
Subject: Outdoor Second-hand Smoking By-law Amendment – **REVISED**

Report to: Public Health and Social Services Committee

Report date: Tuesday, January 8, 2019

Recommendations

1. ***That By-law No. 112-2013 BE UPDATED to harmonize with the Smoke Free Ontario Act to include vaping and cannabis, as an interim measure for consistency, with an appropriate sunset clause;***
2. That staff **BE DIRECTED** to consult with the Local Area Municipalities (LAMs) on revisions to By-law No. 112-2013 ***and the public to build a consensus on an updated*** regional by-law to protect children and vulnerable persons from exposure to outdoor second-hand smoke as follows; and
 - a) ~~Addition of cannabis and e-cigarettes to substances prohibited from use in public outdoor spaces.~~
 - b) ~~Addition to the list of prohibited places of use including nine metres from any public building entrance and/or exit.~~
3. That staff **BE DIRECTED** to report back to PHSSC in a timely manner on the learnings from this consultation with the recommended next steps.

Key Facts

- The Province of Ontario passed the *Smoke-Free Ontario Act, 2017 (SFOA)*, which prohibits spaces where individuals can smoke or vape. Changes to this legislation expand beyond tobacco to include cannabis and all vaping products.
- Niagara's By-Law No. 112-2013 aims to protect children and vulnerable persons from exposure to outdoor second-hand tobacco smoke, which does not address the second-hand smoke exposure to cannabis or second-hand vapour exposure from ***electronic*** e-cigarettes through outdoor spaces.
- Local data suggests support in Niagara to harmonize the Regional By-law with SFOA by including vaping and cannabis, in addition to tobacco, ~~as well as support for restrictions around entrances and exits.~~ ***as an interim measure to ensure consistency and avoid confusion***
- Consultation internally, across Regional departments ~~is important, as well as consultation with the LAMs~~ ***and the public, is important to assess support to develop the next version of the Regional By-law, by consensus across all municipalities.***

Financial Considerations

The Ministry of Health and Long Term Care (MOHLTC) provides multiple funding sources to support the Smoke-Free Ontario strategy at 100% with the approved budget of \$668,600 for 2018. This funding supports five FTE Tobacco Control Officers (TCO) responsible for the promotion, education, enforcement of the *SFOA* and Niagara Region's By-law 112-2013.

The province has announced that it will provide \$40 million over two years to help municipalities with costs related to the legalization of cannabis.¹ In the first phase, \$15 million is to be disbursed in early January 2019, this has been allocated for each municipality. The allocation of these funds to Public Health will be determined once funding amounts have been finalized.

NRPH & ES received 281 complaints, requests and inquiries related to tobacco, cannabis and e-cigarette products in 2018. Of these calls, 82 were complaints related to use of tobacco products being used in places thought to be prohibited places. NRPH & ES has requested funding from MOHLTC to support increased staff time related to cannabis enforcement and prevention work. At the time of writing this report there has been no response to the funding request.

Analysis

SFOA, 2017 Updates

The *SFOA* restricts tobacco sale, supply and places of use; changes to the *SFOA* now include cannabis and vaping products in those restrictions.

SFOA Prohibited Place Examples

- Enclosed public places
- Enclosed work places
- Condos, apartment buildings and university/college residents
 - Application: Common areas
- Playgrounds
 - Application: Perimeter plus 20 metres
- Sports fields
 - Application: Patio plus 20 metres
- Restaurant bar patios
 - Application: Patio plus nine metres

¹ Fedeli, V. Ontario Cannabis Legalization Implementation Fund — Heads of Council Letter [Internet]. Toronto, ON: Ministry of Finance; 2018 [cited 2018 Dec 10]. Available from: <https://www.fin.gov.on.ca/en/budget/oclif/>

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- Hospitals, psychiatric facilities, community health facilities
 - Application: Grounds of facility
 - Child care Centre
 - Application: Grounds of facility

Niagara's By-Law No. 112-2013

Tobacco

In 2012, NRPH & ES conducted public consultations and found that 88% of the 1,907 Niagara residents surveyed supported a by-law restricting smoking in outdoor public settings.² In order to protect the public from second-hand exposure to outdoor smoke, Niagara passed By-law No. 112-2013, which prohibits smoking tobacco on the grounds of all municipal and regional properties, parks, playground, sports fields, splash pads, outdoor pools, arenas and bus shelters. The by-law has a strong focus on protecting children and youth, and this includes denormalization. Also, those who wish to quit find that fewer visual cues and denormalization of smoking is helpful.

Strengthening local by-laws to reduce second-hand exposure to tobacco in outdoor spaces, has been ranked as a highly impactful policy change to protect the public from tobacco smoke.³ ~~Prohibiting tobacco and cannabis smoke and vaping of any product within nine metres of public entrances and exits will be a consideration during consultations.~~

Beyond tobacco, the SFOA now prohibits the use of cannabis and e-cigarettes in public spaces. The benefits of aligning the By-law No. 112-2013 with the SFOA by the inclusion of cannabis and e-cigarettes are:

1. Protecting individuals, especially children and vulnerable populations from second-hand smoke exposure
2. Preventing the normalization of tobacco, cannabis, e-cigarette use amongst youth
3. Creating supportive environments for individuals that are motivated to quit or cut back from use of tobacco, cannabis or e-cigarettes

Cannabis

² Smoke-Free Outdoor Spaces Public Consultation Report, Niagara Region Public Health [Summer 2012]

³ Smoke-Free Ontario Scientific Advisory Committee. Evidence to Guide Action: Comprehensive tobacco control in Ontario [Internet]. Toronto, ON: Public Health Ontario [cited 2018 Dec 10]. Available from: <https://www.publichealthontario.ca/en/BrowseByTopic/ChronicDiseasesAndInjuries/Pages/smoke-free-ontario.aspx>

Cannabis has been criminalized in Canada since 1923, yet prior to legalization 46.4% of adults in Niagara indicated that they have used cannabis at least once in their lifetime and 12.2% used cannabis in the past 12 months.⁴ Within Niagara's secondary schools 35% have used cannabis in the past 12 months and 23% have used cannabis in the past 4 weeks.⁵ The Canadian Cannabis Survey (2018) included 12,958 respondents and found the most common form of consumption of cannabis was through smoking (89%), followed by edibles (42%), and e-cigarettes (26%).⁶ Research has found that second-hand exposure to cannabis smoke and tobacco smoke have similar chemical composition.^{7, 8} Holitzki et. al recommend an alignment in tobacco and cannabis policy by prohibiting outdoor spaces where products can be used.⁹ *Including cannabis as a prohibited drug to smoke or vape into the amended by-law will be a consideration during consultations.*

E-cigarettes

Electronic Cigarettes are known as e-cigarettes, e-cigs or vapes, and typically include a rechargeable battery, a heating element, and an e-juice containing chemical ingredients, which forms a vapour when inhaled. E-cigarettes do not contain tobacco but generally contain nicotine, which may lead to addiction in those who vape but aren't smokers. E-cigarettes contain more than 80 compounds, such as particles, metals, nitrosamines, carbonyls, and flavourings.¹⁰ While the long-term health effects from e-cigarette use are still unknown, some research indicates that use can lead to lung damage, and short-term health effects can include increased heart rate, increased blood pressure, increased airway resistance, decreased airway conductance.¹¹ In Niagara, 25% of secondary students have used an e-cigarette in the past 12 months.¹² The Ontario Student Drug Use and Health Survey found that 61% of secondary students believe there is no risk from regular e-cigarette use.¹³ ~~Including e-cigarettes as~~

⁴ Canadian Community Health Survey [2015-2016]

⁵ Ontario Student Drug Use and Health Survey, Centre for Addiction and Mental Health [2015]

⁶ Canadian Cannabis Survey 2018 Summary. Government of Canada. [cited 2018 Dec 10]. Available from: <https://www.canada.ca/en/services/health/publications/drugs-health-products/canadian-cannabis-survey-2018-summary.html>

⁷ Maertens RM, White PA, Williams A, et al. A global toxicogenomic analysis investigating the mechanistic differences between tobacco and marijuana smoke condensates in vitro. *Toxicology* 2013;308:60-73.

⁸ Maertens RM, White PA, Rickert W, et al. The genotoxicity of mainstream and sidestream marijuana and tobacco smoke condensates. *Chem Res Toxicol* 2009;22:1406-14.

⁹ Holitzki, H., Dowsett, L.E., Spackman, E., Noseworthy, T., Clement, T., Health effects of exposure to second- and third-hand marijuana smoke: A systematic review [Internet] *Canadian Medical Association Journal Open*, 2017: Oct-Dec, 5(4): E814-E822. [cited 2018 Dec 10]. Available from: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5741419/>

¹⁰ Tobacco and Public Health: From Theory to Practice, E-Cigarettes Module [Internet], Toronto, ON, Ontario Tobacco Research Unit [cited Dec 11]. Available from: <https://tobaccocourse.otru.org/course/>

¹¹ Tobacco and Public Health: From Theory to Practice, E-Cigarettes Module [Internet], Toronto, ON, Ontario Tobacco Research Unit [cited Dec 11]. Available from: <https://tobaccocourse.otru.org/course/>

¹² Ontario Student Drug Use and Health Survey, Centre for Addiction and Mental Health [2015]

¹³ Ontario Student Drug Use and Health Survey, Centre for Addiction and Mental Health [2015]

~~a prohibited product into the amended by-law will be a consideration during consultations.~~

In By-law No. 112-2013, tobacco use is more restricted than the public places outlined in the provincial SFOA. Outside of the established buffer zones in the SFOA, individuals could be fined for use of tobacco, but not for cannabis or e-cigarettes at those same locations. ***As an interim measure, harmonizing the By-law No. 112-2013 with the SFOA is important to ensure consistency and avoid confusion.*** By enhancing By-law No. 112-2013, NRPH & ES is aiming to align it with the provincial legislation to include cannabis and e-cigarettes.

Proposed Municipal Consultation

In preparation for cannabis legislation, NRPH & ES has been meeting with the municipal partners through their by-law, park/recreation and planning staff. Area Chief Administrative Officers have been notified of the proposed amendments, and meetings with each of the local area municipalities ***discussed next steps and support harmonizing now, with a sunset clause, with a consensus approach moving forward. An initial meeting is*** are being planned for ***late January/early*** February. During these meetings, NRPH & ES will learn whether the municipalities want to

~~1. Continue with the status quo~~

~~By-law 112-2013 includes only tobacco within the mandate with the SFOA restricting use of tobacco, cannabis and e-cigarettes, despite the confusion in the application and messaging between the pieces of legislation.~~

~~2. Amend By-law No. 112-2013 to align products with the SFOA~~

~~Include the substances of cannabis and e-cigarettes to apply to the same places that are currently covered by the by-law.~~

~~3. Amend By-law No. 112-2013 to align products with the SFOA and add in restrictions related to public entrances and exits~~

~~Include the substances of cannabis and e-cigarettes to apply to nine metres from all public entrances/exits.~~

~~4. Amend By-law No. 112-2013 to align products with the SFOA and expand the prohibited places of use~~

~~Include the substances of cannabis and e-cigarettes to tobacco, and add additional places (i.e. nine metres from all public entrances, beaches, trails).~~

~~Once we have this information, we propose that we return to PHSSC to provide recommended next steps. If there is support for updating the by-law we will bring the proposed amendments to Council.~~

Alternatives Reviewed

Consideration was given to ***not harmonizing, and just embarking on the*** a larger public consultation process. We recommend that we first ~~assess whether there is agreement on harmonizing and updating the by-law as outlined, as it is likely that a large public consultation beyond municipal and regional meetings is not warranted for the two recommended changes.~~ ***for this simplification of the bylaw.***

Relationship to Council Strategic Priorities

This work supports Doing Business Differently by proposing that Niagara continue to aim for simplicity and consistency while remaining among the leaders in Ontario in its smoke-free policies.

Other Pertinent Reports

- 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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Submitted by:

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This report was prepared in consultation with Renata Faber, Manager, Chronic Disease and Injury Prevention, David Lorenzo, Associate Director, Chronic Disease and Injury Prevention and reviewed by Dr. Feller, Associate Medical Office of Health.

THE REGIONAL MUNICIPALITY OF NIAGARA

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 has been determined that smoking and second-hand tobacco smoke is a health hazard or discomfort for individuals residing in or visiting The Regional Municipality of Niagara (hereinafter, "Niagara Region");

AND WHEREAS smoke-free policy interventions are effective mechanisms to reduce exposure to tobacco smoke, prevent initiation of smoking, encourage cessation of smoking, support recent quitters, and contribute to the denormalization of tobacco use;

AND WHEREAS Niagara Region therefore wishes to prohibit tobacco smoking in outdoor public places for the health of the public generally, and particularly for the benefit of young persons, and to improve the environmental and social conditions in public places;

AND WHEREAS Section 115(5) of the said Act provides that a by-law passed under subsection 115(1) shall not come into force unless,

- (a) a majority of all votes on the Council of the upper-tier municipality are cast in its favour;
- (b) a majority of the Councils of all the lower-tier municipalities forming part of the upper-tier municipality for municipal purposes have passed resolutions giving their consent to the by-law; and
- (c) the total number of electors in the lower-tier municipalities that have passed resolutions under clause (b) form a majority of all the electors in the upper-tier municipality.

NOW THEREFORE BE IT RESOLVED THAT the Council of The Regional Municipality of Niagara enacts as follows:

DEFINITIONS AND INTERPRETATION

1. (1) The following definitions shall be used in interpreting and applying this by-law:

“authorized person” means an individual designated or authorized by Niagara Region or an area municipality whose duties include, without limitation, tobacco control or the monitoring of regional or municipal property for the purpose of addressing unauthorized activities;

“area municipality” means any one of the municipalities of the Town of Fort Erie, Town of Grimsby, Town of Lincoln, City of Niagara Falls, Town of Niagara-on-the-Lake, Town of Pelham, City of Port Colborne, City of St. Catharines, City of Thorold, Township of Wainfleet, City of Welland and the Township of West Lincoln.

“outdoor public place” means any property owned, leased or controlled by the Niagara Region or any area municipality, including without limitation parks, playgrounds, sports or playing fields, arenas, recreational centres, bus shelters, splash pads, pools and any area that is within a nine-metre radius of an entrance to or exit from a building located on any property owned, leased or controlled by the Niagara Region or any area municipality, whether or not a “No Smoking” sign is posted, but does not include the following:

- a. highways;
- b. road allowances abutting a regional or municipal property;
- c. municipal sidewalks, save and except for that portion of any municipal sidewalk that is within a nine-metre radius of any entrance to or exit from a building located on any property owned, leased or controlled by the Niagara Region or any area municipality;
- d. parking lots or any area designated for the parking of motor vehicles;
- e. beaches;
- f. walking or hiking trails;
- g. rights-of-way; and
- h. residential dwellings owned, operated or subsidized by Niagara Regional Housing or an area municipality;

“smoke” or **“smoking”** includes the holding of tobacco or other lighted smoking material or equipment while the product is alight or emitting smoke;

“tobacco” includes pipe tobacco, water-pipe tobacco, cigarettes, cigars, cigarillos or any similar product made with or containing tobacco;

PROHIBITION

- 2.(1) No person shall smoke tobacco upon or within an outdoor public place.
- 2.(2) The prohibition in section 2.(1) above applies whether or not a “No Smoking” sign of any format or content is posted.
- 2.(3) No person shall remove a sign posted under this section while the prohibition remains in force.
- 2.(4) No person shall hinder or obstruct an authorized person lawfully carrying out the enforcement of this by-law.

OFFENCE and SET FINE

- 3.(1) Any person who contravenes a provision of this by-law is guilty of an offence and, upon conviction, is liable to a set fine of \$250.00.

ENFORCEMENT

- 4.(1) The provisions of this by-law respecting smoking in an outdoor public place shall be enforced by any authorized person as designated by the Niagara Region or an area municipality.

CONFLICTS

- 5.(1) If a provision of this by-law conflicts with an Act or a regulation or another by-law, the provision that is the most restrictive of smoking shall prevail.

SEVERABILITY

- 6.(1) If any section or part of this by-law are found by any Court of competent jurisdiction to be invalid, such section or part shall be deemed to be severable and all other sections of this by-law shall remain valid and enforceable.

ENACTMENT

- 7.(1) This by-law shall come into force on the day that it is approved in accordance with section 115(5) of the *Municipal Act, 2001*, S.O. 2001, C.25.

EFFECTIVE BY-LAW DATE

8. This by-law shall come into force on the date specified by the Regional Clerk as the date when the following have been achieved:
- a) A majority of the Councils of all of the lower-tier municipalities forming part of The Regional Municipality of Niagara have passed resolutions giving consent to this by-law: and
 - b) The total number of electors in the lower-tier municipalities that have passed resolutions under clause (a) above form a majority of all the electors in The Regional Municipality of Niagara.

PASSED, a majority of the members of the Regional Council assenting hereto, this 10th day of October, 2013.

THE REGIONAL MUNICIPALITY OF NIAGARA

Original Signed By:

(Gary Burroughs, Regional Chair)

Original Signed By:

(Janet Pilon, Regional Clerk)

THE REGIONAL MUNICIPALITY OF NIAGARA

(CONSOLIDATED) BY-LAW NO. 112-2-13

A REGIONAL BY-LAW TO PROTECT CHILDREN AND VULNERABLE PERSONS
FROM EXPOSURE TO OUTDOOR SECOND-HAND SMOKE **AND VAPING**

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 **or cannabis** in public places;

AND WHEREAS the *Smoke-Free Ontario Act, 2017*, S.O. 2017, c. 26 as amended prohibits smoking tobacco or cannabis and vaping (use electronic cigarette), but Regional By-Law No. 112-2013 only prohibits smoking tobacco;

AND WHEREAS it has been determined that smoking and second-hand tobacco **and cannabis** smoke is a health hazard or discomfort for individuals residing in or visiting The Regional Municipality of Niagara (hereinafter, "Niagara Region");

AND WHEREAS smoke-free policy interventions are effective mechanisms to reduce exposure to tobacco smoke, prevent initiation of smoking, encourage cessation of smoking, support recent quitters, and contribute to the denormalization of tobacco ~~uses~~ **smoking**;

AND WHEREAS Niagara Region therefore wishes to prohibit tobacco **and cannabis** smoking **and vaping (use electronic cigarette)** in outdoor public places for the health of the public generally, and particularly for the benefit of young persons, and to improve the environmental and social conditions in public places;

AND WHEREAS Section 115(5) of the said Act provides that a by-law passed under subsection 115(1) shall not come into force unless,

- (a) a majority of all votes on the Council of the upper-tier municipality are cast in its favour;
- (b) a majority of the Councils of all the lower-tier municipalities forming part of the upper-tier municipality for municipal purposes have passed resolutions giving their consent to the by-law; and
- (c) the total number of electors in the lower-tier municipalities that have passed resolutions under clause (b) form a majority of all the electors in the upper-tier municipality.

NOW THEREFORE BE IT RESOLVED THAT the Council of The Regional Municipality of Niagara enacts as follows:

DEFINITIONS AND INTERPRETATION

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"authorized person" means an individual designated or authorized by Niagara Region or an area municipality whose duties include, without limitation, tobacco, **cannabis or electronic cigarette** control or the monitoring of regional or municipal property for the purpose of addressing unauthorized activities;

"area municipality" means any one of the municipalities of the Town of Fort Erie, Town of Grimsby, Town of Lincoln, City of Niagara Falls, Town of Niagara-on-the-Lake, Town of Pelham, City of Port Colborne, City of St. Catharines, City of Thorold, Township of Wainfleet, City of Weiland and the Township of West Lincoln.

"outdoor public place" means any property owned, leased or controlled by the Niagara Region or any area municipality, including without limitation parks, playgrounds, sports or playing fields, arenas, recreational centres, bus shelters, splash pads, pools and any area that is within a nine-metre radius of an entrance to or exit from a building located on any property owned, leased or controlled by the Niagara Region or any area municipality, whether or not a "No Smoking" or **"No Vaping"** sign is posted, but does not include the following:

- a. highways;
- b. road allowances abutting a regional or municipal property;
- c. municipal sidewalks, save and except for that portion of any municipal sidewalk that is within a nine-metre radius of any entrance to or exit from a building located on any property owned, leased or controlled by the Niagara Region or any area municipality;
- d. parking lots or any area designated for the parking of motor vehicles;
- e. beaches;
- f. walking or hiking trails;
- g. rights-of-way; and
- h. residential dwellings owned, operated or subsidized by Niagara Regional Housing or an area municipality;

"smoke" or "smoking" includes the holding of tobacco or **cannabis** or other lighted smoking material or equipment while the product is alight or emitting smoke;

"tobacco" includes pipe tobacco, water-pipe tobacco, cigarettes, cigars, cigarillos or any similar product made with or containing tobacco;

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

“electronic cigarette” has the same meaning as in subsection 1 (1) of the *Smoke-Free Ontario Act, 2017*

PROHIBITION

- 2.(1) No person shall smoke tobacco **or cannabis, or vape (use electronic cigarette)** upon or within an outdoor public place.
- 2.(2) The prohibition in section 2.(1) above applies whether or not a "No Smoking" or **“No Vaping”** sign of any format or content is posted.
- 2.(3) No person shall remove a sign posted under this section while the prohibition remains in force.
- 2.(4) No person shall hinder or obstruct an authorized person lawfully carrying out the enforcement of this by-law.

OFFENCE and SET FINE

- 3.(1) Any person who contravenes a provision of this by-law is guilty of an offence and, upon conviction, is liable to a set fine of \$250.00.

ENFORCEMENT

- 4.(1) The provisions of this by-law respecting smoking in an outdoor public place shall be enforced by any authorized person as designated by the Niagara Region or an area municipality.

CONFLICTS

- 5.(1) If a provision of this by-law conflicts with an Act or a regulation or another by-law, the provision that is the most restrictive of smoking shall prevail.

SEVERABILITY

- 6.(1) If any section or part of this by-law are found by any Court of competent jurisdiction to be invalid, such section or part shall be deemed to be severable and all other sections of this by-law shall remain valid and enforceable.

Bill 112
ENACTMENT

7.(1) This by-law shall come into force on the day that it is approved in accordance with section 115(5) of the *Municipal Act, 2001*, S.O. 2001, C.25 **as amended**.

EFFECTIVE BY-LAW DATE

8. This by-law shall come into force on the date specified by the Regional Clerk as the date when the following have been achieved:
- a) A majority of the Councils of all of the lower-tier municipalities forming part of The Regional Municipality of Niagara have passed resolutions giving consent to this by-law: and
 - b) The total number of electors in the lower-tier municipalities that have passed resolutions under clause (a) above form a majority of all the electors in The Regional Municipality of Niagara.

THE REGIONAL MUNICIPALITY OF NIAGARA

Original Signed By:

(James Bradley, Regional Chair)

Original Signed By:

(, Regional Clerk)