

**Subject: Review of Potential Regulations for Vapour Product Retailers**

**File Number: ACS2024-EPS-PPD-0004**

**Report to Emergency Preparedness and Protective Services Committee on 17  
October 2024**

**and Council 30 October 2024**

**Submitted on October 7, 2024 by Valérie Bietlot, Manager, Business and  
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**Ward: Citywide**

**Objet : Examen concernant d'éventuels règlements pour les détaillants de  
produits de vapotage**

**Numéro de dossier : ACS2024-EPS-PPD-0004**

**Rapport présenté au Comité des services de protection et de préparation aux  
situations d'urgence du**

**17 octobre 2024**

**et au Conseil le 30 octobre 2024**

**Soumis le 7 octobre 2024 par Valérie Bietlot, gestionnaire, Services de soutien  
technique et aux activités, Direction générale des services de protection et  
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**Quartier : À l'échelle de la ville**

## REPORT RECOMMENDATION(S)

That Emergency Preparedness and Protective Services Committee recommend that Council approve:

1. Amendments to the City's Licensing By-law (No. 2002-189, as amended) to establish regulations for the licensing of vapour product retailers as described in this report and in the general form as set out in Document 1.
2. That City Council direct the City Clerk to write to the Premier of Ontario and to the Ontario Minister of Health to recommend an amendment to Section 22 of the *Smoke-Free Ontario Act, 2017* to include vapour product sales offences within automatic prohibition order applications, as described in this report.

## RECOMMANDATION(S) DU RAPPORT

Que le Comité des services de protection et de préparation aux situations d'urgence recommande au Conseil :

1. d'approuver les modifications du *Règlement sur les permis* (n° 2002-189, dans sa version modifiée) visant à encadrer la délivrance de permis aux détaillants de produits de vapotage, comme le décrivent le présent rapport et le formulaire général (document 1).
2. de demander à la greffière municipale d'écrire au premier ministre de l'Ontario ainsi qu'à la ministre de la Santé de l'Ontario pour recommander la modification de l'article 22 de la *Loi de 2017 favorisant un Ontario sans fumée* de sorte que les ordonnances d'interdiction automatique puissent s'appliquer aux infractions liées à la vente de produits de vapotage, comme l'explique le présent rapport.

## EXECUTIVE SUMMARY

The purpose of this report is to present recommendations for a new business licence requirement for vapour product retailers in Ottawa, as set out in Document 1 and described in this report.

Vapour products include electronic cigarettes (e-cigarettes) and vape pens, and any substance made or sold to be used with the product. Most vapour products contain nicotine, which can lead to physical dependencies and addictions, including a transition

to cigarettes. The City has seen a significant increase in the number of retail establishments selling vapour products in recent years. Approximately 90 per cent of the City's licensed tobacco vendors are now also selling vapour products. Additionally, the number of specialty vape stores operating in Ottawa has increased from 19 stores at the beginning of 2019 to 71 stores operating as of July 2024.

A business licensing regime is recommended to ensure public health and safety, as well as consumer protection, by requiring that vapour product retailers comply with the City's business licensing requirements and all federal, provincial, and municipal regulations related to the sale, display, and promotion of vapour products. Licensing of vapour product retailers will also provide the City with additional enforcement tools and resources to support the ongoing enforcement of the *Smoke-Free Ontario Act, 2017* (SFOA) with respect to the sale, display, and promotion of tobacco and vapour products in retail settings. The licensing tool and resource are needed in order to supplement the Provincial funding for local enforcement of the SFOA and to help address ongoing issues of regulatory non-compliance from retailers, particularly with respect to the sale of vapour products to minors. Recommended licensing fees for a new vapour product retailer licence together with a recommended increase in licensing fees for tobacco vendors selling vapour products will fund the administration and enforcement resources within By-law and Regulatory Services that are required for the implementation of this by-law, as set out further in this report.

The report also recommends that City Council direct the City Clerk to write to the Premier of Ontario and the Ontario Minister of Health to request an amendment to Section 22 of the *Smoke-Free Ontario Act, 2017* to allow for an automatic prohibition order to be issued against retailers for offences related to the sale of vapour products. Currently this enforcement tool is only available for offences relating to the sale of tobacco products. The extension of prohibition orders against vapour product retailers would provide an additional and effective enforcement tool for local Tobacco Enforcement Officers to address issues of non-compliance from retailers selling vapour products.

### **Assumptions and Analysis**

Ottawa Public Health receives annual funding from the Ontario Ministry of Health for enforcement of the SFOA. Enforcement is undertaken by the City's By-law and Regulatory Services branch in the Emergency and Protective Services Department. Funding amounts from the Ministry of Health for SFOA enforcement have remained the same since 2019 and have not been augmented to meet the increase in the number of retailers overall or the growing availability of vapour products. From 2020 to 2024,

Ottawa Public Health supplemented enforcement funding with other funding sources from the Province, primarily Provincial cannabis funding, but that funding is no longer provided from the Province. As a result, current available Provincial funding is insufficient to meet the required service levels for SFOA enforcement of tobacco and vapour product retailers. Enforcement data shows continued non-compliance by retailers, notably in the area of youth access, and the number of retailers selling vapour products is increasing. As a result, additional tools such as a licensing requirement for retailers together with additional enforcement capacity are needed to help support the City's ongoing enforcement of the SFOA. The proposed licence requirement and associated regulations would repeal and replace existing regulations for tobacco vendors in Schedule 12 of the City's Licensing By-law (No. 2002-189, as amended) with new and updated licensing requirements for both tobacco and vapour product retailers. This regulatory review forms part of the City's 2023 to 2026 By-law Review Work Plan.

This report supports the 2023 to 2026 Term of Council Priority "A city with a diversified and prosperous economy" by supporting the comprehensive review and modernization of the City's Licensing By-law.

### **Financial Implications**

The proposed new licensing regime would be implemented on a cost-recovery basis through licensing fees to offset the cost of administration and enforcement. Annual licensing fees of \$930 for retailers selling only vapour products and \$1,092 for retailers selling both tobacco and vapour products are recommended. The recommended licensing fees will provide cost recovery for the required resources within By-law and Regulatory Services to administer, monitor, and enforce the recommended new licensing regime.

### **Public Consultation/Input**

Consultation on proposed regulations occurred in April and May 2024 with existing licensed tobacco vendors as well as known vapour product retailers. Staff also contacted vapour product retail industry organizations, local and Provincial business networks, and public health advocacy groups. Most retailers who provided feedback were not in favour of a new licence requirement due to anticipated license fee costs and existing regulations at the Provincial and Federal levels. Retailers who supported a licence requirement for vapour product retailers cited the additional enforcement and regulatory capabilities that licensing would provide, particularly with respect to preventing illegal sales.

## RÉSUMÉ

Le présent rapport présente des recommandations pour que soit exigée l'obtention d'un permis d'entreprise aux détaillants de produits de vapotage à Ottawa, comme le décrivent le document 1 et le présent rapport.

Les produits de vapotage englobent la cigarette électronique et les stylos de vapotage ainsi que toute substance fabriquée ou vendue aux fins d'utilisation avec ledit produit. La plupart de ces produits contiennent de la nicotine, qui peut entraîner une dépendance physique et de l'accoutumance, et donner lieu à une transition vers la cigarette. Dans les dernières années, la ville a enregistré une augmentation importante du nombre de commerces de détail vendant des produits de vapotage. On estime que 90 pour cent des détaillants de produits du tabac titulaires de permis à Ottawa vendent aussi maintenant des produits de vapotage. De plus, le nombre de boutiques spécialisées de vapotage en activité à Ottawa est passé de 19 au début de 2019 à 71 en juillet 2024.

On recommande l'instauration d'un régime de permis pour protéger la sécurité et la santé publiques, ainsi que les consommatrices et consommateurs : les détaillants de produits de vapotage seraient alors tenus de se conformer aux exigences relatives aux permis d'entreprise, et aux règlements fédéraux, provinciaux et municipaux encadrant la vente, l'étalage et la promotion des produits de vapotage. Grâce à la délivrance de permis, la Ville pourra se doter d'outils et de ressources supplémentaires pour appliquer de façon soutenue la *Loi de 2017 favorisant un Ontario sans fumée* (LFOSF) concernant la vente, l'étalage et la promotion des produits du tabac et de vapotage dans les commerces de détail. En effet, ces outils et ressources sont nécessaires pour compléter le financement provincial réservé à l'application locale de la LFOSF et pour mieux lutter contre certains problèmes récurrents de non-conformité des détaillants, particulièrement en ce qui a trait à la vente de produits de vapotage aux mineurs. Les droits de permis recommandés pour les nouveaux détaillants de produit de vapotage et l'augmentation des droits recommandée pour les détaillants de produits du tabac qui vendent aussi des produits de vapotage financeront les ressources d'administration et d'application de la loi dont ont besoin les Services des règlements municipaux pour mettre en œuvre le règlement municipal, comme l'explique plus loin le présent rapport.

Le rapport recommande aussi au Conseil de demander à la greffière municipale d'écrire au premier ministre et à la ministre de la Santé de l'Ontario pour réclamer la modification de l'article 22 de la *Loi de 2017 favorisant un Ontario sans fumée*, de sorte

qu'il soit possible d'émettre des ordonnances d'interdiction automatique à l'endroit des détaillants qui commettent une infraction relative à la vente de produits de vapotage. Pour l'instant, cet outil d'application ne vise que les infractions relatives à la vente de produits du tabac. En élargissant la portée de ces ordonnances aux produits de vapotage, les agentes et agents locaux d'application de la législation antitabac disposeront d'un outil efficace supplémentaire pour s'attaquer aux problèmes de non-conformité touchant les détaillants de produits de vapotage.

### **Hypothèses et analyse**

Santé publique Ottawa reçoit du financement annuel du ministère de la Santé de l'Ontario pour l'application de la LFOSF, application qui relève des Services des règlements municipaux de la Direction générale des services de protection et d'urgence. Les sommes versées par le ministère pour l'application de la LFOSF sont les mêmes depuis 2019 et n'ont pas suivi l'augmentation du nombre total de détaillants ni l'accès accru aux produits de vapotage. De 2020 à 2024, Santé publique Ottawa a bonifié ce financement avec d'autres sources de financement provincial, principalement le financement lié au cannabis, mais ce dernier n'existe plus. Par conséquent, le financement provincial actuel ne suffit pas pour assurer les niveaux de service nécessaires à l'application de la LFOSF auprès des détaillants de produits du tabac et de vapotage. Les données sur l'application de la loi révèlent des cas récurrents de non-conformité parmi les détaillants, surtout en ce qui a trait à l'accès des jeunes aux produits, ce à quoi s'ajoute l'augmentation du nombre de détaillants qui vendent des produits de vapotage. Ainsi, des outils supplémentaires, comme l'exigence d'un permis, et le renforcement des capacités d'application de la loi sont nécessaires pour aider la Ville à faire appliquer la LFOSF de façon soutenue et à assurer les niveaux de service requis.

L'exigence d'un permis et les règlements connexes proposés abrogeraient et remplaceraient l'annexe 12 du *Règlement sur les permis* (n° 2002-189, dans sa version modifiée) qui concerne les détaillants de tabac, laissant place à de nouvelles exigences relatives à la délivrance de permis aux détaillants de produits du tabac et de vapotage. Cette révision du règlement fait partie du Plan de travail de l'examen des règlements municipaux de 2023 à 2026.

Le présent rapport favorise la priorité pour le mandat du Conseil 2023 à 2026 « Une ville avec une économie diversifiée et prospère », puisqu'il s'inscrit dans la révision et la modernisation exhaustives du *Règlement sur les permis* de la Ville.

## **RÉPERCUSSIONS FINANCIÈRES**

Le nouveau régime de permis serait mis en œuvre selon le principe du recouvrement des coûts, c'est-à-dire que les droits de permis compenseront les coûts d'administration et d'application de la loi. Sont recommandés des droits de permis de 930 \$ pour les détaillants qui vendent uniquement des produits de vapotage et de 1 092 \$ pour les détaillants qui vendent les deux types de produits. Cela couvrirait les coûts des ressources dont ont besoin les Services des règlements municipaux pour l'administration, la surveillance et l'exécution du régime de permis recommandé.

## **Consultations publiques et commentaires**

En avril et en mai 2024 ont eu lieu des consultations auprès de détaillants de produits du tabac titulaires de permis et de détaillants connus de produits de vapotage. Le personnel a aussi communiqué avec des organisations du secteur de la vente au détail de produits de vapotage, des réseaux d'affaires locaux et provinciaux, et des groupes de défense de la santé publique. La plupart des détaillants qui ont formulé des commentaires ne sont pas en faveur de l'exigence d'un permis en raison des droits de permis qu'ils devront acquitter, et des règlements provinciaux et fédéraux en vigueur. Les détaillants qui appuient l'idée d'un permis pour les produits de vapotage ont fait mention des capacités d'application de la loi et d'encadrement accrues qui découleraient du régime, particulièrement en ce qui a trait aux ventes illégales.

## **BACKGROUND**

### **Municipal Overview**

The recommended business licence requirement for vapour product retailers is based on Council's authority to pass by-laws under the *Municipal Act, 2001*. Under Subsection 10(2) of the Act, City Council can enact by-laws to establish a business licensing regime, and to address issues related to the health, safety, and well-being of persons, consumer protection, and protection of property. Under the business licensing authorities found in Part IV of the *Municipal Act, 2001*, City Council can require businesses to be licensed to operate in Ottawa and can impose conditions as a requirement of obtaining, continuing to hold, or renewing a licence. The City can regulate property and equipment used for the business as well as the persons engaged in the business. Issues of non-compliance by licencees can be addressed through charges and fines, conditions can be placed on licenses to address individual issues, and licenses may also be suspended or revoked in circumstances of repeated or egregious non-compliance.

## Regulatory Landscape

Both the Federal government and the Province of Ontario have put in place legislation to regulate the manufacturing, promotion and sale of tobacco and vapour products. These distinct and complementary regulatory regimes are summarized below.

### *Federal - Tobacco and Vaping Products Act*

The *Tobacco and Vaping Products Act* regulates the manufacture, sale, labelling and promotion of tobacco and vaping products across Canada. This includes specific regulations and standards for product packaging, prohibited ingredients and flavours, as well as regulating access and promotion of products to young persons. This Act forms part of the Federal tobacco control strategy, which has been designed to help achieve the target of less than 5 per cent tobacco use by 2035.<sup>1</sup>

The Act requires that the packaging for tobacco and vaping products display specific information about the product and its emissions (e.g. toxicity information), as well as the health hazards and health effects arising from the use of the product and its emissions. Regulations under the Act also prohibit the sale of any vaping product that contains a nicotine concentration exceeding 20 milligrams per millilitre. While City staff do not enforce this federal legislation, the City's business licensing regime would require that all vapour product retailers comply with federal requirements. Should the Chief License inspector become aware of non-compliance with the Federal legislation by a particular licensee, the issue can be addressed on a case-by-case basis through a variety of approaches such as placing conditions on a license, as appropriate.

### *Provincial - Smoke-Free Ontario Act, 2017*

In 2018, the Province of Ontario enacted the *Smoke Free Ontario Act, 2017* (SFOA) which created one legislative framework to regulate the smoking and vaping of tobacco and cannabis in Ontario. The SFOA complements Federal legislation in this area and specifically regulates the sale, supply, display, and promotion of tobacco and vapour products across Ontario. Key regulations related to vapour product retailers include:

- Prohibiting the sale of tobacco and vapour products to persons under the age of 19
- Regulating and restricting how customers can view or handle tobacco or vapour products in a retail setting before purchasing them

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<sup>1</sup> <https://www.canada.ca/en/health-canada/services/publications/healthy-living/canada-tobacco-strategy.html>



- Regulating the promotion of tobacco and vapour products and accessories in retail settings
- Prohibiting the sale of tobacco and vapour products in hospitals, psychiatric facilities, long-term care homes, schools, and post-secondary institutions, among other places
- Regulating the sale of flavoured tobacco and vapour products
- Specific regulations and exemptions for registered specialty vape stores and tobacconists, which are standalone shops that sell specialized vapour or tobacco products

The SFOA provides for the issuance of an automatic prohibition order in circumstances where a retailer violates certain regulations pertaining to tobacco sales. When this type of order has been issued, a retailer is prohibited from selling tobacco products and must post signs at their retail location advising of the prohibition. Currently, the SFOA only allows this prohibition to be ordered for tobacco product sales offences but not for vapour product sales offences. Staff recommend that the City request the Province of Ontario to extend this prohibition tool to vapour products in the case of non-compliant vapour product retailers, as described further in this report.

## **Legislative history**

### *Licensing tobacco vendors*

Tobacco vendors have been licensed and regulated by the City of Ottawa since 2004, under the City's harmonized Licensing By-law (Schedule 12, By-law 2002-189, as amended). Under the regulations, an annual business licence from the City is required for each premise that sells tobacco products by retail, and retailers must also ensure that they are compliant at all times with the SFOA. An annual licence fee is also required and is intended to recover the City's costs of the administration, monitoring, and enforcement of the licensing regulations, as well as any additional inspections or investigations that may be required in relation to complaints or potential regulatory violations, in accordance with the City's User Fees and Charges Policy. Most tobacco vendors in Ottawa now also sell vapour products, as further described in the Discussion section of this report.

### *Ottawa Public Health - Let's Clear the Air 3.0 Plan*

In 2019, the City's Board of Health approved Ottawa Public Health's 'Let's Clear the Air 3.0 Plan' ([ACS2019-OPH-HPP-0002](#)) to provide an updated approach to addressing smoking of tobacco, cannabis, and vaping. This updated plan included three main goals: prevent youth initiation of smoking, vaping, and cannabis use; work with partners to reduce exposure to second-hand smoke and vapour; and increase supports for cessation. In addition, Ottawa Public Health also set out to address gaps in municipal, provincial, and federal smoking-related legislation and regulations. This included working with City departments to harmonize City smoking related regulations, advocating for stronger provincial smoke-free and vape-free legislation in regard to advertising and promotion of vaping products, as well as responding to federal consultations regarding proposed vaping regulations.

### *Smoking and Vaping By-law (2019-241)*

Also in 2019, and as part of the Let's Clear the Air 3.0 Plan, Council approved the harmonization of smoke-free by-laws in the City through the enactment of the Smoking and Vaping By-law ([ACS2019-EPS-GEN-0008](#)). This by-law complements the SFOA by prohibiting smoking and vaping of any substance in any enclosed public place or workplace or on any outdoor municipal property, restaurant or bar patio and any stand in the ByWard Market or Parkdale Market. From a local perspective, the Smoking and Vaping By-law helps regulate the use of tobacco and vapour products, while the Licensing By-law helps regulate the retailers of these products.

### *Industry landscape*

In Ottawa, the number and type of retailers selling vapour products is growing. As of May 2024, there are over 370 known premises where vapour products can be purchased. This includes:

- over 300 licensed tobacco vendors who are also known to sell vapour products. These vendors are typically gas stations and convenience stores.
- 71 registered speciality vape stores who exclusively sell vapour products, as described below.
- a small number of unlicensed standalone stores that sell vapour and tobacco products and accessories.

Specialty vape stores, as noted above, must be registered at no cost with the local board of health for the public health unit where the store is located. To be registered as a specialty vape store, at least 85 per cent of the store's total sales must be from vapour

products. The remaining sales must be reasonably associated with vapour products or branded with the name of the specialty vape store or a brand of vapour product.

Under the SFOA, access to a specialty vape store is restricted to persons over the age of 19. Specialty vape stores are allowed to sell a wider variety of products than what is permitted in non-specialty retail establishments, including most flavoured products. Customers are also allowed to test and sample products inside of specialty vape stores. Specialty vape stores are subject to inspections and regulations under the SFOA, but do not currently require a business licence from the City.

### **Council direction**

As part of the City's 2023 to 2026 By-law Review Work Plan ([ACS-2023-EPS-PPD-0001](#)), City Council directed staff to conduct a review of potential regulations for vapour product retailers, including a potential business licence requirement.

### **DISCUSSION**

Staff recommend a new licence requirement for vapour product retailers to provide the City with additional enforcement tools and resources to support the ongoing enforcement of the *Smoke-Free Ontario Act, 2017*. The recommended licensing regime and regulations will focus on public health and safety and consumer protection by ensuring that vapour product retailers are compliant with all federal, provincial, and municipal regulations related to the sale, display, and promotion of vapour products. The creation of a licensing requirement will allow for additional inspections and oversight and increase accountability for retailers. New enforcement tools will also be available to address situations of non-compliance. A funding source through licensing fee revenues will recover the costs of administration and enforcement of the new regime. Licensing will also place vapour product retailers on a level playing field with tobacco retailers, who are currently regulated under both the Provincial SFOA and the City's Licensing By-law.

### **What are vapour products?**

The SFOA defines a vapour product as, "an electronic cigarette, an e-substance, or any component of an electronic cigarette and includes the package in which the electronic cigarette, e-substance or component is sold." An e-substance is a substance that is manufactured or sold to be used in an electronic cigarette.

### **Health risks**

There are health risks associated with vapour products. Vaping can expose an individual to harmful chemicals and metals. Most vaping products contain nicotine,

which can lead to physical dependencies and addictions, including a transition to cigarettes. This is especially a concern with youth, where nicotine can also affect brain development and worsen symptoms of depression and anxiety.

While long-term health impacts of vaping are still unknown, short-term effects may include mouth or throat irritation, cough, shortness of breath, headache, nausea, vomiting, and diarrhea. Evidence supporting vaping as a smoking cessation tool is limited, and no vapour product to treat nicotine dependence has been approved by Health Canada.<sup>2</sup>

### **Jurisdictional scan**

There are currently six municipalities in Ontario that have implemented licensing as a means of regulating vapour product retailers: Brampton, Chatham-Kent, Hamilton, London, Oakville, and Toronto. The City of Oshawa is currently developing a licensing regime as well. Licensing regulations for vapour product retailers in these cities typically include a requirement for retailers to be compliant with all applicable Federal and Provincial legislation. Some cities have also included regulations providing for the suspension or revocation of a municipal business licence for any convictions or automatic prohibition orders issued under the SFOA to a licensed retailer.

### **Issues and concerns**

#### *Provincial funding for SFOA enforcement*

In accordance with applicable provincial legislation and accompanying standards, Ottawa Public Health is responsible for the overall enforcement of the SFOA within the City of Ottawa. Ottawa Public Health receives annual funding from Ontario's Ministry of Health for local SFOA enforcement and provides this funding to By-law and Regulatory Services for the staffing of Tobacco Enforcement Officers. The amount of annual Ministry funding for SFOA enforcement has remained at the same level of \$250,000 since 2019 without increase from the Province. Ottawa Public Health has utilized other funding sources from the Province, primarily Provincial cannabis funding, to supplement enforcement but that funding from the Province is no longer provided. As a result, the total amount of funding that has been provided to By-law and Regulatory Services for local SFOA enforcement since 2020 has been as follows:

- 2020: \$450,000
- 2021: \$450,000

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<sup>2</sup> <https://www.ottawapublichealth.ca/en/public-health-topics/vaping-and-hookah.aspx#vaping>

- 2022: \$400,000
- 2023: \$350,000
- 2024: \$250,000

Due to these reductions in Provincial funding, there are currently two Tobacco Enforcement Officers providing SFOA enforcement services in Ottawa, however in the past the City has operated with as many as four.

#### *Growing number of retailers*

The City has seen a significant increase in the number of retail establishments selling vapour products in recent years. Approximately 90 per cent of the City's licensed tobacco vendors are now also selling vapour products and the number of specialty vape stores operating in Ottawa has increased from 19 stores at the beginning of 2019 to 71 stores operating as of July 2024. The increasing number of specialty stores in the city may be attributed in part to recent regulatory changes in the Province of Quebec which banned the sale of any flavoured vapour products at all retail establishments across the Province. Enforcement activities related to vapour product retailers are now using an equal amount of resources and staff time as tobacco enforcement, without any additional funds being received from the Province. In addition, Provincial funds do not appear to be indexed for inflation or adjusted for any increase in the number of retailers or enforcement requirements.

#### *Retailer non-compliance*

In addition to Provincial funding reductions and an increasing number of retailers, ongoing cases of non-compliance with SFOA regulations from retailers have compounded the need for additional enforcement tools and resources being available to the City. Local enforcement data indicates yearly increases in the number of SFOA charges issued against vapour product retailers. Vapour product charges have outnumbered tobacco product charges issued to retailers since 2021, as outlined in the table below.

*Table 1 – Total tobacco and vapour product charges issued to Ottawa retailers (2021 to June 30, 2024)*

	2021	2022	2023	2024*	Total
Total Vapour Product Charges Issued	20	69	93	34*	216
Total Tobacco Product Charges Issued	26	20	109	24*	179

\*as of June 30

A primary concern is the number of charges issued for selling vapour products to persons under the age of 19. Since the start of 2022, 51 per cent of all vapour product related charges issued to local retailers under the SFOA have been for selling vapour products to minors.

*Table 2 – Charges issued for selling vapour products to minors (2018 to June 30, 2024)*

	2018-2021	2022	2023	2024*
Youth access charges issued (vapour products)	22	31	41	28*

\*as of June 30

There is further concern with respect to the amount of youth access charges issued against specialty vape stores, where persons under the age of 19 are not permitted to enter under SFOA regulations.

*Table 3 – Youth access charges issued to specialty vape stores (2022 to June 30, 2024)*

	2022	2023	2024*
Youth access charges issued (specialty vape stores)	9	11	10*

\*as of June 30

Overall, between January 1, 2022, and June 30, 2024, over one-third (36 per cent) of all vapour product related charges issued to Ottawa retailers for youth access and promotion and display violations under the SFOA were issued to specialty vape stores. For context, specialty vape stores only represented between 15 to 20 per cent of the total number of vapour product retailers in Ottawa during this period. As previously indicated, specialty vape stores do not currently require a business licence from the

City. Moreover, the SFOA does not currently allow for an automatic prohibition order to be issued against a retailer for any offences related to vapour product sales.

### *Youth vaping*

According to the Centre for Addiction and Mental Health's 2023 Ontario Student Drug Use and Health Survey, the prevalence of electronic cigarette use and vaping among Ontario students in grades seven through 12 is substantially higher than tobacco cigarette smoking.<sup>3</sup> The study indicates that vaping products are some of the most readily available substances for students, and that the perceived availability of vaping products significantly increased between 2021 and 2023.<sup>4</sup> Moreover, about 43 per cent of students who reported vaping in the past year indicated that they started using electronic cigarettes before grade nine.<sup>5</sup> A recent submission from Ottawa Public Health to Health Canada on the review of the *Tobacco and Vaping Products Act* noted that research has shown that youth who vape may also go on to smoke cigarettes. Furthermore, with the high levels of nicotine often found in vapour products, youth can quickly develop an addiction and this may eventually lead to smoking cigarettes ([ACS2023-OPH-HPP-0006](#)).

Concerns with respect to youth vaping as well as substance use issues for all age groups was the central focus of the 2023 annual report from Ontario's Chief Medical Officer of Health. The report highlighted that while fewer people are smoking tobacco, more are vaping. In the first few years after vaping products were legalized, their use increased rapidly in individuals aged 15 and older, and the number of adults in Ontario who have reported using electronic cigarettes or vaping devices has also increased from 12.8 per cent in 2019 to 15.2 per cent in 2020.<sup>6</sup> In addition, the report noted a concerning trend with the growing number of individuals who have never smoked who are vaping, adding that people exposed to nicotine through vaping are more likely to develop a nicotine addiction and to start using tobacco later in life.<sup>7</sup> It was also noted that youth who vape also tend to use other substances, particularly alcohol and cannabis.

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<sup>3</sup> Boak, A., & Hamilton, H. A. (2024). Drug use among Ontario students, 1977–2023: Findings from the Ontario Student Drug Use and Health Survey (OSDUHS). Toronto, ON: Centre for Addiction and Mental Health, p. 7.

<sup>4</sup> Boak, A., & Hamilton, H. A. (2024) at p. 136.

<sup>5</sup> Boak, A., & Hamilton, H. A. (2024) at p. 113.

<sup>6</sup> Nigatu YT, Hamilton HA. CAMH monitor e-report: substance use, mental health and well-being among Ontario adults, 2022. Toronto, ON: Centre for Addiction and Mental Health; 2022.

<sup>7</sup> *Balancing Act, An All-of-Society Approach to Substance Use and Harms*, 2023 Annual Report of the Chief Medical Officer of Health of Ontario to the Legislative Assembly of Ontario. (<https://www.ontario.ca/files/2024-04/moh-cmoh-annual-report-2023-en-2024-04-02.pdf>)

Accordingly, increases in the number of vapour product retailers combined with no increase in Provincial funding for SFOA enforcement pose a significant challenge in meeting the required enforcement service levels. At the same time, recent enforcement data shows ongoing non-compliance from retailers, in particular with the sale of vapour products to minors.

**Recommendation 1 – a business licence requirement for vapour product retailers**

Staff recommend a new business licence requirement for vapour product retailers in Ottawa, described below and attached as Document 1, to provide additional regulatory tools and resources to ensure that retailers comply with the requirements of the SFOA. The recommended licensing regime will apply to any business selling vapour products by retail, including individual vapour product stores and any existing licensed tobacco vendors who also sell vapour products.

The benefits of the recommended new licensing requirement include:

- Additional resources and capacity to support the City's ongoing enforcement of the *Smoke-Free Ontario Act, 2017*
- Assistance with the identification of all retailers selling vapour products to ensure required inspections can take place
- Additional enforcement tools available to the City to ensure retailers are compliant with all applicable legislation and regulations
- Increased accountability for vapour product retailers to ensure employees are compliant with all applicable legislation and regulations
- A level playing field for the municipal regulation of both tobacco and vapour product retailers, in alignment with current federal and provincial regulatory approaches.

*Conditions of licence issuance and licence renewal*

Under the proposed licensing regime, a vapour product retailer must obtain a yearly business licence from the City and must meet specific business licence application and renewal requirements to obtain a license or have a license renewed. These include:

- Confirming that the person applying for or renewing the licence is 18 years of age or older



- Confirming that the premises meets zoning and property standards requirements of the City
- Providing a complete list of business or trade names used by the business and the respective business addresses, email addresses, and telephone numbers relating to those businesses, to facilitate enforcement and follow-up
- Confirming that the retail premise is duly registered as a specialty vape store with Ottawa Public Health in accordance with the SFOA, if applicable, and
- Payment of the applicable licence fee

As with other businesses regulated under the City's Licensing By-law, the Chief Licence Inspector would also be authorized to require any additional documents or information from the applicant that they deem necessary in order to determine whether a licence can be issued or renewed.

#### *Classes of licence*

Due to the differing business models for tobacco and vapour product retailers, staff recommend three separate business licence classes as part of the new licensing regime for tobacco and vapour product retailers. This will help better identify the types of products each licensed retailer is selling. Currently, a retailer licensed as a 'tobacco vendor' under the Licensing By-law may also be selling vapour products. In order to confirm whether this is the case, enforcement efforts and resources such as multiple inspections at the retail premise and the use of test shoppers are often required. Staff from By-law and Regulatory Services as well as Ottawa Public Health have experienced challenges in identifying the exact number of retailers selling only tobacco products, only vapour products, or both. To address these gaps and provide better clarity, staff are recommending that each retailer be categorized as one of the following three licence classes:

- Tobacco product retailer
- Vapour product retailer
- Tobacco and vapour products retailer

Each licence class would be subject to the City's business licensing requirements and will be required to comply with the SFOA and all other Provincial or Federal laws applying to tobacco and vapour products. From a business licensing perspective, regulations and requirements would be the same for each licence class, with minor

administrative exceptions. This includes by-law officers confirming that no prohibition order for tobacco sales offences has been issued against a retailer applying for or renewing a tobacco product retailer licence, as well as confirmation that a specialty vape store applying for or renewing a vapour product retailer licence is also duly registered with Ottawa Public Health, as required under the SFOA. Staff recommend that the annual licence fee for retailers selling only tobacco products or only vapour products be set at a lower rate than the annual fee for retailers selling both type of products. Further details regarding recommended annual licence fees are discussed below.

### *General regulations*

All vapour product retailers will be required to comply with certain general regulations as part of maintaining their licence. This includes ensuring that their valid licence is prominently displayed within the licensed premises and that every employee of the licensed business complies at all times with the regulations set out in the *Smoke-Free Ontario Act, 2017* and the *Tobacco and Vaping Products Act*. All licensees are also required to comply with the City's by-laws, including those related to signage, solid waste, noise, and others. These licensing regulations are currently in place for licensed tobacco vendors under Schedule 12 of the City's Licensing By-law to ensure consumer protection and public health. The regulations will be carried forward to the new Schedule 12 that will apply to both tobacco and vapour product retailers.

### *Automatic suspension of licence*

Staff also recommend the automatic suspension of a retailer's municipal business licence if they have been issued an automatic prohibition order under the SFOA. This means that if a prohibition order has been issued under the SFOA, the retailer's municipal business licence will be suspended until the City's Chief License Inspector has determined that the retailer has complied with all applicable conditions of the SFOA suspension order. A similar regulation will be in place for licensed retailers who are also registered with Ottawa Public Health as a specialty vape store or tobacconist as per SFOA requirements. If a retailer fails to renew their registration with Ottawa Public Health when required, their license will be suspended until registration is completed.

### *Licensing fees*

Licensing fees are established to recover the City's costs of administration and enforcement work required for the proposed new licensing requirement. These fees are further detailed in Document 1. The recommended annual fees for tobacco and vapour product retailers are as follows:

- Retailers selling only tobacco products: \$930 (current fee)
- Retailers selling only vapour products: \$930 (new fee)
- Retailers selling both tobacco and vapour products: \$1,092 (current tobacco vendor fee of \$930 plus a new increase of \$162)

These recommended fees have been developed to provide cost recovery for the administration, management, and enforcement of the new licensing requirement by staff in By-law and Regulatory Services, in keeping with Council's User Fees and Charges Policy. The recommended licence fee of \$930 for vapour product retailers is equivalent to the current annual licence fee for tobacco vendors. Staff recommend mirroring the licence fee for retailers selling only vapour products with the current tobacco vendor licence fee to provide a level field among both types of retailers and to limit the impact on existing tobacco vendors who do not sell vapour products. Existing licensed tobacco vendors selling only tobacco products will see no change to their annual licence fee amount for 2024.

The recommended fee of \$1,092 for any retailer selling both tobacco and vapour products represents a \$162 increase to the current tobacco vendor licence fee of \$930. This increase is required to provide the necessary funding for the additional administration and enforcement requirements associated with retail establishments selling both types of products. All licence fees will be reviewed as part of the annual budget cycle to monitor cost recovery and cost effectiveness.

### **Enforcement approach**

Licensing fees collected through the new regime will recover the costs of resources in By-law and Regulatory Services for the administration, management and enforcement of the licensing regime, including supporting ongoing SFOA enforcement and the enforcement activities of Tobacco Enforcement Officers by ensuring all retailers are identified and are compliant with applicable regulations and legislation.

### **Other regulatory options considered**

#### *Provincial review of Ontario Public Health Standards*

In August 2023, the Ontario Ministry of Health announced that it was moving forward with a strategy to strengthen Ontario's public health sector. Part of this strategy includes a review of the Ontario Public Health Standards to refine, clarify, and strengthen local public health roles and responsibilities. The Ontario Public Health Standards identify minimum expectations for public health programs and services to be delivered by boards of health/public health units across the Province. This includes the Tobacco,

Vapour and Smoke Protocols that set out SFOA inspection and enforcement requirements for local public health units and Tobacco Enforcement Officers. Initiatives such as the Ontario Public Health Standards review are intended to help support a longer-term review of the Ministry's funding methodology for public health in Ontario.

Given this ongoing Provincial review, staff assessed whether it would be beneficial to defer the development and implementation of any local regulations for vapour product retailers until after the Ontario Public Health Standards review has been completed. This option would allow additional time for staff to monitor the progress of the review and obtain a better understanding of the scope and potential impact that updated public health standards may have on future funding and enforcement requirements for the SFOA.

At this time, staff do not recommend deferring the development and implementation of a licensing regime for vapour product retailers until after the Ontario Public Health Standards review is completed. Staff's assessment is that more immediate support and enforcement tools are required to properly address the current issues regarding the sale and promotion of vapour products across the city. Staff from Emergency and Protective Services will continue to work with staff in Ottawa Public Health to monitor the progress of the Ontario Public Health Standards review and assess any proposed changes or potential impacts on SFOA enforcement, if any.

*Regulation through zoning (minimum separation distances)*

One of the potential regulatory options identified and assessed by staff as part of this by-law review was regulation through zoning, with the use of minimum separation distances for retailers. Staff from the Planning, Development and Building Services department have confirmed that minimum separation distances are not justified in the case of vapour product retailers.

*Non-intervention or status quo*

Given the current level of regulation for vapour product retailers at both the Federal and Provincial levels of government, staff also assessed the feasibility of not recommending any additional regulations for retailers at the municipal level and maintaining enforcement with existing resources. A similar approach was taken by the City of Vancouver in 2019, where it was determined that local enforcement options were already available to the City under existing by-laws and that Provincial regulations were found to provide a proper level of regulation to address the sale and promotion of vaping products.

While the Vancouver example is similar to the current situation in the City of Ottawa, staff do not recommend maintaining the status quo with respect to the enforcement and monitoring of vapour product retailers at this time. Staff's assessment is that continuing to rely on existing resources would not adequately address the ongoing issues and concerns with retailers, in particular with respect to the number of youth access charges being issued and the increase in the number of retailers now operating within the City. Furthermore, as Provincial funding for SFOA enforcement has remained the same and other sources of Provincial funding to supplement enforcement are no longer available, and any future changes to the funding methodology or total funding amounts are not yet known, it is recommended that the proposed regulations be implemented as soon as possible to provide more immediate assistance and resources to support the City's existing enforcement efforts.

**Recommendation 2 – request amendments to the *Smoke-Free Ontario Act, 2017***

In addition to the recommended new business licence requirement for vapour product retailers, staff are also recommending that Council direct the City Clerk to write to the Premier of Ontario and the Ontario Minister of Health to recommend an amendment to Section 22 of the *Smoke-Free Ontario Act, 2017* to allow for the issuance of an automatic prohibition for vapour product sales offences. Currently, Section 22 of the SFOA contains provisions that allow enforcement officers to issue an order against a retailer that prohibits them from selling and storing tobacco products in the place where tobacco sales offences were committed. In addition, no wholesaler or distributor is allowed to deliver tobacco to any retailer that has been issued a prohibition order. Amending the SFOA to include vapour product sales offences within the scope of an automatic prohibition order would provide an additional and effective enforcement tool for Tobacco Enforcement Officers to address situations of non-compliance from retailers. This recommended amendment to the SFOA has also been proposed and supported by Ontario's Association of Local Public Health Agencies (aLPHa). A resolution was passed by the association in June 2024 urging the Ministry of Health to include prohibition orders for vapour product sales to help prevent unauthorized sales to the public.

**Implementation**

Staff recommend that the proposed new licensing requirement and associated regulations come into force on November 30, 2024. In advance of this report being brought forward for approval by Committee and Council, staff from Emergency and Protective Services communicated with impacted retailers to advise them of when the proposed new licensing requirement and associated licensing fees may come into

effect. Should Council approve the recommendations, staff from Emergency and Protective Services will communicate further with impacted retailers to provide updated information about the new regulations and the implementation timeline, as well as information on licence applications and requirements. Information will also be made available on [ottawa.ca](http://ottawa.ca) for education and awareness.

Staff will also have the opportunity to monitor the implementation of the new licensing regime and recommend any necessary updates or changes as part of the final staff report on the comprehensive review and modernization of the City's Licensing By-law. This review was also included on the City's 2023 to 2026 By-law Review Work Plan, and staff anticipate bringing a final report and recommendations on this review to Emergency Preparedness and Protective Services Committee and City Council in Q2 of 2026.

### **FINANCIAL IMPLICATIONS**

The proposed fees will offset enforcement and administration costs.

### **LEGAL IMPLICATIONS**

There are no legal impediments to implementing the recommendations set out in this report. With respect to the proposed amendments to the Licensing By-law set out under Recommendation 1 to this report, the *Municipal Act, 2001* provides municipalities with the authority to enact by-laws to address a variety of licensing and regulatory matters. Subsection 10(2) of the Act lists 11 spheres in respect of which a municipal council can pass by-laws, including the health, safety and well-being of persons (s. 10(2).6), consumer protection (s. 10(2).8), and business licensing (s. 10(2).11). Specifically, Part IV of the *Municipal Act, 2001*, provides for broad powers for Council to impose conditions as a requirement of obtaining, continuing to hold or renewing a license.

### **COMMENTS BY THE WARD COUNCILLOR(S)**

This by-law applies City-wide.

### **CONSULTATION**

The consultation process for this review began in early 2024. Staff sought input from known vapour product retailers, existing licensed tobacco vendors, vapour product retail industry organizations, business associations, and public health groups. The consultation process was primarily done through online methods of engagement such as an online survey and email communications. Staff also offered alternative methods of

engagement, such as by phone or through regular mail, and invited further direct discussions with stakeholders if desired. All external consultation efforts offered a brief description of the ongoing by-law review and provided necessary context for the consultation questions.

In April 2024, an online survey for both tobacco and vapour product retailers was launched and was open for responses between April 15 and May 10, 2024. The survey generated 36 responses total. This survey sought to provide staff a more fulsome understanding of retailers' support for a licensing requirement, proposed licence conditions, and the subsequent impacts to their business. In this consultation process, retailers were also invited to raise key issues that they experienced with respect to enforcement and industry adherence to existing regulations. Results from the survey indicated that most retailers (58 per cent) were not in favour of a business licensing requirement, with responses citing redundancies with existing regulations as well as additional costs as reasons they did not support the proposed new licence. Conversely, those in favour of the proposed licence (22 per cent) listed additional enforcement and the prevention of unregulated sales as potential benefits. When questioned on whether it was appropriate that the proposed new licensing conditions mirror the existing tobacco vendor licensing rules, responses showed that 66 per cent of respondents felt it was appropriate. Other responses to the retailer survey included a desire for provincial and federal regulatory changes, which staff note are out of scope for this review.

Staff also contacted industry groups such as the Vaping Industry Trade Association and the Canadian Vaping Association, as well as local and provincial business associations and public health groups. Consultation materials consisted of a curated list of questions that sought to obtain feedback on a proposed licensing requirement, its requirements for vapour retailers, and their opinion on enforcement within the vapour product industry. These groups were also provided the opportunity to raise other issues they had experienced in the vapour product industry that may be handled through improved regulations. While responses from these stakeholders were limited, staff received feedback from local business groups that showed support for a licensing requirement that would be similar to what is currently required for tobacco retailers. Other key issues highlighted by these groups included public health concerns related to vaping in general, especially among young people, as well as a desire for continued and stringent enforcement.

Overall themes throughout the consultation process included mixed feedback regarding a business licensing requirement and support for strict enforcement of existing tobacco and vapour product regulations. Throughout the consultation process, staff provided an

overview of information relevant to the review and to existing regulations in order to facilitate meaningful engagement. As previously mentioned, staff provided numerous methods of contact for licensees, impacted retailers, and other interested organizations, and welcomed opportunities for further discussion.

## **ACCESSIBILITY IMPACTS**

This report recommends a licensing regime for vapour product retailers, along with related regulations. As part of this regime, licensees will be required to comply with both Provincial and Federal laws and regulations. This includes the *Accessibility for Ontarians with Disabilities Act, 2005*, and the *Integrated Accessibility Standards Regulation 191/11*. Any licensee under the legislation will be subject to specific obligations including those relating to information and communications standards for retail customers.

While By-law and Regulatory Services has no authority to enforce the *Accessibility for Ontarians with Disabilities Act, 2005* itself, information can be provided to members of the public upon request on how to provide feedback or make a complaint to the appropriate provincial authority should concerns be raised about compliance with the legislation. In addition, confirmed violations of provincial legislation may result in the review of the licence status of any licensee under the proposed by-law, and would be addressed on a case-by-case basis by City's Chief License Inspector.

The City is committed to ensuring that all information that will be made available to the public or to prospective licensees about the proposed licensing regime and related regulations on Ottawa.ca will be compliant with the City's obligations under the legislation, and will be provided in French and English. In accordance with the City's Accessible Formats and Communications Supports Procedure, alternative formats and supports will also be made available upon request.

## **DELEGATION OF AUTHORITY IMPLICATIONS**

The Director of By-law and Regulatory Services will be authorized to administer and enforce the proposed licensing regime and associated regulations, including the delegated authority to issue, refuse, suspend, or revoke a licence and impose conditions on licenses. These authorities, as well as other measures to ensure public health and safety, consumer protection, and to prevent public nuisances, are set out in the proposed by-law, as well as within the City's Licensing By-law (No. 2002-189). Once enacted, By-law and Regulatory Services will report on the implementation of the new licensing regime in its Annual Report.



## **INDIGENOUS, GENDER AND EQUITY IMPLICATIONS**

The *Smoke-Free Ontario Act, 2017* acknowledges the traditional use of tobacco that forms part of Indigenous culture and identity, including the use of tobacco for cultural or spiritual purposes and traditions. The proposed regulations set out in this report and attached as Document 1 will not interfere with these traditional uses.

As part of this regulatory review, staff consulted with the Indigenous Relations branch in the City's Community and Social Services Department to help identify impacted retailers within the Indigenous community of Ottawa. Staff provided consultation and engagement materials to the Indigenous Business Hub (ADAWE) of Ottawa, the Ottawa Black Business Alliance, and the Women's Business Network and invited these groups to provide feedback on the proposed regulations under consideration.

## **RISK MANAGEMENT IMPLICATIONS**

There are no risk implications associated with this report.

## **RURAL IMPLICATIONS**

The recommended licensing regime and associated regulations apply to tobacco and vapour product retailers City-wide.

## **TERM OF COUNCIL PRIORITIES**

This report supports the following strategic priorities identified in the 2023 to 2026 Term of Council Priorities:

- A city with a diversified and prosperous economy by supporting the comprehensive review and modernization of the City's Licensing By-law.

## **SUPPORTING DOCUMENTATION**

The following documents immediately follow this report:

Document 1 – Draft By-law to establish licensing regulations for vapour product retailers

**DISPOSITION**

Following approval of this report's recommendations, Emergency and Protective Services together with Legal Services will prepare the required by-law for enactment by Council and will apply for appropriate set fines from the Province of Ontario in accordance with applicable processes. All administrative requirements for implementation of the new licensing regulations within the City's Licensing By-law will be undertaken.