Town of Newmarket
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Regulations for Smoking By-law
Staff Report to Council

Report Number: 2019-52

Department(s): Legislative Services

Author(s): Kiran Saini, Deputy Town Clerk

Meeting Date: May 21, 2019

Recommendations

1. That the report entitled Regulations for Smoking By-law dated May 21, 2019 be received; and,
2. That Smoking By-law (**Attachment 1**) be enacted; and,
3. That Delegation By-law 2016-17 be amended (**Attachment 2**); and,
4. That Parks By-law 2013-14 be amended (**Attachment 3**); and,
5. That Staff be authorized and directed to do all things necessary to give effect to this resolution.

Executive Summary

The Smoke Free Ontario Act governs smoking and vaping of tobacco and cannabis products in Ontario. Under the Municipal Act, the Town has the authority to further restrict where smoking and vaping may be permitted within Newmarket. Town Council directed staff to review the Smoking By-law in light of the recent legislation which legalized cannabis consumption for personal use. This report presents a draft Smoking By-law that has been formed based on consultation that was conducted with the community over the month of April and with staff from across York Region (upper and lower tier municipalities) and York Region Public Health.

The basis of the draft By-law proposes to prohibit smoking and vaping tobacco and cannabis on all municipally-owned property, including facilities, parks public green spaces, and trails. The By-law also provides for the provision of Designated Smoking

Areas on Town-owned property, which will be determined on a case by case situation to ensure that the Area does not conflict with the regulations within the Smoke Free Ontario Act.

Purpose

The purpose of this report is to seek Council approval for a revised Smoking By-law for the Town.

Background

This report supplements the information that was presented to Committee of the Whole at its meeting on March 18, 2019. Report 2019-33 identified three options for consideration, and it also directed staff to undertake a period of public consultation with the community. Council directed staff to survey the community and report back with a draft by-law for consideration. This report summarizes the feedback from the community and also presents a new Smoking By-law for the Town.

Discussion

Community Consultation

Following Council direction, staff conducted community consultation over the month of April. The Town retained MDB Insight to undertake a telephone survey of Newmarket residents, and an online survey with the same questions was developed and used to gather the community's feedback.

The online survey was launched on April 3, 2019 at the Community Open House. At this event, staff encouraged residents to complete the survey, and answered many questions regarding current and possible regulations for smoking in the Town. The survey was distributed to all Boards and Committees of Council (e.g., the Main Street Business Improvement Area, Accessibility Advisory Committee, etc.). Additionally, laptops with access to the survey were made available at the Magna Centre, the Municipal Offices and at the Newmarket Public Library. The survey was promoted on the Town's social media accounts and these links were shared with Members of Council for their own use and distribution. The online survey was restricted to completion once per device.

352 responses were received from the telephone survey, and 1157 individuals provided responses online.

Survey Questions

Following confirmation that the survey respondent was over the age of 19 and lived in Newmarket, the following questions were asked of respondents regardless of whether they were completing the survey over the phone or online. It is noted that the response of the respondent to declare that they live in Town and were over the age of 19 was

based on them answering truthfully; no additional verification was undertaken to prove this claim.

The survey differentiated vaping and smoking tobacco from vaping and smoking cannabis with all questions.

1. [Context regarding where smoking is permitted and prohibited was provided.] Below is a list of locations where the smoking or vaping of tobacco and cannabis products is currently permitted according to provincial laws and we want to know if you think it should be allowed or prohibited.

    - Public green spaces
    - Public trails
    - Backyards of private residences
    - Designated smoking areas on private property

2. Smoking tobacco or cannabis is not permitted on or within 20 metres from a recreation facility such as the Tim Hortons Skating and Water Feature at Newmarket's Riverwalk Commons, playgrounds, sports fields, or recreation facilities. However, public gathering areas beyond the 20 metre limit do not have any such restriction.

    Should smoking or vaping of tobacco or cannabis products be allowed or prohibited in the public areas beyond the 20 metre limit?

3. Shisha smoking (also called hookah), is a way of smoking tobacco, sometimes mixed with fruit or molasses sugar, through a bowl and hose or tube.

    Do you think Shisha smoking in a private business catering to Shisha smoking should be allowed or prohibited in the Town of Newmarket?

Respondents were also asked to advise whether they smoke or vape tobacco and cannabis products, and if so, how frequently they smoke or vape.

Telephone and Online Survey Findings

The majority of respondents would not permit smoking or vaping of tobacco and cannabis in public green spaces, public trails, or public gathering areas beyond the areas already prohibited by the Smoke Free Ontario Act (SFOA).

The majority of respondents would permit smoking and vaping of both tobacco and cannabis in backyards.

Tobacco smoking and vaping in designated smoking areas on private property seems acceptable to most, but not cannabis.

The majority of telephone respondents would permit smoking of shisha in a private business catering to Shisha Smoking in the Town of Newmarket. Online respondents

were more divided on this question. Almost half of respondents would permit private shisha businesses, whereas almost 40% would suggest banning. It is noteworthy that when staff were assisting respondents at the Community Open House, there were a number of questions regarding specifically what shisha was. Given that most of the responses between the online and telephone survey were generally consistent, it can be inferred that individuals may not have had the benefit of speaking to a person prior to answering a question they were unsure of. It is also noteworthy that 30% of the online respondents skipped this question and a further 12% stated they "didn't know or were unsure", which further supports staff's suggestion that respondents didn't necessarily understand what shisha was when they answered this question.

Demographics and Behaviour Information from Telephone Survey

The telephone survey was able to weight answers based on ward and age. The following information was provided by MDB Insight based on their analysis.

The results across wards were very similar with the exception of ward 2, who are more likely to permit smoking and vaping of tobacco on public green space and trails.

The attitudinal difference between smoking and vaping tobacco versus cannabis in designated smoking areas seems to be driven by age and over time would dissolve.

Demographics and Behaviour Information from Both Surveys

Respondents were asked to comment on the frequency in which they smoke or vape tobacco and cannabis products.

The majority (80% or more) of online and telephone respondents stated that they never smoke or vape tobacco or cannabis.

9% of online and telephone respondents smoke or vape **tobacco** products everyday, and between 1% and 5% of online and telephone respondents smoke or vape **cannabis** products everyday.

The remaining respondents indicated that they either smoke or vape tobacco and cannabis products on a frequency that ranged from several times a week to less often.

Draft Smoking By-law (Attachment 1)

As indicated at the March 18, 2019 Committee of the Whole meeting, staff have participated in a York Regional Working Group to develop consistency as it relates to by-law definitions, powers of entry, enforcement, offences and penalties, etc. This group included staff from York Region's prosecutor's office.

In general, the provisions of the Smoking By-law presented with this report (**Attachment 1**) are as follows:

- With limited exceptions, this By-law addresses regulations for smoking and vaping on public property only. This means that private property owners are responsible for establishing their own regulations (and Designated Smoking Areas) as it pertains to tobacco and cannabis use on their property.

- Smoking and vaping tobacco and cannabis is not permitted on all properties where schools, daycare facilities, and other child care facilities are located.

- Smoking and vaping tobacco and cannabis would not be permitted at all Town-owned parks, green spaces, and trails. **Attachment 3** seeks Council approval to amend Parks By-law for clarity.

- Smoking and vaping tobacco and cannabis is not permitted on street furniture, which include benches, picnic tables, or other furniture items that are maintained, owned or leased by the Town.

- Smoking and vaping tobacco and cannabis would be permitted only in Designated Smoking Areas.

Designated Smoking Areas on Public Property

The draft Smoking By-law currently permits Designated Smoking Areas to exist so long as they do not contravene the Smoke Free Ontario Act (SFOA). Staff recommend that the establishment of permanent Designated Smoking Areas on public property (including potential Designated Smoking Areas in parks and along trails) be delegated to staff. This would allow staff to evaluate each property based on the a number of matters including the regulations contained in the SFOA, health and safety, the Town's current Smoking in the Workplace Policy, and individuals within each environment. Staff would also use factors such as proximity to a sidewalk as factors to determine whether a Designated Smoking Area should exist on public property. Accordingly, **Attachment 2** seeks Council approval to amend Delegation By-law to provide for this delegation to staff.

For approved Designated Smoking Areas, staff would evaluate each property and develop a mechanism to delineate the defined Area. Additionally, signage will be erected to clearly mark the Area as designated for smoking, and waste receptacles will be installed to help reduce littering.

Upon approval of the permanent Designated Smoking Areas, staff will communicate these areas on the Town's website (with visual maps) to promote compliance and develop marketing material to conduct public education over the summer months.

Special Events

Staff note that the event organizers have already inquired whether smoking or vaping is permitted at their special event being held on Town-owned property. Given that each event is unique, staff recommend that each event organizer work with the Town's Program Coordinators to determine whether a temporary Designated Smoking Area would be permitted at their event. Following consultation with York Region Public Health staff, it is apparent that each special event needs to be evaluated and considered separately (i.e., staff will need to know if food being served, if there is a movable play structure such as a bouncy castle for children to play on, etc.) These are some factors that would require staff to determine whether the SFOA provisions apply and if there is an established setback in accordance with the Act. For example, an inflatable bouncy castle would classify as a playground for the purposes of the SFOA, therefore, smoking or vaping on the structure would be prohibited, and smoking or vaping within 20 metres of it would also not be permitted.

Individuals are permitted to smoke or vape tobacco and cannabis on Municipal Boulevards

As indicated on page 11 of Staff Report 2019-33, the Municipal Act specifies that individuals may smoke or vape on a highway, which includes the municipal boulevard. This means that individuals are permitted to smoke or vape on sidewalks.

At the March 18, 2019 Committee of the Whole meeting, there was discussion regarding a specific laneway between Main and Cedar streets in downtown Newmarket, and whether it was classified as a "highway" for the purposes of the Municipal Act. Staff conducted further research into this matter, and have concluded that this laneway is a highway; therefore, smoking and vaping cannot be restricted on this laneway.

Medical Cannabis

Individuals who use cannabis for medicinal purposes are provided an exemption from the By-law. This means that if they are smoking or vaping for medical reasons in places that are prohibited, they will need to ensure that they are carrying their documentation with them in the event they are asked by an Enforcement Officer.

Conclusion

Should Council approve the recommendations as set out within this report, staff will work to develop a communication and education plan to advise residents and visitors of the community of the smoking and vaping regulations in Newmarket.

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 Services, Financial Services, Public Works Services, Legal Services, Legislative Services, Customer Service, Economic Development, Recreation and Culture, Central York Fire Services, 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 York Region Public Health, 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

In anticipation of the public education campaign over the summer months, staff will be hiring 2 summer students to conduct public outreach and education between June and August of this year.

Budget Impact

Many of the parks and trails currently have signs advising visitors of the rules of being on the property; these signs will be updated to advise that smoking is not permitted while in a park or on a trail. Additional signs will be erected on an as needed basis, and should additional funding be required to support these signs, staff will report to Council with a budget request.

Attachments

Attachment 1 - Draft Smoking By-law

Attachment 2 - Amendment to Delegation By-law

Attachment 3 - Amendment to Parks By-law

Approval

Lisa Lyons

Director of Legislative Services/Town Clerk

Contact

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