

Community Services Report to
SPC on Community and Protective Services
2019 November 13

ISC: UNRESTRICTED
CPS2019-1405

Strengthening the Smoking and Vaping Bylaw

EXECUTIVE SUMMARY

On 2018 April 03, Council directed Administration to further strengthen the Smoking and Vaping Bylaw 23M2018 with consideration given to prohibiting a number of smoking-related activities. Administration was directed to engage with citizens and key stakeholders including Alberta Health Services (AHS) in conducting this work. Drawing upon extensive engagement and research, this report includes recommendations to further strengthen Calgary's Smoking and Vaping Bylaw 23M2018 while taking into account the potential impact on businesses and municipal enforcement services. However, Council may prefer to reserve this decision in light of the Government of Alberta's plans to amend the *Tobacco and Smoking Reduction Act*, anticipated in the Spring of 2020.

ADMINISTRATION RECOMMENDATIONS:

That the Standing Policy Committee on Community and Protective Services recommend that Council approve one of the following options:

1. Give three readings to the proposed bylaw to amend the Smoking and Vaping Bylaw 23M2018 (Attachment 1); or
2. Reserve its decision to approve the proposed bylaw in Attachment 1 until the Government of Alberta passes amendments to the *Tobacco and Smoking Reduction Act*, expected to be introduced in the 2020 Spring session of the Legislature, and report back with recommendations on further amendments to the Smoking and Vaping Bylaw 28M2018 if required.

RECOMMENDATION OF THE STANDING POLICY COMMITTEE ON COMMUNITY AND PROTECTIVE SERVICES, 2019 NOVEMBER 13:

That Council direct Administration to report back to Council through the Standing Policy Committee on Community and Protective Services with an update and bylaw recommendations subsequent to a provincial decision on amendments to the *Tobacco and Smoking Reduction Act*, expected to be introduced in the 2020 Spring session of the Legislature.

PREVIOUS COUNCIL DIRECTION / POLICY

On 2019 February 25, Council approved Administration's request to defer the report on smoking and waterpipe restrictions to Council through the SPC on Community and Protective Services Committee no later than 2019 Q4.

On 2018 April 5, Council adopted a Motion Arising, moved by Councillor Carra and seconded by Councillor Colley-Urquhart, directing Administration to engage citizens and key stakeholders (including Alberta Health Services) to further strengthen the Smoking and Vaping Bylaw 23M2018, with consideration given to prohibiting:

- Waterpipe smoking in workplaces, public premises and specified outdoor places;
- Smoking in multi-unit public housing administered by The City of Calgary, and;

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- Smoking and vaping in hotel and motel rooms, in outdoor public parks and at outdoor public events,

and report back to Council, through the Standing Policy Committee on Community and Protective Services with recommendations and bylaw amendments no later than 2019 Q2.

BACKGROUND

The Government of Alberta's *Tobacco and Smoking Reduction Act* (TSRA) was first enacted in 2005, establishing a number of measures to prevent and reduce tobacco use to protect individuals from the harms of tobacco and second-hand smoke. The TSRA prohibits smoking in all public places and workplaces and bans retail displays, advertising and promotion of tobacco products. On 2019 October 2, the Government of Alberta announced a review of its tobacco and smoking legislation. The announcement indicated the review will specifically address vaping and the use of tobacco-like products such as hookah (waterpipe) in public and work places. Amendments are scheduled to be introduced in the 2020 Spring session of the Legislature.

Calgary's Smoking and Vaping Bylaw was passed in 2005. While the bylaw mirrors many of the existing provisions in the TSRA, it also regulates vaping which is currently absent from provincial regulations.

Waterpipe/Shisha Smoking

A waterpipe is a smoking device that consists of a bowl mounted on a vessel of water, which is provided with a long tube and arranged so that smoke is drawn through the water where it is cooled and moves up the tube to the mouth. The smoking material, or shisha, is placed in a bowl on top of the waterpipe and heated/burned by charcoal which rests on top of the shisha, usually separated by aluminum foil or other metal. The heated air, which contains the shisha/herbal mixture and charcoal fumes, passes through the waterpipe and is inhaled by the smoker.

The TSRA was amended in 2013 through Bill 33 and was intended to better protect Albertans from the harmful effects of tobacco, tobacco-like products and second-hand smoke. Bill 33 banned the sale of menthol flavored tobacco products, eliminating most flavored tobacco products. However, the sections of Bill 33 which would have prohibited 'tobacco-like products' - shisha - from being smoked in the same places as tobacco were never proclaimed. As a result, venues which offer tobacco-like products for sale and consumption on their premises have been allowed to legally continue operations.

Multi-unit Public Housing

Calgary Housing Company (CHC) is a wholly-owned subsidiary of The City of Calgary and is governed by an independent Board of Directors. CHC is not the sole provider of affordable, non-market housing in Calgary and does not represent the whole of the non-market housing sector. CHC currently allows smoking in most buildings it manages but has introduced no-smoking policies in several newer properties.

Hotel and Motel Rooms

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The TSRA includes an exemption for designated hotel and motel rooms. As such, hotels and motels in Alberta have been able to designate specific rooms as smoking rooms within their premises.

Outdoor Public Parks/Outdoor Public Events

Calgary's Smoking and Vaping Bylaw currently prohibits smoking within five metres of a(n): outdoor pool, outdoor skating rink, playground, skate park, sports field, or transit property. Currently it prohibits smoking or vaping in only one city park - Olympic Plaza - however, it does not otherwise prohibit smoking in city parks or pathways.

Calgary's Smoking and Vaping Bylaw does not restrict smoking or vaping at outdoor public events. However, in many instances event operators choose to create designated smoking or vaping areas.

INVESTIGATION: ALTERNATIVES AND ANALYSIS

Waterpipe/Shisha

Since the TSRA and Calgary's Smoking and Vaping Bylaw were passed, there has been renewed international interest in, and numerous studies revealing, the health effects of smoking shisha. As a result, the World Health Organization has recommended that waterpipe use be prohibited in public places. In the interest of public health, many governments around the world have followed this recommendation and waterpipe use is prohibited in public places in Toronto, Vancouver, Ottawa, and in countries where use is prevalent, including Turkey, Kenya, Pakistan, and Jordan. Attachment 2 includes a list of leading practices.

In recent years, there have been serious health concerns associated with shisha lounges in Calgary. A multi-agency team, headed by AHS was formed to address concerns, and includes representatives from AHS, the Alberta Gaming and Liquor Commission, Calgary Fire Department, Calgary Building Services and Calgary Community Standards. Notable incidents included at least two cases of carbon monoxide poisoning which resulted in patients being placed in a hyperbaric chamber to aid in recovery. Calgary has approximately 40 businesses which offer shisha as part of their service. Several have recently cooperated with the multi-agency team which inspected these locations to address immediate health concerns on their premises. Several local businesses installed upgraded air units in order to meet provincial building code requirements for air exchange in smoking rooms. It is important to note that while these upgraded units were installed to address immediate and severe health concerns, there is no known ventilation system which entirely mitigates the short and long-term health effects of second-hand shisha smoke.

In responding to the Motion Arising, Administration considered as an option reserving a recommendation to amend the Smoking and Vaping Bylaw until the Government of Alberta releases anticipated amendments to the TSRA during the 2020 Spring session of the Legislature, as noted above. Since smoking is regulated at both the provincial and municipal levels, any amendments to provincial legislation prohibiting waterpipe smoking in public places and workplaces would apply to Calgary businesses. Delaying a decision would enable The City to assess the provincial amendments and determine whether additional changes to municipal bylaws would be needed to address the health impacts associated with waterpipe smoking in workplaces and public places. Should the anticipated provincial amendments not prohibit the

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consumption of waterpipe/shisha products in businesses, a decision on a course of action would ultimately rest with The City.

Given the well-established concerns around the smoking of shisha, along with a longstanding precedent in tobacco legislation for addressing similar concerns, Administration is recommending a prohibition on waterpipe or shisha smoking which aligns with current restrictions on tobacco. Acknowledging that there are several local businesses which depend at least in part on the sale of shisha products and which have made substantial investments to address ventilation requirements, Administration is recommending a delayed implementation until 2021 July 1 for the bylaw amendments. The delay will provide businesses time to phase out this aspect of their offerings. Administration's recommendation aligns with leading practices from around the world and considers health concerns raised by stakeholders, including Alberta Health Services and other health experts. Administration is also recommending mandatory health warning signage and minimum age requirements for venues offering shisha or waterpipe in the interim. These requirements are included in the proposed amendments to the Smoking and Vaping Bylaw 23M2018 found in Attachment 1.

Multi-Unit Public Housing

To inform this report, Administration reached out to CHC for their current smoking policy. CHC has identified a review of its smoking policy as an item on its 2021 workplan. This review is expected to include consultation with the owners (The City of Calgary and the Government of Alberta) of the properties managed by CHC. The review would be conducted with consideration of governance, rental tenancy and human rights legislation regarding the balancing of interests of all tenants alongside health and safety considerations.

Hotel and Motel Rooms

With extra attention on the effects of second and third hand smoke, there has been a move away from designated smoking rooms by many hotel chains and municipalities in North America. According to a report from the American Hotel and Lodging Association, 85 per cent of US hotels offered only non-smoking rooms in 2016, up from 38 per cent in 2008. Five US States prohibit smoking in hotels, and several Alberta municipalities have implemented a similar ban. Concerns include the effect of third-hand smoke, or the residue from smoking, having negative health consequences on staff and guests, as well as hotel-wide air-quality concerns where smoking has been allowed in some rooms. With many hotel and motel chains already providing 100 per cent smoke-free rooms, Administration's recommended prohibition of designated smoking rooms is reflective of an existing industry standard.

Outdoor Public Parks

Some municipalities have chosen to address public smoking by implementing full or partial public bans on smoking. Examples include: Paris which has implemented a full ban on smoking in 52 municipal parks; Halifax which has implemented a ban on smoking on all city property except for specific designated smoking areas, and; Edmonton which has banned smoking in many city parks and increased the minimum distance required from doorways, windows and ventilation. In the six months after Edmonton's smoking bylaw was amended in 2018 October, the city saw almost a threefold increase in smoking complaints as compared to all of 2017. While Edmonton's smoking bylaw also addresses the smoking of cannabis, less than 5 per cent of the 2,687 complaints received during these six months were cannabis-related. Additionally, it was noted that cigarette litter actually increased near popular venues after the amended bylaw came into effect as a result

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of cigarette butt receptacles being removed as they were located within the increased distance from doorways, windows or air intakes.

Current workload for Community Peace Officers with Calgary Community Standards (CCS), coupled with current staffing levels, have resulted in delays in meeting Service Level Agreement response times to existing smoking-related infractions. Without additional funding for officers, it is expected that that current response times would be further eroded by increased complaints should smoking be banned more broadly. Administration is not recommending a further ban on smoking in parks. The experiences and costs incurred by other municipalities, increased citizen expectations, and existing enforcement capacity do not indicate a high likelihood of success for this approach.

Outdoor Public Events

Some jurisdictions have also recently moved to ban smoking at outdoor public events. For example, the City of Ottawa banned smoking at events held on municipal land. However, this has proved difficult to enforce and has recently led to events occurring on federal land within the City of Ottawa that have allowed for designated smoking areas on their grounds. Administration is not recommending a smoking ban at outdoor public events as the research and engagement conducted to inform this report showed a large level of support for continuing to allow for designated smoking areas at festivals and events.

Stakeholder Engagement, Research and Communication

Administration has conducted extensive leading practices research. A summary of leading practices regarding shisha can be found in Attachment 2.

In addition to the multiple health experts consulted through stakeholder workshops and engagement, Administration found that one of the world's leading researchers on the health and societal effects of shisha smoking is based at the University of Alberta. Administration contacted Dr. Fadi Hammal for input on Council's Motion Arising and he provided a summary of his and others' research in the letter in Attachment 3.

Administration also worked with external consultants to conduct engagement and research on Calgarians' views on further smoking restrictions. Administration forwarded invitations to all identified shisha businesses in Calgary and conducted in-person one-on-one meetings with 15 business representatives. Additionally, Administration and the engagement consultants conducted three stakeholder workshops with participants representing industry, healthcare, and professional groups. An online survey was posted for three weeks between 2019 July and August which garnered 5,172 responses. A summary What We Heard report is included in Attachment 4.

In addition to the engagement conducted, Administration also commissioned a 1000 person, statistically representative telephone survey of Calgarians' views on smoking restrictions. A topline report of the research conducted can be found in Attachment 5. It should be noted that a majority of respondents to both the online engagement and the telephone survey indicated they felt that shisha or waterpipe smoking should be allowed in restaurants or shisha lounges. However, a majority of respondents also felt that shisha or waterpipe should be subject to the same regulations as tobacco smoking.

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Administration engaged representatives from the Calgary Hotel Association and was informed that none of their members provide designated smoking rooms. The association represents almost 80 per cent of available room nights in Calgary.

Opportunities for research and engagement were broadly communicated through traditional and online media. Administration continues to communicate with identified stakeholders through email updates. Communication will continue to be a primary focus for Administration as bylaws are developed and amended. If the recommendations in this report are approved by Council, Administration is planning extensive communication with Calgarians once bylaw amendments have been finalized.

Strategic Alignment

The recommended amendments in this report align with Council's Directive of a City of Safe & Inspiring Neighbourhoods. Specifically, Council directive N1: Calgarians want neighbourhoods and public spaces that are safe, accessible and inclusive for all Calgarians.

Social, Environmental, Economic (External)

Prohibiting the smoking of shisha in businesses will have social and economic impacts. As outlined in the Engagement – What We Heard Reports in Attachment 4, several business owners have identified that shisha is a primary offering at their establishments and that their business would suffer and possibly close should it be banned. Furthermore, several businesses have already made extensive investments in their ventilation systems to address the immediate safety and health concerns identified through previous inspections by the multi-agency team.

Although the number of hotels or motels offering smoking rooms in Calgary is minimal, there will likely be economic ramifications for the limited number of operators offering these services.

As identified by AHS and other stakeholders, banning smoking of shisha in businesses and banning designated hotel rooms will have a positive environmental impact on the staff and patrons of these businesses. Given that shisha has been demonstrated to be as harmful as smoking, the proposed prohibition will be in alignment with existing tobacco legislation.

Financial Capacity

Current and Future Operating Budget:

The proposed bylaw amendments and the subsequent implementation fall within the current operating budget of Calgary Community Standards. However, many of the other options considered, but not recommended, including prohibiting smoking in parks and at outdoor public events, would substantially increase operating budget requirements.

Current and Future Capital Budget:

The proposed bylaw amendments and subsequent implementation have no impact on the current capital budget of Calgary Community Standards.

Risk Assessment

The greatest risks of implementing the recommendations in this report is the potential substantial economic implications for local shisha businesses. However, the risk of not implementing the

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proposed bylaw amendments include the long-term health effects to staff and patrons of shisha businesses in Calgary and that venues provide avenues for young people to be introduced to smoking shisha. Experiences in other Canadian municipalities indicate a risk of bylaws being legally challenged, however all legal challenges researched by Administration had the bylaws being upheld in court.

With the Government of Alberta's recent announcement to review and introduce amendments to its tobacco and smoking legislation in 2020 Spring, there is a risk that the proposed amendments in this report may not align to provincial legislation. Delaying the implementation of these amendments until 2021 July 1 will mitigate this risk and allow The City to make adjustments ahead of implementation that would align with provincial legislation.

REASON(S) FOR RECOMMENDATION(S):

Collaboration with stakeholders including health experts and professional researchers has identified the serious health implications of allowing shisha to be smoked in public places, as well as allowing for smoking and vaping in designated hotel/motel rooms. Through Recommendation 1, Administration proposes aligning waterpipe smoking regulations with the existing regulations for tobacco and vaping through the proposed amendments to the Smoking and Vaping Bylaw in Attachment 1. Recognizing that these regulations will have serious impacts on local businesses, Administration is recommending a delayed implementation of 18 months to allow businesses the ability to plan for prohibition.

Alternatively, though Recommendation 2, Council may choose to reserve its decision to approve the proposed bylaw amendments until after the Government of Alberta passes amendments to the *Tobacco and Smoking Reduction Act*, anticipated in the Spring of 2020 to determine whether additional regulation is required to address the concerns identified in the Motion Arising.

ATTACHMENT(S)

1. Attachment 1 – Proposed Wording for an Amendment to Bylaw 23M2018, The Smoking and Vaping Bylaw
2. Attachment 2 – Waterpipe/Shisha Regulations Leading Practices
3. Attachment 3 – Letter from Waterpipe Researcher Dr. Fadi Hammal
4. Attachment 4 – Smoking & Vaping Bylaw Engagement: What We Heard
5. Attachment 5 – Smoking and Vaping Research: Topline Report
6. **Attachment 6 – Cover Sheet Regarding Opinion Poll Received at Committee**
7. **Attachment 7 – Letter Received at Committee**