

# Shisha Lounge Establishments

## Business License Class Options

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### Recommendation

That the April 28, 2021, Urban Form and Corporate Strategic Development report UFCSD00344, be received for information.

### Previous Council/Committee Action

At the January 20, 2021, Community and Public Services Committee meeting, the following motion was passed:

That Administration provide a report to Committee summarizing the bylaw amendments that would be required to create a business licence category permitting the indoor consumption of Shisha, including the following conditions:

- no minors permitted in designated smoking areas
- physically separated smoking area that prevents smoke from entering the remainder of the premises
- no food or drink service within the smoking area
- mandatory signage identifying smoking areas
- working to eliminate any second hand impacts to employees

### Executive Summary

Administration recognizes businesses' pivotal role in promoting livability in the city by providing employment and various services to residents. The Business Licence Bylaw 13138 regulates businesses in alignment with the City's commitment to public safety. The Bylaw reflects The City Plan goals to foster vibrant communities by supporting business activities and reducing barriers for local business to provide services.

In July 2020, the Public Places Bylaw 14614 was amended to align the definitions of indoor smoking of cannabis, tobacco and shisha. These amendments also had the impact of supporting the health of employees and the public. This action effectively led to prohibition of all indoor smoking including shisha consumption in public places.

While amendments to the Business Licence Bylaw 13138 could be made to regulate indoor shisha consumption by establishing a separate business licence category to permit smoking shisha/hookah indoors with additional conditions, further amendments would be required to the Public Places Bylaw 14614 to allow indoor shisha smoking.

These amendments would effectively reverse the July 2020 amendments, re-allowing for shisha consumption indoors.

Upcoming amendments to the *Tobacco and Smoking Reductions Act* are anticipated to prohibit the use of vaping products in public places. The existing *Occupational Health and Safety Act* contains broad protections for workers from any conditions that may be dangerous to their health and safety. Should Administration develop bylaw amendments that permit the consumption of shisha in public places, it is anticipated that the proclamation of the *Tobacco and Smoking Reduction Act* would supersede municipal bylaws unless the province were to exempt shisha from its legislation.

No timeline is established for the proclamation of this legislation. Should a bylaw be advanced at a municipal level that enabled public consumption of shisha, there would be no certainty to guide businesses seeking to make investments to meet municipal regulations.

### Report

#### *Bylaw Amendments*

Administration was asked to explore opportunities to create a business license category that would enable Shisha consumption indoors, alongside a series of potential conditions. In undertaking this work, it is important to note the following:

- The province is advancing upcoming changes to the *Tobacco and Smoking Reduction Act*, which, as currently proposed, would prohibit the consumption of shisha indoors. Once this legislation is proclaimed it will supersede any municipal legislation. Administration cautions advancing any changes which are in conflict with upcoming changes to provincial administration.
- The Business Licence Bylaw 13139 would need to be amended to create a separate business licence category which would permit the activity of smoking shisha/hookah indoors. This would enable additional conditions to be attached. Attachment 1 Business Licence Conditions outlines considerations for the five specific conditions described in the motion.
- The Public Places Bylaw 14614 would also require amendments, as this bylaw prohibits the smoking of tobacco or “tobacco-like products” in public places. “Tobacco-like products” are defined as a “product, other than a tobacco product, composed in whole or in part of plants or plant products, or any extract of them, and includes shisha and hookah.” Council recently approved these changes (June 2019) which became effective for businesses in July 2020 and establishments previously offering shisha smoking have been able to continue operating under their primary category of restaurant, food service or alcohol sales, while complying with the Public Places Bylaw.

### *Approach*

With direction from Council to permit shisha consumption within business premises, a number of steps would need to be undertaken. Given that this large body of work is not currently part of the 2021 work plan and resources have been allocated to identified priorities, funding would be required for a robust engagement program. The program activities could include:

- Engaging with the community and ensuring that a Gender Based Analysis Plus (GBA+) lens is applied.
- Amending the Public Places Bylaw 14614
- Amending the Business Licence Bylaw 13138
- Advocating to the Government of Alberta to exclude shisha from the proposed Provincial legislative restrictions on vaping products (outside the jurisdiction of Administration)

### *Other Considerations*

Should amendments be made that would allow shisha consumption in physically separated areas away from staff, there remain significant enforcement challenges, including:

- Difficulty in identifying what product is actually being consumed in these areas
- The time, cost and process of testing suspected illicit products
- Risks to regulatory inspection teams assessing compliance in smoke-filled areas
- Gathering offense information without knowing whether illicit products are used
- Risk to business staff accessing space to deal with patron issues or problems
- Risk to business staff cleaning, sanitizing and wiping down the physical space after use, especially during a pandemic

### *Public Health Concerns*

The 2017 and 2020 Tobacco Information Series reports published by Alberta Health Services refer to several issues relevant to waterpipe smoking, including impacts on air quality and health. Specifically, that smoke from waterpipes (with or without tobacco) affects the user, operators and employees and when the establishments are located within a multi-unit building, the adjacent units may be negatively affected. Further information can be found in Attachment 2 - Waterpipe Smoking.

### *Interest Group Feedback*

In a discussion with health professionals and an organized group of citizens interested in establishing shisha lounges, additional considerations were identified. Alberta Health Services' perspective regarding smoking shisha indoors remains unchanged from the discussion with the Community and Public Services Committee in July 2018. The resulting impact of burning combustible products is harmful to the health of employees and citizens. Community groups reached out to Administration and a summary of their comments can be found in Attachment 3 - Interest Group Feedback.

**Legal**

City of Edmonton regulations must be consistent with regulations established by higher orders of government. Bill 19, *the Tobacco and Smoking Reduction Amendment Act*, which amends the *Tobacco and Smoking Reduction Act* by prohibiting vaping in public places, received Royal Assent on June 26, 2020, and the amendments will come into force on proclamation. Administration cannot develop bylaw amendments permitting the consumption of shisha in public places unless the province exempts shisha from the application of this legislation in provincial regulations.

**Corporate Outcomes and Performance Management**

Corporate Outcome(s): Edmonton is a safe city			
Outcome(s)	Measure(s)	Result(s)	Target(s)
Ensure tobacco-like products (such as shisha and waterpipe smoking) education, awareness and compliance programs are effective.	Number of businesses in compliance.	N/A	100% business compliance

**Attachments**

1. Business Licence Conditions
2. Waterpipe Smoking
3. Interest Group Feedback

**Others Reviewing this Report**

- M. Persson, Chief Financial Officer and Deputy City Manager, Financial and Corporate Services
- C. Owen, Deputy City Manager, Communications and Engagement
- R. Smyth, Deputy City Manager, Citizen Services
- Kim Fallis-Howell, Acting City Solicitor