November 24, 2009**

* Date of advertisement of Passage of Bylaw: **December 3, 2009**

Date of mailing to Minister a certified copy of Bylaw: **December, 3, 2009**

I certify that this PROTECTION FROM SECOND-HAND SMOKE BYLAW was adopted by Council and published as indicated above.



Louis Coutinho
Chief Administrative Officer
Town of Windsor

December 3, 2009
Date

Public Health Considerations of Bylaw No. 28, Town of Windsor

Overview:

On October 23, 2018 the Town of Windsor Council will consider First Reading of the amendments for Bylaw No. 28, Protection from Second-hand Smoke. Amendments include a revision of the definition of “smoke” to include vaping and cannabis, and the addition of “any street within Town boundaries” as a location where smoking is prohibited. NSHA Public Health-Central Zone and Mental Health and Addictions – Central Zone supports the proposed amendments. With this in mind, we would like to highlight key considerations that reinforce these amendments and make some recommendations related to the bylaw and its enforcement for Council to consider.

Key Considerations:

Cannabis causes impairment – Cannabis, like alcohol, causes impairment when consumed. Impairment can impact judgement and decision-making. Restricting public consumption of cannabis supports responsible use.

- Cannabis consumption is associated with an increased risk of motor vehicle collisions (Canadian Centre on Substance Use and Addiction, 2018). In 2012, an estimated 75 fatalities resulted from cannabis-impaired vehicle collisions in Canada (Asbridge, 2012).

Smoking as a threat to public health – Restricting public consumption of tobacco smoke will enhance ongoing efforts to decrease tobacco smoking which is a public health problem in Nova Scotia.

- Although smoking rates have declined significantly since 1999, Nova Scotia has the second highest provincial rate of smoking in Canada (17.8%), well above the national average (13%) (Reid JL, 2017).

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- The health impacts from the exposure to second-hand tobacco smoke have been well documented. Second-hand smoke contains the same 4000 chemicals as the smoke inhaled by a smoker, with over 70 of those chemicals having been shown to cause cancer. There is no safe level of exposure to second-hand smoke. Non-smokers exposed to second-hand smoke have an increased risk of developing lung cancer, heart disease and respiratory illnesses (Health Canada, 2011).
- There is increasing evidence that second-hand cannabis smoke is harmful. It contains many of the same cancer-causing chemicals as second-hand tobacco smoke such as acetaldehyde, ammonia, arsenic, benzene, cadmium, chromium, formaldehyde, hydrogen cyanide, isoprene, lead, mercury, nickel, and quinolone (Moir, 2008).

Impact of social exposure to smoking/vaping on children and youth – Restricting social exposure to smoking and vaping helps de-normalize the behaviour and is important in preventing youth initiation of smoking.

- Research shows that social exposure to tobacco smoking can normalize smoking and cause non-smokers to start, especially youth. It can also make it harder for smokers to successfully quit (Muir, 2013).
- Research continues to emerge on the long term health impacts of vaping. To date, research confirms that e-cigarettes have the potential to:
 - Re-normalize cigarette smoking;
 - Delay or prevent attempts at smoking cessation;
 - Increase youth initiation;
 - Cause nicotine addiction for former smokers; and,
 - Expose non-users to toxins found in the aerosol (Erikson M, 2015).
- E-cigarette use among youth in Nova Scotia is higher than the national average. In 2017, 37% of Nova Scotia students in grades 7-12 reported trying e-cigarettes (23% nationally). Twenty-one per cent (21%) reported using e-cigarettes in the last 30 days (10% nationally), an increase from 8% in 2015 (Health Canada, 2018).

Effective public policy enforcement – Including tobacco smoke in the by-law will make effective enforcement easier.

- Aside from the fact that tobacco cigarettes and cannabis “joints” look similar, the tobacco and cannabis industries are increasingly investing in the development of vape products and it is becoming more difficult to distinguish between an e-cigarette used for tobacco and a cannabis vaporizer (Cox, 2015). Many vaporizers come with different attachments for vaping “e-liquids, waxes or oils and loose-leaf (or ‘dry herb’)” (Gartner, 2015).

Recommendations:

- I. We recommend that the Town of Windsor make the following change to the bylaw document to help strengthen and clarify it:
 - Short Title, Section 1 could read "This Bylaw shall be known as Bylaw No. 28, and may be cited as the ***Smoke Free Bylaw / Bylaw Respecting Smoke Free Public Spaces.***"
 - *Title change focuses on creating supportive environments that not only offer protection from second-hand smoke but also help support current smokers to quit.*
 - Interpretation, Section 3(c), should read, ““smoke” means to smoke, hold or otherwise have control over lighted tobacco, ***e-cigarettes, vape pens*** or cannabis”.
- II. We recommend that the enforcement of this bylaw consider health equity by ensuring that marginalized persons with limited access to resources (e.g. those who are homeless and precariously housed) are not unfairly penalized. To support this, we recommend taking an approach to enforcement focused primarily on engaging and educating the public on the new regulations, and only applying fines when absolutely necessary.
- III. We recommend that in addition to these regulatory changes, the municipality and enforcement officers provide information, education, and access to smoking cessation resources. These include:
 - 811 for ongoing smoking cessation support with a trained counsellor;

- Stop Smoking services through NSHA (1-866-340-6700 to find a local session) which provides support and nicotine replacement therapy for the duration of treatment; and,
 - Text SMOKEFREE to 902-700-7700 to receive motivational stop smoking text messages from Tobacco Free Nova Scotia.
- IV. We advise against the implementation of designated smoking areas (DSA) as they are not seen as best practice. DSAs only partially restrict public smoking and continue to allow for smoking to be seen as a social norm (Drope J, 2018).

Submitted by:

Healthy Communities Team, Public Health-Central Zone, NSHA
Mental Health & Addictions-Central Zone, NSHA

Main Contact:

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Date: October 16, 2018

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