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**TO:** CITY MANAGER **DATE:** 2020 Sep 16

**FROM:** DIRECTOR - PUBLIC SAFETY AND  
COMMUNITY SERVICES

**SUBJECT:** AMENDMENTS TO BURNABY BUSINESS LICENCE BYLAW AND  
BYLAW NOTICE ENFORCEMENT BYLAW TO REGULATE SMOKING  
IN BUSINESS PREMISES

**PURPOSE:** To bring forward bylaw amendments to the *Burnaby Business Licence Bylaw 2017* to regulate smoking in business premises and the *Burnaby Bylaw Notice Enforcement Bylaw 2009* to impose penalties for violations of the proposed regulations.

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#### RECOMMENDATIONS:

1. **THAT** Council authorize the City Solicitor to bring forward a bylaw to amend the *Burnaby Business Licence Bylaw 2017* to regulate smoking on business premises, substantially in the form set out in Attachment 1 of this report.
2. **THAT** Council authorize the City Solicitor to bring forward a bylaw to amend the *Burnaby Bylaw Notice Enforcement Bylaw 2009*, as described in Section 4.0 of this report.

#### REPORT

##### 1.0 INTRODUCTION

At its 2020 September 14 regular meeting, Council authorized the establishment of regulations in respect to smoking in business premises and adopted a staff recommendation to bring forward a report with the necessary bylaw amendments. The purpose of this report is to bring forward amendments to the *Burnaby Business Licence Bylaw 2017* and the *Burnaby Bylaw Notice Enforcement Bylaw 2009* in order to implement the regulation of smoking in business premises and impose penalties for violations of these regulations. This report provides Council with information on the proposed bylaw regulations and recommendations for implementation.

## 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 AMENDMENT TO BUSINESS LICENCE BYLAW

In order to implement the smoking regulations authorized at the 2020 September 14 Council meeting, it is recommend that the *Burnaby Business Licence Bylaw 2017* be amended to include a new Schedule F in relation to smoking regulations (see Attachment 1). The key elements of the regulations are summarized as follows:

- Define a “customer service area” as “a partially enclosed or unenclosed area, including a balcony, patio, yard or sidewalk that is part of or connected to or associated with a business that includes the service of food or beverages, including alcoholic beverages, to customers or other persons for consumption on site”.
- Define “enclosed or substantially enclosed business premises” as the part of the business premises with a roof or other covering and where air is prevented from easily flowing through more than 50% of the wall space of that part of the business premises. This definition is consistent with Provincial legislation and guidelines, which will assist with compliance and enforcement.
- Define “smoke” or “smoking” to include inhaling, exhaling, burning or carrying an activated e-cigarette or various lighted equipment (including cigarette, cigar, pipe, hookah pipe, etc.) that burns tobacco, cannabis, or other weed or any substance.
- Prohibit smoking in the customer service area or any enclosed or substantially enclosed area of the business premises that is a workplace or open to the public, except a hotel or motel room designated as a smoking room and a business in a dwelling unit that is not open to the public and only the employee(s) reside in the dwelling unit.
- Require business operators to display signage at all entrances to a customer service area stating: **THIS IS A SMOKE FREE ENVIRONMENT – NO SMOKING**

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#### 4.0 AMENDMENT TO BYLAW NOTICE ENFORCEMENT BYLAW

In order to effectively enforce the proposed smoking regulations, it is recommended that the *Burnaby Bylaw Notice Enforcement Bylaw 2009* be amended to impose penalties for contraventions of the regulations to be included in Schedule F of the *Burnaby Business Licence Bylaw 2017*. The proposed penalties are included in the table below:

Burnaby Business Licence Bylaw 2017 - Schedule "F"				
Section	Smoking Regulations	Penalty Amount	Discounted Penalty (within 15 days)	Compliance agreement available (50% reduction)
2.1 (a)	Permitting smoking in customer service area	\$500	\$400	NO
2.1 (b)	Permitting smoking in enclosed or substantially enclosed business premises	\$500	\$400	NO
2.2	Failure to post required no smoking sign	\$300	\$240	YES

The recommended penalty amounts and enforcement measures are intended to reflect the severity of any potential violation, and are consistent with the penalties for comparable violations of similar regulations.

#### 5.0 RECOMMENDATIONS

In accordance with this report, staff recommend that Council authorize the City Solicitor to bring forward a bylaw to amend the *Burnaby Business Licence Bylaw 2017* to regulate smoking on business premises, substantially in the form set out in Attachment 1, and a bylaw to amend the *Burnaby Bylaw Notice Enforcement Bylaw 2009* to impose penalties for violations of the smoking regulations, as described in Section 4.0 of this report. The amendment bylaws appear elsewhere on this Council agenda for first, second and third readings.

Following Council approval of the amendment bylaw readings and prior to final adoption, City staff will consult with the Fraser Health Authority in regard to the smoking regulations. Staff will also publish notices of the proposed amendment to the *Burnaby Business Licence Bylaw 2017* in two consecutive editions of the Burnaby Now and provide an opportunity for interested parties to make written submissions to Council. These consultation and notices are for the purposes of satisfying the procedural requirements under the *Community Charter*. The notices will provide a deadline of 2020 October 21 to

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make written submissions. All responses will be collected and provided to Council prior to final adoption of the amendment bylaws.



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  
Chief Licence Inspector

Attachment: Burnaby Business Licence Bylaw – Schedule F

SCHEDULE “F”

SMOKING REGULATIONS

1.0 Definitions

1.1 In this Schedule,

- “**burn**” means to produce smoke, vapour or other substances that can be inhaled;
- “**customer service area**” means a partially enclosed or unenclosed area, including a balcony, patio, yard or sidewalk, that is part of or connected to or associated with a **business** that includes the service of food or beverages, including alcoholic beverages, to customers or other persons for consumption on site;
- “**dwelling unit**” means a dwelling unit as defined in *Burnaby Zoning Bylaw, 1965*;
- “**e-cigarette**” means the following:
- (a) a product or device, whether or not it resembles a cigarette, containing an electronic or battery-powered heating element capable of vapourizing an e-substance for inhalation or release into the air; or
  - (b) a product or device similar in nature or use to a product or device described in clause (a);
- “**enclosed or substantially enclosed business premises**” means that portion, or those portions, of a **business premises**:
- (a) with a roof or other covering; and
  - (b) in respect of which air is prevented from easily flowing through more than 50% of the wall space of that portion, or portions, of a **business premises**;
- “**e-substance**” means a solid, liquid or gas that, on being heated, produces a vapour for use in an e-cigarette, regardless of whether or not the solid, liquid or gas contains nicotine;
- “**responsible person**” means a **person** who owns, controls, manages, supervises or operates a **business** or a **customer service area**;
- “**smoke**” or “**smoking**” means to inhale, exhale, burn or carry:
- (c) a lighted cigarette, cigar, pipe, hookah pipe, or other lighted smoking device or equipment that burns tobacco, cannabis or other weed or any substance; or

- (d) an activated e-cigarette.

## **2.0 Regulations**

**2.1 A responsible person** shall not permit an individual to **smoke** in:

- (a) a **customer service area**; or
- (b) an **enclosed or substantially enclosed business premises** that is a workplace or a place to which the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry, except **smoking** may be permitted:
  - (i) where the **business premises** are located within a **dwelling unit** that is not open to members of the public and the only person or persons employed by the business also reside in the **dwelling unit**; and
  - (ii) in a hotel room or motel room designated within a hotel or motel by a **responsible person** as a smoking room.

**2.2 A responsible person** must display and maintain, or cause to be displayed and maintained, at all times at each entrance to a **customer service area**, a sign stating:

**THIS IS A SMOKE FREE ENVIRONMENT – NO SMOKING**