

## Report to Council

<b>Report Title:</b>	Smoking Enforcement By-Law		
<b>Prepared By:</b>	Fiona Hamilton, Clerk		
<b>Department:</b>	Clerk's		
<b>Date:</b>	September 8, 2020		
<b>Report Number:</b>	CLK2020-29	<b>File Number:</b>	C11CL
<b>Attachments:</b>	Brockton Resolution 20-06-04 Draft Smoking Enforcement By-law		

### Recommendation:

That the Council of the Municipality of Brockton hereby approves Report Number CLK2020-29 – Smoking Enforcement By-Law, prepared by Fiona Hamilton, Clerk and in doing so approves a By-Law coming forward restricting smoking within the Municipality of Brockton.

### Report:

#### Background:

The eastern boundary of Walkerton District Community School (WDCS) is directly across Fischer Dairy Road Subdivision which is home to seniors and young families. Under the *Smoke-Free Ontario Act, 2017, S.O. 2017, c. 26, Sched. 3* the smoking prohibition is twenty (20) meters from school boundaries, which has resulted in negative unintended consequences at the intersection of Hinks Street and Fischer Dairy Road forcing student smokers onto the edge of the school property. This has resulted in loitering, littering, graffiti, and upset between residents and students.

Staff brought forward Report Number CLK2019-33 - Fischer Dairy Road Smoking Information Bulletin on November 12, 2019 and Report Number CLK2019-24 - Fischer Dairy Road Smoking Concerns on August 27, 2019 regarding these concerns.

Staff sent a letter to the WDCS on August 29, 2019, suggesting alternative solutions, including Council recommendations to address the smoking concerns. Staff further consulted with the South Bruce O.P.P., Bluewater School Board, the Walkerton District Community School and the Grey-Bruce Health Unit in the past year, but unfortunately a suitable solution to the on-going problem loitering and safety concerns has not been reached. On September 10, 2019, Brockton Council passed Resolution 19-19-06 stating their disappointment in the lack of support for smoking enforcement concerns on Hinks Street and Fischer Dairy Road.

On February 11, 2020, Brockton Council passed Resolution 20-06-04 directing staff to investigate implementing a local by-law to provide immediate relief for affected residents at Hinks Street and Fischer Dairy Road in Walkerton.

### **Analysis:**

The Smoking Enforcement By-Law would prohibit smoking or tobacco or cannabis in the Fischer Dairy Road Subdivision and along the West River Road at all times. The challenge of the by-law was to provide a sufficiently large prohibited area that students would not simply be pushed to another residential area while not being overly restrictive to capture local businesses (so that a resident could still smoke outside the restaurants, for example). The goal of the prohibited area in the draft by-law was to channel students choosing to smoke to the Saugeen River Trail rather than residential areas or the Cemetery property.

A number of set fines have been included in the By-Law in order for enforcement. The set fines included in the Smoking Enforcement By-Law would be drafted in compliance with the *Provincial Offences Act, R.S.O. 1990, c. P.33* ("POA") and will be sent to the Attorney General for approval.

We will be implementing an educational approach to enforcement and continuing to work with the Walkerton District Community School staff. Staff also recommend that the By-Law Enforcement Officer participate in training on how to enforce POA tickets against minors and also dealing with youth with mental health (as suggested by the administration of the Walkerton District Community School). Staff have also connected with the administration at the Walkerton District Community School about arranging some video conference to educate students about the prohibited zone and the potential consequences of breaching the by-law.

The draft By-law has also been provided to the Grey Bruce Health Unit and staff are currently waiting to receive a response. The draft that has been presented anticipates allowing Tobacco Enforcement Officers from the Grey Bruce Health Unit the ability to lay charges under the by-law as well, however this provision may be amended based on the comfort level of the Grey Bruce Health Unit.

It should be noted that the legislative changes did not result in the same degree of unintended consequences at Sacred Heart High School due to its proximity to the Saugeen River Trail. As a result, the draft By-law did not need to expand the parameters around this school.

### **Sustainability Checklist:**

What aspect of the Brockton Sustainable Strategic Plan does the content/recommendations in this report help advance?

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|---|-----|
| • Do the recommendations help move the Municipality closer to its Vision? | N/A |
| • Do the recommendations contribute to achieving Cultural Vibrancy?       | N/A |
| • Do the recommendations contribute to achieving Economic Prosperity?     | N/A |
| • Do the recommendations contribute to Environmental Integrity?           | N/A |
| • Do the recommendations contribute to the Social Equity?                 | N/A |

### **Financial Impacts/Source of Funding:**

- Do the recommendations represent a sound financial investment from a sustainability perspective? Yes

Staff are still investigating possible training programs at this time.

**Reviewed By:**



**Trish Serratore, Chief Financial Officer**

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**Respectfully Submitted by:**



**Fiona Hamilton, Clerk**

**Reviewed By:**



**Sonya Watson, Chief Administrative Officer**

## The Corporation of the Municipality of Brockton - Council Meeting

**Agenda Number:** 6.2

**Number:** 20-06-04

**Title:** Resolution – Smoking at Hinks Street and Fischer Dairy Road in Walkerton

**Date:** Tuesday, February 11, 2020

**Moved By:**

**Seconded By:**

Whereas the Walkerton District Community School (WDCS) is located in the former Town of Walkerton in the Municipality of Brockton, Ontario;

And whereas the easterly boundary of the school is directly across from both a seniors residential community and newly constructed homes for many young families,

And whereas the Municipality of Brockton Council supports the principles of the smoking related restrictions spelled out in the Smoke-Free Ontario Act, 2017,

And whereas the prohibition against smoking within twenty (20) meters from school boundaries has resulted in negative unintended consequences at the intersection of Hinks Street and Fischer Dairy Road in the former Town of Walkerton where students smokers have been forced from a safe, hidden away location on the edge of the school property;

And whereas, since students have been forced off school property, neighbouring residents routinely find student smokers loitering on their lawns, along the municipal right of way and the roadway;

And whereas the affected property owners routinely have to clean up cigarette butts, left behind trash and graffiti,

And whereas the affected property owners have had numerous run-ins with the student smokers,

And whereas some residents feel uncomfortable even walking by the makeshift student smoking area such that their security is compromised,

And whereas, with winter road conditions, snowplowing efforts, general car and truck travel have routinely made for both student safety and vehicle operations safety risk,

And whereas neither the Bluewater School Board, the Walkerton District Community School or the Grey-Bruce Health Unit have been able to come up with a suitable solution to the on-going problem loitering and safety concerns,

And whereas the Municipality of Brockton needs to take any and all action to keep residents safe,

Be it resolved that the Municipality of Brockton investigate implementing a local bylaw which will provide immediate relief for the affected residents.

**Carried**

**Tied, Defeated**

**Defeated**

**Tabled**

Mayor - Chris Peabody

# The Corporation of the Municipality of Brockton



## By-Law 2020-XXX

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### Being a By-Law to Regulate Smoking and Vaping in Areas in the Municipality of Brockton.

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**Whereas** the *Municipal Act, 2001, S.O. 2001, c. 25*, Section 5(1), as amended, provides that the powers of a municipal corporation are to be exercised by its council;

**And Whereas** the *Municipal Act, 2001, S.O. 2001, c. 25*, Section 5(3), as amended, provides that a municipal power, including a municipality's capacity rights, powers and privileges under section 9; shall be exercised by By-Law;

**And Whereas** the *Municipal Act, 2001, S.O. 2001, c. 25*, Section 10, as amended, provides that a municipality may pass by-laws respecting the economic, social, and environmental well-being of the municipality, the health, safety and well-being of persons, and the protection of persons and property;

**And Whereas** the *Municipal Act, 2001, S.O. 2001, c. 25*, Section 115, as amended, provides that a municipality may pass by-laws regulating the smoking of tobacco in public places within the municipality;

**And Whereas** the *Municipal Act, 2001, S.O. 2001, c. 25*, Section 425, as amended, provides that a municipality may pass by-laws providing that a person who contravenes a by-law of the municipality is guilty of an offence;

**And Whereas** the *Municipal Act, 2001, S.O. 2001, c. 25*, Section 429, as amended, provides that a municipality may establish a system of fines for offences under a by-law of the municipality;

**And Whereas** the *Smoke-Free-Ontario Act, 2017, S.O. 2017, c. 26*, Section 18, as amended, provides that if there is a conflict between a provision of that Act and a provision of another Act, a regulation or a municipal by-law that deals with a matter to which that Act applies, the provision that is more restrictive of the matter to which the Act applies prevails;

**And Whereas** it has been determined that second-hand smoke and vapour are a health hazard or discomfort for many residents;

**Now Therefore** the Council of the Corporation of the Municipality of Brockton **Enacts as Follows:**

#### 1. Definitions

For the purposes of this by-law:

"**Cannabis**" has the same meaning as in Subsection 2 (1) of the *Cannabis Act, 2017, S.O. 2017, c. 26, Sched. 1*.

"**Council**" means those persons elected to represent the people of the Municipality of Brockton.

"**Designated Public Place**" means a public place designated pursuant to Section 4.1 of this by-law;

**"Director"** means the Director of Community Services for the Municipality, his or her designate or, in the event of organizational changes, another employee designated by Council.

**"Electronic Cigarette" or "E-Cigarette"** means a vapourizer 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 nicotine-based liquid substance or e-substance to produce a vapour intended to be inhaled by the user of the device directly through the mouth.

**"E-Substance"** means a material that is manufactured or sold to be used in an Electronic Cigarette, whether or not the material contains nicotine.

**"Highway"** means any provincial or municipal roadway, lane, street, circle, avenue, etc. within the geographic limits of the Municipality of Brockton and includes sidewalks, boulevards and all other lands within the lateral boundaries of the highway.

**"Lighted"** means the burning of material.

**"Officer"** means a person appointed by Council as a municipal law enforcement officer to enforce this by-law or a tobacco enforcement officer or successor position, as employed by the Grey Bruce Health Unit, or any successor agency;

**"Park"** means any land, owned, leased or controlled by the Municipality, designed or used for public recreation, including but not limited to: trails, gardens, green space, playgrounds, sports fields, playing fields, picnic areas, pavilions, swimming pools and beach areas.

**"Person"** means a corporation, business and/or organization as well as an individual.

**"Shisha"** means a is a single- or multi-stemmed instrument for vapourizing and smoking flavoured tobacco, or sometimes cannabis, whose vapor or smoke is passed through a water basin-often glass-based-before inhalation. Also known as an argilee, water pipe, hookah, nargile, qalyan, chillim, jajeer, hitboo matrra pipe, huqqo, jajeer, guduguda, or lulava, cachimba.

**"Smoke" and "Smoking"** include the carrying, holding, having and/or inhaling of any lighted cannabis, cigar, cigarette, e-cigarette, shisha, vapourizer or any other lighted smoking equipment or apparatus.

**"Special Event"** means an occasion approved by the Municipality in accordance with policies, laws and regulations adopted by Council.

**"Municipality"** means The Corporation of the Municipality of Brockton.

**"Tobacco"** means a product produced by curing or drying a plant for smoking or vaping.

**"Vapourizer"** means an inhalant-type device 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, cannabis or any other substance.

**"Vaping", "Vape" and "Vapourizing"** mean the act of heating and converting cannabis, an E-substance or any other substance through a Vapourizer or an Electronic Cigarette, for the purpose of simulating the inhalation of smoke.

## **2. Interpretation**

- 2.1 This by-law applies to the Smoking and Vaping of Tobacco, Cannabis, E- Substance, shisha, whether or not it contains Tobacco, and other plant material or oils intended for inhalation in every Designated Public Place within the geographic limits of the Municipality of Brockton.

### **3. Administration**

- 3.1 The Municipality is responsible for the enforcement of this by-law.

### **4. Regulations**

- 4.1 The following are Designated Public Places for the purpose of this by-law:
- 4.1.1 Every place as set out in Section 12(2) of the *Smoke-Free Ontario Act, 2017, S.O. 2017, c. 26, Schedule 3*;
  - 4.1.2 Any Highway, road allowance, Park or Cemetery identified on Schedule “B” to this By-law;
- 4.2 No Person shall Smoke or Vape in any Designated Public Place, whether or not a "No Smoking" sign or a "No Vaping" sign is posted.

### **5. Signs**

- 5.1 Signs shall be posted and maintained in accordance with the *Smoke-Free Ontario Act, 2017, S.O. 2017 c. 26, Schedule 3*, and as prescribed by the Director.
- 5.2 Notwithstanding Section 5.1 of this by-law, the requirement for signs does not apply to any of the Designated Public Places specified in section 4.1.2 above.
- 5.3 A reference to a by-law of a former municipality, or to a predecessor to this by-law on any sign that identifies a Designated Public Place or in which Smoking or Vaping are prohibited is deemed to be a reference to this by-law.

### **6. Enforcement**

- 6.1 The provisions of this by-law respecting the prohibition of Smoking and Vaping in Designated Public Places, will be enforced by Officers.
- 6.2 An Officer may, at any time, enter any Designated Public Place in which Smoking and Vaping are prohibited to determine whether this by-law is being complied with and, for this purpose, may make such examinations, investigations and inquiries as are necessary.
- 6.3 No person shall obstruct or interfere with an Officer in the lawful execution of their duty enforcing the provisions of this by-law.

### **7. Offence and Penalty Provisions**

- 7.1 Every person(s) who violates a provision of this by-law is guilty of an offence and on conviction is liable to the penalty provided in Section 61 of the *Provincial Offences Act R.S.O. 1990 Chapter P.33* as amended from time to time.

### **8. Validity**

- 8.1 If there is a conflict between a provision of any Act, regulation or by-law and a provision of this by-law, the provision that is the most restrictive prevails.
- 8.2 If for any reason any section, clause or provisions of this by-law is deemed by a court of competent jurisdiction to be invalid the same shall not affect the validity of the by-law as a whole or any part thereof other than the part which was declared to be invalid.
- 8.3 Any by-law which is inconsistent with the provisions contained in this by-law is hereby rescinded and repealed.

**9. Commencement**

9.1 This by-law shall come into full force and effect upon the date of its final passing.

**10. Title**

10.1 This By-Law may be cited as the “Smoking Enforcement By-Law”.

**Read, Enacted, Signed and Sealed this 8th day of September, 2020.**

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Mayor – Chris Peabody

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Clerk – Fiona Hamilton



**Set Fine Schedule**  
**Part I of the *Provincial Offences Act***  
**The Corporation of the Municipality of Brockton**  
**By-Law 2020-XXX**

Item	Column 1 Short Form Wording	Column 2 Offence Creating Provisions	Column 3 Set Fine
1	Smoke or Vapourize in any Designated Public Place	Section 4.3	200.00
2	Obstruct or interfere with an Officer in the lawful execution of their duty enforcing the provisions of this by-law	Section 6.3	300.00

Note: The penalty provisions for the offence(s) indicated above is/are Section 7 of By-Law Number 2020-XXX a certified copy of which has been filed.



# Schedule "B" - Smoking Prohibited Zone Walkerton



Prohibited Zone

0 50 100 200 Metres

This map has been prepared by the Municipality of Brockton GIS Department for information, consultation, and discussion purposes only. The Municipality does not guarantee the accuracy or completeness of the contents and assumes no liability for any consequences arising out of anyone's use of, reliance on, the information depicted.

Prepared by: Jessica Rodgers / GIS Technician  
 Prepared Date: 04/09/2020