

## MEMO / NOTE DE SERVICE

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TO: Members of the Board of Health for the City of Ottawa Health Unit

DESTINATAIRE : Conseil de santé de la circonscription sanitaire de la ville d'Ottawa

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2 juillet 2015

FILE NUMBER: ACS2015-OPH-HPDP-0003-IPD

**SUBJECT: BILL 45 – TOBACCO CONTROL AND ELECTRONIC CIGARETTES**

**OBJET : PROJET DE LOI 45 – LUTTE CONTRE LE TABAGISME ET CIGARETTES ÉLECTRONIQUES**

### **PURPOSE**

The purpose of this memo is to provide further background information on tobacco control and electronic cigarette provisions of Bill 45, *Making Healthier Choices Act, 2015* ("Bill 45"), that received Royal Assent on May 28, 2015. By way of memo dated November 28, 2014 ([ACS#2014-OPH-HPDP-0001-IPD](#)), a summary of the measures contained in Bill 45 had been distributed. Not discussed in this memo is the *Healthy*

*Menu Choices Act, 2015* that, pursuant to Schedule 1 of Bill 45, will require menu labeling at large chain food service premises when it comes into force on January 1, 2017. The two remaining schedules that will amend the *Smoke-Free Ontario Act* (SFOA) and enact the *Electronic Cigarettes Act, 2015* (ECA) respectively are discussed in turn below. However, neither the SFOA amendments nor the ECA are in force, although the Government of Ontario is expected to begin phasing both in sometime next year.

## **DISCUSSION**

### ***Smoke-Free Ontario Act Amendments***

The amendments to the SFOA include a ban on the sale of flavored tobacco products, including menthol-flavored tobacco products. The amendments also double the maximum fines for those who sell tobacco to youth. The purpose of the amendments, as with the amendments under the SFOA that have been in force since the beginning of this year that prohibit smoking and sale of tobacco in a greater number of places, is to protect the health of Ontarians, in particular youth.

The amendments will also clarify the powers of tobacco enforcement officers that are appointed by the Province under the SFOA. In Ottawa, Ottawa Public Health purchases the services of City of Ottawa By-Law and Regulatory Services in order to fulfil the enforcement requirements of the SFOA, as required of the Board of Health under the Public Health Funding and Accountability Agreement. By-Law and Regulatory Services Officers that undertake this work as tobacco enforcement officers will have the power to enter places that are not dwellings for the purposes of determining whether a regulated or prohibited activity is occurring and have the power to remove anything from the premises that is relevant to the inspection. This new power to seize substances may assist the City of Ottawa in overcoming challenges that it has encountered as described in a Report submitted by the Medical Officer of Health entitled “Enforcement Strategies with Ottawa’s Water-Pipe Smoking Establishments” that was received by the Board of Health for information on June 20, 2011 ([ACS2011-OPH-HPDP-0002](#)). In summary, the challenge has been that tobacco enforcement officers have had to conduct joint inspections with Ministry of Finance Inspectors in order to ascertain whether the products smoked at water-pipe establishments contained tobacco. Only if the substances smoked included tobacco could charges be laid under the SFOA. Although the SFOA will continue to only apply to products that contain tobacco, tobacco enforcement officers will have the ability to independently seize substances used in water-pipes and have them tested for tobacco content.

While the SFOA amendments will come into force on a day to be named by proclamation, comments made by the Associate Health Minister suggest that the amendments may take effect on January 1, 2016, with the exception of the menthol cigarettes ban that would take effect in January 1, 2017.

### ***Electronic Cigarettes Act, 2015***

Electronic cigarettes were previously unregulated for the most part. Use of electronic cigarettes, commonly referred to as “vaping”, frequently involves heating of substances other than nicotine and results in a vapor rather than conventional cigarette smoke. The Province of Ontario has opted to take a precautionary approach by regulating e-cigarettes under separate legislation.

The ECA will only apply to electronic cigarettes, defined under the legislation as inhalant-type devices that contain a power source and a heating element that are designed to heat a substance and produce a vapor intended to be inhaled by the user of the device directly through the mouth. The substance heated is not relevant and the name of the device is not determinative to finding that a device is subject to the legislation. Due to the requirement that an electronic cigarette have a power source, water pipes that use coal as a source of heat would likely not meet the definition of an electronic cigarette. However, some devices including electronic vaporizers that heat plant matter including marihuana, will meet the definition of electronic cigarette. What is or is not an electronic cigarette will become clearer upon inspection of the device and after future legal precedents are set.

The sale and supply of e-cigarettes to anyone under the age of 19 will be banned under the ECA. Use of e-cigarettes in enclosed public places, workplaces, and vehicles with another person who is less than sixteen years old will be prohibited, similar to how tobacco products are regulated under the SFOA. It remains to be seen whether the Province will, as with the SFOA, by regulation prohibit use of electronic cigarettes in unenclosed public places such as unenclosed restaurant patios. There will also be a ban on the sale of e-cigarettes in certain places including hospitals and any place that may be prescribed in the regulations. There will be a prohibition on the display and promotion of e-cigarettes in places where e-cigarettes or tobacco products are sold or offered for sale. The enforcement provisions mirror the amendments under the SFOA, and it is anticipated that some municipal enforcement officers will be appointed as inspectors under the ECA.

Comments made by a Government Member during debates before the Legislative Assembly of Ontario suggest that the implementation of the ECA could be in two phases: the first phase focused on age-based sales restrictions on e-cigarettes that would come into force as early as January 1, 2016; and a second phase will focus on the other provisions including display/promotion and usage restrictions that come into force as early as January 1, 2017.

## **CONCLUSION**

Ottawa Public Health supports the measures to further protect youth from the dangers of tobacco use and the potential harms of electronic cigarettes. As the legislation has received Royal Assent, OPH will consult with City staff including tobacco enforcement officers and legal services in anticipation that the Government of Ontario will in the near future proclaim the dates that the various provisions will come into force.

### ***'Original signed by'***

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