

REPORT

COUNCIL MEETING

MEETING DATE: FEBRUARY 22, 2021

FROM: Municipal Enforcement Services Department

DATE: February 9, 2021

SUBJECT: Tobacconist and Vaping Store Licensing Update

LOCATION: Town wide

WARD: Town wide

Page 1

RECOMMENDATION:

- 1) That the report from the Municipal Enforcement Services department, dated February 9, 2021, titled "*Tobacconist and Vaping Store Licensing Update*" be received, and,
- 2) That By-law 2021-028, a by-law to amend the By-law 2015-075 (the Licensing By-law), attached as Appendix A to the report from Municipal Enforcement Services, dated February 9, 2021, be passed and come into effect March 1, 2021.

KEY FACTS:

The following are key points for consideration with respect to this report:

- On June 24, 2019, Council approved By-law 2019-065, amending the Parks By-law to prohibit vaping and cannabis use anywhere smoking is prohibited within parks
- During this same meeting Council directed staff to draft licensing regulations for vapour and e-cigarette retailers
- On July 15, 2020 Halton Region Council approved staff report MO15-20 – Smoking and Vaping in Public Places By-law.
- On December 21, 2020 Council provided consent to the regional Smoking and Vaping in Public Places By-law
- Staff consulted with members of the Halton Region Health Department to discuss the regulatory requirements relating to vape/e-cigarette shops and current health department enforcement practices
- The proposed amendment to the licensing by-law to regulate vape/e-cigarette retailers aligns with regulations in the Parks By-law and the recent Regional Smoking and Vaping in Public Places By-law

BACKGROUND:

On Monday, June 24, 2019, Town Council approved the following recommendation:

“That staff be directed to include the licensing and regulation of businesses selling vapour (vape, e-cigarette) products within the Town of Oakville as part of the Licensing By-law Housekeeping review, to be brought back to Council by the first quarter of 2020”

Although Licensing By-law 2015-075 is currently under review, staff do not anticipate the final version of the by-law to be presented to Council until later this year. In order to meet the direction from Council and align with the recent Region of Halton Smoking and Vaping in Public Places By-law, a proposed amendment to the Licensing By-law has been drafted for the consideration of Council.

COMMENT/OPTIONS:**Provincial Regulations-Smoke Free Ontario Act**

On October 17, 2018, the federal government legalized cannabis use, and in response, the provincial government enacted the Smoke Free Ontario Act (SFOA), 2017 on the same day. 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 and areas. Appendix B lists the places where the smoking of tobacco and cannabis and use of an electronic cigarette are prohibited under the SFOA, 2017 and O. Reg. 268/18.

The SFOA, 2017, c. 26 contains regulations to limit the sales of electronic cigarettes and vape products. These regulations speak to various areas of the display and sale of tobacco and electronic cigarette and vapour products including:

- sales limited to customers at least 19 years of age;
- secure storage of the products; and
- signage required identifying the sale of the product

Under the SFOA, if a retailer is found to be in violation any of the regulations they will be charged under the act. Once convicted, the SFOA deploys a progressive enforcement strategy whereby, if the retailer is found to be in violation subsequent times, further action will be taken to interrupt the retailers ability to sell tobacco and vapour and e-cigarette products. Such measures include suspension or prohibition of the retailer's ability to sell tobacco products.

Automatic prohibition

An automatic prohibition is issued under the SFOA for multiple violations under the act. The method in which the prohibition orders are structured is consistent with progressive enforcement practices. A retail location will be subject to prohibitions as follows:

- six month prohibition after the prohibition notice served, if there are only two convictions of tobacco sales offences committed in the same place during the five year period;
- nine month prohibition after the probation notice is served, if there are only three convictions of tobacco sales offences committed in the same place during the five-year period; and,
- Twelve month prohibition after the prohibition notice is service, if there are four or more convictions of tobacco sales offences committed in the same place during the five-year period

Once a prohibition is in place the retailer is required to post signage publicizing they are prohibited from selling tobacco, vapour and e-cigarette products.

Licensing Regulations

Establishing requirements for vape and e-cigarette retail stores is within the licensing powers provided to municipalities through the Municipal Act 2001. The town has an existing comprehensive licensing by-law, which establishes regulations for many businesses and trades for the purposes of

1. Consumer protection
2. Health and safety
3. Nuisance control

The regulations for vapour and e-cigarette retailers have been integrated into the existing tobacconist licensing class. This alignment seemed natural as tobacco retailers are regulated under the same provincial legislation (SFOA) as the vapour and e-cigarette retailers. With this, the general requirements for the vapour and e-cigarette retailers will be the same as the existing tobacconist consisting of:

- Insurance
- Zoning
- Health department inspection
- Business corporate documents

From: Municipal Enforcement Services Department
 Date: February 9, 2021
 Subject: **Tobacconist and Vaping Store Licensing Update**

As the Tobacconist licensing class already exists it is recommended the Tobacconist, vapour and e-cigarettes retailers be combined into one licensing class at the rate currently approved for Tobacconists.

Vapour and E-cigarette Regulations

The SFOA sets out regulations relating to the sale of vapour and e-cigarette products, the proposed licensing program will provide the municipality with the ability to uphold the provincial regulations and suspend or revoke licenses based both on adherence to provincial regulations as well as the proposed licensing regulations. The proposed regulations under the licensing of vapour and e-cigarette retailers will require vapour and e-cigarette retailers as follows:

- **inform the town if a prohibition order under the SFOA has been issued to the owner or occupier**
- **inform the town if they have been convicted of an offence under the SFOA**
- **comply with all regulations under the SFOA**

Enforcement

The licensing by-law supports the progressive enforcements strategy outlined in the SFOA. While the Health Department continues to enforce the regulations under SFOA, the proposed regulations will allow Municipal Enforcement Services the ability to align the business licence suspension and revocation processes with the retailer's status under the SFOA.

SFOA ACTION	Licensing By-law ACTION
First conviction under SFOA	Licensing Commissioner issues written warning that further convictions will result in a license suspension
Second conviction under SFOA (within 5 year period of first conviction)	License automatically suspended for 6 months
Third Conviction under SFOA (within 5 year period of first conviction)	License revoked
Automatic Prohibition issued under SFOA	License automatically suspended for life of the prohibition

Automatic prohibitions would not be subject to appeal under the licensing by-law.

From: Municipal Enforcement Services Department
Date: February 9, 2021
Subject: **Tobacconist and Vaping Store Licensing Update**

Municipal Enforcement, while requiring the licensee to report their convictions or prohibitions, will also coordinate with the Health Department to follow both licensed establishments for convictions but also to request information relating to any newly established vapour and e-cigarette retailers that may not have yet become licensed. It is through this partnership that we expect to be able to confirm the status of retailers. Failure for a retailer to adhere to the SFOA will result in enforcement of the licensing regulations.

Minimum separation distance (MDS) regulations

An MDS would establish the minimum distance between a vapour and e-cigarette retailer and another land use with the objective of minimizing retail access and visibility to minors.

At this time vapour and e-cigarette sales would be permitted as a “retail” use under the zoning by-law. “Retail” is defined as a premises in which goods, wares, merchandise, substances, articles or things are displayed, rented, or sold directly to the public.

Staff conducted a cursory review to determine considerations when establishing an MDS for vapor and e-cigarette retailers. The following items were noted:

- MDS would not address sales to minors
- Licensing cannot be used to take the place of zoning regulations
- Currently e-cigarette sales are considered as a retail use under the zoning by-law, this would require changes to the zoning by-law including;
 - Tobacconists would need to be considered a “retail store”
 - E-cigarette retailers would require a separate land use designation with regulations that do not apply to any other retail store
- Planning rationale for regulating the land use must be provided, including reasons for the minimum distance requirement that would be imposed
- Resources would be required to conduct a comprehensive review from the Planning, Zoning and Legal departments
- Building and land uses change over time, creating administrative challenges in both Building and MES departments
- The proposed licensing regulations provide significant consequences in the form of penalties and suspensions for any retail store that violates the SFOA or the licensing by-law

A municipal scan was conducted and noted that the municipalities of Burlington, Milton, Halton Hills, Mississauga and Brampton have not approved vapour and e-cigarette business licensing or MDS regulations at this time.

From: Municipal Enforcement Services Department
Date: February 9, 2021
Subject: Tobacconist and Vaping Store Licensing Update

As a result of the review and considering the proposed business licensing program for vapour and e-cigarette retailers, the introduction of minimum distance separations are not recommended at this time.

CONSIDERATIONS:

(A) PUBLIC

Public notice of the proposed by-law sent to stakeholders and posted on the Town website in accordance with public engagement guidelines. The enactment of vape/e-cigarette regime supports health and safety, consumer protection and nuisance control for residents.

(B) FINANCIAL

All business licensing fees established are based on a full cost recovery model. Appendix C outlines recommended fee that is in line with the current rate set for Tobacconists. In addition the administrative penalty system will encourage compliance and assist cost recovery.

(C) IMPACT ON OTHER DEPARTMENTS & USERS

Enforcement of the SFOA regulations is to be provided by the Halton Region Public Health. Municipal Enforcement Services will work to ensure all e-cigarette retailers obtain a business licence.

(D) CORPORATE AND/OR DEPARTMENT STRATEGIC GOALS

This report addresses the corporate strategic goal to:

- be accountable in everything we do
- provide outstanding service to our residents and businesses

(E) COMMUNITY SUSTAINABILITY

Promote health and social responsibility supporting Halton Public Health by consenting to the Regional Smoking and Vaping in Public Places By-law.

APPENDICES:

Appendix A – 2021-028 A by-law to amend Licensing By-law 2015-075 with respect to tobacco/electronic cigarette retailers

Appendix B – List of prohibited areas

Appendix C – Proposed fee

Prepared by:
Selena Campbell
Manager, Enforcement Services

Submitted by:
Jim Barry
Director, Enforcement Services