

CITY OF VAUGHAN

EXTRACT FROM COUNCIL MEETING MINUTES OF MARCH 19, 2019

Item 11, Report No. 11, of the Committee of the Whole, which was adopted without amendment by the Council of the City of Vaughan on March 19, 2019.

11. ALIGNMENT OF CITY BY-LAWS WITH THE SMOKE-FREE ONTARIO ACT

The Committee of the Whole recommends approval of the recommendation contained in the following report of the Deputy City Manager, Community Services, dated March 5, 2019:

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.

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

Proposed By-law Amendments

1. Amend the Smoking By-law by adding a section that defines the scope and applicability of the By-law, as follows:

Scope and Applicability

- (1) This By-law applies to all property within the jurisdiction of the City of Vaughan with the exception of any property containing one or more dwellings.
- (2) This By-law does not apply to any person who is entitled to possess cannabis pursuant to a medical document issued pursuant to the *Access to Cannabis for Medical Purposes Regulation, SOR/2016-230* or its successor legislation or regulation.

2. Amend the Smoking By-law by replacing the following definitions in the current Smoking By-law:

“Designated Area” means an area identified as such at a *City*-owned facility where *Smoking* is permitted.

“Officer” means any person appointed by Council as a Municipal Law Enforcement Officer, and a Police Officer appointed by York Regional Police Service, the Ontario Provincial Police or the Royal Canadian Mounted Police.

“Smoke” means the holding of a lighted *Tobacco* or *Cannabis* product, or the holding of an activated *Electronic Cigarette*.

3. Add the following definitions to the Smoking By-law:

“Cannabis” has the same meaning as in subsection 2(1) of the *Cannabis Act* (Canada).

“Electronic Cigarette” has the same meaning as subsection 1(1) of the *Smoke-Free Ontario Act, 2017*.

“Facility” refers to any building or structure.

“Off-Leash Park” means a designated area, separated from other areas by an enclosure, for the purpose of allowing off-leash dogs.

“Park” means land and land covered by water and all portions thereof owned by or made available by lease, agreement, or otherwise to the municipality, that is or hereafter may be established, dedicated, set apart or made available for use as

public open space or golf course, and that has been or hereafter may be placed under the (jurisdiction) of the *City* including any and all buildings, structures, facilities, erections, and improvements located in or on such land, save and except where such land is governed by other by-laws of the municipality;

“Tobacco” includes any product that contains tobacco.

4. Amend sections 2 and 3 of the current Smoking By-law, which establish the prohibitions for smoking on *City*-owned property, by replacing it with one section and the following wording:
 - (1) No person shall *Smoke* inside any *City*-owned Facility.
 - (2) No person shall *Smoke* within 20 metres of the perimeter of any *City*-owned Facility, including its grounds, but not including any *Parks*.
 - (3) Where a *City*-owned Facility forms part of a *Park*, subsection (2) shall only apply to the Facility.
 - (4) Despite subsection (2), the prohibition of *Smoking* does not apply to property that belongs to or comprises part of a private dwelling or to any public sidewalk.
 - (5) Despite subsection (2), *Smoking* is permitted in *Designated Areas* of *City*-owned Facilities, which shall not be within 9 metres of any *Public Entrance* or openable window.
 - (6) Despite subsection (5), the *Smoking of Cannabis* is prohibited anywhere on the grounds of the *City*-owned Facilities listed in Schedule 1 of this By-law.
 - (7) Despite subsection (3), no person shall *Smoke* or in any manner discard of any substance used for *Smoking*, unless it is done in a receptacle intended for that purpose, within 9 metres of an *Off-Leash Park*.
 - (8) No person shall *Smoke* within 20 metres of any *City*-owned wading pool, splash pad, skating rink, skate park, sports field, playground, tennis court or basketball court, including any spectator area of such places.
 - (9) No person shall *Smoke* within 20 metres of any school site or private school, as defined in the *Education Act, 1990*.
 - (10) No person shall *Smoke* within 9 metres of the *Public Entrance* or any openable window of any child care centre, as defined in the *Child Care and Early Years Act, 2014* or within 20 metres of any playground under the care and control of any child care centre.

5. Amend the Smoking By-law by eliminating Schedule A.
6. Amend the Smoking By-law by replacing sections 4, 5 and 6 of the current By-law, which provide for enforcement, with the following sections:

Enforcement

- (1) The provisions of this By-law may be enforced by an *Officer*.
- (2) An *Officer* who has reasonable grounds to believe that a person has contravened any provision of this By-law may require such person to provide his or her identification and any other particulars reasonably required to issue a penalty notice or file a Summons.
- (3) Any information provided to the Officer under subsection (2) is presumed to be correct and accurate, and is admissible in any proceeding.
- (4) Failure to provide identification or correct and accurate particulars when requested by an *Officer*, under subsection (2), shall constitute obstruction of the *Officer* under this By-law.
- (5) Officers are authorized, where there are reasonable grounds to believe an offence under this By-law has taken place or for the purposes of an inspection, to:
 - (a) enter, at any reasonable time, onto any property, other than a dwelling unit unless authorized by the occupier of such dwelling unit or under the authority of a warrant issued by a court of competent jurisdiction;
 - (b) require any person to produce for inspection any substance, equipment, documents, or other things relevant to the alleged offence or inspection;
 - (c) alone or in conjunction with persons possessing special or expert knowledge, make examinations, take tests, obtain samples, and/or make audio, video and/or photographic records relevant to the alleged offence or inspection;
 - (d) require information from any person concerning the alleged offence or inspection.

Offences

- (1) Any person who contravenes or fails to comply with any provision of this By-law is guilty of an offence.

- (2) No person shall hinder or obstruct, or attempt to hinder or obstruct, an *Officer* who is exercising a power or performing a duty under this By-law.
7. Amend the Smoking By-law by replacing the section 7 of the current By-law, which sets out offences and penalties, with the following:

Penalties

- (1) Every person who is convicted of an offence under this By-law is liable to a fine as provided for in the *Provincial Offences Act, 1990*.
 - (2) Despite subsection (1), an Officer may issue an administrative monetary penalty of \$100.
 - (3) Penalty notices indicating a contravention of this By-law shall be issued in accordance with the Administrative Monetary Penalties By-law.
 - (4) In the event that a Summons is issued by the Officer, a person who is found guilty of the offence described therein shall be subject to the following penalties:
 - (i) Upon a first conviction, a fine of not less than \$100 and not more than \$500;
 - (ii) Upon a second or subsequent conviction, a fine of not less than \$500 and not more than \$1,000;
 - (iii) Upon conviction of multiple offences, for each offence, a fine of not less than \$100 and not more than \$1,000.
8. Amend the Smoking By-law by adding the following section:

Collection of Unpaid Penalties and Fines

- (1) Where a fine is in default, the City may proceed with civil enforcement against the person upon whom the administrative monetary penalty or fine has been imposed.
9. Amend the Smoking By-law by adding the following section:

Severability

- (1) If any provision or part of this By-law is declared by any court or tribunal of competent jurisdiction to be illegal or inoperative, in whole or in part, or inoperative in particular circumstances, the balance of the By-law, or its

application in other circumstances, shall not be affected and shall continue to be in full force and effect.

10. Amend the Smoking By-law by adding Schedule 1, which shall list the following City-owned Facilities:

Vaughan City Hall	2141 Major MacKenzie Drive West
Vaughan Joint Operations Centre	2800 Rutherford Road
All Vaughan Public Libraries	Various locations

*Any Other City Owned/Operated Property as identified from time to time

11. Amend Parks By-law 134-95, as amended, by adding the following section:

10.1 Smoking

While in any *Park*, unless otherwise provided for in this By-law, no person shall *Smoke*, except in accordance with the provisions of the Smoking By-law.

12. Amend the Parks By-law 134-95, as amended, by adding the definitions for “Smoke”, “Tobacco”, “Cannabis”, and “Electronic Cigarette” as per above.
13. Any other consequential amendments of related by-laws as required.