

Administration

Office of the Regional Clerk

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May 25, 2022

CL 10-2022, May 19, 2022
PHSSC 5-2022, May 10, 2022
PHD 2-2022, May 10, 2022

LOCAL MUNICIPAL CLERKS**SENT ELECTRONICALLY****Re: Waterpipe Smoking By-law**

Regional Council, at its meeting of May 19, 2022, approved the following recommendation of its Public Health and Social Services Committee:

That Report PHD 2-2022, dated May 10, 2022, respecting Waterpipe Smoking By-law, **BE RECEIVED** and the following recommendations **BE APPROVED**:

1. That Regional Council **APPROVE** the proposed by-law to regulate waterpipe use in the Regional Municipality of Niagara, outlined in Appendix 1 of Report PHD 2-2022;
2. That Regional Council **ADOPT** a by-law to regulate waterpipe smoking in the Regional Municipality of Niagara, outlined in Appendix 1 of Report PHD 2-2022, that will, if adopted, come into force and effect on January 1, 2023, provided that:
 - 2.1. A majority of the councils of the local area municipalities pass resolutions consenting to the by-law; and
 - 2.2. The total number of electors in the local municipalities that have passed resolution in support of the by-law form a majority of all electors in the Region of Niagara as established in the revised list of electors for the municipal election held in the year 2018; and
3. That, subject to the adoption of the aforementioned by-law, a copy of the by-law and Report PHD 2-2022 **BE CIRCULATED** to the Clerks of the 12 local area municipalities (LAMs) with a request that their councils adopt the following resolution and advise the Regional Clerk of the results of that consideration by August 1, 2022:

“That the Council of (name of municipality) consents to the passage of the Waterpipe By-law of the Regional Municipality of Niagara, being a by-law to regulate waterpipe smoking in the Region.”

Pursuant to Section 115(5) of the *Municipal Act, 2001*, a by-law passed under subsection 115(1) shall not come into force unless:

- a) A majority of all votes on the Council of the upper-tier municipality are cast in its favour;
- b) A majority of the Councils of all the lower-tier municipalities forming part of the upper-tier municipality for municipal purposes have passed resolutions giving their consent to the by-law; and
- c) The total number of electors in the lower-tier municipalities that have passed resolutions under clause (b) form a majority of all the electors in the upper-tier municipality.

We respectfully request that you place this matter before your Council at your earliest opportunity to consider a resolution consenting to the by-law and advise of the action taken by your Council no later than August 1, 2022.

A copy of Report PHD 2-2022 and By-law No. 2022-35 are enclosed for your information.

Thanking you in advance for your assistance and should you require anything further, please do not hesitate to contact me.

Yours truly,



Ann-Marie Norio
Regional Clerk

:kl

CLK-C 2022-073

cc:

K. Grewal, Health Promoter, Chronic Disease & Injury Prevention
Dr. M. M. Hirji, Acting Medical Officer of Health
D. Teng, Manager, Chronic Disease & Injury Prevention
D. Lorenzo, Associate Director, Chronic Disease & Injury Prevention
W. Middleton, Executive Assistant to the Acting Medical Officer of Health

Subject: Waterpipe Smoking By-law

Report to: Public Health and Social Services Committee

Report date: Tuesday, May 10, 2022

Recommendations

1. That Regional Council **APPROVE** the proposed by-law to regulate waterpipe use in the Regional Municipality of Niagara, outlined in Appendix 1 of Report PHD 2-2022;
2. That Regional Council **ADOPT** a by-law to regulate waterpipe smoking in the Regional Municipality of Niagara, outlined in Appendix 1 of Report PHD 2-2022, that will, if adopted, come into force and effect on January 1, 2023, provided that:
 - 2.1. A majority of the councils of the local area municipalities pass resolutions consenting to the by-law; and
 - 2.2. The total number of electors in the local municipalities that have passed resolution in support of the by-law form a majority of all electors in the Region of Niagara as established in the revised list of electors for the municipal election held in the year 2018; and
3. That, subject to the adoption of the aforementioned by-law, a copy of the by-law and Report PHD 2-2022 **BE CIRCULATED** to the Clerks of the 12 local area municipalities (LAMs) with a request that their councils adopt the following resolution and advise the Regional Clerk of the results of that consideration by August 1, 2022:

‘That the Council of (name of municipality) consents to the passage of the Waterpipe By-law of the Regional Municipality of Niagara, being a by-law to regulate waterpipe smoking in the Region.’

Key Facts

- The purpose of this report is to seek Council’s approval to enact a by-law that prohibits tobacco and non-tobacco (i.e., herbal) waterpipe smoking in open and enclosed public spaces as described in the Policy Consideration section and Appendix 1 of Report PHD 2-2022.
- Taking a proactive approach to governing waterpipe use could prevent an influx in establishments coming to Niagara due to restrictions in neighbouring communities (e.g., Halton, Toronto, Peel Region and Durham Region), allow consistency of rules across the Golden Horseshoe, and give predictability and clarity to local businesses.

- Through an online survey, 60.8% of the general population was supportive of a waterpipe by-law to restrict use in public places. LAM members that participated in consultation were also supportive of a regional waterpipe by-law.

Financial Considerations

There are no financial implications of this report. The Ministry of Health provides funding under the Smoke-free Ontario Strategy in a cost shared (provincial and Regional levy) model for the Tobacco Control Program. Existing staff of this program will manage enforcement of the by-law should it be adopted within the existing budget.

Analysis

Current Legislation

The *Smoke-free Ontario Act, 2017 (SFOA)* prohibits spaces where waterpipe smoking of tobacco product is allowed, however has no restrictions to non-tobacco (i.e., herbal) products which are allowed in enclosed public spaces and outdoor spaces under the SFOA and By-law No. 112-2013.

Enforcement challenges arise when determining whether a product is tobacco or non-tobacco. Testing is offered through the provincial Ministry of Health and requires taking a sample and testing at a lab, making it difficult to know what is being used in waterpipe devices. Sampling of four establishments conducted between Dec. 2021 and March 2022 all came back positive with tobacco. Waterpipes therefore exploit a legislative and regulatory loophole to allow smoking of substances in otherwise regulated places.

Local Context

In Niagara, there are five waterpipe establishments in operation, three in Niagara Falls and two in St. Catharines. As by-laws are implemented across the GTHA to address the current regulatory gaps, there are concerns that more establishments may decide to relocate or open in Niagara given the absence of governing rules.

Healthy and Safety Concerns

Waterpipes filled with tobacco and/or herbal shisha contain harmful toxins and chemicals comparable to cigarette smoking, including particulate matter, polycyclic aromatic hydrocarbons, carbon monoxide, and heavy metals.¹ Non-tobacco and

tobacco shisha contain similar levels of toxins, thus health harms are due to the waterpipe device rather than the product itself.¹ Similar to cigarette smoking, waterpipe use is associated with increases in lung cancer and cardiovascular disease.^{1,2}

A waterpipe session lasts from 20 to 80 minutes, putting others at risk due to high levels of toxic compounds in second-hand smoke, irrespective of the product being used (i.e., tobacco or herbal).^{1,3} Non-smoking sections of waterpipe cafés have similar levels of toxins in the air as restaurants where cigarette smoking is allowed.¹ The chemicals and toxins in second-hand exposure lead to increased risk of cancer, cardiovascular disease, carbon monoxide poisoning and chronic obstructive pulmonary disease.¹

Waterpipe smokers often share a hose/mouthpiece in a communal environment, putting users at risk of contracting viruses and respiratory infections such as tuberculosis, hepatitis, herpes, influenza, COVID-19 and oral diseases.^{1,3}

Public Consultation

An online survey was conducted from February 8 to March 14, 2022, to gauge public opinion. To review the promotion of the survey, see Appendix 2 of Report PHD 2-2022. 956 surveys were completed and included in the analysis. See Appendix 3 of Report PHD 2-2022, for the breakdown of survey responses per municipality in Niagara Region.

Of the respondents, 10.4% had used a waterpipe in the last 12 months; use was highest among youth 17-24 year olds (16.9%). Of all respondents, 35% perceived waterpipe use as more socially acceptable than cigarettes. The flavouring, misperception of harm, accessibility, and social use are contributing factors to waterpipe use among youth.^{4,5}

2.9% of those who smoked waterpipe in the last 12 months were “very concerned” with the health effects as compared to 97.1% of non-users. 33.3% of users thought waterpipe use was a healthier alternative to cigarette smoking.

31.3% used waterpipes for cultural reasons. Waterpipes were most commonly used at waterpipe establishments (68.7%), at home (59.6%), or someone else’s home (55.6%). When asked about the primary reason for visiting a waterpipe establishment, ‘to socialize’ (34.5%) was the top reason; for ‘food and drink (26.7%)’ was second; ‘to smoke’ (21.6%) was ranked third.

60.8% of the respondents supported a by-law, 27.4% did not support, and 11.1% were ambivalent. The majority of respondents supported further restrictions in particular

locations including restaurants, lounges, and bars (67.8%), workplaces (81.2%), and patios (58.5%). See Appendix 4 of Report PHD 2-2022 for the breakdown of support for a by-law.

Owner/Operator Consultation

All five existing establishments participated in interviews. Establishments offered food and drink in addition to waterpipes. Some offered alcoholic beverages and live entertainment as well. Revenue from waterpipe sales ranged from three to 15%. Owners noted that demand had not changed, with the exception of a decline due to the pandemic, and they did not foresee a change in the future.

Two of the five establishments did not expect a prohibition to have a significant impact on their business, whereas others felt it would significantly affect revenue as waterpipe is what brings patrons into the establishment.

Municipal Consultation

Niagara Region Public Health & Emergency Services (NRPH&ES) consulted with the area CAOs to convene a representative group together from each LAM. The LAM group met on Dec. 6, 2021 and March 28, 2022. Background information, current research and evidence on waterpipe smoking was provided. As a group, decisions and guidance were provided for the public consultation survey including planning, implementation, and communication.

Consultation results were shared with LAM representatives in attendance. The LAM group was presented with items for consideration, a proposed by-law based on the consultations done, the opportunity to discuss whether amendments should be added, and the opportunity to either support or oppose the by-law. All LAMs in attendance were supportive of the by-law.

Policy Consideration

The Water Pipe Smoking By-law intends to address tobacco and non-tobacco (i.e. herbal) waterpipe smoking in Niagara. The by-law will address all areas currently covered by the *SFOA* and Niagara Region By-law 112-2013, which include enclosed public places, enclosed workplaces, parks, beaches, recreational trails, nine metres from public entrances, patios, sporting areas and their spectator areas, schools, and 20 metres from sporting and spectator areas, playgrounds and schools.

In alignment with GTHA jurisdictions, the fines will be no more than \$10,000 for the first offence, and \$25,000 for subsequent convictions, for individuals. For corporate offences are not more than \$50,000 for the first offence, and \$100,000 for subsequent offences.

Enforcement

There are five FTE Tobacco Control Officers currently supporting the existing provincial and local smoke-free legislation, and will support education and enforcement the new by-law. As part of routine *SFOA* inspections, waterpipe establishment education and sampling is already conducted on an annual basis.

Niagara takes a progressive enforcement approach, which entails providing education, then moving on to warn and/or enforce. The by-law will be monitored through routine inspections and on a complaint basis. Complaints are received through the NRPH Tobacco Hotline 1-888-505-6074 ext.7393 and NRPH&ES website.

Comprehensive education is fundamental to ensuring successful implementation. It is important to ensure that people know about the changes and NRPH&ES will ease into this change process with a similar approach to previous legislative changes.

Alternatives Reviewed

Through the consultation process, the owners/operators of waterpipe establishments suggested to continue allowing waterpipes in designated areas, at specific times (i.e., time of day or duration), or to remove hookah lounges from the by-law. Considering the health concerns due to second-hand smoke, difficulty with enforcement and previous experience with similar alternatives when prohibiting indoor smoking, Public Health recommends moving forward with restricting waterpipe use at all locations within the *SFOA* and current smoke-free Bylaw No. 112-2013.

Relationship to Council Strategic Priorities

Adoption of a by-law to regulate waterpipe use supports the Council Strategic Priority of Healthy and Vibrant Community by enabling Public Health to protect children and vulnerable persons from exposure to second-hand vapour from waterpipe sources.

Other Pertinent Reports

- [PHD 10-2021 – Waterpipe \(Hookah\) Smoking – Policy Consideration](https://pub-niagararegion.escibemeetings.com/filestream.ashx?DocumentId=19010)
(https://pub-niagararegion.escibemeetings.com/filestream.ashx?DocumentId=19010)
- [PHD 09-2019 – Amendments to By-law 112-2013 – A Regional By-law to Protect Children and Vulnerable Persons from Exposure to Outdoor Second-hand Smoke](https://pub-niagararegion.escibemeetings.com/filestream.ashx?DocumentId=3899)
(https://pub-niagararegion.escibemeetings.com/filestream.ashx?DocumentId=3899)

Prepared by:

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Health Promoter, CDIP
Public Health and Emergency Services

Recommended by:

M. Mustafa Hirji, MD MPH RCPC
Medical Officer of health & Commission
Public Health and Emergency Services

Submitted by:

Ron Tripp, P.Eng.
Chief Administrative Officer

This report was prepared in consultation with Diana Teng, Manager, Chronic Disease and Injury Prevention, and reviewed by Callie Anderson, Health Promoter, Chronic Disease and Injury Prevention, and David Lorenzo, Associate Director, Chronic Disease and Injury Prevention.

Appendices

Appendix 1	Waterpipe By-Law
Appendix 2	Survey promotion for public consultation
Appendix 3	Number and Proportion of Respondents by Municipality
Appendix 4	Support Versus Opposition for a By-law by Municipality

Sources

¹ Public Health Ontario. (2021). Evidence Brief: Health Impacts of Waterpipe Smoking and Exposure. Retrieved from: (https://cm.publichealthontario.ca/-/media/documents/e/2021/eb-waterpipe-smoking-exposure.pdf?sc_lang=eng)

² U.S. Centers for Disease Control and Prevention. (2018). Smoking and tobacco use: hookahs. Retrieved from: (https://www.cdc.gov/tobacco/data_statistics/fact_sheets/tobacco_industry/hookahs/index.htm)

³ World Health Organization Study Group on Tobacco Product Regulation. (2005). Waterpipe tobacco smoking: Health effects, research needs and recommended actions by regulators. Geneva, Switzerland: World Health Organization. Retrieved from: (www.who.int/tobacco/global_interaction/tobreg/Waterpipe%20recommendation_Final.pdf)

⁴ Non-Smokers Rights Association. (2012). Waterpipe smoking in Canada: New trend, old tradition. Ottawa, ON: Non-Smokers Rights Association. Retrieved from: (https://nsra-adnf.ca/wp-content/uploads/2016/08/Waterpipe_SMoking_in_Canada_New_Trend_Old_Tradition_Feb_2012.pdf)

⁵ McKeown, D. (2015). Hookah (waterpipe) use in licensed establishments. Toronto, ON: City of Toronto. Retrieved from: (<http://www.toronto.ca/legaldocs/mmis/2015/hl/bgrd/backgroundfile-80194.pdf>)

THE REGIONAL MUNICIPALITY OF NIAGARA
BY-LAW NO.

A by-law to regulate water pipe smoking in the Regional Municipality of Niagara

WHEREAS, water pipe smoking has been associated with various disease and poor health outcomes, including lung cancer, negative pregnancy outcomes, poor oral health, dental disease, respiratory illness and impaired lung function linked to tobacco water pipe formulations, and carbon monoxide exposure and reduced lung capacity linked to non-tobacco formulations;

AND WHEREAS, water pipe smoking, in general, negatively affects indoor air quality for indicators including carbon monoxide and particulate matter, which are closely related to potential impacts on human health;

AND WHEREAS, subsection 11(2) of the Municipal Act, 2001, S.O. 2001, c. 25, provides that upper tier municipalities have the authority to pass by-laws respecting the health, safety and well-being of persons;

AND WHEREAS, subsection 115(1) of the Municipal Act, 2001, S.O. 2001, c. 25 provides that a municipality may prohibit or regulate the smoking of tobacco in public places and workplaces;

AND WHEREAS, it is desirable for the health, safety and well-being of the inhabitants of Niagara Region to prohibit the use of water pipes in enclosed public places, enclosed workplaces, and other specified areas within Niagara Region to protect individuals from conditions hazardous to human health;

NOW THEREFORE, the Council of the Regional Corporation enacts as follows:

DEFINITIONS

1. That in this By-law:

“Employee” means a person who performs any work for, or supplies any service to, an employer, or a person who receives any instruction or training in the activity, business, work, trade, occupation or profession of an employer;

“Employer” includes an owner, operator, proprietor, manager, superintendent, overseer, receiver or trustee of an activity, business, work, trade, occupation, profession, project or undertaking who has control or direction of, or is directly or indirectly responsible for, the employment of a person in it;

“Enclosed Public Place” means the inside of any place, building or structure, or vehicle or conveyance or a part of any of them,

- (a) That is covered by a roof; and
- (b) To which the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry.

“Enclosed Workplace” means the inside of any place, building or structure or vehicle or conveyance or a part of any of them,

- (a) That is covered by a roof; and
- (b) That employees work in or frequent during the course of their employment whether or not they are acting in the course of their employment at the time.

“Highway” means a highway as defined in the Municipal Act, 2001, S.O. 2001, c. 25

“Medical Officer of Health” means the Medical Officer of Health for The Regional Municipality of Niagara, duly appointed under the Health Protection and Promotion Act, R.S.O. 1990, c. H.7, as amended;

“Officer” means a Provincial Offences Officer, acting under the direction of the Medical Officer of Health;

“Order” has the meaning set forth in section 11 of this By-law.

“Person” means an individual or a corporation;

“Playground” means an area where the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry, that is primarily used for the purposes of children’s recreation, and is equipped with children’s play equipment including but not limited to slides, swings, climbing apparatuses, splash pads, wading pools, or sand boxes.

“Proprietor” means the person, governing body or agency which controls, governs or directs activity carried on within an Enclosed Public Place, Enclosed Workplace, or other area specified by this By-law and includes the person who is actually in charge thereof;

“Patio” means an area where the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry, or that is worked in or frequented by employees during the course of their employment, whether or not they are acting in the course of their employment at the time, and where food or drink is served or sold or offered for consumption, or that is part of or operated in conjunction with an area where food or drink is served or sold or offered.

“Property Owner” means a Person with a legal or beneficial ownership of a building or other structure that contains an Enclosed Public Place or an Enclosed Workplace operated either directly by the Property Owner or indirectly by a tenant, licensee or other Person operating in the building or structure with the permission of that Property Owner and includes:

- (a) the registered owner on title of the property
- (b) the person, for the time being, managing or receiving the rent of the land or premises in connection with which the word is used, whether on the person’s own account or as agent or trustee of any other person, or who would receive the rent if the land and premises were let; and,
- (c) the lessee or occupant of the property.

“Public Place” means

- (a) Any property owned, leased, or controlled by Niagara Region or any area municipality, including without limitation parks, playgrounds, sports or playing fields, recreational trails, beaches, arenas, recreational centers, community meeting areas, special events, farmers markets, bus shelters, splash pads, and pools;
- (b) Any outdoor area within a nine-metre radius of an entrance to or exit from a building located at any property owned, leased or controlled by Niagara Region or any area municipality; and
- (c) Any outdoor area that is within a nine-metre radius of an entrance to or exit from a public building or building generally accessible to the public, whether or not the building is leased, or controlled by Niagara Region or any area municipality, including places of employment, condominium buildings, apartment buildings and other similar residential buildings

“Roof” means a physical barrier of any size, whether temporary or permanent, that covers an area or place or any part of an area or place, and that is capable of excluding rain or impeding airflow, or both;

“School” means the lands or premises included in the definition of a school under the Education Act, R.S.O. 1990, c. E.2 or the building or the grounds surrounding the building of a private school as defined in the Education Act, where the private school is the sole occupant of the premises, or the grounds annexed to a private school as defined in the Education Act, where the private school is not the sole occupant of the premises.

“Spectator Area” means an area with tiered seating or benches;

“Smoke” or “Smoking” includes the use or carrying of any lighted or activated or heated Water pipe as well as the fumes or byproducts of heating or combustion associated with Water pipe use.

“Sporting Area” means an area where the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry, used primarily for the purposes of sports including, but without being limited to soccer, football, basketball, tennis, baseball, softball, cricket, skating, beach volleyball, running, swimming, or skateboarding.

“Water pipe” means any activated, lighted or heated smoking equipment used to burn or heat tobacco or a non-tobacco substance or a combination thereof, with which the vapor or smoke may be passed through a water basin before inhalation.

PROHIBITIONS

2. That no person shall Smoke a Water pipe in:
 - (a) an Enclosed Public Place;
 - (b) an Enclosed Workplace;
 - (c) a Patio;
 - (d) a Playground;
 - (e) a Public Place;
 - (f) a Sporting Area;
 - (g) a Spectator Area adjacent to a Sporting Area;
 - (h) a School; or
 - (i) any area that is within nine metres of any point on the perimeter of a Public Place, Playground, Sporting Area or Spectator Area adjacent to a Sporting Area.
3. That the prohibitions in this By-law shall apply whether or not a notice is posted that Water pipe Smoking is prohibited;
4. That no Person shall provide or supply a Water pipe for use in an area where Smoking a Water pipe is prohibited by this By-law;
5. That no Proprietor, Employer, or Employee shall encourage, entice, cause or permit the Smoking of a Water pipe within an Enclosed Public Place, Enclosed Workplace, or Restaurant or Patio or Sporting Area or Spectator Area;
6. No Property Owner, shall cause or permit use of a building or other structure that contains an Enclosed Public Place or an Enclosed Workplace building in which that Property Owner has a legal or beneficial interest to be used

EXEMPTIONS

7. That this By-law does not apply to a Highway including a pedestrian sidewalk adjacent to a Highway, but does apply to public transportation vehicles and taxicabs on a Highway;
8. That this By-law does not apply to the portion of a premises used primarily as a private dwelling;

ENFORCEMENT

9. That where any Person contravenes any provision of this By-law, an Officer may direct such Person to comply with this By-law. Every Person so directed shall comply with such direction without delay;
10. That where an Officer has reasonable grounds to believe that an offence has been committed by a Person, the Officer may require the name, address, and proof of identity of that Person, and the Person shall supply the required information;
11. In the event the Medical Officer of Health is satisfied that a contravention of this By-law has occurred, Niagara Region may make an order, as authorized by section 444(1) of the *Municipal Act, 2001* S.O. 2001 c25 (as amended or replaced from time to time) requiring the person who contravened the By-law or who caused or permitted the contravention or the Property Owner of the land on which the contravention occurred to discontinue the contravening activity and the Medical Officer of Health is by this By-law, delegated authority to issue such Orders.

INSPECTIONS

12. That an Officer may enter and inspect all buildings, structures or parts thereof that are subject to this By-law at any reasonable time for the purposes of determining whether there is compliance with this By-law;
13. That for the purposes of an inspection under this By-law, an Officer may:
 - (a) require the production for inspection of documents or things relevant to the inspection;
 - (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - (c) require information from any person concerning a matter related to the inspection; and
 - (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
14. In the event the Medical Officer of Health determines that it would be beneficial for the enforcement of the requirements of this By-law, Niagara Region shall have

all be entitled to:

- (a) seek a search warrant pursuant to section 439 of the *Municipal Act, 2001* S.O. 2001 c25 (as amended or replaced from time to time);
- (b) Apply to restrain any breach or continuing breach of the By-law pursuant to section 440 of the *Municipal Act, 2001* S.O. 2001 c25 (as amended or replaced from time to time); and

OBSTRUCTION

- 15. That no Person shall hinder or obstruct, or attempt to hinder or obstruct, an Officer lawfully carrying out a power, duty or direction under this By-law;

OFFENCES

- 16. That every Person other than a corporation who contravenes any provision of this By-law, is guilty of an offence and on conviction is liable, for every day or part thereof upon which such offence occurs or continues, to a fine of not more than \$10,000 for a first offence; and not more than \$25,000 for any subsequent conviction;
- 17. That every Person other than a corporation who fails to promptly comply with an Order issued pursuant to section 11 of this By-law, is guilty of an offence and on conviction is liable, for every day or part thereof upon which such offence occurs or continues, to a fine of not more than \$10,000 for a first offence; and not more than \$25,000 for any subsequent conviction;
- 18. That every corporation which contravenes any provision of this By-law, is guilty of an offence and on conviction is liable, for every day or part thereof upon which such offence occurs or continues, to a fine of not more than \$50,000 for a first offence and not more than \$100,000 for any subsequent conviction;
- 19. That every corporation which fails to promptly comply with an Order issued pursuant to section 11 of this By-law, is guilty of an offence and on conviction is liable, for every day or part thereof upon which such offence occurs or continues, to a fine of not more than \$50,000 for a first offence and not more than \$100,000 for any subsequent conviction;
- 20. That without limiting any other section of this By-law, every Person who contravenes any provision of this By-law is guilty of an offence and on conviction is liable to a fine in accordance with the *Provincial Offences Act*, R.S.O. 1990, c. P.33;
- 21. That without limiting any other section of this By-law, every Person who fails to promptly comply with an Order issued pursuant to section 11 of this By-law is guilty of an offence and on conviction is liable to a fine in accordance with the *Provincial Offences Act*, R.S.O. 1990, c. P.33;

22. That if any Person is in contravention of any provision of this By-law, and the contravention has not been corrected, the contravention of the provision shall be deemed to be a continuing offence for each day or part of a day that the contravention remains uncorrected;
23. That for the purposes of this By-law, subsequent conviction means a conviction for an offence which occurs after the date of conviction for an earlier offence under this By-law;
24. That where any Person contravenes any provision of this By-law, such person shall be responsible for all costs incurred by the Region directly related to the contravention;

SEVERABILITY

25. That if any section or sections of this By-law, or parts thereof are found by any court of competent jurisdiction to be illegal or beyond the power of Regional Council to enact, such section or sections or parts thereof shall be deemed to be severable from this By-law and all remaining sections or parts of this By-law shall be deemed to be separate and independent therefrom and to be properly enacted and to be of full force and effect;

CONFLICT

26. That in the event of a conflict between any provision of this By-law and any applicable Act or regulation, the provision that is the most restrictive prevails;

EFFECTIVE DATE

27. That this By-law shall come into force and take effect on **<insert date>**, provided that the conditions in subsection 115(5) of the *Municipal Act, 2001*, S.O. 2001, c. 25 have been satisfied;

SHORT TITLE

28. That the short title of this By-law is the "Niagara Region Water pipe Smoking By-law".

Appendix 2

Survey Promotion for Public Consultation

The target population for the public consultation survey was Niagara residents from all municipalities who were 16 and older. The survey was primarily promoted through paid advertisements on Niagara Region social media accounts (i.e. Twitter, Facebook, Instagram, and Snapchat). Advertisements were placed on the Niagara Region website Public Health landing page and the vine site. Municipal communications representatives for each LAM were provided a promotion toolkit enabling them to promote the survey through unpaid social media messages, email and/or newsletter, and other established communication channels. Finally, the survey may also have spread on social media organically and by word of mouth.

Appendix 3

Table 1 – Number and Proportion of Respondents by Municipality

Municipality	Population Estimate	Proportion of Total Niagara Population	Response Rate per Municipality	Number of Respondents	Proportion of Total Survey Respondents
Niagara Region	447,888	100%	0.21%	956	96.27%
St. Catharines	133,113	30%	0.25%	327	33.93%
Niagara Falls	88,071	20%	0.22%	191	19.23%
Welland	52,293	12%	0.19%	98	9.87%
Fort Erie	30,710	7%	0.25%	76	7.65%
Port Colborne	18,306	4%	0.25%	45	4.53%
Lincoln	23,787	5%	0.16%	39	3.93%
Niagara-on-the-Lake	17,511	4%	0.18%	31	3.12%
Grimsby	27,314	6%	0.13%	35	3.52%
Thorold	18,801	4%	0.26%	48	4.83%
Pelham	17,110	4%	0.22%	38	3.83%
West Lincoln	14,500	3%	0.09%	13	1.31%
Wainfleet	6,372	1%	0.16%	10	1.01%

Appendix 4

Table 2 – Support Versus Opposition for a By-law by Municipality

Municipality	Support Number of respondents	Support Proportion of respondents	Opposition Number of respondents	Opposition Proportion of respondents
Niagara Region	581	60.8%	269	28.1%
St. Catharines	197	60.2%	96	29.4%
Niagara Falls	115	60.2%	48	25.1%
Welland	56	57.1%	32	32.7%
Fort Erie	45	59.2%	21	27.6%
Port Colborne	23	51.1%	14	31.1%
Lincoln	23	59.0%	14	35.9%
Niagara-on- the-Lake	22	71.0%	7	22.6%
Grimsby	22	62.9%	9	25.7%
Thorold	31	64.6%	11	22.9%
Pelham	27	71.1%	10	26.3%
West Lincoln	Not reportable	Not reportable	Not reportable	Not reportable
Wainfleet	Not reportable	Not reportable	Not reportable	Not reportable

THE REGIONAL MUNICIPALITY OF NIAGARA

BY-LAW NO. 2022-35

A BY-LAW TO REGULATE WATER PIPE SMOKING IN THE
REGIONAL MUNICIPALITY OF NIAGARA

WHEREAS, water pipe smoking has been associated with various disease and poor health outcomes, including lung cancer, negative pregnancy outcomes, poor oral health, dental disease, respiratory illness and impaired lung function linked to tobacco water pipe formulations, and carbon monoxide exposure and reduced lung capacity linked to non-tobacco formulations;

WHEREAS, water pipe smoking, in general, negatively affects indoor air quality for indicators including carbon monoxide and particulate matter, which are closely related to potential impacts on human health;

WHEREAS, subsection 11(2) of the Municipal Act, 2001, S.O. 2001, c. 25, provides that upper tier municipalities have the authority to pass by-laws respecting the health, safety and well-being of persons;

WHEREAS, subsection 115(1) of the Municipal Act, 2001, S.O. 2001, c. 25 provides that a municipality may prohibit or regulate the smoking of tobacco in public places and workplaces; and

WHEREAS, it is desirable for the health, safety and well-being of the inhabitants of Niagara Region to prohibit the use of water pipes in enclosed public places, enclosed workplaces, and other specified areas within Niagara Region to protect individuals from conditions hazardous to human health.

NOW THEREFORE, the Council of the Regional Corporation enacts as follows:

DEFINITIONS

1. In this By-law:

“Employee” means a person who performs any work for, or supplies any service to, an employer, or a person who receives any instruction or training in the activity, business, work, trade, occupation or profession of an employer.

“Employer” includes an owner, operator, proprietor, manager, superintendent, overseer, receiver or trustee of an activity, business, work, trade, occupation, profession, project

or undertaking who has control or direction of, or is directly or indirectly responsible for, the employment of a person in it.

“Enclosed Public Place” means the inside of any place, building or structure, or vehicle or conveyance or a part of any of them:

- (a) that is covered by a roof; and
- (b) to which the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry.

“Enclosed Workplace” means the inside of any place, building or structure or vehicle or conveyance or a part of any of them:

- (a) that is covered by a roof; and
- (b) that employees work in or frequent during the course of their employment whether or not they are acting in the course of their employment at the time.

“Highway” means a highway as defined in the Municipal Act, 2001, S.O. 2001, c. 25.

“Medical Officer of Health” means the Medical Officer of Health for The Regional Municipality of Niagara, duly appointed under the Health Protection and Promotion Act, R.S.O. 1990, c. H.7, as amended.

“Officer” means a Provincial Offences Officer acting under the direction of the Medical Officer of Health;

“Order” has the meaning set forth in section 11 of this By-law.

“Person” means an individual or a corporation;

“Playground” means an area where the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry, that is primarily used for the purposes of children’s recreation, and is equipped with children’s play equipment including but not limited to slides, swings, climbing apparatuses, splash pads, wading pools, or sand boxes.

“Proprietor” means the person, governing body or agency which controls, governs or directs activity carried on within an Enclosed Public Place, Enclosed Workplace, or other area specified by this By-law and includes the person who is actually in charge thereof;

“Patio” means an area where the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry, or that is worked in or frequented by employees during the course of their employment, whether or not they are acting in the course of their employment at the time, and where food or drink is served or sold or offered for consumption, or that is part of or operated in conjunction with an area where food or drink is served or sold or offered.

“Property Owner” means a Person with a legal or beneficial ownership of a building or other structure that contains an Enclosed Public Place or an Enclosed Workplace operated either directly by the Property Owner or indirectly by a tenant, licensee or other Person operating in the building or structure with the permission of that Property Owner and includes:

- (a) the registered owner on title of the property;
- (b) the person, for the time being, managing or receiving the rent of the land or premises in connection with which the word is used, whether on the person’s own account or as agent or trustee of any other person, or who would receive the rent if the land and premises were let; and
- (c) the lessee or occupant of the property.

“Public Place” means:

- (a) any property owned, leased, or controlled by Niagara Region or any area municipality, including without limitation parks, playgrounds, sports or playing fields, recreational trails, beaches, arenas, recreational centers, community meeting areas, special events, farmers markets, bus shelters, splash pads, and pools;
- (b) any outdoor area within a nine-metre radius of an entrance to or exit from a building located at any property owned, leased or controlled by Niagara Region or any area municipality; and
- (c) any outdoor area that is within a nine-metre radius of an entrance to or exit from a public building or building generally accessible to the public, whether or not the building is leased, or controlled by Niagara Region or any area municipality, including places of employment, condominium buildings, apartment buildings and other similar residential buildings.

“Roof” means a physical barrier of any size, whether temporary or permanent, that covers an area or place or any part of an area or place, and that is capable of excluding rain or impeding airflow, or both.

“School” means the lands or premises included in the definition of a school under the Education Act, R.S.O. 1990, c. E.2 or the building or the grounds surrounding the building of a private school as defined in the Education Act, where the private school is the sole occupant of the premises, or the grounds annexed to a private school as defined in the Education Act, where the private school is not the sole occupant of the premises.

“Spectator Area” means an area with tiered seating or benches.

“Smoke” or “Smoking” includes the use or carrying of any lighted or activated or heated Water pipe as well as the fumes or byproducts of heating or combustion associated with Water pipe use.

“Sporting Area” means an area where the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry, used primarily for the purposes of sports including, but without being limited to soccer, football, basketball, tennis, baseball, softball, cricket, skating, beach volleyball, running, swimming, or skateboarding.

“Water pipe” means any activated, lighted or heated smoking equipment used to burn or heat tobacco or a non-tobacco substance or a combination thereof, with which the vapor or smoke may be passed through a water basin before inhalation.

PROHIBITIONS

2. No person shall Smoke a Water pipe in:

- (a) an Enclosed Public Place;
- (b) an Enclosed Workplace;
- (c) a Patio;
- (d) a Playground;
- (e) a Public Place;
- (f) a Sporting Area;
- (g) a Spectator Area adjacent to a Sporting Area;
- (h) a School; or

- (i) any area that is within 9 metres of any point on the perimeter of a Public Place, Playground, Sporting Area or Spectator Area adjacent to a Sporting Area.
- 3. The prohibitions in this By-law shall apply whether or not a notice is posted that Water pipe Smoking is prohibited.
- 4. No Person shall provide or supply a Water pipe for use in an area where Smoking a Water pipe is prohibited by this By-law.
- 5. No Proprietor, Employer, or Employee shall encourage, entice, cause or permit the Smoking of a Water pipe within an Enclosed Public Place, Enclosed Workplace, or Restaurant or Patio or Sporting Area or Spectator Area.
- 6. No Property Owner, shall cause or permit use of a building or other structure that contains an Enclosed Public Place or an Enclosed Workplace building in which that Property Owner has a legal or beneficial interest to be used.

EXEMPTIONS

- 7. This By-law does not apply to a Highway including a pedestrian sidewalk adjacent to a Highway, but does apply to public transportation vehicles and taxicabs on a Highway.
- 8. This By-law does not apply to the portion of a premises used primarily as a private dwelling.

ENFORCEMENT

- 9. Where any Person contravenes any provision of this By-law, an Officer may direct such Person to comply with this By-law. Every Person so directed shall comply with such direction without delay.
- 10. Where an Officer has reasonable grounds to believe that an offence has been committed by a Person, the Officer may require the name, address, and proof of identity of that Person, and the Person shall supply the required information.
- 11. In the event the Medical Officer of Health is satisfied that a contravention of this By-law has occurred, Niagara Region may make an order, as authorized by section 444(1) of the Municipal Act, 2001 S.O. 2001 c25 (as amended or replaced from time to time) requiring the person who contravened the By-law or who caused or permitted the contravention or the Property Owner of the land on which the contravention occurred to discontinue the contravening activity and the

Medical Officer of Health is by this By-law, delegated authority to issue such Orders.

INSPECTIONS

12. An Officer may enter and inspect all buildings, structures or parts thereof that are subject to this By-law at any reasonable time for the purposes of determining whether there is compliance with this By-law.
13. For the purposes of an inspection under this By-law, an Officer may:
 - (a) require the production for inspection of documents or things relevant to the inspection;
 - (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - (c) require information from any person concerning a matter related to the inspection; and
 - (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
14. In the event the Medical Officer of Health determines that it would be beneficial for the enforcement of the requirements of this By-law, Niagara Region shall have all be entitled to:
 - (a) seek a search warrant pursuant to section 439 of the Municipal Act, 2001 S.O. 2001 c. 25 (as amended or replaced from time to time); and
 - (b) apply to restrain any breach or continuing breach of the By-law pursuant to section 440 of the Municipal Act, 2001 S.O. 2001 c. 25 (as amended or replaced from time to time).

OBSTRUCTION

15. No Person shall hinder or obstruct, or attempt to hinder or obstruct, an Officer lawfully carrying out a power, duty or direction under this By-law.

OFFENCES

16. Every Person other than a corporation who contravenes any provision of this By-law, is guilty of an offence and on conviction is liable, for every day or part thereof upon which such offence occurs or continues, to a fine of not more than \$10,000 for a first offence; and not more than \$25,000 for any subsequent conviction.
17. Every Person other than a corporation who fails to promptly comply with an Order issued pursuant to section 11 of this By-law, is guilty of an offence and on conviction is liable, for every day or part thereof upon which such offence occurs or continues, to a fine of not more than \$10,000 for a first offence; and not more than \$25,000 for any subsequent conviction.
18. Every corporation which contravenes any provision of this By-law, is guilty of an offence and on conviction is liable, for every day or part thereof upon which such offence occurs or continues, to a fine of not more than \$50,000 for a first offence and not more than \$100,000 for any subsequent conviction.
19. Every corporation which fails to promptly comply with an Order issued pursuant to section 11 of this By-law, is guilty of an offence and on conviction is liable, for every day or part thereof upon which such offence occurs or continues, to a fine of not more than \$50,000 for a first offence and not more than \$100,000 for any subsequent conviction.
20. Without limiting any other section of this By-law, every Person who contravenes any provision of this By-law is guilty of an offence and on conviction is liable to a fine in accordance with the Provincial Offences Act, R.S.O. 1990, c. P.33.
21. Without limiting any other section of this By-law, every Person who fails to promptly comply with an Order issued pursuant to section 11 of this By-law is guilty of an offence and on conviction is liable to a fine in accordance with the Provincial Offences Act, R.S.O. 1990, c. P.33.
22. If any Person is in contravention of any provision of this By-law, and the contravention has not been corrected, the contravention of the provision shall be deemed to be a continuing offence for each day or part of a day that the contravention remains uncorrected.
23. For the purposes of this By-law, subsequent conviction means a conviction for an offence which occurs after the date of conviction for an earlier offence under this By-law.

24. Where any Person contravenes any provision of this By-law, such person shall be responsible for all costs incurred by the Region directly related to the contravention.

SEVERABILITY

25. If any section or sections of this By-law, or parts thereof are found by any court of competent jurisdiction to be illegal or beyond the power of Regional Council to enact, such section or sections or parts thereof shall be deemed to be severable from this By-law and all remaining sections or parts of this By-law shall be deemed to be separate and independent therefrom and to be properly enacted and to be of full force and effect.

CONFLICT

26. In the event of a conflict between any provision of this By-law and any applicable Act or regulation, the provision that is the most restrictive prevails.


EFFECTIVE DATE


27. This By-law shall come into force and take effect on January 1, 2023, provided that the conditions in subsection 115(5) of the Municipal Act, 2001, S.O. 2001, c. 25 have been satisfied.

SHORT TITLE

28. The short title of this By-law is the "Niagara Region Water Pipe Smoking By-law".

THE REGIONAL MUNICIPALITY OF NIAGARA


James Bradley, Regional Chair


Ann-Marie Norio, Regional Clerk

Passed: May 19, 2022