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**TO:** Mayor Kogon and Members of Council

**SUBMITTED BY:** Chief Dwayne Pike

**DATE:** May 27, 2019

**SUBJECT:** Smoke Free Recreational Places Act

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**ORIGIN:** The Federal *Cannabis Act* legalized recreational cannabis on October 17, 2018. Municipal governments have a role to play in terms of regulating where cannabis can be personally cultivated, and consumed in public places.

**LEGISLATIVE AUTHORITY:** Municipal Government Act, in Section 172(1) (a), (c) and (d) authorizes a council to make bylaws for municipal purposes respecting the health, well-being, safety and protection of persons; persons and activities in public places and places open to the public; and nuisances, including burning, odours and fumes.

**RECOMMENDATION:** That Council give first reading to the Bylaw to Amend the Smoke-Free Recreational Places Bylaw C-12 to include the use of cannabis and vaping.

**BACKGROUND:** The Cannabis Act took effect on October 17<sup>th</sup>, 2018 and provided a framework for the production, distribution, sale and possession of cannabis for medical and recreational purposes. Issues relating to cannabis distribution and retail sales are addressed in the Provincial Governments' Cannabis Control Act, and amendments were made to the Smoke Free Places Act in relation to the use of Cannabis and vaping. Municipal Government responsibilities include enforcement, safety, impacts on the community and home cultivation.

The Amherst Smoke Free Recreational Places Bylaw prohibit smoking on parks and recreational facilities and includes the following definition under 3(a) of the Bylaw:

*"Smoke" means to smoke, hold or otherwise have control over lighted tobacco.*

This bylaw does not recognize issues relating to the use of either cannabis or vaping products.

**DISCUSSION:**

**Smoking on Municipal Property**

Provincially, the Smoke-Free Places Act prohibits smoking tobacco in certain areas and was amended to include cannabis and other substances in addition to tobacco. Smoking of these substances is prohibited in the following areas:

- Provincial Parks and Beaches



- Within 20 metres of playgrounds, sport and recreation events or venues, and
- Within 9 metres of public trails.

Smoke and smoking are public health and safety issues. The health impacts from the exposure to second-hand tobacco are well documented, as are the issues surrounding cannabis and use of vaping products.

In its current form, the Smoke-Free Recreational Places Bylaw prohibits smoking at a park or playground on Town property or at an outdoor recreational facility on Town property or property maintained by the Town.

An amendment to the Town By-law to ban smoking, in all its forms, allows for effective enforcement of the restrictions. Differentiating between cannabis smoke and tobacco smoke would make enforcement very difficult. From an enforcement perspective, one would only have to prove that a person was 'smoking' on municipal property. Should a ban only include cannabis, the Crown would be required to prove that the substance smoked was cannabis as opposed to another substance. This would require a laboratory analysis.

With this in mind, Council may consider an amendment to the bylaw that will address smoking in its many forms. Council may also consider banning the use of such products on the grounds of an event that are being held on Town property, or property maintained by the Town. This would effectively deal with issues relating to smoking at festivals, markets or concerts that are not a 'recreational facility'.

Recommended changes to the By-law are as follows:

1. Adding a definition of cannabis: *'a cannabis plant as defined by the Cannabis Act (Canada) and includes any products containing cannabis in any form'*
2. Defining 'smoke' as *'smoke, inhale or exhale smoke from, burn, carry, hold or otherwise have control over a lit or heated cigarette, cigar, pipe, waterpipe, electronic cigarette or other device that burns or heats tobacco, cannabis or another substance that is intended to be smoked or inhaled;*
3. Under 'Prohibition' include: *'the grounds of an event on town property or property maintained by the town, that is open to the public, including, but not limited to a festival, market or concert whether admittance to the event is gratis or for a fee'*

**FINANCIAL IMPLICATIONS:** The proposed changes should not affect law enforcement and service levels.

**COMMUNITY ENGAGEMENT:** None at this time, however council may wish to direct staff to conduct more research

**ENVIRONMENTAL IMPLICATIONS:** None at this time

**SOCIAL JUSTICE IMPLICATIONS:** Cannabis/tobacco and vaping are all issues widely debated considering the health concerns as well as the possible medicinal uses of cannabis. The question may arise 'Does this By-law target specific groups in the community?'

**ALTERNATIVES:**

1. Maintain status quo
2. Amend the Smoke-Free Recreational Places By-law to include cannabis and vaping and the additional prohibition.

**ATTACHMENTS:** Smoke-Free Recreational Places Bylaw Draft with recommended amendments.

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Report prepared by: D. Pike  
Report and Financial approved by: