



Proposed Business Licence for Vapour Product Retailers

Date: September 27, 2019

To: General Government and Licensing Committee

From: Executive Director, Municipal Licensing and Standards

Wards: All

SUMMARY

This report recommends amendments to Toronto Municipal Code, Chapter 545, Licensing to introduce a new licence requirement for vapour product retailers.

Vapour products containing nicotine have only recently been legalized in Canada and are now a regulated product. Since 2018, the provincial government now regulates vapour product use and sales through the *Smoke-Free Ontario Act, 2017 (SFOA)*. Vapour products include electronic cigarettes (e-cigarettes), any part of an e-cigarette (for example, coils), and substances made or sold to be used in an e-cigarette. The *SFOA* treats vapour products similar to tobacco products in their display, handling, and sale in retail stores. One of the main purposes of the *SFOA* is to help reduce youth access to tobacco and vapour products and to protect workers and the public from second-hand tobacco and cannabis smoke and second-hand vapour.

Over the past few years, the presence of vapour products has become widespread throughout the city of Toronto; they are sold in most stores where tobacco is sold and there has been a growth of specialty vape stores. Members of the public should be aware of the potential harms of using vapour products ("vaping"), the addictive potential of vapour products containing nicotine, and the risk of vaping leading to subsequent tobacco cigarette smoking.

There have been growing concerns about youth access to vapour products, heightened with recent examples of respiratory illnesses among vapour product users. As of September 2019, there have been reports of cases of severe pulmonary illness associated with vapour product use in the USA and in Canada. Most of the cases report using vapour products containing unregulated/illegal cannabis products; however, the cause is still under investigation.

There is currently no reliable system in place for Toronto Public Health staff to accurately track and inspect all vapour product retailers to ensure their compliance with

the *SFOA*. Introducing a new licensing category for vapour product retailers will assist Toronto Public Health in their enforcement of the *SFOA* by enabling adequate City oversight of the number and location of retailers. The proposed new licence category would also provide the City with tools under Chapter 545, Licensing, to ensure compliance with all laws, and where appropriate, take enforcement actions.

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

RECOMMENDATIONS

The Executive Director, Municipal Licensing and Standards recommends that:

1. City Council amend Toronto Municipal Code, Chapter 545, Licensing, as follows:

Definitions

a. Adopt the following definitions subject to such technical and stylistic amendments as required by the City Solicitor and the Executive Director, Municipal Licensing and Standards:

Vapour Product - An electronic cigarette, an e-substance, or any component of an electronic cigarette and includes the package in which the electronic cigarette, e-substance or component is sold.

E-cigarette - A vaporizer or inhalant-type device, whether called an electronic cigarette or any other name, that contains a power source and heating element designed to heat a substance and produce a vapour intended to be inhaled by the user of the device directly through the mouth, whether or not the vapour contains nicotine.

E-substance - A substance that is manufactured or sold to be used in an electronic cigarette.

Licensing Requirements

b. Create a new business licence category for vapour product retailers and adopt a new licensing requirement for existing owners or operators of any store or shop where vapour products are sold.

c. Require that any person or entity who applies for the vapour product retailer licence shall provide the following information:

1. name of applicant
2. address for business
3. contact information (phone number and e-mail address)
4. primary contact person name, number, e-mail address, and mailing address
5. criminal background check; and
6. any other information as required by the Executive Director, Municipal Licensing and Standards.

d. Require that in order for a vapour product retailer in Toronto to obtain and continue holding a licence under Toronto Municipal Code, Chapter 545, Licensing, every applicant for a licence is required to register, where applicable, under the *Smoke Free Ontario Act, 2017*

e. Require that licence holders must attend the offices of the Municipal Licensing and Standards Division within 48 hours of changing their business address, to inform of the change of address and produce their licence for the change to be entered thereon.

f. Require that existing business licensees that sell vapour products obtain a vapour product retail endorsement on their business licence upon licence renewal as of April 1, 2019.

Fees

2. City Council amend Toronto Municipal Code, Chapter 441, Fees and Charges, to include the following fees for the vapour product retailer licence, subject to annual adjustments based on the Consumer Price Index:

a. Vapour Product Retailer licence fee: \$645.53

b. Vapour Product Retailer annual renewal fee: \$315.17

Implementation

3. City Council direct that the changes come into force on April 1, 2020.

4. City Council authorize the City Solicitor and the Executive Director, Municipal Licensing and Standards to make such technical and stylistic amendments to the bill amending City of Toronto Municipal Code Chapter 545, Licensing, and the City of Toronto Municipal Code Chapter 441, Fees and Charges, as required to give effect to City Council's decision.

FINANCIAL IMPACT

If adopted by City Council, the implementation of a vapour product retail licence would mean that vapour product retailers would be required to obtain a business licence from the City of Toronto. This report proposes adopting the same fee structure for vapour product retailers as tobacco retailers: an application fee of \$645.53 and a renewal fee of \$315.17, adjusted annually based on the Consumer Price Index.

There are currently 78 known specialty vapour product retailers operating in Toronto resulting in additional revenues of \$50,351.34 in the first year of implementation and \$24,583.26 in subsequent years. The revenues will be used to offset the annual expected increase in staffing related costs to administer and enforce the new licence. Non-specialty retailers, such as convenience stores, would need to add a vapour product retailer endorsement to their existing retail licence upon renewal. There is no

fee associated with adding an endorsement to existing licences for non-specialty retailers.

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

DECISION HISTORY

On September 23, 2019, the Board of Health adopted [HL9.10 Health Concerns Associated with Vapour Products](http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.HL9.10) (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.HL9.10>), requesting the Medical Officer of Health to review of the health impacts of vaping and recommendations including, but not limited to, the marketing, advertising, and availability of vaping products, the impacts on youth, data monitoring and dissemination, and recommended actions for all levels of government.

On January 14, 2019, General Governance and Licensing Committee received [Comprehensive Review of Business Licensing - Update](http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.GL1.8) (<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2019.GL1.8>), outlining upcoming stages of a broad modernization of business licensing in Chapter 545, Licensing.

COMMENTS

What are Vapour Products?

Under the *Smoke-Free Ontario Act (SFOA)*, 2017, a vapour product is defined as "an electronic cigarette, an e-substance, or any component of an electronic cigarette and includes the package in which the electronic cigarette, e-substance or component is sold." An e-substance is a substance that is manufactured or sold to be used in an electronic cigarette.

In recent years, there has been a rapid increase in the number of vapour product retailers, with over 1,406 known retailers in the city, including 78 specialty vapour product retailers. Unlike tobacco retailers who are required to obtain a business licence for tobacco retail, there is currently no municipal business licence requirement for vapour product retailers.

Issues and Concerns with Vapour Products

While vapour products, also referred to as e-cigarettes, are less harmful than combustible tobacco cigarettes, they are not without risk. Members of the public should be aware of the potential harms of vaping, the addictive potential of vapour products containing nicotine and the risk of vaping leading to subsequent tobacco cigarette smoking.

There are a number of public health concerns with vapour products:

- Vapour products have been shown to contain multiple toxic substances (propylene glycol, carcinogenic compounds, heavy metals and volatile organic compounds), particulate matter and nicotine.
- Vapour product use by youth has increased significantly in Canada. From 2017 to 2018, there was a 74% increase in the proportion of youth reporting they had vaped in the past month (from 8.4% to 14.6%).
- Nicotine (including the nicotine in e-substances used in vapour products) is highly addictive and known to alter adolescent brain development.
- Vapour product use has been strongly associated with subsequent tobacco cigarette smoking among youth and young adults.
- Short-term health effects from vaping can include respiratory inflammation and throat irritation.
- Long-term health effects of vaping are unknown.
- While vapour products are an alternative to combustible cigarette smoking, there is limited evidence of vapour product use increasing the likelihood of smoking cessation.

As of September 2019, there have been reports of cases of severe pulmonary illness associated with vapour product use in the USA and in Canada. Most of the cases report using vapour products containing unregulated/illegal cannabis products; however, the cause is still under investigation.

Current Regulation of Vapour Products

Federal Rules

Vapour products containing nicotine have only recently been legalized in Canada and are now a regulated product under the Federal *Tobacco and Vaping Products Act (TVPA)*, 2018. Vapour products, both nicotine and non-nicotine containing, have been available in Canada for over a decade; however, the recent coming into force of the *TVPA* filled what was previously a regulatory vacuum related to these products.

The federal regulation of vapour products is very similar to the regulation of tobacco products. Federally, the sale of most flavoured tobacco products as well as the advertising, promotion, and sponsorship of tobacco products is strictly prohibited. Lifestyle advertising, sponsorship promotion, and testimonials of vapour products is prohibited. There are no flavour restrictions on vapour products but there are restrictions on the advertising of vapour products targeting youth (such as advertisement of certain candy or confectionary flavours of vapour products that are designed to appeal to youth).

The federal government is currently considering introducing regulations under the *TVPA* to require health-related labels (i.e. health warnings, health information, and toxic emissions information) as is required for tobacco products.

Provincial Rules

The provincial *SFOA* first came into force in 2006. The initial purpose of the *SFOA* was to help reduce youth access to tobacco products and to protect workers and the public from the hazards of second-hand smoke.

In 2017, the Government of Ontario added regulations for vapour products (including e-cigarettes and other e-substances) to the *SFOA*, 2017. The *SFOA*, 2017 previously included regulations prohibiting the promotion of vapour products, which aligned the regulations with those for tobacco products. TPH supports amending the *SFOA*, 2017, to re-enact the previously approved regulations that were removed by the current Ontario government. The current regulations generally treat vapour products similar to tobacco products, with the same prohibitions on places of use (including all enclosed public places), retail display, and age of access. A key difference is that the legislation now allows the promotion of vapour products at retail settings (i.e. convenience stores, gas stations) where the same is prohibited for tobacco products.

On September 23, 2019, the Board of Health requested the Medical Officer of Health to review of the health impacts of vaping and recommendations including, but not limited to, the marketing, advertising, and availability of vaping products, the impacts on youth, data monitoring and dissemination, and recommended actions for all levels of government. TPH staff are currently undertaking this work and will report to the Board of Health in December 2019.

Youth Access

While, the *SFOA* prohibits the sales of vapour products to youth (under 19), TPH believes that youth access may be greater partly due to the growth in availability of vapour products at retail stores and their widespread promotion. According to research by the Ontario Tobacco Research Unit (OTRU), proactive education and inspection of retailers by local public health departments has been shown to improve *SFOA* compliance. The OTRU study also found that having a municipal licensing structure in place (e.g. tobacco) facilitated the identification of stores that sold vapour products because they were already documented by the municipality.

The Ministry of Health currently requires that public health departments, such as TPH, carry out inspections to enforce these provisions in retail settings whether related to tobacco or vapour products.

However, TPH faces challenges in fully enforcing the *SFOA* as TPH staff are not equipped to find, track, and inspect all vapour product retailers and keep up to date on their status and/or location without a business licence requirement.

Research and Consultation

Jurisdictional Scan

Ontario

Other Ontario municipalities have recently introduced a licensing regime for vapour product retailers to support local public health departments in achieving a mandate to enforce the *SFOA* as well as ensure compliance with other provincial and federal laws.

As of 2017, the City of Hamilton now requires vapour product retailers to be licensed. The annual licensing fee for this business type is \$558.80 and retailers who sell both tobacco and vapour products have an annual licensing fee of \$765.80. The City of London also introduced an electronic cigarette licence in 2017. The associated cost of this licence type is \$277.00. Licensing regulations in both Hamilton and London mandate retailers to comply with federal and provincial regulations concerning the sale of vapour products.

The City of Ottawa is currently in the process of consulting on possible changes to smoking and vaping regulations within existing by-laws and determining whether new regulations are needed.

Other Jurisdictions

Outside of Ontario, the City of Vancouver licenses vapour product retailers. Under the licence, display, advertising, and promotion of vapour products, in any manner that may reasonably be seen, heard, or accessed by a minor, either outside or inside the business is prohibited. The licensing fee for a retailer licence is \$151 annually.

Both New York City and Chicago require retailers of vapour products to be licensed. Currently, New York requires an "Electronic Cigarette Retail Dealer" licence, which has a \$200 annual licensing fee and requires all retailers to comply with state level registration with the Department of Health.

Chicago requires all vapour product retailers to obtain a "Retail Tobacco" licence, which is \$550 annually and prohibits sale within 100 feet of a school and/or day care facility, along with other storage and sale regulations.

Public Consultation

In preparing this report, TPH and MLS undertook a process to review and identify options to support better enforcement of current laws around vapour product retail. Staff consulted with members of the public and vapour product industry, who generally did not express opposition to this new requirement.

During the review process, staff hosted a public consultation on the proposed licensing considerations for vapour retailers. The consultation was posted on the City of Toronto website and was promoted on City of Toronto social media. Both email and letter invites were sent to registered specialty vape stores. City Councillors and local BIAs were also notified of the consultation.

Twenty-one participants attended the public consultation and included specialty vapour shop owners and representatives of federal and provincial professional vaping retail associations.

MLS and TPH staff presented information on licensing, the *SFOA* and the proposed considerations for licensing vapour product retailers, including a proposed application fee (\$645.53) and renewal fee (\$315.17). Participants were given an opportunity to ask

questions and provide feedback on the introduction of a new licence for vapour product retailers and the proposed fee.

Consultation participants did not share specific objections to licensing or suggest any changes to the proposed fees. Most feedback stemmed from misunderstandings between the role of the province and municipality and questions around how fees collected by MLS are used. Participants recommended that the proposed licensing requirement and fee be used to support enhanced compliance efforts and be applied to all retailers that sell vapour products (i.e.: including gas stations, convenience stores and head shops). Participants also recommended the City use clear definitions that are consistent with legislation and that vapour products be considered separate from tobacco products.

MLS staff also consulted the Ontario Convenience Store Association regarding proposed considerations. It was suggested that changes would have a low impact on association members.

New Licence Category

Given the growth in this industry, and the need to ensure that there is sufficient oversight of business activities (for the purpose of consumer protection and public health and safety), staff propose the introduction of a new business licence for vapour product retailers.

Business licensing will assist TPH in their enforcement of the *SFOA* by ensuring adequate City oversight to track and inspect vapour product retailers and help to ensure compliance with federal and provincial laws, particularly the prohibition on the sale of vapour products to minors. In order to sell tobacco in Toronto, a retailer must have a business licence, however, there is currently no such requirement for vapour product retailers. Licensing enables TPH to accurately identify, track and inspect tobacco retailers and ensure their compliance with the *SFOA*. There is currently no reliable system in place for TPH staff to accurately track and inspect all vapour product retailers to ensure their compliance with the *SFOA*.

In addition to assisting TPH with better data and operator information to enforce the *SFOA*, licensing would also provide MLS with enforcement options and tools for use with retailers who are non-compliant with the regulations under the *SFOA*. With a licence requirement, the City would have the ability to use enforcement tools, including laying charges and bringing a noncompliant licensee before the TLT for a hearing seeking to revoke or place conditions on a licence.

Proposed Licensing Requirements

Retailers that sell vapour products would have to become licensed under the new licence category and retailers that are already licensed with the City (such as a convenience store) would have to become endorsed for vapour product sales under their existing licence category.

In summary, this report recommends:

- Adding new licensing requirement for owners or operators of a store or shop where vapour products, are sold ("vapour product retailers");
- Introducing a proposed fee of: \$645.53 (on application); \$315.17 (on renewal); and
- Adding definitions for vapour product, e-cigarette, and e-substance that mirror the definitions used in the *SFOA*.

Staff recommend the following definitions to align with the definitions found in the *SFOA*:

Vapour Product: " An electronic cigarette, an e-substance, or any component of an electronic cigarette and includes the package in which the electronic cigarette, e-substance or component is sold."

E-Cigarette: " A vaporizer or inhalant-type device, whether called an electronic cigarette or any other name, that contains a power source and heating element designed to heat a substance and produce a vapour intended to be inhaled by the user of the device directly through the mouth, whether or not the vapour contains nicotine."

E-Substance: "A substance that is manufactured or sold to be used in an electronic cigarette."

Applicants for the new business licence would have to provide the City with the following information, pursuant to the general provisions within Toronto Municipal Code, Chapter 545, Licensing:

- name of applicant;
- address for business;
- contact information (phone number and e-mail address);
- primary contact person name, number, e-mail address, and mailing address
- criminal background check; and
- any other information as required by the Executive Director, Municipal Licensing and Standards.

The proposed licensing requirement would mirror the licensing requirements and fees for tobacco retailers. The City of Toronto requires all retailers of tobacco products to be licensed and MLS communicates weekly updates on the existence and status of tobacco retailers to TPH, which has assisted TPH in successfully enforcing the *SFOA* for tobacco retail. Licensing vapour product retailers would ensure oversight of the vapour product industry and enable TPH to pursue *SFOA* enforcement and compliance efforts. As well, applicants for business licences would be required to comply with any applicable registration requirements under the *SFOA*.

As such, this report also recommends that licensees attend and inform the Licence and Permit Issuing Office of MLS within 48 hours of a change of address. This requirement helps promote accurate record-keeping requirements for enforcement purposes.

Implementation

If City Council adopts these proposed changes, staff will communicate information on the new rules and provide next steps for vapour product retailers. MLS and TPH will partner in bringing all vapour product retailers into compliance.

It is anticipated that vapour product retailers will be able to apply for a City licence within a few months of the adoption of the By-law. This time is required to update licensing systems and launch a communications plan. Staff will provide information to vapour product retailers as appropriate on the licensing process when it is available.

Other business licence holders, such as convenience and variety stores, that now sell vapour products, would be required to apply to obtain a vapour product retailer endorsement upon renewal of their existing business licence.

CONTACT

Fiona Chapman, Director, Business Licensing and Regulatory Services, Municipal Licensing and Standards, 416-392-3070, Fiona.Chapman@toronto.ca

SIGNATURE

Carleton Grant
Executive Director, Municipal Licensing and Standards