

TORONTO STAFF REPORT

March 24, 2003

To: Board of Health

From: Dr. Sheela V. Basrur, Medical Officer of Health

Subject: Toronto's Environmental Tobacco Smoke (ETS) By-law- Designated Smoking Rooms

Purpose:

This report responds to a Board of Health request for the Medical Officer of Health to report back on a proposal to end the approval of new applications for Designated Smoking Rooms (DSRs) effective June 1, 2004 allowing existing DSRs as of that date to be grandparented and the feasibility of DSR permit revocation by the City if the owner of such DSR does not comply with permit conditions.

Financial Implications and Impact Statement:

There are no financial implications arising from this report.

Recommendations:

It is recommended that:

- 1) City of Toronto Municipal Code Chapter 709 – Smoking be amended immediately to further define a Designated Smoking Room as a room to which no patron under the age of 19 years is permitted;
- 2) City of Toronto Municipal Code Chapter 709 – Smoking be amended by deleting the exemption for Designated Smoking Rooms in workplaces and public places effective June 1, 2005;
- 3) That the City Solicitor be given the authority to prepare and introduce a Bill to Council to give effect to recommendations 1 and 2; and
- 4) The appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.

Background:

At its March 3, 2003 meeting, the Board of Health received a report from the Medical Officer of Health outlining options to phase-out or otherwise amend the exemption to allow DSRs in Toronto's ETS By-law. At this meeting the Board of Health adopted a resolution to: direct appropriate City officials to take the necessary action to amend the ETS By-law by deleting the exemption for DSRs in workplaces and public places effective June 1, 2005 and by prohibiting any patron under the age of 19 from entering a DSR effective immediately; refer the matter to the April 7, 2003 Board of Health meeting for public consultation; and request the Medical Officer of Health to report back, in consultation with the City Solicitor, on an alternative option to allow DSRs existing as of June 1, 2004 to be grandparented and the feasibility of the City revoking permits when the owner of a DSR does not comply with permit conditions.

Comments:

DSR Approval Process:

The current process for DSR approval in the City of Toronto requires that applicants complete an application form and provide a drawing that clearly indicates the total occupiable space and the location of the proposed DSR. The application form (Appendix 1) clearly indicates the requirements for a DSR and if approved, will indicate the maximum allowable DSR size for the premises. The role of TPH in the application process is to ensure that the premises is eligible for a DSR, that the intended location of the DSR meets the By-law requirements and to identify the maximum allowable size.

Upon approval by TPH, the next step for the applicant is to apply for a building permit. To do so, the applicant must submit their plans together with the TPH approval, to Urban Development Services (UDS). UDS staff review the application to ensure that: the DSR is fully enclosed; the construction will effectively seal off any passage of smoke; the doors are self-closing; the heating and ventilation requirements for the separate ventilation system are met; and that the construction will meet all Ontario Building Code requirements. While there is no fee for TPH approval, the applicant must pay a building permit fee for interior alterations and a special ventilation system.

Occasionally, applicants will seek approval to use an existing room as a DSR. When no new construction is necessary, a building permit is not required and UDS is not involved in the approval process. In these situations, TPH reviews the size and location of the room and ensure that the room is fully enclosed. The applicant would be required to provide documentation from a recognized heating and ventilation expert, verifying that the room meets all ventilation requirements.

Once UDS has approved the final construction (when applicable) and the DSR has been installed, the room would be subject to inspection by TPH during routine food premises inspections or upon receipt of a complaint.

As reported to the Board of Health on January 27, 2003, common complaints or observations made by inspectors with respect to DSRs include: doors of DSRs being propped open to the non-

smoking area and ventilation systems being turned off or not adequately maintained (e.g filter cleaning). With the necessary ventilation requirements, many operators are finding that the cost of operating a DSR not only involve the initial construction costs, but also high energy costs in both summer and winter.

Grandparenting of DSRs:

As an alternative to completely eliminating the exemption in the By-law to allow DSRs it is possible to stop the approval of new DSRs on a specific date and grandparent existing DSRs. To do so, the City would have to identify a date upon which no new applications would be approved. It is also recommended that a time period be established in which the DSR must be installed after approval. The City would also need to determine if the grandparenting of the DSR would apply to premises regardless of ownership or if the permission to use the DSR would expire upon the sale or closure of the business. However, monitoring the ownership of the business would be a difficult undertaking. It is important to note that the option to grandparent DSRs would result in continued ETS exposure for staff working in these rooms. Overall, fewer workers in the City would be exposed, but there would be continue to be inequity in the hospitality industry. Other health protective legislation intended to protect workers from hazardous conditions does not allow exposure to continue for a select group of employees.

The grandparenting of DSRs would be desirable for those operators that have already installed DSRs as they believe that they would be able to recoup some or all of the cost of the DSR over a number of years. However, this same benefit could be achieved simply by extending the date upon which DSRs would no longer be permitted. This approach has occurred in other North American jurisdictions. Without assigning a specific date upon which DSRs would be eliminated there will continue to be a cost to the City for the ongoing monitoring of DSRs.

DSR Permit Revocation for Non-compliance:

As indicated in the DSR plan approval process described earlier in this report, the City does not issue a permit for DSRs. Toronto Public Health approves the application and Urban Development Services issues a building permit for the construction. Hence, there is no specific DSR permit to revoke. Currently, if a DSR does not meet the By-law requirements enforcement staff treat the premises as if a DSR does not exist and have the option to lay charges for By-law infraction. Repeated non-compliance would likely result in progressively higher fines. City prosecution staff could also deal with recalcitrant operators by seeking a prohibition order to prevent the operation of a DSR at that premises.

Even if the City were to develop a permit system for DSRs, it would not likely create any greater enforcement opportunities than currently exist. Consideration was also given to the possibility of collecting a permit fee to offset the City's cost of enforcement. However, the City does not have the authority under the Municipal Act to collect a fee for such services. Therefore, introducing a permit system would not be a feasible option at this time.

Conclusions:

Toronto Public Health has thoroughly explored the options to phase-out or otherwise amend the exemption to allow Designated Smoking Rooms in Toronto's ETS By-law. To accommodate the interest of all stakeholders and to keep pace with the evolving attitude in the community with respect to exposure to environmental tobacco smoke, the ETS By-law was developed and implemented utilizing a phased-in approach. Although not included in the By-law upon passage in 1999, the logical next step in achieving 100% smoke-free public places and workplaces in the City of Toronto is to completely phase out the use of DSRs in the City. The whole reason for having an ETS By-law is to protect people in workplaces and public places. While the By-law implementation has been very successful to date, some members of the hospitality industry express concern that the By-law does not provide a level playing field for hospitality establishments. By continuing to allow DSRs the few owners that have had the resources to install DSRs would continue to experience the perceived benefit of allowing smoking in their premises. While these owners have made financial investments in these rooms they should be able to recover these costs over a set period of time, after which time they would no longer be in operation.

The Board of Health resolution to prohibit access to DSRs by persons under 19 years of age is the first step in dealing with the problems associated with DSRs. To truly serve the public health need in the City of Toronto, the Board of Health in consultation with appropriate stakeholders should establish a date in the near future upon which DSRs will be no longer permitted in the City.

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List of Attachments:

Appendix 1: Public Health Approval of Designated Smoking Room form