

**Report to  
Rapport au:**

**Ottawa Board of Health  
Conseil de santé d'Ottawa  
20 June 2016 / 20 juin 2016**

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**Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE      File Number: ACS2016-OPH-HPDP-0005**

**SUBJECT: PROHIBITING THE USE OF WATERPIPES IN PUBLIC PLACES AND WORKPLACES**

**OBJET: INTERDICTION D'UTILISATION DES PIPES A EAU DANS LES LIEUX PUBLICS ET LES LIEUX DE TRAVAIL**

#### **REPORT RECOMMENDATIONS**

- 1. That the Board of Health for the City of Ottawa Health Unit recommend that the Community and Protective Services Committee recommend that Council approve:
  - a) The Water Pipes in Public Places and Workplaces By-law that prohibits the use of water pipes in enclosed public places, enclosed workplaces, and****

outdoor patios, as described in this report and in the draft by-law attached as Document 2, to take effect December 1, 2016;

- b) Amendments to Encroachment By-law (2003-446, as amended), or any successor by-law respecting patios, that prohibit the use of water pipes in café seating and outdoor patio encroachments areas, as described in this report and in the draft by-law attached as Document 3, to take effect December 1, 2016;
- c) Amendments to the Parkdale Market By-law (2008-448, as amended) and the ByWard Market Program By-law (2008-449, as amended) that prohibit the use water pipes in stands, as described in this report and in the draft by-law attached as Document 4, to take effect December 1, 2016; and
- d) That the City Clerk and Solicitor finalize and make necessary adjustments to the draft by-laws referenced in Recommendations 1(a) to (c) inclusive, to give effect to the intent of Council.

## **RECOMMANDATIONS DU RAPPORT**

1. Que le Conseil de santé de la circonscription sanitaire de la Ville d'Ottawa recommande que le Comité des services communautaires et de protection recommande que le Conseil approuve :
  - a) que le Règlement sur les pipes à eau dans les lieux publics et les lieux de travail qui interdit l'utilisation de pipes à eau dans les lieux publics fermés, les lieux de travail fermés et les terrasses extérieures, comme décrit dans le présent rapport et dans le règlement provisoire ci-joint en tant que Document 2, entre en vigueur le 1<sup>er</sup> décembre 2016;
  - b) que les modifications au Règlement sur les empiètements (2003-446, modifié) ou tout règlement qui le remplace, qui interdit l'utilisation de pipes à eau sur les petites terrasses de café et les zones d'empiètement de terrasse, comme décrit dans le présent rapport et dans le règlement provisoire ci-joint en tant que Document 3, entrent en vigueur le 1<sup>er</sup> décembre 2016;
  - c) que les modifications au Règlement sur le marché Parkdale (2008-448, modifié) et au Règlement du programme du marché By (2008-449, modifié) qui interdisent l'utilisation de pipes à eau dans les kiosques, comme décrit

**dans le présent rapport et dans le règlement provisoire ci-joint en tant que Document 4, entrent en vigueur le 1<sup>er</sup> décembre 2016 ; et**

- d) que le greffier municipal et chef du contentieux finalise et modifie au besoin les règlements provisoires mentionnés dans les recommandations 1a) à 1c) inclusivement, afin de respecter l'intention du Conseil.**

## **EXECUTIVE SUMMARY**

Further to the Board of Health's December 7, 2015 approval of Council's request that staff review and consult with relevant stakeholders on the potential to expand City of Ottawa by-laws to regulate the use of electronic cigarettes and smoking of non-tobacco combustible substances in public places and work places, this report includes a recommendation that the City of Ottawa adopt a new by-law and amending by-laws that prohibit the use of water pipes in the same public places, workplaces, and outdoor patios where smoking of tobacco is prohibited under existing City by-laws.

There is growing evidence of the harmful health effects of herbal water pipe smoking and on second-hand smoke exposure to workers and to the general public. All water pipe smoke contains many of the same toxicants that are known to cause cancer, heart and lung disease<sup>[i]</sup>. Furthermore, there is an increase among youth that have tried a water pipe. Ottawa data collected in 2014 shows that nearly 50% of those aged 18 to 24 reporting that they have tried a water-pipe<sup>[iii]</sup>.

The proposed new by-law and amendments to current by-laws aim to protect Ottawa residents, including children, from second-hand smoke exposure; prevent youth initiation of smoking water pipes and de-normalize smoking behaviors among youth and young adults.

At its meeting on April 18, 2016, the Board of Health for the City of Ottawa Health Unit approved recommendations included in Ottawa Public Health's report "[Let's Clear the Air 2.0: 2016 Action Plan](#)". This Action Plan aims to protect people from second-hand smoke exposure, to prevent youth initiation and to de-normalize smoking behaviors among youth and young adults through three main focus areas: Community Action, Prevention and Protection

In addition to approving the above-noted Action Plan, the Board of Health directed Ottawa Public Health (OPH) staff to report back in June on options for enacting a municipal by-law to address herbal water pipe use, should provincial legislative changes not be enacted to this affect. Through contacting staff at the Ministry of Health and Long

Term Care and monitoring *Bill 178, Smoke-Free Ontario Amendment Act (Bill 178)* and regulatory activity, OPH staff were able to confirm that there are no indications that the Province would prohibit the smoking of herbal shisha (water pipe) in public places and workplaces.

Throughout the month of January 2016, OPH provided several opportunities for residents, business owners and community groups to give their input into potential municipal regulation pertaining to the use of non-tobacco combustible substances and electronic cigarettes in workplaces and public places. Consultations and public opinion research revealed that Ottawa residents strongly support creating more smoke-free spaces.

Letters were sent to 17 known water pipe establishments inviting them to participate in the consultation by way of an in-person meeting, on-line survey or telephone survey. Follow-up phone calls were also made to these businesses advising them of potential regulations and to invite them to attend an in-person consultation session. Five operators of water pipe establishments participated in the in-person consultation session on January 21, 2016.

Should Council approve the water-pipe regulation recommendations, a phased-in approach to enforcement would be undertaken along with a public awareness campaign designed to support public understanding of the new water pipe regulations. The phased-in enforcement of the proposed regulatory amendments would be as follows:

- I. The ***education phase*** would begin upon Council's approval of the new water-pipe regulations recommended in this report.
- II. The ***warning phase*** would commence December 1, 2016, the date the regulations take effect, and continue for four months.
- III. The ***charging phase*** would commence April 1, 2017.

### **Financial Implications**

There are no direct financial implications associated with this report.

### **Public Consultation / Input**

OPH provided several opportunities for residents, business owners and community groups to give their input into potential municipal regulation pertaining to the use of non-tobacco combustible substances and electronic cigarettes in workplaces and public places. Letters were sent to affected businesses and community organizations inviting

them to participate in the consultation by way of an in-person meeting, on-line survey or telephone survey. Businesses offering the use of water pipes were also contacted by telephone to advise them of possible regulations and to invite them to attend an in-person consultation session. Public consultations were promoted through public service announcements, earned media, social media (Facebook and Twitter), and OPH's website.

Public consultation was conducted from January 7 to January 24, 2016, with over 1,300 people participating via an online survey and an additional 400 residents participating through a random telephone survey.

## **Résumé**

Pour faire suite à l'approbation initiale par le Conseil de santé, le 7 décembre 2015, de la demande du Conseil municipal visant à ce que le personnel consulte les intervenants concernés en vue d'évaluer la possibilité d'élargir les règlements municipaux de façon à réglementer l'usage de la cigarette électronique et des substances combustibles sans tabac dans les lieux publics et les lieux de travail, ce rapport recommande que le Conseil municipal adopte un règlement qui interdit l'utilisation de pipes à eau dans les lieux publics, les lieux de travail et les terrasses extérieures où il est actuellement interdit de fumer du tabac en vertu des règlements municipaux.

On retrouve de plus en plus de données sur les effets nocifs de l'usage de la pipe à eau à base d'herbes et de l'exposition des travailleurs et du public à la fumée secondaire. La fumée de toutes les pipes à eau contient des substances toxiques dont on sait qu'elles causent le cancer et des maladies cardiaques et pulmonaires.<sup>[i]</sup> En outre, le nombre de jeunes qui ont essayé la pipe à eau a augmenté. Des données recueillies en 2014 à Ottawa révèlent que près de 50 % des jeunes de 18 à 24 ans ont indiqué avoir essayé la pipe à eau<sup>[ii]</sup>.

La mise en application d'un règlement interdisant l'utilisation de pipes à eau dans les lieux publics et les lieux de travail fermés et les terrasses des restaurants et des bars procure de nombreux avantages pour la santé publique, notamment, la protection des gens, y compris les enfants, contre l'exposition à la fumée secondaire, la prévention de l'initiation des jeunes, la promotion de la non-utilisation du tabac chez les jeunes et les jeunes adultes et l'amélioration des résultats sur la santé.

Lors de sa réunion du 18 avril 2016, le Conseil de santé de la circonscription sanitaire de la Ville d'Ottawa a approuvé les recommandations du rapport de Santé publique d'Ottawa, intitulé « [Purifions l'air 2.0 : Plan d'action 2016](#) ». Le plan d'action vise à

protéger les gens contre l'exposition à la fumée secondaire, à prévenir l'initiation des jeunes et à promouvoir la non-utilisation du tabac chez les jeunes et les jeunes adultes. Il mise sur trois priorités : l'action communautaire ; la prévention et la protection.

En plus des recommandations approuvées dans le rapport Purifions l'air 2.0, le Conseil de santé a demandé au personnel de Santé publique Ottawa (SPO) de présenter un rapport en juin sur un règlement municipal traitant de l'usage des pipes à eau à base d'herbes, s'il y avait des lacunes dans les règlements sans fumée provinciaux. SPO a communiqué avec le ministre de la Santé et des Soins de longue durée qui a indiqué que la chicha (pipe à eau) à base d'herbes ne serait pas comprise dans le projet de loi 178, *Loi de 2016 modifiant la Loi favorisant un Ontario sans fumée*.

Tout au long du mois de janvier 2016, SPO a créé de nombreuses occasions pour permettre aux résidents, aux propriétaires d'entreprises et aux groupes communautaires d'exprimer leur opinion sur la possibilité de réglementer l'usage des substances combustibles sans tabac et des cigarettes électroniques dans les lieux publics et les lieux de travail. Les consultations et les sondages d'opinion publique ont révélé que les résidents d'Ottawa appuient fortement la création d'autres espaces sans fumée.

Des lettres ont été envoyées à 17 établissements de narguilés connus, les invitant à participer à la consultation par le biais d'une rencontre en personne ou d'un sondage en ligne ou par téléphone. On a également téléphoné à ces entreprises pour faire un suivi, les informer des règlements possibles et les inviter à participer, en personne, à une séance de consultation. Cinq établissements de narguilés ont participé à la séance de consultation en personne le 21 janvier 2016.

Si le Conseil approuvait les recommandations concernant la réglementation sur les pipes à eau, il faudrait adopter une approche d'application progressive et mener une campagne de sensibilisation pour faire comprendre aux citoyens la nouvelle réglementation. L'application progressive des modifications proposées au règlement se ferait comme suit :

- I. La **phase de sensibilisation** débiterait dès que le Conseil aurait approuvé la nouvelle réglementation sur les pipes à eau recommandée dans le présent rapport.
- II. La **phase d'avertissement** commencerait le 1<sup>er</sup> décembre 2016, date d'entrée en vigueur du règlement, et durerait quatre mois.

III. La **phase de mises en accusation** débuterait le 1<sup>er</sup> avril 2017.

### Répercussions financières

Aucune répercussion financière n'est associée directement à ce rapport.

### Consultation publique et commentaires

SPO a créé de nombreuses occasions pour permettre aux résidents, aux propriétaires d'entreprises et aux groupes communautaires d'exprimer leur opinion sur la possibilité de réglementer l'usage des substances combustibles sans tabac et des cigarettes électroniques dans les lieux publics et les lieux de travail. Des lettres ont été envoyées aux entreprises et organisations communautaires concernées, les invitant à participer à la consultation par le biais d'une rencontre en personne ou d'un sondage en ligne ou par téléphone. On a également contacté par téléphone les entreprises offrant l'utilisation de pipes à eau pour les informer des règlements possibles et les inviter à participer, en personne, à une séance de consultation. Les consultations publiques ont été annoncées par l'entremise de messages d'intérêt public, de publicité gratuite, des médias sociaux (Facebook et Twitter) et du site Web de SPO.

Une consultation publique a eu lieu du 7 au 24 janvier 2016. Plus de 1300 personnes y ont participé par le biais d'un sondage en ligne, et 400 autres résidents ont participé dans le cadre d'un sondage téléphonique aléatoire.

### BACKGROUND

At its meeting on April 18, 2016, the Board of Health for the City of Ottawa Health Unit approved recommendations included in Ottawa Public Health's (OPH) report "[Let's Clear the Air 2.0: 2016 Action Plan](#)". This Action Plan aims to protect people from second-hand smoke exposure, to prevent youth initiation and to de-normalize smoking behaviors among youth and young adults through three main focus areas:

- **Community Action:** Contributing to the provincial government's consultation on its proposed *Electronic Cigarettes Act* and *Smoke-Free Ontario Act* amendments, and advocating to the federal government to address current gaps including stronger regulations for e-cigarettes and shisha (water pipe) product.
- **Prevention:** Implementing tailored awareness activities for youth to increase knowledge of the health risks associated with water pipe use, cannabis and e-cigarettes and promoting the *Electronic Cigarettes Act* requirements to retailers.

- **Protection:** OPH and By-law & Regulatory Services enforce municipal and provincial smoke-free legislation and the new *Electronic Cigarette Act* sales to minors' provision by conducting youth access inspections for e-cigarette vendors.

In addition to the approved recommendations in the Let's Clear the Air 2.0 report, the Board of Health directed Ottawa Public Health staff to:

- a) Request clarification from the Province, ahead of the Board of Health's June meeting, on the intentions of the amendments;
- b) Continue to monitor the progress of *Bill 178, Smoke-Free Ontario Amendment Act, 2016*, including any proposed regulations that prohibit the smoking of non-tobacco substances and products; and
- c) Should legislative changes not be enacted or in the event that these do not address all the concerns raised by the Board of Health and Ottawa City Council, that staff report back in June 2016, on options for enacting a municipal by-law to address this gap in smoke-free regulations to address hookah and shisha unless clear indications are provided by the Province on that matter.

Pursuant to the recommendations outlined in the Let's Clear the Air 2.0 report, the Chair of the Board of Health submitted comments to the Minister of Health and Long Term Care on the regulatory changes proposed in its Consultation Paper entitled "Strengthening Ontario's Smoking and Vaping Laws" and requested that these changes be put in force at the earliest opportunity. These submissions also included the Board of Health recommendation that the *Smoke Free Ontario Act (SFOA)* be further amended to include the smoking of all combustible products such that all non-tobacco substances, including shisha (water-pipe) product, be prohibited in public places and workplaces.

Subsequent to submitting the aforementioned comments to the Minister of Health and Long-Term Care, OPH contacted staff at the Ministry of Health and Long Term Care who confirmed that the government did not currently have plans to regulate non-tobacco herbal shisha and understands that not all shisha contains tobacco. On June 9, 2016 Bill 178 passed third reading and received Royal Assent. There were no amendments to Bill 178 and at the time of writing of this report the Bill 178 amendments have not come into force and regulations prescribing non-tobacco substances and products have not been filed. As the Province has only indicated that the smoking of medical marijuana



will be prescribed, OPH staff proceeded to consult further with Emergency and Protective Services and Legal Services staff with respect to by-law options.

## **DISCUSSION**

A water pipe (also known as a hookah, shisha and narghile) is a device that is used to smoke tobacco or non-tobacco (herbal) products, often referred to as shisha. Hot charcoal is placed on top of a foil sheet or metal screen, which causes the shisha in the bowl to be heated and produce smoke. By sucking on an attached hose, the smoke is drawn down through the stem and is passed through a water basin—often made of glass—before inhalation. Currently, only the smoking of shisha that contains tobacco is prohibited in certain public places and workplaces under the SFOA. As part of the aforementioned April Board of Health report, staff advised the Board on the health concerns associated with water pipe use, including the health risks to users and those exposed to second hand smoke, regardless of the substance smoked.

### **Enforcement Complexities: Tobacco Shisha and Herbal Shisha**

Tobacco shisha smoking is currently prohibited under the SFOA. Some owners of water pipe establishments claim the product that is being smoked indoors is herbal and does not contain tobacco. There have been ongoing challenges for Tobacco Enforcement Officers (TEOs) to differentiate between herbal product and tobacco product. These challenges were first identified 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). These issues were subsequently discussed in the Report entitled “Expanding Smoke-Free Spaces- Let’s Clear the Air: A Renewed Strategy for a Smoke-Free Ottawa” that was considered by Council on February 22, 2012 (ACS2012-COS-EPS-0012). In short, TEOs were required to conduct joint inspections with Ministry of Finance Inspectors to ascertain whether the products smoked at water pipe establishments did or did not contain tobacco in order to determine whether charges under the SFOA could be laid.

From 2010 to 2013, joint enforcement inspections were conducted with Ottawa’s TEO’s and Tax Inspectors from Ministry of Finance. A total of sixty-four inspections were conducted at water pipe establishments during that period. The product that was seized during these inspections was submitted to the Canadian Border Services Agency by the Ministry of Finance on behalf of OPH in order for the product to be tested to determine if it contained tobacco. Fifty Provincial Offence Notices were issued for violations such as: selling improperly packaged tobacco; smoking tobacco in an enclosed public place;

failure to post no-smoking signs; and allowing a person smoking or holding lighted tobacco to remain. In 2013, the joint inspections with the Ministry of Finance's Tax Inspectors were discontinued due to product testing limitations.

### **Provincial Legislation**

On November 24, 2014, the Ontario government introduced Bill 45, *Making Healthier Choices Act, 2015*. One of the changes outlined in that legislation was to amend the SFOA by strengthening enforcement practices to allow for TEOs to seize and test substances used to smoke, including water pipes. Although those changes have since come into force, at the time of writing this report, the Ministry of Health and Long Term Care was working to finalize details that would allow TEOs to seize and test samples of shisha for tobacco content, which helps them assess compliance with the provisions of the SFOA.

In addition, in March of 2016, the Province tabled Bill 178 that would amend the SFOA to prohibit the smoking of any substance or product prescribed by regulation. On June 9, 2016 Bill 178 passed third reading and received Royal Assent. To date, the Province has only formally proposed that medical marijuana be prescribed under the regulations.

In summary, despite the aforementioned legislative changes, at the time of writing this report, TEOs have been unable to proceed to test shisha for tobacco content, and the use of herbal shisha in places other than outdoor City property is not prohibited, either under provincial laws or City by-laws.

### **Harmful Health Effects of Herbal Shisha**

There is growing evidence of the harmful health effects of herbal shisha (water-pipe) use and on second-hand smoke exposure to workers and to the general public. All water pipe smoke contains many of the same toxicants that are known to cause cancer, heart and lung disease<sup>1</sup>. Studies have shown that the air quality in water pipe cafés is unhealthy and potentially hazardous<sup>2</sup>. It has been estimated that a daily one hour water pipe session is comparable to smoking 10 cigarettes<sup>3</sup>.

Research has shown an increase of those who have ever used a water-pipe tripled from 3% in 2006 to 10% in 2012 among those aged 18 and up in Ontario<sup>4</sup>. Further, studies have shown that the air quality in water pipe cafés is unhealthy and potentially hazardous due to increased pollutant levels, including carbon monoxide (CO), particulate matter (PM2.5) and polycyclic aromatic hydrocarbons (PAHs)<sup>5, 6</sup>.

## **Concerning Trends for Youth and Young Adults**

According to the results of the 2012/2013 Youth Smoking Survey, 11% of those in grades 7 to 12 have tried a water pipe compared to 6% in 2010/2011<sup>7</sup>. Ottawa data collected in 2014 shows that nearly 50% of those aged 18 to 24 reported that they have tried a water pipe<sup>8</sup>. There is a misperception among 18 to 24 year olds that smoking tobacco water pipe is safer than smoking cigarettes and that second hand smoke from a water pipe is less harmful than cigarette second-hand smoke. Approximately 1 in 5 Ottawa residents felt that herbal shisha was less harmful than tobacco shisha<sup>9</sup>.

## **Consultation Results**

Throughout the month of January 2016, OPH provided several opportunities for residents, business owners, community health groups and social service organizations to give their input into potential municipal regulation pertaining to the use of non-tobacco combustible substances and electronic cigarettes in workplaces and public places. Letters were sent to affected businesses and community organizations inviting them to participate in the consultation by way of an in-person meeting, on-line survey or telephone survey. Businesses offering the use of water pipes were also contacted by telephone to advise them of possible regulations and to invite them to attend an in-person consultation session. Public consultations were promoted through public service announcements, earned media, social media (Facebook and Twitter), and OPH's website.

Over the course of the consultation period, which ran from January 7 to January 24, 2016, more than 1,700 responses were received from the general public, business owners and community partners, 1,300 of which were submitted through the on-line channel.

Consultations and public opinion research revealed that Ottawa residents strongly support creating more smoke-free spaces. A random public telephone survey involving 402 residents indicated that 84% of respondents support regulations that prohibit the smoking of non-tobacco combustible substances that create second hand smoke in workplaces and public places. The on-line public survey results indicated support at 67%.

Of the 17 known establishments offering water pipe use, which were invited to participate, five business owners attended the water pipe owner consultation on January 21<sup>st</sup>. Overall comments from owners/operators of businesses that permit water pipe use indicated they would prefer strict regulation and licensing rather than a

prohibition or ban of smoking of non-tobacco combustible substances in their establishments. The water pipe establishment owners who attended the consultation session indicated that a ban or prohibition would be very difficult from a business perspective as for some of the owners this is their sole business purpose. Additional effort was made to contact business owners who did not attend the consultation; however, no responses have been received from those business owners to date.

### **Environmental Scan**

There are seven municipalities in Ontario that have prohibited water pipe use in enclosed public spaces and workplaces: Barrie, Bradford West Gwillimbury, Orillia, Peterborough, Toronto, Region of Peel and the Township of Russell. The City of Toronto prohibition of water pipes is limited to places that are licensed by the municipality, including restaurants. The City of Ottawa currently prohibits the use of water pipes and non-tobacco products on outdoor municipal property. In addition, the City of Vancouver prohibits the smoking of all shisha (water pipe) products in enclosed spaces. Nova Scotia, Prince Edward Island, New Brunswick and Quebec have also enacted provincial legislation that prohibits the use of water pipes in the same places as tobacco use is prohibited. And finally, several countries have banned indoor water pipe smoking, including Lebanon, Turkey and parts of Saudi Arabia and India, where water pipe smoking has been considered a cultural activity.

### **Benefits of Smoke-Free Legislation and Public Health Value of Regulations Prohibiting Water Pipe Use**

According to the World Health Organization, implementation of 100% smoke-free environments is the only effective way to protect the population from the harmful effects of second-hand smoke<sup>10</sup>. Numerous studies have shown that smoke-free legislation reduces smoking rates, youth initiation rates and increases quit attempts<sup>111213141516</sup>. Since the implementation of the 2012 Let's Clear the Air Strategy, Ottawa's smoking rate has decreased to 9% after a decade of remaining stable at 15%<sup>17</sup>. The majority (81%) of Ottawa students reported they have never smoked in their lifetime<sup>18</sup>. In 2014, just over half of Ottawa residents who smoked indicated they were thinking about quitting and nearly two thirds reduced the amount they smoke because of the smoke-free regulations enacted in 2012<sup>19</sup>. Smoking bans have also been associated with improved health outcomes, such as reductions in respiratory illness and acute coronary events<sup>202122232425</sup>. Further, smoke-free legislation does not appear to have negative impact on the use of spaces covered by the bans and has resulted in a high degree of support and compliance from both smokers and non-smokers<sup>2627</sup>. Lastly, studies show

that smoking bans have no adverse economic impact on the restaurant, bar and pub industry<sup>282930</sup>.

The public health value of a by-law that prohibits use of water pipes in enclosed public places and workplaces includes:

- Protecting people, including vulnerable populations such as children, from second-hand smoke exposure;
- Reducing tobacco use;
- Reducing youth initiation;
- Reducing social smoking among young adults;
- Increasing quit attempts and supporting people to remain smoke-free;
- Improving health outcomes such as reducing heart attacks, respiratory illness and cancer<sup>313233343536</sup>.

### **Review of Policy Options with City Departments**

OPH, Legal Services and Emergency and Protective Services staff reviewed the regulatory options to expand by-laws to regulate the use of water pipes in public place and workplaces.

There remains a gap in the regulatory framework, as herbal shisha continues to not be prohibited under the SFOA. While Council partially closed the regulatory gap in 2012 through adopting amendments to the City's *Parks and Facilities By-law* to prohibit the use of non-tobacco products, including water pipes, on outdoor municipal property including City parks, such activity continues to be permitted on other properties, such as enclosed public places and workplaces.

City Council has the authority to enact and amend the above-noted by-laws to prohibit the use of water pipes by virtue of paragraph 6 of subsection 10(2) of the *Municipal Act, 2001* that allows a municipality to pass by-laws respecting health, safety and well-being of persons; and to pass by-laws prohibiting and regulating the smoking of tobacco in public places and work places within the municipality pursuant to Section 115 of the *Municipal Act, 2001*, S.O. 2001, c.25.

Based on a review of the City's legal authority, as well as an assessment of enforcement capacity, OPH, Legal Services, and Emergency and Protective Services

staff are recommending the enactment of the Water pipes in Public Places and Workplaces By-law in respect of use of water pipes in enclosed public places, enclosed workplaces, and outdoor patios (Document 2), as well as amendments to the Encroachment By-law in respect of use of water pipes in café seating and outdoor patio encroachment areas (Document 3) and to the Parkdale Market and ByWard Market Program By-laws in respect of use water pipes in stands (Document 4).

As of January 2016 there are 15 known water pipe establishments in Ottawa. Thirteen of these establishments are licensed food premises. The two establishments that are not food premises may be negatively impacted by the proposed prohibition on the use water pipes.

**Recommended Municipal Regulations:**

The new by-law and by-law amendments, once they are enacted and come into force, will prohibit the use of water pipes in:

- Enclosed public places;
- Enclosed workplaces;
- Outdoor patios; and
- Stands in the ByWard Market and the Parkdale Market

In addition to making it an offence for anyone to use a water pipe in the above places, the by-laws also makes it an offence for a person in charge of one of the places listed above to allow any person to use a water pipe in the area or set up a water pipe for use by adding charcoal, adding smoking product, or having the water basin of the water pipe filled with liquid.

The proposed new by-law applies to any enclosed public places and workplaces, including public transportation vehicles, taxicabs and other vehicles-for-hire. Although the majority of such enclosed public places and workplaces may be hookah lounges, staff wanted to ensure there were no regulatory gaps and that use of hookahs is prohibited in the same public places and workplaces where smoking of tobacco is prohibited under City by-laws.

Similarly, the aforementioned amendments to the Encroachment By-law and the two Markets By-laws are recommended to ensure that use of hookahs is prohibited in the same places that the smoking of tobacco is prohibited, such as in encroachment areas (e.g. café seating) and Markets stands. The recommended approach is intended to

align City by-laws with those in comparator municipalities in Ontario and to be compatible with provincial legislation.

The proposed new by-law and by-law amendments define “water pipe” as a device and exclude from that definition any electronic cigarette, as defined under the *Electronic Cigarettes Act, 2015* (ECA). The rationale for this approach is that use of electronic cigarettes is regulated under the ECA, separate and apart from smoking, which is regulated under the SFOA, although at the time of writing this report, the Province had delayed the coming into force date of provisions of the ECA and its regulations that prohibit the use of electronic cigarettes in the same places where smoking is prohibited under the SFOA. Smoking of tobacco or non-tobacco substances using a water pipe may be distinguished from electronic cigarette use as water pipes use charcoal to heat or burn shisha, whereas electronic cigarettes are required under the ECA to have a power source such as a battery.

If Council adopts the recommendations of this report, current City policies, Transit By-law provisions related to smoking, and the by-law provisions under the City Parks and Facilities By-law that prohibit the smoking of any substance on outdoor City property will remain in force. The City adopted those policies and by-law prohibitions under the more expansive authority the City exercises as property owner or lease-holder. As such, smoking of any substance or device, including water pipes, and use of electronic cigarettes will continue to be prohibited in City parks. In respect of transit property, the smoking of any substance or use of electronic cigarettes continues to be prohibited under the Transit By-law, in the context of interference with the comfort and convenience of other persons.

### **Phase-in Period of the New Regulations**

The implementation plan for the proposed regulatory amendments, if approved, consists of three phases:

- I. The ***education phase*** would begin upon Council approval of the new water pipe regulations recommended in this report. This would be accompanied by a public awareness campaign, which is described below.
- II. The ***warning phase*** would commence December 1, 2016, the date the regulations take effect, and continue for four months. OPH staff and by-law enforcement staff would conduct joint educational visits to known water pipe establishments to ensure they are aware of the new regulations.

- III. The **charging phase** would commence April 1, 2017. When this phase begins, by-law enforcement staff would issue Provincial Offence Notice tickets that carry penalties. Courtesy warnings would no longer be issued, unless there is insufficient evidence to issue a charge. Following the enactment of the new by-law and by-law amendments, an application will be made to the Chief Justice of Ontario for short form wordings to be used on the Provincial Offence Notice, as well as amount of the fine to be charged.

Should Council approve the recommendations, a public awareness campaign will be designed and implemented to support public understanding of the new regulations. This will include a multi-pronged strategy aimed at the owners of the water pipe establishments and other affected parties, including groups that are known to use water pipes such as young adults and multi-cultural groups. The campaign will focus on ensuring clarity and awareness of the regulations, and will be promoted through a variety of media channels including earned media, paid advertising, signage, the web, social media and information campaigns aimed to support owners and employees of affected restaurants and bars.

### **RURAL IMPLICATIONS**

There are no rural implications associated with this report.

### **CONSULTATION**

OPH consulted with over 1,700 people, including residents and business owners, as well as community health groups and social service organizations

### **LEGAL IMPLICATIONS**

There are no legal impediments to the implementation of the recommendations in this report.

While there is a possibility that there may be a legal challenge to the by-laws, either directly or in the course of a prosecution under the by-law, there appears to be sufficient regulatory authority for the enactment of such a by-law. A challenge was commenced in March 2016 against a similar By-law enacted by the City of Toronto, which came into effect on April 1, 2016. The challenge in Toronto is based on various grounds, including that the By-law unlawfully restrains trade, is discriminatory and violates the operators' rights under the *Canadian Charter of Rights and Freedoms*. As of the date of this report the challenge is still before the courts.



Finally, it is noted that in the case *Vancouver (City) v. Abdiannia, 2015 BCSC 1058*, a Judge of the Supreme Court of British Columbia dismissed an appeal brought by two hookah establishment operators who were convicted in 2014 for violating the Vancouver Health By-law. The Judge held that the By-law did not violate the rights of the operators under the *Canadian Charter of Rights and Freedoms*, including under Section 2(a) (freedom of conscience and religion), Section 8 (life, liberty and security of the person), and Section 15(1) (equal protection and benefit of the law without discrimination).

### **RISK MANAGEMENT IMPLICATIONS**

There are no risk management implications associated with this report.

### **FINANCIAL IMPLICATIONS**

There are no financial implications to the report recommendations. Funds are available in the 2016 budget for the public awareness campaign following Council approval.

### **ACCESSIBILITY IMPACTS**

There are no accessibility implications associated with this report.

### **SUPPORTING DOCUMENTATION**

Document 1 – Overview of Let's Clear the Air 2.0 Consultation Results

Document 2 – Draft Waterpipes in Public Places and Workplaces By-law

Document 3 – Draft Amendments to Encroachment By-law (2003-446, as amended)

Document 4 - Draft Amendments to the Parkdale Market By-law (2008-448, as amended) and the ByWard Market Program By-law (2008-449, as amended)

### **DISPOSITION**

Following approval by the Ottawa Board of Health, this report will be forwarded to Community and Protective Services Committee for its consideration via a transmittal report.

Ottawa Public Health, in conjunction with any other relevant Departments, will implement Council directions emanating from this report, as appropriate.

Upon City Council approval, staff of the City Clerk and Solicitor Department and Emergency and Protective Services will prepare the necessary by-laws for enactment.

Staff will also apply to the Province of Ontario for the required set fines regarding new or amended offences, as required, as per the process set out by the Ministry of the Attorney General.

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- <sup>[i]</sup> Shihadeh A et al. Toxicant content, physical properties and biological activity of water-pipe tobacco smoke and its tobacco-free alternatives. *Tobacco Control*, 2015
- <sup>[ii]</sup> Rapid Risk Factor Surveillance Survey, 2014
- <sup>[i]</sup> Shihadeh A et al. Toxicant content, physical properties and biological activity of water-pipe tobacco smoke and its tobacco-free alternatives. *Tobacco Control*, 2015
- <sup>[ii]</sup> Rapid Risk Factor Surveillance Survey, 2014
- <sup>1</sup> Shihadeh A et al. Toxicant content, physical properties and biological activity of water-pipe tobacco smoke and its tobacco-free alternatives. *Tobacco Control*, 2015
- <sup>2</sup> Kumar SR et al. A review of air quality, biological indicators and health effects of second-hand waterpipe smoke exposure. *Tobacco Control*, 2015
- <sup>3</sup> OTRU Update: Water-pipe smoking: A growing health concern. Ontario Tobacco Research Unit. 2011.
- <sup>4</sup> Canadian Tobacco Use Monitoring Survey (2006, 2011, 2012)
- <sup>5</sup> Kumar SR et al. A review of air quality, biological indicators and health effects of second-hand waterpipe smoke exposure. *Tobacco Control*, 2015
- <sup>6</sup> Zhang B et al. 'Enter at your own risk': a multimethod study of air quality and biological measures in Canadian waterpipe cafes. *Tobacco Control*, 2015
- <sup>7</sup> Youth Smoking Survey, 2010/2011, 2012/2013. Ontario Tobacco Research Unit. Tobacco Informatics Monitoring System (TIMS)
- <sup>8</sup> Rapid Risk Factor Surveillance Survey, 2014
- <sup>9</sup> Ibid
- <sup>10</sup> World Health Organization: 2009. *The Trend Toward Smoke-free Outdoor Areas*. Framework Convention on Tobacco Control Article.
- <sup>11</sup> Fichtenberg CM, Glantz SA. 2002. *Effect of smoke-free workplaces on smoking behaviour: Systematic review*. *Br Med Journal*.
- <sup>12</sup> Pierce JP, Leon M. 2008. *Effectiveness of smoke-free policies*. *Lancet Oncology*.
- <sup>13</sup> Wakefield MA, Chaloupka FJ, Kaufman NJ, Orleans CT, Barker DC, Ruel EE. 2000. *Effect of restrictions on smoking at home, at school, and in public places on teenage smoking: Cross sectional study*. *Br Med Journal*
- <sup>14</sup> Hopkins DP, Briss BA, Ricard CJ, Husten CG, Carande-Kulis VG, Fielding JE et al. 2001. *Reviews of evidence regarding interventions to reduce tobacco use and exposure to environmental tobacco smoke*. *Am J Prev Med*
- <sup>15</sup> Callinan JE, Clarke A, Doherty K, Kelleher C. 2010. *Legislative smoking bans for reducing secondhand smoke exposure, smoking prevalence and tobacco consumption*. *Cochrane Database of Systematic Reviews*.
- <sup>16</sup> Farkas AJ, Gilpin EA, White MM, Pierce JP. 2000. *Association between household and workplace smoking restrictions and adolescent smoking*. *JAMA*.
- <sup>17</sup> Rapid Risk Factor Surveillance Survey, 2014
- <sup>18</sup> Ottawa Public Health. Ontario Student Drug Use and Health Survey, 2014.
- <sup>19</sup> Ottawa Public Health. Smoke-Free By-law Survey, 2014
- <sup>20</sup> Glantz S. 2008. *Meta-analysis of the effects of smoke free laws on acute myocardial infarction: An update*. *Preventive Medicine*.
- <sup>21</sup> Tu J., Nardi I., Fang J., Liu J., Khalid L., Johansen H. 2009. *National trends in rates of death and hospital admissions related to acute myocardial infarction, heart failure and stroke, 1994-2004*. *Canadian Medical Association Journal*.
- <sup>22</sup> Naiman, A., Glazier, R. and Moineddin, R. 2010. *Association of anti-smoking legislation with rates of hospital admission for cardiovascular and respiratory condition*. *Canadian Medical Association Journal*.
- <sup>23</sup> Eagan, T., Hetland, J, 2006. *Decline in respiratory symptoms in service workers five months after a public smoking ban*. *Tob Control*.
- <sup>24</sup> Lemstra M, Neudorf C, Opondo J. 2008. *Implications of a public smoking ban*. *Can J Public Health*
- <sup>25</sup> Juster HR, Loomis BR, Hinman TM, Farrelly MC, Hyland A, Bauer UE et al. 2007. *Declines in hospital admissions for acute myocardial infarction in New York State after implementation of a comprehensive smoking ban*. *Am J Public Health*.
- <sup>26</sup> Kennedy R. *Evaluation of the City of Woodstock's Outdoor Smoking By-law: A Longitudinal Study of Smokers and Non-Smokers*. University of Waterloo, 2010.
- <sup>27</sup> Ottawa Public Health. Smoke-Free By-law Survey, 2014
- <sup>28</sup> Kennedy, R., Marshall, T., and Mutti, S. 2010. *Understanding the impact of the Smoke-Free Ontario Act on hospitality establishments' outdoor environments: a survey of restaurants and bars*. *Tobacco Control Journal*.
- <sup>29</sup> The Centre for Social Gerontology. *Economic Impacts of Smoke-Free Environments: Smoke-Free Environments Law Project*. [www.tcsg.org/sfelp/economic.htm](http://www.tcsg.org/sfelp/economic.htm)
- <sup>30</sup> Bourns, B., and Malcolmson, A. 2001. *Economic Impact Analysis of the No-Smoking By-Law on the Hospitality Industry in Ottawa*. KPMG Report.
- <sup>31</sup> Glantz S. 2008. *Meta-analysis of the effects of smoke free laws on acute myocardial infarction: An update*. *Preventive Medicine*.
- <sup>32</sup> Tu J., Nardi I., Fang J., Liu J., Khalid L., Johansen H. 2009. *National trends in rates of death and hospital admissions related to acute myocardial infarction, heart failure and stroke, 1994-2004*. *Canadian Medical Association Journal*.
- <sup>33</sup> Naiman, A., Glazier, R. and Moineddin, R. 2010. *Association of anti-smoking legislation with rates of hospital admission for cardiovascular and respiratory condition*. *Canadian Medical Association Journal*.
- <sup>34</sup> Eagan, T., Hetland, J, 2006. *Decline in respiratory symptoms in service workers five months after a public smoking ban*. *Tob Control*.
- <sup>35</sup> Lemstra M, Neudorf C, Opondo J. 2008. *Implications of a public smoking ban*. *Can J Public Health*
- <sup>36</sup> Juster HR, Loomis BR, Hinman TM, Farrelly MC, Hyland A, Bauer UE et al. 2007. *Declines in hospital admissions for acute myocardial infarction in New York State after implementation of a comprehensive smoking ban*. *Am J Public Health*.