

**alPHa RESOLUTION AXX-YY (year-number – assigned by alPHa)**

**TITLE:** **Permitting Applications for Automatic Prohibition Orders under the *Smoke Free Ontario Act, 2017* for Vapour Product Sales Offences**

**SPONSOR:** **Middlesex-London Health Unit (MLHU)**

**WHEREAS** In Ontario, there are approximately 800 age-restricted specialty vape stores and 12,000 retail outlets that sell both commercial tobacco and vapour products; and

**WHEREAS** in Ontario, under the *Smoke-Free Ontario Act, 2017*, the sale of menthol, mint, and tobacco-flavoured e-cigarettes (vapour products) is permitted at convenience stores, gas stations, and any other retail environment where vulnerable individuals have access; and

**WHEREAS** in Ontario, the sale of menthol, mint, tobacco-flavoured, fruit, and candy-flavoured vapour products are permitted at age-restricted specialty vape stores; and

**WHEREAS** in 2023, approximately 414 charges were issued against retailers of vapour products in Ontario for selling a vapour product to a person under the age of 19 years of age; and

**WHEREAS** in 2023, approximately 182 charges were issued against retailers of vapour products in Ontario for selling flavoured e-cigarettes and/or selling vapour products with greater than 20 mg/ml nicotine, contrary to regulations under the *Smoke-Free Ontario Act, 2017*; and,

**WHEREAS** automatic prohibition orders under Section 22 of the *Smoke-Free Ontario Act, 2017* apply to tobacco product sales convictions only; and

**WHEREAS** the membership previously carried resolution A21-1 proposing provincial and federal policy measures to address youth vaping, several of which have not been implemented.

**NOW THEREFORE BE IT RESOLVED** that the Association of Local Public Health Agencies urge through the Ministry of Health to the Government of Ontario to include automatic prohibition order applications by public health for convictions related to vapour product retail sales to prevent unauthorized sales to the public;

**AND FURTHER** that the Association of Local Public Health Agencies advise all Ontario Boards of Health to recommend their local Members of Provincial Parliament to advocate for an amendment to Section 22 of the *Smoke Free Ontario Act, 2017* to include vapour product sales convictions for inclusion within automatic prohibition order applications.

## Statement of Sponsor Commitment

The Middlesex-London Health Unit is discouraged by the level of non-compliance by vapour product retailers despite the provisions under the *Smoke-Free Ontario Act, 2017*. Regardless of the development of regulatory measures to reduce youth access and appeal of vapour products, the number of brick-and-mortar retailers in Ontario has increased significantly. Increased youth access to vapour products threatens to reverse what has been a downward trend in smoking rates and nicotine addiction within our youth and young adult populations.

The Middlesex-London Health Unit's Tobacco Enforcement Officers have been noting an increase in the number of warnings and charges being issued against vapour product retailers for sales to persons under the age of 19 years of age. Retailers that are prohibited from offering to sell candy and fruit-flavoured vapour products and e-cigarettes with nicotine concentrations greater than 20 mg/ml continue to do so, despite the deployment of progressive enforcement measures. It has become apparent that the issuance of fines and seizures of vapour products are an insufficient deterrent.

Under the *Smoke-free Ontario Act, 2017*, routine non-compliance with tobacco sales offences results in the issuance of an automatic prohibition order under Section 22. At present, a similar enforcement tool for routine non-compliance with regulatory measures for vapour products does not exist. An amendment to Section 22 of the *Smoke-Free Ontario Act, 2017* to include vapour product sales convictions for inclusion within automatic prohibition order applications is warranted to help reduce youth access to these highly addictive products.

Dr. Alex Summers, Medical Officer of Health for the Middlesex-London Health Unit, will be present at the 2024 Annual General Meeting to provide clarification on the proposed resolution.

## Background

Under the *Smoke-Free Ontario Act, 2017 (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 tobacco sales offences committed at the same location. Automatic Prohibition Orders can be based on registered convictions against multiple owners (past and present); that is, ownership of the business at that location may change but the convictions and the Automatic Prohibition Order stay with the address. The length of the prohibition on the sale and storage of tobacco at an address depends upon the number of convictions within a five-year period. Two convictions registered at the address within five years results in a six-month prohibition, three convictions registered at the address within a five-year period warrants a nine-month prohibition, and four convictions within a five-year period result in a twelve-month prohibition. While an Automatic Prohibition Order is in effect, wholesalers or distributors are prohibited from delivering tobacco products to that location.

Under Section 22 of the *SFOA, 2017*, only registered convictions for tobacco sales offences are eligible for inclusion in the application of an Automatic Prohibition Order. Examples of tobacco sales offences that can result in the issuance of an Automatic Prohibition Order include:

- The sale or supply of tobacco to someone under the age of 19 years.
- Failing to request identification from someone appearing to be less than 25 years of age.

- Selling tobacco without posting required age restriction and government identification signs.
- The sale of improperly packaged tobacco.
- The sale of tobacco in vending machines.
- The sale or storage of tobacco during an automatic prohibition.
- Selling unmarked or unstamped tobacco in violation of section 8 or 9 of the *Tobacco Tax Act*.

Vapour products can continue to be sold at a retailer even if they are under an Automatic Prohibition Order for violating either the *Smoke-Free Ontario Act, 2017* or the *Tobacco Tax Act*. Between 2011 and 2023, Middlesex-London Health Unit has served 25 Automatic Prohibition Orders, with 3 Orders in effect at the present time.<sup>1</sup>

### The Changing Vapour Product Retail Landscape

Since the legalization of nicotine vapour products in Canada on May 23, 2018, under Canada's *Tobacco and Vaping Products Act*, the retail market landscape has undergone significant changes in Ontario. In the Middlesex-London jurisdiction, the number of retailers that sell vapour products has grown from 186 in 2018, to 253 in 2023. Provincially, it is estimated that there are approximately 800 age-restricted specialty vape stores and 12,000 retail outlets that sell both commercial tobacco and vapour products. This growth in community availability of vapour products is in alignment with the growth of the global e-cigarette market. In 2021, the global e-cigarette market was valued at approximately 20.4 billion US dollars, with projections to continue its rapid growth to 30 billion US dollars by 2027 (Business Wire, 2022).

Nicotine is highly addictive, and the negative effects on youth brain development (US Surgeon General, 2016) and growing evidence regarding cardiovascular and lung health harms associated with vapour product use is a significant public health concern (Buchanan et al., 2020; Davis et al., 2022; Keith and Bhatnagar, 2021; Kennedy et al., 2019; Willis et al., 2020). To reduce youth access, it is illegal to sell or supply a vapour product to a person under the age of 19 years in Ontario under the *SFOA, 2017*. Additionally, only vapour products flavoured with mint, menthol, and tobacco can be sold in non-specialty vape stores (e.g., convenience stores, grocery stores, gas station kiosks, etc.); whereas, all flavoured vapour products, including candy- and fruit-flavoured products can be sold in age-restricted specialty vape stores. Under Canada's *Tobacco and Vaping Products Act*, the sale of vapour products with nicotine concentrations greater than 20 mg/ml is prohibited. Despite these health protective regulatory measures, public health units report significant retailer non-compliance.

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<sup>1</sup> *The Smoke-Free Ontario Act* came into force on May 31, 2006. Although retailers were already selling tobacco products, convictions prior to this date were not applicable to APs which is why the date of 2011 is used (2006 + 5 years = 2011). Same applies for the *Smoke-Free Ontario Act, 2017* – it came into force on October 17, 2018, so any convictions prior to this date were not applicable to APs which is relative to the 3 APs that were issued in 2023 and are still active (2018 + 5 years = 2023).

**Table 1**  
**Retailer Non-Compliance as Reported by Ontario Public Health Units for 2023**

<b># of charges</b> issued to either a clerk OR an owner (e.g., sole proprietor, general limited partnership, or corporation) for the <b>supply or sale</b> of a vapour product to a <b>person under the age of 19 years of age</b> .	<b>414<sup>1</sup></b>
<b># of charges</b> issued to either a clerk OR an owner for the <b>supply or sale</b> of a vapour product to a person who <b>appears to be less than 25 years of age without requesting government ID</b>	<b>54<sup>1</sup></b>
<b># of charges</b> issued for <b>selling or offering to sell flavoured e-cigarettes in a prohibited place</b> (e.g., fruit or candy flavoured vaping products in a non-specialty vape store) and/or <b>selling or offering to sell vapour products with greater than 20 mg/ml nicotine</b>	<b>182<sup>1</sup></b>
<b># of vapour product seizures</b>	<b>474<sup>2</sup></b>

<sup>1</sup> These numbers are an underrepresentation of non-compliance. Many Health Units reported that due to the COVID-19 pandemic response and staff redeployments between 2020 and 2022, enforcement programs were not fully functional until 2023. In 2023, the emphasis was on education, the issuing of warnings (versus charges), and re-inspections to gain compliance.

<sup>2</sup> This number is an underestimation of non-compliance. Some Health Units were unable to report due to insufficient time provided to collate local tracking data. Additionally, due to capacity challenges in 2023, some public health units relied on referrals to Health Canada for seizures.

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. Public Health Units also reported that in 2023, convenience store operators began to explore how to operate an age-restricted specialty vape store in conjunction with their convenience store, to expand the inventory of vapour products that they could legally sell. This change in the retail marketplace has the potential to further increase market availability of vapour products to youth. Based on current compliance rates and reported retailer behaviours, current vapour product regulations are insufficient.

### **Opportunity to Strengthen Controls to Reduce Youth Access and Increase Retailer Compliance**

Rates of youth vaping are escalating at a concerning rate. 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 (Statistics Canada, 2023). Reducing youth access to vaping products through the enforcement of age restriction legislation is an important public health measure. Current test shopping and inspection practices of Ontario public health unit staff are critical to promote and monitor retailer compliance; however, opportunity exists to strengthen controls at retail. As noted in the [Middlesex-London Health Unit's 2022 submission](#) to Health Canada to help inform the legislative review of Health Canada's *Tobacco and Vaping Products Act*, there is no automatic prohibition lever that can be applied to retailers who continue to sell vapour products to persons under the age of 19 years, nor for non-specialty vape stores that continue to sell vapour products that should only be available for sale in age-restricted stores in Ontario. 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.

Based on lessons learned from the enforcement of the regulations under the *SFOA, 2017* for commercial tobacco products, the Middlesex-London Health Unit recommends that the Ontario Government implements an automatic prohibition regime for vaping products that is modelled after Section 22,

which would apply to repeated convictions against retailers who:

- Sell or supply vaping products to someone under the age of 19 years.
- Fail to request identification from someone appearing to be less than 25 years of age.
- Sell or offer to sell vapour products without posting required age restriction and government identification signs.
- Sell or offer to sell vaping products that are regulated by law in a prohibited place.
- Sell or offer to sell vaping products that are prohibited by law.
- Sell or store vapour products during an automatic prohibition.

By permitting public health units to apply to the Ministry of Health for an automatic prohibition order against a retailer who has committed either tobacco product and/or vapour product violations, retailers who are providing either of these products to vulnerable individuals will be prevented from doing so for a defined period of time depending upon the number of registered convictions on file for a location. Nicotine, whether in the form of a vaping product or a commercial tobacco product, is harmful for youth and young adults. Nicotine interferes with healthy brain development, which continues until the age of 25, and young people can become heavily addicted with lower levels of exposure than adults (US Surgeon General, 2016). It is important to hold retailers of these harmful products accountable when commercial tobacco and vaping products are being sold in contravention of the *Smoke-Free Ontario Act, 2017*.

## References

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