

A Model ByLaw to Prohibit the Smoking of Tobacco or Other Weeds or Substances in Public Places and Workplaces

Waterpipe smoking is emerging as a chic new trend among young adults worldwide, including Ontario. The *Smoke-Free Ontario Act (SFOA)* prohibits the smoking of “lighted” tobacco in enclosed public places and workplaces—other weeds or substances are beyond its jurisdiction. There is no definition of smoking in the *SFOA*.

Unfortunately, it is increasingly common for proprietors of restaurants and bars to remove tobacco shisha (what is smoked in a waterpipe) from its original packaging and store it in unlabelled plastic containers. Claiming the shisha is “herbal” and does not contain any tobacco, proprietors are circumventing the *SFOA* and allowing customers to smoke indoors. It should also be noted that shisha is technically heated and not directly combusted (the tinfoil prevents it from coming in contact with the charcoal), making it possible to argue that it is not “lighted” and therefore legal.

Section 115 of the Ontario *Municipal Act, 2001* provides municipalities with the jurisdiction to enact bylaws prohibiting the smoking of tobacco in public places and workplaces that go beyond the provisions of the *SFOA*. However, because section 115 is limited to tobacco, these bylaws too are insufficient to prohibit the smoking of other weeds or substances in a waterpipe or otherwise.

Sections 10 and 11 of the *Municipal Act, 2001* provide authority for municipalities to pass bylaws respecting the “health, safety and well-being of persons.” This arguably includes prohibiting the smoking of other weeds or substances in public places and workplaces. In addition, section 128 provides the authority to control public nuisances, and section 129 to regulate odours, among other irritants.¹

Regardless of how the job gets done, it is imperative that municipalities look at ways of addressing this burgeoning issue at the local level—it could take years before the provincial government takes action and amends the *SFOA*. This model bylaw offers a comprehensive definition of smoking and further tightens things up by defining tobacco as well as other weeds or substances.

¹ The City of Ottawa passed a bylaw in June 2012 prohibiting the smoking of waterpipes and non-tobacco products on municipal property, citing sections 128 and 129 of the *Municipal Act, 2001*.
<http://ottawa.ca/calendar/ottawa/citycouncil/occ/2012/06-27/cpsc/02%20-%20ACS2012-CMR-LEG-0008%20Smoking%20Water%20Pipes.pdf>

CITY OF _____

BYLAW NO. 2012-_____

Option 1 - New bylaw

A bylaw of the City of _____ to prohibit the smoking of tobacco or other weeds or substances in waterpipes and other smoking equipment in public places and workplaces.

Option 2 - Amended bylaw

A bylaw of the City of _____ to amend Bylaw No. _____ to prohibit the smoking of tobacco or other weeds or substances in waterpipes and other smoking equipment in public places and workplaces.

WHEREAS Council wishes to prohibit the smoking of tobacco or other weeds or substances in public places and workplaces including indoor and outdoor areas in public places and workplaces;

AND WHEREAS to limit the impact of tobacco smoke or smoke from other weeds or substances for the general health of the public, to benefit young persons from reducing their likelihood of experimenting and becoming addicted to tobacco and non-tobacco products, and to improve the environmental and social conditions in public places and workplaces;

AND WHEREAS Council recognises the negative health effects of smoking tobacco in a waterpipe are similar to those of smoking cigarettes;² and that there are no statistically significant differences between waterpipe tobacco smoke and waterpipe smoke from other weeds or substances in terms of harmful toxicants produced from combustion or heating, including carcinogens and other substances that can cause smoking-related cancers and cardiovascular disease;³

AND WHEREAS there is compelling evidence that chronic obstructive pulmonary disease in women, acute respiratory infections in children and acute lower respiratory infections in children under the age of five are associated with indoor biomass smoke;⁴

AND WHEREAS the burning of charcoal on a waterpipe produces high yields of carbon monoxide (CO) and carcinogenic polycyclic aromatic hydrocarbons (PAH), both damaging to human health;⁵

² Shihadeh A, Salman R, Jaroudi E et al., 2012. Does switching to a tobacco-free waterpipe product reduce toxicant intake? A crossover study comparing CO, NO, PAH, volatile aldehydes, "tar" and nicotine yields. *Food and Chemical Toxicology* 50, 1497. Doi:10.1016/j.fct.2012.02.041.

³ *Ibid.*

⁴ Torres-Duque C, Maldonado D, Perez-Padilla R et al., 2008. Biomass fuels and respiratory diseases: A review of the evidence. *Forum of International Respiratory Societies Report* 5, 577-582. Doi: 10.1513/pats.200707-100RP.

⁵ Monzer B, Sepetdjian E, Saliba N et al., 2008. Charcoal emissions as a source of CO and carcinogenic PAH in mainstream narghile waterpipe smoke. *Food and Chemical Toxicology* 46;2991-2995. Doi: 10.1016/j.fct.2008.05.031.

AND WHEREAS lung cancer in women is associated with household coal use;⁶

AND WHEREAS waterpipe use has been recognized as an emerging health epidemic;⁷

AND WHEREAS the sharing of waterpipes can increase the risk of contracting infectious diseases;⁸

AND WHEREAS there is public misconception about the negative health effects of waterpipe use;⁹

AND WHEREAS Council recognises that flavoured and sweetened waterpipe preparations are attractive to young adults;¹⁰

AND WHEREAS the smoking rates for young adults are significantly higher than the national average;¹¹

AND WHEREAS the City has the capacity, rights, power and privileges of a natural person, and may pass bylaws for prohibiting or regulating, for purposes considered necessary or desirable including the use and protection of public assets, social and environmental purposes, the delivery of services, and for the health, safety and well-being of persons under the authority of the *Municipal Act, 2001*, including but not limited to sections 8, 9, 10, 11 and 115.

Option 1 – New bylaw (or Amended bylaw)

NOW THEREFORE the Council of the City of _____ enacts as follows:

1. The definition of “smoke” or “smoking” in Section ___ of Bylaw No. ___, entitled _____ as amended is repealed and the following definition is substituted therefore:

“smoke” or “smoking” shall include the use or carrying of any lighted or heated cigar, cigarette, pipe, waterpipe, or any other equipment used to inhale, exhale, burn or heat any tobacco or other weed or substance in any manner or in any form;

⁶ *Supra* note 3.

⁷ Maziak, W. The waterpipe – a global epidemic or a passing fad. *International Journal of Epidemiology* 2010; 39: 857-859.

⁸ WHO Study Group on Tobacco Product Regulation. *Waterpipe Tobacco Smoking: Health Effects, Research Needs and Recommended Actions by Regulators*. Geneva, Switzerland: World Health Organization, 2005.

⁹ Wataid, W et al. Water pipe smoking: Effects, attitude and directions. *Journal of Smoking Cessation* 2009; 4: 18-25.

¹⁰ Dugas E, Tremblay M, Low N et al., 2010. Water-pipe smoking among North American youths. *Pediatrics* 125; 1187. Doi: 10.1542/peds.2009-2335.

¹¹ Canadian Tobacco Use Monitoring Survey 2010. Health Canada. www.hc-sc.gc.ca/hc-ps/tobac-tabac/research-recherche/stat/ctums-esutc_2010_graph-eng.php

DEFINITIONS AND INTERPRETATION

1. (1) In this Bylaw the following terms have the prescribed meanings unless the context otherwise requires:

(a) “smoke” or “smoking” shall include the use or carrying of any lighted or heated cigar, cigarette, pipe, waterpipe, or any other equipment used to inhale, exhale, burn or heat any tobacco or other weed or substance in any manner or in any form;

(b) “tobacco” shall include pipe tobacco, waterpipe tobacco (also known as shisha), cigarettes, cigars, cigarillos or any other similar product made with or containing tobacco;

(c) “other weeds or substances” shall include non-tobacco “herbal” shisha and other plant or products intended for inhalation.

PASSED and ENACTED this day of , 2012.

MAYOR

CLERK