
TO: CITY MANAGER **DATE:** 2020 Aug 27

FROM: DIRECTOR - PUBLIC SAFETY AND
COMMUNITY SERVICES

SUBJECT: PROPOSED REGULATION OF SMOKING IN BUSINESS PREMISES

PURPOSE: To obtain Council authorization to establish regulations in respect to smoking in business premises.

RECOMMENDATION:

1. **THAT** Council authorize staff to bring forward a report with the bylaw amendments needed to implement the regulation and enforcement of smoking in business premises, as outlined in Sections 5.0 and 7.0 of this report.

REPORT

1.0 INTRODUCTION

According to the World Health Organization, smoking remains a leading cause of preventable death globally. Smoking is a significant risk factor for lung cancer, heart disease, stroke, chronic respiratory disease, and other serious health conditions. The B.C. Lung Association and the Heart & Stroke Foundation of B.C., primary members of the Clean Air Coalition of B.C., continue to advocate for a smoke-free British Columbia.

Although smoking of traditional tobacco products, such as cigarettes, has been in decline in recent years, other forms of smoking have emerged. In May 2018, Health Canada legalized the sale of vaping products. E-cigarettes, or vapes, are battery-operated devices that heat and vaporize a liquid that users inhale or “vape” to imitate the smoking experience. The liquid usually contains nicotine in a mixture of propylene glycol, vegetable glycerin, water and flavouring agents.

In addition to vaping, the use of hookah is gaining in popularity. Hookahs are water-pipes that are used to smoke specially made tobacco mixtures as well as tobacco-free mixtures (such as herbal shisha) that come in a wide variety of flavors. They usually work by passing charcoal-heated air through the tobacco or tobacco-free mixture and ultimately through a water-filled chamber. A user then inhales the smoke through a tube and mouthpiece. The American Lung Association reports that hookah users often perceive it to be less harmful than smoking cigarettes, but studies show that the smoke contains

To: City Manager
From: Director - Public Safety and Community Services
Re: Proposed Regulation of Smoking in Business Premises
2020 Sep 14 Page 2

many of the same toxic components found in cigarette smoke, such as nicotine, tar and heavy metals. Furthermore, according to the Centers for Disease Control and Prevention, the charcoal used to heat both tobacco and non-tobacco hookah mixtures can raise health risks by producing high levels of carbon monoxide, metals and cancer-causing chemicals.

This report is provided to Council to recommend regulation of smoking in business premises, through amendments to the *Burnaby Business Licence Bylaw 2017*. Enforcement would be by way of bylaw violation notices under the *Burnaby Bylaw Notice Enforcement Bylaw 2009*.

A separate report to address regulation of smoking in public parks and other public spaces is currently in development. The report will be provided to Council at a future date.

2.0 POLICY SECTION

The recommended action is aligned with the City of Burnaby's Corporate Strategic Plan by supporting the following goals and sub-goals of the plan:

A Healthy Community

- Healthy life – Encourages opportunities for healthy living and well-being
- Healthy environment – Enhance our environmental health, resilience and sustainability

3.0 PROVINCIAL LEGISLATION AND LOCAL GOVERNMENT AUTHORITY

In British Columbia the *Tobacco and Vapour Products Control Act* (the "**Act**") and *Tobacco and Vapour Products Control Regulation* (the "**Regulation**") regulate the sales, promotion and use of tobacco and vapour products. Under the Act, businesses and owners, managers or lessees, are responsible for ensuring that their public and workplaces comply with the requirements for creating a tobacco and vapour-free environment. The Act prohibits smoking within any building or any other place that is fully or substantially enclosed and that is open to the public or is a workplace. The Act and Regulation also establish a six metre buffer zone around any doorway, air intake or open window to any public or workplace in which no one can stand and use tobacco or vapour products.

The Regulation does, however, provide certain exceptions to the six metre buffer zone restrictions. For instance, tobacco and vapour products can be used on an outdoor hospitality patio (e.g., patio of a bar or café that sells either food or beverages, or both, or the patio of a casino) that is within a buffer zone if it is not fully or substantially enclosed, there are no open windows, doors or active air intakes between the patio and the hospitality venue, and if the doorway between the patio and the hospitality venue is closed at all times when the patio is in use except when someone is passing through it.

The standards set by the Province under the Act and Regulation are minimum requirements. Municipal governments have the authority to set stricter standards to meet the needs of their community. For instance, local governments can enact bylaws to ban the use of tobacco and vapour products in all partially enclosed or unenclosed customer service areas (e.g., balconies, yards, outdoor patios, decks, and sidewalks that are part of or associated with a business), create buffer zones that are larger than six metres, or ban the use of these products in outdoor spaces such as beaches or playgrounds. Municipalities can also place restrictions on the use of other smoking products that are not covered under the Act and Regulation, and require businesses to post signage to advise patrons of smoking restrictions.

4.0 BYLAW REGULATIONS IN OTHER MUNICIPALITIES

A number of Metro Vancouver municipalities have enacted bylaws to regulate smoking. Many of these bylaws exceed provincial standards in some aspect. The table below provides an example of the regulations that have been put in place in other Metro Vancouver municipalities to protect public health.

City	Exceed 6m Buffer Zone	Include restrictions on non-tobacco products	Signage required	Prohibit smoking in customer service areas
Coquitlam	No	Yes	Yes	Yes
Vancouver	No	Yes	Yes	Yes
Port Moody	Yes (7.5m)	Yes	Yes	No
Pitt Meadows	Yes (7.5m)	Yes	Yes	Yes
White Rock	Yes (7.5m)	Yes	Yes	Yes
New Westminster	Yes (7.5m)	Yes	Yes	Yes
Richmond	Yes (9m)	Yes	Yes	Yes

5.0 PROPOSED SMOKING REGULATIONS

It is recommended that Council approve the development of smoking regulations, similar to those enacted by other municipalities, to prohibit smoking within business premises and in customer service areas in business premises. Below are descriptions of the proposed regulations, which is proposed to be set out in a new schedule to the Burnaby Business Licence Bylaw 2017.

5.1 Within Business Premises

The Act and Regulation prohibit smoking within any building or any other place that is fully or substantially enclosed and that is open to the public or is a workplace. It is

To: City Manager
From: Director - Public Safety and Community Services
Re: Proposed Regulation of Smoking in Business Premises
2020 Sep 14 Page 4

recommended that the City's regulation also apply to these areas within business premises so that the City is able to enforce this prohibition independent of the Province.

Certain businesses categorized as "home occupations" operate from within private residences that are not open to members of the public and that employ only persons that reside within the dwelling unit. It is recommended that Council provide an exemption for these types of businesses from the proposed City regulation. For clarity, this exemption would not apply to home-based child care facilities operating from within a private residence as such businesses due to the presence of children.

In addition, it is also recommended that an exemption be provided for rooms for rent in hotels and motels that are designated and provided to customers as "smoking rooms".

5.2 Customer Service Areas

The Act and Regulation do not apply to areas within or outside buildings that are only partially enclosed or unenclosed. Outdoor hospitality patios may also be exempt under the Regulation from the requirement to maintain a six metre buffer zone around doorways, air intakes or open windows.

It is proposed that, for business premises, smoking be prohibited in these partially enclosed or unenclosed spaces (such as balconies, hospitality patios, yards and sidewalks) where the business includes the service of food or beverage, including alcoholic beverages, to customers. Most Metro Vancouver municipalities with smoking regulation bylaws also prohibit smoking within these types of customer service areas.

5.3 Tobacco and non-tobacco products and substances

As noted under Section 3.0 of this report, the Act and Regulation regulate only the sales, promotion and use of tobacco and vapour products. The Act and Regulation do not regulate the smoking of substances generally, such as the smoking of hookah pipes or other lighted smoking equipment that burns tobacco or other weed or substance. In the case of hookahs, studies have shown that the smoke from the burning of both tobacco and tobacco-free mixtures contains cancer-causing chemicals, and that the inhalation of that smoke raises health risks to users.

It is therefore recommended that the City's proposed regulation include prohibiting smoking of tobacco products, vaping products, as well as any other weed or substance within business premises and customer service areas.

5.4 Signage requirements

As the proposed smoking regulations are more restrictive than those under the Act and Regulation, it is also recommended that businesses be required to place signage on or

within certain areas of the business premises to advise patrons of the City's smoking restrictions.

6.0 COMMUNITY CHARTER CONSULTATION REQUIREMENTS

Under the *Community Charter* and *Public Health Bylaws Regulation*, Council may not adopt a bylaw in relation to the protection, promotion or preservation of the health of individuals unless a copy of the bylaw has first been provided to the BC Minister of Health. In 2004, the Union of British Columbia Municipalities, the Ministry of Health Services and Ministry of Community, Aboriginal and Women's Services, entered into a consultation agreement (the "**Consultation Agreement**") to establish additional processes regarding the operation of the *Public Health Bylaws Regulation*. In particular, the Consultation Agreement sets out the following process with respect to municipal bylaws that regulate some aspect of public health:

- a) The municipality must consult with the local health authority (i.e., Fraser Health Authority) prior to third reading of the bylaw; and
- b) After third reading of the bylaw, the municipality must forward a copy of the bylaw, together with evidence that consultation with the local health authority has taken place, to the Minister of Health for deposit.

If Council approves the recommendation in this report, City staff will consult with the Fraser Health Authority and after third reading of the bylaw to implement the regulation of smoking in business premises, forward a copy of the amendment bylaw, together with evidence that consultation with Fraser Health Authority has taken place, to the Minister of Health.

In addition to consultation with the Fraser Health Authority, the *Community Charter* requires that before adopting a bylaw in regards to business regulation, Council must give notice of its intention and provide an opportunity for persons who consider they are affected by the bylaw to make representations to Council. In order to ensure all interested parties are provided sufficient notification, notice of the proposed bylaw amendment to implement the regulation of smoking in business premises will need to be advertised in the local newspaper for two consecutive weeks and a period of time provided for interested parties to make written submissions to Council, prior to final adoption of the bylaw amendments.

7.0 ENFORCEMENT OF PROPOSED SMOKING REGULATIONS

The *Burnaby Bylaw Notice Enforcement Bylaw 2009* sets out the bylaws and bylaw contraventions that may be dealt with by way of bylaw violation notices. It is recommended any violation of the proposed smoking regulations also be enforced through bylaw violation notices. This will require an amendment to the *Burnaby Bylaw Notice Enforcement Bylaw 2009*.

To: City Manager
From: Director - Public Safety and Community Services
Re: Proposed Regulation of Smoking in Business Premises
2020 Sep 14 Page 6

8.0 RECOMMENDATION

In British Columbia, the Province regulates the sales, promotion and use of tobacco and vapour products. There is a gap in the Provincial regulation as it relates to partially enclosed or unenclosed customer service areas and smoking of non-tobacco products and substances. This report proposes to address these gaps by regulating smoking of tobacco and non-tobacco products and substances within business premises, including customer service areas. It is recommended that Council authorize staff to bring forward a report with the bylaw amendments needed to implement the regulation and enforcement of smoking in business premises, as outlined in Sections 5.0 and 7.0 of this report.



Dave Critchley
DIRECTOR - PUBLIC SAFETY AND COMMUNITY SERVICES

DC:dl

Copied to: Director Planning and Building
Director Parks, Recreation and Cultural Services
Director Corporate Services
City Solicitor