

Priorities Committee Meeting_Apr17_2018

STRATEGIC INITIATIVE AND UPDATE**Smoking Bylaw Update****Report Purpose**

To seek input from the Priorities Committee on the draft smoking bylaw, prior to presentation at the May 8, 2018 non-statutory public hearing.

Council History

February 6, 2018 – Council approved “THAT Administration prepare a bylaw that would prohibit smoking of tobacco or cannabis as well as vaping in areas not addressed by provincial legislation (such as, but not limited to, playgrounds, sports fields, outdoor recreation facilities, school grounds, outdoor events, outdoor markets and hotel guest rooms); and that a non-statutory public hearing, in accordance with Strathcona County’s public hearing procedures, be held on May 8, 2018 so that Council may consider the proposed bylaw and any related public input.”

Strategic Plan Priority Areas

Economy: n/a

Governance: n/a

Social: A bylaw regulating smoking may help support the social outcome of making people feel safe living, gathering, and moving about.

Culture: n/a

Environment: n/a

Other Impacts

Policy: n/a

Legislative/Legal: The *Municipal Government Act*, RSA 2000, c M-26 provides that municipalities may pass bylaws for municipal purposes respecting matters such as the safety, health and welfare of people and the protection of people and property (s. 7); Tobacco and Smoking Reduction Act and regulations; Building Code Regulation AR 31/2015.

Interdepartmental: Legislative and Legal Services has worked with Enforcement Services; Recreation, Parks and Culture; Intergovernmental Affairs; and Communications on this matter.

Summary

As noted above, Council directed administration to prepare a bylaw that would prohibit smoking of tobacco or cannabis as well as vaping in areas not addressed by provincial legislation. Administration has begun drafting the “Smoking Bylaw” (Enclosure 1) and is providing an update to the Priorities Committee to ensure that the Committee’s input on the draft can be reflected in the version that will be made available for the non-statutory public hearing on May 8, 2018. The draft bylaw was a collaborative effort between Legislative and Legal Services, Enforcement Services, Recreation Parks and Culture, Communications, and Intergovernmental Affairs departments.

Background

Tobacco is regulated by the province under the *Tobacco and Smoking Reduction Act* and related regulations. This Act permits municipalities to pass bylaws containing more restrictive provisions than the provincial regime. Possession or consumption of cannabis is currently an offence governed by federal controlled substances legislation. When cannabis ceases to be a controlled substance and becomes a regulated commodity - which is expected to occur before fall of 2018 - both the federal and provincial levels of government will pass enactments to regulate the growing, possession and consumption of cannabis.

The province has passed, but not proclaimed, draft legislation that amends the provincial *Gaming and Liquor Act*, which will be renamed the *Gaming, Liquor and Cannabis Act*. Section 90.28 of the amending legislation prohibits the smoking of cannabis in any location where tobacco consumption is prohibited by an enactment or bylaw, and on hospital property, school property, child care facility property, playgrounds, sports or playing fields, skateboard or bicycle parks, zoos, outdoor theatres, outdoor pools or splash pads, and at any other location prescribed by future regulations.

Draft Smoking Bylaw:

The draft bylaw relies upon the municipality's power to regulate activities and nuisance and therefore, **the municipal offence created in the bylaw is not tied to the actual substance smoked or vaped – just the activity of smoking or vaping any substance that could create nuisance (in terms of odour, vapours or emissions) to other persons.** Tobacco and the *Tobacco and Smoking Reduction Act* are referenced, but the offence extends to any substance that is smoked or vaped in a public place. It is anticipated that the draft bylaw may need to be amended to align with, and fill in any gaps within the provincial enactments when they are prepared and passed.

In the draft bylaw a "public place" is defined to include all of the locations specified in the *Tobacco and Smoking Reduction Act*, the locations specified in the draft amendments to the *Gaming and Liquor Act* that apply to municipal properties, and those additional locations specified in Council's motion of February 6, 2018. Administration contacted School Boards and was advised that smoking and vaping are prohibited by the Boards on school property and they have no objection to the County creating an offence under a bylaw, as the prohibition further supports their policies.

The draft bylaw provides for extensive prohibition of smoking within the County. Under the draft bylaw, smoking or vaping is prohibited in public places. The only exceptions are: off-leash dog parks (except skating rinks that are used as off-leash dog parks in the summer); golf courses; certain outdoor recreation areas; and hotel guest rooms that were already designated as smoking rooms under the *Tobacco and Smoking Reduction Act*, and that comply with the Alberta Building Code clean air and ventilation regulations. We have contacted the Hotel Association, and they advised there does not seem to be a demand for additional smoking hotel rooms within most municipalities. Once hoteliers are advised of the current requirements under the Building Code, they do not consider it worthwhile to install new smoking areas or rooms, so preventing new development of this type is not likely to be objectionable. The draft bylaw, in its current form, would prevent hotels from developing smoking guest rooms in future, even if the owner was to comply with the Building Code and other legislative requirements.

The draft bylaw also permits the Chief Commissioner to designate specific areas as non-smoking by installing signage to that effect. This provision is included to ensure that smoking can be prohibited, through appropriate sign placement, in locations that are the subject of a significant number of smoking complaints.

The draft bylaw requires a 10 metre non-smoking set back from areas where children are more likely to congregate such as playgrounds, spray parks, skate and bicycle parks, pools, skating rinks, and sports fields, and from doorways and air intake areas. The *Tobacco and Smoking Reduction Regulation* currently only requires a five metre setback.

Next Steps

If a smoking bylaw is passed, and once the federal and provincial legislation regarding cannabis is in force, it may be necessary to return to Council with proposed amendments to ensure alignment.

Administration is proposing a complaints-based enforcement model, along with an extensive public education program (similar to the program used for the Responsible Dog Ownership Bylaw). If a bylaw is passed, Administration will closely monitor complaints under the bylaw to ensure that resources are adequate to meet the enforcement demand.

Adequate sign placement is important to ensure the public is aware of the restrictions and to enhance compliance and enforceability. Administration will propose that signs be considered for areas where children are likely to be present, and at regional parks.

Administration requests the Committees feedback on the proposed bylaw to allow preparation of a draft to be presented to the public for comment in advance of the May 8, 2018 hearing.

Communication Plan

Administration has contacted the Elk Island Public Schools, Elk Island Catholic Schools and the Alberta Hotel and Lodging Association regarding the draft bylaw. In addition, Administration will advertise the May 8, 2018 non-statutory public hearing in the newspaper for the two consecutive weeks prior to the hearing.

Enclosure

- 1 Draft Smoking Bylaw
- 2 Smoking Bylaw Update Presentation