



The Corporation of the Town of LaSalle

To: Mayor and Members of Council

Prepared by: Domenic Dadalt, Legal Counsel

Department: Administration

Date of Report: November 14, 2019

Report Number: AD-17-19

Subject: Municipal By-law restricting e-cigarette advertising in public places

Recommendation

That the report of the Legal Counsel of LaSalle dated November 14, 2019 (AD-17-19) regarding e-cigarette advertising in public places BE RECEIVED and that the request for Administration to draft and pass a new municipal By-law restricting e-cigarette advertising in public places BE DENIED.

Report

Background

At the Regular Meeting of Council dated May 14, 2019, the matter regarding the creation of a new municipal By-law dealing with the advertisement of e-cigarettes, vapour products and any other related items coinciding with the use of e-cigarettes (collectively referred to as “e-cigarettes” for the purpose of this report) was deferred until more clarity was obtained with respect to language within the *Smoke-Free Ontario Act, 2017* (the “SFOA”). Specifically, clarification was sought regarding section 18 of the SFOA, which appears to permit municipal legislation to add further restrictions to the terms of the SFOA.

Findings

Upon reaching out to the Ontario Ministry of Health (the “MOH”), a response was provided by Correspondence Services at the MOH indicating that municipal legislation more restrictive than the SFOA would prevail, subject to section 19 of the SFOA. Section 19 acknowledges and allows for exemptions for Indigenous persons, as the traditional use of tobacco forms a part of Indigenous culture and spirituality. The correspondence received from the MOH further noted that “your local public health unit

is responsible for enforcing the *SFOA 2017*, and can answer further questions regarding enforcement”. In this regard, it appears that municipal legislation running counter-intuitive to the *SFOA* is acceptable. However, this does not address potential differences with the federal legislation under the *Tobacco and Vaping Products Act* (the “*TVPA*”), which could still result in a by-law being challenged and found to be beyond the Town’s jurisdiction. However, there has been changes announced at the provincial and federal levels that mitigate the need for a municipal by-law.

Recent Developments in Federal and Provincial Policy

As vaping-related illnesses gained media attention in the United States and parts of Canada during the months since the prior report, there has been a call to restrict e-cigarette availability and/or its advertising. The initial administrative report on this issue took the stance that the issues surrounding e-cigarette advertising were appropriately dealt with at the federal and/or provincial level, as legislation was already in place that determined the handling of e-cigarette advertising and the related enforcement of the legislation.

That initial administrative report can be found here as Attachment #1. There was a concern that a municipal by-law would be overstepping beyond the Town’s jurisdiction, or that the drafting any by-law in-line with overarching legislation would be akin to attempting to hit a “moving target”, since there were reviews being undertaken at the time of the proposed by-law.

As indicated in the prior administrative report, Health Canada was fielding input from interested parties to provide comments on regulatory measures to reduce the impact of vaping product advertising on youth and non-users of tobacco products under the *TVPA*. In July of this year, a summary of the results of that consultation was provided by Health Canada, attached to this report as Attachment #2.

This summary includes 7 proposals for future regulations, one of which specifically looks to restricting vaping product advertisements in public places. While these proposals have yet to be codified in revised legislation or regulations, the “Conclusion” of the consultation summary implies that the changes are simply a matter of when, not if, they take place.

With respect to provincial policy changes, the MOH announced on October 25, 2019, that the promotion of e-cigarette products in convenience stores and gas stations would be banned effective January 1, 2020. The news release from the MOH confirming this is attached to this report as Attachment #3. This change brings advertising for e-cigarettes up to the same restrictions and requirements with advertising for tobacco under the *SFOA*. Accordingly, based on the current framework of the *SFOA*, it is assumed that local health units will be responsible for enforcement of this regulation.

Conclusion

Given the upcoming confirmed changes in provincial legislation and the projected changes to come at the federal legislative level, it is Administration's position that even if a municipal by-law falls in-line with the superseding legislation, it becomes redundant and has the potential to blur the lines of enforcement. As of January 1, 2020, there will be legislation enacted province-wide, with a known enforcement group in the form of local health units tasked with tracking compliance. In addition to that, future federal changes will likely add another layer of protection.

Due to the widespread nature of the vaping issue, Administration believes that this matter is being dealt with at the appropriate levels of government, ensuring a consistent approach firstly at a provincial level and further on a national level. Therefore, the recommendation to Council is to deny the request for the drafting and passing a new municipal By-law restricting e-cigarette advertising in public places.

Consultations

Type consultations here

Financial Implications

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Prepared By:



Legal Counsel

Domenic Dadalt

Link to Strategic Priorities

	Expanding and diversifying our assessment base
	Effectively communicating the activities and interests of the Town
	Managing our human and financial resources in a responsible manner
	Promoting and marketing LaSalle
yes	Promote a healthy and environmentally conscious community

Communications

yes	Not applicable
	Website
	Social Media
	News Release
	Local Newspaper
	Bids & Tenders
	Notification pursuant to the Planning Act

Notifications

Name	Address	Email
Eric Nadalin		
Petar Bratic		

Report Approval Details

Document Title:	AD-17-19 - Municipal By-law restricting e-cigarette advertising in public places.docx
Attachments:	<ul style="list-style-type: none">- Vaping Advertisement Report Council 14May2019.pdf- Health Canada Consultation Summary - Vaping July 2019.pdf- Ministry of Health News Release 2019-Oct-25.docx
Final Approval Date:	Nov 18, 2019

This report and all of its attachments were approved and signed as outlined below:



Chief Administrative Officer

Joe Milicia