

E-CIGARETTE EXEMPTION UPDATE

EXECUTIVE SUMMARY

On 2015 June 29, Council approved amendments to The City of Calgary Smoking Bylaw #57M92 prohibiting the use of e-cigarettes in public places where tobacco smoking is prohibited and exempted enclosed vape shops to allow sampling of e-cigarette products inside the premises. This exemption applies only to enclosed vape shops where the primary function of the premises is the sale of electronic smoking devices and does not apply to stores that sell additional products or to kiosks located in malls. Council members directed Administration to review and monitor the implications of the exemption, consult with key stakeholders and adjacent businesses regarding potential public nuisance impacts, and review the exemption in relation to provincial and federal legislation.

Through this review process, consultation with exempted vape shops found that 100 per cent have trained their staff to prohibit minors from entering the vape shops and 83 per cent have a formal policy prohibiting minors from entering the premises. Administration also invited businesses adjacent to enclosed vape shops to provide feedback through a telephone survey. Feedback from the adjacent businesses identified no concerns directly related to sampling of e-cigarette products inside the neighboring vape shops. Further, monitoring of the vape shops by bylaw officers found no evidence that minors were on the premises and signage indicating minors were prohibited was evident at the monitored locations. Based on these findings, Administration concluded that the new regulatory environment created by Council is working effectively; therefore, no further changes to the bylaw are required at this time. Administration will continue to monitor the legislative context at the federal and provincial levels and will report back to council on an as needed basis with any new developments.

ADMINISTRATION RECOMMENDATION(S)

That the SPC on Community and Protective Services recommends that Council receive this report for information.

PREVIOUS COUNCIL DIRECTION / POLICY

On 2015 June 29, Council approved Report CPS2015-0387 as follows: 1) Receive this report for information; 2) Give three readings to the proposed bylaw to amend Smoking Bylaw 57M92; and 3) Request that the Mayor send a letter to the Minister of Health advocating for a provincial e-cigarette strategy. Council approved Councillor Colley-Urquhart's amendment to the proposed Bylaw 27M2015 to amend Bylaw 57M92 by adding an exemption to allow a person to use an electronic smoking device to sample a product prior to purchase inside an enclosed premises where the primary function of the premises is the sale of electronic smoking devices. Council also approved Councillor Carra's Motion Arising that with respect to Report CPS2015-0387, Administration was directed to review and monitor the implications of exempting vape shops from the restrictions on the use of electronic smoking devices in public premises and workplaces. This includes: consulting with key stakeholders and adjacent businesses regarding potential public nuisance impacts; conducting a review of the exemption in relation to provincial and federal legislation, and further reporting back to the SPC on Community and Protective Services on the findings as required no later than 2016 February with a status update.

On 2014 December 15, Council approved Report CPS2014-0862, as follows: 1) Receive this report for information; and 2) Direct Administration to proceed with Phase 2 of the review

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process in conjunction with Alberta Health Services, reporting back to the SPC on Community & Protective Services by 2015 June with review recommendations.

On 2014 September 22, Council approved Report CPS2014-0663 as amended: 1) Receive this report for information; and 2) Direct Administration to partner with AHS on a shared approach to the work identified in the attachment, and report back in 2014 December to Council, through the SPC on Community and Protective Services with Phase 1 findings and an AHS/City cost and resource sharing agreement for Phase 2 work.

On 2014 March 31, Council approved Councillor Diane Colley-Urquhart's Notice of Motion 2014-13 requesting that Administration prepare, in respect to e-cigarettes and their potential impacts on communities and citizens, a project scope and work plan that would: a) lead to determining recommendations for Council, including any bylaw changes, as to how this matter could be addressed; b) include consultation and participation among identified key stakeholders, including, but not limited to, Alberta Health Services (AHS), and Alberta Health and Wellness; c) identify resource and cost estimates; and d) be presented to the 2014 September meeting of the SPC on Community and Protective Services.

BACKGROUND

E-cigarettes are electronic smoking devices that use a heating element to vaporize e-liquid, which can include flavourings as well as nicotine. With the increased sale and use of e-cigarettes in recent years, Council directed Administration to review the issue of e-cigarettes, including potential impacts on communities and citizens, and provide recommendations on how to approach the issue as a municipality. The review was conducted in collaboration with AHS in two phases. This work included an examination of existing regulations, best practices in other jurisdictions, a citizen survey and research into potential health, nuisance and behavioural impacts. Based on research findings and to address citizen concerns regarding the nuisance effects of e-cigarettes, The City of Calgary Smoking Bylaw #57M92 was amended to prohibit the use of e-cigarettes in public places where tobacco smoking is prohibited, with the exception of enclosed vape shops, effective 2015 June 29.

INVESTIGATION: ALTERNATIVES AND ANALYSIS

In response to Council's direction, Administration reviewed and monitored the implications of exempting vape shops from the restrictions on the use of electronic smoking devices in public premises and workplaces. The exemption allows enclosed vape shops to demonstrate e-cigarette use and enable customers to sample the products, as vape shops indicated that sampling is an important aspect of their business model. The review included identifying the enclosed vape shops eligible for the exemption; consulting with the exempted vape shops on their current practices regarding minors; consulting with adjacent businesses regarding potential public nuisance impacts; monitoring citizen service requests; and reviewing the bylaw exemption in relation to provincial and federal legislation.

Engagement with Exempted Vape Shops

Administration identified 17 enclosed vape shops which are eligible for the exemption allowing sampling of e-cigarette products within their stores. More than 70 per cent of these vape shops participated in a telephone survey, which found that:

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- 75 per cent of the eligible shops provide the opportunity to sample e-cigarette products in store;
- 83 per cent were aware of the Smoking Bylaw amendments regarding e-cigarettes;
- 100 per cent indicated their staff are trained to prohibit minors from entering the vape shop;
- 83 per cent have a formal policy prohibiting minors from entering the vape shop;
- 92 per cent have signage stating that minors are prohibited from entering the vape shop; and
- 100 per cent require staff to be age 18 or older.

These survey findings, outlined further in Attachment 1, were subsequently confirmed by Calgary Community Standards (CCS) bylaw officers, who monitored a sampling of the vape shops over a two week period, and found that minors were not present in any of these establishments. These findings indicate no issues with minors accessing vape stores or sampling vape products in store.

It is also important to note that many of the 17 exempted vape shops belong to the United Vape Retailers Association, which requires members to adhere to a code of conduct that includes the requirement to “clearly state (e-cigarettes) not intended for sale to anyone under the age of majority as a minimum policy.” The growth of this association since the commencement of the e-cigarette review process has now resulted in an industry organization that The City can partner with on e-cigarette initiatives on an ongoing basis.

Engagement with Adjacent Businesses

Administration identified 28 businesses located adjacent to enclosed vape shops and invited them to provide feedback through a telephone survey (Attachment 2). Feedback from the adjacent businesses identified no concerns directly related to sampling of e-cigarette products inside the neighboring vape shops. Four businesses did indicate concerns about potential e-cigarette use outside of the vape shops, including near entrances. While these issues do not relate to the exemption, vaping or smoking within 5 metres of a doorway is prohibited by the Smoking Bylaw, and these concerns are being monitored by CCS officers, and information about the bylaw has been provided to the businesses involved.

Monitoring Citizen 3-1-1 Service Requests

In the first six months following the Smoking Bylaw amendments no citizen complaints were received related to the exemption for enclosed vape shops. Overall, CCS has received five 3-1-1 service requests from citizens concerning vaping in general. Of these complaints, CCS investigated two service requests regarding vaping inside public establishments and provided a warning to one manager and information to the other. CCS also provided information about the bylaw to three citizens whose service requests did not relate to a violation of the Smoking Bylaw.

Legislative Review in Relation to Bylaw Exemption

Since the enactment of the amended Smoking Bylaw, Administration has monitored the legislative context at the provincial, federal and municipal levels. At the federal level, Health Canada has not yet responded publicly to a parliamentary committee’s study recommending the

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development of a regulatory framework for e-cigarettes, which had been developed under the previous government; there is no current timetable for this response.

Provincially, Administration was advised that there were no immediate plans to amend the *Tobacco Smoking Reduction Act*, which currently does not pertain to e-cigarettes. As a result, Alberta's Occupational Health & Safety (OHS) Act may represent the only provincial legislation that could address e-cigarette use currently, as employers are required to ensure the health and safety of workers and must comply with the OHS Regulation and Code, which defines standards for protection of employees from specific hazards, such as airborne levels of chemical contaminants.

Municipally, The City of Edmonton has now also banned the use of e-cigarettes from all public places where smoking is prohibited, effective 2015 October. The bylaw amendment included an exemption to allow the use of e-cigarettes when someone is sampling a product inside an electronic cigarette retailer.

Summary of Findings

Engagement findings indicated that Calgary's enclosed vape shops do not allow minors on the premises, utilize signage on the outside of the premises prohibiting minors from entering, have store policies in place prohibiting minors, and subsequently train staff accordingly. Further, businesses adjacent to the exempted vape shops have indicated no concerns directly related to the sampling of e-cigarettes inside the neighbouring vape shop. Additionally, a review of citizen service requests regarding the exemption for vape shops to allow sampling electronic cigarette products inside the business, found no complaints since the exemption has been in place. Based on these findings, Administration is not recommending any further amendments to the The City of Calgary Smoking Bylaw #57M92, including the exemption for enclosed vape shops.

Ongoing Work

Administration is continuing public awareness efforts relating to e-cigarettes regulations, including the dissemination of information via social media, online and through community awareness programs within Calgary communities. Further, Administration will continue to monitor other municipal jurisdictions and any emerging developments at the federal and provincial levels, and will report back to council on an as needed basis with any new developments.

Stakeholder Engagement, Research and Communication

Administration has consulted with businesses adjacent to enclosed vape shops within Calgary regarding any potential implications or public nuisance impacts related to exempting vape shops from the bylaw restrictions. The proprietors of enclosed vape shops have also been engaged on their policies and views regarding minors entering shops where e-cigarette sampling is permitted. In addition, both the provincial and federal government has been consulted regarding the potential for future regulation at those levels of government.

Strategic Alignment

This report aligns with Council's Priorities for 2015-2018:

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“Provide great public spaces and public realm improvements across the city to foster opportunity for well used public spaces and places for citizen connections and urban vitality,” and “Lead by example and manage regulatory risks to protect public health and the environment.”

Social, Environmental, Economic (External)

The review of e-cigarettes addressed potential social and environmental implications, including nuisance-related issues. The review also addresses potential concerns regarding the enjoyment and comfort of public places while also ensuring vape shops have the ability to continue to allow customers to sample products in store.

Financial Capacity

Current and Future Operating Budget:

There are no operating funding implications associated with this report.

Current and Future Capital Budget:

There are no capital funding implications associated with this report.

Risk Assessment

Administration has mitigated the potential public nuisance risks associated with the Smoking Bylaw exemption for enclosed vape shops by consulting with adjacent businesses; engaging vape shops on their policies prohibiting minors from entering the stores; monitoring citizen service requests related to e-cigarette use; and continuing to review legislative developments at the provincial and federal level.

Reason for Recommendation

Council directed Administration to review and monitor the implications of the vape shop exemption to the Smoking Bylaw, consult with key stakeholders and adjacent businesses regarding potential public nuisance impacts, and review the exemption in relation to provincial and federal legislation. Consultation with exempted vape shops found that 100 per cent have trained their staff to prohibit minors from entering the vape shops and 83 per cent have a formal policy prohibiting minors from entering the premises. Feedback from the adjacent businesses identified no concerns directly related to sampling of e-cigarette products inside the neighboring vape shops. Based on these findings, Administration concluded that the new regulatory environment created by Council is working effectively; therefore, no further changes to the bylaw are required at this time. Administration will continue to monitor the legislative context at the federal and provincial levels and will report back to council on an as needed basis with any new developments.

ATTACHMENT(S)

1. Vape Shop Survey Findings
2. Adjacent Businesses Survey Findings