



Town of Newmarket
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Proposed Regulations for Smoking By-law Staff Report

Report Number: 2019-33

Department(s): Legislative Services

Author(s): Kiran Saini, Acting Director of Legislative Services/Town Clerk

Meeting Date: March 18, 2019

Recommendations

1. That the report entitled Proposed Regulations for Smoking By-law dated March 18, 2019 be received; and,
2. That Council select one of the three Options outlined within this report; and,
3. That Staff be directed to conduct community consultation for a period of no less than 30 days on Council's proposed regulations for smoking in the Town of Newmarket; and,
4. That Staff be directed to report back with proposed amendments to the Town's Smoking By-law after the community consultation period has ended; and,
5. That Council repeal Odour By-law 2002-111; and,
6. That Staff be authorized and directed to do all things necessary to give effect to this resolution.

Executive Summary

This report is being provided following Council direction to Staff to prepare recommended by-laws for smoking and vaping cannabis in the Town of Newmarket. Staff are seeking Council direction with respect to the types of regulations Council wishes to see within the community, and to further direct staff to engage in community consultation on such regulations. The report details three options available to Council: 1) a prohibitive regime which would effectively prohibit smoking or vaping anywhere except for inside a private home or on the municipal boulevard; 2) alignment with the

current restrictions contained in the Smoke-Free Ontario Act (“SFOA”); and, 3) alignment with the Smoke-Free Ontario Act with additional restrictions.

Purpose

The purpose of this report is to seek Council direction on the regulations and restrictions in the Town’s Smoking By-law.

Background

On January 15, 2019, Council directed staff to “prepare amendments or new by-laws as required and return with recommendations as to how the smoking and vaping of cannabis in public places should be regulated in Newmarket by March/April 2019.”¹

Further to this direction, Town Staff have been participating in a York Regional Working Group comprised of staff from all 10 municipalities. The goal of this Group is to establish “template” definitions and provisions for a by-law for all local Council’s considerations. The template is being developed with the understanding that each municipality is unique and may wish to impose different levels of restrictions within that community.

This report provides Newmarket Council with preliminary information to inform their direction and feedback to staff on the regulations Council wishes to see in Town.

Staff have received a legal opinion that engaging in public consultation prior to adopting regulations on smoking and vaping in the community would strengthen the validity of the Town’s By-law. Such community engagement would also provide support and rationale for the municipality in the event of a legal challenge launched against the By-law.

Current By-laws - Smoking, Odour & Parks

The Town’s current Smoking By-law prohibits smoking in Town-owned buildings, vehicles, and smoking while using Town-owned equipment.

Newmarket’s Odour By-law is not an effective enforcement tool as over the years it has proven to be very challenging to enforce and to prosecute. The provisions within this By-law are fairly broad and subjective, and therefore, it is recommended that Odour By-law 2002-111 be repealed (**Attachment 1**).

The Parks By-law currently prohibits smoking tobacco anywhere within the boundaries of Sunnyhill Park, within a 20 metre radius surrounding the edge of all municipal sports surfaces, play structures, and the entrance or exit of a park.

¹ Special Council Meeting. January 15, 2019. [Item 4.2.3](#) Recreational Cannabis Report, T. Horton.

Discussion

The following three Options have been provided to Council for consideration. These Options are intended to develop and set a community threshold for smoking and vaping different substances in Newmarket.

Option 1 - Restricting cannabis use to only within a private dwelling

This Option uses the authority of the Municipal Act (“Act”) to adopt such prohibitory by-laws. Subsection 115(1) of the Act authorizes municipalities to prohibit or regulate the smoking of tobacco or cannabis in public places and workplaces.

Further, subsection 128(1) of the Act permits municipalities to take proactive steps to prevent a nuisance before it arises, and subsection 128(2) states that as long as the prohibitions put in place by the municipal council are arrived at in good faith, it is not subject to review by any court. This suggests that prior to adopting such prohibitory by-laws, council should be engaging in public consultation, seek out reports and other information that would substantiate why the specific nuisance needs to be regulated.

While the municipality has the authority to limit consumption to within a dwelling, it is subject to the following concerns:

1. Demonstration that there is a legitimate public health and safety issue if consumption is **not** regulated to within a private dwelling; and,
2. Practical enforcement issues such as resources and entry into dwelling (i.e., search and seizure authority).

Benefit

- Subject to individual compliance, the odour of smoked cannabis (often described as a skunk-like or otherwise offensive smell) would be, for the most part, confined to individual homes. The only exception is that the municipality cannot regulate cannabis consumption on a highway, and this includes the municipal boulevard (i.e., smoking or vaping on sidewalks cannot be prohibited).

Drawbacks

- Enforcement of such restrictive provisions would be challenging, requiring Town staff to seek to enter non-dwelling places where cannabis is smoked, such as backyards, apartment balconies, and privately-owned outdoor amenity areas. Given the short-term duration it takes to smoke and commit an offence, under this approach and the near-total area of Newmarket where smoking would be prohibited, the Town does not have the resources to effectively enforce such restrictions.
- Is not aligned with the use of tobacco in the Province (a product that is similar in how it is consumed). Over the last two decades, public health agencies have been advocating for tobacco consumption to be in open unenclosed areas instead of enclosed spaces.

- Would overlap with restrictions in the Smoke-Free Ontario Act that already prohibits smoking cannabis in workplaces, school, near playgrounds, and other areas where children are commonly present. This could lead to confusion over enforcement, and the public understanding where they could smoke or vape a product.
- It does not align with the view that cannabis is a product that can be legally purchased and consumed in Canada.
- By restricting use to inside a dwelling, it is effectively exposing other individuals inside that dwelling to second-hand smoke or vapours.
- The Town does **not** have the authority to restrict cannabis use on highways, which includes municipal boulevards (see “Other Considerations” within this report).
- Is not an easily understood restriction, which limits the likelihood of voluntarily compliance. As the public can legally smoke on the sidewalk and boulevard but such a by-law would prohibit smoking in a privately-owned yard, porch, patio, or parking lot, it would be challenging for intuitive understanding of where the restrictions are in place.

Option 2 - Alignment with the Smoke-Free Ontario Act (“SFOA”)

Smoking regulations have been in place in Ontario since the 1990’s. The current legislation, the Smoke-Free Ontario Act (“SFOA”), governs smoking and vaping in the Province. Since there are public health agencies who already conduct education on tobacco and cannabis consumption in Ontario, the Town could leverage the educational resources already in place by the province.

Restrictions within the SFOA

The SFOA **does not** differentiate between medical or recreational cannabis. Therefore any references below to smoking or vaping are in relation to any type of cannabis or tobacco. The SFOA came into effect in December 2017, and has fairly restrictive provisions within the Act itself, and if a municipality has a by-law that regulates smoking in that community, between the SFOA and that by-law, the more restrictive provisions apply.

The following information regarding SFOA regulations was obtained from the Province’s website.

1. Restaurant and bar patios

Individuals are not permitted to smoke or vape on a patio of any bar or restaurant, including the public areas within 9 metres of the patio.

2. Vehicles and boats

Drivers and their passengers cannot smoke tobacco or vape anything in a car or other motor vehicle (boats, snow mobiles, etc.) if anyone inside is age **15 years or younger**.

No one in a motor vehicle (including motorized snow vehicles such as snowmobiles) or boat that is being driven, or is at risk of being put into motion, can consume cannabis in any manner (smoking, vaping, eating). There are exceptions, including for:

- a passenger who is a medical cannabis user and consumes edible medical cannabis (smoking or vaping is not permitted).
- certain residential vehicles and boats, specifically a motor vehicle that has permanent sleeping accommodations and permanent cooking facilities, is parked somewhere that is not a highway, road or driveway, and is being used as a residence.
- a boat that has permanent sleeping accommodations and permanent cooking and sanitary facilities (other than a boat used to carry passengers for hire), is anchored or secured to a dock or land, and is being used as a residence.

3. Child care facilities and related places

Individuals are not permitted to smoke or vape anywhere on the entire premise of any child care centre or place that provides an early years program/service.

Further to this, homes that are established as home child care centres must be smoke-free and vape-free at all times, even if the children are not present. This includes any outdoor spaces that the children use.

4. Schools

Individuals are not permitted to smoke or vape in any public or private schools indoor space, outdoor grounds (includes playgrounds and sports fields), or public areas within 20 metres of the school's grounds.

5. Playgrounds and publicly owned sports areas

Individuals are not permitted to smoke or vape on children's playgrounds or public areas within 20 metres of children's playgrounds. Smoking or vaping is not permitted in publicly owned sporting areas, their viewing areas, and public areas within 20 metres of these places.

This means that smoking or vaping is not permitted on or within 20 metres of any Town-owned playgrounds such as exist in many of the Town's parks. More, it is prohibited to or smoke or vape on or within 20 metres of any sports areas such as the fields of Ray Twinney Recreation Complex.

6. Reserved outdoor seating venues

Individuals are not permitted to smoke or vape in the seating area of outdoor sports arena or entertainments venues. This prohibits smoking on or within 20 metres of the sports or seating area for any field for soccer, football, basketball, tennis, baseball, skating, and other sports. This is in addition to other restrictions that outright prohibit

smoking inside of any enclosed public space which would encompass all municipal recreation buildings.

7. Community recreational facilities

Smoking or vaping is not permitted on the outdoor grounds of a community recreational facility and any public areas within 20 metres of its grounds. A community recreational facility is an enclosed public place that offers athletic and recreational programs to the community and is owned by the Town. An example of this type of facility would be the Magna Centre.

8. Enclosed workplaces

Smoking or vaping in an enclosed workplace is not permitted, even when the workplace is closed. This prohibits smoking or vaping in any Town structure or vehicle that an employee works in or visits.

9. Enclosed public places

Individuals are not permitted to smoke or vape in an enclosed public place. Examples of these spaces would be inside the Municipal Offices or the Operations Centre.

10. Sheltered areas

Smoking or vaping in an outdoor shelter that has more than two walls and a roof if the public or employees are invited to use it (for example, a bus shelter) is not permitted.

11. Smoking and vaping where health and/or long-term care service is being provided

Individuals are not permitted to smoke or vape within 9 metres of any entrance or exit of a public, private hospital, psychiatric facility, long-term care home or independent health facility.

Smoking or vaping on any **outdoor** grounds of a hospital or psychiatric facility is prohibited.

Smoking or vaping is prohibited in residential care facilities, which includes:

- long-term care homes
- retirement homes that provide care; and,
- provincially-funded supportive housing residences

Some residential care facilities may choose to operate a controlled area for residents to smoke or vape. In these situations, these facilities must adhere to prescribed regulations for how to maintain and operate these areas.

12. Common indoor areas

Smoking or vaping is prohibited in **any common indoor areas** of condos, apartment buildings or college and university residences. Examples of indoor common areas include:

- elevators
- stairwells
- hallways
- parking garages
- laundry facilities
- lobbies
- exercise areas
- party or entertainment rooms

13. Second-hand smoke or vapour in rental units

Unless an individual has signed an agreement or lease or is living in a condominium with by-laws that say otherwise, that person is allowed to smoke or vape in their private home.

14. Hotels, motels and inns

The only places guests may smoke or vape in hotels, motels and inns is in fully enclosed guest rooms that the management has designated for smoking and/or vaping.

Smoking or vaping is not allowed on or around playgrounds at hotels, motels and inns.

Enforcement of SFOA provisions

Currently, only York Region Public Health Inspectors can enforce the provisions of the SFOA in the Town of Newmarket. Should Council provide direction to amend the Town's Smoking By-law to align with the SFOA, Town By-law Enforcement Staff would be given the authority to enforce the same smoking and vaping provisions. While updating the By-law would allow for greater enforcement powers; it is also likely that there may be an impact on existing staff resources. Following any amendments to the By-law being adopted, staff will monitor and assess the impact of the amendments, and if required, suggest recommendations to address the impact on resources.

Benefits

- These restrictions are universal across Ontario, which provides for consistent application and understanding between all municipalities. This increases understanding by members of the public and the likelihood of voluntarily compliance with the restrictions.

- Given the extensive smoking and vaping prohibitions, public education on smoking tobacco has been ongoing, which means that individuals are likely getting accustomed to the restrictions in place.
- Signage in many of these places where smoking or vaping is prohibited have already been erected, which adds another component of ongoing public education.

Drawback

- The community may wish to seek additional regulations above and beyond what the SFOA already provides for.

Option 3 - Alignment with the Smoke-Free Ontario Act, with additional exceptions

The Option would adopt all the same regulations as with Option 2, with potential further restrictions imposed.

1. Riverwalk Commons

As discussed above, the SFOA prohibits smoking on children’s playgrounds and within 20 metres of them. This includes splash pads, and prohibits smoking within 20 metres of the splash pad. The SFOA does not clearly define the boundaries of the “playground”, and as such it is unclear whether the edge of the splash pad or the edge of the property on which it is located if the point from which the distance radius is measured.

Given the significant number of events and festivals within the Riverwalk Commons area, and because the overall Riverwalk Commons area is a popular attraction used by young children in the summer months, Council may wish to consider designating:

- a) The area as no smoking and/or vaping in its entirety (the area that encompasses the black outlined portion of the map in **Attachment 2**, with some exceptions); or,
- b) A smoking area to allow for tobacco and cannabis consumers to do so in a specific area (area to be determined).

Areas within Riverwalk Commons that are already “no smoking/vaping” in accordance with the SFOA

As depicted in **Attachment 2**, there are certain areas within the Riverwalk Commons area that are already deemed as “no smoking/vaping” in accordance with the SFOA. The yellow areas identify a recreation facility or a playground, and smoking/vaping is prohibited on the grounds of those areas, and any public areas within a 20 metre radius of those restricted grounds.

The pink areas have been identified as the restaurants with patios in the Riverwalk Commons vicinity. Smoking and vaping is not permitted on restaurant or bar patios and any public area that is within 9 metres of that patio.

Note: Public areas includes any part of the sidewalk/road that falls within that 20 or 9 metre radius identified above.

Sidewalks and parking lots in the Riverwalk Commons

Attachment 2 shows which parking lots are included as part of the official Riverwalk Commons area; the southern lots adjacent to Doug Duncan Drive would qualify as part of Riverwalk Commons. However, it is important to note that, the Town does **not** have the authority to regulate smoking on municipal boulevards. This means that should Council wish to prohibit smoking and vaping in the entire Riverwalk Commons area, the Town does not have the authority to regulate smoking or vaping on the roads and sidewalks that have been identified as dark grey and white in **Attachment 2**.

Special events in the Riverwalk Commons

Many special events are held in the Riverwalk Commons, and there are also many regularly scheduled events such as the Farmer's Market. Should Council adopt a by-law that prohibits or restricts tobacco or cannabis use in Riverwalk Commons, the event organizers would need to abide by any such regulations. However, the by-law could not restrict or prohibit smoking on sidewalks or on the roadway, unless that portion of the sidewalk/roadway falls into one of the "no smoking" areas already covered by the SFOA.

2. Town-owned Parks and Trails

Council may wish to impose additional restrictions in municipally-owned parks and trails in recognition that there are varying age groups that use these outdoor spaces, and that smoking or vaping cannabis has a skunk-like odour that individuals may consider as offensive. Accordingly, Council may wish to seek public consultation on developing smoking and vaping restrictions across all Town-owned parks and trails.

It is important to note that enforcement on public parks and trails would present a number of challenges, such as: safety of staff (e.g., the person smoking is located 100 metres into a wooded lot), limited resources to respond to these complaints in a reactive manner (i.e., enforcement staff are not proactively walking around in parks or on trails).

The Town's Parks By-law, currently prohibits smoking in Sunnyhill Park due to its proximity to and use by residents of the Southlake Residential Care Village. The Parks By-law also prohibits smoking within 20 metres of any municipal sports surface, play area, or municipal facility. This largely mirrors existing restrictions in the SFOA.

3. Town-owned facilities that are not community recreational facilities

As the interior of all Town-owned buildings are workplaces and enclosed public places, smoking or vaping is already prohibited in these buildings. However, the SFOA only applies a minimum distance prohibition on smoking or vaping within 20 metres of the building or the outdoor grounds of any community recreational facility, and not from municipal buildings generally. Thus, Council may wish to adopt no smoking or vaping regulations at Newmarket-owned facilities that do not qualify as community recreational facilities in order to prohibit smoking and vaping on exterior grounds of the properties.

Table 1 below illustrates which Town-owned facilities are classified as community recreational facilities for the purposes of the SFOA

Facility Name	Community Recreational Facility Note: If yes, then smoking/vaping within 20 metres of the outdoor grounds is already prohibited by the SFOA.
Art Ferguson Clubhouse*	No*
Central York Fire Services Station 4-1	No
Central York Fire Services Station 4-2	No
Elman W. Campbell Museum	No
Global Pet Food Dog Park	No
Gorman Outdoor Pool	Yes
Hollingsworth Arena	Yes
Magna Centre	Yes
Mulock Estate	No
Municipal Offices	No
Newmarket Community Centre & Lions Hall	No
Newmarket Public Library	No
Newmarket Youth Centre & Sk8 Park	Yes
Old Town Hall	No
Ray Twinney Recreation Complex	Yes
Robert N. Shelton Operations Centre	No
Seniors' Meeting Place	No
Stickwood Walker Farmhouse	No

* **Note:** There is a playground located approximately 4 metres from Art Ferguson Clubhouse, which means smoking and vaping is already prohibited within a 20 metre radius of the playground.

For the facilities identified as “no” in the second column, Council may wish to designate the outdoor grounds of the facility as an area where smoking or vaping are prohibited. Council could restrict smoking and vaping of the outdoor grounds of these facilities within a certain distance from the buildings (e.g., 9 metres or 20 metres) or could prohibit smoking on the grounds of Town facilities generally (i.e, no smoking or vaping on the entire property).

Other Considerations

Medical Cannabis

The Town is currently consulting with external legal counsel on its authority to restrict medical cannabis beyond the SFOA, and with York Region from a prosecution standpoint. At the time this report was written, this matter was not yet resolved; however, it is anticipated that municipal authority will be determined by the time staff prepare a draft by-law for Council’s consideration.

Municipal Boulevards/Sidewalks

Subsection 115(3) of the Municipal Act does not permit the Town to restrict smoking of tobacco or cannabis on a **highway**. Based on a legal opinion, “highway” includes municipal boulevards; therefore, the Town cannot regulate smoking or vaping tobacco or cannabis on municipal boulevards, and this includes sidewalks.

Designated Smoking Areas

The Town’s current Smoking By-law authorizes certain property owners to establish “smoking areas”. This provision can be further expanded to permit all private property owners to establish designated smoking areas, provided that it is in compliance with the SFOA, and it would allow commercial property owners to effectively provide an area for individuals to legally smoke tobacco or cannabis.

Other Substances

Council also has the opportunity to review how smoking and vaping of substances other than tobacco or cannabis should be regulated within the Town. Other substances may be herbal products that are smoked or vaped for either recreational or medicinal reasons. Before undertaking any regulations to restrict or prohibit smoking or vaping of substances other than tobacco or cannabis, Council should direct staff to undertake public consultation, and develop a policy rationale as to why these regulations for these substances should be enacted.

Alignment of tobacco and cannabis regulations

Given the similar public health effects of second-hand smoke and the importance of consistency for a by-law that is well understood and enforceable, it is important to align restrictions between tobacco and cannabis smoking and vaping. Aligning where a

person can smoke or vape a substance (whether it is cannabis, tobacco, or another substance) in Town would assist with:

- Educating the public;
- The likelihood of achieving compliance (because all substance users are being regulated the same); and,
- Enforcement.

Number of complaints received by the Town regarding cannabis

Last year, the Town received 3 cannabis-related complaints from residents. These complaints were in relation to individuals who were allegedly smoking cannabis on private property. It is anticipated, however, that with the warmer months ahead, the number of complaints may increase.

Conclusion

Next Steps

1. Subject to Council direction on which option to pursue, conduct community consultation in March/April;
2. Present amendments to Smoking By-law to future Council meeting in April/May; and finally,
3. Conduct community education on enacted By-law.

Business Plan and Strategic Plan Linkages

This report aligns with the Town's vision of being Well-Equipped & Managed, and Well-Planned & Connected.

Consultation

An internal working group of staff from Planning, Building, Finance, Public Works, Legal, Legislative Services, Customer Service, Economic Development, and Communications was consulted on this report.

Additionally, staff have been participating in a York Region Working Group consisting of staff from all 10 York Region municipalities, and as part of this Working Group staff have solicited external legal opinions with matters respecting a municipality's authority to limit cannabis consumption in private and public spaces.

Human Resource Considerations

None.

Budget Impact

Should Council adopt no smoking or vaping anywhere within Town-owned parks, additional signage would need to be ordered and installed. Based on a preliminary estimate, it is anticipated that the cost of signage hardware would be approximately \$28,000 for the parks alone. Should Council wish to adopt additional restrictions in Town, it would cost approximately \$100 per sign.

Attachments

Attachment 1 - Repeal Odour By-law

Attachment 2 - Map of Riverwalk Commons Area

Approval

Lisa Lyons, Acting Commissioner of Corporate Services

Corporate Services Commission

Contact

For more information, please contact Kiran Saini, Acting Director of Legislative Services/Town Clerk at ksaini@newmarket.ca