

<p>6. HARMONIZATION OF SMOKE-FREE BY-LAWS HARMONISATION DES RÈGLEMENTS SANS FUMÉE</p>

COMMITTEE RECOMMENDATION, AS AMENDED

That Council:

1. approve the proposed consolidated Smoking and Vaping By-law and repeal related pre-existing smoking by-laws and specific smoking regulations, as well as approve related amendments to the *Transit By-law* (2007-268, as amended) and *ROW Patio By-law* (2017-92, as amended), all in the general form set out in Documents 1, 2, and 3, and as described in this report; and
2. petition the National Capital Commission, the Parks Canada Agency, Canadian Heritage, and other Federal departments and agencies that administer, manage, or program activities on Federal properties where members of the public congregate to put into place policies that create and support smoke-free and vapour-free public places on Federally-owned properties; and
3. request that the Mayor communicate such Council petition to the Chairperson and Chief Executive Officer of the National Capital Commission as well as the responsible Ministers for Parks Canada, Canadian Heritage, and any other appropriate Federal department and agency.

RECOMMANDATION DU COMITÉ, TELLES QUE MODIFIÉES

Que le Conseil :

1. approuve le projet de consolidation du règlement concernant l'usage de produits à fumer ou à vapoter, l'abrogation des règlements sur le tabagisme et de la réglementation sur l'usage du tabac en vigueur et

les modifications connexes du Règlement sur le transport en commun (no 2007-268, dans sa version modifiée) et du Règlement de la Ville d'Ottawa régissant les terrasses sur emprise sur les voies publiques (no 2017-92, dans sa version modifiée) dans la forme générale des documents 1, 2 et 3 et de la façon décrite dans le présent rapport.

2. demande à la Commission de la capitale nationale, à Parcs Canada, à Patrimoine canadien et aux autres ministères et organismes fédéraux qui gèrent et planifient des activités publiques sur les propriétés fédérales de mettre en place des politiques pour des lieux publics sans fumée ni vapeur.
3. demande que le maire communique cette demande au président et au premier dirigeant de la Commission de la capitale nationale ainsi qu'aux ministres responsables de Parcs Canada, de Patrimoine canadien et des autres ministères et organismes fédéraux.

DOCUMENTATION/DOCUMENTATION

1. Manager's report, Public Policy Development Branch, Emergency and Protective Services dated 11 June 2019 (ACS2019-EPS-GEN-0008).

Rapport de la Gestionnaire, Direction de l'élaboration de politiques publiques, Services de protection et d'urgence, daté le 11 juin 2019 (ACS2019-EPS-GEN-0008).

2. Extract of draft Minutes, Community and Protective Services Committee, 20 June 2019.

Extrait de l'ébauche du procès-verbal, Comité des services communautaires et de protection, le 20 juin 2019.

**COMMUNITY AND PROTECTIVE
SERVICES COMMITTEE
REPORT 4
26 JUNE 2019**

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**COMITÉ DES SERVICES
COMMUNAUTAIRES ET DE
PROTECTION RAPPORT 4
LE 26 JUIN 2019**

**Report to
Rapport au:**

**Community and Protective Services Committee
Comité des services communautaires et de protection
20 June 2019 / 20 juin 2019**

**and Council
et au Conseil
26 June 2019 / 26 juin 2019**

**Submitted on June 11, 2019
Soumis le 11 juin 2018**

**Submitted by
Soumis par:**

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Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE File Number: ACS2019-EPS-GEN-0008

SUBJECT: Harmonization of Smoke-Free By-laws

OBJET: Harmonisation des règlements sans fumée

REPORT RECOMMENDATIONS

That the Community and Protective Services Committee recommend that Council approve the proposed consolidated Smoking and Vaping By-law and repeal related pre-existing smoking by-laws and specific smoking regulations, as well as approve related amendments to the *Transit By-law (2007-268, as amended)* and *ROW Patio By-law (2017-92, as amended)*, all in the general form set out in Documents 1, 2, and 3, and as described in this report.

RECOMMANDATIONS DU RAPPORT

Que le Comité des services communautaires et de protection recommande au Conseil d'approuver le projet de consolidation du règlement concernant l'usage de produits à fumer ou à vapoter, l'abrogation des règlements sur le tabagisme et de la réglementation sur l'usage du tabac en vigueur et les modifications connexes du Règlement sur le transport en commun (no 2007-268, dans sa version modifiée) et du Règlement de la Ville d'Ottawa régissant les terrasses sur emprise sur les voies publiques (no 2017-92, dans sa version modifiée) dans la forme générale des documents 1, 2 et 3 et de la façon décrite dans le présent rapport.

EXECUTIVE SUMMARY

Assumption and Analysis

On October 17, 2018, Federal and Provincial cannabis legislation came into force providing legal access to and use of recreational cannabis for adults, subject to specific limits on legal possession and home cultivation, among other restrictions.

At the same time, the Province of Ontario enacted the new *Smoke Free Ontario Act, 2017* ("SFOA, 2017"), replacing the *Electronic Cigarettes Act, 2015* and the previous *Smoke Free Ontario Act* to create one legislative framework to regulate the smoking and vaping of tobacco and cannabis in Ontario. The SFOA, 2017 prohibits smoking and vaping cannabis and tobacco in the same places where smoking tobacco is prohibited, which includes but is not limited to enclosed public places, enclosed workplaces, in and around schools, in common areas of multi-unit residential buildings, and on outdoor restaurant and bar patios.

On December 13, 2018, Council approved that private cannabis retail stores be allowed within the City of Ottawa. As part of that decision and further to Motion No.3/6 of the same date, staff were directed to review the City's smoke-free by-laws in light of cannabis legalization. The Public Policy Development branch within the Emergency and Protective Services Department (EPS) has reviewed the various smoking prohibitions that currently exist in the City of Ottawa's by-laws and is recommending amendments to ensure a harmonized approach in terms of smoking and vaping of tobacco, cannabis, and other substances, and to generally align with the SFOA, 2017.

At this time, staff do not propose an expansion of smoking and vaping prohibitions. Rather, the proposed by-law amendments will create consistent rules regarding smoking and vaping of tobacco, cannabis, and any other substance in the places where tobacco smoking and use of water pipes are already prohibited. This harmonized approach provides both clarity for the public and ease of enforcement. It is noted that while the by-law amendments recommended in this report and in Documents 2 and 3 include the *Transit By-law* and *ROW Patio By-law*, which would typically be presented to the Transit Commission and Transportation Committee, respectively, there is agreement from the Chairs in question that all amendments be presented in one report to the Community and Protective Services Committee to ensure consistency.

Public Consultation/Input

As part of this harmonization work, staff has consulted with Ottawa Public Health (OPH) and affected departments. This report's recommendations have been particularly informed by public consultations and ongoing work conducted by OPH in recent years on smoking and vaping in Ottawa as part of its "Let's Clear the Air" campaign. Given this, no additional public consultations were conducted as part of this harmonization exercise as current prohibited places are being maintained. However, should the need arise to create new prohibited places of consumption or to expand smoking and vaping prohibitions based on public health information, evidence, or emerging issues, staff expect that public consultation would occur to inform those recommendations in keeping with the City of Ottawa's Public Engagement Strategy.

BACKGROUND

On December 13, 2018, Council directed staff to review the City's smoking-related by-laws with a view to harmonizing the regulations to include cannabis and vaping, in accordance with the authorities in the SFOA, 2017 and the *Municipal Act, 2001*, and to make recommendations for other amendments to the smoke-free regulations, if any. In undertaking this review, staff were also directed to consult with Ottawa Public Health and affected departments (Motion No. 3/6, ACS2018-EPS-GEN-0011). This report, together with the proposed new Smoking and Vaping By-law and related by-law amendments, are the result of staff's work in response to this Council direction.

History of Current Smoke-Free By-laws in Ottawa

The City of Ottawa has a history of creating smoke-free places. Smoking regulations have been in place in Ottawa since 2001, when City Council enacted the *Public Places By-law* (By-law No. 2001-148, as amended) to prohibit smoking in certain public places, and the *Workplace By-law* (2001-149), to require the creation of smoke-free policies in workplaces. At the time these by-laws were enacted, Council wished to address the harmful health effects of second-hand smoke based on public health evidence that second-hand smoke exposure was one of the leading preventable causes of death and exposed others to carcinogens, that it had a negative impact to those who have medical conditions which are exacerbated by smoke, and that it was a nuisance due to its irritating and discomforting properties. As a result, these 2001 by-laws were enacted (Ref No: ACS2001-PEO-HEA-0003) to protect the health of citizens in Ottawa, as the exposure to the dangers of smoking was still common in many public places and some workplaces at that time.

In 2012, Council added smoke-free regulations in the *Parks and Facilities By-law* (By-law No. 2004-276, as amended) to expand smoke-free outdoor spaces in the City of Ottawa to include City parks in their entirety (e.g. pools, playgrounds, sports and playing fields, ball diamonds, and pathways leading to and from a park) and municipal beaches, as well as outdoor areas of City properties including community buildings and recreation centres (Ref No: ACS2012-COS-EPS-0012). At that time, smoking prohibitions were also expanded to include restaurant patios and market stands. These regulations were based on the Ottawa Board of Health's "Let's Clear the Air: A Renewed Strategy for a Smoke-Free Ottawa", which was designed to protect children and non-smokers from

second-hand smoke while reducing smoking rates by expanding smoke-free places in the City.

In 2016, Council enacted the *Water Pipes in Public Places and Workplaces By-law* (By-law No. 2016-303, as amended) restricting water pipe use in enclosed public places, enclosed workplaces, and on outdoor restaurant and bar patios (Ref No: ACS2016-OPH-BOH-0004). These regulations were based on growing evidence of the harmful health effects of herbal water pipe smoking and on second-hand smoke exposure to workers and the public, and that water pipe smoke contains many of the same toxicants that are known to cause cancer, and heart and lung disease. The *Transit By-law* (By-law No. 2007-268, as amended), enacted in 2008, and the *ROW Patio By-law* (By-law No. 2017-92, as amended), enacted in 2017, also contain smoking prohibitions on transit property and on patios, respectively.

In the March 4, 2019, Board of Health report entitled “Let’s Clear the Air (LCA) 3.0” ([ACS2019-OPH-HPP-0002](#)), the report outlines evidence of the harmful health effects of second-hand smoke including triggering cardiovascular events and asthma attacks, and aggravation of chronic obstructive pulmonary disease and other respiratory conditions. In addition, OPH advises that, based on current evidence, exposure to second-hand cannabis smoke may be harmful for children, pregnant women, the elderly, and those with respiratory problems. With respect to the effects of second-hand vapour, the Board report cites that current research demonstrates possible harmful effects of second-hand vapour and notes that long-term safety of vaping continues to be assessed. The Board of Health report also outlines research and local data regarding increased e-cigarette use among youth, as well as related issues, which support the inclusion of vaping prohibitions in places where smoking is currently prohibited in order to protect people, including vulnerable populations, from second-hand exposure, reduce youth initiation through de-normalization, increase quit attempts, and improve health outcomes.

Authority for Smoking and Vaping Regulations

Smoking prohibitions currently in effect in Ottawa are imposed both by by-laws and through the Provincial SFOA, 2017, depending on the specific area or activity that is regulated, as described below in this report.

The authority for municipalities to enact smoking and vaping regulations is found in the *Municipal Act, 2001*. In particular, paragraphs 6 and 8 of Subsection 10(2) of the

Municipal Act, 2001, authorize the municipality to pass by-laws respecting the health, safety, and well-being of persons and the protection of persons and property. Section 115 of the Act further authorize municipalities to prohibit or regulate smoking and vaping tobacco and cannabis in public places and workplaces excluding the highway (roadway and sidewalk), although by-laws enacted under that section may apply to public transportation vehicles and taxicabs on a highway. Section 115 of this Act further allows municipalities to define “public places” for the purposes of these prohibitions, to require appropriate signage on site, and to generally require the owners or occupiers of these places to ensure compliance with any such smoking and vaping prohibitions. Finally, it is noted that Section 128 of the Act authorizes a municipality to prohibit and regulate with respect to public nuisances and allows municipal councils to determine what is, or could become or cause, a public nuisance for the purpose of those prohibitions.

Under the SFOA, 2017, municipalities are specifically authorized to enact smoking and vaping regulations in by-laws and these can be stricter than the regulations found in the SFOA, 2017.

Key Provisions of SFOA, 2017

The SFOA, 2017 regulates smoking and vaping in numerous public and other places. This Provincial legislation specifically prohibits smoking tobacco, smoking medical and recreational cannabis, and using electronic cigarettes to vape any substance in enclosed workplaces and enclosed public places as well as other designated places in Ontario, enumerated below.

There are no laws or legislation that prohibit smoking or vaping in a personal residence, however restrictions may be imposed by the property owner or landlord of the premises in condominium by-laws and lease agreements, or other contractual arrangements between the landlord/owner and the tenant. Although smoking and vaping is permitted in a personal residence, the SFOA, 2017 prohibits smoking and vaping in the indoor common areas of multi-unit dwellings such as condominiums, apartment buildings, and college and university residences. This includes but is not limited to hallways, elevators, parking garages, laundry facilities, stairwells, and entertainment rooms.

The SFOA, 2017 is enforced by Tobacco Enforcement Officers who are appointed by the Minister of Health and Long-Term Care. Any individual who smokes or vapes in a

prohibited area is guilty of an offence under the SFOA, 2017 and on conviction is liable to maximum fines of \$1000 for a first offence, or \$5000 for any further offence.

Ongoing enforcement work

As outlined in the March 2019 “Let’s Clear the Air (LCA) 3.0” Board of Health report, OPH has taken steps through educational programs and by supporting by-law enforcement to reduce second-hand exposure to smoke and vapour from tobacco, cannabis, and other substances in the community. Enforcement of the smoking prohibitions in the SFOA 2017 and of the applicable smoke-free provisions of City by-laws is undertaken by Tobacco Enforcement Officers within By-law and Regulatory Services (BLRS), funded by Ottawa Public Health. The SFOA, 2017 prohibits vaping and smoking cannabis anywhere tobacco smoking is prohibited, including all secondary school properties. It is expected that ongoing efforts will be required from BLRS for both proactive and reactive enforcement of cannabis and vaping related regulations, including smoking on City property (e.g. parks, beaches, City facilities), on school or hospital property, on restaurant/bar patios, and other prohibited locations.

Tobacco Enforcement Officers have been using a progressive enforcement approach for school property, which consists of education, complaint-based inspections, and proactive inspections where time and resources permit. Enforcement actions continue to be taken in schools related to students vaping, including verbal warnings, written warnings, and charges. This is in addition to OPH’s ongoing work to provide targeted education programs and resources to youth, parents, youth workers, teachers and school administrators. Examples of this work include the provision of in-class presentations and resource materials on smoking and vaping.

DISCUSSION

Proposed Harmonization Approach

Given the broad scope of smoke-free places created by City Council through existing by-laws and under provincial legislation, enumerated below, staff are not proposing to expand the list of prohibited places at this time. Rather, staff recommend the harmonization of current by-laws to create consistent, clear, and enforceable provisions to consistently prohibit smoking and vaping tobacco, cannabis, and any other substance

in those places where smoking and water pipe use is currently prohibited, as proposed in Document 1.

The areas that are not currently protected by smoking and vaping prohibitions are largely limited to outdoor, unenclosed (open) areas such as outdoor areas of post secondary campuses, outdoor construction sites, privately-owned outdoor/uncovered properties where the public is invited (e.g. for special events), and Federal properties (e.g. for special events). Ottawa Public Health is continuing to engage with key stakeholders to encourage the voluntary creation of smoke-free places and to explore the feasibility and readiness for expanding the prohibited smoking and vaping places and, together with City staff, will consider whether any potential future expansion of smoke-free spaces should best occur through regulations or by other means such as policies of property owners or voluntary compliance. Staff from Emergency and Protective Services Department will collaborate with OPH in this ongoing work to inform public policy development in this area, which may include public and stakeholder consultations as required.

As part of the by-law harmonization work recommended in this report, staff has consulted with Ottawa Public Health (OPH), the Recreation, Culture and Facilities Services Department, the Transportation Department, the Planning, Infrastructure and Economic Development Department, and the City Clerk and Solicitor Department (Legal Services). This report's harmonization approach and recommendations have been particularly informed by past public consultations and ongoing work conducted by OPH as part of their "Let's Clear the Air" program from 2012 to 2018, as described in the Board of Health's March 2019 report.

Given the above and the fact that the by-law amendments recommended in this report seek to harmonize, not expand upon, the smoking provisions already in existence in Ottawa, no further public consultation was conducted for the purpose of this harmonization exercise. However, should the need arise to create new prohibited places of consumption or to expand on existing prohibited places, based on public health information, evidence, or emerging issues, staff expect that public consultation would occur to inform those recommendations in keeping with the City of Ottawa's Public Engagement Strategy.

Current Smoke-Free By-laws

There are currently eight City of Ottawa by-laws enacted between 2001 and 2017 containing smoking prohibitions in numerous public and other places within the City. Each by-law regulates smoking in a slightly different manner and applies to different properties. Some of these by-laws do not explicitly address vaping or cannabis. The eight by-laws are:

- *Public Places By-law* (No. 2001-148, as amended)
- *Workplaces By-law* (No. 2001-149)
- *Parks and Facilities By-law* (No. 2004-276, as amended)
- *Parkdale Market By-law* (No. 2008-448, as amended)
- *ByWard Market Program By-law* (No. 2008-449, as amended)
- *Transit By-law* (No. 2007-268, as amended)
- *Water Pipes in Public Places and Workplaces By-law* (No. 2016-303, as amended)
- *Right of Way Patio By-law* (No. 2017-92, as amended).

Where smoking and vaping prohibited

Together, the SFOA, 2017 and the City's smoke-free by-laws cover numerous public and other areas, making the City of Ottawa smoke-free in many places, as indicated in the list below. While the SFOA, 2017 prohibits both smoking as well as vaping tobacco and cannabis, the City's current smoke-free by-laws do not all explicitly address the smoking and vaping of cannabis and other substances in a consistent manner. This inconsistency is being remediated by the proposed new Smoking and Vaping By-law (Document 1) and related by-law amendments (Documents 2 and 3).

The SFOA, 2017 and City of Ottawa by-laws prohibit smoking and/or vaping in the following places:

- Outdoor municipal property, including parks (sports and playing fields, baseball diamonds, public pools, paths to and from parks), grounds of municipal facilities, and beaches
- In the vendor stands of the ByWard and Parkdale Markets

- Transit property including platforms, stations and buses
- Restaurant and bar patios and within 9 metre radius **
- School and private school buildings and grounds *
- Public areas within 20 metres of any point on the perimeter of a school or private school *
- The outdoor grounds of a community recreational facility and within 20 metres *
- Playgrounds and all public areas within 20 metres of playground *
- A child care centre *
- A place where home child care is provided, whether or not children are present *
- A place where an early years program or service is provided *
- Outdoor grounds of a hospital and within 9 metres of entrance or exit *
- Outdoor grounds of a community health facility and within 9 metres of entrance or exit *
- Outdoor grounds of psychiatric facility and within 9 metres of entrance or exit *
- Within 9 metre radius surrounding any entrance or exit of an independent health facility *
- Within 9 metre radius surrounding any entrance or exit of a long-term care home*
- Outdoor grounds of certain office buildings owned by the Province *
- Sporting areas and public areas within 20 metres of a sporting area *
- Spectator areas adjacent to sporting area and public areas within 20 metres of a spectator area *
- Reserved seating area of sports arena or entertainment venue *
- Enclosed public place, such as bars and businesses where the public is invited **

- Enclosed workplace **
- Indoor common areas including in a condominium, apartment building, university or college residence, elevators, and enclosed parking garages *
- Bus Shelters *
- In a vehicle with someone under the age of 16 *
- Vehicles and boats (cannabis only) *

(Note: * = SFOA, 2017 only, ** = SFOA, 2017 and City by-law(s))

Recommendation – New Consolidated Smoking and Vaping By-law and Related Amendments

Staff is recommending harmonizing the smoke-free provisions in the by-laws to create one single Smoking and Vaping By-law, as set out in Document 1, that will consistently address smoking and vaping of tobacco, cannabis, and any other substance in all the places where smoking is currently prohibited. Having a single legislative instrument containing the City's smoking prohibition will assist in enforcement of the prohibition and provide clarity for the public. The proposed Smoking and Vaping By-law will:

- Use harmonized definitions of smoking and vaping to include tobacco, cannabis, and any other substance
- Include water pipes and electronic cigarettes
- Prohibit smoking and vaping in the places currently addressed in the City's smoke-free by-laws, including the enclosed public places, enclosed workplaces, outdoor municipal properties (including the entirety of parks, sports and playing fields, and beaches), patios, market stands, and transit properties and buses
- Incorporate updated language for the enumerated public places to ensure clarity
- Continue related requirements and prohibitions currently found in the City's smoke-free by-laws, such as requirements for appropriate signage.

The inclusion of “any other substance” in the proposed new by-law and definitions is recommended in order to be consistent with the provisions in the *Water Pipe in Public Places By-law* and the *Parks and Facilities By-law* which both specifically made reference to “any other substance”. Smoking or vaping any substance can be considered a nuisance therefore should be prohibited and will provide ease of enforcement as an Officer could issue a charge without having to verify the substance being smoked or vaped.

In addition to the proposed new Smoking and Vaping By-law, staff recommend that the smoking and vaping prohibitions within the *Transit By-law* and the *Right of Way Patio By-law* continue to exist separately as they each are a complete code for the areas that they cover and encompass more than just smoking or vaping regulations. Although the *Transit By-law* and the *Right of Way Patio By-law* will remain standalone by-laws, the same amendments to the definitions and prohibitions are recommended to be consistent with those in the proposed Smoking and Vaping By-law, as set out in Documents 2 and 3, attached.

If approved, staff will consolidate the smoking provisions from the *Parks and Facilities By-law*, *Public Places By-law*, *Workplaces By-law*, *Water Pipes in Public Places By-law*, *ByWard Market Program By-law*, and the *Parkdale Market By-law* into a new harmonized Smoking and Vaping By-law that specifically addresses smoking and vaping. This approach will allow for ease of reference for the public and would allow the *Public Places By-law*, *Workplaces By-law* and the *Water Pipes in Public Places By-law* to be repealed. The harmonized city-wide regulations to be adopted will reflect the intent of the existing regulations to reduce the risks of second-hand smoke, along with adding new regulations for vaping and cannabis use, in accordance with the legislative authorities noted above in the *Municipal Act, 2001* and the SFOA, 2017.

Offences for non-compliance with the smoking and vaping prohibitions are provided in the proposed amendments.

In-Force Date of Proposed By-law and Amendments

An in-force date of November 1, 2019 has been proposed for the new Smoking and Vaping By-law and related by-law amendments, due to the amount of time required to have set fines for the prohibitions approved by the Ministry of the Attorney General and

Senior Regional Justice. Set fines allow enforcement by way of a ticket (provincial offence notice) that allows the accused the option of settling out of court by paying a set fine, thereby providing an efficient enforcement tool and process. Without set fines, enforcement staff would need to issue a summons that requires the defendant attend court, which is more administratively complicated and time consuming, and therefore less efficient. During the Summer months, it is proposed that the current smoking by-laws continue to apply as is, with appropriate staff enforcing these by-laws as well as the prohibitions of the SFOA, 2017, as required. Information and education regarding applicable prohibitions of the by-laws and the SFOA, 2017 will be provided as appropriate during the Summer months as well.

RURAL IMPLICATIONS

There are no rural implications associated with this report, as the by-law applies city-wide.

CONSULTATION

Public Policy Development staff consulted with By-law and Regulatory Services and Event Central within Emergency and Protective Services as well as Ottawa Public Health, City Clerk and Solicitor Department (Legal Services), Transportation Services, Planning, Infrastructure and Economic Development, Recreation, Cultural & Facility Services, and the Marchés d'Ottawa Markets on the development of the proposed Smoking and Vaping By-law, as well as the amendments to the *Transit By-law* (2007-268, as amended) and *Right Of Way Patio By-law* (2017-92, as amended).

The Ottawa Police Services Board and the Ottawa Public Library Board have also been contacted and advised of the proposed harmonization, and no concerns were noted as the properties of these respective boards will continue to be included in the smoke-free provisions, as is currently the case.

COMMENTS BY THE WARD COUNCILLOR(S)

Not applicable as this is a City-wide report.

ADVISORY COMMITTEE(S) COMMENTS

No advisory committees were consulted in preparation of this report.

LEGAL IMPLICATIONS

There are no legal impediments to implementing the recommendations of this report. Paragraphs 6 and 8 of Subsection 10(2) of the *Municipal Act, 2001* authorize a municipality to pass by-laws respecting the health, safety, and well-being of persons and the protection of persons and property. Section 115 of the *Municipal Act, 2001* further authorize municipalities to prohibit or regulate smoking and vaping tobacco and cannabis in public places and workplaces excluding the highway (roadway and sidewalk), although by-laws enacted under that section may apply to public transportation vehicles and taxicabs on a highway.

Provincial legislation contemplates the possibility of a conflict between provincial legislation and a municipal by-law enacted under the authority of section 115 of the *Municipal Act, 2001*. Section 115(9) of the *Municipal Act, 2001* and section 18 of the *Smoke-Free Ontario Act, 2017* provides that when there is a conflict between provincial law and municipal by-laws with respect to smoking, the provision that is more restrictive prevails. Furthermore, smoking by-laws apply to lands owned or occupied by the Government of Ontario as section 115(2) of the *Municipal Act, 2001* provides that a by-law enacted under the authority of that section binds the Crown.

With respect to potential or actual conflict with federal laws, the harmonized smoking-by-law is a law of general application that would prohibit individuals from smoking in designated public places on lands including lands within the City of Ottawa that are owned or occupied by the Federal Government. However, as with any municipal by-law, there is potential for a provision of the harmonized by-law to be invalidated if it were to conflict with federal legislation. Currently, prohibitions under the *Federal Non-Smokers' Health Act* apply to the smoking of cannabis and tobacco and the use of vaping products in federal work spaces and the prohibitions align with the prohibitions under the harmonized by-law. If a conflict between the harmonized by-law and Federal laws with respect to smoking were to arise in the future, the provision of the municipal by-law may be deemed to not apply.

RISK MANAGEMENT IMPLICATIONS

There are no risk management implications associated with this report.

FINANCIAL IMPLICATIONS

There are no financial implications associated with this report.

ACCESSIBILITY IMPACTS

There are no direct impacts on persons with disabilities or older adults associated with the contents of this report. All information is available in accessible formats.

TERM OF COUNCIL PRIORITIES

The recommendations of this report support the 2014-2018 Term of Council Priority of Healthy and Caring Communities (HC): Help all residents and visitors enjoy a good quality of life and a sense of community well-being by providing healthy, safe, secure, accessible and inclusive places and services.

SUPPORTING DOCUMENTATION *(Held on file with the City Clerk)*

Document 1: proposed Smoking and Vaping By-law

Document 2: proposed amending by-law – Transit By-law

Document 3: proposed amending by-law – ROW Patio By-law

DISPOSITION

Upon approval, Public Policy Development, in conjunction with By-law and Regulatory Services, as well as the Office of the City Clerk and Solicitor, will prepare the required by-law and by-law amendments for enactment by Council.

Staff is recommending an in-force date of November 1, 2019, to ensure that there is enough time to apply for set fines and for those set fines to be approved by the Ministry of the Attorney General and the Senior Regional Justice prior to the by-law being enacted. The proposed in-force date allows for the current smoking provisions in the various by-laws to continue to be enforced during the summer months with their current set fines while waiting for the set fines in the proposed Smoking and Vaping By-law to be approved, making it easier for enforcement officers to regulate smoking under current by-laws along with SFOA, 2017 provisions for vaping and cannabis.