

Tobacco and Vape Enforcement

To: Chair and Members of the Board of Health

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Recommendations

It is recommended that the Board of Health receive this report for information.

Key Points

- 51.9% of Canadian youth who purchased electronic cigarettes (vapes) surveyed reported purchasing from retail sources. Online sales are another common supply of vapes to youth.
- The number of vape retailers has doubled in Wellington-Dufferin-Guelph (WDG) since 2018, from less than 100 retailers to over 200 in 2023.
- 100% of the secondary schools inspected in 2023 reported having issues with youth vaping on school property, prompting the development of an online reporting tool for administrators and increasing the presence of enforcement officers in schools.
- Close to \$45,000 of illegal nicotine products were seized from January-August 2023.
- Youth Test Shopping sales have increased, with 30% vape (33 of 110) and 8% tobacco (20 of 256) test shopping investigations ending with a sale to a minor.
- In 2023, WDG Public Health received more complaints, referrals, and requests regarding tobacco and vaping than the last five years combined.
- Tobacco Enforcement Officers and Public Health Inspectors have issued six times the number of notices of violation and charges in 2023 compared to the last five years combined.

- Joint enforcement initiatives are ongoing with municipal, provincial, and federal enforcement agencies.
- Targeted enforcement initiatives are occurring in Fall 2023 and into Winter 2024 targeting all tobacco and vape product retailers within walking distance of schools in WDG.
- An online diversion program is set to be launched in Winter 2024 as part of the WDG Public Health Learning Management System portal.

Background

Ontario, like many jurisdictions in Canada, has implemented a series of legislative measures to address the public health concerns associated with electronic cigarettes and tobacco use. These laws and regulations aim to reduce smoking rates, protect non-smokers from the harmful effects of second-hand smoke, and discourage the use of nicotine products.

The *Smoke-Free Ontario Act, 2017* is a comprehensive piece of legislation governing tobacco and electronic cigarette use and sales in the province. It replaced the previous *Smoke-Free Ontario Act, 2006*, and the *Electronic Cigarettes Act, 2015*. The legislation prohibits smoking in enclosed public places, enclosed workplaces, and certain outdoor areas, such as restaurant and bar patios, playgrounds, and sports fields. It also prohibits the use of electronic cigarettes and cannabis products where traditional tobacco use is not permitted.

The act and corresponding regulations outline the requirements for retailers, the restrictions for smoking and vaping in public areas, and the sale and promotion of tobacco and electronic cigarette products. The regulation governs the sale, display, and promotion of nicotine products and sets the age restrictions for purchasing in the province at 19 years.

Prohibitions in certain areas include additional restrictions for schools and surrounding areas, all recreational areas, playgrounds, and public areas near restaurant patios (Table 1). Previous limitations in confined workplaces remain unchanged other than the addition of wording for electronic cigarette use and lit cannabis products.

Area	Smoke-Free Ontario Act 2006/Electronic Cigarettes Act 2015	Smoke-Free Ontario Act 2017
Prohibition on School Grounds	The property of a school as defined in The Education Act.	Addition of public areas within 20m of any point on the perimeter of school property.
		Addition of electronic cigarette, and cannabis use
Prohibition on Playgrounds	Children's playgrounds	Addition of tobacco, electronic cigarette, and cannabis use Public areas within 20m of any point of the perimeter of a children's playground
Prohibition for Sporting Areas	Sporting and spectator areas	Addition of tobacco, electronic cigarette, and cannabis use Public areas within 20m of any point on the perimeter of a sporting and spectator area.
Prohibition on Recreation Centre Property	No provincial regulations	The outdoor grounds of a community recreation facility and public areas within 20m of any point on the perimeter of the grounds.
		Addition of tobacco, electronic cigarette, and cannabis use
Prohibition in Restaurant and Bar Patios	Restaurant and bar patios	Addition of public areas within 9m of any point on the perimeter of a restaurant or bar patio.
		Addition of tobacco, electronic cigarette, and cannabis use

Table 1 Changes to the Smoke-Free Ontario Act 2017
Source: <https://www.ontario.ca/laws/statute/17s26>

A Spotlight on Electronic Cigarettes (Vapes)

Electronic cigarettes (also known as vaping devices or vapes) have gained significant popularity in Ontario in recent years, with an increasing number of users, especially among young people. The health impacts of long-term use of electronic cigarettes are difficult to know given the

complexity and variability of the chemicals used in production and their newness to the market. Furthermore, electronic cigarettes are often used by those who already use other tobacco products, making it challenging to monitor cause and effect in the short timeframe they have been available.

Statistics Canada and Health Canada conduct annual surveys through their *Canadian Tobacco Alcohol and Drugs Survey* (CTADS) and *Canadian Tobacco and Nicotine Survey* (CTNS) and have reported that since the legalization of vaping products in 2018, there has been a noticeable shift to electronic cigarette use by Canadians. In 2017, just over 600,000 Canadians surveyed reported using electronic cigarettes; in 2022, the number exceeded 1,800,000. ^{1,3}

Within Ontario, Specialty Vape Stores (SVS) are required to be licensed by the local health unit and have stringent advertising restrictions enforced by Tobacco Enforcement Officers and Public Health Inspectors employed by WDG Public Health. SVS legally sell flavoured vape products, but flavour bans are in place for retailers such as convenience stores and gas stations. The *Smoke-Free Ontario Act 2017* does not provide WDG Public Health enforcement authority for online sales unless the product is delivered and received in a physical retail store.

In 2021, the Ontario Student Drug Use and Health Survey (OSDUHS) noted that 41% of the students who use vape in secondary schools in Ontario reported purchasing from a retail source.² Health Canada's 2022 Tobacco and Nicotine Survey also reported that over half (51.9%) of those using electronic cigarette and vapour products ages 15-19 purchased from a retail source such as SVS, convenience stores, or gas stations. ²

Over one-quarter of the students surveyed in Ontario (26.4%) stated they have tried vaping in their lifetime, and 55.8% of those surveyed said that it was "fairly easy" or "very easy" to obtain vapour products within their communities. ³ These numbers indicate a more significant presence of enforcement and control measures is needed to restrict the accessibility of vape products to under-aged youth.

Discussion

The *Ontario Public Health Standards: Requirements for Programs, Services, and Accountability* (Standards) published by the Ministry of Health specifies the mandatory programs and services provided by public health units in Ontario. The standards require health units to enforce the *Smoke-Free Ontario Act, 2017*, including:

- Prohibition on selling and/or supplying tobacco and vapour products to persons under age 19;
- Prohibition on selling tobacco and vapour products in certain places.

- Prohibition on selling improperly packaged tobacco and vapour products.
- Posting of required signs.
- Restrictions on selling flavoured tobacco and vapour products.
- Restrictions on selling vapour products with nicotine concentration levels >20 mg/ml.
- Prohibition on selling tobacco and vapour products in vending machines; and.
- Prohibitions on the smoking of tobacco, the use of electronic cigarettes to vape any substance, and the smoking of cannabis.

To ensure that the prohibitions under the act are fulfilled, the standards outline the minimum requirements for all public health units (Figure 1). Annual display and promotion inspections are conducted in all tobacco and vape retail locations, and licensing requirements are in place for SVS and tobacconists.

Provincial Requirement	Total in 2023
Annual display and promotion inspection for all tobacco retailers	192
Annual display and promotion inspection for all vapour product retailers	201
Annual licensing approvals for specialty vape stores and tobacconists.	38
Two (2) test shops are conducted annually on each tobacco retailer	384
One test shop is conducted annually for vapour product retailer.	201
Annual inspection of all secondary schools	16
Investigate all complaints of smoking and vaping on public property or confined workplaces such as hospitals, creational centres, residential care centres etc.	65

Figure 1 Number of Annual Inspections Conducted under the Smoke-Free Ontario Act 2023
Source: WDG Public Health

Locally, WDG Public Health has seen a considerable increase in vapour product retailers. In 2018, there were less than 100 vape retailers, mainly convenience stores and gas stations. This number doubled in five years, with Tobacco Enforcement Officers and Public Health Inspectors inspecting over 200 retail facilities in 2023 (Figure 2). The WDG has also seen an increase in SVS, with roughly six that would meet the definition in 2018, to close to 40 in 2023, which require annual licensing and registration from the inspection team.

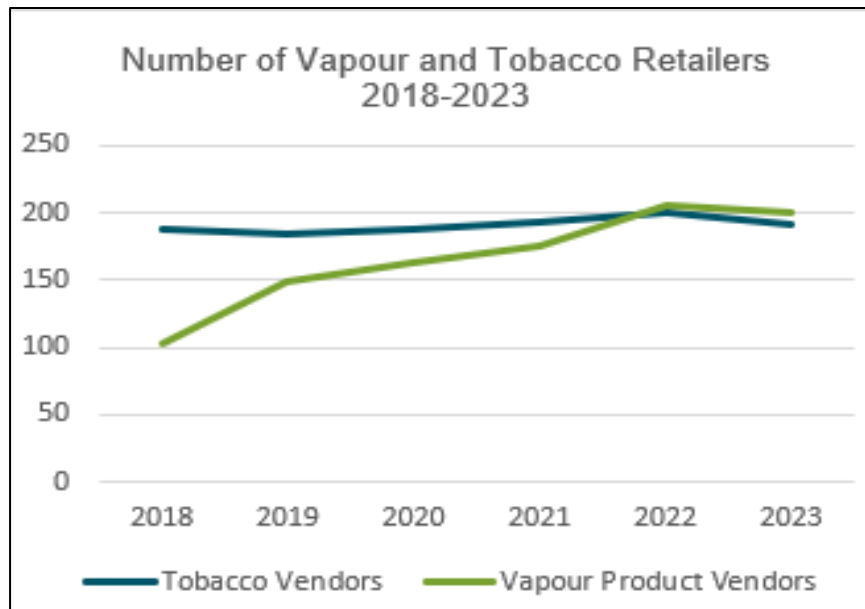


Figure 2 Number of Vapour and Tobacco Product Vendors 2018-2023
Source: WDG Public Health

Data from display and promotion inspections were analyzed in 2023 to drive targeted enforcement and health promotion initiatives. Seized products totaled nearly \$45,000 in retail value during the first eight months of enforcement in 2023. Items included illegal vape products well over the legal limit for nicotine in Canada, flavoured vape products in non-specialty vape stores, and products that were purchased overseas that have not been approved by Health Canada for importation. Routine display and promotion inspections identified 74 instances of non-compliance in 2023. The top three infractions included:

1. *Sell/Offer for sale flavoured vapour products (other than menthol, mint, or tobacco).*
2. *Display or permit the display of tobacco products in a manner permitting viewing or handling prior to purchase.*
3. *Sell/Offer to sell vapour products with nicotine concentration greater than 20mg/ml.*

Annual inspections of secondary schools occurred between January and March of 2023. During the inspections, enforcement staff identified that school administrators at all secondary school locations reported issues with vaping among the student population. School administrators reported students using vape products in bathrooms and other areas regularly, making it difficult to manage. These reports prompted the enforcement team to review and update their online reporting tool to improve the referral process. Meetings have been held with school boards to review policies and procedures in a joint effort to address vaping and tobacco use on school property.

Communications were sent to all secondary schools in the fall of 2023 to utilize the online reporting tool, allowing administrators to report on [cannabis, tobacco, and vape use on school property](#) and the [selling of tobacco and vape products](#) on school property.

Selling of cannabis on school property is to be referred to local police services, as the *Smoke-Free Ontario Act 2017* only contains language for cannabis use and not sales.

Members of the public are encouraged to report illegal sales of tobacco and vape products to the enforcement team for investigation through the WDG Public Health online complaint submission tool through the WDG Public Health disclosure website [CheckBeforeYouChoose.ca](#). Since the launch of the online complaint and administrator reporting tools in 2023, WDG Public Health has received over 65 complaints, requests, and referrals to our Tobacco Enforcement Officers, resulting in five notices of violations and three tickets issued to youth vaping on school property.

In total, WDG Public Health Tobacco Enforcement Officers, and Public Health Inspectors have issued over 90 notices of violations and tickets under the *Smoke-Free Ontario Act, 2017* (Figure 3, Figure 4, Figure 5). Although minimal routine tobacco and vape control was conducted during the COVID-19 pandemic, complaints were still responded to, and a ticket was issued in 2020, but no tickets were issued in 2018, 2019, 2021, or 2022. The rise in non-compliance can be attributed to a notable increase in accessibility to vapour products and the lack of test shopping completed during 2020 and 2021 by WDG Public Health – indicating the importance of a robust tobacco and vape enforcement program to ensure compliance.

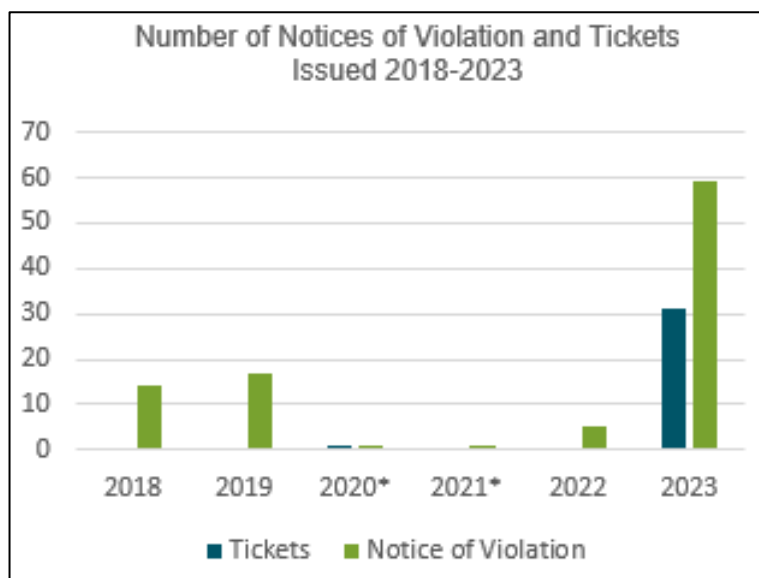


Figure 3 Number of Notices of Violation and Tickets issued under SFOA from 2018-2023 Source: WDG Public Health

Tickets by Infraction 2023



Figure 4 2023 Tickets by Infraction type Source: Wellington Dufferin Guelph Public Health

Notice of Violation by Infraction 2023

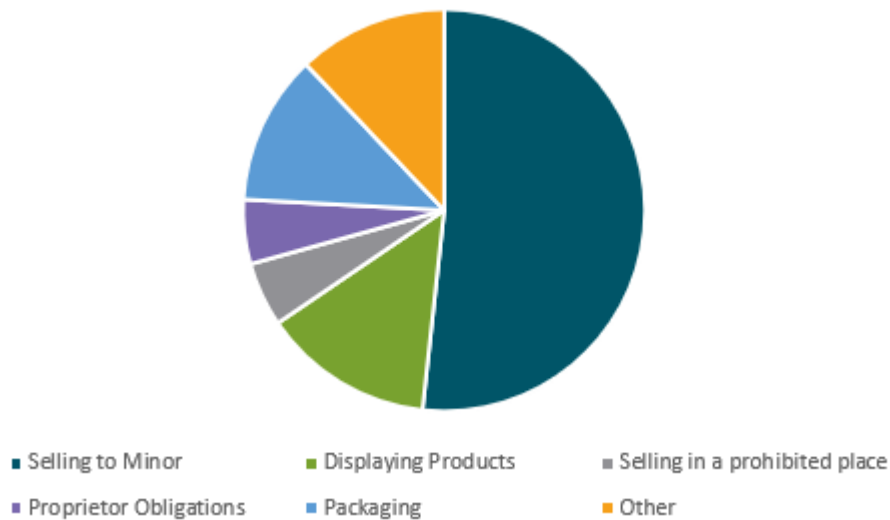


Figure 5 2023 Notices of Violation and Tickets by Infraction type Source: Wellington-Dufferin-Guelph Public Health

Youth Test Shopping

Youth test shopping (YTS) is overseen by Tobacco Enforcement Officers and Public Health Inspectors on the Environmental Health team. WDG Public Health employs students ages 15-18 for the YTS program to purchase tobacco and vapour products from retailers. Throughout the year, enforcement officers will routinely test shop all retailers and issue offence notices and or notices of violation to retailers that have sold to youth. Repeated sales of tobacco products to youth during YTS can result in automatic prohibition of tobacco products. *Section 22* of the

Smoke-Free Ontario Act 2017 states that upon becoming aware of two more convictions against any owner of tobacco sales offences committed at the same place within a five-year period, the Ministry of Health shall notify the owner or occupant of the business that the sale, storage, and delivery of tobacco products is prohibited at the premises. At present, automatic prohibitions do not apply to vapour product sale convictions.

YTS will be completed on each tobacco retailer (384 in WDG) twice a year and vapour product retailer (201 in WDG) once yearly, as required under the Standards. As of November 2023, WDG Public Health has completed 110 tobacco and 256 vapour YTS audits with a 30% and 8% sale rate, respectively (Figure 5). WDG Public Health has focused on vape product sales, display and promotion inspections, and secondary school inspections in WDG, given the high number of complaints of vape use in schools among youth.

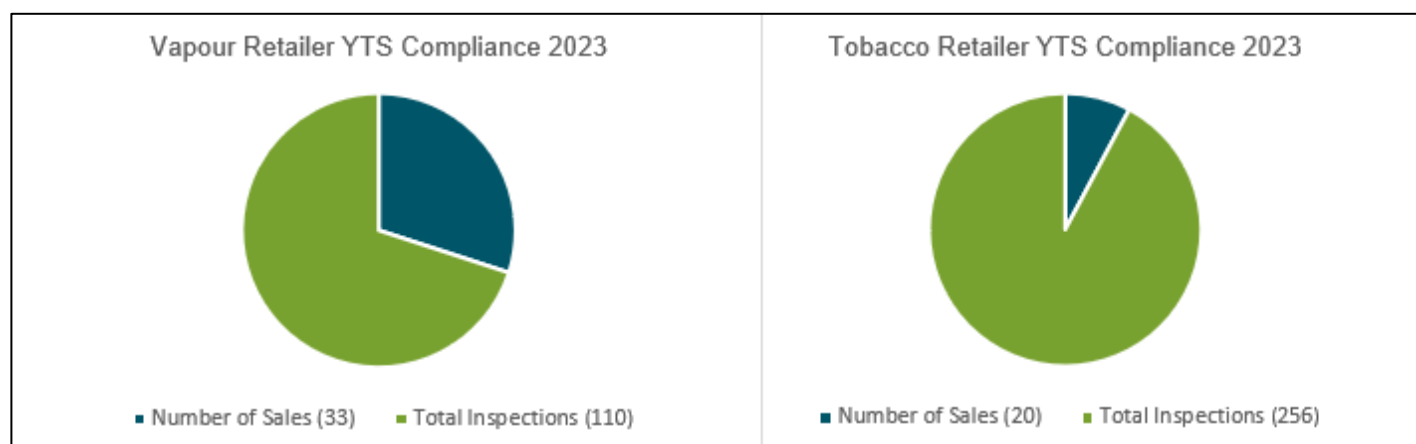


Figure 5 Youth Test Shopping Tobacco and Vape Sales to Minors
Source: Wellington-Dufferin-Guelph Public Health

Next Steps

Given the significant increase in non-compliance among retailers of tobacco and vape products, WDG Public Health will focus on educating operators and owners during display and promotion inspections throughout the year. Although unannounced, these visits are often meant to provide education and review the various vendors' products. During these visits, enforcement officers and inspectors will take a progressive enforcement approach to help tobacco and vape retailer operators and owners work towards compliance with the *Smoke-Free Ontario Act*.

Tobacco Enforcement Officers and Public Health Inspectors will focus resources to target YTS of all tobacco and vape retailers within walking distance of secondary schools. They will continue to work with local police services and high school resource officers in various secondary schools within WDG with education and enforcement initiatives. Joint education and audits have been conducted in secondary schools in 2023, which have been very successful,

with planned education sessions in 2024 for school administrators to equip them with knowledge on the risks of tobacco and vape use in youth.

WDG Public Health is working on a Learning Management System (online learning portal), with a scheduled release of a diversion program for youth in 2024. Youth who are caught smoking or vaping may be able to complete the diversion program to avoid fines. WDG Public Health will work with school boards once the learning portal is complete to incorporate the diversion program into the referral process launched this year.

WDG Public Health will continue supporting enforcement partners for joint initiatives. The *Smoke-Free Ontario Act 2017* works with other legislation that partner agencies enforce. These agencies include the Canada Revenue Agency (CRA), Health Canada, the Alcohol and Gaming Commission Ontario (AGCO), the Ministry of Finance, and local municipal enforcement agencies. Collectively, all agencies have a role to play in reducing smoking rates, protecting non-smokers from the harmful effects of second-hand smoke, discouraging the use of nicotine products, and preventing the sale of nicotine to youth.

Health Equity Implications

Health Equity is a significant concern when it comes to vaping and tobacco use among youth. Those who start vaping at an early age may face long-term health consequences, potentially worsening existing health disparities. Low-income communities may face difficulties accessing smoking cessation resources, making it harder to quit once they start. The continued efforts of WDG Public Health for both enforcement and promotion of cessation tools are intended to prevent adverse health outcomes that may be amplified due to inequities in our communities.

Conclusion

As Ontario's tobacco and vaping landscape changes rapidly, enforcement and health promotion teams must ensure they review and utilize local data to focus their resources effectively. Vapour products have become highly accessible in retail stores, and the number of retailers is growing throughout the region, resulting in a much-needed enforcement presence to ensure compliance with the *Smoke-Free Ontario Act*.

The lack of YTS in 2020-2021 due to the COVID-19 pandemic has directly impacted the number of sales to minors in recent years. WDG Public Health has seen over 30% of vape YTS audits end in a sale in eight (8) months. As a result, the WDG Public Health has initiated several joint operations and inspections with local law enforcement and high school resource officers to address tobacco and vape use on school property.

Starting this year, enforcement officers will conduct targeted YTS in all tobacco and vape retailers within walking distance of schools. Continued display and promotion inspections will focus on flavoured vape products and detailed inventory reviews.

Furthermore, WDG Public Health will be launching a smoking and vaping diversion program in 2024, working with school boards to provide education to youth caught vaping or smoking tobacco on school grounds. Going forward, a continued collaborative approach with enforcement and health promotion partners within our community will be required to allow WDG Public Health to redirect resources to higher-risk populations such as youth. WDG Public Health encourages community members, concerned parents, and agency partners to refer non-compliance to the *Smoke-Free Ontario Act, 2017*, to the organization's enforcement team to support tobacco and vape control within our region.

Ontario Public Health Standards

Foundational Standards

- Population Health Assessment
- Health Equity
- Effective Public Health Practice
- Emergency Management

Program Standards

- Chronic Disease Prevention and Well-Being
- Food Safety
- Healthy Environments
- Healthy Growth and Development
- Immunization
- Infectious and Communicable Diseases Prevention and Control
- Safe Water
- School Health
- Substance Use and Injury Prevention

2023 WDGPH Strategic Directions

- People & Culture:** WDG PUBLIC HEALTH has an organizational culture of engagement, inclusion and agility.
- Partner Relations:** WDG PUBLIC HEALTH collaborates with partners to address priority health issues in the community.
- Health System Change:** WDG PUBLIC HEALTH is positioned to be an agent of change within the broader health sector.

References

1. Health Canada. Canadian Tobacco and Nicotine Survey (CTNS): summary of results for 2022 [cited 2023, Nov 01] Available from: <https://www.canada.ca/en/health-canada/services/canadian-tobacco-nicotine-survey.html>
2. Ontario Student Drug Use and Health Survey 2021 [cited 2023, Nov 01] Available from: <https://www.camh.ca/-/media/files/pdf---osduhs/2021-osduhs-report-pdf.pdf>
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