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Report To: General Government Committee

Date of Meeting: April 18, 2017

Report Number: CLD-002-17 **Resolution:**

File Number: **By-law Number:**

Report Subject: Smoking on Municipal Property

Recommendations:

1. That Report CLD-002-17 be received;
2. That Council prohibit smoking within 9 metres of any entrance to any Municipal building within the Municipality of Clarington;
3. That the 9 metre smoking prohibition be communicated to the general public and patrons of the buildings and facilities;
4. That the organizers of special events be advised of the smoking prohibitions contained in the *Smoke-Free Ontario Act*, in particular those dealing with smoking in reserved seating areas of entertainment venues; and
5. That all interested parties listed in Report CLD-002-17 and any delegations be advised of Council's decision.

Report Overview

This Report is to provide information on extending smoking restrictions for Municipal property beyond the Provincial legislation.

1. Background

1.1 General

On July 4, 2016 Council passed Resolution #GG-411-16 directing staff to report on a complete ban of smoking at all Municipal buildings and the manner of enforcement. Following the July 4, 2017 meeting, it was explained to staff that the matter was raised as a result of an issue at community halls whereby guests at the halls are smoking near the entrances, and hall board members have had no means by which to require the guests to stop. Staff were further advised that smoking at community events has also been reported to members of Council as an issue for the attendees at these events. This Report will address each concern separately.

1.2 Governing Legislation and By-laws

Smoke-Free Ontario Act, S.O. 1994, c.10 (the *Act*) sets out the following restrictions as they pertain to smoking:

- No smoking within 20m of children's playgrounds and publicly owned sport fields and surfaces or the reserved seating area of a sports arena or entertainment venue
- post "No Smoking" signs at all entrances, exits, washrooms and anywhere signs can be easily placed and seen
- make sure that within Clarington no one smokes or holds lighted tobacco in an enclosed workplace, public place, or area where smoking is banned
- make sure that a person who does not comply leaves the premises
- Enforcement of the new restrictions is the responsibility of DRHD within Clarington

In 2016 the *Electronic Cigarette Act, 2015* was enacted. The following definitions apply to Electronic Cigarettes;

electronic cigarette” means any of the following:

1. A vaporizer or inhalant-type device, whether called an electronic cigarette or any other name, that contains a power source and heating element designed to heat a substance and produce a vapour intended to be inhaled by the user of the device directly through the mouth, whether or not the vapour contains nicotine.
2. A component of a device described in paragraph 1.
3. Any other prescribed device or product;

The above Act similarly mirrors the Smoke-Free Ontario Act. Currently, certain sections which will regulate the use of electronic cigarettes has yet to come into force.

Clarington By-law 93-146, being a By-law to Regulate Smoking in Public Places, was superseded by the Act. The Act is enforced by The Tobacco Enforcement Division of Durham Region, as is the Electronic Cigarette Act, 2015.

2. Discussion

2.1 Municipal Buildings

Municipal buildings include the Municipal Administrative Centre (MAC), Operations depots, Animal Shelter, and some library branches. Smoking within Municipal buildings is prohibited and is governed by the Act. Smoking outside of the Municipal buildings entrances, however is not governed by the Act.

These buildings can be generally categorized as either municipal workplaces or municipal buildings generally used as a place of public assembly (which hence forth will be referred to a community halls throughout this Report).

Smoking outside of the municipal workplace buildings has generally not been an issue.

Smoking outside of community halls, however is the genesis of this review. Although the initial complaint was received by one community hall board member, members of other community hall boards did express concerns to a member of Council. Essentially, the problem stems from private functions held at the community hall where guests are gathering immediately outside of the entrances into the hall, thus forcing the other guests to have to walk through the “smoking area” to enter and exit the building. Members of the hall boards expressed frustration with an apparent lack of authority or mechanisms to prohibit smoking immediately outside of the community hall entrances.

2.2 Municipal Facilities

Municipal facilities include the recreation facilities.

Several years ago, a policy was put in place to prohibit smoking within 3 metres from the entrances to the Municipal facilities, as it was deemed to support the goals of healthy living. In 2004, the policy was amended (as approved by Council) and smoking is now prohibited within 9 metres from the entrances to the Municipal facilities. This policy has been well received by the public and is generally complied with. Should an issue be raised, these facilities are typically staffed during facility hours of use and as such, staff are available to swiftly address any concerns. According to feedback from facility staff, smoking on Municipal facility property beyond 9 metres of the entrances, presents no concerns. (An example of such areas would be an arena parking lot.)

2.3 Municipal Parks

Municipal parks include sports fields, playgrounds, passive parkland, and trails.

As stated above, the Act prohibits smoking within 20m of playgrounds and sports fields. As well, the Act prohibits smoking within the reserved seating area of an entertainment venue. This could include the seating areas for such community events in Clarington's parks such as the concerts in the park, provided the seating area is identified as such.

The issue of smoking within the seating areas of such community events has been raised as a concern by members of the public. Further, staff have been advised that there is confusion as to whether or not smoking is currently prohibited at such events and if so, who would enforce the prohibition.

Community event organizers should contact the Durham Region Health Department Environmental Health Division for details regarding enforcement for smoking within reserved seating areas at community events.

2.4 Regulating Smoking Beyond the Act

2.4.1 Outside of Durham Region

Staff research indicates that, in general, there is a varying degree of by-laws/policies regulating smoking throughout municipalities. By-laws range from a complete mirror of Ontario's Smoke-Free legislation, to additional restrictions that are specific to the municipality, to by-laws that are now superseded by Ontario's Smoke-Free legislation. The City of Peterborough By-law mirrors Smoke-Free legislation to assist in enforcement but, in addition, adds specific park areas or additional buildings where smoking is prohibited within 9 metres of entrance ways. Orillia, on the other hand, has a by-law that restricts smoking within 9 metres of any entrances to municipal Buildings. There are portions of the Orillia Smoking

By-law which have been superseded by Ontario's Smoke-Free legislation. Orillia does however, require that all employers must have a smoke free policy in all work places. Collingwood's Smoking By-law includes a 9 metres restriction around municipal entrances and they report that they receive few concerns.

2.4.2 Within Durham Region

Currently within Durham Region Whitby and Scugog each have a Smoke-Free by-law which imposes a 15 metre restriction near any municipal facility or municipal outdoor activity area. These by-laws were passed in 2014, in response to residents' concerns of smoking near playgrounds and sports fields. Whitby's by-law was initiated along with a communication campaign and increased enforcement/education. During the initial stages there were frequent complaints brought forward; over time however, the volume of complaints has significantly decreased but has proven difficult to enforce so officers tend to rely more on education approach than enforcement. The Act now supersedes the by-laws with a 20m restriction for playgrounds and sports fields.

Ajax and Pickering rely on Smoke-Free legislation and enforcement therefore, is performed by the Region of Durham, while Oshawa has a restriction on entrances to their City Hall.

2.4.3 Feedback from Durham Region's Health Department Environmental Health Division

As per Council's direction staff discussed the pros and cons of an outright ban and generally concluded that each property has its unique characteristics, including geographic locations and once size does not necessarily fit all. Further, the HDEHD also commented on enforcement challenges. They see a parallel between their experience in enforcing legislation in areas such as schools and hospitals, and believe the same challenges would also be experienced were there a complete ban on Municipal property. Smoking related issues would merely be displaced (ie. pushed onto adjacent properties.)

In 2016 Durham Region received 7 complaints for smoking within 20 metres of sport fields and an estimated 18 for within 9 metres of public entrances. (Note, public entrance infractions / complaints are not fully tracked as the current legislation does not include all public entrances.)

2.4.4 Feedback from Hall Boards

General feedback from community hall board members, when asked if they support any smoking restrictions being imposed, concluded that there is limited support in a complete ban on smoking on the hall property. Should there be smoking restrictions imposed, their concerns primarily focus on enforcement during events or rentals of facilities. (ie. Who would be responsible as they have very limited staff/volunteer resources?). As well, most indicated that they have not received requests from their hall users requesting changes to the current smoking restrictions.

2.4.5 Enforcement

Feedback from other municipalities and the HDEHD suggests that enforcement is the key challenge to implementing greater smoking restrictions beyond the provincial requirements which are regulated by the HDEHD. Staff therefore considered the use of setting a policy versus enacting a by-law.

- A) Policy -- Regulating Clarington-specific smoking policies (beyond the provincial legislation) can be promoted through public education and enforced by any staff person or facility board member (depending on the enforcement clauses of the policy of course). This approach to regulation provides the ability to address issues as they are brought forward and in real time. A policy would not include monetary penalties for the smoker who may be violating the policy as a by-law would. A policy could, however, provide for other disciplinary measures. For example, the policy provide for the inclusion of a standard “termination of contract” clause where a person/organization who rents the facility is not complying with the smoking policy, or the policy could provide for the inclusion of non-refundable deposit if smoking policy is contravened. To best achieve success, the policy should be consistent for all municipal facilities and buildings. It should be noted, that where a person is refusing to comply with staff direction, as with any situation on municipal property, the situation could be escalated through the *Trespass to Property Act*.
- B) By-laws – Currently the Municipality of Clarington’s Smoking By-laws are out dated as they have been superseded by Ontario’s Smoke-Free legislation. A new by-law could be enacted by Council to establish any smoking restrictions beyond those established by the province. A regulatory by-law is enforceable by designated individuals only and within Clarington is solely enforced by Municipal Law Enforcement Officers. By-law enforcement is initiated through education awareness and generally a compliance based focus. Following education and compliance monetary penalties are used as a deterrent to gain compliance. As previously mentioned, enforcement proves to be difficult when addressing members of the public, because usually by the time an officer is able to respond to the scene, the smoker has left. As well, the hours that our facilities are used, are frequently well outside of the regular hours of enforcement which would provide further challenges and increased costs.

2.5 Proposal

Through Resolution #GG-411-16 staff have been requested to address the concern of smoking at the entrances of community halls and (through additional discussions) staff also reviewed the issue of smoking in the seating areas of community events.

Evidence from Smoke-Free Ontario-Scientific Advisory Committee (2010) indicates that smoke free interventions are effective at reducing exposure, supporting quitting and the denormalization of tobacco use. Additional benefits to smoke free environments include a reduction in: fire hazards from discarded cigarettes, litter and costs associated with clean up, and exposure to clients or staff near exits.

Based on feedback from the HDEHD and best practices from other municipalities, and the successes realized at Clarington's Municipal facilities including Clarington library branches, staff recommends that Council approve a policy to prohibit smoking within 9 metres of any entrance to any Municipal building or facility. Implementing the policy (rather than a by-law) acknowledges our limitations while implementing a mechanism which is appropriate for the extent of the problem we are trying to address.

A public education program would be initiated to educate the community hall board members, staff, community event organizers, and the general public. This program would include signage at each Municipal building and facility and the inclusion of "smoking restrictions" and "right to terminate" clauses included in each rental agreement. As well, facility staff, operations staff, and community hall board members, and community event organizers will be provided educational materials detailing the restrictions and contact information for enforcement should they not be able to remedy the situation. This public education will address both smoking near entrances as well as smoking within reserved venue seating areas at community events.

3. Concurrence

This report has been reviewed by the Director of Community Services and the Director of Operations who concur with the recommendations.

4. Conclusion

Ontario's Smoke-Free legislation regulates smoking in Ontario and is enforced in Clarington by staff of the HDEHD. Implementing any restrictions beyond those imposed by the Province through the *Smoke-Free Ontario Act*, would promote and facilitate a healthy environment for patrons and staff and must be cautiously imposed with due consideration to enforcement and any necessary resources.

In an effort to promote healthy living through reasonable and achievable restrictions with minimal impact on the Municipality, the hall boards, and neighbours, it is recommended to implement a policy prohibiting smoking (including the use of electronic cigarettes) within 9 metres of all entrances to Municipal buildings. To implement such a policy for all of Clarington's Municipal buildings addresses the concerns brought to the attention of Council, provides for consistency, and facilitates success through education, awareness and the use of smoking restrictions" and "right to terminate" clauses in rental agreements.

5. Strategic Plan Application

Not applicable.

Submitted by:



C. Anne Greentree,
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Reviewed by:



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List of interested parties to be notified of Council's decision:

Clarington Arena and Hall Boards