

MIDDLESEX-LONDON BOARD OF HEALTH

REPORT NO. 15-24

TO: Chair and Members of the Board of Health

FROM: Dr. Alexander Summers, Medical Officer of Health
Emily Williams, Chief Executive Officer

DATE: 2024 March 21

aIPHA RESOLUTION: PERMITTING APPLICATIONS FOR AUTOMATIC PROHIBITION ORDERS UNDER THE SMOKE FREE ONTARIO ACT, 2017 FOR VAPOUR PRODUCT SALES OFFENCES

Recommendation

It is recommended that the Board of Health:

- 1) *Receive Report No. 15-24 re: “aIPHa Resolution: Permitting Applications for Automatic Prohibition Orders under the Smoke Free Ontario Act, 2017 for Vapour Product Sales Offences”; and*
 - 2) *Direct staff to submit the draft resolution, attached as [Appendix A](#), to the Association of Local Public Health Agencies (aIPHA) for consideration at the Annual General Meeting on June 5, 2024.*
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Report Highlights

- The Health Unit’s Tobacco Enforcement Officers have noted an increase in the number of warnings and charges being issued against vapour product retailers.
- Under Section 22 of the *Smoke-Free Ontario Act, 2017 (SFOA, 2017)*, routine non-compliance with commercial tobacco sales offences by tobacco product retailers results in the issuance of an automatic prohibition order by the Ministry of Health. This does not apply to vapour product retailers.
- Health Unit staff prepared a draft resolution, attached as [Appendix A](#), that if approved, would go to the Association of Local Public Health Agencies (aIPHA) Annual General Meeting on June 5, 2024.
- The resolution recommends that aIPHA urge through the Ministry of Health to the Government of Ontario to implement an automatic prohibition order regime for vaping product sales offences that is modelled after Section 22 of the *SFOA, 2017*.

Background

Nicotine vapour products were legalized in Canada on May 23, 2018 with the enactment of Canada’s *Tobacco and Vaping Products Act*. Ontario’s *Smoke-Free Ontario Act* and *Electronic Cigarettes Act* were repealed to allow for the enactment of the *Smoke-Free Ontario Act, 2017 (SFOA, 2017)*; landmark legislation which regulates the sale, supply, display, and promotion of

commercial tobacco and vapour products at retail. The *SFOA, 2017* also prohibits the smoking of commercial tobacco and cannabis, and the vaping of any substance in enclosed workplaces and public places, as well as other designated places in Ontario to protect people from second-hand smoke and vapour, and to role model a lifestyle free from the smoking and vaping.

Despite the current regulatory measures in place to reduce youth and young adult vapour product access and appeal, vaping prevalence rates within the youth and young adult populations have reached alarming levels. According to the 2022 [Canadian Tobacco and Nicotine Survey](#), 30% of youth aged 15 to 19 years and 48% of young adults aged 20 to 24 years reported having tried vaping in their lifetime. Younger Canadians were also more likely than those 25 years of age and older to have vaped within the past 30 days, with 14% of youth aged 15 to 19 and 20% of those aged 20 to 24 years (compared to 4% of Canadians aged 25 years and older). The existing legislative framework does not sufficiently address the risks associated with these products. Retailers are not held to the same level of accountability for non-compliance with the sections of the *SFOA, 2017* that regulate the sale of vapour products.

Opportunity to Strengthen Retail Compliance Measures – Resolution for ALPHA

The Health Unit's Tobacco Enforcement Officers have been noting an increase in the number of retail outlets that sell vapour products within the Middlesex-London jurisdiction. Additionally, overall compliance with vapour product provisions under the *SFOA, 2017* is decreasing. Operators have shared with Tobacco Enforcement Officers that the total revenue from sales of vapour products far exceeds both the fine amounts and the risk of product seizures and is viewed as a cost of doing business. Similar trends have been observed and reported in other public health unit jurisdictions.

Under Section 22 of the *SFOA, 2017*, an Automatic Prohibition Order will be issued by the Ministry of Health, and served by the local public health unit, when there are two or more registered convictions within a five-year period against any owner for commercial tobacco sales offences committed at the same location. Vapour products can continue to be sold at a retailer even if they are under an Automatic Prohibition Order. At present, there is no automatic prohibition lever that can be applied to vapour product sales infractions. Based on lessons learned from the enforcement of the regulations under the *SFOA, 2017* for commercial tobacco products, Health Unit staff prepared a draft resolution, attached as Appendix A, that recommends that the Ontario Government implements an automatic prohibition regime for vaping products that is modelled after Section 22.

Next Steps

The Annual General Meeting (AGM) of the Association of Local Public Health Agencies (ALPHA) is scheduled for June 5, 2024. Upon approval of the draft resolution, attached as [Appendix A](#), staff will submit the resolution for consideration at the AGM. The Medical Officer of Health, Dr. Alex Summers, will sponsor the resolution at the AGM.

This report was co-written by the Manager of Safe Water, Tobacco Enforcement, and Vector Borne Disease and the Manager of Social Marketing and Health Systems Partnerships.



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Medical Officer of Health



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Chief Executive Officer

This report refers to the following principle(s) set out in Policy G-490, Appendix A:

- The Substance Use and Injury Prevention Standard (requirements 2 and 3) as outlined in the [Ontario Public Health Standards: Requirements for Programs, Services and Accountability](#).
- The following goal or direction from the [Middlesex-London Health Unit's Strategic Plan](#):
 - Our public health programs are effective, grounded in evidence and equity.

This topic has been reviewed to be in alignment with goals under the Middlesex-London Health Unit's [Anti-Black Racism Plan](#) and [Taking Action for Reconciliation](#), specifically ensuring the use of culturally appropriate language.