



**STAFF REPORT
ACTION REQUIRED**

Prohibiting Hookah (Waterpipe) Use in Licensed Establishments

Date:	June 11, 2015
To:	Licensing and Standards Committee
From:	Executive Director, Municipal Licensing and Standards
Wards:	All
Reference Number:	P:\2015\Cluster B\MLS\LS15014

SUMMARY

This report proposes that the use of hookahs (waterpipes) be prohibited in commercial establishments licensed under Chapter 545, Licensing. This report builds on Toronto Public Health's (TPH) research and consultation on the health risks of hookah use and effects of prohibition as reported to the June 1st meeting of the Board of Health (BOH).

Smoking hookah jeopardizes the health and safety of workers, consumers and the general public. Non-tobacco and tobacco hookah use contribute to the social acceptability of smoking. They also pollute the air of the establishments permitting hookah use, potentially harming the employees, patrons, and nearby residents.

Legal Services and Toronto Public Health were consulted in the preparation of this report.

RECOMMENDATIONS

The Executive Director, Municipal Licensing and Standards recommends that:

1. City Council approve amendments to Toronto Municipal Code, Chapter 545, Licensing, to:
 - a. Include the following definition of "hookah" in section 545-1, Definitions: Hookah means a device, whether called a hookah or any other name, designed to heat or burn a substance to produce smoke intended to be inhaled by a user or users.

- b. Include the following definition of "hookah use" in section 545-1, Definitions:

Use, with respect to hookah, includes any of the following:
 - i. Inhaling smoke from a hookah
 - ii. Exhaling smoke from a hookah
 - iii. Holding an activated hookah
 - c. Prohibit the use of hookah in establishments that are licensed or required to be licensed under Chapter 545, Licensing, by adding an offence provision that reads: No person licensed or required to be licensed under this chapter shall permit any person or persons to use a hookah in or upon any premises, vehicle or thing to which the licence relates; and
 - d. Direct that the proposed changes come into force on October 1, 2015.
2. City Council authorize the City Solicitor and the Executive Director, Municipal Licensing and Standards to make such technical and stylistic amendments as required to give effect to Recommendation 1 above.

Financial Impact

There are no financial implications beyond what has already been approved in the current year's budget.

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

DECISION HISTORY

At its meeting of June 1, 2015, the BOH adopted, as amended, the recommendations in a report by the Medical Officer of Health containing results on consultations conducted on hookah use in Toronto establishments, evidence on the health risks associated with hookah use and second-hand hookah use, and a jurisdictional scan of regulatory practices around hookah use. The BOH adopted the recommendation that, effective October 1, 2015, City Council prohibit the use of hookah in establishments that are licensed or required to be licensed under Municipal Code Chapter 545, Licensing.
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.HL4.1>

At its meeting of March 24, 2014, the BOH directed the Medical Officer of Health, in consultation with stakeholders, to report on measures, including prohibition, to address the health risks of indoor hookah smoking in Toronto commercial establishments and

connected patios thereof, and requested that the report include a scan of international best practices on hookah legislation and an analysis of the economic impact on businesses.
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.HL29.1>

At its meeting of October 19, 2012, Municipal Licensing and Standards (ML&S) reported to Licensing and Standards Committee requesting City Council's direction to develop a recommended approach to regulating hookah use in Toronto.
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2012.LS16.2>

ISSUE BACKGROUND

Hookahs are waterpipe devices (also known as shisha, narghile, hubble bubble, ghelyoon, ghalyan, goza, arghile) that are used to smoke moist tobacco or non-tobacco (herbal) products often known as shisha. This alternative form of smoking originates from the Middle East and parts of Asia but has, more recently, gained popularity in North America.

According to TPH, there are at least 60 businesses in Toronto that currently allow the use of hookahs on their premises, the majority of which are licensed as eating establishments under Toronto Municipal Code, Chapter 545, Licensing.

The *Smoke-Free Ontario Act, 2006*, prohibits smoking tobacco in workplaces, enclosed public spaces, in motor vehicles when children under 16 are present and, as of January 2015, on all bar and restaurant patios. Although there is some evidence that tobacco is often mixed with shisha products and served in areas where tobacco use is prohibited, only non-tobacco shisha products are currently permitted to be smoked at businesses that allow hookah use.

On March 24, 2014, the Medical Officer of Health reported to the BOH on health concerns associated with hookah use. In that report headed "Health Risks of Indoor Waterpipe Smoking," the Medical Officer of Health presented evidence on the use and health effects of waterpipe smoking in indoor public places, including recent evidence on indoor air quality at waterpipe cafes in Toronto. The report demonstrated that tobacco and non-tobacco hookah use could have negative health impacts, especially for the workers in these establishments. The BOH amended the recommendations presented in that report, requesting that the Medical Officer of Health consult with the City Solicitor and stakeholders and report back on measures, including prohibition, to address the health risks of indoor waterpipe smoking in commercial establishments and connected patios thereof. Staff were also directed to include international best practices on waterpipe legislation and an economic impact analysis on businesses in their report.

On June 1, 2015, the Medical Officer of Health reported to the Board of Health with results from the consultation conducted between October 2014 and January 2015, research of existing literature and evidence on the subject, and a jurisdictional scan of

regulatory practices around hookah use in public places. The BOH adopted an amended version of this report.

COMMENTS

Research Conducted by Toronto Public Health

TPH has reviewed evidence on the health impacts of tobacco and non-tobacco hookah use, conducted a jurisdictional scan, and consulted with a number of stakeholders, including businesses that permit hookah use on their premises, patrons of these establishments, neighbouring businesses that do not offer hookah, local Business Improvement Areas, cultural and health organizations, community health centres and universities and colleges. TPH findings are summarized in their report to the June 1 BOH meeting headed "Hookah (Waterpipe) Use in Licensed Establishments" (HL4.1).

Health Risks of Hookah Use

Based on the Ipsos Reid study commissioned by TPH, the public is generally not aware of the health impacts of hookah use. Tobacco hookah use is often mistaken to be less harmful and less addictive than cigarette smoking due to a misperception that the water in a hookah filters the nicotine and other harmful chemicals from the smoke that is inhaled by users. Non-tobacco hookah use is mistaken to be even less harmful since the products being used are herbal, not containing nicotine or other chemicals found in tobacco products.

These misperceptions are damaging in light of evidence that shows that some establishments where hookah is used have high indoor levels of air pollutants and even air nicotine, suggesting that some establishments are serving tobacco shisha products in contravention of the *Smoke-Free Ontario Act*.

Research shows that both tobacco and non-tobacco hookah use result in negative health effects, exposing the users and bystanders, including employees and people living in nearby residences, to high and sometimes hazardous levels of air pollutants and cancer-causing chemicals.

Regulatory Approaches in Other Jurisdictions

A growing number of Canadian jurisdictions have addressed hookah use through various legislative approaches. Provincially, Quebec, Alberta, and Nova Scotia have passed and amended legislation to prohibit hookah use where smoking is prohibited, with an exemption for some cigar rooms in Quebec.

While the Government of Ontario has not taken action on the issue of non-tobacco hookah use, four Ontario municipalities have prohibited tobacco and non-tobacco hookah use in indoor public places: Peterborough, Orillia, Bradford West Gwillimbury and Barrie. Although these municipalities do not have a large number of establishments

permitting the use of hookah, they have set an important precedent by taking local action to reduce the harms of hookah use.

Like Ontario, British Columbia (BC) only prohibits tobacco hookah use in public spaces. Some BC municipalities, such as Vancouver, West Vancouver, and Surrey, have taken the step to prohibit non-tobacco hookah use in restaurants, cafes, bars and/or on outdoor patios.

Impact on Businesses of Prohibiting Hookah Use

Half of the known businesses that permit hookah use are restaurants, bars or nightclubs that rely predominantly on revenue from other sources such as food and alcohol. The other half are establishments where hookah use is the main activity and likely an important source of revenue.

Evidence suggests that smoke-free laws have not had significant long-term effects on revenues or employment in the restaurant and bar sector. Therefore, prohibiting hookah use in premises that operate mainly as bars and restaurants may be similarly insignificant.

Businesses that primarily serve hookah would be impacted by regulatory prohibition on hookah use in licensed establishments. While this is difficult to predict, the Ipsos Reid study found that operators of hookah establishments stated that a prohibition would result in the closure of their businesses. However, since only 14 of the 71 establishments where hookah use is permitted (known at the time) were successfully reached for interviews, these findings may not be representative of all hookah establishment operators. Further, the study also interviewed patrons of these establishments, finding that visiting hookah establishments is a social and cultural practice for some patrons. Nearly half of those interviewed stated that they would still visit the businesses even if they did not offer hookah.

Amendments to Toronto Municipal Code, Chapter 545, Licensing

Typically, establishments where non-tobacco hookah use is occurring are licensed as either eating establishments or retail stores that require business licences under Chapter 545, Licensing. ML&S, in consultation with TPH and Legal Services, proposes that the most effective approach to reducing the health risks associated with hookah use is to prohibit the practice from taking place in any establishment licensed or required to be licensed under Chapter 545, Licensing. This will help ensure the health and safety of consumers and the public by further reducing their exposure to harmful air pollutants.

To implement this change, the Licensing By-law will be amended to include a provision prohibiting hookah use in any establishment licensed or required to be licensed under Chapter 545, Licensing, along with definitions of hookah and hookah use. This provision of the By-law will be enforced by TPH Healthy Environments staff.

TPH staff advise that enforcement strategies would evolve over time to allow licensed businesses to adjust to the amendments to Chapter 545, Licensing. Through a public education blitz, staff will focus on raising awareness of the changes to the By-law. Subsequent enforcement may take a complaint-based approach.

TPH staff will also respond to non-compliance of the prohibition by issuing a ticket or serving a summons in accordance with the *Provincial Offences Act*. Businesses that continue to contravene the Chapter 545 requirements could be brought before the Toronto Licensing Tribunal, which has the power to grant, refuse, suspend, revoke, or place conditions on business licences.

TPH staff are aware that some hookah businesses that are also eating establishments do not currently have business licences. When referred by TPH, ML&S enforcement staff will take the necessary steps to ensure that eating establishments requiring a licence become licensed.

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SIGNATURE

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