



**STAFF REPORT
INFORMATION ONLY**

Regulating Hookah (Waterpipe) Establishments

Date:	October 9, 2015
To:	Licensing and Standards Committee
From:	Executive Director, Municipal Licensing and Standards
Wards:	All
Reference Number:	P:\2015\Cluster B\MLS\LS15020

SUMMARY

At its meeting of June 25, 2015, Licensing and Standards Committee deferred consideration of "Prohibiting Hookah (Waterpipe) Use in Licensed Establishments" (LS5.1) to its October 2015 meeting. That report recommended that the use of hookahs be prohibited in commercial establishments licensed under Chapter 545, Licensing. The Committee directed that staff report back on legislation and regulation currently in force on hookah establishments operating within Toronto, on the permitted age of patrons at these establishments, tobacco product labelling, and absent of regulation, on a regulatory regime for City Council's consideration.

The City of Toronto does not have any specific requirements in place for establishments that serve hookah or permit the smoking of non-tobacco shisha on their premises. Typically, these establishments are licensed as either eating establishments or retail stores under Chapter 545, Licensing.

This report responds to Licensing and Standards Committee's request to draft possible regulation to licensing hookah establishments for City Council's consideration. Attachment 1 contains draft components that could be considered in creating a Hookah Establishment Licence. Should Council decide to explore licensing hookah establishments, staff will undertake further research and stakeholder consultations to inform the design of a licensing regime, and report back to Licensing and Standards Committee.

Staff recommend that prohibiting hookah use at licensed establishments in Toronto is the most effective way to address concerns with the practice, particularly public health concerns.

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

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 25, 2015, Licensing and Standards Committee deferred consideration of the recommendation to prohibit hookah use in businesses licensed under Chapter 545, Licensing, to their October 2015 meeting and directed staff to report back to the Committee on legislation and regulation currently in force on hookah establishments operating within Toronto, on the permitted age of patrons at these establishments, tobacco product labelling, and outline a regulatory regime for Council's consideration.
<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.LS5.1>

At its meeting of June 1, 2015, the Board of Health (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 (MOH), 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, 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 that are used to smoke moist tobacco or non-tobacco (sometimes called "herbal") products known as shisha. According to Toronto Public Health (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.

On October 19, 2012, ML&S reported to Licensing and Standards Committee in response to a November 29, 2011 direction to undertake a comprehensive review of the legality and neighbourhood impact of businesses operating as vapour lounges. Staff reported that TPH had identified this as an emerging issue of public health concern in Toronto in light of the trend to its increasing use among young people, coupled with a lack of awareness of the potential negative health effects from hookah smoking. In 2012, the BoH requested the Ministry of Health and Long-term Care to actively monitor the issue of waterpipe smoking and to take appropriate strategies to minimize harm. At that time, TPH staff concluded that the body of research available was insufficient in establishing a strong argument for prohibiting hookah use in public places in Toronto. In light of this, staff requested City Council's direction to develop a recommended approach to regulate waterpipe use in Toronto. The item was referred back to staff for a further report to Committee.

TPH has since conducted extensive research and consultation on the health effects of non-tobacco hookah use in public places and determined that there is sufficient cause for concern and reason for more rigorous action on limiting hookah use in public places.

On March 24, 2014, the MOH reported to the BoH on health concerns associated with hookah use. In that report headed "Health Risks of Indoor Waterpipe Smoking", staff presented evidence on the use and health effects of hookah smoking in indoor public places, including recent evidence on indoor air quality at hookah establishments in Toronto. The report demonstrated that tobacco and non-tobacco hookah use could have negative health impacts, especially for the workers in these establishments.

As a follow-up to that report, on June 1, 2015, the MOH reported to the BoH 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 and legislative practices around hookah use in public places. The BoH adopted an amended version of this report.

On June 25, 2015, ML&S reported to Licensing and Standards Committee recommending that hookah use be prohibited in all establishments licensed under Chapter 545, Licensing, as a result of the BoH recommendation to City Council to prohibit hookah use in licensed establishments. The item was deferred and Committee requested staff to conduct further research on legislation and regulation currently in force on hookah establishments operating within Toronto, permitted age of patrons at these establishments, tobacco product labelling, and licensing requirements.

While the *Smoke-Free Ontario Act (SFOA), 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, including tobacco shisha, there are no Ontario regulations that prohibit smoking non-tobacco products, including

"herbal" or non-tobacco shisha products used in hookahs, in public places. The *Making Healthier Choices Act* was recently passed, amending the *SFOA* in a number of ways, but particularly strengthening enforcement to enable Tobacco Enforcement Officers (TEOs) to collect shisha samples to test for tobacco content in assessing compliance with the *SFOA*. This change will come into force on January 1, 2016, pending proclamation.

COMMENTS

TPH has reported on research that 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.

An Ipsos Reid study commissioned by TPH in early 2015 determined that 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 also mistaken to be even less harmful since the products being used are herbal, not containing nicotine or other chemicals found in tobacco products.

TPH has reported that these misperceptions are damaging in light of evidence that shows that most 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 *SFOA*.

Jurisdictional Review

ML&S staff have conducted a jurisdictional scan of provinces and larger municipalities to learn more about efforts to license or ban hookah establishments in other Canadian jurisdictions. Staff have found that while there are a number of jurisdictions that have prohibited the use of non-tobacco hookah in public places and workplaces, none have developed licensing regimes that regulate establishments that serve hookah and allow the smoking of non-tobacco shisha indoors.

Across Canada, smoking tobacco products is banned in indoor public places and workplaces, with some exceptions for designated smoking rooms, primarily in the hospital setting. Several Canadian jurisdictions have also prohibited smoking non-tobacco hookah in public places. Provincially, Quebec, Alberta, New Brunswick, and Nova Scotia have passed and amended legislation to prohibit hookah use where smoking is prohibited, with an exemption for some grandfathered cigar rooms in Quebec. In British Columbia, public non-tobacco hookah use is prohibited in Vancouver, Surrey, and West Vancouver.

Internationally, many countries, including jurisdictions in the Middle East region, prohibit hookah use in indoor public places. In the UK, smoking tobacco or any other

substance is prohibited under the *Health Act (2006)*. Smoking is defined broadly and includes tobacco and non-tobacco shisha as well as any other substance.

Unlike the above-listed provinces, Ontario has not prohibited non-tobacco hookah smoking in public places. In the absence of provincial efforts to prohibit non-tobacco shisha, Peterborough, Orillia, Bradford West Gwillimbury and Barrie have expressed concerns over the health impacts of non-tobacco hookah use and have prohibited hookahs in public places and work places.

Licensing Hookah Establishments

The City of Toronto does not currently have any specific requirements in place for establishments that serve hookah and permit the smoking of non-tobacco shisha on their premises. Typically, establishments that offer hookah use are licensed as either eating establishments or retail stores under Chapter 545, Licensing, as they also offer food, beverages, or other products that require them to obtain these business licences.

Staff were directed by Licensing and Standards Committee to develop an alternative approach to regulating hookah use in public places.

A new Hookah/Waterpipe Establishment business licence could regulate businesses that serve hookah, aimed at addressing some of the negative impacts on patrons, employees, neighbors, and the general public. Attachment 1 outlines possible requirements of holders of such a licence.

Options to Address Concerns

Ventilation Systems

One of the central concerns surrounding hookah establishments is the negative health impacts from smoking non-tobacco hookah and being exposed to second-hand smoke. Studies suggest that non-tobacco hookah smoke contains high levels of carcinogens and carbon monoxide and other harmful pollutants.

Legally, hookah establishments can only serve non-tobacco shisha products. However, there is research that indicates that these establishments, knowingly or unknowingly, serve shisha products that contain tobacco in contravention of the provincial law.

In 2013, the Ontario Tobacco Research Unit (OTRU) first reported on its 2012 study of the air quality in a sample of indoor and outdoor hookah establishments located across Toronto. OTRU tested the air of 12 indoor establishments and found dangerous levels of nicotine, fine particulate matter, and carbon monoxide in the air. Findings from this study suggest that non-smoker exposure to hookah smoke in a Toronto hookah establishment for just two hours is approximately equivalent to smoking 10 cigarettes per day or to smoking hookah directly for 15 minutes. A similar study conducted in New York City (NYC) in 2014, found dangerous levels of nicotine, air pollutants, and carbon monoxide

in the 8 hookah establishments that were studied. Further, the NYC Department of Health tested shisha samples from 13 hookah establishments and found that all 13 contained tobacco. The NYC Health Department is commencing proceedings to revoke the permits of these establishments since they are in violation of the *Smoke-Free Air Act*. These and other studies confirm the harmful air quality in hookah establishments, lack of ventilation, and lack of oversight of so-called "tobacco-free" or "herbal" shisha products.

TPH and MLS recommend that the most effective way to address the public health concerns associated with both tobacco and non-tobacco hookah use and to protect workers and others from second-hand exposure is to prohibit their use at all licensed establishments in Toronto. This will reduce confusion among members of the public, establishment operators and enforcement staff about which substances can legally be smoked at licensed businesses. Prohibition is the approach taken by most jurisdictions in Canada and internationally to address health concerns associated with hookah establishments.

Should Council decide to pursue a licensing approach, a hookah establishment licensing regime for Toronto could include a requirement to install adequate ventilation systems that would remove some of the harmful smoke and particulates produced by burning of charcoal and shisha product indoors, reducing exposure to second-hand smoke. Staff would consult with relevant City Divisions (e.g. TPH, Toronto Building, and Toronto Fire Services) to ensure that ventilation requirements meet high standards, including those currently required where designated smoking areas are allowed in Ontario.

Labelling and Testing Requirements

As the studies discussed above suggest, owners/operators of hookah establishments are serving shisha products that contain tobacco. So-called non-tobacco shisha products are either mishandled by owners/operators or often poorly labelled – not listing all ingredients, mislabelled as "herbal" or tobacco-free, or misrepresent the product as safe to use despite the health risks associated with non-tobacco hookah use.

To the extent that the allocated resources will allow, the recent changes to the *SFOA* enabling Tobacco Enforcement Officers (TEO) to seize and test shisha samples for tobacco content will help to address concerns about owners/operators serving and allowing illegal tobacco use.

In Ontario, the *SFOA* defers to the federal *Tobacco Act* for tobacco packaging requirements. The *Tobacco Products Information Regulations (TPIR)* requires that all tobacco product labels display toxic emission/constituent levels and graphic health warnings and health messages containing information to help people quit smoking.

Since some shisha products claim to be "tobacco-free" or "herbal", they are not scrutinized in the same way as tobacco products and they do not fall under tobacco labelling regulations. In order to better address the issue of shisha products mischaracterized as "tobacco-free" and contraventions of the *SFOA* and *TPIR*,

owners/operators can be required to adhere to rules around the sourcing and labelling of the shisha products served at their establishments. Shisha products should have a manufacturer's label with a complete ingredient list, made available to patrons and City officials, including TEOs, upon request. Since many of these products seem to be poorly or inaccurately labeled by manufacturers or mishandled by owners/operators of hookah establishments, City officials could have the authority to collect shisha samples upon licence renewal and at any point once the establishment is in operation. This requirement might necessitate additional resources that go beyond those allocated through the province for the seizure/sampling of shisha.

Age of Consent Requirement

The popularity of hookah establishments has ignited concerns over the social visibility of smoking in public places, and the resultant acceptability of smoking, particularly among youth. Currently, many hookah establishments permit entry to minors. A licensing requirement could impose a 19+ age restriction on these establishments to address concerns about youth hookah use. However, a limitation of the licensing approach is that allowing hookah smoking to continue as a practice might not address TPH concerns of social visibility, acceptability and attractiveness of the practice to youth.

Should City Council decide to explore licensing hookah establishments, staff will need to undertake further research, necessary internal and external stakeholder consultations to inform the design of a possible licensing regime, and an assessment of additional resources and funding necessary for proper enforcement of the new licensing requirement, and report back to Licensing and Standards Committee.

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ATTACHMENT

Attachment 1: Draft Hookah Establishment Licence Requirements

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#	Requirement	Details
1	Business Licence and Authorities of City Officials	Hookah lounge owners/operators to obtain licence and pay applicable fee. Licence to be renewed yearly. City officials to have the authority to inspect establishments at any time during hours of operation.
2	Age restrictions	Patrons and employees must be 19 years of age or older. Owners/operators to be prohibited from advertising to or soliciting patrons or employees under the age of 19.
3	Ventilation	Hookah lounge owners/operators to ensure adequate ventilation system for the smoke and heating of charcoal indoors, and reducing second-hand smoke at their own expense.
4	Cleaning and sanitation processes	Owners/operators to reduce the transmission of communicable diseases through the shared use of hookah pipes by providing a sanitized hose and a new mouthpiece for each patron.
5	Food or other refreshments	Hookah lounge owners/operators to offer only hookah and herbal shisha. Hookah lounges must not offer any food, refreshments, or other products or services to patrons.
6	Insurance	Hookah lounge owner/operator to maintain proper insurance.
7	Criminal background check	Hookah lounge owner/operator is required to undergo criminal background check.
8	Communication	Poster notifying the public of potential harms of non-tobacco hookah use and second-hand smoke within establishment to be posted at the entrance way in a visible area. Information on the source and ingredients of shisha products to be made available upon request by any member of the public. Valid ML&S-issued licence to be posted at entranceway in a visible area.
9	Compliance with provincial and federal laws	Owners/operators to ensure compliance with all provincial and federal laws pertaining to smoking indoors, including ensuring adherence to the <i>Building Code Act, 1992</i> and the <i>Fire Protection and Prevention Act, 1997</i> with special consideration for adequate emergency exits, emergency lighting, smoke detectors, and carbon monoxide detectors. Owners/operators to ensure that all products are tobacco free and labelled correctly.
10	Limitation on premises	All hookah-lounge activities to be limited to the enclosed licensed establishment.
11	Occupancy limits	The maximum occupancy level to be established by Toronto Fire Services.