

Authority: Item 2, Public Health Report 23-009 (BOH23017(a))
Council Meeting: September 13, 2023 Ward: City Wide
Written approval for this by-law was given by Mayoral Decision MDE-2023-02
dated September 13, 2023

Bill No. 170

CITY OF HAMILTON

BY-LAW NO. 23-170

To Regulate Waterpipe Smoking in Public Places and Workplaces in the City of Hamilton

WHEREAS waterpipe smoking has been associated with various disease and poor health outcomes, including lung cancer, negative pregnancy outcomes, poor oral health, dental disease, respiratory illness and impaired lung function linked to tobacco waterpipe formulations, and carbon monoxide exposure and reduced lung capacity linked to non-tobacco formulations;

AND WHEREAS waterpipe smoking, in general, negatively affects indoor air quality for indicators including carbon monoxide and particulate matter, which are closely related to potential impacts on human health;

AND WHEREAS, subsection 10 (2) of the *Municipal Act, 2001*, S.O. 2001, c. 25, (the "*Municipal Act, 2001*") provides that single-tier municipalities have the authority to pass by-laws respecting the health, safety and well-being of persons;

AND WHEREAS, section 115 of the *Municipal Act, 2001* provides that a municipality may prohibit or regulate the smoking of tobacco or cannabis in public places and workplaces;

AND WHEREAS it is desirable for the health, safety and well-being of the inhabitants of the City of Hamilton to prohibit the use of waterpipes in enclosed public places, enclosed workplaces and other specified areas within the City of Hamilton to protect individuals from conditions hazardous to human health;

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

DEFINITIONS

"Authorized Staff" or **"Authorized Person"** means a municipal law enforcement officer, a public health inspector, a tobacco enforcement officer or any staff of the City whose duties include those provided for or assigned under the By-law, and shall include the Director of Licensing and By-law Services, Director of Environmental Health (and their designate) and the Medical Officer of Health (and their designate) and shall also include a police officer;

“**City**” means the City of Hamilton;

“**Employee**” means an individual who performs any work for, or supplies any service to, an Operator, or an individual who receives any instruction or training in the activity, business, work, trade, occupation or profession of an Operator;

“**Enclosed Public Place(s)**” means the inside of any place, building or structure, or vehicle or conveyance or a part of any of them;

- a) that is covered by a roof; and
- b) to which the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry;

“**Enclosed Workplace(s)**” means the inside of any place, building or structure or vehicle or conveyance or a part of any of them;

- a) that is covered by a roof; and
- b) that Employees work in or frequent during the course of their employment whether or not they are acting in the course of their employment at the time;

“**Highway**” means a highway as defined in the *Highway Traffic Act*, R.S.O. 1990, c. H.8;

“**Medical Officer of Health**” means the Medical Officer of Health for the City, duly appointed to such position by the City, and their designate(s);

“**Operator**” means the Person, governing body or agency which alone or with others operates, manages, runs, controls, governs or directs activity carried on, or directs an Employee within an Enclosed Public Place, Enclosed Workplace, Recreational Property, Patio or other area specified by this By-law and includes the Person who is actually in charge thereof;

“**Patio**” means an outdoor area where the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry or that is worked in or frequented by employees during the course of their employment, whether or not they are acting in the course of their employment at the time, and where food or drink may be served or sold or offered for consumption, or the area is part of or operated in conjunction with an area where food or drink may be served, sold or offered;

“**Person**” includes an individual or corporation;

“**Police Officer**” includes an officer of the Hamilton Police Service;

“**Property Owner**” includes:

- (a) the registered owner(s) on title of the property;
- (b) the Person, for the time being, managing or receiving the rent of the land or premises in connection with which the words are used, whether on the Person’s

own account or as agent or trustee of any other Person, or who would receive the rent if the land and premises were let; and
(c) the lessee or occupant of the property;

“Recreational Property” means a park or place owned or operated by the City for recreational purposes including without limiting the generality of the foregoing a leash-free dog park, pool, recreation center, playground, skate-board park, beach, arena, stadium, sports or playing field;

“Roof” means a physical barrier of any size, whether temporary or permanent, that covers an area or place or any part of an area or place and that is capable of excluding rain or impeding airflow, or both;

“School” means the lands or premises included in the definition of school under the *Education Act*, R.S.O 1990, c. E.2 or the building or the grounds surrounding the building of a private school as defined in the *Education Act*, where the private school is the sole occupant of the premises;

“Smoke(s) or Smoking” includes the use or carrying of any lighted or heated Waterpipe or any other equipment used to inhale, exhale, burn or heat any Smoking Product;

“Smoking Product” means tobacco, a tobacco-like product, a non-tobacco product or any combination thereof with a purpose of being burned or heated to produce vapours, gases, or smoke, which are inhaled, and shall include but is not limited to non-tobacco herbal shisha, and other plant material or oils intended for inhalation; and

“Waterpipe” means any smoking equipment used to burn or heat a Smoking Product, with which the vapour or smoke may be passed through a water basin before inhalation.

REQUIREMENTS AND PROHIBITIONS

1. No Person shall Smoke a Waterpipe in or on:

- a) an Enclosed Public Place;
- b) Enclosed Workplace;
- c) a Patio;
- d) Recreational Property; or
- e) a School.

2. No Operator or Property Owner shall cause or permit a Person to smoke a Waterpipe in or on:

- a) an Enclosed Public Place;
- b) Enclosed Workplace;
- c) a Patio;
- d) Recreational Property; or
- e) a School.

3. No Property Owner shall cause or permit use of a building or other structure on their property that contains an Enclosed Public Place or an Enclosed Workplace in contravention of this By-law.
4. No Operator and no Employee working at a Patio, Enclosed Public Place operating as a bar or restaurant, or Recreational Property shall cause or permit any Waterpipe or component of a Waterpipe to be displayed.
5. Every Operator shall:
 - a) give notice to any individual or Employee Smoking a Waterpipe in the Enclosed Public Place, Enclosed Workplace, or Patio that Smoking is prohibited there;
 - b) ensure that no Waterpipe or similar equipment remain in the Enclosed Public Place, Enclosed Workplace, or Patio; and
 - c) ensure that a Person who refuses to comply with a notice pursuant to subsection (a) does not remain in the Enclosed Public Place, Enclosed Workplace, or Patio.
6. The prohibitions in this By-law shall apply whether or not a notice is posted that Waterpipe Smoking is prohibited.
7. No Person shall hinder or obstruct, or attempt to hinder or obstruct, an Authorized Person who is exercising a power or performing a duty under this By-law.

EXEMPTIONS

8. This By-law does not apply to a Highway including a pedestrian sidewalk adjacent to a Highway, but does apply to public transportation vehicles, taxicabs, and Enclosed Public Places or Enclosed Workplaces on a Highway.
9. This By-law does not apply to the portion of a premises actually being used as a dwelling.

ADMINISTRATION AND ENFORCEMENT

10. The Medical Officer of Health is responsible for administration of this By-law. The Medical Officer of Health and Director of Licensing and By-law Services are responsible for enforcement of this By-law. The Medical Officer of Health and Director of Licensing and By-law Services may each appoint delegates or assign duties to City staff under this By-law.
11. City staff who carry out any action under this By-law are deemed to be Authorized Staff for the purposes of this By-law, in the absence of evidence to the contrary.
12. Authorized Staff may, at any reasonable time, enter and inspect land including all buildings, structures or parts thereof that are subject to this By-law for the purposes of

determining compliance with this By-law or an Order thereunder. Despite the foregoing, any inspection of a room or place actually being used as a dwelling shall only be done in accordance with the requirements of the *Municipal Act, 2001*.

13. For the purposes of an inspection under section 12, Authorized Staff may,
- a) require the production for inspection of documents or things relevant to the inspection;
 - b) inspect and remove documents or things relevant to the inspection for the purposes of making copies or extracts;
 - c) require information from any Person concerning a matter related to the inspection; and
 - d) alone or in conjunction with a Person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
14. Where an Authorized Person is satisfied that a contravention of this By-law has occurred, the Authorized Person may make an order, in accordance with section 444 (1) of the *Municipal Act, 2001* (as amended or replaced) requiring the Person who contravened the By-law or who caused or permitted the contravention or owner or occupier of the land on which the contravention occurred to discontinue the contravening activity. An Order under this section shall set out the reasonable particulars of the contravention adequate to identify the contravention, the location of the land on which the contravention occurred, and the date by which there must be compliance with the order.

OFFENCES AND PENALTIES

15. Every Person, other than a corporation, who contravenes any provision of this By-law and every director or officer of a corporation who knowingly concurs in such contravention by a corporation is guilty of an offence and is liable, upon conviction, to a fine for each offence not exceeding:
- (a) on a first offence under this by-law, ten thousand dollars (\$10,000); and
 - (b) on a subsequent offence under this by-law, twenty-five thousand dollars (\$25,000).
16. Every corporation that contravenes any provision of this By-law is guilty of an offence and is liable, upon conviction, to a fine for each offence not exceeding:
- (a) on a first offence under this by-law, fifty thousand dollars (\$50,000); and
 - (b) on a subsequent offence under this By-law, one hundred thousand dollars (\$100,000).
17. If any Person is in contravention of any provision of this By-law and the contravention has not been corrected, the contravention of the provision shall be deemed to be a continuing offence for each day or part of a day that the contravention remains

uncorrected. In the case of a continuing offence, for each day or part of a day that the offence continues, the maximum fine shall not exceed \$10,000 but the total of all fines for each included offence shall not be limited to \$100,000.

18. For the purposes of this By-law, subsequent offence means an offence which occurs after the date of conviction for an earlier offence under this By-law.

19. The fine amounts in this By-law are exclusive of costs, are created pursuant to the Municipal Act, 2001, S.O. 2001, c. 25 and are recoverable under the *Provincial Offences Act*, R.S.O., 1990, c. P.33.

20. The court in which the conviction has been entered and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the Person convicted and such order shall be in addition to any other penalty imposed on the Person convicted.

MOST RESTRICTIVE PROVISION PREVAILS

21. In the event of differing requirements between any provision of this By-law and any applicable Act or regulation, the provision that is the most restrictive prevails.

SEVERABILITY

22. Should any section of this By-law be declared by a Court of competent jurisdiction to be ultra vires or illegal for any reason, the remaining parts shall nevertheless remain valid and binding, and shall be read as if the offending section or part had been struck out.

SHORT TITLE

23. This By-law may be referred to as the Hamilton Waterpipe By-law.

EFFECTIVE DATE

24. The provisions of this By-law shall become effective on the date approved by City Council.

PASSED this 13th day of September, 2023.

A. Horwath
Mayor

J. Pilon
Acting City Clerk