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TO:	CHAIR AND MEMBERS COMMUNITY & PROTECTIVE SERVICES COMMITTEE FEBRUARY 25, 2013
FROM:	WILLIAM C. COXHEAD MANAGING DIRECTOR OF PARKS & RECREATION
SUBJECT:	PROHIBITING SMOKING NEAR RECREATION AMENITIES AND ENTRANCES BY-LAW

RECOMMENDATION

That, on the recommendation of the Managing Director of Parks & Recreation, the attached By-Law (Appendix A) **BE INTRODUCED** at the Municipal Council meeting to be held on March 05, 2013 being "A By-law to prohibit smoking within 9 meters of playgrounds and recreation amenities in Municipal parks and entrances to Municipally-owned buildings" under sections 5(3), 9, 10(1), 10(2), 115(1) and 115(3) of the *Municipal Act, 2001*.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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| October 1, 2012 | Smoking Restrictions in Outdoor Public Spaces Public Participation Meeting |
| August 21, 2012 | Smoking Restrictions in Public Outdoor Spaces |
| February 13, 2012 | Communication dated January 9, 2012 from Dr. G. Pollett, Medical Officer of Health, Middlesex-London Health Unit |

BACKGROUND

On February 13, 2012 the Community Services Committee received a report from Dr. G. Pollett, Chief Medical Officer of Health from the Middlesex London Health Unit (MLHU) building the case for smoke-free public outdoor spaces in London. The MLHU identified that reduction in exposure to second hand smoke is good for everyone, especially children, would provide positive role modelling for youth and help keep our public spaces cleaner. In August 2012, staff brought forward a series of possible options for smoking restrictions in outdoor municipal spaces for Council to consider. On October 9, 2012, following a public participation meeting, Municipal Council resolved a by-law be drafted with respect to smoking restrictions in municipal outdoors spaces that will:

- a) Prohibit smoking within 9 meters (30 feet) of playground and recreation amenities in municipal parks; and,
- b) Prohibit smoking within 9 meters (30 feet) of an entrance to a municipally-owned building.

The by-law is drafted in accordance with the Council resolution, to prohibit smoking within 9m of playground and recreation amenities in municipal parks, and within 9m of an entrance to a municipally-owned building.

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NEXT STEPS

The MLHU currently enforces and promotes the *Smoke-Free Ontario Act* and the City of London Smoke-Free Public Places and Workplaces By-laws. The MLHU Tobacco Enforcement Officers will provide enforcement for this new by-law. As well the MLHU will continue to promote awareness of the bylaw, restrictions and potential consequences. The MLHU will lead a media campaign to raise awareness of the new bylaw in parks and at Municipal buildings. Upon passing of the by-law staff can seek a Set Fine Order from the Senior Regional Justice. Staff is recommending a set fine of \$205 per offence.

The City of London will install proper signage in selected parks and entrances to Municipally-owned buildings by May 1, 2013 the date on which this by-law comes into force and effect. Signage will not be a requirement for the enforcement of the by-law.



As discussed by Council at the October 9th meeting, this by-law will be revisited after three years to determine the potential to expand the scope to a full ban in Municipal parks.

Financial Impact

The media campaign and awareness program will be provided by the MLHU. The enforcement of the bylaw will also be provided with staff from the MLHU. The City of London Parks department will be arranging for the manufacture and installation of signing at selected parks that contain the largest participation levels. Funding is contained within the Parks operating budget.

Acknowledgements

This report was prepared with input by the Middlesex London Health Unit (Linda Stobo, Wally Adams), Orest Katolyk, Donna Baxter and Lynn Marshall.

PREPARED BY:	RECOMMENDED BY:
	
SCOTT STAFFORD DIVISION MANAGER PARKS & COMMUNITY SPORTS	WILLIAM C. COXHEAD MANAGING DIRECTOR, PARKS & RECREATION

- c Dr. Christopher Mackie, Middlesex-London Board of Health
- Wally Adams, Director, Environmental Health & Chronic Disease & Injury Prevention
- Linda Stobo, Manager, Chronic Disease Prevention & Tobacco Control
- George Kotsifas, Managing Director, Development & Compliance Services and Chief Building Official
- Orest Katolyk, Manager, By-law Enforcement
- Bill Campbell, Division Manager, Facilities
- Lynn Marshall, City Solicitor
- Lynne Livingstone, Managing Director, Neighbourhood, Children & Fire Services

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APPENDIX A

Bill No.
2013

By-law No.

A By-law to Prohibit Smoking within 9 metres of Recreation Amenities in Municipal Parks, and Entrances to Municipally-owned Buildings.

WHEREAS subsection 5(3) of the *Municipal Act*, S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act*, 2001 provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS subsection 10(1) of the *Municipal Act*, 2001 provides that a municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

AND WHEREAS subsection 10(2) of the *Municipal Act*, 2001 provides that a municipality may pass by-laws respecting: in paragraph 4, Public assets of the municipality acquired for the purpose of exercising its authority; in paragraph 5, Economic, social and environmental well-being of the municipality; in paragraph 6, Health, safety and well-being of persons; in paragraph 7, Services and things that the municipality is authorized to provide under subsection (1); in paragraph 8, Protection of persons and property;

AND WHEREAS subsection 115(1) of the *Municipal Act*, 2001 provides that a municipality may prohibit or regulate the smoking of tobacco in public places and workplaces;

AND WHEREAS section subsection 115(3) of the *Municipal Act*, 2001 provides that section 115 shall not apply to a highway;

AND WHEREAS it has been determined that restrictions on smoking in outdoor public spaces can have a protective effect on smoking uptake among children, youth and young adults, and supports those who are currently addicted to tobacco trying to quit;

AND WHEREAS The Corporation of the City of London considers it desirable for the public to prohibit the smoking of tobacco as set out in this by-law;

AND WHEREAS it is deemed expedient to pass this by-law;

NOW THEREFORE The Council of The Corporation of the City of London hereby enacts as follows:

1.0 DEFINITIONS

1.1 For the purpose of this by-law:

“City” means The Corporation of the City of London;

“City Park” means land and land covered by water and all portions thereof under the control, management, or joint management of the City, that is or hereafter may be established, dedicated, set apart, or made available by the City for recreational purposes, including without limiting the generality of the foregoing, a park, a leash-free dog park and an environmentally significant area,

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including any buildings, structures, facilities, erections and improvements located in or on such land;

“Enforcement Officer” means a person appointed by the Middlesex-London Board of Health to enforce this by-law or any person appointed by City Municipal Council to enforce this by-law or any police officer of the London Police Service;

“Municipally-owned Building” means a building owned by the City;

“Playground” means any part of an outdoor area fitted with play equipment, including but not limited to slides, swings, climbing equipment;

“Recreation Amenity” means any part of an outdoor area established for recreation or sport activity, including but not limited to a Playground, pools, wading pools, spray pads, outdoor skating rinks, sports fields (including but not limited to fields for soccer, baseball, football, field hockey, lacrosse, cricket), skateboard parks, bicycle or BMX parks, courts (including but not limited to courts for tennis, basketball), picnic areas, gazebos, outdoor shelters, spectator areas, food and beverage concessions, and Storybook Gardens, but does not include any golf course.

2.0 PROHIBITIONS

- 2.1 No person shall smoke tobacco or hold lighted tobacco within nine (9) metres of any part of the following public places:
- (a) a Recreation Amenity in a City Park; or
 - (b) an entrance of a Municipally-Owned Building.
- 2.2 The application of section 2.1 is not affected by the absence or presence of signage with respect to smoking tobacco or holding lighted tobacco.

3.0 EXCEPTIONS

- 3.1 This by-law does not apply to the smoking of tobacco on a highway.
- 3.2 This by-law does not prohibit an Aboriginal person from smoking tobacco or holding lighted tobacco, if the activity is carried out for traditional Aboriginal cultural or spiritual purposes.
- 3.3 This by-law does not prohibit a non-Aboriginal person from smoking tobacco or holding lighted tobacco, if the activity is carried out with an Aboriginal person and for traditional Aboriginal cultural or spiritual purposes.

4.0 ENFORCEMENT

- 4.1 This by-law may be enforced by an Enforcement Officer.
- 4.2 No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this by-law.
- 4.3 (a) Where any person contravenes this by-law, such person is subject to the provisions of the *Trespass to Property Act*.
- (b) An Enforcement Officer, the Managing Director of Parks and Recreation Services, the Managing Director of Neighbourhood, Children's and Fire Services, or their written designates, or a person designated in writing by the City Manager, may order a person believed to be in contravention of this by-law to:
- (i) cease the activity that is in contravention of the by-law; and/or
 - (ii) leave the premises.

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5.0 PENALTY

- 5.1 Any person who contravenes any provision of this by-law is guilty of an offence and is liable to a minimum fine of \$100 and a maximum fine of not more than Ten Thousand Dollars (\$10,000).
- 5.2 If this by-law is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the by-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order,
 - (a) prohibiting the continuation or repetition of the offence by the person convicted; and
 - (b) requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

6.0 CONFLICTS

- 6.1 If a provision of this by-law conflicts with an Act or a regulation or another by-law, the provision that is the most restrictive of smoking shall prevail.

7.0 SEVERABILITY

- 7.1 If any section or sections of this by-law or parts thereof are found in any court of law to be illegal or beyond the power of Council to enact, such section or sections or parts thereof shall be deemed to be severable and all other sections or parts of this by-law shall be deemed to be separate and independent there from and to be enacted as such.

8.0 SHORT TITLE

- 8.1 This by-law may be referred to as the "Smoking Near Recreation Amenities and Entrances By-law".
- 8.2 This by-law shall come into force and effect on the 1st. day of May, 2013.

PASSED in Open Council , 2013

Joe Fontana
Mayor

Catharine Saunders
City Clerk

First reading -
Second reading -
Third reading -