Minutes – Executive Policy Committee – January 17, 2018

Report – Standing Policy Committee on Protection, Community Services and Parks – January 9, 2018

Item No. 4 Smoking on Outdoor Patios

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Protection, Community Services and Parks, as amended, and submitted the following to Council:

1. That the Public Service be directed to prepare for Council approval, amendments to the Outdoor Smoking By-law No. 62/2011, to achieve the following:

    A. Prohibit the use of personal smoking devices (including cigarettes, cigars, pipes, e-cigarettes, water pipes, hookahs, and other similar products/devices) on outdoor patios where food and/or beverage service is-permitted.

    B. Penalties for both smokers and patio owners/operators if smoking on outdoor patios takes place.

    C. A fine schedule for offences related to smoking on patios, enforceable through the *Municipal By-law Enforcement Act* (MBEA).

    D. That Indigenous-led ceremonies be exempt.

    E. Effective date of April 1, 2018.

2. That the Winnipeg Public Service be directed to report back to the Standing Policy Committee on Protection, Community Services and Parks with a review of the prohibition of the use of personal smoking devices on outdoor patios, two years from the date of the enactment of this by-law.

3. That the Public and Stakeholder Engagement Report, included as Attachment 1, be received as information.

4. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Report – Standing Policy Committee on Protection, Community Services and Parks – January 9, 2018

DECISION MAKING HISTORY:

Moved by Councillor Pagtakhan,

That the recommendation of the Standing Policy Committee on Protection, Community Services and Parks be concurred in, with the following amendment:

- Add the following new recommendation 2, and renumber the remaining recommendations accordingly:

    2. That the Winnipeg Public Service be directed to report back to the Standing Policy Committee on Protection, Community Services and Parks with a review of the prohibition of the use of personal smoking devices on outdoor patios, two years from the date of the enactment of this by-law.

and forwarded to Council.

Carried

STANDING COMMITTEE RECOMMENDATION:

On January 9, 2018, the Standing Policy Committee on Protection, Community Services and Parks concurred in the recommendation of the Winnipeg Public Service, with the following amendments:

- Recommendation 1A delete “offered” and replace with “permitted”
- Renumber recommendation 1D as 1E
- Add new Recommendation 1D:
  “D. That Indigenous-led ceremonies be exempt.”,

and submitted the matter to the Executive Policy Committee and Council.

Further on January 9, 2018, Debra Gautron submitted a communication dated January 9, 2018 with respect to the matter.

Report – Standing Policy Committee on Protection, Community Services and Parks – January 9, 2018

DECISION MAKING HISTORY (continued):

STANDING COMMITTEE RECOMMENDATION (continued):

Further on January 9, 2018, Neil Johnston, Interim President & CEO, Director of Health Initiatives The lung Association, submitted a presentation dated January 9, 2018, in support of the matter.

On June 12, 2017, the Standing Policy Committee on Protection, Community Services and Parks passed the following motion:

WHEREAS second hand smoke is a known Class A carcinogen for which there is no safe level of exposure and scientific studies confirm negative health consequences including an increased risk of cardiovascular and respiratory disease, can result from even short exposures to second hand smoke;

AND WHEREAS The City of Winnipeg Charter provides that Council may pass by-laws respecting health hazards and the health and well-being of people within the City of Winnipeg;

THEREFORE BE IT RESOLVED that the Winnipeg Public Service conduct a cross-jurisdictional review of Canadian municipalities and other Canadian regulatory agencies and/or legislations on prohibitions related to cigarettes, cigars, pipes, e-cigarettes, water pipes, hookahs, and other similar products/devices that generate second hand smoke on outdoor patios at restaurants and bars.

BE IT FURTHER RESOLVED that as part of its review that the Winnipeg Public Service, through the Office of Public Engagement, conduct consultation with the public and stakeholders to determine the level of interest in changing the Outdoor Smoking By-law No. 62/2011 as applicable to smoking on outdoor patios at bars and restaurants.

BE IT FURTHER RESOLVED that the Winnipeg Public Service provide appropriate recommendations based on the information obtained in its review and feedback provided through public consultation and report back to the appropriate committee of Council within 180 days.

Further on June 12, 2017, Marcia Anderson DeCoteau and Catherine Cook, Winnipeg Regional Health Authority, submitted a communication dated May 30, 2017, in support of the matter.

Further on June 12, 2017, Daniel Elias submitted a communication dated June 7, 2017, in support of the matter.

Report – Standing Policy Committee on Protection, Community Services and Parks – January 9, 2018

DECISION MAKING HISTORY (continued):

STANDING COMMITTEE RECOMMENDATION (continued):

Further on June 12, 2017, Allison Kesler, Heart and Stroke Foundation, submitted a communication dated June 9, 2017, in support of the matter.

Further on June 12, 2017, Murray Gibson, Manitoba Tobacco Reduction Alliance Inc., submitted a communication dated June 12, 2017, in support of the matter.

Further on June 12, 2017, Alison Hamilton submitted a communication dated June 12, 2017, in support of the matter.

Daniel's Story

Hello, my name is Daniel Elias, thank you for allowing me to speak and share my story today. I heard about this committee meeting through my wife, who works at the Lung Association and I wanted to get involved. Four years ago after a bone marrow transplant, I developed a severe case of a type of COPD called Bronchiolitis Obliterans, which greatly impacted my quality of life and my mobility. This made enjoying the outdoors difficult. When I did manage to get outside, any dust or smoke made it even harder for me to breathe, often resulting in panic attacks or even worsening my underlying condition. I was surprised to learn during this time that e-cigarettes or vaping can often have the chemical diacetyl in it which has been linked directly to causing my disease. This caused some concern as at that time we were living directly across from a vape shop.

Thankfully, four months ago I received a double lung transplant which has allowed me to have another chance at a better quality of life. One of the biggest improvements for me has been the ability to enjoy being outside, whether it be for a walk or enjoying an evening on a patio with my wife and friends. Due to the instability of lung transplants it is easy to trigger some sort of rejection from many sources, one of these being smoke from either cigarettes or e-cigarettes. This could greatly reduce both my quality of life once more as well as reduce my life expectancy. I know that my case is an extreme one but I know there are many Winnipeggers living with lung disease, asthma or even minor allergies who can find themselves in trouble if someone is close by is smoking while they are trying to enjoy an outdoor meal. I would ask that a ban on smoking on patios is passed to help make breathing and enjoying outdoor life easier for all Winnipeggers.

Thank you,

Daniel Elias

ADMINISTRATIVE REPORT

Title: Smoking on Outdoor Patios

Critical Path: Standing Policy Committee on Protection, Community Services and Parks – Executive Policy Committee – Council

AUTHORIZATION

Author	Department Head	CFO	CAO
W. Yee	C. Fernandes	n/a	D. McNeil

EXECUTIVE SUMMARY

On June 12, 2017, the Standing Policy Committee on Protection, Community Services and Parks directed the Winnipeg Public Service to conduct a cross-jurisdictional review of legislation in Canadian cities to prohibit smoking on outdoor patios at bars and restaurants, as well as to engage in public and stakeholder consultation, and report back to the Committee with results and recommendations within 180 days.

The results from both the statistically-significant telephone survey and the online public survey showed that three out of four Winnipeggers support the banning of smoke-producing materials and devices on outdoor patios where food and beverages are served. Potential health risks related to exposure to second hand smoke was the most common reason given for supporting a ban. The cross-jurisdictional scan of 10 major Canadian cities indicated all have municipal or provincial legislation (or both) prohibiting smoking on restaurant and bar patios. Ceremonial tobacco use during Indigenous-led ceremonies was deemed exempt from the legislation in all jurisdictions.

Based on these findings, the Public Service is recommending that the City ban smoking, from any personal device that produces second-hand smoke, on outdoor patios where food and/or beverage service is offered.

RECOMMENDATIONS

1. That Council direct the Public Service to prepare for Council approval, amendments to the Outdoor Smoking By-law No. 62/2011, to achieve the following:
   a) Prohibit the use of personal smoking devices (including cigarettes, cigars, pipes, e-cigarettes, water pipes, hookahs, and other similar products/devices) on outdoor patios where food and/or beverage service is offered.
   b) Penalties for both smokers and patio owners/operators if smoking on outdoor patios takes place.

c) A fine schedule for offences related to smoking on patios, enforceable through the *Municipal By-law Enforcement Act* (MBEA).
d) Effective date of April 1, 2018.

2. That the Public and Stakeholder Engagement Report, included as Attachment 1, be received as information.

3. That the proper officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

On June 12, 2017, the Standing Policy Committee on Protection, Community Services and Parks directed the Winnipeg Public Service to conduct a cross-jurisdictional review of legislation in Canadian cities to prohibit smoking on outdoor patios at bars and restaurants, as well as to engage in public and stakeholder consultation, and report back to the Committee with results and recommendations within 180 days.

Council approval is required to move forward with drafting an amending by-law.

IMPLICATIONS OF THE RECOMMENDATIONS

If approved, the Public Service will draft an amending By-law to the Outdoor Smoking By-law 61/2011, for Council approval.

There are no financial implications associated with the recommendations of this report. Any fine revenue resulting from the proposed amending by-law is anticipated to be minimal.

HISTORY/DISCUSSION

On June 12, 2017, the Standing Policy Committee on Protection, Community Services and Parks directed the Winnipeg Public Service to:

1. Conduct a cross-jurisdictional review of Canadian municipalities and other Canadian regulatory agencies and/or legislations on prohibitions related to cigarettes, cigars, pipes, e-cigarettes, water pipes, hookahs, and other similar products/devices that generate second hand smoke on outdoor patios at restaurants and bars.
2. Through the Office of Public Engagement, conduct consultation with the public and stakeholders to determine the level of interest in changing the Outdoor Smoking By-law No. 62/2011 as applicable to smoking on outdoor patios at bars and restaurants.
3. Provide appropriate recommendations based on the information obtained in its review and feedback provided through public consultation and report back to the appropriate committee of Council within 180 days.

The Outdoor Smoking By-law No. 62/2011 was passed by Council on May 25, 2011, to prohibit smoking in areas around playgrounds and athletic fields, school grounds, around health care facilities and City of Winnipeg workplaces.

The Provincial *Non-Smoker's Health Protection Act* prohibits smoking in indoor workplaces, and enclosed public places. The Act was amended on October 1, 2017 to also prohibit the use of e-cigarettes in enclosed public spaces. As most outdoor patios are not fully enclosed, they are not subject to the provisions of The Act. Currently, Provincial Public Health Inspectors enforce The Act in restaurants and bars.

Section 134 of The City of Winnipeg Charter provides that Council may pass by-laws respecting health hazards and the health and well-being of people, and further provides that such by-laws may include provisions respecting the sale, use, consumption, possession or disposal of substances that may constitute a health hazard. Tobacco smoke is a known Class A carcinogen, for which there is no safe level of exposure and scientific studies confirm that negative health consequences, including an increased risk of cardiovascular and respiratory disease, can result from even short exposures.

Results of Public Engagement

Through the Office of Public Engagement, the public engagement strategy was developed to ensure that an array of perspectives and viewpoints could be heard. Consultation was conducted with the public and stakeholders to determine the level of interest in changing the Outdoor Smoking By-law, with respect to smoking on outdoor patios at bars and restaurants. This was facilitated through stakeholder meetings, an online survey on Winnipeg.ca, and engaging an outside consultant to conduct a statistically significant telephone survey through most of September 2017 (Smoking Engagement Report attached as Appendix 1).

Table 1: Engagement activity and associated participation level:

Date	Activity	Participation
August 30 – 31, 2017	Stakeholder Sessions	12 stakeholders
September 5 – 26, 2017	Online Survey	7,935 respondents
September 11 – 22, 2017	Street Team	289 interactions
September 21 – October 10, 2017	Omnibus Telephone Survey	600 respondents

The results from the statistically significant omnibus survey show strong support (76%) for a patio smoking ban at restaurants and (58%) bars (18+) in Winnipeg, and lesser support (34%) for patios at bars and clubs to be exempt from a patio smoking ban (95% ± 4.0%). Health concerns are the overwhelming driver of support for a patio smoking ban, while the one-third of Winnipeggers who oppose a ban, feel that the health effects of second hand smoke are not as significant in outdoor areas.

Public input gathered from the online survey produced similar results to the statistically-significant survey, showing strong support for a patio smoking ban at both restaurants (73%) and bars (18+) (65%) in Winnipeg, with public health being the primary factor for supporting a ban. Public support is stronger for a smoking ban on restaurant patios than bar (18+) patios. Based on the open-ended online survey responses, the absence of children on bar patios and an association of drinking with smoking may have contributed to lower support for a smoking ban on bar (18+) patios.

The stakeholder sessions provided in-depth insight on the potential benefits and challenges of a patio smoking ban. While a patio smoking ban would protect the health of patrons and workers, smokers may simply move onto public spaces like an adjacent sidewalk creating many spin-off issues including litter, nuisances to neighbouring properties and safety concerns. Some stakeholders also made a distinction between different types of patios, noting that a patio at a family restaurant is different from a patio at a bar or video lottery terminal (VLT) lounge.

Results of Cross Jurisdictional Review

Results of a cross-jurisdictional scan and survey were compiled to determine how smoking on outdoor patios at bars and restaurants is being regulated across Canada (Attachments 2 & 3).

The results indicate that all 10 Canadian cities surveyed have municipal or provincial legislation (or both) prohibiting smoking on restaurant and bar patios, including e-cigarettes. Ceremonial tobacco use during Indigenous-led ceremonies was deemed exempt from the legislation in all jurisdictions.

Implementation and compliance was achieved primarily through a combination of public and industry education, and providing support to business owners through a transition period. Most municipalities reported limited need for enforcement, due to general public acceptance, and cooperation from business owners.

Impact on businesses in other jurisdictions was not readily available, but informal and anecdotal information suggested no, or minimal, impact. This may be related to the responses of the public engagement survey which showed that a majority (57%) of residents would be likely to avoid patronizing a patio where smoking was permitted.

Based on these findings, the Public Service is recommending that the City ban smoking, from any personal device that produces second-hand smoke, on outdoor patios where food and/or beverage service is offered.

FINANCIAL IMPACT

Financial Impact Statement

Date: Nov. 8, 2017

Project Name:
Smoking on Outdoor Public Patios

COMMENTS:

There are minimal financial implications with respect to the recommendations of this report. Revenue derived from the establishment of a fine schedule for offences related to smoking on patios, enforceable through the Municipal By-law Enforcement Act (MBEA), cannot be estimated but it is anticipated that there will be a limited need for enforcement due to general public acceptance, and cooperation from business owners.

Original Signed by Kelly Lemoine
Kelly Lemoine, CPA, CA
Manager, Finance & Administrative Services
Community Services Department

CONSULTATION

This Report has been prepared in consultation with:

Office of Public Engagement (for public and stakeholder consultation results)
Legal Services (as to legal matters)

OURWINNIPEG POLICY ALIGNMENT

Our Winnipeg 02-2 Environment:

- Collaborate to ensure water and air quality.

A Sustainable Winnipeg Statement 09 - 4: Collaborate to ensure water and air quality.

- Partner with government agencies, public agencies, industry and others to monitor and maintain standards for good air quality.

SUBMITTED BY

Department: Community Services
Division: Community By-law Enforcement Services
Prepared by: Marcia Fifer, Licensing Coordinator
Date: November 7, 2017

Attachments:

Attachment 1: Public and Stakeholder Engagement Report

Attachment 2: Jurisdictional Scan – Summary of Findings

Attachment 3: Jurisdictional Scan Detail – Legislation prohibiting smoking on outdoor patios at restaurants and bars