

NO: **R179**

COUNCIL DATE: **October 7, 2019**

REGULAR COUNCIL

TO: **Mayor & Council**

DATE: **October 1, 2019**

FROM: **General Manager, Corporate Services**

FILE: **3900-02**

SUBJECT: **Vaping and E-Cigarette Product Use and Sales and Proposed Amendments to Business License Bylaw, 1999, No. 13680 – Consultation**

RECOMMENDATION

The Corporate Services Department recommends that Council:

1. Receive this report for information; and
2. Authorize the City Clerk to bring forward *Business License Bylaw, 1999, No. 13680, Amendment Bylaw, 2019, No. 19903*, attached to this report as Appendix “I”, for final adoption.

INTENT

The purpose of this report is to provide Council with comments provided by members of the public and the Fraser Health Authority with respect to changes to *Business License Bylaw, 1999, No. 13680* that would place the same restrictions on vaping and e-cigarette product sales as tobacco product sales and require all retail vendors of these products to display signage advising customers that they must be 19 years of age or older to purchase these products.

BACKGROUND

At the July 22, 2019 Council meeting, Council approved Corporate Report No. R150; 2019, attached to this report as Appendix “II”. The recommendations of R150; 2019 included approving the proposed amendments to *Business License Bylaw, 1999, No. 13680*, authorizing the City Clerk to give public notice in the form of newspaper advertisement of the proposed bylaw amendments and to provide an opportunity to persons who consider they are affected by the proposed amendments to make representations to Council and to direct staff to report back to Council on any representations received. At the same Council meeting, the *Business License Bylaw, 1999, No. 13680, Amendment Bylaw, 2019, No. 19903* (the “Proposed Amendments”) was given 3 readings.

Section 59 of the Community Charter requires that Council give notice of its intention to regulate a business and provide an opportunity for persons who consider they are affected by the bylaw to make representations prior to the bylaw being adopted. Notice was provided in the Surrey Now-Leader and the Peace Arch News on September 6 and 11, 2019 and in the Cloverdale Reporter on September 11, 2019. Members of the public had an opportunity to provide a submission to Council in writing to the Legislative Services Division or in person at the September 16, 2019 Council meeting.

In addition to the above, the *Public Health Bylaws Regulation* provides that a Council must consult with the Fraser Health Authority regarding any proposed bylaw provisions related to the protection, promotion or preservation of the health of individuals. A copy of Corporate Report No. R150; 2019, including the Proposed Amendments, was provided to the Fraser Health Authority and comments were received back on September 8, 2019.

DISCUSSION

After allowing an opportunity for members of the public and Fraser Health Authority to provide comments on the Proposed Amendments, staff received feedback as outlined below.

Comments from the Public

As noted previously in this report, notice of the Proposed Amendments was advertised in local newspapers inviting an opportunity for the public to provide comments to Council. A copy of the newspaper notice is attached as Appendix "III". No comments were received from the public in this regard.

Members of the public were also provided an opportunity to comment on the Proposed Amendments at the September 16, 2019 Regular Council Public Hearing Meeting. The City received no requests from the public to speak to this issue and no member of the public came forward to speak to this issue at the noted Council meeting.

Comments from Fraser Health Authority

The Fraser Health Authority had the opportunity to provide comments on the Proposed Amendments and offered comments on three issues:

1. Fraser Health Authority advised that the City's definition of e-substance in the bylaw would include cannabis since cannabis is no longer a controlled substance in Canada. Therefore, the regulations in the bylaw regarding the sale of e-substances and vapour products would also apply to cannabis vaping products.

While there are no cannabis dispensaries in operation in the City at this time, it is intended that these bylaw regulations would also apply to the sale of cannabis vaping products where they are lawfully sold. The sale of any product containing cannabis is considered a Cannabis Dispensary use in the City's zoning bylaw. Cannabis Dispensaries are prohibited in all zones except in Zone 36B – Community Commercial B Zone. Including cannabis in the definition of e-substance and the regulation of vaping products does not grant permission to sell cannabis products where it is not a use permitted by the zoning.

2. Fraser Health Authority commented that the Provincial legislation does not require persons 19 years of age or over to produce picture identification at the time of sale, while the proposed bylaw does include that requirement.

While picture identification is not required in the Provincial legislation, the Provincial legislation provides that sellers have a defence to a charge of selling to a minor if sellers can establish that they required the individual to produce identification, examined the identification and reasonably believed that the identification was unaltered and depicted the individual. The Proposed Amendments incorporate this sound business practice as a requirement.

3. As a result of the requirement in the Provincial legislation that vapour products not be visible from outside the retail premises, Fraser Health Authority advised that many vape shops have started to black out their windows, which has become a safety concern for customers, shop owners and their employees.

As with the Provincial legislation, the Proposed Amendments does not require windows to be blacked out, and the bylaw requirements can be met through the use of opaque window coverings or by sellers keeping products out of their window displays.

Legal Services Review

The Legal Services Division has reviewed this report and has no concerns.

SUSTAINABILITY CONSIDERATIONS

The proposed bylaw amendments support the objectives of the City's Sustainability Charter 2.0. In particular, this work relates to the Sustainability Charter 2.0 theme of Public Safety. Specifically, the proposed bylaw amendments support the following Desired Outcome ("DO") and Strategic Direction ("SD"):

- Community Safety and Emergency Services D05: Surrey is recognized and perceived as a leader in establishing and maintain collaborative partnerships for community safety and well-being; and
- Community Safety and Emergency Services SD4: Enhance intergovernmental relations and ensure broad partnerships and collaboration to address multi-jurisdictional social issues (e.g., homelessness, mental health, addictions, etc.).

CONCLUSION

This report provides Council with the comments provided by the public and the Fraser Health Authority with respect to the proposed amendments to *Business License Bylaw, 1999, No. 13680* that relate to changes that would place the same restrictions on vaping and e-cigarette product sales as tobacco product sales and require all retail vendors of these products to display signage advising customers that they must be 19 years of age or older to purchase these products. This report also seeks Council's authorization for the City Clerk to bring forward *Business License Bylaw, 1999, No. 13680, Amendment Bylaw, 2019, No. 19903* for final adoption.

Rob Costanzo
General Manager, Corporate Services

Appendix "I": Business License Bylaw, 1999, No. 13680, Amendment Bylaw, 2019, No. 19903
Appendix "II": Corporate Report No. R150; 2019
Appendix "III": Newspaper Advertisement

CITY OF SURREY

BYLAW NO. 19903

A bylaw to amend the provisions of "Business License By-law, 1999,
No. 13680", as amended.

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The Council of the City of Surrey, ENACTS AS FOLLOWS:

1. "Business License By-law, 1999, No. 13680", as amended, is hereby further amended as follows:
 - a) Section 2, Interpretation is amended as follows:
 - i. Insert new definitions of "E-Cigarette" and "E-Substance" immediately after the definition of "Drug Paraphernalia" as follows:

"E-Cigarette" means the following:

 - (a) a product or device, whether or not it resembles a cigarette, containing an electronic or battery-powered heating element capable of vapourizing an e-substance for inhalation or release into the air;
 - (b) any product or device prescribed as an e-cigarette by regulation under the Tobacco and Vapour Products Control Act, R.S.B.C. c. 451.

"E-Substance" means a solid, liquid or gas:

 - (a) that, on being heated, produces a vapour for use in an e-cigarette, regardless of whether the solid, liquid or gas contains nicotine; and
 - (b) that is not a controlled substance within the meaning of the *Controlled Drugs and Substances Act*."
 - ii. Insert a new definition of "Point of Sale System" immediately after the definition of "Pinball Machine" as follows:

"Point of Sale System" means a digital, electric, manual or mechanical system for calculating and recording sales transactions."

iii. Insert new definitions of "Tobacco" and "Vapour Product" immediately after the definition of "Therapeutic Touch Technique" as follows:

"Tobacco" means tobacco leaves or products produced from tobacco in any form or for any use.

"Vapour Product" means the following:

- (a) an e-cigarette;
- (b) an e-substance;
- (c) a cartridge for or a component of an e-cigarette."

b) Section 64, Tobacco Product Sales is deleted in its entirety and replaced with a new Section 64, Tobacco and Vapour Product Sales as follows:

"Tobacco and Vapour Product Sales

64. (1) No proprietor of a retail business which has for sale tobacco or vapour products will sell, offer for sale, provide or distribute tobacco or vapour products to a person unless the individual is 19 years of age or over and presents picture identification showing that the individual is 19 or over.
- (2) The proprietor of every retail business which has for sale tobacco or vapour products must not display tobacco or vapour products, or advertise or promote the use of tobacco or vapour products, in any manner by which the tobacco or vapour products or the advertisement or promotion:
- (a) may reasonably be seen or accessed by a person inside the retail premises who is not 19 years of age or over; or
 - (b) are clearly visible to a person outside the retail establishment.
- (3) For the purposes of Subsection (2), "advertise or promote the use of tobacco or vapour products" means to advertise or promote the use of tobacco or vapour products by any means, including by:
- (a) displaying on a sign, video, clothing or other tangible object the name of a brand or manufacturer of tobacco or vapour products, an abbreviation or other thing that would reasonably identify the name of a brand or manufacturer of tobacco or vapour products, or a graphic, design or symbol that is commonly associated with the name of a brand or manufacturer of tobacco or vapour products; or
 - (b) making available any sign, video, clothing or other tangible object that displays any of the things set out in paragraph (a).

- (4) Despite Subsection (3), the proprietor of a retail business which has for sale tobacco or vapour products may advertise within the premises the types of tobacco and vapour products for retail by means of a sign that meets all of the following criteria:
- (a) the sign must not be larger than 968 cm²;
 - (b) the background of the sign must be white only;
 - (c) the text of the sign must be black only;
 - (d) the letters in the text of the sign must not be higher than 5 cm;
 - (e) except for the "\$" symbol in front of a price, the sign must not contain any graphic or design, or any symbol that is not an alpha-numeric character;
 - (f) the sign must not include the name of a brand or manufacturer of tobacco or vapour products;
 - (g) the sign must not include any abbreviation, or other thing that would reasonably identify the name of a brand or manufacturer of tobacco or vapour products; and
 - (h) the sign may advertise only the types of tobacco and vapour products for sale and the prices of, or a price range for, those types of tobacco and vapour products,

and the proprietor must not have more than 3 signs on the premises, including not more than one sign at each point of sale system.

- (5) The proprietor of a retail business which has for sale tobacco or vapour products must ensure that warning signs as prescribed in Subsections (6), (7) or (8) are displayed in accordance with the following:
- (a) the decals for purchasers must be displayed in plain view to purchasers at the point and time of sale;
 - (b) the decals for employees must be displayed in plain view to the employee operating the point of sale system on or near the point of sale system at the time of sale; and
 - (c) the decals must not be obscured by any sign, notice or any other thing that could make the decal less than fully visible.
- (6) The proprietor of a retail business which has for sale tobacco, but not vapour products, must do both of the following:
- (a) display to purchasers the decal set out in Figure 1 of Schedule "C"; and
 - (b) display to employees the decal set out in Figure 2 of Schedule "C".

- (7) The proprietor of a retail business which has for sale vapour products, but not tobacco, must do both of the following:
 - (a) display to purchasers the decal set out in Figure 3 of Schedule "C";
 - and
 - (b) display to employees the decal set out in Figure 4 of Schedule "C".

- (8) The proprietor of a retail business which has for sale both tobacco and vapour products must do both of the following:
 - (a) display to purchasers the decal set out in Figure 5 of Schedule "C";
 - and
 - (b) display to employees the decal set out in Figure 6 of Schedule "C".

- (9) A proprietor who operates a vending machine that sells tobacco or vapour products must affix to the front of the vending machine the decal referred to in Figure 1, Figure 3 or Figure 5 of Schedule "C", as applicable.

- (10) The proprietor of a retail business which has for sale vapour products is exempt from the provisions of Subsections (1), (2) and (3) with respect to vapour products that are prescribed by regulation under the Tobacco and Vapour Products Control Act, R.S.B.C. c. 451 as products or devices intended to be used for medical purposes, including to reduce nicotine dependence."

c) Insert a new Schedule "C", attached and forming part of this Bylaw, after Schedule "B".

2. This Bylaw shall be cited for all purposes as "Business License Bylaw, 1999, No. 13680, Amendment Bylaw, 2019, No. 19903"

PASSED FIRST READING on the 22nd day of July, 2019.

PASSED SECOND READING on the 22nd day of July, 2019.

PASSED THIRD READING on the 22nd day of July, 2019.

PUBLIC MEETING HELD on the 16th day of September, 2019.

CONSULTATION WITH THE FRASER HEALTH AUTHORITY on the day of , 2019.


RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the th day of , 2019.

_____MAYOR

_____CLERK

SCHEDULE "C"

Figure 1



19

Government ID with a photo and birth date must be shown when requested.

You must be 19 or older to purchase TOBACCO.

 **BRITISH COLUMBIA**

Tobacco and Vapour Products Control Act

Figure 2



19

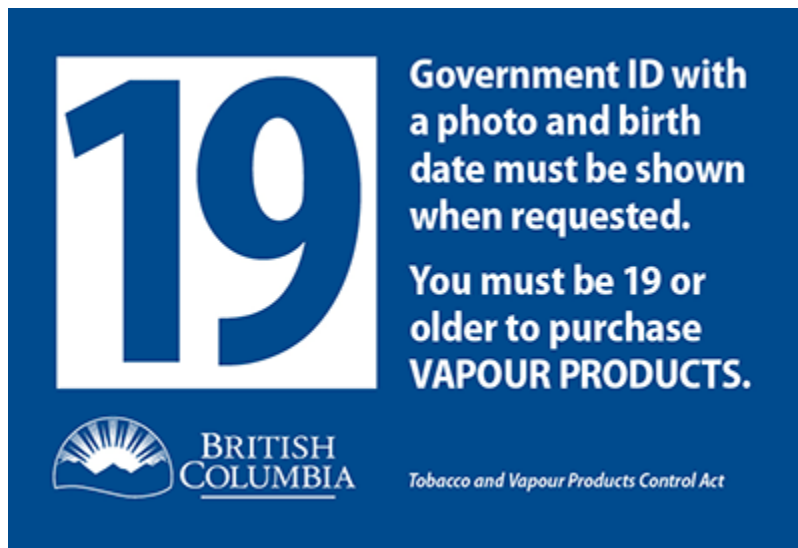
It is ILLEGAL to give or sell TOBACCO to anyone under 19 years of age.

Valid photo ID may be required.

 **BRITISH COLUMBIA**

Tobacco and Vapour Products Control Act


Figure 3



19

Government ID with a photo and birth date must be shown when requested.

You must be 19 or older to purchase VAPOUR PRODUCTS.

 BRITISH COLUMBIA

Tobacco and Vapour Products Control Act

This sign features a large white square with the number '19' in blue. To the right, white text on a blue background states: 'Government ID with a photo and birth date must be shown when requested.' and 'You must be 19 or older to purchase VAPOUR PRODUCTS.' At the bottom left is the British Columbia logo, and at the bottom right is the text 'Tobacco and Vapour Products Control Act'.

Figure 4



19

It is ILLEGAL to give or sell VAPOUR PRODUCTS to anyone under 19 years of age.

Valid photo ID may be required.

 BRITISH COLUMBIA

Tobacco and Vapour Products Control Act

This sign features a large white square with the number '19' in blue. To the right, white text on a blue background states: 'It is ILLEGAL to give or sell VAPOUR PRODUCTS to anyone under 19 years of age.' and 'Valid photo ID may be required.' At the bottom left is the British Columbia logo, and at the bottom right is the text 'Tobacco and Vapour Products Control Act'.

Figure 5



19

Government ID with a photo and birth date must be shown when requested.

You must be 19 or older to purchase TOBACCO or VAPOUR PRODUCTS.

 **BRITISH COLUMBIA**

Tobacco and Vapour Products Control Act

Figure 6



19

It is ILLEGAL to give or sell TOBACCO or VAPOUR PRODUCTS to anyone under 19 years of age.

Valid photo ID may be required.

 **BRITISH COLUMBIA**

Tobacco and Vapour Products Control Act

NO: R150

COUNCIL DATE: July 22, 2019

REGULAR COUNCIL

TO: **Mayor & Council** DATE: **July 16, 2019**
FROM: **General Manager, Corporate Services** FILE: **3900-02**
SUBJECT: **Vaping and E-Cigarette Product Use and Sales and Proposed Amendments to Business License By-law, 1999, No. 13680**

RECOMMENDATION

The Corporate Services Department recommends that Council:

1. Receive this report for information;
2. Approve proposed amendments to *Business License By-law, 1999, No. 13680*, as documented in Appendix "I" of this report that includes the same restrictions on vaping and e-cigarette product sales as tobacco product sales and includes the BC Ministry of Health requirement that all retail vendors of these products display signage on their premise that advises customers they must be 19 years of age or older to purchase these products;
3. Authorize the City Clerk to give public notice, in the form of newspaper advertisement, of the proposed amendments to *Business License By-law, 1999, No. 13680*, as documented in Appendix "I", and to provide an opportunity to persons who consider they are affected by the proposed amendments to make representations to Council;
4. Direct staff to report back to Council on any representations received prior to Council considering final adoption of the proposed amendments to *Business License By-law, 1999, No. 13680*, as documented in Appendix "I"; and
5. Endorse the measures proposed by Health Canada and the BC Ministry of Health pertaining to the sale of vape products and their use, as contained in this report.

INTENT

The purpose of this report is to provide Council with background information on vaping and e-cigarette products and the current Federal, Provincial and Local Government regulations surrounding the sale and use of these products; and to seek Council's approval of the proposed bylaw amendments. The amendments would place the same restrictions on vaping and e-cigarette product sales as tobacco product sales and require all retail vendors of these products to display signage advising customers that they must be 19 years of age or older to purchase these products.

BACKGROUND

At the April 15, 2019 Council Meeting, Council passed a motion that “staff provide a report that includes options for increasing the restrictions on vape shops, with consideration for the possibility of banning them altogether.”

Overview of Vaping Products and Their Use Amongst Youth

Vaping products, also referred to as e-cigarettes, are battery-powered devices that heat a liquid solution to create an aerosol (vapour or cloud). These devices do not contain tobacco and do not involve burning. Vaping products come in many shapes, sizes, and styles. They can contain low to high amounts of nicotine, which are readily absorbed providing a greater nicotine “hit.”

The use of vaping products amongst youth is significantly increasing. New research released in June 2019 from the University of Waterloo suggests that vaping amongst young Canadians has skyrocketed by 74% in just one year. The study found the number of Canadians aged 16 to 19 who reported vaping in the previous month jumped from 8.4% in 2017 to 14.6% in 2018. Rates of weekly use climbed to 9.3% from 5.2% over the same time period. The study also reflects that conventional cigarette use increased from 10.7% in 2017 to 15.5% in 2018, deviating from decades of research suggesting youth smoking in Canada was on the decline.

Based on an earlier study that was conducted between October 2016 and June 2017 by the University of Waterloo’s “Canadian Student Tobacco, Alcohol, and Drugs Survey” (“CSTADS”), it was found that less than one quarter (22%) of the 52,103 students surveyed across Canada between grades 7 to 12 purchased vaping products through a retail source. Retail sources include purchases made in store or online. More than half of these students (53%) say it is “fairly easy” or “very easy” to access vaping products. CSTAD is supported and funded by Health Canada to carry out biennial surveys in this regard.

Health Impacts

While the long-term health effects of using vaping products are currently unknown and continue to be studied, Health Canada has stated that using vaping products can adversely impact health. The toxic chemicals in the aerosol lead to short-term respiratory and cardiovascular health effects and may cause cancer. Vaping products that contain nicotine can lead to nicotine addiction and physical dependence. The immediate response to nicotine includes increased heart rate and blood pressure. Youth are particularly susceptible to the negative effects of nicotine. It can alter brain development, affect memory, concentration, and mood.

Health Canada has also stated that for cigarette smokers, vaping products may be considered a less harmful alternative since aerosol contains fewer toxic chemicals compared to cigarettes. However, given the potential and unknown harms of vaping products, people who do not smoke should not vape.

In April 2019, the Canadian Council of Chief Medical Officers of Health, representing chief medical officers from across Canada, issued a warning about the dangers of youth vaping stating that vaping poses a serious health risk. The statement called on government to take greater action to reduce youth access, as a new generation of youth addicted to nicotine may lead to a resurgence in smoking or create new public health problems, reversing decades of progress.

DISCUSSION

Vaping products are legal in Canada. There are both Federal and Provincial laws that govern how vaping products are produced, labelled, promoted, sold and used. With the exception of Alberta and Saskatchewan, all provinces have e-cigarette legislation. Many local governments across Canada have their own bylaws that further restrict the use of vaping products. The subsequent sections of this report outline existing regulations for each level of government and highlight the latest developments pertaining to the evolution of these regulations.

Federal Government Regulation

In May 2018, the Federal Government enacted the *Tobacco and Vaping Products Act* (“TVPA”) to regulate the manufacture, sale, labelling and promotion of tobacco products and vaping products sold in Canada. The TVPA replaces the former *Tobacco Act* that was originally enacted in 1997 in response to the national public health problem posed by tobacco use. The *Tobacco Act* and its regulations have been a key component in advancing the government's strategy to protect the health of Canadians from tobacco related death and disease.

In light of the growing presence of vaping products on the Canadian market, the TVPA provides a new legal framework for regulating vaping products to protect young persons from nicotine addiction and tobacco use, while allowing adults access to vaping products as a less harmful alternative to smoking.

For vaping products, the purpose of the TVPA is to:

- Protect young persons and non-tobacco users from inducements to use vaping products;
- Protect the health of young persons and non-users of tobacco products from exposure to and dependence on nicotine that could result from the use of vaping products;
- Protect the health of young persons by restricting access to vaping products;
- Prevent the public from being deceived or misled with respect to the health hazards of using vaping products; and
- Enhance public awareness of the health hazards of using vaping products.

The TVPA prohibits sales of vaping products to any person under the age of 18. Provincial governments across Canada have the authority to raise the minimum age restriction beyond the age of 18.

Federal Government - Proposed Changes

In early 2019, the Federal Government introduced a proposal to ban advertisements for vaping products from public places where young people could see them, including billboards and public transit. The ban would apply to retail stores where youth are allowed, as well as print publications, websites and social media. Vaping ads would be prohibited on TV and radio, but only immediately before, during and after youth programming. It also launched a multi-phase campaign to educate teens about the risks associated with vaping at a young age.

In April 2019, the Federal Government announced it was proposing additional measures to stop young people from using e-cigarettes, including:

- A crackdown on the availability of flavours;
- Limiting the concentration of nicotine in e-cigarettes; and
- Placing restrictions on online sales and regulating vaping products to make it harder for youth to conceal them in schools.

BC Government Regulation

In BC, the Ministry of Health has established the legal minimum age requirement to buy vaping product as 19 years of age, similar to the age requirement for smoking. The Ministry of Health is also responsible for regulating the display, sale and use of vaping products through the *Tobacco and Vapour Products Control Act and Regulation* which is enforced by the five regional health authorities.

The *Tobacco and Vapour Products Control Act and Regulation* controls the use, sale and display of tobacco products. Under this legislation, the following are banned:

- Sale and supply of vaping products to minors (under 19);
- Sales of vaping products wherever tobacco sales are banned;
- Vaping anywhere smoking is banned (inside public spaces and workplaces), with the exception of vape shops where minors are not allowed to enter; with a maximum of two people sampling a product at the same time;
- Vaping in cars with children under 16;
- Vaping within six metres of doors, air intakes and open windows;
- Any kind of promotion of vaping products in stores except point of sale showing availability and price, including duty free shops;
- All point of sale display of vaping products except where minors are prohibited, permits vending machines in adult only venues, including duty free shops; and
- Vaping on health authority property unless in designated areas.

In addition to the above, the *Tobacco and Vapour Products Control Act and Regulation* prohibits the use of vaping products at all kindergarten to grade 12 school sites across BC at all times and mandates that the school boards, superintendents, and principals throughout the province be accountable if there is a violation. In an effort to support school districts across the region, in May 2019, the BC Lung Association, in partnership with Fraser Health and Vancouver Coastal Health, released an information brochure on vaping with an intended audience of students and parents. A copy of the brochure is attached as Appendix "II".

BC Government Enforcement of Vaping Regulations

Appendix "III" contains a document titled "Requirements under the Tobacco and Vapour Products Control Act and Tobacco and Vapour Products Control Regulation" that was prepared by the BC government just prior to the enactment of this legislation in September 2016.

This document provides an outline of the requirements of retailers and users of vape products, as well as an overview of penalties for violations of the legislation that would be enforced by a BC Health Authority Enforcement Office as follows:

- The issuance of a violation ticket ranging from \$345 to \$575 depending on the contravention; and
- Making a request for an administrative hearing for more serious violations that allows both the retailer and enforcement officer an opportunity to provide evidence in a hearing. If a contravention is found, adjudicators can set monetary penalties and/or suspend tobacco sales authorizations and prohibit the sale of vapour products. Monetary penalties range up to \$5,000, and suspensions of tobacco sales authorizations and prohibition of sale of vapour products range up to 180 days.

BC Government - New Developments

In late June 2019, the BC Minister of Health released a statement that the BC government, as part of a Federal Government consultation on vaping, has recommended Federal regulatory action in the following four areas:

1. Restricting the concentration and delivery of nicotine;
2. Restriction to the promotion and sale of flavoured vaping products;
3. Restrictions on advertising of vaping products; and
4. Measures aimed at reducing youth appeal of the vaping device itself.

The BC Health Minister also endorsed the implementation of six measures noted in a recent federal consultation paper:

1. Requiring that online retailers post information advising prospective customers that the sale of vaping and tobacco products are restricted to persons of legal age;
2. Requiring two-step age verification for online retailing, like the age verification system in place in B.C. for online cannabis ordering;
3. Requiring that packages containing vaping or tobacco products bear a prescribed label that reads 'Age verification required at delivery';
4. Requiring a signature upon delivery and prohibiting packages from being left on doorsteps;
5. Restricting delivery to prescribed carriers; and
6. Restricting online retailing to retailers that utilize third-party age-verification services.

The Health Minister further stated that while it is the BC government's preference to work with the Federal Government on joint action towards restricting the sale of vaping products to youth, it also stands ready to introduce its own initiatives should Federal action be delayed. A similar approach has already been taken by the province of Quebec.

In addition to the above, the BC Health Minister announced that the BC government will work with youth across the province to establish youth-led efforts to curb vaping among young people.

Recommendations Regarding Federal and Provincial Proposed Changes

Given that the overarching regulations on vaping sales and use stem from senior levels of government in Canada, it is recommended that the City endorse the measures proposed by Health Canada and the BC Ministry of Health regarding the sale of vaping products and their use, all as contained above.

Local Government Regulation

Staff's research into municipal vaping prohibitions reveals that no municipality in Canada has presently imposed an outright ban on vaping products and use.

A review of several local governments within the Metro Vancouver region and across Canada reveals that municipalities are allowing the sale and use of vaping products provided that the vendors and users are, at a minimum, following Federal and Provincial legislation. Beyond this, the zoning requirements in each municipality vary slightly and all require that the sale and use of vaping products follow the same requirements as their respective tobacco sales and use bylaws.

In the United States, the City of San Francisco announced in late June 2019 that it would ban vaping and e-cigarette sales, making it the first city in North America to do so. The City of San Francisco bylaw (referred to as an "ordinance" in US cities) states that "no person shall sell or distribute an electronic cigarette to a person in San Francisco unless that product has undergone premarket review by the US Food and Drug Administration". To date, no e-cigarette or vaping product sold in the United States has undergone a premarket review by the US Food and Drug Administration.

The San Francisco ban includes sales in retail stores, as well as online sales shipped to a San Francisco address. The ordinance also applies to flavored tobacco products in addition to e-cigarettes. The measure does not ban the use of vaping products among people 21 and older. Many cities across the United States that are considering taking the same approach are waiting to determine the effectiveness of the ban in San Francisco before they proceed in this regard.

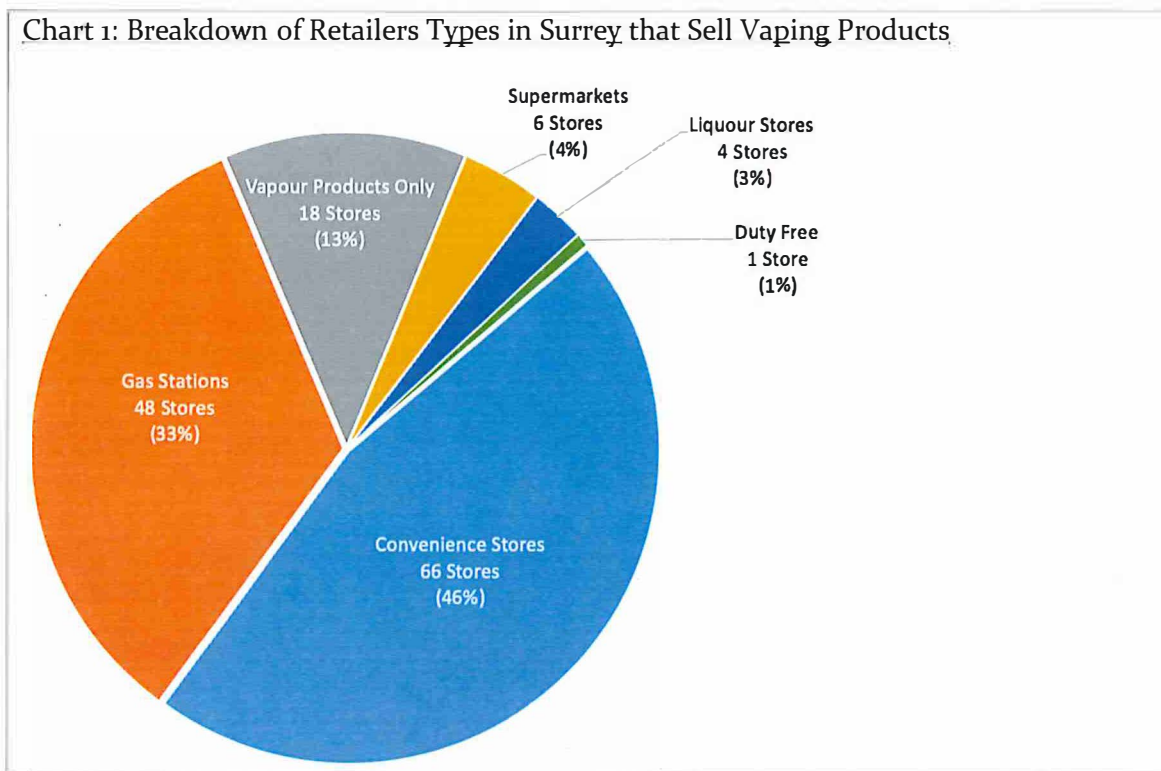
City of Surrey Regulations

At present, vaping products are sold at 143 retail locations throughout Surrey, including convenience stores, gas stations and retail stores that traditionally sell tobacco products.

Retail stores that specialize in vape-only products have become more common in recent years. The City's practice towards issuing business licenses for vape-only shops has been to conduct an inspection of the retail premise and to require the applicant to submit proof of a Fraser Health inspection prior to the issuance of the license. This is to ensure that the applicant is not selling cannabis and is adhering to the requirements of the *BC Tobacco and Vapour Products Control Act and Regulation*.

With the exception of retailers that sell vape-only products, all of the retailers that sell vape products also sell tobacco products.

A breakdown of the type of retail categories that sell vape products in Surrey is provided in the chart below:



The City of Surrey's existing regulations related to vape products are reflected below along with discussion pertaining to proposed changes (if any) of these bylaws:

Surrey Public Health Smoking Protection By-law, 2008, No. 16694

This bylaw defines "e-cigarette" and regulates where they can be used with respect to:

- The distance one must maintain from a door or window when vaping (7.5 metres in Surrey versus the Provincial requirement of 6 metres);
- Surrey does not permit vaping to occur in a taxicab, on public transit, or any passenger bus;
- Vaping in Surrey must not occur within 7.5 metres of a bus shelter or bus bench;
- Any vehicle that has an occupant that is under 19 years of age must not vape (the Provincial minimum is 16 years of age); and
- Not allowing vaping to occur in a building, with exceptions.

An offence against this bylaw can result in a fine of not less than \$100 and not more than \$2,000. If the offence continues after the issuance of the fine, each day that the offense continues constitutes a separate and distinct offense.

Surrey Parks, Recreation and Cultural Facilities Regulation By-law, 1998, No. 13480

This bylaw prohibits the smoking of cigarettes and vaping products within a City of Surrey park except in an area designated and posted for such purpose by the General Manager. The bylaw defines a park as:

- Every public park, open space, playground, urban forest (including all driveways, roadways, paths and lanes within a public park, playground or urban forest), beach, boulevard, swimming pool (whether indoor or outdoor), water playground, wading pool, ice arena, community centre, art gallery, museum, arena, exhibition building, cemetery, marina, and all other community recreational or cultural facilities owned or controlled by the City; and
- Any real property acquired and held by the City and dedicated and reserved by it for the use, recreation or enjoyment of the public.

A violation of this bylaw can result in a penalty of not less than \$50 and not more than \$2,000 plus the cost of the prosecution, or to a term of imprisonment not exceeding 3 months, or both.

At this time, it is not recommended that the City amend the above noted bylaws pertaining to vaping use. These bylaws presently exceed the Provincial requirements pertaining to the use of vaping products. Providing greater restrictions beyond the existing regulations of these bylaws may not be practical from an enforcement perspective.

Notwithstanding the above, a growing and higher usage of vaping products has been observed in the past few years at City hosted special events that are held in Surrey parks, such as the Canada Day event. In this regard, Bylaw Services staff will work with Parks, Recreation & Culture Department staff to ensure a more coordinate approach towards gaining compliance from patrons that may be using vaping products at these special events.

Zoning By-law, 1993, No. 12000

Under the City's Zoning bylaw, vaping products are ordinarily sold by businesses on properties zoned for retail or convenience use. This includes retailers that solely sell vaping products.

While the City has authority to regulate businesses pursuant to the *Community Charter*, the City does not have the authority to outright prohibit the sale of vaping products.

The City has the ability to regulate the use of land, building and other structures pursuant to the *Local Government Act*. Using this authority, the City could conceivably control the location of shops primarily selling vaping products by amending *Surrey Zoning By-law, 1993, No. 12000* to create a new category in relation to retailers primarily selling vaping products. However, this will likely lead to legal non-conforming use claims from existing shops primarily selling vaping products, which could create challenges for any future rezoning attempts provided that the use is continued in the same manner.

In this regard, an amendment to the City's Zoning Bylaw is not recommended at this time.

Business License By-law, 1999, No. 13680

This bylaw contains sections specific to Tobacco Product Sales but has not been updated to reflect vaping products or e-cigarettes. Section 64(1) of the bylaw states that “no proprietor of a retail business which has for sale cigarettes and related tobacco products will permit a person to purchase cigarettes or related tobacco products unless the person presents picture identification showing that the person is 19 years of age or over”.

It is recommended that this bylaw be amended to include the same restrictions on vaping and e-cigarette product sales as tobacco product sales. It is also recommended that the bylaw be updated to reflect the BC Ministry of Health’s requirement that all retail vendors of vaping and e-cigarette products display signage on their premise that advises customers they must be 19 years of age or older to purchase these products and that an inspection be carried out periodically by the City’s bylaw staff to ensure business license holders are adhering to this requirement.

The *Community Charter*, S.B.C. 2003, c. 26, requires Council to provide notice of the proposed amendments to the *Business License By-law, 1999, No. 13680* and Council must provide persons who consider they are affected by the proposed amendments to make representations to Council. There are no similar requirements that apply to the proposed amendments of the other by-laws referred to in this report.

SUSTAINABILITY CONSIDERATIONS

The proposed bylaw amendments support the objectives of the City’s Sustainability Charter 2.0. In particular, this work relates to the Sustainability Charter 2.0 theme of Public Safety. Specifically, the proposed bylaw amendments support the following Desired Outcome (“DO”) and Strategic Direction (“SD”):

- Community Safety and Emergency Services DO5: Surrey is recognized and perceived as a leader in establishing and maintain collaborative partnerships for community safety and well-being; and
- Community Safety and Emergency Services SD4: Enhance intergovernmental relations, and ensure broad partnerships and collaboration to address multi-jurisdictional social issues (e.g., homelessness, mental health, addictions, etc.).

CONCLUSION

This report provides Council with background information on vaping products, the increased use of vaping products amongst youth, health concerns associated with prolonged use of these products and an overview of the pertinent governing legislation by all three levels of government. The reports seeks Council approval of the proposed amendments to the *Business License By-law, 1999, No. 13680* that includes the same restrictions on vaping and e-cigarette product sales as tobacco product sales; and includes the requirement that all retail vendors display signage on their premise that advises customers they must be 19 years of age or older to purchase vaping products. This report also seeks Council to endorse the measures proposed by Health Canada and the BC Ministry of Health pertaining to the sale of vaping products as discussed above.



Rob Costanzo
General Manager, Corporate Services

RAC/KR:js **Appendices available upon request**

Appendix "I": Proposed amendments to Business License By-law, 1999, No. 13680

Appendix "II": Vaping Products Brochure Produced by the BC Lung Association, Fraser Health and Vancouver Coastal Health

Appendix "III": BC Ministry of Health's Requirements under the Tobacco and Vapour Products Control Act and Tobacco and Vapour Products Control Regulation

MEETING DATE
MONDAY
SEPT 16, 2019
PUBLIC HEARING

MEETINGS AT CITY HALL
 13450 - 104 AVENUE,
 SURREY, BC
COMMENCING: 7PM
COUNCIL CHAMBERS

MORE INFO

Planning & Development
 604.591.4441
www.surrey.ca
 View bylaws and related documents at City Hall
 Mon-Fri 8:30am-4:30pm
 except statutory holidays.

BE HEARD

Email City Clerk
clerks@surrey.ca
 Fax or mail a letter to
 City Hall (fax: 604-501-7578)
 In person at a Public
 Hearing meeting

These applications are at the Public Hearing stage, which is a critical time for public input.

Please see surrey.ca for Public Hearing items located south of No. 10 Highway (56 Avenue).

**“Surrey Zoning Bylaw, 1993, No. 12000,
 Amendment Bylaw, 2019, No. 19904”**

Application: 7919-0106-00

Location: 8972 – 160 Street

Purpose of Bylaw: The applicant is seeking to rezone the site shown in grey on the location map from One-Acre Residential Zone to Single Family Residential Zone.

The applicant is proposing to subdivide the site into 2 single family residential lots.



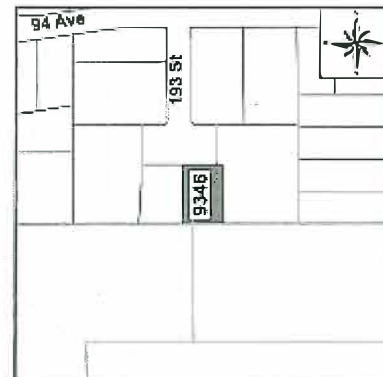
**“Surrey Zoning Bylaw, 1993, No. 12000,
 Amendment Bylaw, 2019, No. 19906”**

Application: 7919-0165-00

Location: 9346 – 193 Street

Purpose of Bylaw: The applicant is seeking to rezone the site shown in grey on the location map from Light Impact Industrial Zone to Comprehensive Development Zone.

The applicant is proposing to allow the inclusion of a pet crematorium, with ancillary memorial services as a permitted use, in an existing industrial building.



**“Surrey Zoning Bylaw, 1993, No. 12000,
 Text Amendment Bylaw, 2019, No. 19902”**

Purpose of Bylaw: To amend “Surrey Zoning By-law, 1993, No. 12000” as amended, in Part 5 in order to include changes as it relates to off-street parking requirements and parking stall dimensions for select land uses, as described in Corporate Report 2019-R077, which was approved at the April 29, 2019 meeting.

Copies of the bylaw and related documents may be viewed at City Hall Monday through Friday from 8:30am to 4:30pm or online at surrey.ca.

**“Business License Bylaw, 1999, No. 13680,
 Amendment Bylaw, 2019, No. 19903”**

Purpose of Bylaw: To amend “Business License By-law, 1999, No. 13680” as amended, in Section 2 and Section 64 and to insert a new Schedule “C” in order to place the same restrictions and requirements on vaping and e-cigarette product sales as is required for tobacco product sales. The proposed amendments are described in Corporate Report No. R150, which was approved at the July 22, 2019 meeting.

Copies of the bylaw and related documents may be viewed at City Hall Monday through Friday from 8:30am to 4:30pm or online at surrey.ca.