
TO: ACTING CITY MANAGER **DATE:** 2021 June 23

FROM: DIRECTOR PLANNING AND BUILDING **FILE:** 42000 20
DIRECTOR PARKS, RECREATION AND
CULTURAL SERVICES
DIRECTOR PUBLIC SAFETY AND COMMUNITY
SERVICES

**SUBJECT: SMOKING RESTRICTIONS IN CITY PARKS, CITY-OWNED OR
CONTROLLED OUTDOOR PUBLIC SPACES AND BUSINESS
PREMISES**

PURPOSE: To recommend Council adopt a new bylaw that would restrict smoking in City
parks, outdoor public spaces and business premises.

RECOMMENDATIONS:

1. **THAT** Council authorize the City Solicitor to bring forward a new *Burnaby Smoking Regulation Bylaw* to regulate smoking in the City, as described in Section 5.0 of this report and substantially in the form set out in Attachment #1.
2. **THAT** Council authorize the City Solicitor to bring forward a bylaw to amend the *Burnaby Bylaw Notice Enforcement Bylaw* to implement penalties for violations of the new *Burnaby Smoking Regulation Bylaw*, as described in Section 6.0 of this report.
3. **THAT** Council authorize the City Solicitor to bring forward bylaws to repeal *Burnaby Business Licence Bylaw 2017*, Amendment Bylaw No. 2, 2020 (Bylaw #14220) and *Burnaby Bylaw Notice Enforcement Bylaw 2009*, Amendment No. 2, 2020 (Bylaw #14221), following adoption of the above bylaws.
4. **THAT** a copy of this report be forwarded to the Burnaby Parks, Recreation and Culture Commission, for information.

REPORT

1.0 INTRODUCTION

According to the Government of Canada, smoking continues to be a major public health threat that is linked to more than two dozen diseases and health conditions including various cancers, heart diseases and respiratory issues. Exposure to second-hand smoke is a risk factor for various health conditions, particularly for infants, children and pregnant women. More recently, studies worldwide on the environmental toll of smoking and tobacco use, including the impacts of post-

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consumption waste, carbon dioxide emissions, increased fire risk and the effects of hazardous by-products on eco-systems and water quality, have become more prevalent.

Alternatives to cigarette smoking, including the use of vapour products (i.e. vaping) and hookah or waterpipe smoking, have continued to gain popularity in North America and have also been flagged by various public health agencies for potential short-term and long-term health impacts, whether or not tobacco substances are consumed. Compared with cigarette smoking, research on the health impacts of smoking and vaping cannabis and exposure to second-hand cannabis smoke and vapour is less well-established, but has become an increasingly important public health topic in Canada, especially following Federal legalization of cannabis in 2018.

While both tobacco and cannabis smoking and vaping is banned in the majority of indoor spaces and workplaces across British Columbia, the Clean Air Coalition of BC has recognized a growing demand for smoke-free settings, and has identified local government regulation as a useful tool to more comprehensively protect the public from second-hand exposure.

The purpose of this report is to recommend the adoption of a new comprehensive bylaw to restrict smoking in the City's parks and other City-owned or controlled outdoor public spaces, as well as businesses premises (see *Attachment #1*).

2.0 POLICY SECTION

The advancement of the above recommendations to regulate smoking in the City aligns with the following City policies: Corporate Strategic Plan (2017), Official Community Plan (1998), Social Sustainability Strategy (2011), and Environmental Sustainability Strategy (2016).

3.0 EXISTING LEGISLATION

In British Columbia, the *Tobacco and Vapour Products Control Act* and the *Tobacco and Vapour Products Control Regulation* regulate the sale, promotion and use of tobacco and vapour products. Under these provincial regulations, tobacco and vapour product use is prohibited on school properties, indoor public spaces, workplaces, residential common areas, transit shelters, and within six metres of a doorway, window, or air intake of any building, structure, vehicle or any other place that is fully or substantially enclosed and accessible to the public. These prohibitions do not apply to the ceremonial use of tobacco in relation to a traditional aboriginal cultural activity, or by a prescribed group for a prescribed purpose.

The *Cannabis Control and Licensing Act* prohibits cannabis smoking and vaping everywhere tobacco smoking and vaping are prohibited, in addition to select outdoor public spaces such as provincial and regional parks, playgrounds, sports fields, skate parks, and other places where children commonly gather.

Standards set by the Province under the above regulations are minimum requirements. Municipal governments have the authority to set stricter standards to meet the needs of their community, including imposing additional regulations for smoking and vaping in indoor and outdoor spaces.

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Municipalities can also place restrictions on the use of other smoking products that are not covered by Provincial regulations.

The majority of Metro Vancouver municipalities regulate smoking on business premises and within parks and other outdoor public spaces through a combination of smoking, public health, or regulatory bylaws. Many of these bylaws have been updated to encompass smoking and vaping of tobacco, cannabis and other substances using various types of smoking and vaping devices.

4.0 POLICY BACKGROUND AND CONTEXT

At the 2019 June 11 open Burnaby Parks, Recreation and Culture Commission (the “Commission”) meeting, the following Notice of Motion was received for consideration:

THAT smoking of all substances be banned in City of Burnaby parks.

The Commission referred the matter to staff for a report on the feasibility of banning smoking of all substances in City of Burnaby parks. In response, at the 2019 September 10 Commission meeting, staff presented a report on the feasibility of prohibiting smoking and vaping in City parks (see *Attachment 2*). Arising from the discussion, the Commission directed staff to prepare a further report outlining specific bylaw text amendments to the *Burnaby Parks Regulation Bylaw 1979* to include a ban on smoking and vaping of all substances in City of Burnaby parks.

It was noted in the staff report that an approach which involved only amendments to the *Parks Regulation Bylaw 1979* would not address smoking and vaping in other outdoor public spaces outside of park lands. Therefore, the Commission also approved an additional motion to forward the staff report to Council for information, in the event that Council wished to examine the feasibility and advisability of extending the ban on smoking and vaping of all substances to all public places in the City.

At the 2019 September 16 Open Council meeting, Council adopted the following recommendation as amended:

THAT Council authorize staff to examine the feasibility and advisability of extending the ban on smoking and vaping of all substances to all public places owned, controlled or operated by the City of Burnaby.

At the 2020 September 14, 2020 September 28 and 2020 November 23 Open Council meetings, Council approved proposed amendments to the *Burnaby Business Licence Bylaw 2017* and *Burnaby Bylaw Notice Enforcement Bylaw 2009* to introduce smoking prohibitions in business premises, including customer service areas (e.g. restaurant patios) (See *Attachments 3, 4 and 5*). The amendment bylaws (Bylaws #14220 and #14221) were adopted at the 2021 January 25 Open Council meeting and scheduled to come into force on 2022 January 01. These bylaw amendments, however, did not address outdoor public spaces that are not connected to a business.

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At the Open Council meeting held on 2021 May 10, Council reconsidered the smoking in business premises regulations and associated enforcement penalties previously adopted through Bylaws #14220 and #14221, and directed staff to bring forward a report on a broader approach to regulating smoking in Burnaby (see **Attachment #6**). At the same meeting Council also requested that Bylaws #14220 and #14221 be repealed concurrently with the implementation of the broader smoking regulations.

5.0 PROPOSED SMOKING REGULATION BYLAW

The proposed *Burnaby Smoking Regulation Bylaw 2021* (see **Attachment #1**) will have the effect of banning smoking of all substances in the majority of business premises and City-owned or controlled outdoor public spaces where people commonly and regularly pass, stay, gather and engage in recreation. Public spaces include parks and areas within higher-density Town Centres, Urban Villages, and other areas where people gather (i.e. public areas abutting properties with a principal commercial, assembly, institutional or park use).

The definition of “smoking” in the proposed bylaw will include inhaling, exhaling, burning or carrying an activated e-cigarette (i.e. vaping) or a lighted cigarette, cigar, pipe, hookah pipe, or other lighted smoking device or equipment that burns tobacco, cannabis or other weed or any substance. In essence, the vaping or smoking of tobacco, cannabis and other substances in the City will be regulated in accordance with the proposed bylaw.

The key regulations in the proposed bylaw are as follows:

Parks and Outdoor Public Spaces

The proposed regulation will prohibit any person from smoking in the following outdoor spaces:

- in any City park;
- on any multi-use path, which includes paths within the City that are intended to be shared among pedestrians, cyclists, in-line skaters, etc.;
- in the following City-owned or controlled outdoor public spaces:
 - on any bicycle lane, boulevard, crosswalk, sidewalk, walkway or other public space or passageway that is either dedicated road or otherwise secured for public use through a statutory right-of-way agreement granted to the City, that:
 - is located along or abutting major transportation routes within or connecting to commercially focused areas (these routes will be identified on the map attached as Schedule A to the bylaw);
 - abuts a property with a principal commercial, assembly or institutional use; or,
 - abuts a City park;
- on all lands and outdoor facilities owned or leased by the City and intended for public or civic use, with the exception of designated smoking areas; and,

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- within six metres of any public transit facility or infrastructure where people wait to board a public transit vehicle, including transit stations, bus stops, shelters, benches, poles and signage identifying a stopping place for a public transit vehicle.

Business Premises and Customer Service Areas

The proposed regulation will prohibit any person from smoking in the following areas of a business premises:

- in partially enclosed or unenclosed customer service areas where food or beverages are served for consumption on site (i.e. patio, balconies and terraces); and,
- in any enclosed or substantially enclosed area of a business premise that is a workplace or open to the public.

In addition, the bylaw will require business operators to ensure the business premises is smoke free and to display signage at all entrances to a customer service area stating:

THIS IS A SMOKE FREE ENVIRONMENT - NO SMOKING

Exceptions to the Regulations

The bylaw regulations will allow for certain exceptions to the above smoking restrictions with the approval of the City:

- engaging in the ceremonial use or smoking of tobacco or other substance in relation to a traditional aboriginal cultural activity; or,
- smoking or permitting smoking during a movie production or theatrical or other artistic performance.

In regard to business premises, the proposed bylaw restrictions will not apply to:

- a business premises that is within a residential dwelling unit that is not open to the public and the only the employee(s) are those who reside in the dwelling unit; or,
- a hotel or motel room designated as a smoking room

In addition to the regulatory exceptions listed above, staff also recommend providing exceptions to existing businesses with valid business licences that offer hookah smoking, other than tobacco and cannabis, as part of their business establishment. The exception is not required in implementing the smoking regulations, however, would recognize the investments made by the operators to their existing business premises.

There are currently 11 businesses (listed below) that offer hookah smoking within their business premises as part of their regular business operations. Each of these businesses currently have a

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valid Burnaby Business Licence to operate as either a restaurant or public assembly. Recognizing that these business operators have made improvements to their existing business locations in order to offer hookah smoking, staff recommend providing an exception to these business operators in their current locations from the proposed bylaw regulations in respect to enclosed or substantially enclosed business premises. The exception would not apply to the smoking restrictions in customer service areas, as these areas are unenclosed or only partially enclosed and would not have needed significant improvements to accommodate hookah smoking.

The exception would only apply for the current business operators and locations of these establishments. If the business were to relocate to another business premises, or if the current business licensee were to assign, sell, transfer or otherwise dispose of their business licence, the exception would no longer apply. The City's *Burnaby Business Licence Bylaw 2017* provides a mechanism for tracking these changes as it requires all business licence holders to apply to the City before making these changes.

The following business operators and locations are proposed to be provided the exception under the new *Smoking Regulation Bylaw*:

	Licencee	Doing Business As	Location	Business Licence #
1	1207941 BC Ltd	Lounge Sixty	6462 Kingsway #101	BUS19-01212
2	Arwaz Hookah Lounge Limited	Arwaz Hookah Lounge	7751 6th Street	BUS14-01099
3	Narah Shisha Café Inc	Kayan Shisha Hookah Café	5593 Kingsway #A	BUS13-02001
4	Rima Abduljawad	Reema's Shisha House	5236 Irmin Street	BUS14-01497
5	The Glass House Hookah Lounge Ltd	The Glass Hookah Lounge	6649 Hastings Street	BUS18-02154
6	Bula Lounge Inc	Bula Lounge	4027 Hastings Street	BUS20-01462
7	Bloo Bby Restaurant Ltd.	Bloo Bby Restaurant	4052 Hastings Street	BUS20-05079
8	Dejavu Lounge Ltd	Déjà Vu Hookah Lounge	4705 Hastings Street	BUS19-01894
9	Living Room Café Inc	Living Room Café	3787 Canada Way #116	BUS19-01740
10	PMC Hookah Lounge Ltd	PMC Hookah Lounge	2849 North Road #102	BUS18-00162
11	Perk & Puff Café Inc	Perk & Puff Café	7670 6th Street #102	BUS19-02396

6.0 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 that any violation of the proposed smoking restrictions also be enforced through bylaw violation notices. This will require an amendment to the *Burnaby Bylaw Notice Enforcement Bylaw 2009*, with the following proposed penalties:

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Burnaby Smoking Regulations Bylaw 2021				
Section		Penalty Amount \$	Discounted Penalty \$ (within 15 days)	Compliance agreement available (50% reduction)
3.1(a)	Smoking in park or multi-use path	200	160	NO
3.1(b)	Smoking on City bicycle lane, boulevard, crosswalk, sidewalk, walkway or other public space or passageway	200	160	NO
3.1(c)	Smoking on City property intended for public or civic use	200	160	NO
3.1(d)	Smoking within 6 metres of transit infrastructure	200	160	NO
4.1(a)	Individual smoking in a customer service area	200	160	NO
4.1(a)	Responsible person permitting smoking in customer service area	500	400	NO
4.1(b)	Individual smoking in enclosed or substantially enclosed business premise	200	160	NO
4.1(b)	Permitting smoking in enclosed or substantially enclosed business premises	500	400	NO
4.2	Failure to post no smoking sign at entrance to customer service area	300	240	YES

The penalty amounts for individuals violating the smoking regulations are comparable to the fines under Provincial legislation for similar violations contained in the *Tobacco and Vapour Products Control Act*. The proposed penalty amounts applicable to business operators are comparable to similar penalties for comparable violations of the *Burnaby Business Licence Bylaw 2017*.

7.0 COMMUNITY CHARTER CONSULTATION AND NOTICE 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.

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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.

Should Council approve the recommendations of this report, staff will consult with Fraser Health Authority and after third reading of the proposed *Smoking Regulation Bylaw* forward a copy, together with evidence that consultation with Fraser Health Authority has taken place, to the Minister of Health.

In addition to the procedural requirements due to the public health aspect of the proposed *Smoking Regulation Bylaw*, the *Community Charter* also requires that Council must give notice of its intention and provide an opportunity for persons who consider they are affected by a bylaw regulating businesses to make representations to Council before the bylaw is adopted. In order to comply with this requirement in respect to the restrictions on smoking in business premises, notice of the proposed *Smoking Regulation Bylaw* will be advertised in the local newspaper for two consecutive weeks after first reading of the bylaws. The notice will provide a timeline after the last advertisement to make written submissions. All responses will be collected and provided to Council prior to final adoption of the proposed *Smoking Regulation Bylaw*.

8.0 RECOMMENDATIONS

In accordance with this report, staff recommend that Council authorize the City Solicitor to bring forward a bylaw to regulate smoking in parks, City-owned or controlled public spaces, and business premises. The proposed *Smoking Regulation Bylaw* is substantially in the form set out in *Attachment #1* of this report.

In addition, it is recommended that Council authorize the City Solicitor to bring forward an amendment to *Burnaby Bylaw Notice Enforcement Bylaw 2009* to implement enforcement penalties for the violations of the proposed *Smoking Regulation Bylaw*.

As directed by Council at its 2021 May 10 meeting, the City Solicitor will to bring forward bylaws to repeal *Burnaby Business Licence Bylaw 2017*, Amendment Bylaw No. 2, 2020 (Bylaw #14220) and *Burnaby Bylaw Notice Enforcement Bylaw 2009*, Amendment No. 2, 2020 (Bylaw #14221) following adoption of the above-referenced bylaws.

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It is further recommended that a copy of this report be forwarded to the Parks, Recreation and Culture Commission.



Dave Ellenwood
DIRECTOR PARKS,
RECREATION AND CULTURAL SERVICES



E.W. Kozak
DIRECTOR PLANNING AND BUILDING



Daye Critchley
DIRECTOR PUBLIC SAFETY
AND COMMUNITY SERVICES

AY:tn

Attachments

cc: Director Corporate Services
Director Engineering
City Solicitor