

THE RESPONSIBILITIES AND POWERS OF ONTARIO MUNICIPALITIES TO ADDRESS TOBACCO USE.

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Introduction and summary

This review seeks to identify the responsibilities and powers of Ontario local governments to regulate tobacco. The purpose of the document is to assist local authorities in their discussions of ways to design and implement interventions to reduce tobacco use. The review was undertaken at the suggestion of several individuals with responsibilities for tobacco control in Ontario settings. The work was funded by Health Canada through a contribution agreement under the Substance Use and Addictions Programs. The conclusions reached and the views expressed are the responsibility of the authors.

Local governments in Ontario operate as “creatures of the province”. Their responsibilities to protect public health, their authority to regulate commercial and private activity, and their capacity to generate revenues to do so are established by provincial laws and administrative practices. Local public health units have wide-ranging responsibilities to implement substance use interventions, including those to prevent and reduce smoking. They have wide-ranging authorities to regulate commercial and private practices. While they do not have the authority to tax, local governments are authorized to impose regulatory charges to defray the costs to government that are caused by the activity.

Public health and tobacco control exist in the shared jurisdiction of federal, provincial and municipal governments. Each level of government has authority to regulate tobacco sales and use, and the Smoke-Free Ontario Act makes clear that local laws can be stronger than provincial ones. In some jurisdictions, local public health authorities have demonstrated an interest in implementing stronger public health regulations than the national-level standards.

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Ontario mandates local governments to reduce tobacco use

Ontario's *Health Promotion and Protection Act* establishes the organization and delivery of public health services and the promotion and protection of public health in Ontario.¹ In addition to setting the duties of medical officers of health and other key local authorities, this law sets (by reference) the public health standards for the province. These standards, revised in 2018,² set wide-ranging responsibilities for local health authorities. Relevant to tobacco control are the responsibilities of local health authorities to conduct population health assessments, address health inequities, respond to current and emerging evidence, prevent chronic disease, reduce exposure to health hazards, improve infant and child health, obtain optimal health for school-aged children and reduce substance use.

Through the Public Health Standards, the province requires boards of health to put in place interventions “using a comprehensive health promotion approach that addresses risk and protective factors to reduce the burden of preventable injuries and substance use in the health unit population.” In developing this program, they are required to assess local needs for tobacco control, which is defined in their mandate as “preventing the initiation of tobacco; promoting quitting among young people and adults; eliminating exposure to environmental tobacco smoke; and identifying and eliminating disparities related to tobacco use and its societal outcomes among different population groups.”

In addition to these general duties, local public health authorities also have specific obligations to enforce provincial tobacco control laws. The mandatory Tobacco Protocol 2018³ requires local governments to enforce the *Smoke-Free Ontario Act*, and specifies the number of annual inspections at each retailer, school, controlled smoking areas, as well as responding to complaints, the collection of data, the training of staff and public reporting. Similar obligations are required under the Electronic Cigarettes Protocol.⁴

1 Health Protection and Promotion Act, 1990, s. 2 <https://www.ontario.ca/laws/statute/90h07>

2 Ontario Public Health Standards: Requirements for Programs, Services, and Accountability. 2018.

http://www.health.gov.on.ca/en/pro/programs/publichealth/oph_standards/docs/protocols_guidelines/Ontario_Public_Health_Standards_2018_en.pdf

3 Government of Ontario. Ministry of Health and Long-Term Care. Tobacco Protocol 2018.

http://www.health.gov.on.ca/en/pro/programs/publichealth/oph_standards/docs/protocols_guidelines/Tobacco_Protocol_2018_en.pdf

4 Government of Ontario. Ministry of Health and Long-Term Care. Electronic Cigarettes Protocol, 2018

http://www.health.gov.on.ca/en/pro/programs/publichealth/oph_standards/docs/protocols_guidelines/E-Cigarette_Protocol_2018_en.pdf

Ontario empowers its municipalities to regulate

The regulatory authority of municipalities in Canada is set by provincial law, which is why they are frequently referred to as ‘creatures of the provinces’.

In Ontario the principal laws which provide authority to municipal governments are the *Municipal Act*⁵ which applies to 443 Ontario municipalities and the *City of Toronto Act*,⁶ which provides the province’s largest and capital city with additional powers. It also outlines the relationship of authorities in two-tiered systems of local government. The *Planning Act*⁷ describes where municipalities can set conditions for land use.

Provincial regulations further describe the authority of municipalities to issue licences or control activities.⁸ The relationship between the exercise of municipal and provincial government authority is also codified in agreements.⁹

ONTARIO MUNICIPALITIES HAVE BROAD AUTHORITY OVER HOW BUSINESSES OPERATE

In its guidance to municipal councillors, the Ontario government acknowledges that municipalities have “broad permissive powers to pass bylaws”,¹⁰ including on the following issues connected with tobacco sales and use:

- economic, social and environmental well-being of the municipality, including respecting climate change
- health, safety and well-being of persons
- services and things that the municipality is authorized to provide
- protection of persons and property, including consumer protection
- structures, including fences and signs
- business licensing

The Ontario Municipal Act gives local governments broad scope of authority for bylaws concerning “health, safety and well-being of persons”, for “consumer protection” and for “business licensing”.

In addition to these general authorities, the *Municipal Act* gives local governments several specific powers, including:

- “broad authority” to pass bylaws respecting the health, safety and well-being of persons, business licensing, and consumer protection. (s. 10, 11)
- explicit authority to regulate smoking in public and workplaces, other than sidewalks or roads. (s. 115)
- general authority to pass bylaws respecting the “health, safety and well-being of persons”. (s. 11(2))
- authority over business licences, including the right to charge licence fees, set conditions of receiving or continuing to hold a licence. (s. 150-151). This power has important limitations: cities cannot use bylaws to prohibit manufacturing and wholesale trade, (s. 132) although they may put conditions on such licences.
- authority to use licence fees and charges to recover municipal costs. (s. 391)

5 Government of Ontario. *Municipal Act*, 2001. <https://www.ontario.ca/laws/statute/01m25>

6 Government of Ontario. *City of Toronto Act*, 2006. <https://www.ontario.ca/laws/statute/06c11>

7 Government of Ontario. *Planning Act*, 1990. <https://www.ontario.ca/laws/statute/90p13>

8 These can be accessed at: <https://www.ontario.ca/laws/regulation/060583>. They include Ontario Regulation 583/06 Licensing powers,

9 Association of Municipalities of Ontario: Memorandum of Understanding. <https://www.ontario.ca/page/association-municipalities-ontario-memorandum-understanding>.

10 Government of Ontario. *Ontario municipal councillor’s guide*. 2018. Chapter 7. Councillors as lawmakers <https://www.ontario.ca/document/ontario-municipal-councillors-guide-2018>

- authority to set the hours of most retail businesses. (s. 148)
- authority to decide where types of businesses can be located. (s. 153) (2)). Cities cannot, however, deny a licence based only on the location if there is not a zoning by law in place. (s. 153 (1))
- authority to set fines for breaking any bylaws, within limits set by the Act. (s. 425) and to use administrative penalties to promote compliance (s. 434.1)

For some goods and services, provincial law gives cities specific powers to limit business operations:

- they can limit the number and density of payday loan businesses, and the areas in which they may operate. (s. 154.1)
- they can limit the locations and numbers of adult entertainment establishments and prohibit young persons from entering. (s. 154)
- they can set the fees charged by licensed service providers like taxi cabs and limit the number of taxis. (s. 156)

Ontario municipalities have the authority to say where businesses can operate.

The Ontario *Planning Act* allows cities to prohibit certain activities in certain areas of their jurisdiction. This authority, however, cannot be established retroactively. Established businesses are grandfathered if they were operating legally at the time a zoning bylaw was passed. (s. 34).¹¹

Ontario municipalities can use business licence fees to recover the costs of their ‘regulatory regime’

The 2006 amendments to *Municipal Act* expanded the types of costs that could be recovered through licence fees. Prior to that time, the amount charged was restricted to “costs directly related to the administration and enforcement of the by-law or the portion of the by-law of the licensing municipality”.¹² Municipal authority over fees is regulated under the *Fees and Charges* regulation,¹³ which prohibits municipalities from charging fees to certain bodies (e.g. governments) or for certain purposes (such as education or capital costs). This regulation does not explicitly prohibit municipalities from charging fees to defray the expenses caused.

Ontario municipalities can implement bylaws that are stronger than provincial smoke-free laws.

The *Smoke-Free Ontario Act* does not prohibit municipalities from developing tobacco control measures that are stronger than provincial law. This law does not prevent municipalities from imposing stronger local controls. The Act explicitly provides that where there is a conflict between its provisions and those of municipalities, “the provision that is more restrictive” prevails. The courts have ruled that municipalities can use this authority, even when it could have the effect of forcing some businesses to close (s. 18).^{14 15 16}

The *Municipal Act* expressly states that the more stringent of provincial or municipal laws restricting smoking in public places and workplaces prevails. (s. 115(9))

11 Ontario. *Planning Act*, R.S.O. 1990

12 2211266 Ontario Inc., o/a Gentlemen’s Club v. The Corporation of the City of Brantford, 2012 ONSC 5830 (CanLII). <https://www.canlii.org/en/on/onsc/doc/2012/2012onsc5830/2012onsc5830.pdf>

13 Ontario Regulation 584/06. Fees and Charges. <https://www.ontario.ca/laws/regulation/060584>

14 2386240 Ontario Inc. v. The City of Mississauga, 2018 ONSC 3162. <https://www.canlii.org/en/on/onsc/doc/2018/2018onsc3162/2018onsc3162.pdf>

15 2386240 Ontario Inc. v. Mississauga (City), 2019 ONCA 413. <https://www.canlii.org/en/on/onca/doc/2019/2019onca413/2019onca413.pdf>

16 Horton v. The City of Greater Sudbury 2003 CanLII 34162 <https://www.canlii.org/en/on/onsc/doc/2003/2003canlii34162/2003canlii34162.pdf>

User Fees and Regulatory Charges can help finance local tobacco control activities

Canadian law distinguishes between levies and taxes. Municipalities can levy fees, including user fees and regulatory charges, but are generally restricted in imposing taxes.

The courts have provided guidance on how municipalities can charge user fees and regulatory charge.^{17 18 19}

- The amount a government can charge for a **user fee** generally should not exceed the cost of providing that service.
- The amount that can be imposed in a **regulatory charge** connected to a privilege or right can be assessed on the broader costs related to that activity (the ‘regulatory scheme’).

Regulatory charges apply the “polluter pay” principle

Public health measures like tobacco control fit comfortably within the restrictions set by the Supreme Court of Canada when it ruled on how regulatory charges can be imposed.

The factors to consider when identifying a regulatory scheme include the presence of:

- (1) a complete and detailed code of regulation;*
- (2) a specific regulatory purpose which seeks to affect the behaviour of individuals;*
- (3) actual or properly estimated costs of the regulation; and*
- (4) a relationship between the regulation and the person being regulated, where the person being regulated either causes the need for regulation or benefits from it.²⁰*

Typically, responsibilities of local public health units and municipal governments include many aspects of comprehensive tobacco control regulatory programs, such as preventing tobacco use by young, protecting people from second-hand smoke, supporting smokers in quitting. Specific activities undertaken by municipalities include issuing licenses, inspecting adherence by retailers to restrictions on tobacco sales (signage, sales to minors), enforcing smoke-free regulations, distributing stop-smoking medications or offering other services to quitters, running public education campaigns.

Assigning revenues from fees collected for tobacco licences such activities would be consistent with the court rulings described above. It would reduce the economic burden on the city caused by the sale of tobacco and vaping products and would provide local authorities with resources to meet their health-protection responsibilities.

Lloydminster (which straddles Alberta and Saskatchewan) imposes an additional \$350.00 licensing fee on retailers who sell flavoured tobacco or vaping products. These funds are used “to support local agencies with tobacco reduction strategies.”

City of Lloydminster
Business Bylaw 11-2018

17 Farish, KIE and Tedds, LM. User Fee Design by Canadian Municipalities: Considerations Arising from the Case Law. Canadian Tax Journal. 2014. https://www.lawsonlundell.com/media/news/462_Farish-Canadian-Tax-Law.pdf

18 Mclsaac, BA et al. Canada: Distinguishing Between A Tax And A Regulatory Charge And The Return Of Improperly Collected Money. Mondaq. July 2008. <https://www.mondaq.com/canada/Tax/63566/Distinguishing-Between-A-Tax-And-A-Regulatory-Charge-And-The-Return-Of-Improperly-Collected-Money>

19 Presentation by Tony Fleming to the Eastern Ontario Treasurer’s Association. 2011. https://www.mfoa.on.ca/MFOA/webdocs/EOTA_2011_05_fees_and_charges.pdf

20 Westbank First Nation v. British Columbia Hydro and Power Authority. [1999] 3 SCR 134,

Ontario municipalities assess different licence fees (regulatory charges) on different categories of business.

Ontario municipalities have imposed high license fees on businesses which cause the need for regulatory actions by governments.

- Many Ontario municipalities charge thousands of dollars a year to adult entertainment businesses. For example, Toronto charges owners of such establishment an annual fee of \$13,244²¹ and Ottawa charges \$7,166.²²
- Fees for mobile refreshment vehicles can also range in the thousands of dollars per year. Toronto charges \$6,513 for annual licences for curb-lane vending,²³ and Ottawa charges \$3,423 for annual licences for mobile refreshment vehicles.²⁴
- Some Ontario retailers impose no additional fees on tobacco or vaping retailers, others charge retailers significantly more than businesses for which the city has less regulatory involvement. Ottawa's annual tobacco vendor fees are now \$928, compared with a fee of \$152 for food premises.²⁵ Hamilton charges an annual fee of \$669 for tobacco retailers, with an additional fee of \$72.00 for those who sell e-cigarettes, compared with \$295 for food premises.²⁶

User fees encourage compliance

Municipal governments often charge a user fee for inspections to ensure compliance with regulations. Re-inspection fees promote compliance, as they require the business operators who are found to fail to comply with regulations to absorb the costs of later confirming that their operations have become compliant.

- Barrie charges \$155 for reinspection of defective or incomplete work,²⁷ and Ottawa charges \$100 for each such re-inspection.²⁸
- Niagara Falls charges a re-inspection fee to confirm compliance with fire regulations.²⁹ This fee is also charged in other municipalities, including Toronto³⁰ and London.³¹
- Sault Ste Marie charges a \$100 re-inspection fee for payday loan operators when a second inspection is required to confirm compliance with regulations.³²

21 City of Toronto. Toronto Municipal Code. Chapter 441, Fees and Charges. https://www.toronto.ca/legdocs/municode/1184_441-c.pdf

22 City of Ottawa. Business Licenses. <https://ottawa.ca/en/business/business-assistance-and-growth/permits-licences-and-applications-laws-and-garbage/business-licences>

23 City of Toronto. Toronto Municipal Code. Chapter 441, Fees and Charges. https://www.toronto.ca/legdocs/municode/1184_441-c.pdf

24 City of Ottawa. Business Licenses. <https://ottawa.ca/en/business/business-assistance-and-growth/permits-licences-and-applications-laws-and-garbage/business-licences>

25 City of Ottawa. Business Licenses. <https://ottawa.ca/en/business/business-assistance-and-growth/permits-licences-and-applications-laws-and-garbage/business-licences#tobacco-vendor-license>

26 City of Hamilton. Licensing Business Reference Guide.

<https://www.hamilton.ca/sites/default/files/media/browser/2016-02-01/business-licensing-reference-guide-feb2020.pdf>

27 City of Barrie. Schedule K. Planning and Building Services.

<https://www.barrie.ca/City%20Hall/ByLaws/GeneralDocuments/FeesByLawSchedules/Schedule%20K%202019.pdf>

28 City of Ottawa. Bylaw 2014-220. https://documents.ottawa.ca/sites/documents/files/documents/building_bylaw_en.pdf

29 City of Niagara Falls. By-law No. 2019-72. A by-law to fees and charges for various services, licences and publications for the City of Niagara Falls. <https://niagarafalls.ca/pdf/by-laws/schedule-of-fees.pdf>

30 City of Toronto. Fire Prevention and Rescue Fees. <https://www.toronto.ca/community-people/public-safety-alerts/understanding-emergency-services/fees-related-to-fire-prevention-fire-rescue/>

31 City of London. 2019 Fees and Charges. <https://www.london.ca/city-hall/by-laws/Documents/A-53feesandcharges.pdf>

32 City of Sault Ste Marie. Payday loan business licencing bylaw. 2019-164 <https://saultstearie.ca/Cityweb/media/Legal/By-laws/2019-164.pdf>

Examples and Precedents

A) ONTARIO BY-LAWS

Ontario municipal bylaws have curbed the intensity of some businesses

In addition to using zoning bylaws to confine certain business activities to certain areas, cities in Ontario have also imposed intensity restrictions on some businesses. Bylaws which prevent too many of one type of business in one area include:

- Restrictions on Bed and Breakfast establishments being too close together. The minimum separation distance between Bed and Breakfasts is 100m in Parry Sound³³ and Sarnia.³⁴
- Restrictions on group homes being too close together. The minimum separation distance between group homes is 450 m on Pelee³⁵ and London³⁶ and 400 m in Burlington.³⁷
- A moratorium on new licences. The City of Toronto has imposed moratoriums on newspaper boxes,³⁸ holistic practitioner applicants,³⁹ and night clubs.⁴⁰

Ontario municipal bylaws have put buffer zones around some businesses

Many communities have passed bylaws which prevent selected businesses from being too close to other establishments. These include:

- Restrictions on kennels being placed too close to a residential dwelling. The minimum separation distance between a licensed kennel and a residence is 200 m in Perth,⁴¹ 100 m in Parry Sound⁴² and 250 m in Pelee.⁴³
- Restrictions on restaurant outdoor patios being too close to homes. The minimum separation distance for unscreened outdoor commercial patios is 75 m in Ottawa.⁴⁴
- Restrictions on payday loan businesses being close to schools or casinos. In Ottawa, the minimum separation distance from a payday loan business and a school is 300 m and a casino is 500 m.⁴⁵

33 Town of Parry Sound. Zoning By-law 2004-4653. <https://www.parrysound.ca/en/do-business/resources/zoning-by-law.pdf>

34 City of Sarnia. Bylaw no. 85 of 2002. <https://sarnia.civicweb.net/document/1982>

35 Township of Pelee. Zoning by-law 2012-24

<https://www.pelee.org/wp-content/uploads/2015/06/Township-of-Pelee-Zoning-By-law-2012-24-November-30-2012.pdf>

36 City of London. Zoning by-law. Chapter 4. <https://www.london.ca/business/Planning-Development/zoning-by-law/Documents/CHAPTR04.pdf>

37 City of Burlington. Group Homes. Criteria and registration process. <https://www.burlington.ca/en/services-for-you/resources/Applications,%20Licences%20and%20Permits/Brochure.pdf>

38 City of Toronto. Municipal Code. Chapter 743. Use of Streets and Sidewalks. https://www.toronto.ca/legdocs/municode/1184_743.pdf

39 City of Toronto. Update on comprehensive review of business licensing. December 2018.

<https://www.toronto.ca/legdocs/mmis/2019/gl/bgrd/backgroundfile-123191.pdf>

40 Wellington-Dufferin-Guelph Health Unit. Alcohol Policy Review: Opportunities for Ontario Municipalities. 2018.

<https://opha.on.ca/getattachment/11455cfb-624b-4729-95b4-2850d5924217/alcohol-review.pdf.aspx>

41 Town of Perth. Comprehensive Zoning By-law No. 3358.

<https://www.perth.ca/en/do-business/resources/Documents/2017-3358-91-Amend-Zoning-By-law-No.-3358-Comprehensive-Updates-27Jun2017.pdf>

42 Town of Parry Sound. Zoning By-law 2004-4653. <https://www.parrysound.ca/en/do-business/resources/zoning-by-law.pdf>

43 Township of Pelee. Zoning by-law 2012-24

<https://www.pelee.org/wp-content/uploads/2015/06/Township-of-Pelee-Zoning-By-law-2012-24-November-30-2012.pdf>

44 City of Ottawa. Bylaw 2019-41. Part 3 Specific Use Provisions. <https://documents.ottawa.ca/en/file/9965/download?token=hOnxmn0k>

45 City of Ottawa. Bylaw 2019-41. Part 3 Specific Use Provisions. <https://documents.ottawa.ca/en/file/9965/download?token=hOnxmn0k>

- Restrictions on adult entertainment businesses being close to schools or residential dwellings. In Ottawa adult entertainment facilities may not be closer than 500 m from the minimum distance from such an establishment and a residence is 500 m “a residential use building, day care, place of worship, school, library, community centre, community health and resource centre or park, or any residential, institutional, open space or leisure zone.”⁴⁶ In Mississauga, adult-oriented businesses (adult video stores, night clubs, adult entertainment establishments) must be 800 m from a residential zone.⁴⁷

Ontario municipal bylaws have put restrictions on when certain products may be sold.

- Niagara on the Lake restricts the sale of fireworks to a small number of days in the summer,⁴⁸ as do other municipalities.

Ontario municipal bylaws have set rules for retailer behaviour.

- Burlington prohibits tobacco licencees to sell matches or lighters to children.⁴⁹
- Mississauga requires tobacco vendors to keep their premises clean and to provide litter containers around their store.⁵⁰
- Burlington specifies several measures that food providers must put in place - including lockers for footwear.⁵¹
- Hamilton forbids auctioneers from making “any misrepresentation” about the goods they are selling.⁵²
- Sault Ste Marie requires payday loan operators to post information meeting specified size and prominence on the rates charged and information on credit counselling, and to provide each customer with a brochure on credit counselling.⁵³ Similar requirements are in place in Kingston,⁵⁴ Hamilton,⁵⁵ London,⁵⁶ and other cities.

Ontario municipal bylaws have required businesses to keep and share business records

- Hamilton requires that Auctioneers maintain records and permit officials to inspect them, it requires pawnbrokers to submit weekly reports to local police authorities and requires limousine operators to maintain records for 3 years and allow municipal authorities to see them.⁵⁷
- The Township of Tay puts a condition of licence on salvage yards and recycling centres that allows municipal officials to inspect the premises as well as the “books, records or other documents of the licencee relating to such trade, calling, business or occupation in conjunction with the regulation thereof.”⁵⁸ Similar requirements exist in Orillia.⁵⁹

46 City of Ottawa. Bylaw 2019-41. Part 3 Specific Use Provisions. <https://documents.ottawa.ca/en/file/9965/download?token=hOnxmn0k>

47 City of Mississauga. Zoning Bylaw. <http://www6.mississauga.ca/onlinemaps/planbldg/ZoneBylaw/DZBR1/Part%202.pdf>

48 Niagara on the Lake. Bylaw No. 5172-19. <https://notl.civicweb.net/document/15356>

49 City of Burlington. Bylaw Number 42-2008. <https://www.burlington.ca/uploads/91/635575154676735581.pdf>

50 City of Mississauga. Business Licensing By-law 1-06. http://www7.mississauga.ca/documents/bylaws/Business_Licensing.pdf

51 City of Burlington. Business Licensing Bylaw 042-2008. <https://www.burlington.ca/en/Modules/Bylaws/Bylaw/Download/539c04ad-f7b4-4a5c-8712-983c2fb2e0b5>

52 City of Hamilton. Bylaw No. 07-170. <https://www.hamilton.ca/sites/default/files/media/browser/2017-07-06/07-170-consolidation-december-2019v2.pdf>

53 City of Sault Ste Marie. Payday loan business licencing bylaw. 2019-164 <https://saultstemarie.ca/Cityweb/media/Legal/By-laws/2019-164.pdf>

54 City of Kingston. By-Law Number 2006-2013, “Business Licenses” <https://www.cityofkingston.ca/documents/10180/16904/Business+Bylaw>

55 City of Hamilton. Bylaw No. 07-170. <https://www.hamilton.ca/sites/default/files/media/browser/2017-07-06/07-170-consolidation-december-2019v2.pdf>

56 City of London. Business Licensing By-law. L-131-16. <https://www.london.ca/city-hall/by-laws/Documents/businesslicensingL.-131-16.pdf>

57 City of Hamilton. Bylaw No. 07-170. <https://www.hamilton.ca/sites/default/files/media/browser/2017-07-06/07-170-consolidation-december-2019v2.pdf>

58 Township of Tay. Bylaw 2017-13 <https://www.tay.ca/en/your-municipality/resources/Documents/Bylaws/Business-Licensing-2017-13-as-amended.pdf>

59 City of Orillia Chapter 700. Business Licensing. <https://www.orillia.ca/Modules/Bylaws/Bylaw/Download/f9c51a93-087f-4a96-93f4-cfe2478b80b9>

- Mississauga requires pet store owners to record the name of each animals purchased, and to permit inspection by municipal authorities.⁶⁰

Ontario municipal bylaws have set restrictions on who can have a tobacco licence

- Ottawa will not issue a tobacco licence to outdoor properties or to operators using city property.⁶¹
- Brampton maintains the right to refuse a licence to anyone who has previously been convicted of selling to minors.⁶²

Ontario municipalities have identified products that cannot be sold by some retailers.

- Kingston forbids owners of a pet store licence from buying or selling dogs, cats or rabbits.⁶³ Hamilton forbids the sale in pet stores of animals which do not comply with animal bylaws.⁶⁴
- London permits city officials to set the rules on which types of animals may be sold in pet stores, and prohibits the sale of cats or dogs which do not come from a recognized shelter,⁶⁵ as does Toronto.⁶⁶ Mississauga permits the sale of these animals, but not chicks, ducklings or other poultry or dyed animals.⁶⁷

Ontario municipal bylaws have set rules for how businesses can promote their products.

- Mississauga prohibits the display of animals in pet shop windows.⁶⁸

Ontario municipal bylaws have forbidden some forms of tobacco business.

- Several Ontario cities have banned Shisha cafés, including Ottawa,⁶⁹ Peterborough,⁷⁰ Peel,⁷¹ Toronto⁷² and others. The Ontario Court of Appeal has upheld such laws.⁷³

Ontario municipal bylaws have forbidden some forms of business activity.

- Fort Frances has banned the use of single-use plastics bags (effective January 2021).⁷⁴

60 City of Mississauga. Business Licensing Bylaw. 1-06. https://www7.mississauga.ca/documents/bylaws/Business_Licensing.pdf

61 City of Ottawa. Businesses regulated by Licensing – Bylaw No. 2002-189

<https://ottawa.ca/en/business/business-assistance-and-growth/permits-licences-and-applications-laws-and-garbage/laws-businesses/licensing-law-no-2002-189/businesses-regulated-licensing-law-no-2002-189#tobacco-vendors-schedule-no-12>

62 City of Brampton. Business Licensing Bylaw 332-2013 <https://www.brampton.ca/EN/City-Hall/Bylaws/All%20Bylaws/Business%20Licensing.pdf>

63 City of Kingston. By-Law Number 2006-2013, “Business Licenses” <https://www.cityofkingston.ca/documents/10180/16904/Business+Bylaw>

64 City of Hamilton. Bylaw No. 07-170. <https://www.hamilton.ca/sites/default/files/media/browser/2017-07-06/07-170-consolidation-december-2019v2.pdf>

65 City of London. Business Licensing By-law. L-131-16. <https://www.london.ca/city-hall/by-laws/Documents/businesslicensingL.-131-16.pdf>

66 City of Toronto. Bylaw No. 182-2013. <https://www.toronto.ca/legdocs/bylaws/2013/law0182.pdf>

67 City of Mississauga. Business Licensing Bylaw. 1-06. https://www7.mississauga.ca/documents/bylaws/Business_Licensing.pdf

68 City of Mississauga. Business Licensing Bylaw. 1-06. https://www7.mississauga.ca/documents/bylaws/Business_Licensing.pdf

69 City of Ottawa Bylaw 2019-241. <https://ottawa.ca/en/living-ottawa/laws-licences-and-permits/laws/law-z/smoking-and-vaping-law-no-2019-241>

70 City of Peterborough. Bylaw 12-169. https://bylaws.peterborough.ca/bylaws/getFNDoc.do?class_id=20&document_id=436

71 City of Peel. Bylaw 30-2016. <https://www.peelregion.ca/council/bylaws/2010s/2016/bl-30-2016.pdf>

72 City of Toronto. By-law No. 1797-2019. <https://www.toronto.ca/legdocs/bylaws/2019/law1797.pdf>

73 2386240 Ontario Inc. v. Mississauga (City), 2019 ONCA 413 <http://canlii.ca/t/j0cb2>.

2326169 Ontario Inc. v. Toronto (City), 2016 ONSC 6221. <http://canlii.ca/t/gv30v>

74 Town of Fort Frances. Bylaw No. 11/20. <https://fortfrances.civicweb.net/filepro/documents/?preview=111477>

Ontario municipal bylaws protect residents from their neighbours' smoke

- The Oakville bylaw on open-air burning imposes restrictions on residents with respect to outdoor fireplaces, and protects neighbours from “significant smoke or odour that interferes with the ability of neighbours to enjoy their properties or conduct their business without disruption.”⁷⁵
- Sudbury’s outdoor fire by-law requires those who use outdoor fires to extinguish them if they receive a complaint from neighbours, forbidding fires which result in “inconvenience or irritation to others from smoke or fumes.”^{76 77}
- Mississauga does not permit open air fires “if it is a nuisance to the public.”^{78 79}
- Cornwall has banned open air fires, citing health reasons.⁸⁰

Ontario municipalities charge higher licence fees to larger businesses

- Brantford charges higher business licence fees to larger restaurants than to smaller ones.⁸¹
- St. Catherines’ licence fees for amusement arcades are based on the amount of floor space used.⁸²

Ontario Municipalities have relied on their general ‘broad authority’ to regulate non-tobacco smoking.

- Peterborough banned waterpipe smoking in public places and workplaces, applying the restrictions to tobacco and non-tobacco substances, citing its authority to “make regulations for the health, safety and well-being of persons.”⁸³
- Municipalities which have banned the use of e-cigarettes that do not necessarily contain nicotine in enclosed workplaces and public places citing this authority include Kingston,⁸⁴ Chatham-Kent,⁸⁵ Ottawa.⁸⁶ Ottawa also includes consumer protection as a basis for its updated smoke-free by-law.

75 Town of Oakville. A bylaw to amend By-law 2006-174, a by-law to regulate open air burning in the town of Oakville. Bylaw 2014-044. <https://assets.oakville.ca/blis/BylawIndexLibrary/2014-044.pdf>

76 City of Sudbury. Bylaw 2009-132. A bylaw of the City of Greater Sudbury to regulate open air burning. https://www.greatersudbury.ca/sudburyen/assets/File/Open_Air_Burning_Bylaw_May_29_2009.pdf

77 City of Sudbury. Information Bulletin May 2015. Citizens Reminded to Respect Open Air Burning By-law <https://www.greatersudbury.ca/city-hall/news-and-public-notice/2015/citizens-reminded-to-respect-open-air-burning-by-law1/>

78 City of Mississauga. Open Air Burning Bylaw. Be safe and aware. Brochure. <http://www.mississauga.ca/file/COM/openburn.pdf>

79 City of Mississauga. By-Law Number 49-03. http://www.mississauga.ca/file/COM/Open_Air_Burning.PDF

80 Cornwall Standard Freeholder. Some residents cry foul as Cornwall moves ahead with new open-air fire ban. September 10, 2019 <https://www.standard-freeholder.com/news/local-news/some-residents-cry-foul-as-cornwall-moves-ahead-with-new-bonfire-ban>

81 City of Brantford. Food Premises Business Licence Application. Municipal Code Chapter 326A-2. <https://www.brantford.ca/en/business-and-development/resources/Documents/Business-Licensing/Food-premises/Food-Premise-Application.pdf>

82 City of St. Catherines. Business Licences. <https://www.stcatharines.ca/en/livein/BusinessLicences.asp#>

83 City of Peterborough. Bylaw Number 12-169 https://bylaws.peterborough.ca/bylaws/getFNDoc.do?class_id=20&document_id=436

84 City of Kingston. By-Law Number 2018-173. <https://www.cityofkingston.ca/documents/10180/16904/Smoking+and+Vaporizing+Bylaw>

85 Municipality of Chatham-Kent. Bylaw 137-2014. <https://www.chatham-kent.ca/LocalGovernment/Documents/bylaws/Smoking%20By-law%20137-2014%20Accessible.pdf>

86 City of Ottawa. By-Law Number 2019-241. <https://ottawa.ca/en/living-ottawa/laws-licences-and-permits/laws/law-z/smoking-and-vaping-law-no-2019-241#smoking-and-vaping-law-no-2019-241>

B) BY-LAWS IN OTHER CANADIAN PROVINCES

Minimum pricing bylaws in Canada

- Kamloops requires businesses (including grocery stores) to adhere to minimum pricing of alcohol,^{87 88} as does Victoria⁸⁹ and Vancouver.⁹⁰

Buffer zones.

- Municipalities which have imposed minimum separation distance between alcohol outlets and schools or community facilities include Surrey (400 m), Edmonton (100 m), Fredericton (300 m), Calgary (150 m).

Intensity

- Municipalities which have imposed minimum separation distance between alcohol stores include Surrey (1 km),⁹¹ Edmonton (500 m), and Calgary (300 m).^{92 93 94}

Ban on the use of products by residents

- Hudson Quebec became the first Canadian municipality to ban the cosmetic use of pesticides in 1991,⁹⁵ a use of the precautionary principle that was upheld by the Supreme Court of Canada.⁹⁶ This bylaw was imitated in more than 30 Canadian towns before provincial regulations replaced them.⁹⁷

Advertising restrictions

- The City of Montreal banned outdoor advertising in certain districts in 2010,⁹⁸ with the objective of ridding the neighbourhood of visual pollution. This regulation was upheld by the Quebec Court of Appeal in 2019,⁹⁹ and the Supreme Court has not yet decided whether it will hear an appeal.¹⁰⁰

87 Wellington-Dufferin-Guelph Health Unit. Alcohol Policy Review: Opportunities for Ontario Municipalities. 2018. <https://opha.on.ca/getattachment/11455cfb-624b-4729-95b4-2850d5924217/alcohol-review.pdf.aspx>

88 City of Kamloops. Business Licence and Regulation Bylaw No. 9-60, 2012. <https://kamloops.civicweb.net/document/8290>

89 City of Victoria. Business Licence Bylaw. 89-071. [https://www.victoria.ca/assets/City~Hall/Bylaws/Business%20Licence%20Bylaw%2089-071%20\(consolidated\).pdf](https://www.victoria.ca/assets/City~Hall/Bylaws/Business%20Licence%20Bylaw%2089-071%20(consolidated).pdf)

90 City of Vancouver. Bylaw 4450. <https://bylaws.vancouver.ca/4450c.PDF>

91 Canadian Partnership Against Cancer. Local Government Alcohol Policy Pack. February 2018. <https://www.partnershipagainstcancer.ca/wp-content/uploads/2018/05/local-government-alcohol-policy-pack-en.pdf>

92 Wellington-Dufferin-Guelph Health Unit. Alcohol Policy Review: Opportunities for Ontario Municipalities. 2018. <https://opha.on.ca/getattachment/11455cfb-624b-4729-95b4-2850d5924217/alcohol-review.pdf.aspx>

93 Canadian Partnership Against Cancer. Local Government Alcohol Policy Pack. February 2018. <https://www.partnershipagainstcancer.ca/wp-content/uploads/2018/05/local-government-alcohol-policy-pack-en.pdf>

94 City of Edmonton. Bylaw 17836. https://www.edmonton.ca/city_government/documents/PDF/Bylaw-17836.PDF

95 City of Hudson. Operational By-law No. 270. <https://hudson.quebec/wp-content/uploads/2016/04/270-Pesticides-En.pdf>

96 114957 Canada Ltée (Spraytech, Société d'arrosage) v. Hudson (Town), 2001 SCC 40 (CanLII), [2001] 2 SCR 241

97 City of Toronto Final Evaluation of Toronto's Pesticide Bylaw and Summary of New Provincial Pesticide Regulation. <https://www.toronto.ca/legdocs/mmis/2009/hl/bgrd/backgroundfile-21099.pdf>

98 Plateau de Mont Royal. Règlement d'organisme de l'arrondissement du Plateau Mont Royal. <http://ville.montreal.qc.ca/sel/sypre-consultation/afficherpdf?idDoc=21697&typeDoc=1>

99 Ville de Montréal c. Astral Media Affichage, 2019 QCCA 1609 (CanLII)

100 Supreme Court of Canada. Docket 38911. Astral Media Outdoor, L.P., et al. v. Ville de Montréal.

Substance use reduction

- As part of an initiative to reduce substance use and attendant harms, in 2020, Edmonton amended its business bylaw to impose a requirement for a \$50,000 deposit on any raves, as well as several requirements on how the events were organized.^{101 102}

Conditions of licence

- Peel region regulations on tanning salons require the posting of warning signs, requirements for safety equipment and age restrictions.¹⁰³ Similar restrictions are in place in Victoria.¹⁰⁴

101 City of Edmonton. Business Licence Bylaw. 13138 <https://www.edmonton.ca/documents/Bylaws/C13138.pdf>

102 City of Edmonton. Electronic Dance Music Event. Bylaw 19166. <https://www.edmonton.ca/documents/Bylaws/BL19166.pdf>

103 Regional Municipality of Peel. By-law Number 85-2012. <https://www.peelregion.ca/council/bylaws/2010s/2012/by-85-2012.htm>

104 Capital Regional District Bylaw No. 3711. <https://www.crd.bc.ca/docs/default-source/crd-document-library/bylaws/publichealthcleanairidlingtanningtattoo/3711---tanning-facility-regulation-bylaw-2010B.pdf>

C) MUNICIPAL TOBACCO-CONTROL REGULATIONS IN OTHER COUNTRIES

Although tobacco control measures are often managed by national or state levels of government, local health authorities in many countries have adopted measures which go further than the national standards. Examples of this were seen in Ontario, when several municipalities adopted bylaws to ban smoking in workplaces, public places, patios and parks well before these were adopted by the province.

Buffer zones

- In 2016, West Hollywood prohibited new licences from being issued to retailers within 600 feet of youth populated areas, like schools,¹⁰⁵ and this measure is also in place in other cities.¹⁰⁶ Other cities have prohibited the sale of certain product categories in proximity to children's places: Berkeley does not allow the sale of flavoured tobacco products within 600 feet of any school.¹⁰⁷

Flavour bans

- More than 200 U.S. municipalities ban or restrict the sale of flavoured tobacco products, including some which restrict flavoured e-cigarettes.^{108 109} New York City's ban on all flavoured e-cigarettes comes into effect in July, 2020.¹¹⁰

Minimum legal sales age

- In December 2019, the U.S. Congress adopted a law to set the minimum age for tobacco sales at 21 years.¹¹¹ Before that time, hundreds of U.S. cities and dozens of U.S. states had already adopted that measure. In 2013, New York City became the first major city to raise the legal age to 21.¹¹²

Restrictions on who can sell tobacco

- Boston bans the sale of tobacco by health care institutions and schools.¹¹³ Several municipalities ban the sale of flavoured tobacco products except in age-restricted stores, and more than 200 have banned the sale of tobacco in pharmacies.^{114 115}

105 City of West Hollywood. Tobacco Retailer Ordinance. June 2016. http://qcode.us/codes/westhollywood/view.php?topic=5-2-5_114&showAll=1&frames=off

106 City of Berkeley, Cal. Code 9.80.035(C) <https://www.codepublishing.com/CA/Berkeley/>

107 City of Berkeley, Cal. Code 9.80.035(D) <https://www.codepublishing.com/CA/Berkeley/>

108 Public Health Law Center. U.S. Sales restrictions on flavored tobacco products. June 2019. <https://www.publichealthlawcenter.org/sites/default/files/resources/US-Sales-Restrictions-Flavored-Tobacco-Products-2019.pdf>

109 Tobacco Free Kids. States & Localities that have restricted the sale of flavored tobacco products. <https://www.tobaccofreekids.org/assets/factsheets/0398.pdf>

110 New York City Press Release. Protecting Young New Yorkers: De Blasio Signs Ban of Flavored E-Cigarettes Into Law. December 16, 2019 <https://www1.nyc.gov/office-of-the-mayor/news/620-19/protecting-young-new-yorkers-de-blasio-signs-ban-flavored-e-cigarettes-law#/0>

111 US Congress. H.R. 1865: Further Consolidated Appropriations Act, 2020, s. 603. <https://www.govtrack.us/congress/bills/116/hr1865/text>

112 Public Health Law Centre. Tobacco 21: Tips and Tools

113 Boston Public Health Commission Regulation Restricting the Sale of Tobacco Products in the City of Boston. <http://www.bphc.org/boardofhealth/regulations/Documents/Tobacco%20Control%20Pharmacy,%20Educational%20Institution%20and%20Blunt%20Wrap%20Regulation%20-%20promulgated%20on%20December%202011,%202008.pdf>

114 Public Health Law Center. U.S. Sales restrictions on flavored tobacco products. June 2019. <https://www.publichealthlawcenter.org/sites/default/files/resources/US-Sales-Restrictions-Flavored-Tobacco-Products-2019.pdf>

115 American Nonsmokers' Rights Foundation. Municipalities with tobacco-free Pharmacy Laws. <http://no-smoke.org/wp-content/uploads/pdf/pharmacies.pdf>

Restrictions on product categories.

- Boston bans the sale of blunt wraps.¹¹⁶ San Francisco bans the sale of e-cigarettes.¹¹⁷

Minimum Price.

- Berkeley does not allow cigarettes to be sold for less than \$8.00 per package, and bans any volume discounting.¹¹⁸

Smoke-Free Housing

- More than 50 California municipalities have adopted city or county-level laws to prohibit smoking in all units of multi-unit housing properties.¹¹⁹ These laws apply to privately-owned and publicly-owned residences, including existing and future buildings. These laws do not grandfather existing tenants, and most do not permit smoking on balconies.

Density

- In 2014, San Francisco adopted a tobacco permit density reduction ordinance, using attrition to achieve a goal of 45 permits per district.^{120 121} Other U.S. municipalities have put a cap on the number of tobacco retailers.¹²²

Environmental fees

- Since 2009, San Francisco has imposed a cigarette litter abatement fee, paid for by each retailer. It is currently set at \$1 per package. Each retailer, who must report on a quarterly basis the number of cigarettes sold.¹²³

Ending tobacco sales.

- In June 2019 Beverly Hills, California, approved an ordinance to prohibit the sale of tobacco products in the city, starting January 1, 2021.¹²⁴ (The sale of flavoured tobacco was already forbidden.)¹²⁵

116 Boston Public Health Commission Regulation Restricting the Sale of Tobacco Products in the City of Boston.

<http://www.bphc.org/boardofhealth/regulations/Documents/Tobacco%20Control%20Pharmacy,%20Educational%20Institution%20and%20Blunt%20Wrap%20Regulation%20-%20promulgated%20on%20December%202011,%202008.pdf>

117 City of San Francisco. Ordinance 122-19. <https://sfbos.org/sites/default/files/o0122-19.pdf>

118 City of Berkeley, Cal. Code 9.80.031(D)

119 American NonSmokers' rights Foundation. U.S. Laws for 100% Smokefree Multi-Unit Housing. January 2020 <https://no-smoke.org/wp-content/uploads/pdf/smokefreemuh.pdf>

120 City of San Francisco. Ordinance 259-14. <https://sfbos.org/ftp/uploadedfiles/bdsupvrs/ordinances14/o0259-14.pdf>

121 San Francisco Tobacco Free. Tobacco permit Density Reduction Ordinance. <https://sanfranciscotobaccofreeproject.org/wp-content/uploads/Density-Elements-and-Definitions-1.21.15.pdf>

122 ChangeLab Solutions. Tobacco retailer density. https://www.changelabsolutions.org/sites/default/files/CLS-BG214-Tobacco_Retail_Density-Factsheet_FINAL_20190131.pdf

123 City of San Francisco. Cigarette Litter Abatement Fee. <https://sftreasurer.org/business/taxes-fees/cigarette-litter-abatement-fee-cig>

124 City of Beverly Hills. Ordinance 19-0-2783. <https://www.beverlyhills.org/cbhfiles/storage/files/12788426161892006199/19-O-2783.PDF>

125 City of Beverly Hills. Ordinance 18-0-2758. <http://www.beverlyhills.org/cbhfiles/storage/files/414736079206556183/Ordinance18-O-2758ProhibitingSaleofFlavoredTobaccoProducts.pdf>