

A Case Study:

Peterborough's Leading Edge Bylaws

Peterborough is a city of approximately 78,000 residents, located 125 kilometres northeast of Toronto. As in many other Ontario municipalities, smoking in Peterborough is prohibited in a variety of outdoor locations, including city parks (except in some designated areas), within 9 m of playgrounds, beaches, wading pools, and within 9 m of city-owned or leased buildings including City Hall, fire stations, arenas, etc. However, what sets Peterborough apart are two leading edge bylaws.

Smoke-free and tobacco-free hospital property

The first notable bylaw (#10-123) was passed in July 2010 and prohibits smoking on land owned by the Peterborough County-City health unit, as well as on hospital property.¹ This in itself is significant: although there are dozens of voluntary smoke-free hospital policies in Ontario, there are only 7 other municipalities that have passed bylaws in this respect.² Moreover, Peterborough's bylaw prohibits not just tobacco smoking, but also the use of any tobacco product on hospital property—making it totally unique in Ontario and possibly Canada.

Prior to the bylaw, the hospital had passed a smoke-free property policy in 2008; however, the policy was unfortunately not deemed a success with respect to compliance and enforcement. Not wanting to give up, the hospital's CEO approached the City to see if it would be possible to have the hospital's smoke-free status enforced under a bylaw. Around the same time the health unit had begun to notice an increased use of chew tobacco among Peterborough youth. As such, bylaw #10-123 includes tobacco in any processed or unprocessed form that may be smoked, inhaled or chewed, citing section 10(2) of the *Municipal Act, 2001*. This section enables councils of local municipalities to pass bylaws and make regulations for the health, safety and well-being of its residents.

A smoke-free outdoor environment protects patients, staff and visitors from second-hand smoke in crowded places doorways and patios. Also significant is the social protection afforded by smoke-free spaces: reducing social exposure to smoking reduces visual and sensory cues which can help prevent young people from starting to smoke, helps ex-smokers

¹ Bylaw #10-123 has since been repealed in favour of consolidated bylaw #11-074, *Being a Bylaw to Establish a Bylaw Respecting Smoking in the City of Peterborough*. www.peterborough.ca/Assets/City+Assets/By-Laws/2011/11-074+-+Smoking+By-law.pdf?S_PROVINCESTATEID=&S_LEGISLATIONDOMAINID=&S_REGIONCITYID=447&SID=1341

² Besides Peterborough, the municipalities of Elliot Lake, Mattawa, North Bay, Timmins, Parry Sound, Sault Ste. Marie and Woodstock have also passed bylaws prohibiting smoking on hospital property.

stay off cigarettes and helps smokers to quit. Over and above being smoke-free, a tobacco-free environment reflects the health missions of the hospital and health unit, promotes healthy choices and strongly demonstrates health promotion leadership in the community. Indeed, it can be argued that a hospital is ground zero of the tobacco epidemic, and that allowing tobacco use on hospital property is an unacceptable disconnect.

Hospital staff, patients and visitors were given a one month warning phase before charges began being laid. Since that time, charges have been regularly laid as a constant reminder to the public of the importance of maintaining a smoke- and tobacco-free hospital environment, indoors and out.

A ban on waterpipe smoking in public places and workplaces

Peterborough's second leading edge bylaw was passed in December 2012 and prohibits waterpipe smoking in public places and workplaces, as well as on municipal property and licensed patios.³ Bylaw #12-169 defines waterpipe as "any lighted or heated smoking equipment used to smoke tobacco or non-tobacco substances or any combination thereof in a form that may be smoked or inhaled." This definition includes both tobacco as well as "herbal" shisha—the sticky, sweet preparation that is smoked in a hookah pipe. Section 10(2) of the *Municipal Act, 2001* is again the enabling legislation cited in this bylaw.

Although there were no bars or restaurants offering hookah smoking at the time, the City and health unit had begun receiving enquiries from prospective business owners looking for information about opening hookah establishments. The health unit had noted waterpipe smoking equipment and shisha on store shelves years ago, and had observed an increase in sales in recent years with an estimated one third of City retailers now carrying such products. In its November 2011 staff report to the Board of Health, the County-City Health Unit noted the increasing popularity of hookah smoking in Ontario, particularly among youth and young adults. The report pointed to the health risks of exposure to smoke of any kind, the risk of infectious disease transmission through the sharing hookah pipe hoses and the importance of maintaining a level playing field for all hospitality businesses in the City. The report also emphasized the City's limited capacity to deal with future enforcement issues related to waterpipe smoking in public places. During the bylaw's debate, City Councilors who had participated in the development of the original smoke-free bylaw in the 1990s voiced their concern that allowing waterpipe smoking would result in an erosion of the gains that had been made toward smoke-free indoor spaces in Peterborough.

³ Bylaw #12-169, *Being a Bylaw to Prohibit the Use of Water Pipes in Enclosed Public Places and in Certain Other Places in the City of Peterborough*. www.peterborough.ca/Assets/City+Assets/By-Laws/2012/12-169+-+By-law+to+Prohibit+Smoking+of+Water+Pipes.pdf?S_PROVINCESTATEID=&S_LEGISLATIONDOMAINID=&S_REGIONCITYD=447&SID=1484

In other municipalities, the provincial *Smoke-Free Ontario Act* is being subverted by hookah establishments claiming to serve only “herbal” shisha. Tobacco enforcement officers must be able to prove that the shisha contains tobacco before laying a charge. However, obtaining a sample for chemical analysis can be challenging, and testing is extremely costly as well as slow. Moreover, tobacco enforcement officers are in agreement that up to 98% of the “herbal” shisha samples that are chemically analyzed test positive for tobacco, making the whole “herbal” shisha argument a red herring. Peterborough has just one tobacco enforcement officer and no budget for shisha testing; the potential negative impact of waterpipe smoking on the City’s enforcement program was therefore significant.

By acting quickly to broaden the definition of smoking before any hookah establishments opened in Peterborough, the City has preserved the indoor air quality in public places as well as avoided the enforcement headaches currently being faced in other municipalities.