
HALDIMAND COUNTY

Report BME-01-2019 Prohibiting Smoking On All Public Property For Consideration by Council in Committee on June 24, 2019



OBJECTIVE:

To investigate and report back to Council on the implications and options of prohibiting smoking on all public property.

RECOMMENDATIONS:

1. THAT Report BME-01-2019 Prohibiting Smoking On All Public Property be received;
2. AND THAT staff undertake a community and stakeholder engagement process to solicit input and comments on the options outlined in Report BME-01-2019 and report back to Council with the results.

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Approved: Craig Manley, MCIP, RPP, Deputy Chief Administrative Officer

EXECUTIVE SUMMARY:

Changes to Provincial legislation allowing smoking of cannabis where tobacco and vaping is permitted as well as concerns about the smell and impacts of second-hand smoke, led Council at the January 21, 2019 meeting, to pass a resolution that staff investigate and report back on the options and implications of prohibiting smoking on all public property.

Regulations that impact where one can or cannot smoke are a hybrid between Provincial legislation called the *Smoke Free Ontario Act* enforced by the Haldimand-Norfolk Health Unit and local municipal by-law Haldimand County Smoking By-law 296/02 which is enforced by Municipal By-law Enforcement Officers. The rules around smoking have changed over time and the current hybrid approach is complicated, challenging to enforce, and results in inconsistent rules applying to different types of municipal property.

This report outlines the current regulatory framework, its implications, as well as four alternative options Council could consider to address some of the issues identified and to address Council's direction. It is recommended that these options be subject to community and stakeholder consultation to get feedback prior to making a decision on this matter.

BACKGROUND:

At the January 21, 2019 Council meeting, Resolution 2-19 was passed, which directed staff to prepare a report on the implications of prohibiting smoking on public property. This was in part a desire to address changes in Provincial legislation that allow individuals to smoke or vape cannabis in public

areas wherever tobacco use is allowed as well as concerns regarding odour, second-hand smoke and changing public attitudes towards smoking.

On November 4, 2002, Council passed By-law 296/02 being a By-law to regulate smoking in Municipal facilities. By-law 296/02 repealed the No Smoking By-laws of the former municipalities that were in effect and established standard regulations that prohibited smoking in County facilities and vehicles, and restricted smoking within 9 metres (30 feet) of the entrance of a public building.

The *Smoke Free Ontario Act* (SFOA) came into force in 2006 and has been amended several times. Due to changes over the years to the SFOA, this legislation is generally more restrictive than the County's No Smoking By-law 296/02, the Health Unit has advised that as a result of the SFOA, the County is required to change its current practices to now prohibit smoking on its community recreational properties (i.e. arenas, community halls, etc.) to comply with Provincial Law.

Currently, the rules relating to where smoking can occur in the County as regulated by both the SFOA and the existing by-law are as follows:

Smoke Free Ontario Act (SFOA):

1. The SFOA, 2017 and its regulation prohibits the smoking of tobacco, the use of an e-cigarette to vape any substance and the smoking and vaping of cannabis in all enclosed public spaces and enclosed workplaces, as well as additional prohibited places, such as child care centres and children's playgrounds and schools, where the smoking of tobacco was prohibited;
2. SFOA, 2017 Ontario Regulation 268/18 also prohibits smoking and vaping in additional places as listed here:
 - Any public areas within 20 metres from the perimeter of the grounds of elementary and secondary schools including sidewalks and road allowances;
 - Within 20 metres from the perimeter of a playground/play equipment;
 - Within 20 metres from the perimeter of an outdoor sporting area including spectator areas – defined as areas primarily used for sports (i.e. soccer fields, baseball diamonds, skateboard parks, tennis, basketball, etc);
 - On any property containing a community recreation facility and public areas within 20 metres of the perimeter of the grounds – which is defined as a place primarily used for providing athletic or recreational programs or services to the local community owned, operated or leased by any level of government or by an agent of the municipality;
 - Public areas within 9 metres of a restaurant or bar patios including temporary sidewalk patios;
 - Outside within 9 metres of an entrance to a Long Term Care Home.

County Smoking By-law 296/02:

- The County Smoking By-law prohibits smoking tobacco within 9 metres of any County building entrance and within County vehicles.

Taken together these regulations create a complicated framework regarding where one can and cannot smoke on public property. These are summarized as follows:

- You can smoke on public areas including sidewalks as long as you are not within 20 meters (66 feet) of a playground, outdoor sporting area or a property having an arena, recreational centre, or school, or within 9 metres (30 feet) of an outdoor patio;
- You can smoke in public parks, beaches and trails as long as you are not within 20 metres of a playground or outdoor sporting area;
- You cannot smoke anywhere on/or within 20 meters of a municipal property that has an arena or hall on it. Multiple use facilities – i.e. an arena with ball fields are prohibited for the

entirety of the property and within 20 meters. It can also be interpreted that the SFOA could probably be extended to community halls;

- You can smoke outside on other municipal property – administration buildings, works yards, fire and ambulance halls as long as you are 9 metres (30 feet) from an entrance.
- You can smoke at Special Events and Farmers Markets provided you are 9 metres from food service areas and do not contravene any other limitations.

Staff have been in consultation with the Haldimand-Norfolk Health Unit, regarding the scope of the SFOA, 2017 and how it will affect all County buildings and properties including leased properties. The Haldimand-Norfolk Health Unit has provided a comparison chart identifying different types of County properties and how the County's No Smoking By-law and the SFOA, 2017 apply. This chart is attached as (Attachment 1) to this report. Currently, enforcement of the SFOA and County Smoking By-law under the authority of the a Municipal Enforcement Officer is undertaken by the Health Department's Tobacco Enforcement Officers.

ANALYSIS:

Legislative Framework

As Council considers options to further regulate smoking on public property, it is noted that although The *Smoke-Free Ontario Act*, 2017 is the legislation placing restrictions on the smoking of tobacco, cannabis and vaping, municipalities still have the authority to tailor more stringent regulations through the passing of By-laws. Section 18 of the SFOA 2017 states the following:

SFOA 2017 Conflict With Other Legislation

Section 18 - Where there is a conflict between a provision of this Act and a provision of another Act, a regulation or a municipal by-law that deals with a matter to which this Act applies, the provision that is more restrictive of the matter to which this Act applies prevails, subject to section 19.

The Municipal Act continues to provide authority to municipalities to adopted smoking by-laws in public places and workplaces. This authority provides the opportunity for Municipal Councils to pass Smoking By-laws that are equal to or surpass the regulations is identified in the SFOA 2017.

Municipal Act

115 (1) Without limiting sections 9, 10 and 11, a municipality may prohibit or regulate the smoking of tobacco or cannabis in public places and workplaces.

A by-law passed pursuant to this section is restricted and cannot prohibit smoking on the vehicular portion of a highway.

By-law Options and Implications

In terms of responding to Council's direction to evaluate the options and implications relating to regulating smoking on public property, County staff have been consulting with the Haldimand-Norfolk Health Unit regarding possible options regarding a By-Law, with regulations providing restriction on smoking tobacco, cannabis and vaping. Based on these discussions and other research, staff offer the following options for consideration:

Option #1 – Maintain Status Quo

Changes to Provincial legislation already require the treatment of cannabis to be identical to that of tobacco and also treats smoking and vaping the same. The current County by-law augments the Provincial legislation by adding a 9 metre setback from entrances of municipal buildings that are not

already covered by the regulations of the SFOA, for clarity sake, the by-law signage should be amended to clearly reflect this.

Scope of the By-law

9 metres away from any entrance or to any building or structure owned, leased, or otherwise operated by the Corporation of Haldimand County.

- “Justification” - This option protects the public and staff from the harmful effects of second-hand smoke and vapour around entrances and exits, and maintains long standing rules known by the community.
- “Implications” - This option does not extend protection from the smell or effects of second-hand smoke and vapour to other public areas where staff, visitors, and clients use municipal facilities including:
 - Parks or areas of parks that do not have playgrounds, sport fields or which are located beyond 20 metres from a playground, sportsfield, etc;
 - Trail, beaches, farmers markets;
 - Depending on the location, at special events on County property.

It maintains a complicated and inconsistent regulatory framework as it applies to smoking on municipal property with parts enforced by the Health Unit and other parts enforced locally.

Option #2 – Prohibit Smoking on All Recreational Properties including parks, beaches and trails

Scope of the By-law

- *Maintain current 9 metres setback from any entrance or to any non-recreational building or structure or property owned, leased, or otherwise operated by the Corporation of Haldimand County, which would permit smoking and vaping of any substance, including cannabis 9 metres away from any entrance outside works yards, administration building, fire halls, etc.*
- *All recreational properties owned, operated or leased by Haldimand County including playgrounds, sports fields, parks, trails, beaches.*
- *It would also include land owned or leased by the County that is used by third parties providing recreational services under agreement with the municipality, i.e. field management organizations.*
- “Justification” -
 - This option protects the public and staff from the harmful effects of second-hand smoke & vapour on the entire grounds of any municipal recreational property containing playgrounds, sports fields, passive parks, trails and beaches;
 - It also generally aligns with the SFOA Regulations that already prohibit smoking and vaping both within 20 meters and on the grounds of community recreation facilities as defined under that legislation;
 - It does not require whether a determination of whether an individual smoking is located within a specified distance from playgrounds, sportfields – easier to enforce;
 - There is better clarity of responsibility for enforcement;
 - This option has been implemented by a number of municipalities including Norfolk County.
- “Implications” -
 - There will need to be a plan to educate and promote the public on the by-law as it would have more regulations than is currently the case;
 - There would be a cost of approximately \$2,000.00 to install signage indicating smoking prohibited at all recreational facilities;

- It is possible to see an increase in complaints which would increase the staff time for enforcement;
- This Option will maintain some inconsistency for staff and visitors, as those people using or working on recreational properties will be restricted from smoking and vaping, but those using other facilities such as administration buildings, fire halls, works yards will continue to be allowed to smoke or vape 9 metres from the entrance. This may cause some confusion or concerns about different treatment for different municipal properties.

Option #3 – Prohibit Smoking on All Municipal Property (except road allowances and sidewalks)

A By-law that prohibits, smoking tobacco or cannabis or vaping on any Haldimand County owned, operated or leased property, unless specifically exempted. It would not include road allowances and sidewalks.

Scope of the By-law

- *All property owned operated or leased by Haldimand County with the exception of road allowances.*
 - *Includes all County properties that have office buildings, fire and ambulance facilities, work yards playgrounds, community halls, sports fields, parks, trails, beaches.*
 - *It would also include land owned or leased by the County that is used by third parties providing services under agreement with the municipality – i.e. field management organizations*
 - *Community events on County property irrespective of location.*
- “Justification” -
- This option protects all staff and public that are on or using any Haldimand County owned, operated or leased property from second hand smoke or the nuisance of smell;
 - It ensures consistency of approach amongst all the various County functions. In particular, it should be noted that when staff occupy the New Administrative Centre in late 2019, smoking will be prohibited due to the SFOA as a result of an arena being located on site. This will result in a significant number of staff, visitors and clients being impacted. This option would ensure that all County facilities are treated equally;
 - It removes ambiguity for the public and make enforcement easier as there would be less confusion over where people can and cannot smoke or vape;
 - Under legislation a by-law can only extend to the sidewalks as the traveled portion of the road cannot be regulated. Restricting smoking on sidewalks would encourage people to congregate on the road creating a safety concern;
 - This option has been implemented by a number of municipalities including City of Brantford, City of Hamilton, Niagara Region and the City of Toronto.
- “Implications” - An extensive education plan would have to be implemented. Additional staff time would have to be allocated for more education & enforcement. It is possible to see an increase in complaints which would also increase the staff time for enforcement.

Option #4 – Also Prohibit Smoking in Downtown Areas

Adopt a By-law with all/any of the above 3 options with the addition of a regulation that prohibits smoking within the downtown districts, including sidewalks.

- “Justification” -
- Responds to some concerns raised about the public nuisance of second-hand smoke or vapour from coming into stores and businesses (such as restaurants) from the public

spaces outside of them. This option may also deter people from loitering and littering in places such as downtown areas.

➤ “Implications” -

- An extensive education plan would have to be implemented and this represents a significant change for the community – as such there may be substantial opposition to this option;
- It would raise an expectation of timely enforcement and additional staff time would have to be allocated to address an expected increase in complaints;
- It would be challenging to enforce and would add complexity by needing to physically define geography through signage;
- Under legislation it can only extend to the sidewalks as the traveled portion of the road cannot be regulated. This would encourage people to congregate on the road creating a safety concern.

Signage

New By-law signage is required regardless of the option chosen on all municipal properties. Signage would have to reflect the three symbols of non-smoking indicating the prohibition specific to the By-law option chosen. The cost for erecting signage would be directly related to the option chosen. The Health Unit would assist in recommending the appropriate signage based on the option chosen.

Enforcement

The Health Unit has historically responded to smoking complaints through the SFOA only. To ensure adequate resources are available for an effective enforcement strategy a shared model between the Health Unit and Municipal Law Enforcement Services, with the Health Unit taking the lead role is recommended. This recognizes the Health Unit will continue to have responsibilities under the SFOA such as enforcing rules relating to sales as well as any of the smoking location prohibitions under this *Act*. Municipal Enforcement Officers and Tobacco Enforcement Officers would be trained to take action on the new By-law when observing violations during their regular scheduled work. This allows for maximum coverage more efficiently. Official incoming by-law complaints would be forwarded to and handled by the Health Unit Tobacco Enforcement Officers. The Health Unit already has a phone extension advertised to the public for questions or complaints regarding SFOA infractions and the Norfolk County smoke-free by-law. In this model there would be no requirement to hire additional staff, however, the model should be monitored to determine if additional staff maybe required.

The Health Unit has supplied data related to complaints in Haldimand County that does not fall under the SFOA. This data is attached as (Attachment 2).

Next Steps:

It is suggested that given the nature of the issue that the County undertake public and stakeholder consultation on the options outlined using a variety of methods and report back to Council on the results in September.

FINANCIAL/LEGAL IMPLICATIONS:

The Health Unit estimates that approximately 165 signs would be required if recreational properties alone were included in the By-law. The cost for this signage would be approximately \$2,000.00.

The County has received funds from the Province in the amount of \$115,000.00 to cover 2 years specifically for:

- Increased enforcement
- Public inquiries

- Paramedic services
- Fire services
- By-law/policy development

Council has used \$1,700.00 towards the contracted services with the Health Unit with the remainder of the funds parked for future use as required.

STAKEHOLDER IMPACTS:

The Health Unit has provided research with regards to the benefits of a smoke free By-law which is included as (Attachment 3). The Health Unit also provided the results of a 2013 survey to determine if there was support or opposition for making other public areas smoke-free. The document reflects results well before the use of Cannabis became legalized. (Attachment 4) outlines the document provided.

REPORT IMPACTS:

Agreement: No

By-law: Yes

Budget Amendment: No

Policy: No

ATTACHMENTS:

1. Haldimand County Properties Comparison Chart (Signage).
2. Haldimand County Complaints chart.
3. Benefits fo Smoke Free By-law.
4. Haldimand Resident Support for Smoke-free Outdoor Spaces (2013).