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**Subject:** By-law Enforcement Officer Appointments for Outdoor Second-hand Smoking and Vaping By-law

**Report to:** Public Health and Social Services Committee

**Report date:** Tuesday, November 10, 2020

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## Recommendations

1. That the following Regional staff **BE APPOINTED** as By-law Enforcement Officers for the purpose of enforcing Niagara Region By-law No. 112-2013, as amended, to Protect Children and Vulnerable Persons from Exposure to Outdoor Second-hand Smoke:
  - William Dwyer
  - Jesse Edsall
  - Jean-Marc Lemay
  - Ken MacLean
  - Rob Misener
  - Diana Teng
2. That the necessary by-law **BE PREPARED** and **PRESENTED** for Council's consideration.

## Key Facts

- By-law No. 112-2013 was amended August 2019 to include electronic cigarettes and cannabis as prohibited substances, in addition to prohibited places where tobacco could be used. The list of prohibited places was also expanded to include nine metres from entrances/exits to public buildings, beaches and recreational trails.
- Niagara Region By-law No. 112-2013, section 4(1) provides authority to Council to appoint officers to enforce the by-law.
- Officers utilize a progressive enforcement approach when implementing the by-law which includes education, warnings, and charges, as necessary for the offence.

## Financial Considerations

The Ministry of Health provides funding for the Tobacco Protection and Enforcement program at 70% with the approved gross budget of \$662,828 for 2020. This funding covers the cost for five full-time Tobacco Control Officers (TCOs), one full-time Program Assistant,

12 part time youth test shoppers and one full-time Manager. Staff supported through this funding are responsible for the promotion, education, enforcement of the *Smoke Free Ontario Act, 2017 (SFOA)*, and Niagara Region's Smoke Free By-law No. 112-2013.

There are no financial implications from appointing TCOs to enforce the By-law No. 112-2013.

## **Analysis**

The *SFOA* and Niagara Region By-law No. 112-2013 were amended, and aligned to include cannabis and vaping as prohibited substances where tobacco is prohibited. The *Municipal Act, 2001, S.O. 2001, c.25, s. 115* provides municipalities the authority to develop by-laws to prohibit/regulate smoking of tobacco, e-cigarettes, and cannabis in public places and workplaces.

Appointment of the TCOs as By-law Enforcement Officers provides them with authority to enforce By-law No. 112-2013. As officers, they are able to utilize provisions contained in the *Provincial Offences Act, R.S.O. 1990, c. P. 33* and the *Municipal Act, 2001, S.O. 2001, c.25*.

Enforcement of By-law No. 112-2013 consists of providing education, warnings, and then progresses into charges, as appropriate. Complaints are received through the Tobacco Hotline (phone or online). The World Health Organization (WHO) found that voluntary implementation of tobacco control policy in Spain, and the United Kingdom have resulted in limited protection for the community.<sup>1</sup> WHO has identified that effective tobacco control policy requires dedicated resources to support enforcement.<sup>2</sup>

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<sup>1</sup> [World Health Organization. Making Cities Smoke-Free](https://www.who.int/tobacco/publications/second_hand/making_cities_smoke_free/en/). Geneva, Switzerland. Tobacco Free Initiative and WHO Centre for Health Development (Kobe Centre). 2011. [cited 2020 Aug 17]. Available from: [https://www.who.int/tobacco/publications/second\\_hand/making\\_cities\\_smoke\\_free/en/](https://www.who.int/tobacco/publications/second_hand/making_cities_smoke_free/en/)

<sup>2</sup> [World Health Organization. Making Cities Smoke-Free](https://www.who.int/tobacco/publications/second_hand/making_cities_smoke_free/en/). Geneva, Switzerland. Tobacco Free Initiative and WHO Centre for Health Development (Kobe Centre). 2011. [cited 2020 Aug 17]. Available from: [https://www.who.int/tobacco/publications/second\\_hand/making\\_cities\\_smoke\\_free/en/](https://www.who.int/tobacco/publications/second_hand/making_cities_smoke_free/en/)

## Alternatives Reviewed

Local area municipalities (LAM) through Municipal By-law Officers are also authorized to enforce By-law No. 112-2013. LAM By-law Officers are responsible for multiple by-laws, and have limited capacity to enforce By-law No. 112-2013. Niagara Region's TCOs currently enforce the *SFOA*, and enforcement of By-law No. 112-2013 aligns these responsibilities and provides a dedicated response to tobacco, vaping and cannabis complaints.

## Relationship to Council Strategic Priorities

The Tobacco Control Program supports Council's strategic priority related to health and vibrant communities. As smoking is the leading cause of preventable death with 16,000 from tobacco use each year in Ontario.<sup>3</sup>

## Other Pertinent Reports

- [PHD 02-2019 – Outdoor Second-Hand Smoking By-law Amendment](#)
- [PHD 01-2019 – Cannabis Legalization](#)
- [PHD 13-2018 – Comprehensive Tobacco Control Report](#)
- [PHD 07-2018 – Cannabis Legalization](#)
- [PHD 01-2018 – Smoke-Free Ontario Modernization](#)
- [PHD 04-2017 - Ontario Student Drug Use and Health Survey Results](#)
- [PHD 09-2016 Revised - Cannabis Regulation and Control](#)

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### Prepared by:

Diana Teng  
Manager, Chronic Disease and Injury  
Prevention  
Public Health and Emergency Services

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### Recommended by:

M. Mustafa Hirji, MD MPH RCPC  
Medical Office of Health/Commissioner  
(Acting)  
Public Health and Emergency Services

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<sup>3</sup> Dobrescu A, Bhandari A, Sutherland G, Dinh T. The cost of tobacco use in Canada, 2012. Ottawa, ON: The Conference Board of Canada; 2017.

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**Submitted by:**

Ron Tripp, P.Eng.  
Acting Chief Administrative Officer

*This report was prepared in consultation with Gillian Chappell, Health Promoter, David Lorenzo, Associate Director, Chronic Disease and Injury Prevention and reviewed by Dr. Mustafa Hirji, Medical Officer of Health (Acting).*

**Appendices**

Appendix 1            By-law No. 112-2013 – TCO Designation

THE REGIONAL MUNICIPALITY OF NIAGARA

TO APPOINT BY-LAW ENFORCEMENT OFFICERS TO ENFORCE  
BY-LAW NO. 112-2013  
A REGIONAL BY-LAW TO PROTECT CHILDREN AND VULNERABLE PERSONS  
FROM EXPOSURE TO OUTDOOR SECOND-HAND SMOKE

**WHEREAS** subsection 115(1) of the *Municipal Act, 2001*, S.O. 2001, c.25 as amended provides that a municipality may prohibit or regulate the smoking of tobacco in public places;

**AND WHEREAS** it is necessary to appoint certain Regional staff as by-law enforcement officers for the purposes of enforcement of by-law 112-2013, as may be amended from time to time;

**AND WHEREAS** by-law 112-2013 as amended states that the provisions of by-law 112-2013 respecting smoking in an outdoor public place “shall be enforced by any authorized person as designated by the Niagara Region or an area municipality”.

**NOW THEREFORE BE IT RESOLVED THAT:**

1. That for the purposes of enforcement of Regional By-law No. 112-2013, as amended, the following persons are hereby appointed as “authorized persons” pursuant to section 4 of By-law 112-2013 as amended and are hereby designated as By-law Enforcement Officers for the purpose of enforcement of By-law 112-2013 as amended:

William Dwyer  
Jesse Edsall  
Jean-Marc Lemay  
Ken MacLean  
Rob Misener  
Diana Teng

2. This appointment takes effect on the day it is authorized.

**PASSED**, a majority of the members of the Regional Council assenting hereto, this \_\_\_\_ day of November, 2020

THE REGIONAL MUNICIPALITY OF NIAGARA  
*Original Signed By:*

\_\_\_\_\_  
(James Bradley, Regional Chair)

*Original Signed By:*

\_\_\_\_\_  
(Ann-Marie Norio, Regional Clerk)

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