



To: Mayor Davis and Members of Council

**From: Kimberly A. Jolie,
Legal Counsel**

Date: February 7, 2019

**Subject: Proposed Amendments to Chapter 570 of Brantford's Municipal
Code (Smoking - Clean Air)**

Background

On January 15, 2019, staff brought forward a report to the Committee of the Whole – Operations and Administration regarding the request from the Healthy Brantford Task Force and Council's request for an updated Clean Air By-law. The updates were to prohibit smoking of tobacco more broadly on municipal property, and to include the most restrictive prohibitions on smoking cannabis and vaping.

After the report had been submitted for inclusion in the agenda, but before the meeting occurred, it was determined that the *Municipal Act* had been amended, which necessitated a review of the proposed amendments to the Clean Air By-law to ensure the amendments reflected the legislation. In order for a fulsome review to take place, the report was deferred to the Committee of the Whole meeting on February 12, 2019.

In the interim, the Public Health Unit has reviewed the proposed by-law and have made suggestions for additional changes to the by-law to assist in enforcement. As such, you will note several changes to the proposed by-law. The amended proposed by-law is attached hereto at Appendix "A".

Changes to the Proposed By-law

The first change is with respect to the application of the by-law to sidewalks, roads or road rights of way. Formerly, the *Municipal Act* stated that municipalities could not pass a by-law under section 115 of the Act in relation to the smoking of tobacco on highways. Highways are defined at law to include sidewalks, roads and rights of way. As such, staff had initially prepared the by-law to prohibit the smoking of cannabis on sidewalks. Staff then learned that the *Municipal Act* had been amended and there is now a reference to both tobacco and cannabis in section 115. As such, the City cannot pass a by-law under section 115 of the *Municipal Act* to prohibit the smoking of cannabis on

sidewalks. The Clean Air By-law is a by-law passed under this section of the *Municipal Act*.

That being said, staff are exploring options to regulate the odour produced by the use of cannabis on sidewalks and will be bringing forward recommendations on this subject as part of a report to recommend that the City pass a Nuisance By-law, which is anticipated to be delivered in April of this year. The Nuisance By-law would be passed under a different section of the *Municipal Act*.

The second change you will note is in how public place is defined in the by-law. Initially, the by-law referred to “unenclosed public places” in an effort to differentiate between the areas governed by the *Smoke Free Ontario Act* and the areas governed by our by-law. From an enforcement perspective, the Public Health Unit felt this phrase was too difficult to understand and requested that it be simplified.

Finally, there is now a separate prohibition for vaping. This clarifies that it is the act of vaping that is being prohibited, and not the specific substances being vaped. If the by-law were to prohibit the vaping of tobacco or cannabis, by-law enforcement officers would have to prove that the substances being vaped was tobacco and/or cannabis.

In order to assist in clarifying how the proposed by-law will govern tobacco and cannabis in the City, the following examples are provided. The proposed by-law will prevent the smoking of tobacco or cannabis or vaping on municipally owned properties except municipal housing properties not already deemed smoke free. Therefore, no one will be able to smoke tobacco or cannabis in a City building, in the parking lot of the building or on the grounds of the building. They will be able to smoke tobacco or cannabis or vape on the sidewalks around the City building.

In addition, the proposed by-law will prohibit cannabis smoking or vaping on public property such as the parking lot of a local mall, however it will not prohibit smoking cigarettes in the same parking lot.

By way of a further example with respect to the current status of sidewalks; the proposed by-law would allow a resident to smoke tobacco or cannabis or vape on a sidewalk along Victoria Park, however once the person steps onto the sidewalk within the park property they would be in violation of the by-law.

Required Amendment to the Resolution in Report No. CPRE2019-003

Further to the amendments to the by-law referred to above, the resolution in the original report brought forward on January 15, 2019 will also have to be amended. The wording of the amendment is set out below:

That Clause B of Report No. CPRE2019-003 BE AMENDED to read as follows:

b) That the revised Clean Air By-law attached as Appendix “A” to the February 7, 2019 Memorandum entitled “Proposed Amendments to Chapter 570 of Brantford’s Municipal Code (Smoking - Clean Air)” BE APPROVED.

Conclusion

In conclusion, the proposed by-law achieves the goal of the Healthy Brantford Task Force by prohibiting the smoking of tobacco on municipal properties more broadly than it had in the previous version of the by-law. It also achieves the request to staff to amend the by-law to regulate the smoking of cannabis and vaping within the City to the greatest extent possible under s. 115 of the *Municipal Act*. Staff will continue to review the extent to which it is possible to regulate the odours produced by the use of cannabis on sidewalks and will bring forward a report on this in April.

KJ

Attachment: Amended Proposed Clean Air By-law

APPENDIX A

Chapter 570 SMOKING - CLEAN AIR

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Article 1
INTERPRETATION

570.1.1 Cannabis – defined

“cannabis” has the same meaning as in subsection 2 (1) of the *Cannabis Act* (Canada).

570.1.2 City of Brantford – defined

“City of Brantford” means The Corporation of the City of Brantford.

570.1.3 Includes – defined

“includes” means “includes but not limited to” and the word “including” has a corresponding meaning.

570.1.4 Medical Cannabis – defined

“medical cannabis” means cannabis that is obtained for medical purposes in accordance with Chapter 14 of the *Cannabis Regulations* (Canada) or in accordance with a court order.

570.1.5 Municipally Owned Property – defined

“municipally owned property” means real property where the City of Brantford is the legal or beneficial owner and includes buildings, grounds, parking lots, trails, parkland, golf courses, and bus shelters but excludes housing properties that are not already deemed smoke-free.

570.1.6 Officer – defined

“officer” means an officer appointed in accordance with section 570.5.1.

570.1.7 Operator – defined

“operator” means a person who, alone or with others, operates, manages, supervises, oversees, runs or controls a public place.

570.1.8 Proprietor – defined

“proprietor” means the registered owner or operator of a public place, but excludes the City of Brantford.

570.1.9 Public Place – defined

“public place” means the outside of any place, building or structure or any part of them and to which the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry, including parking lots, grounds and open spaces regardless of whether it is owned by a public or private entity and includes municipally owned properties, unless an exemption is created under the *Smoke-Free Ontario Act* with respect to the public place.

570.1.10 Smoke or smoking – defined

“smoke” or “smoking” means to inhale or exhale the smoke produced by a cigar, cigarette, pipe or similar product or holding or otherwise having control of a cigar, cigarette, pipe or similar product that is producing or emitting smoke.

570.1.11 *Smoke Free Ontario Act* – defined

“*Smoke-Free Ontario Act*” shall mean the *Smoke-Free Ontario Act 2017*, S.O. 2017, C. 26 s. 3, and the regulations thereto, as amended or replaced from time to time.

570.1.12 Vape or Vaping – defined

“vape” or “vaping” means to inhale or exhale the vapour produced by an electronic cigarette or similar device, or holding or otherwise having control of an electronic device that is producing vapour, emissions or aerosol.

570.1.13 Interpretation – Rules

This Chapter shall be interpreted and applied in accordance with the following:

- (a) nothing in this Chapter shall be interpreted to permit smoking or vaping in any location where the same is prohibited under the *Smoke-Free Ontario Act*;

- (b) nothing in this Chapter shall be interpreted to interfere with an exemption established in the *Smoke-Free Ontario Act* provided that all requirements of the *Smoke-Free Ontario Act* regarding the exemption are complied with; and
- (c) nothing in this Chapter shall interfere with a person's right to smoke or vape medical cannabis, provided that the person can produce to an Officer the documentation required to demonstrate that they are authorized to use cannabis for their own medical purposes in accordance with Part 14 of the *Cannabis Regulations* (Canada) or in accordance with a court order.

570.1.14 Interpretation – Interpretation Act

The provisions of Part VI of the *Legislation Act, 2006*, S.O. 2006, c. 21, Schedule F shall apply to this Chapter.

570.1.15 Interpretation – Severability

If any provisions or part of this Chapter is declared by any court or tribunal of competent jurisdiction to be illegal or inoperative, in whole or in part, or inoperative in particular circumstances, the balance of the By-law, or its application in other circumstances, shall not be affected and shall continue to be in full force and effect.

Article 2
PROHIBITION

570.2.1 Cannabis – Use – Prohibited – General Rule

In addition to the prohibitions set out in the *Smoke-Free Ontario Act*, no person shall smoke cannabis in any public place.

570.2.2 Tobacco – Prohibited – General Rule

In addition to the prohibitions set out in the *Smoke-Free Ontario Act*, no person shall smoke tobacco on any municipally owned property.

570.2.3 Vaping – Prohibited – General Rule

In addition to the prohibitions set out in the *Smoke-Free Ontario Act*, no person shall vape in any public place.

570.2.4 Highways – Exempted

No prohibition contained within Article 2 shall apply to highways as defined in the *Municipal Act, 2001*, S.O. 2001 c. 25, as amended or replaced from time to time.

Article 3
PROPRIETORS

570.3.1 Proprietor – Duty to Ensure Compliance

A proprietor of any public place shall ensure that all persons present at a public place comply with section 570.2.2.

570.3.2 Proprietor – Defence – Reasonable Efforts

In any proceeding for a breach of Section 570.3.1, it shall be a defence for a proprietor to show that he or she made reasonable efforts under the circumstances to ensure compliance with Article 2.

Article 4
ERECTION OF SIGNS – CANNABIS – VAPING –
PUBLIC PLACE

570.4.1 Signs – Posted – Public Place

A proprietor shall post clearly visible and conspicuous signs in the form specified in this Article to delineate the area or areas where smoking cannabis or vaping is prohibited pursuant to this Chapter.

570.4.2 Signs – Requirements

Every sign that prohibits smoking cannabis and vaping shall:

- (a) have a white background or consist of contrasting colours where the lettering is applied directly to a

- surface or is mounted on a clear panel;
- (b) contain the text “ No Smoking Cannabis and Vaping in Public Places” with lettering not less than 3 centimetres in height AND the words “ City of Brantford Municipal Code Chapter 570 – Maximum Fine \$5,000.00” with lettering not less than 8 millimetres in height; and
- (c) contain a graphic with a red circle and interdictory stroke in red superimposed upon a cannabis leaf.

570.4.3 Signs – Sample

A sign which is substantially similar to the form and format attached as Schedule “A” will be deemed to comply with Section 570.5.2:

Article 5 OFFICERS

570.5.1 Officers – Appointment

Members of the City of Brantford Building Department By-law Enforcement Division, the City of Brantford Police Service and staff employed by the Brant County Health Unit are appointed officers for the purpose of this Chapter.

570.5.2 Officers – Right of Entry

Officers may, in accordance with and subject to the *Municipal Act, 2001*, enter any public place for the purpose of determining whether there is compliance with this Chapter and otherwise enforce the provisions of this Chapter.

570.5.3 Officers – Require Identification

An Officer who has reasonable grounds to believe that a person has contravened any provision of this By-law may require that person to provide their identification to the Officer. Every person who is required by an officer to provide identification under this section shall identify themselves to the Officer. Giving their correct name, date of birth and address shall constitute sufficient identification.

Article 6 OFFENCES & ENFORCEMENT

570.6.1 Offence – Fail to Comply

Any person who contravenes or fails to comply with any provision of this By-law is guilty of an offence and upon conviction is liable to a fine as provided for by the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33, as amended.

570.6.2 Offence – Hinder or Obstruct

No person shall hinder or obstruct, or attempt to hinder or obstruct, an Officer who is exercising a power or performing a duty under this By-law.

570.6.3 Continuation, Repetition Prohibited by Order

The court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted, and such order shall be in addition to any other penalty imposed on the person convicted.

570.6.4 Civil Enforcement

Where a fine is in default, the City of Brantford may proceed with civil enforcement against the person upon whom the fine has been imposed, pursuant to the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33.

570.6.5 Fine in Default – Add to Tax Roll

The City of Brantford may make a request to the treasurer of a local municipality to add any part of a fine that is in default to the tax roll for any property in the local municipality for which all of the owners are responsible for paying the fine, and collect it in the same manner as municipal taxes.

Article 7
EFFECTIVE DATE

570.7.1 Effective date
This Chapter shall come into effect at midnight on March 1, 2019.

Schedule "A"
Sample

**NO SMOKING CANNABIS
OR VAPING**



ALL PUBLIC PLACES

CITY OF BRANTFORD MUNICIPAL CODE CHAPTER 570
MAXIMUM FINE \$5,000



DATE: January 15, 2019

REPORT NO. : CPREC2019-003

TO: Chair and Members
Committee of the Whole – Operations and Administration

FROM: Sandy Jackson
General Manager, Community Programs, Parks and Recreation

Paul Moore
General Manager, Community Development

Jo Atanas
General Manager, Health and Human Services

1.0	TYPE OF REPORT	CONSENT ITEM [] ITEM FOR CONSIDERATION [x]
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2.0	TOPIC Update to Clean Air By-law – Amendments to Chapter 570 of Brantford’s Municipal Code (Smoking - Clean Air) [Financial Impact (\$70,000)] (Report CPREC2019-003).
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3.0 RECOMMENDATION

- A. THAT Report CPREC2019-003 Clean Air By-law – Amendments to Chapter 570 of Brantford’s Municipal Code (Smoking – Clean Air) (the “Clean Air By-law”) BE RECEIVED; and
- B. THAT the revised Clean Air By-law attached hereto as Appendix “A” BE APPROVED; and
- C. THAT the Clerk BE DIRECTED to place a By-law to repeal Chapter 570 of the City of Brantford Municipal Code and replace said Chapter with the revised Clean Air By-law before Council for approval; and
- D. THAT the costs of implementing the revised Clean Air By-law, [\$70,000] BE FUNDED from the Ontario Cannabis Legalization Implementation Fund.

4.0 PURPOSE

This report supports the Healthy Brantford Task Force recommendation to bring a report to Council to update the current Clean Air By-law to include smoke free municipally owned properties, taking into consideration possible exemptions as well as the Notice of Motion presented to City Council in December 2018 to revise the Clean Air By-law to prohibit the smoking of cannabis in public places in the City of Brantford.

5.0 BACKGROUND

On October 2, 2018 City Council approved the following Recommendations from the Healthy Brantford Task Force Report:

- A. THAT the Healthy Brantford Task Force Report regarding smoke free municipal properties BE RECEIVED; and
- B. THAT the Healthy Brantford Task Force SUPPORTS the concept of smoke free municipally owned properties; and
- C. THAT staff BE DIRECTED to bring a report to Council to update the current Smoking – Clean Air By-law #570 to include smoke free municipally owned properties and possible exemptions in alignment with the Smoke Free Ontario Act ONTARIO REGULATION 48/06.

In addition, Council approved a Resolution on December 18, 2018 to create greater restrictions with respect to cannabis smoking and vaping as follows:

5.1 Motion to Prohibit Smoking and Vaping Cannabis in Public Places

WHEREAS on October 17, 2018, the Federal Government lifted the criminal prohibition on the recreational cultivation and use of cannabis in Canada; and

WHEREAS, in Ontario, persons over the age of 19 may smoke or vape cannabis anywhere that smoking or vaping tobacco is currently permitted (with some exceptions); and

WHEREAS, on October 2, 2018, City Council adopted the recommendation of the Healthy Brantford Task Force and directed Staff to bring forward a report to Council to update the City's Smoking – Clean Air By-law (Chapter 570 of the City of Brantford Municipal Code) to include smoke-free municipally owned properties; and

WHEREAS, smoking or vaping cannabis may have negative healthy impacts and may become or cause a public nuisance; and

WHEREAS, section 128 of the Municipal Act, 2001, provides that municipalities may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council, are or could become or cause public nuisances; and

WHEREAS, section 8 and 10 of the Municipal Act, 2001, confer broad authority on municipalities to govern their affairs as they consider appropriate and to enhance the ability of municipalities to respond to municipal issues and to provide any service or thing that the municipalities considers necessary or desirable for the public;

NOW THEREFORE Council for The Corporation of the City of Brantford hereby resolves as follows:

THAT Staff BE DIRECTED to report back to Council with amendments to Chapter 570 (Smoking – Clean Air) of the City of Brantford Municipal Code to include:

- a) A prohibition on the smoking or vaping of cannabis, as well as the holding or other use of lighted cannabis in any public place, including, without limitation, properties owned or operated by the Corporation of the City of Brantford, to the greatest extent possible;
- b) An exception for cannabis used for medical purposes in accordance with the legislative scheme set out by the Provincial Government; and
- c) Enforcement provisions including, without limitation, the creation of an offence under the Provincial Offences Act for breach of Chapter 570, and the designation of municipal by-law enforcement officers for the purposes of enforcing the amended Chapter 570.

5.2 Smoke Free Ontario Act ONTARIO REGULATION 48/06

The *Smoke-Free Ontario Act (2006)* sets out rules for the sale, supply, use, display, and promotion of tobacco products. This legislation prohibits smoking or holding lighted tobacco in any enclosed workplace, any enclosed public places and specifically designated outdoor places in Ontario. All employers, owners, and operators of such facilities must post signs, ensure that no one smokes in a restricted area, remove ashtrays, and make sure that any person who does not comply leaves the premises. In May 2015, Ontario updated the *Act* with the passage of the *Electronic Cigarettes Act (ECA)*, extending the current tobacco smoking prohibitions in the *Smoke-Free Ontario Act* to e-cigarette use.

Municipalities have the authority to extend protection beyond the provincial legislation regulating smoking. As of 2017, 65 jurisdictions, including Brantford, have restricted smoking beyond those covered by the *Smoke-Free Ontario Act*. The Clean Air By-law was last revised in 2002 and follows the Provincial Act by restricting smoking within 20 metres of playgrounds and sporting areas and exceeds the Act by restricting smoking within 15 metres of public buildings, compared to the provincially legislated perimeter of 9 metres. In addition, all transit shelters in the City are currently smoke free and would continue to be smoke free within the proposed revisions attached as Appendix “A”.

6.0 CORPORATE POLICY OR STRATEGIC PLAN CONTEXT:

Brantford will be recognized as a safe and healthy community – one that promotes and enables the well-being of its citizens and supports access of all citizens to a full range of health and community services.

Strategic Action 2.3: Healthy Brantford

Parks and Recreation Master Plan: Goal 3: To promote and provide access to recreation for health, wellness and active living.

7.0 INPUT FROM OTHER SOURCES

Staff from the By-law Department, Health and Human Services, Housing Department, Human Resources, Legal and Real Estate and Public Works provided input into this report. Staff also informed union representatives of the proposed Clean Air By-law changes. Brantford Police Services and the Brant County Health Unit were consulted on the impact of additional restrictions to the By-law.

8.0 ANALYSIS

The proposed revisions to the Clean Air By-law support two levels of restriction; first to eliminate the smoking and vaping of tobacco on municipally owned properties with some exceptions; and second to prohibit cannabis smoking and vaping in public places as defined by the By-law.

8.1 Proposed Changes to By-law #570

As outlined above, in 2017 Brantford restricted smoking beyond the *Smoke-Free Ontario Act*. The current Clean Air By-law follows the *Smoke Free Ontario Act* by restricting smoking within 20 metres of playgrounds and sporting areas and exceeds the Act by restricting smoking within 15 metres of public buildings, compared to the provincially legislated perimeter of 9 metres.

The proposed revisions to the Clean Air By-law include the following:

- Smoking and vaping tobacco shall be banned on any municipally owned property including (without limitation) parkland, trails, recreation centre and sports facility properties, administrative buildings and parking lots;
- All forms of smoking or vaping cannabis shall be banned from all public places as defined in the revised Clean Air By-law in the most restrictive way allowed under *the Smoke Free Ontario Act*;
- Fines currently set for smoking infractions shall be extended to include cannabis smoking or vaping.

8.2 Inclusions and Exemptions

8.2.1 Tobacco Smoking and Vaping

The revised Clean Air By-law, included as Appendix “A” to this report, expands the restrictions on the use of smoking or vaping tobacco on municipally owned properties. The restrictions include parks, trails, sports and recreation properties as well as City owned buildings and their property. Smoking or vaping tobacco on public sidewalks, road right of ways and municipal housing properties where smoking has not already been prohibited are excluded due to the current laws not allowing prohibition in those places. Specifically, the *Municipal Act 2001* does not allow for the prohibition of smoking of tobacco on highways, which include sidewalks, but does not restrict the ability of municipalities to pass by-laws with respect to the smoking of cannabis on highways.

Smoking (tobacco and cannabis), including vaping, can be prohibited in municipally owned social housing units. However, the *Residential Tenancies Act, 2006* allows for existing tenancies to be grandfathered and prohibition would not be possible at this time. New tenancy agreements can include a smoking prohibition (including vaping) however this creates challenges for enforcing these provisions in buildings with existing smoking households. Achieving a full smoke-free building occurs through attrition and can take many years. Tenancy agreements for units in the newly constructed John Noble Apartments include language prohibiting smoking therefore, tenants who apply to live at these apartments know in advance that smoking is prohibited.

As established in the Brantford-Brant Housing Stability Plan, all municipally owned new construction housing projects will be deemed smoke-free. Tenant engagement and consultation is recommended to best inform approaches and strategies for transitioning existing buildings to be smoke free.

8.2.2 Cannabis Smoking and Vaping

The Clean Air By-law takes smoking and vaping cannabis a step further by banning it in all public places except where the *Smoke-Free Ontario Act* creates exemptions that allow for smoking and vaping in prescribed areas and in prescribed circumstances (i.e. hospices and psychiatric hospitals). For the purposes of the Clean Air By-law, public places have been defined as follows:

“Public Place includes any place to which the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry, regardless of whether it is owned by a public or private entity, and also includes motor vehicles located in a public place or in any place open to public view unless an exemption is created under the Smoke-Free Ontario Act.

The *Smoke-Free Ontario Act* bans cannabis smoking and vaping in all enclosed public places and prescribed places including restaurant and bar patios, children's playgrounds and play areas, sporting areas, shelters, community recreational facilities and the perimeter of schools. The proposed revisions to the Clean Air By-law will expand that definition to also include the grounds and parking lots of public places, including sidewalks and roadways.

With respect to the use of medical cannabis the Clean Air By-law will be enforced in compliance with the (Ontario) Human Rights Code and the *Smoke-Free Ontario Act*.

8.3 Creating a Societal Shift and Education and Awareness

Despite changes to the By-law, compliance with respect to the public smoking bans is addressed in large part through education and awareness, as well as by way of self and community regulation. Enforcement is achieved largely through peer pressure and social conformity, rather than financial or legal penalties. The experience of other jurisdictions suggests that municipalities can achieve a high level of voluntary compliance through education and awareness campaigns, and by championing existing health promotion and smoking cessation initiatives. The Brant County Health Unit offers a number of programs to support smoking cessation and additional information can be found on their website www.bchu.org

8.4 By-law Enforcement

Despite the positive impact of societal shift and efforts related to education and awareness, increased enforcement is important to address those not willing to comply with a new healthier approach to smoking in our community. Enforcement of the Clean Air By-law is currently the responsibility of the Brant County Health Unit (BCHU) and the Brantford Police Services, and is not currently performed by City of Brantford By-law Enforcement Officers. Extending the regulations to include all municipal properties as outlined above, would fall outside the enforcement mandate of the BCHU as it exceeds the provincial requirements. Brantford Police have indicated that current resources would not support the enforcement requirements of the proposed revised Clean Air By-law.

The Bylaw Enforcement Division of the Building Department currently has four full-time By-law Enforcement Officers. These Officers predominantly work standard daytime shifts with occasional after hour's shifts spread out throughout the year.

The City owns over 700 km of sidewalks, 70 kms of trails and over 100 parks. Due to the vast network of sidewalks and roadways, enforcement would be extremely challenging. Furthermore, having two distinct levels of restrictions, one for tobacco and one for cannabis will require a substantial public awareness and education campaign to ensure these rules are fully understood by the public and can effectively be enforced by City staff.

Municipally owned housing units are considered a person's private residence under the *Residential Tenancies Act, 2006*. This legislation does not provide authority for enforcing restrictions on smoking for tenancies without an explicit prohibition in the tenancy agreement. Currently, tenancy agreements do not include this provision and, as such, existing tenancies would be grandfathered. If existing affordable housing buildings were to be transitioned to smoke-free units, this would occur through naturally occurring vacancy attrition, would likely take several years, and would be challenging to enforce. As set out in the Brantford-Brant Housing Stability Plan, tenancy agreements for units in newly constructed housing projects do include provisions to prohibit smoking of both tobacco and cannabis.

8.5 2019 Budget - Unmet Need

In order to enforce the proposed changes to the Clean Air By-law, an unmet need has been requested by the Building Department's, By-law Division for consideration by the Estimates Committee during the 2019 budget process, to hire four new full time by-law enforcement officers. Two of these positions would be structured such that throughout the winter months they would be predominantly daytime shifts, while during the summer months, they will be predominantly after hours, or late shifts. The other two positions will be standard daytime shifts throughout the year. The proposed afterhours shifts would be focused on responding to smoking in public spaces, including parks and municipal facilities, cannabis related complaints and public nuisance complaints (including noise complaints and e-bike use). Increasing the presence of by-law officers in the community during the day and after hours will increase the ability to witness and address these infractions.

These four new positions are required due to the need for additional resources to ensure City by-laws are being properly enforced. It is understood that Police Department's response to by-law complaints are a lower priority item that may not be addressed if Police resources are not available. In addition, the Brant County Health Unit has advised that they will not enforce a by-law beyond the scope of the *Smoke-Free Ontario Act*.

Without additional by-law officers, the revised Clean Air By-law and a number of other community concerns will not be enforced and the City will need to rely on an awareness campaign and a societal shift enforced mainly by residents advocating for their own personal health or their family's health. It is noted that this report will be considered by Council prior to the completion of the Estimates process and therefore, the successful implementation of the proposed by-law changes is contingent upon the results of the unmet need request. Although a comprehensive education and awareness campaign and a societal change is a less costly option, it will take considerable time and will not achieve the same results as promoting a societal shift while also providing additional and concurrent education and enforcement through by-law officers.

8.6 Provincial Offence Notices

Short form wording and set fines were initially approved by the Ministry of the Attorney General in 2002 for the ability to issue Provincial Offence Notices for violations under the Clean Air By-law. This proposed by-law update provides

an opportunity to review the enforcement mechanisms through the Legal Department and the Municipal Prosecutor to ensure they reflect current standards.

8.7 Impact on City of Brantford Employees

Although the City will be encouraging smoking cessation by offering programs and incentives, employees who choose to smoke tobacco during their scheduled breaks and lunch hours will require a safe place to smoke that satisfies the By-law requirements while protecting their co-workers and the public from second hand smoke. Human Resources staff will work with union representatives to discuss the impact of changes to the Clean Air By-law if approved through this report. With respect to cannabis use, employees must be fit for work and shall comply with restrictions related to cannabis use in the workplace.

8.8 Implementation Timing

Should Council approve the proposed changes to the Clean Air Bylaw, new signage on City properties will be required which will require several months to implement. A marketing campaign is also proposed prior to the changes being implemented to allow the community time to adjust to the new restrictions. In addition, the Property Standards and By-law Division of the Building Department will require time to recruit and hire new by-law officers should the unmet need be approved through the 2019 Estimates Process.

8.9 Measuring the Outcomes

Education and enforcement statistics can be gathered by municipal by-law officers through community engagement on the streets, in our City parks, and on municipal properties. This information would inform Council on the success of the proposed changes to the Clean Air By-law.

8.10 Canadian Cancer Society Call to License Tobacco Establishments

In November 2018 the City of Brantford received a letter requesting that the City consider licensing and charging a fee for tobacco retail outlets. The recommendation included electronic vendors also be licensed. This practice is currently in place in London and Hamilton. Although this licensing option has been included in this report for information, it is not included in the recommendations at this time. Should this be considered, future funding could help offset the cost of enforcing the Clean Air By-law.

9.0 FINANCIAL IMPLICATIONS

9.1 By-law Officers

An unmet need for four additional By-law officers has been included in the 2019 budget proposal at a onetime cost of \$135,000 for equipment and a vehicle plus a 2019 operating cost of \$466,600 for four positions to perform

the enforcement and education requirements of this by-law change as well as a Nuisance By-law currently in the development stage.

9.2 Signage

Signage currently in place in parks, at recreation facilities and on other municipal buildings will require replacement to reflect the changes in this amended Clean Air By-law if approved. The following cost estimates have been calculated by staff with a contingency value to address unexpected costs.

1) 130 parks x 2 signs/ea = 260 signs x \$25/ea = 6500 x25 per install=\$6,500
Total \$13,000 (assumes attachment to existing structures) Allowance – 40 posts wood x \$250 each installed =\$10,000
Estimated Total Parks: \$23,000

2) Trail heads and key trail locations: 50 locations x \$50/ea = \$2,500

3) 119 parks buildings x \$50/ea = \$5,950 (included all sheds, shade structures and buildings that the public can access.(\$25/ sign, \$25 to install)

4) 100 signs for sports facilities and other municipal properties and buildings x \$50/each = \$5,000 (\$25/ sign, \$25 to install).

5) Contingency for other locations not identified: \$8,550

Total estimated signage costs: \$ 45,000

9.3 Marketing Campaign & Education Materials

Education is a key component of enforcement. A proposed marketing campaign estimated at approximately \$25,000 has been included in the proposed cost of implementing the revised by-law. The campaign would be initiated one month prior to the implementation date, continuing for an additional two months and sporadically through the remainder of 2019 which includes billboards, social media and newspaper ads as well as paid advertising.

Table 1 Cost Summary

Item	Estimated Cost	Notes
4 New By-law Officers	\$601,600	Annualized cost of \$466,600
Signage	\$ 45,000	Includes \$10,000 contingency
Marketing Campaign	\$25,000	Two waves – launch and reminder campaigns
Total	\$671,600	Including unmet need

The City is anticipating that it will receive approximately \$105,000 from the Provincial Government as part of the Ontario Cannabis Legalization Implementation Fund. The one-time costs for implementing signage and

marketing could be funded from this allocation to avoid affecting the operating budget.

10.0 CONCLUSION

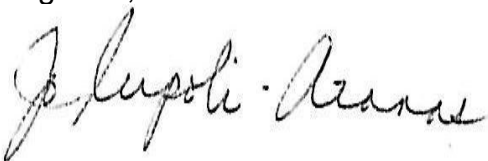
The Healthy Brantford Task Force and a recently approved Council Resolution recommended that City staff provide a report to Brantford City Council updating the current Clean Air By-law to include smoke free municipally owned properties with recommended exemptions. The revised Clean Air By-law, appended to this report restricts smoking tobacco and cannabis on all municipally owned properties excluding sidewalks, roads and road right of ways (for tobacco) and housing properties that do not currently restrict smoking. In addition, City Council directed staff to revise the same by-law to include stricter guidelines regarding cannabis use in public places. These changes have been incorporated into the revised Clean Air By-law as attached to this report. Municipal by-laws that prohibit smoking in public areas have proven effective in reducing health impacts related to second-hand smoke, and can contribute to reduced smoking rates in communities.



Sandy Jackson. BRLS
General Manager, Community
Programs, Parks and Recreation



Paul Moore. MCIP, RPP
General Manager
Community Development



Jo Atanas
General Manager Health and
Human Services



Aaron Wallace
Director of Strategic Planning

Attachments:

Appendix "A": Revised Smoking – Clean Air By-law (Chapter #570 of the City of Brantford's Municipal Code)

In adopting this report, is a by-law or agreement required? If so, it should be referenced in the recommendation section.

By-law required ☒ yes ☐ no

Agreement(s) or other documents to be signed by Mayor and/or City Clerk ☐ yes ☒ no

Is the necessary by-law or agreement being sent concurrently to Council? ☒ yes ☐ no

APPENDIX A

Chapter 570

SMOKING - CLEAN AIR

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EFFECTIVE DATE

570.7.1 Effective Date

SCHEDULE “A”

Sample

Article 1

INTERPRETATION

570.1.1 Cannabis – defined

“cannabis” has the same meaning as in subsection 2 (1) of the *Cannabis Act* (Canada).

570.1.2 City of Brantford – defined

“City of Brantford” means The Corporation of the City of Brantford.

570.1.3 Includes – defined

“includes” means “includes but not limited to” and the word “including” has a corresponding meaning.

570.1.4 Municipally Owned Property – defined

“municipally owned property” means real property where the City of Brantford is the legal or beneficial owner and includes buildings, grounds, parking lots, trails, parkland, golf courses, and bus shelters but excluding sidewalks, right of way, roads and housing properties that are not already deemed smoke-free.

570.1.5 Medical Cannabis – defined

“medical cannabis” means cannabis that is obtained for medical purposes in accordance with Chapter 14 of the *Cannabis Regulations* (Canada) or in accordance with a court order.

570.1.6 Officer – defined

“officer” means an officer appointed in accordance with section 570.4.1.

570.1.7 Operator – defined

“operator” means a person who, alone or with others, operates, manages, supervises, oversees, runs or controls a public place.

570.1.8 Proprietor – defined

“proprietor” means the registered owner or operator of a public place, but excludes the City of Brantford.

570.1.9 Smoke or smoking – defined

“smoke” or “smoking” means to inhale or exhale the smoke produced by a cigar, cigarette, pipe or similar produce or holding or otherwise having control of a cigar, cigarette, pipe or similar product that is producing or emitting smoke.

570.1.10 *Smoke Free Ontario Act* – defined

“*Smoke-Free Ontario Act*” shall mean the *Smoke-Free Ontario Act* 2017, S.O. 2017, C. 26 s. 3, and the regulations thereto, as amended or replaced from time to time.

570.1.11 Unenclosed Public place – defined

“unenclosed public place” means the outside of any place, building or structure or any part of them and to which the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry, including parking lots, grounds and open spaces regardless of whether it is owned by a public or private entity and includes municipally owned properties, sidewalks, right of ways and roads, unless an exemption is created under the *Smoke-Free Ontario Act* with respect to the public place.

570.1.12 Vape or Vaping – defined

“vape” or “vaping” means to inhale or exhale the vapour produced by an electronic cigarette or similar device, or holding or otherwise having control of an electronic device that is producing vapour, emissions or aerosol.

570.1.13 Interpretation – rules

This Chapter shall be interpreted and applied in accordance with the following:

- (a) nothing in this Chapter shall be interpreted to permit smoking or vaping in any location where the same is prohibited under the *Smoke-Free Ontario Act*;
- (b) nothing in this Chapter shall be interpreted to interfere with an exemption established in the *Smoke-Free Ontario Act* provided that all requirements of the *Smoke-Free Ontario Act* regarding the exemption are complied with; and
- (c) nothing in this Chapter shall interfere with a person’s right to smoke or vape medical cannabis, provided that the person can produce to an Officer the documentation required to demonstrate that they are authorized to use cannabis for their own medical purposes in accordance with Part 14 of the *Cannabis Regulations* (Canada) or in accordance with a court order.

570.1.14 Interpretation – Interpretation Act

The provisions of Part VI of the *Legislation Act*, 2006, S.O. 2006, c. 21, Schedule F shall apply to this Chapter.

570.1.15 Interpretation – Severability

If any provisions or part of this Chapter is declared by any court or tribunal of competent jurisdiction to be illegal or inoperative, in whole or in part, or inoperative in particular circumstances, the balance of the By-law, or its application in other circumstances, shall not be affected and shall continue to be in full force and effect.

Article 2 PROHIBITION

570.2.1 Cannabis – use – prohibited – general rule
In addition to the prohibitions set out in the *Smoke-Free Ontario Act*, no person shall smoke cannabis or vape in any public place.

570.2.2 Tobacco – prohibited – general rule
In addition to the prohibitions set out in the *Smoke-Free Ontario Act*, no person shall smoke tobacco or vape on any municipally owned property.

Article 3 PROPRIETORS

570.3.1 Proprietor – duty to ensure compliance
A proprietor of any public place shall ensure that all persons present at a public place comply with section 570.2.2.

570.3.2 Proprietor – defence – reasonable efforts
In any proceeding for a breach of Section 570.3.1, it shall be a defence for a proprietor to show that he or she made reasonable efforts under the circumstances to ensure compliance with Section 570.2.2.

Article 4 ERECTION OF SIGNS – CANNABIS – PUBLIC PLACE

570.4.1 Signs – posted – unenclosed public place
A proprietor shall post clearly visible and conspicuous signs in the form specified in this Article to delineate the area or areas where smoking cannabis or vaping is prohibited pursuant to this Chapter.

570.4.2 Signs –requirements
Every sign that prohibits smoking cannabis and vaping shall:
(a) have a white background or consist of contrasting

- colours where the lettering is applied directly to a surface or is mounted on a clear panel;
- (b) contain the text “ No Smoking Cannabis and Vaping in Unenclosed Public Places” with lettering not less than 3 centimetres in height AND the words “ City of Brantford Municipal Code Chapter 570 – Maximum Fine \$5,000.00” with lettering not less than 8 millimetres in height; and
 - (c) contain a graphic with a red circle and interdictory stroke in red superimposed upon a cannabis leaf.

570.4.3 Signs – Sample

A sign which is substantially similar to the form and format attached as Schedule “A” will be deemed to comply with Section 570.5.2:

Article 5 OFFICERS

570.5.1 Officers – Appointment

Members of the City of Brantford Building Department By-law Enforcement Division, the City of Brantford Police Service and staff employed by the Brant County Health Unit are appointed inspectors for the purpose of this Chapter.

570.5.2 Officers – Right of Entry

Officers may, in accordance with and subject to the *Municipal Act, 2001*, enter any public place for the purpose of determining whether there is compliance with this Chapter and otherwise enforce the provisions of this Chapter.

570.5.3 Officers – Require Identification

An Officer who has reasonable grounds to believe that a person has contravened any provision of this By-law may require that person to provide their identification to the Officer. Every person who is required by an officer to provide identification under section 570.5.2 shall identify themselves to the Officer. Giving their correct name, date of birth and address shall constitute sufficient identification.

Article 6
OFFENCES & ENFORCEMENT

570.6.1 Offence – Fail to Comply

Any person who contravenes or fails to comply with any provision of this By-law is guilty of an offence and upon conviction is liable to a fine as provided for by the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33, as amended.

570.6.2 Offence – Hinder or Obstruct

No person shall hinder or obstruct, or attempt to hinder or obstruct, and Officer who is exercising a power or performing a duty under this By-law.

570.6.3 Continuation, Repetition Prohibited by Order

The court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted, and such order shall be in addition to any other penalty imposed on the person convicted.

570.6.4 Civil Enforcement

Where a fine is in default, the City of Brantford may proceed with civil enforcement against the person upon whom the fine has been imposed, pursuant to the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33.

570.6.5 Fine in Default – Add to Tax Roll

The City of Brantford may make a request to the treasurer of a local municipality to add any part of a fine that is in default to the tax roll for any property in the local municipality for which all of the owners are responsible for paying the fine, and collect it in the same manner as municipal taxes.

Article 7
EFFECTIVE DATE

570.7.1 Effective date

This Chapter shall come into effect at midnight on March 1, 2019.

Schedule "A"
Sample

**NO SMOKING CANNABIS
OR VAPING**



**ALL UNENCLOSED
PUBLIC PLACES**

CITY OF BRANTFORD MUNICIPAL CODE CHAPTER 570
MAXIMUM FINE \$5,000