

Authority: Item 4, Board of Health Committee
Report: 11-002 (BOH07034(e))
CM: March 9, 2011

Bill No. 080

CITY OF HAMILTON

BY-LAW NO. 11-080

To Prohibit Smoking within City Parks and Recreation Properties

WHEREAS Council wishes to prohibit tobacco smoking and limit the impact of tobacco smoke on persons using the City's parks and recreational properties, buildings and structures, particularly for the benefit of young persons, for the health of the public generally, to protect and enhance the quality and use of City property, and to improve the environmental and social conditions on City properties, buildings and structures through a by-law which prohibits the smoking of tobacco;

AND WHEREAS Council intends to provide for enforcement and to allow prohibitions of use or entry to City property where persons fail to comply with the by-law;

AND WHEREAS the City has the capacity, rights, powers and privileges of a natural person, and may pass by-laws for prohibiting or regulating, for purposes considered necessary or desirable including the use and protection of public assets, social and environmental purposes, the delivery of services, and for the health, safety and well-being of persons under the authority of Municipal Act, R. S. O. 1990, c. M.45, including but not limited to sections 8, 9, 10 and 115.

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

DEFINITIONS AND INTERPRETATION

1.(1) In this By-law the following terms have the prescribed meanings unless the context otherwise requires:

- (a) “authorized staff” means a Tobacco Enforcement Officer or any staff of the City whose duties include those provided for or assigned under this By-law, and shall include a police officer, a Director or the Medical Officer of Health;
- (b) “Director” means the Senior Director of Recreation or the Director of Environmental Services, and includes a person acting in their capacity during absence or illness, and their designate for the purposes of this By-law;
- (c) “Medical Officer of Health” means the officer appointed to such position by the City of Hamilton, their deputy, and their designate for the purposes of this By-law;
- (d) “police officer” includes an officer of the Hamilton Police Service;
- (e) “recreation property” means a park or place owned or operated by the City of Hamilton for recreational purposes including without limiting the generality of the foregoing a leash-free dog park, pool, recreation center, playground, skate-board park, beach, arena, stadium, sports or playing field, and the list of property, addresses, places and areas in Schedule “A “ attached to and forming a part of this By-law, but does not in any case include a highway;
- (f) “smoking tobacco” includes the holding of tobacco while the product is alight or emitting smoke, and the verb “smoke” shall include a similar meaning;

- (g) "sports field" means a soccer pitch, baseball diamond, tennis court, lawn bowling or football field, and includes their related spectating and players areas and structures; and
 - (h) "tobacco" includes pipe tobacco, water-pipe tobacco, cigarettes, cigars, cigarillo's or any similar product made with or containing tobacco.
- 1.(2) Subject to subsections (3) and (4), for the purposes of interpretation, a park or recreation property includes all indoor and outdoor areas, buildings and structures on the park or property including those parts covered by water or which are located within the abutting road allowances, and includes the internal trails, paths, walkways, parking lots and lanes for vehicular or pedestrian use, specifically including both public and restricted access portions of such property, and further this By-law applies to a person while they are within or on a vehicle within such areas.
- 1.(3) For the purposes of interpretation the term "recreation area" does not include municipal golf courses including all of their internal playing areas, trails, walkways, parking lots and lanes, namely; (a) Chedoke Golf Course, and (b) King's Forest Golf Course, nor does the term include a City recreational trail outside of the areas listed in Schedule "A".
- 1.(4) The use of a portion of a park or recreation property provided for by a written agreement entered, or written permit granted by the City prior to enactment of this by-law, which agreement or permit is for the exclusive use by a private business or to a person for an event, is not subject to this by-law unless the agreement, permit or permit approval process specifies that no smoking is allowed, but regardless of the agreement or permit the Smoke Free Ontario Act, 1994, S. O. 1994, c. 10 applies which Act may require that no smoking occur on some or all of the property.

PROHIBITION

2. No person shall:
 - (a) smoke tobacco on recreation property;
 - (b) fail to leave recreation property after authorized staff has given the person notice or direction to leave for smoking tobacco on recreation property; or
 - (c) enter or use recreation property after authorized staff have prohibited the persons entry or use for smoking tobacco on recreation property.
3. The prohibitions in section 2 above apply whether or not a “No Smoking” sign of any format or content is posted.

ADMINISTRATION AND ENFORCEMENT

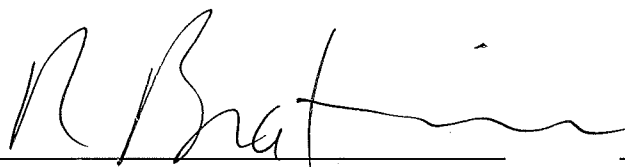
- 4.(1) The Medical Officer of Health is responsible for administration and enforcement of this By-law, and may appoint delegates or assign duties to City staff under this By-law.
- 4.(2) A Director may appoint such additional staff or delegates at or for attendance of parks and recreation property for the purposes of this By-law.
5. City staff who carry out any action under this By-law are deemed to be authorized staff for the purposes of this By-law, in the absence of evidence to the contrary.
6. A Director may issue, extend or vary a prohibition of entry or use by a person on park or recreation property under this By-law, including without limiting the generality of the foregoing, making such prohibition applicable to other parks or recreation property or making a prohibition for any term including for longer than one year, in their absolute discretion.

7. Any person who contravenes a provision of this By-law is guilty of an offence and upon conviction is liable to a maximum fine of \$ 10,000.00.

CONFLICTS, SEVERABILITY AND ENACTMENT

8. Subject to subsection 13 of the Smoke Free Ontario Act, 1994, S. O. 1994, c. 10 (the "Act"), in the event of a conflict between the provisions of sections 9 and 10 of the Act and this By-law, the provision which is more restrictive of smoking shall prevail.
9. Should a court of competent jurisdiction declare a part of whole of any provision of this By-law to be invalid or of no force and effect, the provision or part is deemed severable from this by-law and it is the intention of Council that the remainder survive and be applied and enforced in accordance with its terms to the extent possible under law.
10. This By-law shall come into force and effect on May 31, 2012.

PASSED this 9th day of March, 2011.



R. Bratina
Mayor



R. Caterini
City Clerk