



CITY OF
ST. CATHARINES

Corporate Report

Report from Legal Services, Administration

Date of Report: July 24, 2013

Date of Meeting: August 12, 2013

Report Number: LS-221-2013

File: 35.23.5

Subject: Regional By-law to Regulate Smoking in Outdoor Public Place

Recommendation

That Council receive the report from Legal Services, Administration, dated July 24, 2013 for information purposes. FORTHWITH

Background

On September 26, 2011, Council requested that staff prepare a report on the implications of a regulatory by-law to restrict smoking on City property. At its meeting on July 9, 2012, Council received a report from Legal Services, Administration, regarding the City's ability to enact a by-law to restrict smoking on City property as well as the alternatives and implications of such a by-law. In response, Council directed staff to prepare a by-law which would prohibit smoking in outdoor public spaces within the City of St. Catharines. At its meeting on October 15, 2012, Council received a further report from Legal Services, Administration, which confirmed that Niagara Region Public Health was recommending a Regional by-law which would prohibit smoking in outdoor public spaces throughout the Niagara Region, and Council referred the matter back to staff until such time as the Region of Niagara had determined its position in relation to a Regional by-law. On December 17, 2012, Council received a report from Legal Services, Administration, regarding the progress of a Regional by-law to Regulate Smoking in an Outdoor Public Place. At its meeting of May 13, 2013, Council received in correspondence a letter from Ms. Janet Pilon, Regional Clerk, inviting comments on a revised report on the proposed by-law from the Region's Medical Officer of Health and a draft version of the proposed by-law. This Correspondence has been included as Appendix A. The Region is currently compiling feedback received from municipal councils, and this will be shared in a report to the Public Health and Social Services Committee on September 10, 2013. To that end, the Region requires comments from St. Catharines City Council no later than August 13, 2013.

Report

Region Seeks Comments on Draft By-law

While the Region is not seeking approval of the proposed by-law at this time, they are seeking comments from every municipality in the Niagara Region.

The proposed by-law would prohibit the smoking of tobacco upon or within an Outdoor Public Place, as defined, and includes the outdoor areas around all buildings located on any property owned, leased or controlled by the Niagara Region or any local municipality, but specifically excludes highways, road allowances and municipal sidewalks. The Region's proposed by-law would not contain exemptions, except those set forth within the definition of "outdoor public place". Requests for future exemptions could be presented to Regional Council and made as an amendment to the by-law provided a triple majority from both the Region and the area municipalities was obtained for such an amendment.

The Region will cover the costs of education, enforcement and signage related to this proposed by-law; however, area municipalities would be required to post or adhere signage as necessary. It would be open to each local municipality as to whether municipal by-law enforcement staff would assist with enforcement within their municipality.

Staff have no additional objections or concerns with the proposed by-law at this time.

Financial Implications

Not Applicable.

Submitted by:

Stacey E. Wells, Assistant City Solicitor

Prepared by:

Stacey E. Wells, Assistant City Solicitor

Approved by:

Nicole Auty, City Solicitor/Director

April 19, 2013

Ms. Bonnie Nistico-Dunk
City Clerk
City of St. Catharines
PO Box 3012
St. Catharines, Ontario
L2R 7C2

CL 5-2013, April 18, 2013
PHSSC 4-2013, April 9, 2013
Revised Report PHD 05-2013
Regional by-law to Regulate
Smoking In an Outdoor Public Place

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APR 29 2013

LEGAL SERVICES

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FILE:	

The Council of the Regional Municipality of Niagara, at its meeting of April 18, 2013, approved the following recommendation of its Public Health and Social Services Committee:

"That Revised Report PHD 05-2013, April 9, 2013, respecting A Regional By-law to Regulate Smoking in an Outdoor Public Place, **BE REFERRED to local municipal councils for comments (by June 30, 2013).**"

A copy of Revised Report PHD 05-2013 is attached for your reference. Please circulate this report to all members of your Council for their comments. We would appreciate receiving all comments by June 30, 2013. **Please note that we are not asking for approval of this by-law at this time.** The matter will be put before your council at a later time if supported by Regional Council. If you have any questions, I encourage you to contact Niagara Region Public Health, Maria Brigantino at maria.brigantino@niagararegion.ca or (905) 688-8248 ext. 7233, Manager, Tobacco Control Program.

Thank you for your attention to this very important matter.

Yours truly,



Janet Pilon
Regional Clerk

cc: Dr. V. Jaeger, Medical Officer of Health
Maria Brigantino, Manager, Tobacco Control Program

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APR 26 2013

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Niagara Region

REPORT TO: Public Health and Social Services Committee

SUBJECT: A Regional By-law to Regulate Smoking in an Outdoor Public Place

RECOMMENDATION

- 1) That the proposed Regional by-law, "A By-law to Regulate Smoking in an Outdoor Public Place", excluding roads, sidewalks, and rights-of-way, attached as Appendix, "A" **BE APPROVED**;
- 2) That the Chair of the Board of Health **BE DIRECTED** to share this report and the decision with local area municipalities; and,
- 3) That the Chair of the Board of Health **BE DIRECTED** to request from each of the local area municipalities a resolution giving their consent to the proposed Regional by-law

PURPOSE

This report explains the process used and rationale to develop the attached by-law, and requests approval for the attached by-law. It responds to suggestions and directions from the PHSSC meeting of March 5, 2013.

BUSINESS IMPLICATIONS

There are financial, staffing, and legal business implications which are fundamental to successfully implementing a Regional by-law.

Financial:

Enforcement: The by-law will be primarily enforced by Tobacco Control Officers (TCOs) which are 100 per cent funded through the Smoke-Free Ontario Strategy. Once the primary education phase is over, the **set fine amount would be \$250 (\$305, including court fees), consistent with fines established under the Smoke-Free Ontario Act (SFOA). Consistent with practice in other jurisdictions, it is anticipated that very few fines will need to be laid.**

Signage: A budget of approximately \$30,000 is required to cover the costs of signage. This one-time cost will be managed through the approved 2013 Niagara Region Public Health (NRPH) budget. The Region will provide signage to local area municipalities, and municipalities will be responsible for posting or adhering signage, ***as deemed appropriate using their best judgment, consistent with other by-laws.***

Education: A budget of approximately \$60,000 will be required to educate residents and visitors. These costs will be managed through the NRPH 2013 approved budget. Local area municipalities have also identified in-kind contributions to support these efforts.

Staffing:

Existing staff and summer students will be utilized for by-law education, implementation, and enforcement. It is anticipated that several summer students will be hired from May-August 2013 to provide education and awareness during outdoor events throughout all Niagara municipalities. The costs associated with the students will be managed within the approved 2013 Tobacco Control budget. It is also anticipated that during the first year of the by-law, enforcement will utilize approximately 0.2 FTE TCO tracking and responding to complaints related to the by-law. Enforcement efforts are anticipated to decline over time as need will decrease.

Legal:

Experience from other jurisdictions indicates that adequate education, awareness, and enforcement will result in high compliance. Legal enforcement action will be managed and funded through current practices in dealing with Smoke-Free Ontario Act offences through the Provincial Offences court.

The Municipal Act, 2001 empowers municipalities to pass by-laws with respect to the health, safety, and well-being of persons and also specifically with respect to smoking (section 115). The Municipal Act provides the authority for the Region to prohibit or regulate smoking of tobacco in public places and workplaces. The by-law will exclude highways, road allowances abutting a regional or municipal property, municipal sidewalks **(except where within 9 metres of an entrance or exit of a regional or municipal building)**, designated parking areas, and rights-of-way.

To be effective, the by-law must pass a "triple majority", meaning:

- 1) A majority of votes in favour of the by-law are cast at Regional Council;
- 2) A majority of the lower-tier municipalities must pass their own resolutions consenting to the by-law; and,
- 3) The number of electors in those municipalities that pass consenting resolutions must represent a majority of all electors in the Region. If the by-law fails on either (1) or (2) above, it will be deemed to have been repealed at the Regional level.

REPORT

The by-law attached in Appendix "A" proposes prohibiting smoking on or at outdoor regional and municipal property including, but not limited to, parks, playgrounds, sports and playing fields, splash pads, bus shelters, and beaches. Niagara region contains approximately 450 locations affected by the by-law. These locations include municipal and regional parks, green spaces, beaches, trails, and work sites. Recreation and parks areas will be prioritized for by-law implementation and enforcement based on age/demographic of user groups using these areas, primarily children and youth.

By-laws restricting smoking in outdoor areas such as parks and playgrounds are a positive step towards building safer and healthier communities. Studies have shown that ensuring these areas are smoke-free benefits the larger population generally, promotes positive role modelling for children, prevents cigarette litter, and creates supportive environments for those who are interested in cutting back or quitting smoking.

Boards of Health are required to work with municipalities to support healthy public policies and the creation or enhancement of supportive environments for comprehensive tobacco control. Appendix "B" outlines consultations that were conducted with local area municipality CAO's, by-law officers, and staff. ***The consultation table has been updated since the March 5, 2012 PHSSC meeting to reflect additional delegations to municipal councils.*** Other consultations also include Senior Management Teams of all Niagara Region Departments, Legal Services, and other Ontario municipalities.

Public Consultation:

Extensive public consultation was conducted across all 12 Niagara region municipalities. NRPH administered surveys at over 60 outdoor locations across the region between May-July 2012. In total, 1,907 Niagara residents completed the survey and the findings revealed that public support for smoke-free environments is strong, especially in outdoor areas where children are present. The results revealed the following:

- 88 per cent of Niagara residents support a by-law restricting smoking in outdoor public settings;
- 94 per cent of visitors to the region support a by-law restricting smoking in outdoor public setting;
- 90 per cent of Niagara residents support Niagara Falls by-law to some extent; and
- 85 per cent of Niagara residents agreed that restricting smoking in outdoor settings is good for the health of their community.

The survey results align with findings from the Rapid Risk Factor Surveillance System (RRFSS) which reported that 96 per cent of Niagara adults support some level of smoking restriction in outdoor settings (RRFSS, 2011).

An informational postcard was also developed to support this initiative. Approximately 8,000 postcards were distributed by 80 community partners. Over 500 postcards were received from Niagara residents pledging their support for a by-law which supports smoke-free environments.

NRPH receives daily complaints to the Tobacco Hotline from Niagara region residents. A common concern identified by residents is understanding where smoking is prohibited in outdoor settings. Typically, areas of concern identified are playing fields and entrances/exits to public buildings which are not restricted under the SFOA or in the municipal context.

Municipal Consultation:

Municipal consultations were conducted with all 12 local area municipalities to inform by-law development, planning, implementation, communications and education, enforcement, and signage. Meetings were conducted with local area municipality CAO's and Municipal By-law Enforcement Officers. Consultations were conducted in each municipality with representatives from various Departments including, but not limited to, Corporate Services, Parks and Recreation, Facilities, Municipal By-Law Enforcement, Communications, Planning, Public Works and Engineering, and Health and Safety.

The vast majority of municipal staff identified support for a Regional approach to prohibit smoking in outdoor spaces, with the Region taking the lead role in regulating and enforcing the by-law. Four common themes were identified during the consultation process:

- Enforcement—local area municipalities support the Region taking accountability for enforcement while working in conjunction with municipal by-law officers, where capacity exists. Municipalities identified strong support for referring complaints to the Tobacco Hotline, managed by the Tobacco Control Program.
- Predicted Challenges—municipal staff identified festivals, community events, and arenas as potential areas for non-compliance due to high volume of visitors. Initially, designated smoking areas (DSA's) and exemptions were identified as possible solutions by municipal staff. After consultation, the vast majority of staff recognized creating DSA's and exemptions would lead to inconsistent restrictions across the Region, which may result in confusion among the public and visitors alike. DSA's and exemptions would also create communication and enforcement challenges for regional and municipal staff. Alternatively, municipal staff were able to advise on educational opportunities and approaches, additional signage, and communications which could be used to mitigate concerns in combination with a complaint-based enforcement approach.
- Communications Strategies—there were various in-kind opportunities that were identified during consultations that will be instrumental in promoting the by-law across the region.
- Training—municipal staff identified training opportunities for staff as a critical success factor to implement the by-law. Suggestions and strategies have been integrated into by-law implementation plans.

Regional staff offered to make delegations to municipal councils. Presentations have been organized based on the advice and guidance from municipal staff (see Appendix "B"). Delegations to council have been open to the public. Presentations on this issue have been highlighted by various media outlets including Niagara This Week, St. Catharines Standard, and Thorold News.

Enforcement:

Enforcement of smoking restrictions is often raised as a concern but studies show that concerns about compliance far exceed the number of actual problems. Municipalities in Ontario with smoke-free outdoor legislation were contacted to discuss their experience, the findings of which have proved consistent with the literature. Municipalities also reported no impact on the use of recreational facilities as a result of the by-law.

The initial phase of enforcement consists of education, and then moves towards warnings and/or charges, as appropriate. ***Fine amounts from other jurisdictions have been reviewed to inform the set fine for the proposed by-law.***

Enforcement of the by-law will be performed on a complaint basis by Tobacco Control Officers (TCOs) working in conjunction with existing municipal by-law officers. Municipal by-law officers will have the authority to issue charges if there is support and capacity from the municipality. ***The existing Tobacco Hotline¹ would be used to receive complaints from the public or local area municipalities.*** Previous experience enforcing by-laws demonstrates that comprehensive education efforts are fundamental to ensure successful implementation. It is important to ensure that people know about the changes, and NRPH will ease into this change process much like in the past during various phases of going smoke-free.

Education:

NRPH has developed a public education strategy that will ultimately increase awareness of the by-law and educate residents of the benefits of smoke-free environments. Strategies will include utilizing students to provide education and awareness at various outdoor events, disseminating information and resources to various user groups, and displaying temporary signage at large community events. Existing social media channels will be utilized to engage Niagara residents, in addition to traditional forms of media.

Signage:

To support education efforts, signage will be produced by the Region and installed by local area municipalities. Additional signage will be used as needed to reinforce the by-law and to direct complaints to the Tobacco Hotline.

¹ Tobacco Hotline: 905-688-8248 ext. 7393 or 1-888-505-6074

Signage is one component of a larger comprehensive public education strategy to make it clear where smoking is not permitted. Signs will be posted at all primary access points of regional and municipal properties, including beaches and trails. Local municipal staff have advised on the location and the number of signs required in order to ensure the best coverage. Municipal recommendations have been provided based on experience educating about and enforcing other municipal by-laws. Secondary signage will be available to municipalities to support education efforts. Signage will adhere to all relevant municipal and provincial guidelines.

Requiring that a "No Smoking" sign be posted for the by-law to be in effect is not feasible due to financial, staffing, and sign pollution issues. There are significant financial implications associated with the development and installation of additional signs, including the production of the signs, staff time, and additional hardware and posts required. Signage recommendations proposed here are consistent with other by-laws and legislation such as the Highway Traffic Act, litter by-laws, and other provincial legislation such as the ban on cell phone use while driving in a motor vehicle.

After careful review and consideration of financial, staffing, and enforcement implications, NRPH recommends using a comprehensive education strategy to inform the public of the Regional by-law, and keeping signage related to this by-law consistent with other by-laws and legislation.

Exemptions and Designated Smoking Areas:

During several consultations, there were discussions pertaining to an exemption process or to allow designated smoking areas across all regional and municipal properties. Creating other exemptions and/or designated smoking areas will cause confusion as to where smoking is allowed and where it is not permitted. There would be additional costs related to the following: for extra signage to clearly mark areas where smoking would be permitted, additional work for Regional and Municipal staff, and significant enforcement barriers. This option may also result in residents still being exposed to second-hand smoke and children observing adults smoking.

Requests for future exemptions could be presented to Regional Council as an amendment to the by-law but would need a triple majority from both the Region and the area Municipalities. There is no general exemption process that could be written into this by-law that would negate the need for going through the triple majority process.

Exemption applications would require additional staff time, which would result in financial implications, including the development and installation of additional signage, and additional communications and enforcement. It is not known how many exemptions would be put forward by municipalities, or with what frequency, and therefore cost cannot be calculated.

The exemptions here identified are based on consultations with Municipal and Regional staff, municipal readiness, and legislative requirements. Since the scope of the proposed by-law is limited to regional and municipal property, provincial and federal properties have not been specifically identified as exemptions.

NRPH is not recommending exemptions unless exemptions have been identified in existing by-laws or staff performing work at regional or municipal work sites are unable to leave property by virtue of legislation, emergency response, or operational requirements.

NRPH staff considered the Scotiabank Convention Centre exemption in great detail. The intent of the Regional by-law was to enhance the most comprehensive by-law existent in the region, that of Niagara Falls. During the municipal consultation process, NRPH was informed that Niagara Falls City Council had identified a strong rationale to exempt the Scotiabank Convention Centre from the Niagara Falls by-law which was implemented in May, 2011.

NRPH has considered many options in reviewing the exemption for the Scotiabank Convention Centre from the Regional "By-Law to Regulate Smoking in an Outdoor Public Place". Options have included the following: identifying a "sunset provision" that would name a specific date in which the exemption would no longer apply under the Regional by-law; not including any exemption for the Scotiabank Convention Centre in the Regional by-law; and working with the City of Niagara Falls and the Scotiabank Convention Centre to identify opportunities to work towards making the property smoke-free, while recognizing that this process will take time. The latter option is recommended as the most balanced and appropriate option.

By focusing on parks, playgrounds, sporting areas and beaches, including events that occur in these areas, and minimizing exemptions, this by-law provides more protection for children and other Niagara residents and visitors from the effects of secondhand smoke, while denormalizing smoking behavior and facilitating decreased smoking rates.

REPORTS PERTINENT TO THIS MATTER

2011 - PHD 04-2011; PHD 05-2011; PHD 46-2011

2012 - PHD 11-2012; PHD 38-2012

Submitted by:

Valerie Jaeger, MD, PhD, MPH
Medical Officer of Health

Approved by:

Mike Trojan
Chief Administrative Officer

This report was prepared by Maria Brigantino, Manager, Chronic Disease and Injury Prevention, and Gillian McDonald, Health Promoter, Chronic Disease and Injury Prevention; and reviewed by Stephen Chisholm, Legal Services, Ellen Wodchis, Director, Chronic Disease and Injury Prevention, Dr. Andrea Feller, Associate Medical Officer of Health and Dr. Valerie Jaeger, Medical Officer of Health.

Appendix A: Proposed Regional By-Law

THE REGIONAL MUNICIPALITY OF NIAGARA

Bylaw No.

A BY-LAW TO REGULATE SMOKING IN AN OUTDOOR PUBLIC PLACE

WHEREAS subsection 115(1) of the *Municipal Act, 2001*, S.O. 2001, c.25 as amended provides that a municipality may prohibit or regulate the smoking of tobacco in public places;

AND WHEREAS it has been determined that smoking and second-hand tobacco smoke is a health hazard or discomfort for individuals residing in or visiting The Regional Municipality of Niagara (hereinafter, "Niagara Region");

AND WHEREAS smoke-free policy interventions are effective mechanisms to reduce exposure to tobacco smoke, prevent initiation of smoking, encourage cessation of smoking, support recent quitters and contribute to the denormalization of tobacco use;

AND WHEREAS Niagara Region therefore wishes to prohibit tobacco smoking in outdoor public places for the health of the public generally, and particularly for the benefit of young persons, and to improve the environmental and social conditions in public places;

NOW THEREFORE BE IT RESOLVED THAT the Council of The Regional Municipality of Niagara enacts as follows:

DEFINITIONS AND INTERPRETATION

1. (1) The following definitions shall be used in interpreting and applying this by-law:

"authorized person" means an individual designated or authorized by Niagara Region or a local municipality whose duties include, without limitation, tobacco control or the monitoring of regional or municipal property for the purpose of addressing unauthorized activities;

"designated parking area" means a parking lot or parking area which has been established only for the purpose of parking a vehicle and is not associated with any other municipal or regional property;

"local municipality" means any one of the municipalities of the Town of Fort Erie, Town of Grimsby, Town of Lincoln, City of Niagara Falls, Town of Niagara-on-the-Lake, Town of Pelham, City of Port Colborne, City of St. Catharines, City of Thorold, Township of Wainfleet, City of Welland and the Township of West Lincoln.

"municipal sidewalk" means a sidewalk intended for pedestrians located between that portion of a highway intended for the general passage of vehicles and the lateral property line, but does not include a sidewalk located within the boundary of any regional and municipal owned or leased property;

“outdoor public place” means the outdoor areas around all buildings located on any property owned, leased or controlled by the Niagara Region or any local municipality, including without limitation parks, playgrounds, sports or playing fields, arenas, recreational centres, splash pads, pools, beaches, bus shelters, trails and any area that is within a 9 metre radius of an entrance to or exit from a building located on any regional or municipal property, whether or not a “No Smoking” sign is posted, but does not include:

- a. highways;
- b. road allowances abutting a regional or municipal property;
- c. municipal sidewalks, save and except for that portion of any municipal sidewalk that is within a 9 metre radius of any entrance to or exit from a building located on any regional or municipal property;
- d. designated parking areas;
- e. rights-of-way;
- f. regional or municipal property where city or regional staff are not able to leave the property during work hours by virtue of legislative, operational or emergency response requirements;
- g. residential dwellings owned, operated or subsidized by Niagara Regional Housing or a local municipality, and;
- h. the three (3) designated smoking areas at the Niagara Falls Scotiabank Convention Centre, as set forth more particularly in the City of Niagara Falls Consolidated By-Law No. 2011-51 as amended by By-Law 2011-152.

“smoke” or **“smoking”** includes the holding of tobacco or other lighted smoking material or equipment while the product is alight or emitting smoke;

“tobacco” includes pipe tobacco, water-pipe tobacco, cigarettes, cigars, cigarillos or any similar product made with or containing tobacco;

PROHIBITION

- 2.(1) No person shall smoke tobacco upon or within an outdoor public place.
- 2.(2) The prohibition in section 2.(1) above applies whether or not a “No Smoking” sign of any format or content is posted.
- 2.(3) No person shall remove a sign posted under this section while the prohibition remains in force.
- 2.(4) No person shall hinder or obstruct an authorized person lawfully carrying out the enforcement of this by-law.

OFFENCE and SET FINE

- 3.(1) Any person who contravenes a provision of this by-law is guilty of an offence and, upon conviction, is liable to a set fine of \$250.00.

ENFORCEMENT

- 4.(1) The provisions of this bylaw respecting smoking in an outdoor public place shall be enforced by any authorized person as designated by the Niagara Region or a local municipality.

CONFLICTS

- 5.(1) If a provision of this by-law conflicts with an Act or a regulation or another by-law, the provision that is the most restrictive of smoking shall prevail.

SEVERABILITY

- 6.(1) If any section or part of this by-law are found by any Court of competent jurisdiction to be invalid, such section or part shall be deemed to be severable and all other sections of this by-law shall remain valid and enforceable.

ENACTMENT

- 6.(1) This by-law shall come into force on the day that it is approved in accordance with section 115(5) of the *Municipal Act, 2001*, S.O. 2001, C.25.

**Appendix B: Consultations with Local Area Municipalities
(Updated March 25, 2013)**

Type of Consultation	Date	Municipality	Presentation to Municipal Council Requested
Area CAO Meeting	Friday November 30, 2012	All area municipalities	N/A
Municipal Consultation	Monday December 3, 2012	Niagara Falls	In the process of scheduling
Municipal Consultation	Wednesday December 5, 2012	Port Colborne	In the process of scheduling
Municipal Consultation	Thursday December 6, 2012	Thorold	February 5, 2013
Municipal Consultation	Monday December 10, 2012	NOTL	February 11, 2013
Municipal Bylaw Enforcement Officer Consultation	Wednesday December 12, 2012	All area municipalities	N/A
Municipal Consultation	Friday January 4, 2013	Pelham	May 21, 2013
Municipal Consultation	Monday January 7, 2013	Welland	April 16, 2013
Municipal Consultation	Monday January 7, 2013	Wainfleet	February 26, 2013
Municipal Consultation	Tuesday January 8, 2013	West Lincoln	March 18, 2013
Municipal Consultation	Wednesday January 9, 2013	Fort Erie	February 25, 2013
Municipal Consultation	Tuesday January 15, 2013	Lincoln	March 25, 2013
Municipal Consultation	Tuesday January 15, 2013	Grimsby	February 26, 2013 (Parks and Recreation Committee)
Municipal Consultation	Wednesday January 23, 2013	St. Catharines	In the process of scheduling