

Item:



Committee of the Whole Report

DATE: Tuesday, March 05, 2019

WARD(S): ALL

TITLE: ALIGNMENT OF CITY BY-LAWS WITH THE SMOKE-FREE ONTARIO ACT

FROM:

Mary Reali, Deputy City Manager, Community Services

ACTION: DECISION

Purpose

The most recent amendments to the *Smoke-Free Ontario Act, 2017*, through the *Cannabis Statute Amendment Act, 2018*, have created a legislative gap between provincial and City regulatory requirements with respect to the smoking of recreational cannabis and e-cigarettes, in addition to tobacco. This report recommends a number of by-law amendments to eliminate those incongruencies.

Report Highlights

- The smoking of recreational cannabis became legal in Canada on October 17, 2018. As a result, the Province introduced a series of amendments to various statutes in order to regulate the legal sale and smoking of recreational cannabis.
- The legislative amendments created a gap between the new laws and some of the City's regulatory by-laws, in particular the City's Smoking By-law and Parks By-law.
- This report is intended to eliminate these gaps by bringing the City's by-laws in line with the Province's legislation, in particular the *Smoke-Free Ontario Act, 2017*.
- Following this alignment staff will monitor, assess and bring any other appropriate recommendations to these and other peripheral City by-laws, such as Property Standards.

Recommendations

1. THAT City Council approve the proposed by-law amendments, as per Attachment 1 and that the Smoking By-law be consolidated accordingly on a go-forward basis;
2. THAT City Council authorize staff to undertake any actions necessary to give effect to the aforementioned recommendations, including any other stylistic or other amendments to ensure the consolidated Smoking By-law is in line with the City's other by-law provisions and by-law drafting standards.

Background

On October 17, 2018, the federal *Cannabis Act* decriminalized recreational cannabis in Canada. On the same day, the Province of Ontario passed legislation amending several statutes to regulate the sale and use of cannabis in the Province. As part of its regulatory regime, the Province introduced a provincial retail model that initially established a government-run on-line store as the only legal source of recreational cannabis. The Province also introduced a private retail model to come into effect on April 1, 2019. Municipalities were given the option to participate in this retail model or to opt out and not permit private stores. On January 21, 2019, the City of Vaughan decided to opt out of the Province's private retail model. However, the smoking of recreational cannabis continues to be legal and its purchase continues to be available on line.

As a result, the City of Vaughan, like all other municipalities in Ontario, must contend with the smoking of recreational cannabis within its borders. To this end, the Province has established some legislative restrictions on the smoking of recreational cannabis in both public and private places. In particular, it amended both the *Smoke-Free Ontario Act, 2017* and the *Highway Traffic Act, 1990* to mitigate the negative impacts of recreational cannabis use.

This report was prepared in consultation with Recreation Services, Facility Services, Office of the City Solicitor, York Regional Police, York Region Public Health Services, and Vaughan Public Libraries.

Previous Reports/Authority

[Item 1, Report No. 29](#) of the December 5, 2018 Committee of the Whole: Ontario Recreational Cannabis Legislation (deferred by City Council on December 12, 2018 to the Special Committee of the Whole of January 21, 2019).

[Communication C13](#) of the Special Committee of the Whole: Presentation - Legalization of Recreational Cannabis in Ontario (received by City Council on January 21, 2019).

Analysis and Options

The recent legislative changes have created a gap between provincial regulations and the City's By-laws. As a first step in contending with the new regulations around smoking, staff are recommending that the City's by-laws be amended to bring municipal regulations in line with provincial standards.

The *Smoke-Free Ontario Act, 2017* provides for where there is a conflict between the Act and a provision of another Act, a regulation or a municipal by-law by deferring to the more restrictive provision. Thus, in order to align the City's by-laws with the Province's smoking legislation, the Act must be taken as the minimum requirement or standard.

It is being proposed that the Smoking By-law apply to all property with the exception of property containing one or more dwellings. It is also being recommended that the By-law not apply to individuals who are entitled to use medical cannabis [Recommendation 1 of Attachment 1].

It is also being recommended that the definition of smoking in the current Smoking By-law be amended to include the use of cannabis and e-cigarettes. Consequentially, it is also being proposed that definitions for tobacco, cannabis and e-cigarettes be added [Recommendations 2 and 3 of Attachment 1].

In addition, with the exception of the restrictions on public offices and yards, distancing requirements are now 20 metres from the perimeter of any school, playground, sports field (including any spectator areas) or community recreational facility. This effectively eliminates any currently designated smoking areas that lie within the perimeter of a municipal recreational facility, including any parking lot. However, staff are proposing that the smoking of cannabis be specifically prohibited anywhere on identified City property including but not limited to City Hall and all public Library properties [Recommendations 4 and 5 of Attachment 1].

In line with the above, staff are also recommending that a further restriction be placed on smoking within 9 metres of any public entrance and openable window of a child care centre and within 20 metres of any outside playground [Recommendation 4 of Attachment 1].

In accordance, with the City's By-law Strategy, staff are also recommending that a number of the Smoking By-laws sections be amended to reflect the powers and authorities necessary for effective administration and enforcement, including providing

for offences under the City's AMPs program [Recommendation 6 of Attachment 1] and adding severability and collection provisions [Recommendations 8 and 9 of Attachment 1].

Penalties under the By-law will generally be imposed as administrative monetary penalties (i.e., "tickets") of \$100 per offence; however, Officers will also have the option of issuing a Summons and applying fines of up to \$500 for a first offence, up to \$1,000 for a subsequent offence and up to \$1,000 per offence for multiple offences (Recommendation 7 of Attachment 1). This provision will be most useful for Police Officers, as they are not equipped to issue penalty notices under the City's AMPs program.

Staff are further recommending that a section referencing the Smoking By-law be added to the Parks By-law. Under proposed provisions, smoking in parks would be prohibited in those areas identified as restricted in the Act (i.e., playgrounds, sports fields and recreational facilities) and identified in the Smoking By-law [Recommendations 11 and 12 of Attachment 1].

Finally, staff are also recommending that smoking be prohibited within 9 metres of any off-leash parks, of which there are two in Vaughan. This prohibition is partly being recommended because tobacco and cannabis (if consumed in the form of discarded cigarettes or joints) is toxic to dogs and in some cases even lethal to smaller breeds [Recommendation 4 of Attachment 1].

Under the enforcement powers of the Parks By-law, enforcement staff have, in addition to their usual powers of issuing fines, the authority to expel individuals from City parks and to issue trespass notices.

The proposed amendments are intended to close a legislative gap and ensure that enforcement staff can apply the City's smoking rules to cannabis and e-cigarettes. Over the coming season, staff will monitor and assess the need to fine tune regulatory provisions or recommend further regulation.

Financial Impact

Legislative alignment will result in a number of costs for the City, including the replacement and addition of no-smoking signs across City parks, sport fields and facilities, and training for staff in a number of departments, including BCLPS, VFRS, Recreation Services and Access Vaughan. These initial costs are expected to be approximately \$80,000 and will be offset by the Province's Ontario Cannabis Legalization Implementation Fund payments, totaling \$127,449 for Vaughan.

Remaining funds will be used for any other expenses incurred as a result of the review of the other City by-laws and any associated recommendations. The City is mandated by the Province to monitor and report out on all cannabis legalization-related costs.

Broader Regional Impacts/Considerations

There are no direct implications to the Region or to other levels of government as a result of the approval of the recommendations of this report. However, the provisions of this By-law may be enforced by York Regional Police and York Region Public Health Services.

Conclusion

The recommendations of this report, if approved, will bring the City's by-laws in line with Ontario's current smoking legislation and regulations and will allow the City's smoking regulations to apply to recreational cannabis and e-cigarettes, in addition to tobacco. The recommendations also strengthen enforcement powers and give Officers broader options when it comes to imposing penalties.

Over the coming season, staff will monitor and assess the impact of these amendments and, if necessary, make further recommendations to address any additional needs or concerns.

For more information, please contact: Gus Michaels, Director and Chief Licensing Officer.

Attachments

1. Proposed By-law Amendments

Prepared by

Rudi Czekalla-Martinez, Manager, Policy & Business Planning, ext. 8782