

**Report to
Rapport au:**

**Community and Protective Services Committee
Comité des services communautaires et de protection
25 August 2016 / 25 août 2016**

**and Council
et au Conseil
31 August 2016 / 31 août 2016**

**Submitted on August 18, 2016
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**Submitted by
Soumis par:
Diane Blais, Board Secretary, Ottawa Board of Health / secrétaire du Conseil de
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Ward: CITY WIDE / À L'ÉCHELLE DE LA VILLE File Number: ACS2016-OPH-BOH-0004

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

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

BOARD OF HEALTH RECOMMENDATIONS

**That the Community and Protective Services Committee recommend that
Council:**

1. 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 of 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; and**
- 2. Amend the phased-in enforcement of the proposed regulatory amendments so that the *charging phase* would commence January 1, 2017, as discussed in this report.**

RECOMMANDATIONS DU CONSEIL DE SANTÉ

Que le Comité des services communautaires et de protection recommande que le Conseil :

1. 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^{er} 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^{er} 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^{er} 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 ; et

2. De modifier l'application progressive des modifications proposées à la réglementation, de façon que la *phase de sanctions légales* débute le 1^{er} janvier 2017, tel que discuté dans le rapport.

EXECUTIVE SUMMARY

Further to Council's November 25, 2015 request that the Board of Health 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. 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.

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. By 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 was able to confirm that there are no indications 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 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 waterpipe 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. It should be noted that, at its meeting of June 20, 2016, the Ottawa Board of Health recommended amending the phased-in implementation timelines so that the charging phase would commence on January 1, 2017 rather than April 1, 2017, as originally proposed by staff.

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. 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.

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 aux 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 approuve les recommandations concernant la réglementation sur les pipes à eau, il faudra adopter une approche d'application progressive et mener une campagne de sensibilisation pour faire comprendre aux citoyens la nouvelle réglementation. Il est à noter que, lors de sa rencontre du 20 juin 2016, le Conseil de santé d'Ottawa a recommandé une modification à l'approche d'application progressive pour faire en sorte que la phase de mises en accusation débute le 1^{er} janvier 2017 au lieu du 1^{er} 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

In 2012, the Ottawa Board of Health approved the "[Let's Clear the Air: A Renewed Strategy for a Smoke-Free Ottawa](#)" - a strategy designed to protect children and non-smokers from second-hand smoke (SHS) while reducing smoking rates by focusing on cessation, protection and prevention. Since the program's implementation, Ottawa's smoking rates have decreased from 15% to 9% ⁽¹⁾ and smoke-free outdoor spaces have been expanded to include parks, city properties, beaches, two of the City's outdoor markets as well as restaurant and bar patios.

While the Let's Clear the Air Strategy and smoke-free related regulations largely focus on tobacco, there is growing concern about the harmful effects from non-tobacco substances, such as shisha (water pipe) product, electronic cigarettes (e-cigarettes) and cannabis that produce smoke and/or vapour in public places and workplaces.

To address this regulatory gap at the local level, on November 25, 2015, City Council approved a motion requesting that the Board of Health direct staff to review and consult with relevant stakeholders on the potential to expand by-laws to regulate the smoking of non-tobacco combustible substances and the use of e-cigarettes in public spaces and workplaces; to report back to the Board of Health with recommendations for Standing

Committee and Council in time for implementation by Fall 2016; and to work with the City's Emergency and Protective Services (By-law & Regulatory Services (BLRS)) and Legal Services Departments to review and recommend any required updates to the smoke-free by-laws based on the review listed above, including any operational and enforcement considerations.

In December 2015, the Board approved OPH's plan to engage Ottawa residents, businesses and other interested parties to solicit their input on the potential for regulating non-tobacco combustible substances and e-cigarettes in Ottawa workplaces and public places. This consultation process took place from January 7 to January 24, 2016, reaching over 1,300 people via an in-person meeting and online survey and an additional 400 residents through a random telephone survey. The results showed support for a ban on smoking of non-tobacco combustible substances that create SHS and second-hand vapours in workplaces and public spaces.

At the same time that OPH completed its public consultation, the Ontario government announced plans to further strengthen smoking and vaping laws by proposing six additional changes to the regulations made under the *Smoke-Free Ontario Act (SFOA)* and the *Electronic Cigarette Act (ECA)* as follows:

1. Expanding "no smoking rules" to apply to medical marijuana;
2. Prohibiting the use of e-cigarettes - including the use of vaporizers to consume medical marijuana and testing in vape stores - in all enclosed public places, enclosed workplaces, and other specified outdoor areas;
3. Permitting parents, guardians and caregivers to supply e-cigarettes to minors for medical marijuana purposes;
4. Expanding the definition of "e-cigarette" to include "e-substance";
5. Expanding the list of places where e-cigarettes are prohibited for sale;
6. Establishing rules for the display and promotion of e-cigarettes at places where they are sold.

At its meeting on April 18, 2016, the Board of Health approved staff recommendations included in the Ottawa Public Health Unit's report "[Let's Clear the Air 2.0: 2016 Action Plan](#)". The Action Plan aimed to protect people from second-hand smoke exposure, prevent youth initiation and 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:

- Request clarification from the Province, ahead of the Board of Health's June meeting, on the intentions of the amendments;
- 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
- 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.

Further to the above directions, 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.

Ontario Bill 178, *An Act to amend the Smoke-Free Ontario Act*, received third reading on June 9, 2016. Bill 178 gives the Ontario Government regulatory authority to prohibit smoking of substances other than tobacco in places where smoking of tobacco is banned. For now, the Ontario Government intends only to ban smoking of medical marijuana in places where smoking is banned. 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 proposed that the smoking of medical marijuana in certain public places and workplaces be prohibited by regulation, OPH staff proceeded to consult further with Emergency and Protective Services and Legal Services staff with respect to by-law options.

Based on the health risks associated with herbal water pipe use, the results of the public consultation, the gap in provincial legislation pertaining to herbal water pipes and the direction from the Board of Health, a report titled [Prohibiting the Use of Water Pipes in Public Places and Workplaces](#), was presented by staff and approved by the Board of Health at its meeting of June 20, 2016. In considering this report, the Board of Health also approved a motion recommending that the proposed enforcement schedule be amended in order that the charging phase would commence on January 1, 2017 – moved up from April 1, 2017 recommended by staff.

This report is hereby submitted for the consideration of Community and Protective Services Committee and Council.

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 Water Pipe Smoking

According to a recent study, all water pipe smoke is toxic ⁽²⁾. Tobacco as well as herbal smoke contains toxicants including carbon monoxide, tar, polycyclic aromatic hydrocarbons and volatile aldehydes ⁽²⁾. With the exception of nicotine, all toxicants measured in “herbal” smoke equal or exceed those found in tobacco water pipe smoke ⁽²⁾. Water pipe smokers inhale and absorb the same toxicants that are known to cause cancer, heart and lung disease ⁽²⁾. Smoking “herbal” shisha presents the same disease risks as tobacco shisha ⁽²⁾.

Immediate observations linked with water pipe (tobacco) smoking include increased heart rate, increased blood pressure, impaired lung function and carbon monoxide intoxication ⁽³⁾. Complications from long term use include bronchitis, emphysema and coronary artery disease ⁽³⁾. Water pipe tobacco smoking is also associated with lung, stomach and oesophageal cancer ⁽³⁾. Other health effects associated with water pipe smoking include periodontal disease, obstetrical complications, osteoporosis and mental health issues ⁽³⁾.

Studies looking at indoor air quality have found increased pollutant levels where water pipes are smoked, including carbon monoxide (CO), particulate matter (PM2.5) and polycyclic aromatic hydrocarbons (PAHs) ⁽⁴⁾. Some of those studies have determined that water pipe SHS contains hazardous levels of pollutants as per the Environmental Protection Agency’s air quality index ⁽⁴⁾.

Despite tobacco water pipe smoking being prohibited in enclosed places under the *Smoke-Free Ontario Act*, one study showed levels of air nicotine that were comparable with levels of air nicotine found in smoky bars ⁽⁵⁾. It also found that two hours exposure in a Toronto hookah café is equivalent to smoking 10 cigarettes (based on CO levels) ⁽⁵⁾. The levels of particulates and CO found in water pipe cafés in Toronto are hazardous to the health of smokers and non-smokers, and the café staff in particular ⁽⁵⁾.

Concerning Trends for Youth and Young Adults

According to the results of the 2012/2013 Youth Smoking Survey, 11% of Ontario grade 7 to 12 students have tried a water pipe compared to 6% in 2010/2011 ⁽⁶⁾. Ottawa data collected in 2014 shows that nearly 50% of those aged 18 to 24 reported that they have tried a water pipe ⁽¹⁾. 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 ⁽¹⁾. Research has shown an increase of those who have ever used a waterpipe tripled from 3% in 2006 to 10% in 2012 among those aged 18 and up in Ontario ⁽⁷⁾. Approximately 1 in 5 Ottawa residents felt that herbal shisha was less harmful than tobacco shisha ⁽¹⁾.

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%.

In January 2016, there were 17 known establishments offering water pipe use. All were invited to participate in a January 21st consultation session for business owners. Five of them attended. 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 were received. Prior to the June 20, 2016 Board of Health meeting, Ottawa Public Health visited each known establishment to inform them of the report recommendations listed above. Business owners and/or their managers were also invited to attend the Board of Health meeting on June 20, 2016.

Environmental Scan

A dozen Ontario municipalities, including Toronto, Peel, Peterborough and the Township of Russell, four Canadian provinces (NB, NS, QB, PEI) and several Middle Eastern and neighbouring countries now ban or restrict the use of hookah indoors, including Lebanon, Egypt, Jordan, UAE, Kazakhstan and parts of India. The City of Toronto prohibition of water pipes is limited to places that are licensed by the municipality, including restaurants. The City of Vancouver prohibits the smoking of all shisha (water pipe) products in enclosed spaces.

The City of Ottawa currently prohibits the use of water pipes and non-tobacco products on outdoor municipal property.

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 SHS ⁽⁸⁾. Numerous studies have shown that smoke-free legislation reduces smoking rates, youth initiation rates and increases quit attempts ⁽⁹⁻¹⁴⁾. 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% ⁽¹⁾. 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 ⁽¹⁵⁻¹⁶⁾. Lastly, studies show that previous smoking bans have had no adverse economic impact on the restaurant, bar and pub industry ⁽¹⁷⁻¹⁹⁾.

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 and water pipe 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 and respiratory illnesses ^(18, 20-22).

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 June 2016, there were 15 known water pipe establishments in Ottawa. Thirteen of these establishments are licensed food premises. A common concern among businesses is that smoke-free regulations can cause financial loss. However, studies conducted on the economic impacts of smoke-free environments show that the hospitality industry is not impacted financially by smoke-free regulations (8-10). The goal is to protect people, including workers and vulnerable populations with respiratory diseases such as asthma, from second-hand smoke exposure. Two establishments are non-food premises and may be negatively impacted by the water pipe regulations.

Recommended Municipal Regulations

The proposed new by-law and by-law amendments, if enacted, will prohibit the use of water pipes in:

- Enclosed public places;
- Enclosed workplaces;
- Outdoor patios, including café seating and patio encroachment areas; 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 tobacco, which is regulated under the SFOA. 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 and other City property. 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 on which the regulations take effect, and continue for one month (reduced from four months, as recommended by the Board of Health). OPH staff and By-law & Regulatory Services staff would conduct joint educational visits to known water pipe establishments to ensure they are aware of the new regulations. In addition, efforts will be made to notify businesses, festivals and other organizations that could be impacted.
- III. The ***charging phase*** would commence January 1, 2017 (as recommended by Board of Health). When this phase begins, by-law enforcement staff would issue Provincial Offence Notice tickets, as appropriate, 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. The results of the public consultation are outlined at Document 1.

At its meeting of April 18, 2016, the Ottawa Board of Health heard from 12 public delegations and received three (3) written submissions, all of which were in support of moving forward with stronger regulations. (Document 5)

At its meeting of June 20, 2016, the Ottawa Board of Health heard from three (3) public delegations and received two (2) written submissions, all the public delegations and one ⁽¹⁾ of the submissions were in support of moving forward with the proposed by-law and one ⁽¹⁾ written submission was in opposition. (Document 5)

COMMENTS BY THE WARD COUNCILLOR(S)

This is a city-wide issue.

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 direct financial implications associated with the report recommendations. Funds are available in the 2016 Ottawa Public Health budget for the public awareness campaign and in the 2016 By-law & Regulatory Services budget for enforcement.

ACCESSIBILITY IMPACTS

There are no accessibility implications associated with this report.

TERM OF COUNCIL PRIORITIES

The report recommendations contribute to creating Healthy and Caring Communities.

SUPPORTING DOCUMENTATION

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

Document 2 – Draft Water Pipes 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)

Document 5 – Written submissions received by the Ottawa Board of Health (from the meetings of April 18, 2016 and June 20, 2016)

DISPOSITION

Ottawa Public Health and Emergency & Protective Services, 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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