

## **Review of Businesses Operating as Vapour Lounges and a Discussion of the Status of Hookah / Shisha**

<b>Date:</b>	October 11 <sup>th</sup> , 2012
<b>To:</b>	Licensing and Standards Committee
<b>From:</b>	Executive Director, Municipal Licensing and Standards
<b>Wards:</b>	All
<b>Reference Number:</b>	

### **SUMMARY**

The purpose of this report is to review the legality and neighbourhood impact of businesses currently operating as “water pipe establishments” in the City of Toronto. This report considers reviewing current City approval processes and regulations, in consideration of licensing such businesses, and amendments, if any, to the current smoking bylaw, to aid in the control of this activity.

In undertaking the review of “vapour lounges” and to address the use of “water pipes and other apparatus” as well as “vapourizers and vapourizing accessories” referred to in Council's motion, staff determined that there were different types of locations or operations that would fall under such a review. Given the differences in the nature of these businesses and the varying legal, public health and safety concerns related to them, two separate reports are being submitted to fully address Council's motion.

This report addresses exclusively the legality and neighbourhood impact of the operations at water pipe establishments, known for the consumption of a substance known as “shisha”, available in tobacco and non-tobacco forms. The second report will address the issue of medical marihuana, its use relative to “vapour lounges”, and a discussion regarding potential upcoming amendments to the Federal regulation governing its use.

Staff recommends that City Council direct that work continue in the development of a regulatory regime, including a proposed addition to the City of Toronto Municipal Code, Chapter 545, Licensing, to include a specific article governing these water pipe establishments and their operations within the City. These regulations would focus on addressing specific health concerns at these establishments, including air quality,

transmission of communicable disease and the entry of minors, in addition to identifying opportunities to aid in the mitigation of some of the challenges faced in regulating the substances consumed (hookah/shisha) under the current tobacco control legislation. Further consultation and development of a proposed regulatory regime, as well as issues related to zoning, are required.

The City Solicitor, the Medical Officer of Health and the Deputy City Manager and Chief Financial Officer were consulted in the preparation of this report.

## **RECOMMENDATIONS**

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### **The Executive Director, Municipal Licensing and Standards recommends that:**

1. City Council receive this report for information.
2. City Council direct the Executive Director, Municipal Licensing and Standards, to undertake the necessary steps to recommend an appropriate regulatory regime, including the establishment of a business license for water pipe establishments.

## **FINANCIAL IMPACT**

There is currently no financial impact identified for Municipal Licensing and Standards as a result of the recommendations in this report.

The Deputy City Manager and Chief Financial Officer has reviewed this report and agrees with the financial impact statement.

## **DECISION HISTORY**

At its meeting of November 29, 2011, City Council directed the Executive Director, Municipal Licensing and Standards to undertake a comprehensive review of the legality and neighbourhood impact of businesses operating as ‘vapour lounges’.

<http://www.toronto.ca/legdocs/mmis/2011/mm/bgrd/backgroundfile-42713.pdf>

## **ISSUE BACKGROUND**

### **Hookah/Shisha**

Hookah is an alternative form of smoking tobacco that is believed to have originated in India and the Middle East more than 400 years ago. The practice is also referred to as shisha, water pipe smoking, narghile or qaylan. For the purposes of this report, ‘hookah’ will refer to the actual water pipe used to facilitate consumption, while ‘shisha’ will refer to the substance being smoked. The term ‘water pipe establishment’ will refer to businesses that sell shisha, and r which allow consumption on the premises.

Two types of shisha are commonly available: a form of shisha which contains tobacco and an ‘herbal’ shisha which does not. The ingredients in shisha are typically unclear due to poor manufacturer labelling and sparse ingredient lists. In general, shisha is comprised

of a variety of dried plants, herbs, tea leaves, and/or possibly tobacco leaves, and contains a mixture of preservatives and flavourings that are bound by molasses or honey. Both tobacco and herbal shisha are moist substances and can be flavoured in such varieties as watermelon, mango, apple, cherry and grape.

A diagram of a hookah pipe and how it is used is attached to this report as Appendix A.

### **Recognition of Tobacco Hookah as an emerging public health issue**

Though hookah remains most popular in the Middle East, it is an emerging trend in North America, as well as in Europe and Asia. The World Health Organization has raised concerns about the increased number of individuals, particularly youth, who are taking up the activity of smoking tobacco shisha.

Because hookah is an emerging trend in North America, it is difficult to quantify its popularity. Though there are currently no statistics on hookah use in Toronto, a study published in *Pediatrics* in May, 2010 surveyed 871 young adults 18-24, living in Montreal. Twenty-three percent of respondents reported having used a hookah pipe within the past year.

#### **( Reference:**

Dugas, E., Tremblay M., Low N.C.P., Cournoyer D. and O'Loughlin J. (2010). Waterpipe Smoking Among North American Youths. *Pediatrics* 125: 1184-1189.)

### **Water pipe establishments in the City of Toronto**

Toronto Public Health estimates that approximately 80 businesses operate as water pipe establishments in the City. It is difficult, however, to accurately quantify these establishments because they do not require a specific license or endorsement to operate as such. It is believed that while some of these businesses operate and advertise exclusively as water pipe establishments, many are operating primarily as other businesses, such as restaurants, bars or cafés, which allow hookah pipes to be used on the premises, and in some cases only after certain hours.

Staff have identified 25 businesses which advertise and operate as water pipe establishments, and which are also currently licensed as eating establishments.

## **COMMENTS**

### **Hookah Culture**

With its roots in the Middle East, hookah has important cultural significance to several communities in the City. It is important to note, however, that while water pipe smoking is strongly embedded in Middle Eastern tradition, it is a popular and emerging trend among non-Middle Eastern individuals, particularly youth. One of the reasons for this popularity is the social dynamic involved in smoking shisha. On visits to water pipe establishments, staff witnessed groups of patrons either sharing a single hookah pipe's hose, or groups of patrons smoking individual hookah pipes around a single table. Because smoking 'sessions' can last between 40 minutes and one hour, it is believed that hookah encourages a sense of gathering and community.

### **Health Concerns/Misperceptions about Harm**

Health authorities, including the World Health Organization, the Non- Smokers' Rights Association, non-governmental organizations and several municipal health departments, have raised concerns about the growth in popularity of hookah and its subsequent health effects. Part of the reason for this is the commonly held misconception that because shisha is flavoured and the smoke passes through water, hookah is a healthier form of smoking than cigarettes and cigars. Public health authorities hold this perception to be false.

Toronto Public Health is currently completing a report on the City's Tobacco Control Plan, where it identifies some of the negative health effects of hookah smoking, which include exposure to toxins including carcinogens. In addition to these effects, TPH and ML&S have identified some additional concerns associated with water pipe establishments. These include:

1. **Transmission of communicable diseases.** The sharing of hookah pipes, as with sharing cigarettes between individuals, carries a risk of transmitting infectious agents such as meningitis or herpes (cold sore) virus when saliva is exchanged through the passing of the pipe.
2. **Air Quality.** When using water pipes, the risk from second-hand smoke is compounded by the added risks of fuel and heat source, and also because hookah sessions tend to last longer than the time an individual would be exposed to second-hand smoke from a cigarette.
3. **Attractiveness to youth.** Evidence suggests that water pipe smoking is most attractive to younger individuals between the ages of 15 and 22, the same age group in which most people begin to smoke cigarettes and other forms of tobacco. There are concerns that some of the City's water pipe establishments can lead young individuals to take up other forms of smoking tobacco as many of these water pipe establishments permit entry by minors.

### **Current legislation and enforcement challenges**

#### ***The Smoke Free Ontario Act***

The Smoke Free Ontario Act (SFOA) prohibits the smoking of tobacco, which includes tobacco shisha, in any enclosed public place or enclosed workplace. However, in the absence of specific reference to include the smoking of other weeds or substances that would include non-tobacco shisha, Tobacco Control Officers (TEOs) must prove that the shisha contains tobacco before laying a charge. TPH has been inspecting water pipe establishments in the City since 2010 and during this time has laid 81 SFOA charges against 25 establishments. At many of these inspections, TEOs have collaborated with the RCMP's Toronto detachment, the Ministry of Revenue, Toronto Police Service and ML&S.

### ***Municipal Code Chapter 709, Smoking***

Under Chapter 709 of the Toronto Municipal Code, “‘smoke’ or ‘smoking’ includes the carrying of a lighted cigar or cigarette, pipe or any other lighted smoking equipment.” As with the SFOA, the definition of smoking in Chapter 709 does not include non-tobacco substances and is therefore inapplicable to water pipe establishments that sell and permit consumption of non-tobacco shisha indoors.

### ***Consideration of Prohibition***

In consultation with TPH, staff considered the option to ban hookah smoking indoors by expanding the definition of smoking in Chapter 709 of the Municipal Code. A ban of this kind would remove the onus on Tobacco Enforcement Officers to test shisha for tobacco content and would overcome the cost and necessary inter-agency coordination currently involved in TPH inspections. Additionally, public health authorities believe that a ban would address not only the wording gaps, but also uphold the spirit and intent of the SFOA with regards to smoking indoors, where most people do not draw the distinction between the non-tobacco and tobacco shisha being smoked.

One challenge, however, is that there is limited research about the harmful effects of non-tobacco shisha to justify a total ban or prohibition at this time. More research and evidence is required before the proper authorities can determine that non-tobacco shisha constitutes a significant threat to public health, such that action should be taken to prohibit its smoking indoors, and shutter many independent businesses across the City. Staff believe that at the municipal level, these considerations are best taken by TPH and that any further pursuit of this option is best addressed through the Board of Health.

### **Neighbourhood Impact of Water Pipe Establishments**

The neighbourhood impact of these businesses appears to vary based on the neighbourhoods in which they locate. Staff heard complaints regarding the conduct of patrons leaving these establishments, as well as concerns that the operation of these facilities can create a bad influence on young individuals who may be susceptible to smoking. Staff concluded, however, that the concerns raised about the neighbourhood impacts of water pipe establishments are not necessarily unique to the activity of hookah smoking on the premises and that many similar complaints are registered against bars and cafés in these neighbourhoods. Where water pipe establishments are unique is that they are not specifically regulated for this type of service. It is therefore likely that some of these concerns could be adequately addressed through appropriate regulations.

### **Consultations with Business Improvement Areas**

Staff requested consultations with four BIAs where three or more water pipe establishments currently operate within their boundaries. Of these, the Danforth Mosaic and Wexford Heights BIAs participated.

The representative of the Danforth Mosaic BIA reported concerns that several of the water pipe establishments in the neighbourhood contribute to an increase in crime, such as vandalism, graffiti, loitering and nuisance outside the establishments. It was reported

that residents and businesses have moved out of the neighbourhood because of the problems associated with these establishments.

Representatives of the Wexford Heights BIA, in which nine water pipe establishments operate, indicate that their members have reported no specific concerns about the operations of these establishments in the neighbourhood.

### **Consultations with Toronto Fire Services**

Toronto Fire Services was consulted to determine if there are any fire code violations at these water pipe establishments. Based on site visits, TFS concluded that no obvious fire code violations exist and that, in general, no obvious negative impact to the neighbourhood exists, from a fire safety perspective.

### **Consultations with Toronto Police Services**

The TPS provided staff with information on calls for service at 25 of the identified water pipe establishments in the City. When compared to bars and coffee shops in the same neighbourhoods, these establishments did not have a preponderance of police involvement, suggesting that the operations of these establishments do not, on their own, lead to an increased number of reported crimes that would contribute to community disorder.

### **Consultations with Owners and Operators**

Consultations were held with the owners and operators of these water pipe establishments. Staff reported to the stakeholders on the process of the comprehensive review and invited them to comment on public health and safety concerns associated with their establishments. Surveys were also mailed to water pipe establishments within the City. Of the 30 establishments invited, five were represented at the consultations. Surveys were completed by ten businesses.

Those present at the consultations reported that they do not allow tobacco shisha to be smoked indoors and the majority reported already taking steps to address concerns about air quality, sanitization and entry by minors.

Owners and operators largely agreed that the introduction of a water pipe establishment license would increase the legitimacy of their businesses and level the market for shisha in the City, by requiring the currently illegitimate operators (those who permit tobacco smoking indoors and entry by minors) to address public health concerns.

### **Water Pipe Establishments in Other Jurisdictions**

Staff have identified water pipe establishments operating in at least seven Canadian provinces, and in all of the 10 most-populated municipalities. In nine Canadian provinces, legislation prohibits smoking in public places, but limits the definition of smoking to that which contains tobacco and makes no reference to hookah, shisha or non-tobacco products. This limited definition presents Tobacco Enforcement Officers across the country with similar challenges as those in Toronto, regarding the investigation of water pipe establishments and enforcement of anti-smoking legislation.

Two jurisdictions have broader definitions of smoking than the SFOA:

1. Quebec's Tobacco Act contains a regulation that states “for the purposes of the Tobacco Act, any product that does not contain tobacco and is intended to be smoked is considered to be tobacco.”
2. Vancouver, as well as eleven other municipalities in British Columbia, expanded the definition of smoking in their health or no-smoking bylaws to include either specific reference to the hookah pipe, or any “other weed or substance.” It should be noted that this bylaw is currently being challenged in the British Columbia Supreme Court.

Ottawa’s Community Protective Services Committee recommended on June 21, 2012, that Council amend the City’s Parks and Facilities Bylaw to prohibit the smoking of water pipes or other non-tobacco products on municipal property, including all City parks, beaches and facilities. Council adopted these recommendations, with the authority granted under Section 128 (regulating public nuisances) and Section 129 (regulating public odours) of the *Municipal Act, 2001*.

Information on water pipe establishments in other jurisdictions and steps taken to address health concerns is attached to this report as Appendix B.

### **Summary**

Given the legal context in which water pipe establishments operate, the cultural sensitivities surrounding hookah and the number of businesses affected, the City should consider adopting reasonable measures to address the public health concerns. These health concerns would be best addressed at this time through a licensing regime that considers the regulating of indoor air quality through the provision of adequate mechanical ventilation, the cleaning and sanitization of hookah equipment and which restricts the entry of minors.

### **Rationale**

It is the opinion of staff that a proposed Water Pipe Establishment License could permit businesses to sell and allow consumption of lawful non-tobacco shisha indoors, while addressing the health concerns as outlined in this report.

Considerations in this new licensing regime could include requiring establishments to maintain adequate mechanical ventilation, which would address concerns about poor air quality due to smoke emitted from the shisha and burning charcoal in the hookah pipe. The license could require that the ventilation system in every water pipe establishment be maintained so that the premise does not become a health hazard.

Secondly, requiring adherence to proper cleaning and sanitization procedures would address concerns about the transmission of communicable diseases through the shared use of hookah pipes. The proposed license could require the hookah pipe, including the hose, be sanitized after each use, or that the hose and tip be replaced for each new patron.

Thirdly, consideration would be given to water pipe establishments being required to prohibit entry to individuals under the age of 18 on the basis that they are not yet at an appropriate age to consent to the exposure of hookah smoke.

Beyond these health concerns, the proposed license could also require owners/operators to retain ingredient lists and manufacturer packaging to provide TEOs with greater documentation that the shisha sold and consumed in these establishments is tobacco-free.

This proposed license, first and foremost, could address the significant health concerns associated with the current operations at water pipe establishments. In addition, this licensing regime could recognize that some operators in the City already take measures to address health concerns in their establishments and that more research is required on the full effects of non-tobacco shisha.

A license, rather than a prohibition or a ban, regulates owners and operators in a reasonable manner, while balancing the community's cultural practices. Moreover, licensing these establishments will help to quantify them, increasing TEOs' ability to monitor and inspect.

Upon receiving this direction, next steps would include conducting public consultations to ensure that the interests of all relevant stakeholders are properly considered, consultation with City Planning to consider zoning aspects related to these premises, and all other necessary internal division inputs.

## **CONTACT**

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## **SIGNATURE**

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Appendix A: Hookah Pipe Diagram

Appendix B: Information on water pipe establishments in other jurisdictions



## Appendix A: Hookah Pipe Diagram



**Appendix B: Information on action/legislation relating to water pipe establishments in other jurisdictions**

<b>Jurisdiction</b>	<b>Action</b>
Vancouver, West Vancouver, District of North Vancouver, Port Moody, Powell River, Richmond, Surrey, Tofino and Coquitlam, British Columbia	Local bylaws have a broad definition of smoking, such that: “smoke or smoking means to inhale, exhale, burn, or carry a lighted cigarette, cigar, pipe, hookah pipe, or other lighted smoking equipment that burns tobacco or other weed or substance.”
Village of Anmore, Belcarra and Whistler, British Columbia	Local bylaws have a broad definition of smoking, such that: “smoke or smoking means to inhale, exhale, burn, or carry a lighted cigarette, cigar, pipe or other lighted smoking equipment that burns tobacco or other weed or substance. ”
Office of the Alberta Chief Medical Officer of Health	<ul style="list-style-type: none"> <li>- Released a report in February 2012 outlining the health concerns associated with hookah</li> <li>- Currently developing a water pipe awareness campaign for 2012/2013</li> </ul>
Quebec	Enacted a regulation under the Tobacco Act in 2008 to expand the definition of smoking, such that “any product that does not contain tobacco and is intended to be smoked is considered to be tobacco.”
Ottawa	<ul style="list-style-type: none"> <li>- Ottawa’s Community Protective Services Committee recommended on June 21, 2012, that Council amend the City’s Parks and Facilities Bylaw to prohibit the smoking of water pipes or other non-tobacco products on municipal property, including all City parks, beaches and facilities.</li> <li>- Ottawa's Board of Health approved in June 2011 a motion that called on the Chair of the Board of Health to write letters recommending the following action on water-pipes: <ul style="list-style-type: none"> <li>• That the Federal Minister of Health consider clarifying or amending the Tobacco Act and regulations to include tobacco water-pipe products</li> <li>• That the Ontario Minister of Health and Long-Term Care consider amendments to the Smoke Free Ontario Act (SFOA) and its regulations to: <ul style="list-style-type: none"> <li>▪ Broaden the scope of the legislation to include the smoking of other</li> </ul> </li> </ul> </li> </ul>

	<p>weeds or substances such that smoking of water-pipe products would be included and</p> <ul style="list-style-type: none"> <li>▪ Provide Tobacco Enforcement Officers with the authority to search, seize and test product when conducting an investigation</li> </ul>
Durham Region Health Department	Issues a fact sheet on the health effects of hookah
Hamilton Public Health Services	Issues a guide to water pipe establishments on how to properly clean and sanitize hookah
Region of Waterloo	<ul style="list-style-type: none"> <li>- The Region of Waterloo Community Services Committee passed a motion on February 28<sup>th</sup>, 2012 to recommend that the Regional Municipality of Waterloo (as the Board of Health) request that the Minister of Health and Long Term Care monitor the evolution of water pipe use in Ontario and its population health impact; and address the enforcement complexities under the Smoke Free Ontario Act regarding water pipe use, particularly the identification of tobacco.</li> <li>- Issues a fact sheet on the health effects of hookah</li> </ul>