Agenda – Executive Policy Committee – January 16, 2024

Report – Standing Policy Committee on Community Services – November 20, 2023

Item No. 1 Regulation of Hookah Establishments

STANDING COMMITTEE RECOMMENDATION:

On November 20, 2023, the Standing Policy Committee on Community Services did not concur in the recommendation of the Winnipeg Public Service and submitted the following to Council:

1. That the Winnipeg Public Service be directed to develop a by-law for the purpose of banning hookahs indoors and on patios.

    A. That the by-law be enforced at the stage of occupancy permit application or public complaint.

    B. That the by-law be developed in cooperation with relevant City departments.

2. Notwithstanding the adoption of a by-law, that the City of Winnipeg request the Province of Manitoba to amend existing legislation to accommodate the banning of hookahs indoors and on patios within the City of Winnipeg.

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

Agenda – Executive Policy Committee – January 16, 2024

Report – Standing Policy Committee on Community Services – November 20, 2023

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On December 5, 2023, the Executive Policy Committee laid the matter over for 30 days.

STANDING COMMITTEE RECOMMENDATION:

On November 20, 2023, the Standing Policy Committee on Community Services did not concur in the recommendation of the Winnipeg Public Service, and submitted the following to the Executive Policy Committee and Council:

1. That the Winnipeg Public Service be directed to develop a by-law for the purpose of banning hookahs indoors and on patios.

    A. That the by-law be enforced at the stage of occupancy permit application or public complaint.

    B. That the by-law be developed in cooperation with relevant City departments.

2. Notwithstanding the adoption of a by-law, that the City of Winnipeg request the Province of Manitoba to amend existing legislation to accommodate the banning of hookahs indoors and on patios within the City of Winnipeg.

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

COUNCIL DECISION:

On March 23, 2023, Council concurred in the recommendation of the Standing Policy Committee on Community Services and adopted the following:

1. Conduct a jurisdictional scan of regulatory practices around hookah use in provinces and larger Canadian municipalities.

2. Consult with the Liquor, Gaming and Cannabis Authority of Manitoba to determine appropriate regulations for hookah establishments, including but not limited to:

    A. Additional ventilation system requirements.

Report – Standing Policy Committee on Community Services – November 20, 2023

DECISION MAKING HISTORY (continued):

COUNCIL DECISION (continued):

B. Licensing conditions and additional safety measures to ensure the health and safety of patrons, workers and the general public in the vicinity of hookah establishments.

3. That the Winnipeg Public Service report back on the matter to the appropriate Standing Policy Committee in 210 days.

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

On January 26, 2023, Council ruled automatic referral of the following motion to the Standing Policy Committee on Community Services:

Moved by Councillor Gilroy,
Seconded by Councillor Rollins,

WHEREAS hookah lounges have become popular in Winnipeg;

AND WHEREAS many other municipal and provincial governments are looking into specific requirements for establishments that serve hookah on their premises;

AND WHEREAS the Government of Manitoba and City of Winnipeg should be reviewing existing best practices and working together to ensure the health and safety for patrons and employees of hookah lounges;

AND WHEREAS research that shows that both tobacco and non-tobacco hookah use may expose users and bystanders to hazardous levels of air pollutants, including elevated levels of carbon monoxide;

AND WHEREAS Many of the Hookah lounges are open after hours for parties and events and there are no regulations over seeing these venues and ensuring the safety of those visiting, working and or living near to hookah lounges;

AND WHEAREAS studies suggest that non-tobacco hookah smoke contains high levels of carcinogens, carbon monoxide and other harmful pollutants;

Report – Standing Policy Committee on Community Services – November 20, 2023

DECISION MAKING HISTORY (continued):

COUNCIL DECISION (continued):

AND WHEREAS carbon monoxide is known as the silent killer and is very hard to detect because it is odorless, colorless and the symptoms are hard to detect in a timely manner;

AND WHEREAS Winnipeg Fire Paramedic Services have had to abruptly shut down hookah lounges due to high-levels of carbon monoxide in the air and concerns for the safety or patrons and workers of the establishments;

AND WHEREAS there have also been concerns with respect to the higher-than-normal carbon monoxide detected at buildings and apartments surrounding hookah lounges;

AND WHEREAS there are currently no specific requirements in place for establishments that serve hookah on their premises as the establishments are often licensed as either dining or beverage rooms;

THEREFORE BE IT RESOLVED that the Winnipeg Public Service be directed to:

1. Conduct a jurisdictional scan of regulatory practices around hookah use in provinces and larger Canadian municipalities.

2. Consult with the Liquor, Gaming and Cannabis Authority of Manitoba to determine appropriate regulations for hookah establishments, including but not limited to:

    A. additional ventilation system requirements.

    B. licensing conditions and additional safety measures to ensure the health and safety of patrons, workers and the general public in the vicinity of hookah establishments.

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

ADMINISTRATIVE REPORT

Title: Regulation of Hookah Establishments

Critical Path: Standing Policy Committee on Community Services

AUTHORIZATION

Author	Department Head	CFO	CAO
A. Reisacher	M. Jack	N/A	M. Jack

EXECUTIVE SUMMARY

In response to the direction of Council, the Public Service conducted a review of hookah regulations in four external provinces and six cities and contacted the Liquor, Gaming and Cannabis Authority of Manitoba ("LGCA") regarding their regulatory approach to hookah lounges.

None of the provinces studied for this report (including Manitoba) regulate the use of hookahs as long as they are not used in combination with tobacco or cannabis. However, five of the six cities have specifically banned hookahs through municipal smoking bylaws.

Through the Outdoor Smoking By-law, the use of hookahs in Winnipeg is prohibited in certain public places, such as restaurant patios. Hookahs are allowed, however, indoors.

As identified in the original motion to Council, no specific regulatory requirements or licences are currently in place for establishments offering hookahs on their premises. Both the City of Winnipeg and the LGCA approach these establishments in the same manner as other beverage rooms, dining establishments, or private clubs. Adequate air quality should be maintained through the established processes; namely the Manitoba Building Code / Winnipeg Building By-law and the permitting processes, with plans for proposed new or renovated hookah lounges approved by a design professional based on good engineering practice and industry standards.

Through the Smoking and Vapour Products Control Act and the City of Winnipeg Charter, options are available to further regulate, or completely prohibit, the use of hookahs in Winnipeg – similar to what Toronto, Regina, Edmonton, Vancouver, and North Vancouver have already done.

RECOMMENDATIONS

1. That this report be received as information.

REASON FOR THE REPORT

On March 23, 2023, Council concurred in the recommendation of the Standing Policy Committee on Community Services and adopted the following:

1. Conduct a jurisdictional scan of regulatory practices around hookah use in provinces and larger Canadian municipalities.

2. Consult with the Liquor, Gaming and Cannabis Authority of Manitoba to determine appropriate regulations for hookah establishments, including but not limited to:

    A. Additional ventilation system requirements.

    B. Licensing conditions and additional safety measures to ensure the health and safety of patrons, workers and the general public in the vicinity of hookah establishments.

3. That the Winnipeg Public Service report back on the matter to the appropriate Standing Policy Committee in 210 days.

IMPLICATIONS OF THE RECOMMENDATIONS

There are no implications to receiving this report as information.

HISTORY/DISCUSSION

Background

A hookah is a type of water pipe, originating in India, that is used for smoking shisha (flavoured tobacco, though shisha is also available tobacco-free). It is a traditional cultural practice in parts of Africa and Asia, and can be commonly found in hookah lounges across North America and other parts of the world.

The main parts of a hookah include a smoke chamber, a water bowl, a pipe, and a hose. The shisha is heated on coals or charcoal and the smoke from the heated shisha is passed through a water basin before inhalation.

Current Smoking Regulations in Winnipeg

Manitoba's Provincial Smoking and Vapour Products Control Act (the Act) prohibits smoking in indoor workplaces, enclosed public places, and various outdoor public places and is enforced by Provincial Public Health Inspectors in restaurants and bars. A key element of the Act is that the definition of "smoking" is restricted to tobacco and cannabis only. The Act does regulate the use of e-cigarettes but does not consider the use of hookahs.

This Act reigns supreme for smoking legislation in the Province of Manitoba. However, Section 6(2) of the Act permits municipalities to enforce further regulation, through bylaws, as long as said regulations are more restrictive than the Act.

Further, Section 134 of the City of Winnipeg Charter (the Charter) provides that Council may pass bylaws respecting health hazards and the health and well-being of people. The Charter provides that such bylaws may include provision respecting the sale, use, consumption, possession or disposal of substances that may constitute a health hazard.

The City's Outdoor Smoking By-law No. 62/2011 (“the By-law”) 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. In 2018, the By-law was extended to all outdoor patios which have an occupancy permit issued by the City of Winnipeg. As the Act already prohibits smoking in enclosed public places, the By-law is specific to areas that are outdoors.

The By-law specifically names hookahs as “personal smoking devices” and bans its use in the above-mentioned places (including patios) regardless of whether they are used for tobacco, cannabis, or any other substance that generates second-hand smoke.

When reviewed as a whole, the Act and By-law currently allow for the use of hookahs in Winnipeg as long as they are being used indoors and the shisha does not contain tobacco or cannabis.

City Experience Regarding Hookah

As identified in the original motion, the Winnipeg Fire Paramedic Service (WFPS) has ordered the evacuation of at least one hookah lounge location due to air quality concerns. However, these kinds of evacuations are very infrequent in nature and, therefore, the WFPS does not consider hookah lounges a significant ongoing concern.

Note that exposure to carbon monoxide, and air quality concerns in general, are possible in many indoor locations, including restaurants, homes, ice arenas, and garages. Each year, the WFPS responds to approximately 700 calls related to carbon monoxide. The WFPS recommends that all homes have at least one carbon monoxide alarm (preferably one per level).

If a resident believes they are being exposed to carbon monoxide, or if a carbon monoxide alarm sounds, they should leave the building immediately and call 9-1-1.

Jurisdictional Scan

The Public Service conducted a jurisdictional scan and reviewed the regulations from four provinces (Alberta, British Columbia, Ontario, and Saskatchewan) and six cities (Toronto, Regina, Edmonton, Calgary, Vancouver, and North Vancouver). Detailed findings can be found in Appendix A, attached.

In summary, municipalities are generally enforcing more stringent regulations than their provincial partners. None of the provinces reviewed regulate hookahs through smoking legislation – provided the hookahs are not used in combination with tobacco or cannabis.

Five of the six cities reviewed, however, regulated hookahs in the same manner as cigarettes, e-cigarettes, and other forms of smoking regardless of whether the shisha used contain tobacco

or cannabis. As a result, hookah lounges are prohibited in Toronto, Regina, Edmonton, Vancouver, and North Vancouver

The sixth municipality reviewed, Calgary, specifically limits its definition of “smoking” to tobacco and cannabis products. Therefore, Calgary allows hookah lounges as long as the shisha is tobacco and cannabis-free.

It should be noted that Calgary has launched public consultation regarding whether its smoking bylaws should be strengthened – including a prohibition on hookahs in workplaces, public premises, and specified outdoor places. The final report on the matter is not yet available and no bylaw changes are being proposed at this time.

The Manitoba Building Code / Winnipeg Building By-law

National building codes are adopted in Manitoba at the provincial level through the Buildings and Mobile Homes Act. Municipalities are responsible for adopting and enforcing these codes and may use bylaws for implementation. In Winnipeg, the Manitoba Building Code (“MBC”) is enforced through the Winnipeg Building By-law (“WBB”). The City of Winnipeg does not legally have the authority to either increase or decrease Provincially-adopted building code regulations.

The Public Service reviewed the MBC, as it relates to hookah lounge regulation, and determined that the MBC does not currently provide a regulatory platform for the regulation of hookah lounges. The MBC classifies buildings (or tenant spaces) based on the major occupancy (i.e. the principal use of the space).

A hookah lounge would be classified as an Assembly Occupancy, which is defined as "the occupancy or the use of a building, or part thereof by a gathering of persons for civic, political, travel, religious, social, educational, recreational or like purposes, or for the consumption of food or drink."

The building use for a hookah lounge can be placed under one of the following examples of major occupancy classification described in Table 3.1.2.1 of the MBC; "Clubs, nonresidential," "Dance halls," "Licensed beverage establishments," or "Restaurants."

The building classification (Group A, Division 2 or “A2”) along with the intended use of the building or space (i.e. Restaurant) and posted occupant load forms the basis of the Building Occupancy Permit.

Looking further into the MBC requirements, Part 3 of the MBC (Fire Protection, Occupant Safety and Accessibility) addresses the major occupancy classification requirements (i.e. building construction, fire alarms, sprinklers, egress/exits, washrooms, accessibility). These are all independent of the use of hookah, while Part 6 of the MBC (Heating, Ventilating and Air-Conditioning) requires all buildings to be ventilated.

In respect to ventilation, the design of the system is based on good engineering practice, such as the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) Standard 62, Ventilation for Acceptable Indoor Air Quality. If hookahs were present in a proposed new or renovated lounge, this would be considered in the ventilation design to address potential air quality issues.

For additional clarity, below are scenarios which outline the involvement of the MBC for hookah lounges in Winnipeg.

1. A new Assembly Occupancy (A2) is being established that identifies the use of hookah in a restaurant. The mechanical engineer of record would be responsible for the design of the ventilation system. Audit review and inspections would occur as part of the building and trade permit process that, when complete (which includes certification from the design professionals), would result in a Building Occupancy permit for the Assembly Occupancy (A2) as a restaurant with a prescribed building occupant load.

2. An existing Assembly Occupancy (A2) adds the use of hookah in a restaurant. A mechanical engineer would need to be retained to assess the existing ventilation system to see if upgrading is necessary. If it is determined that mechanical alterations are necessary, either a building and mechanical trade permit (if building alterations) or a mechanical trade permit (if only HVAC alterations) would be required for the ventilation changes. Audit review and inspections would occur as part of the building and trade permit process, upon completion, the design professionals of record would provide certification for their area of work. The building (or tenant space) would not require a new Building Occupancy Permit, unless there were significant alterations to the building fire and life safety systems.

There are several enforcement tools to address issues with the two scenarios above. These enforcement tools are consistent to all compliance issues associated to building code.

- If work under any of the scenarios described above starts prior to required permit issuance, escalated enforcement associated with work without a permit is available.
- Pre-mature occupancy in scenario 1 would be subject to enforcement of occupancy w/o permit.
- Scenario 2 – If the existing HVAC system is deemed sufficient by a design professional, adding hookahs to an established Assembly Occupancy would be considered acceptable in the MBC / WBB and would not necessarily be work without a permit.

In summary, the MBC / WBB does not have any regulation specific to hookahs. If hookahs are part of a proposed new or renovated lounge, the existing processes are designed to address potential air quality issues. Failure to adequately comply would result in enforcement actions from the proper authorities, depending on the infraction.

The approach described above is also shared by the Liquor, Gaming & Cannabis Authority of Manitoba (“LGCA”), which does not currently have any additional regulation or conditions specific to hookahs. No new licensing conditions or other regulations are being considered at this time.

Conclusion and Next Steps

As identified in the original motion to Council, no specific regulatory requirements or licences are currently in place in the Winnipeg for establishments offering hookahs on their premises. Both the City and the LGCA approach these establishments in the same manner as other beverage rooms, dining establishments, or private clubs. Adequate air quality should be maintained through the established processes; namely the MBC / WBB and the permitting processes, with plans for proposed new or renovated hookah lounges approved by a design professional based on good engineering practice and industry standards

Through the Outdoor Smoking By-law, the use of hookahs in Winnipeg is prohibited in certain public places, such as restaurant patios. Hookahs are allowed, however, indoors as they are not regulated through either the By-law or the Smoking and Vapour Products Control Act.

Through the Act and the City of Winnipeg Charter, options are available to further regulate, or completely prohibit, the use of hookahs in Winnipeg – similar to what Toronto, Regina, Edmonton, Vancouver, and North Vancouver have already done.

FINANCIAL IMPACT

Financial Impact Statement

Date: November 6, 2023

Project Name:
Regulation of Hookah Establishments

COMMENTS:

There are no financial implications associated with the recommendations in this report.

Randy Bernard

Randy Bernard, CPA, CMA
Manager of Finance & Administration (Campus)
Corporate Finance Department

CONSULTATION

This Report has been prepared in consultation with:

- Community Services Department
- Planning, Property and Development Department
- Winnipeg Fire Paramedic Service

OURWINNIPEG POLICY ALIGNMENT

N/A

WINNIPEG CLIMATE ACTION PLAN ALIGNMENT

Consideration was given as to whether this report connects to the Winnipeg Climate Action Plan (CAP), and it was determined that the CAP is not applicable to this specific report.

WINNIPEG POVERTY REDUCTION STRATEGY ALIGNMENT

Consideration was given as to whether this report connects to the Winnipeg Poverty Reduction Strategy (PRS) and its Goals and Objectives, and it was determined that the PRS is not applicable to this specific report.

SUBMITTED BY

Department: Office of the Chief Administrative Officer
Division: N/A
Prepared by: A. Reisacher, T. Pomanski, K. Happychuk, A. Crocker, G. Mikolayenko, W. Yee
Date: November 6, 2023
File No: N/A

Attachments:

Appendix A – Jurisdictional Scan

Appendix A – Jurisdictional Scan

Province of Ontario

The use of a waterpipe to smoke herbal shisha is not prohibited under the Smoke-Free Ontario Act, 2017 (unless it is being used to smoke tobacco or cannabis). Additional restrictions on hookahs are permitted through municipal bylaws.

City of Toronto

Waterpipe Bylaw – Municipal Code Chapter 545

This bylaw, adopted by Toronto City Council on November 3, 2015, prohibits hookah use in City licensed establishments (cafes, bars/restaurants, stores, other businesses, etc.), including the inhaling or exhaling of smoke from a hookah, as well as the holding of an activated hookah. The bylaw increases areas where smoking is prohibited to protect the public from adverse health effects of second-hand smoke.

Toronto Municipal Code Chapter 545, Licensing

545-8.4 General provisions applicable to all licensees

C. No person licensed, or required to be licensed, under this chapter shall permit any person, including him or herself, to use a hookah or smoke, which shall include the carrying of a lit cigar, cigarette, pipe, or any other lit smoking equipment, in or upon any premises, vehicle, or thing to which the licence relates.

Province of Alberta

The Province of Alberta regulates tobacco smoking in public places through the Tobacco, Smoking and Vaping Reduction Act.

However, the Act does not apply to hookahs and waterpipe use (as long as they are not used for tobacco or cannabis). Additional restrictions on hookahs are permitted through municipal bylaws.

City of Edmonton

Public Places Bylaw 14614

The City of Edmonton's Public Places Bylaw regulates where smoking is permitted in public places: this includes tobacco, tobacco-like products (including hookah), vaping and cannabis.

The bylaw defines hookah and shisha as “tobacco-like products” and, thereby, defines its use as “smoking.”

Public Places Bylaw 14614

SMOKING PROHIBITION

12(1) Except as permitted by this Park no person shall smoke:

(a) inside a building;

(b) on a patio;

DEFINITIONS

11 (n) “**smoke**” or “**smoking**” means to inhale or exhale smoke or vapour from, hold, use, or otherwise have control over:

(i) lit, ignited or heated cannabis, tobacco product, or tobacco-like product;”

(q1) "**tobacco-like product**" means a product, other than a tobacco product, composed in whole or in part of plants or plant products, or any extract of them, and includes shisha and hookah;

City of Calgary

Smoking and Vaping By-law

Calgary primarily relies upon Provincial legislation when investigating smoking complaints (which does not apply to shisha or hookahs). Further, it's Smoking and Vaping Bylaw limits its definition of "smoking" specifically to tobacco and cannabis.

As a result, hookahs are not regulated in Calgary.

Province of Saskatchewan

Like Ontario and Alberta, Saskatchewan's *Tobacco and Vapour Products Control Act* excludes shisha and hookah from its definitions for "vapour product" and "tobacco-related product."

The Government of Saskatchewan has stated it considers shisha an herbal product that does not meet the definition of tobacco and it does not anticipate that regulation will be considered in the future. However, restrictions on hookahs within municipalities (via bylaws) are not prohibited.

City of Regina

Smoking By-law No. 2017-20

Regina's bylaw includes hookah and water pipes in its definition of smoking and bans it in indoor and outdoor public places. However, an exemption is provided for traditional spiritual or cultural practices and ceremonies, where the smoking or vaping is an integral part of the practice or ceremony.

Smoking By-law No. 2017-20

Definitions

3 (l) **"smoke or smoking**" means to inhale, exhale, burn, carry or control a lighted cigarette, cigar, pipe, or similar equipment that burns any substance or generates smoke, and includes the use of a hookah pipe, water pipe or bong;

Outdoor Public Seating Areas

4 No person shall smoke or vape in any outdoor seating area.

Outdoor Public Place

9 No person shall smoke or vape in any outdoor public place.

Public Places

10 No person shall smoke or vape within 10 metres outside of any doorway, window or air intake of an enclosed public place.

11 No person shall vape in any enclosed public place.

Exemptions

12 Nothing in this Bylaw prohibits a person from smoking or vaping for the purposes of traditional spiritual or cultural practices or ceremonies, if smoking or vaping is an integral

part of the traditional spiritual or cultural practices or ceremonies being carried out with the consent of the owner of that place.

Province of British Columbia

British Columbia does not include shisha or hookah in the Tobacco and Vapour Products Control Act. Additional restrictions on hookahs are permitted through municipal bylaws.

City of Vancouver

Health By-Law No. 9535

Vancouver includes hookah pipe in its definition of smoking, which is banned in all buildings with limited exceptions (as set out below).

City of Vancouver Health By-Law No. 9535

Definitions

1.2 "smoke" or "smoking" includes burning a cigarette or cigar, or burning any substance using a pipe, hookah pipe, lighted smoking device or electronic smoking device;

Ban on smoking

2.2 A person must not smoke:

(a) in a building, except in:

(i) a dwelling unit or sleeping unit defined under the Zoning and Development By-law including a dwelling unit in which an owner or occupier also carries on a business,

(ii) a hotel or motel room or suite designated for smoking by a responsible person, or

(iii) enclosed premises:

A. that are not open to the public,

B. that are not private clubs or smoking clubs, a purpose of which is to allow patrons, customers, or other persons to smoke, and

C. where the only occupants are the owner or owners of the business carried on in the premises;

City of North Vancouver

Smoking Regulation Bylaw No. 7026

North Vancouver bans smoking, including hookahs, in parks, public plazas, and in buildings. Exceptions are as specified in the bylaw, including for traditional Indigenous cultural activity.

Smoking Regulation Bylaw No. 7026

PART 1: INTERPRETATION

"**Smoke**" or "**Smoking**" means to inhale, exhale, burn, or carry a lighted cigarette, cigar, pipe, hookah pipe, vaping device, e-cigarette or other lighted or activated electronic smoking device that burns or vapourizes tobacco, cannabis, or substance. It does not apply to ceremonial use of tobacco in connection with a traditional Indigenous cultural activity;

PART 2: GENERAL SMOKING RESTRICTIONS

A person must not smoke:

(a) in a Building, except in:
    (i) Dwelling Unit other than a Dwelling Unit in which a Business to which employees or the public are invited is carried on therein;
    (ii) a hotel or motel room or suite designated for Smoking by a Responsible Person;
    (iii) enclosed Premises:
        (1) that are not open to the public, and
        (2) where the only occupants are the owner or owners of the business carried on in the Premises;

(d) in or within 7.5 metres of a Building, Transit Stop or Transit Shelter where people wait to board a Passenger Directed Vehicle or public transit vehicle, provided that, subject to the other provisions of this bylaw;

(e) in or within 7.5 metres of the perimeter of an Outdoor Customer Service Area except Outdoor Customer Service Areas for Liquor Primary Licensed Establishments that are already in existence and operation;

(f) within 7.5 metres measured on the ground from a point directly below any opening into any Building including any door or window that opens or any air intake.