Agenda – Council – March 22, 2018

Report – Standing Policy Committee on Protection, Community Services and Parks – March 6, 2018

Item No. 3 Outdoor Smoking By-law Amendments

STANDING COMMITTEE RECOMMENDATION:

On March 14, 2018, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Protection, Community Services and Parks and submitted the following to Council:

1. That Council adopt the attached By-law to amend the Outdoor Smoking By-law No. 62/2011, which will:

    A. Ban smoking on outdoor patios of bars, restaurants and craft breweries;
    B. Extend the definition of "smoking" to include the use of devices such as e-cigarettes, and smoking non-tobacco substances such as cannabis;
    C. Replace the fines currently set out in the By-law with standard set fines that can be enforced through The Municipal By-law Enforcement Act.

2. That the Winnipeg Public Service be directed to report back to the Standing Policy Committee on Protection, Community Services and Parks in two years with a review of the Outdoor Smoking By-law including:

    A. Considerations for establishing buffer zones around outdoor commercial patios where personal smoking devices generating second hand smoke is prohibited, and
    B. Advice concerning if prohibitions should be extended to areas where food and drinking are ancillary or incidental to the principal use under occupancy permit.

3. 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 – March 6, 2018

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On March 14, 2018, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Protection, Community Services and Parks and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On March 6, 2018, the Standing Policy Committee on Protection, Community Services and Parks concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

Title: Outdoor Smoking By-law Amendments

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

This report proposes amendments to the Outdoor Smoking By-law which will operationalize Council's decision to ban smoking on patios but grant an exemption to ceremonies led by Indigenous persons, to be effective April 1, 2018. The By-law will not apply to where food services or business put out picnic tables for the use of patrons or employees in an undefined space. Some examples include picnic tables at ice cream places or fast food venues. The By-law also excludes spaces where the consumption of food or beverage are ancillary or incidental to the zoning use, such as sports or entertainment arena/stadium and other recreation and entertainment outdoor venues where the principal uses under the occupancy permit are not restaurant or drinking establishment.

The By-law also expands the definition of smoking to include personal smoking devices and products including cigarettes, cigars, pipes, e-cigarettes, water pipes, hookahs, cannabis, tobacco and non-tobacco based products producing second hand smoke, and applies this new definition to all locations where smoking is banned by the By-law.

Both smokers and business owners/operators can be fined for contravening the patio smoking ban.

Set fines for all contraventions in the Outdoor Smoking By-law are set out so that all offences in the By-law can be dealt with through the Municipal By-law Enforcement Act (MBEA).

The report also proposes that the Public Service report back to the Standing Policy Committee on Protection, Community Services and Parks in two years with a review of the Outdoor Smoking By-law.

RECOMMENDATIONS

1. That Council adopt the attached By-law to amend the Outdoor Smoking By-law No. 62/2011 which will:
    D. Ban smoking on outdoor patios of bars, restaurants and craft breweries;
    E. Extend the definition of "smoking" to include the use of devices such as e-cigarettes, and smoking non-tobacco substances such as cannabis;
    F. Replace the fines currently set out in the By-law with standard set fines that can be enforced through The Municipal By-law Enforcement Act.

2. That the Public Service be directed to report back to the Standing Policy Committee on Protection, Community Services and Parks in two years with a review of the Outdoor Smoking By-law including:
    (a) Considerations for establishing buffer zones around outdoor commercial patios where personal smoking devices generating second hand smoke is prohibited, and
    (b) Advice concerning if prohibitions should be extended to areas where food and drinking are ancillary or incidental to the principal use under occupancy permit.

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 January 25, 2018, Council adopted the following motion:

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:

1. 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.
2. Penalties for both smokers and patio owners/operators if smoking on outdoor patios takes place.
3. A fine schedule for offences related to smoking on patios, enforceable through the Municipal By-law Enforcement Act (MBEA).
4. That Indigenous-led ceremonies be exempt.
5. Effective date of April 1, 2018.

IMPLICATIONS OF THE RECOMMENDATIONS

The amended by-law will prohibit the use of personal smoking devices (including cigarettes, cigars, pipes, e-cigarettes, water pipes, hookahs, and other similar products/devices), to smoke cannabis, tobacco and non-tobacco based products producing second hand smoke on outdoor patios where food and/or beverage service is permitted.

The definition of smoking includes the use of devices (such as e-cigarettes) and substances (such as cannabis and other non-tobacco substances) which are not included in the current definition of “smoking” in the Outdoor Smoking By-law. The attached draft amending By-law will apply this larger definition to all locations where smoking is currently prohibited by the Outdoor Smoking By-law. This includes locations such as within 30 metres of the playing surface of an athletic field or hockey rink, a swimming pool, wading pool, spray pad or spray park owned or operated by the City of Winnipeg, on the premises of a primary school, on the premises of health care facilities, or within 8 metres of the outdoor entrance to a health care facility, a City of Winnipeg workplace or a WRHA workplace.

In order to operationalize Council’s direction to prohibit smoking on “outdoor patios where food and/or beverage service is permitted”, the By-law prohibits smoking in outdoor areas set up for the consumption of food and which are required to obtain an occupancy permit under the Winnipeg Building By-law. In addition, the space must be located:

- On properties whose principal use falls within the “Food and Beverage Service” Use Category (within the area governed by the Winnipeg Zoning By-law) or the “Restaurant” or “Drinking Establishment” use in areas within the Downtown Winnipeg Zoning By-law, or
- Within an encroachment onto the street right of way approved (or able to be approved) pursuant to sub-clause 4(1)(c)(i) of the Encroachment By-law (outdoor patios adjacent to restaurants).

The By-law therefore applies to all patios that occupy defined space and therefore require an occupancy permit. It would therefore apply to areas surrounded by fences or hedges that limit access to the area. It would not, however, apply to chairs and tables set out for the use of customers in an area that is not defined, such as picnic tables at ice cream places or fast food venues.

However, in order for the By-law to apply, the defined space would also either have to be on private property where the principal zoning use is a restaurant, drinking establishment or craft brewery, distillery or winery, or it would have to be on an encroachment onto the sidewalk, street, or any public right of way for an outdoor patio. This means that the By-law would not apply to outdoor areas on properties where food or beverage services are ancillary or incidental to the zoning use. Sports or entertainment arena/stadium and other recreation and entertainment outdoor venues will be exempt where the principal uses under the occupancy permit are not restaurant or drinking establishment. As well, the prohibition would not apply to outdoor eating areas set up by employers for employees to enjoy lunch or coffee breaks.

As per the resolution of Council, the By-law also specifically exempts ceremonies which are led by Indigenous individuals that involve smoking.

Fines for contraventions are set out in the amending by-law and are dealt with through the Municipal By-law Enforcement Act (MBEA). The fine amounts are proposed to be $200 for persons or patrons, and $400 for business operators. No early payment discount is being proposed.

HISTORY/DISCUSSION

On January 25, 2018 Council adopted the January 9, 2018 recommendation of the Standing Policy Committee on Protection, Community Services and Parks.

On January 9, 2018 The Standing Policy Committee on Protection, Community Services and Parks concurred in the recommendation of the Winnipeg Public Service, as amended, and recommended to Council:

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:

1. 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.
2. Penalties for both smokers and patio owners/operators if smoking on outdoor patios takes place.
3. A fine schedule for offences related to smoking on patios, enforceable through the Municipal By-law Enforcement Act (MBEA).
4. That Indigenous-led ceremonies be exempt.
5. Effective date of April 1, 2018.

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.

Summary of Changes to the Outdoor Smoking By-law (attached)

Prohibitions related to Location & Product or devices

Existing	New - Location	Products Prohibited	Existing Fines	New Fines
n/a	Patio	**Existing:** Tobacco only **New –** Personal smoking devices (including cigarettes, cigars, pipes, e-cigarettes, water pipes, hookahs, and other similar products/devices) Cannabis, tobacco and non-tobacco based products producing second hand smoke	n/a	$200 – person/patron $400 – business operator
Within 30 meters of the playing surface of an athletic field or hockey rink during a youth event	No change		Person only All offences are noted as "not less than" and "not more than" 1st offence: $100 - $500 2nd offence: $200 - $700 3rd offence: $300 - $1000	$200 - person
On a playground	No change			$200 - person
Within 30 meters of a swimming pool, wading pool, spray pad or spray park owned or operated by the City of Winnipeg	No change			$200 - person
On the premises of a primary school, middle school or secondary school	No change			$200 - person
*on the premises of a health care facility	No change			$200 - person
Within 8 meters from an outdoor entrance providing direct access to a City of Winnipeg workplace	No change			$200 - person
Within 8 meters from an outdoor entrance providing direct access to a WRHA workplace	No change			$200 - person

*subject to conditions outlined in the by-law

Proposed Fines for contraventions of all prohibited sections are $200 for persons / patrons, and $400 for business operators (restaurant and drinking establishments).

FINANCIAL IMPACT

Financial Impact Statement **Date:** February 9, 2018

Project Name:

Outdoor Smoking By-law Amendments

COMMENTS:

There are minimal financial implications with respect to the recommendations of this report. Revenue derived from the amendments to the Outdoor Smoking By-law 69/2011, enforceable through the Municipal By-law Enforcement Act (MBEA), cannot be reasonably estimated. 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"
Ozzy Garrett, CPA, CGA
Acting Manager of Finance & Administration
Community Services Department

CONSULTATION

This Report has been prepared in consultation with:

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: Winston Yee, Manager Community By-law Enforcement Services
Date: February 9, 2018

Attachments:

Outdoor Smoking By-law