

Report To:	Regional Chair and Members of Regional Council
From:	Hamidah Meghani, Commissioner and Medical Officer of Health
Date:	October 20, 2021
Report No:	MO-05-21
Re:	Halton Region Waterpipe Smoking By-law

RECOMMENDATION

1. THAT Regional Council enact a by-law to prohibit waterpipe smoking as set out in Report No. MO-05-21 re: "Halton Region Waterpipe Smoking By-law" and that the Director of Legal Services be authorized to prepare such a by-law substantially in the form of the draft by-law in Attachment #1.
2. THAT upon its passage, the Regional Clerk forward a copy of the by-law together with Report No. MO-05-21 to the City of Burlington, Town of Halton Hills, Town of Milton, and Town of Oakville with the request that each Council pass a resolution giving its consent to the by-law.

REPORT

Executive Summary

- The Provincial government enacted the [Smoke-Free Ontario Act, 2017](#) (SFOA, 2017) on October 17, 2018. The Act prohibits the smoking of tobacco and cannabis and the use of electronic cigarettes in prescribed places such as enclosed public places, workplaces, restaurants and bars (including within nine metres of patios).
- The [Halton Region Smoking/Vaping By-law \(By-law No. 40-20\)](#) came into effect on March 15, 2021 and expands on the SFOA, 2017 by prohibiting the smoking of tobacco and cannabis, and the use of electronic cigarettes in public parks and public areas within nine metres from any entrance or exit of municipally owned or leased buildings and of child care centres.
- The proposed Halton Region Waterpipe Smoking By-law would prohibit waterpipe smoking wherever smoking or vaping is currently prohibited under the SFOA, 2017 and By-law No. 40-20.

- Public Health Ontario's recent evidence brief on the health impacts of waterpipe smoking (also known as hookah, narghile or shisha) found that waterpipe smoke contains harmful toxins and chemicals such as particulate matter (PM), polycyclic aromatic hydrocarbons (PAHs), carbon monoxide (CO) and heavy metals.
- Exposure to waterpipe smoke is associated with multiple adverse health outcomes including respiratory diseases such as chronic obstructive pulmonary disease (COPD) and chronic bronchitis, lung cancer, heart disease, dental disease, and negative pregnancy outcomes (including infants with low birth weight).
- An evidence-informed approach was taken to draft the proposed Halton Region Waterpipe Smoking By-law, which included an environmental scan of municipal by-laws in Ontario, consultation with other health units that have implemented a similar by-law, and information sessions with current waterpipe establishment owners in Halton.

Background

The purpose of this report is to bring forward a Regional waterpipe smoking by-law for Council to approve. This by-law aims to prohibit waterpipe smoking wherever smoking tobacco or cannabis, or vaping is already prohibited under the *SFOA, 2017* and By-law No. 40-20.

Similar to cigarette smoking and vaping, waterpipe smoking is linked to multiple harmful health outcomes and it negatively affects indoor and outdoor air quality.

On October 17, 2018, the provincial government enacted the *SFOA, 2017* to protect workers and the public from second-hand smoke and vapour. The *SFOA, 2017* prohibits the smoking of tobacco and cannabis, and the use of electronic cigarettes in prescribed places such as enclosed public places, workplaces, restaurants and bars (including within nine metres of patios).

On July 15, 2020, Regional Council received and approved Report No. MO-15-20 re: "Smoking and Vaping in Public Places By-Law". Subsequently, the by-law was approved by all four local municipalities and came into effect on March 15, 2021 as the Halton Region Smoking/Vaping By-law (No. 40-20). By-law No. 40-20 goes further than the *SFOA, 2017* by prohibiting the smoking of tobacco and cannabis, and the use of electronic cigarettes in public parks and public areas within nine metres from any entrance or exit of municipally owned or leased buildings and of child care centres.

Report No. MO-15-20 re: "Smoking and Vaping in Public Places By-Law" advised that staff had consulted with the local municipalities regarding the inclusion of waterpipe smoking in the by-law. While there was support for the prohibition of waterpipe smoking in workplaces and public places, consultation with waterpipe establishment owners

identified a need to better understand the impacts of enacting a waterpipe smoking by-law. Since these initial consultations, Halton Region Public Health staff have met with Peel Public Health, Ottawa Public Health, and Toronto Public Health staff to learn about their experience with enacting their waterpipe smoking by-laws. Halton Region Public Health staff also reached out to Public Health Ontario to update the research evidence on health concerns related to waterpipe smoking. Furthermore, Halton Region Public Health staff have since had additional meetings with current waterpipe establishment owners in Halton to discuss the proposed by-law and consider their concerns.

Discussion

Legal authority:

In Ontario, municipalities are granted authority under section 11 of the [Municipal Act, 2001](#) to enact by-laws respecting the health, safety and well-being of individuals within its jurisdiction. Section 115 of the *Municipal Act, 2001* further permits municipalities to prohibit or regulate the smoking of tobacco or cannabis in public places and workplaces.

Pursuant to Section 115 of the *Municipal Act, 2001*, a triple majority is required for a Regional by-law passed under this section to come into force. This means that a majority of all votes on Regional Council must be cast in its favour and that a majority of the local Councils (at least three out of the four) representing a majority of the Region's electors must pass resolutions consenting to the by-law.

Health and safety risks:

In its capacity as Halton Region's Board of Health, Council has a mandate under the *Health Protection and Promotion Act*, R.S.O. 1990, c. H.7, as amended, to reduce the burden of preventable injuries and substance use. This includes protecting the public from exposure to second-hand smoke.

Just like smoke from a cigarette or an e-cigarette, smoke from a waterpipe contains harmful toxins and chemicals such as particulate matter, polycyclic aromatic hydrocarbons, carbon monoxide and heavy metals. This is the case even when tobacco is not used and the substance smoked is a non-tobacco herbal preparation. An additional burden of waterpipe smoking, distinct from cigarettes, is the risk of carbon monoxide poisoning (and the impact on air quality) from the charcoal used to heat the tobacco or the non-tobacco herbal preparation. Second-hand smoke is a health risk to non-smoking patrons, staff, enforcement officers, and first responders.

Waterpipe smoking has been linked to the same diseases as cigarette smoking, with multiple harmful health outcomes including lung cancer, heart disease, negative respiratory effects (including reduced lung function), dental disease, and negative pregnancy outcomes (including infants with low birth weight). Evidence to date suggests that one hour of waterpipe smoking results in higher emissions of carbon monoxide, hydrocarbons, and volatile aldehydes than one hour of cigarette smoking. Waterpipe smoking negatively affects both indoor and outdoor air quality for indicators including

carbon monoxide and particulate matter, which are themselves closely related to potential impacts on human health.

In recent years sweetened and flavored tobacco, along with other herbal (non-tobacco) flavours have made waterpipe smoking more appealing to users, especially youth, and the practice has increased in popularity in Ontario and in Canada. Waterpipe establishments (also known as hookah bars or shisha lounges) have become a social attraction for youth and young adults as popular places to hang out. In addition to the serious health risks directly presented by waterpipe smoking and exposure to waterpipe smoke, there is a growing added concern that this activity will lead to the re-normalization of smoking behaviour among youth and young adults with attendant lifetime risks.

Environmental scan:

Public Health staff used an evidence-informed approach when considering recommended inclusions for the Regional by-law. This consisted of an environmental scan of other municipal by-laws in Ontario and staff analysis of an evidence report prepared by Public Health Ontario (Ontario's lead agency for public health scientific and technical advice, which provides support to public health officials at the provincial and local levels).

An environmental scan conducted by Public Health staff during the summer of 2019 revealed that 30 municipalities in Ontario had enacted waterpipe smoking by-laws. These by-laws included a combination of indoor and outdoor settings, as well as tobacco and herbal waterpipe smoking. Many jurisdictions across Canada, the United States, and the Middle East have also passed laws prohibiting waterpipe smoking in public places and workplaces. In May 2020, Public Health Ontario reported that 35 of 65 municipalities surveyed had new or amended municipal/regional by-laws that prohibit waterpipe smoking in specified locations, including: Peel Region, Durham Region, Niagara Region, City of Toronto, and City of Ottawa.

Consultation:

Halton Region is one of an estimated ten public health units (of 34) with operating establishments for waterpipe smoking. However, the concerning part is the increasing number of these establishments within the health units. For example, in Halton Region currently there are nine such establishments compared to three establishments in 2017. In July and August 2021, all current Halton Region waterpipe establishment owners were invited to virtual meetings with Public Health where staff presented the proposed by-law followed by an opportunity for discussion. Five individuals representing four waterpipe establishments in Halton attended these meetings. During these discussions, Public Health staff shared the research evidence to support the implementation of the by-law. Although the proposed by-law was not received favourably, operators were appreciative for the notice and the opportunity to comment.

Halton Region Public Health staff met with Peel, Ottawa, and Toronto Public Health staff discuss their waterpipe smoking by-laws.

Peel Region's waterpipe smoking by-law (passed in 2016) is similar in approach to Halton Region's proposed waterpipe smoking by-law. The Peel by-law prohibits the use of waterpipes in enclosed public places, enclosed workplaces, and other specified areas such as playgrounds, sporting areas and schools. Five waterpipe establishment owners challenged the validity of Peel's by-law in court. Peel Region won the case before the Ontario Divisional Court (2018), confirming the by-law was legal and valid. The establishment owners appealed to the Ontario Court of Appeal (2019), which dismissed the appeal, upholding the validity of the by-law. The applicants then applied for leave of appeal to the Supreme Court of Canada (2019), which refused to hear the case.

These court decisions upholding Peel's waterpipe smoking by-law follow similar decisions by Ontario's Divisional Court (2016) and Court of Appeal (2017), dismissing a challenge to the City of Toronto's by-law prohibiting waterpipe smoking (passed in 2015).

Enforcement/Non-compliance:

Upon approval, the requirements of the by-law will be communicated through a targeted communication strategy. The objective is to educate waterpipe smokers and establishment owners about the new by-law that is enacted to protect the health and safety of Halton residents.

Non-compliance with the by-law will be investigated on a complaint basis. A progressive enforcement approach to achieve compliance will be used by public health inspectors. Progressive enforcement includes the potential use of education, warnings, monetary fines, and other legal tools to reflect the frequency and severity of the level of non-compliance.

FINANCIAL/PROGRAM IMPLICATIONS

There are no financial implications associated with this report. Costs to support the progressive enforcement approach by Public Health staff will be absorbed within the approved budget.

Respectfully submitted,



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Hamidah Meghani, MD
Commissioner and Medical Officer of Health

Approved by



Jane MacCaskill
Chief Administrative Officer

If you have any questions on the content of this report,
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Attachments: Attachment #1 – Draft Halton Region Waterpipe Smoking By-law