

TORONTO STAFF REPORT

April 26, 2004

To: Board of Health

From: Dr. Barbara Yaffe, Acting Medical Officer of Health

Subject: Toronto's No Smoking By-law (Municipal Code Chapter 709–Smoking) – Implementation Update

Purpose:

This report provides an update on Toronto's No Smoking By-law and the communications and enforcement activities related to the implementation of the third phase of the By-law.

Financial Implications and Impact Statement:

Implementation costs of \$785,700 (gross), \$392,800 (net) for communication and enforcement of the by-law are included in the Policy & Finance Committee Recommended 2004 Toronto Public Health Operating Budget. The existing complement of Public Health Inspectors will incorporate by-law enforcement in their routine inspections of food premises. The recommended budget includes an enhancement of \$273,300 (gross), \$136,650 (net) for 2004 and an increment of \$24,800 (gross), \$12,400 (net) for 2005 required to hire Municipal Code Enforcement Officers (4 FTE) and clerical support (.5 FTE) for the implementation of phase 3 of the by-law.

The Chief Financial Officer and Treasurer has reviewed this report and concurs with the financial impact statement.

Recommendations:

It is recommended that:

- (1) the Board of Health urge the Provincial Government to permit no new Designated Smoking Rooms (DSRs) following enactment of province-wide no smoking legislation, and that all existing Designated Smoking Rooms (DSRs) in Ontario be closed as of June 1st, 2007;

- (2) the Board of Health recommend that, should the Provincial Government not implement province-wide legislation by June of 2005 that requires closure of all DSRs by June 1, 2007, the Medical Officer of Health report further on amending Toronto's No Smoking By-law so that all DSRs in Toronto are closed by June 1, 2007; and
- (3) the appropriate City Officials be authorized and directed to take the necessary action to give effect thereto.

Background:

In August 1999, Toronto City Council approved a harmonized No Smoking By-law. The by-law provides protection from Environmental Tobacco Smoke (ETS) by prohibiting smoking within City of Toronto workplaces and public places, with some exemptions. One exemption permits smoking in approved Designated Smoking Rooms (DSRs) and other exemptions have allowed smoking in specific classes of establishments for defined periods of time. In Phase 1, up to 25% unenclosed smoking was permitted in public places such as restaurants, bars, bowling centres, billiard halls, casinos, and bingo halls. On June 1, 2001, the exemption for restaurants and bowling alleys (Classes A and B) expired and Phase 2 was implemented. Phase 2 allows for up to 25% unenclosed smoking only in billiard halls, casinos, bars and bingo halls (Classes C, D, E and F respectively) until June 1, 2004. On June 1, 2004, all exemptions that permit smoking in specified classes of public places will expire. The exemption that permits the installation and use of DSRs remains in effect.

The reduction and eventual elimination of exposure to ETS in public places and workplaces is occurring simultaneously in Toronto's neighbouring communities. York and Peel Regions have almost identical multi-phase by-laws as Toronto; Durham Region has a very similar by-law that will require all public places and workplaces to go smoke-free all at once on June 1, 2004 (see Appendix A). Toronto Public Health staff continue to work with neighbouring regions to achieve consistency in communication and enforcement plans. Recently and on a number of occasions, the Ontario government has announced that they will introduce legislation to ban smoking in public places and workplaces province-wide. In an April 8, 2004 presentation to the Empire Club, Minister of Health George Smitherman said, "We will take aggressive action to ban smoking in all work and public places", also saying that "within three years we will make all work and public places smoke-free."

Comments:

Gradually reducing unwanted exposure to second-hand smoke through a three-phase approach has been an effective method in moving toward the ultimate goal of 100% smoke-free workplaces and public places in the City of Toronto. The major components of the implementation of the by-law include public education, community awareness and enforcement. The implementation of the by-law is also part of a comprehensive Toronto Public Health approach to tobacco control that includes protection, prevention and cessation programs.

Community Awareness Campaign:

Public education has been and continues to be an essential part of Toronto's by-law. An effective communications campaign supports the implementation and enforcement of the by-law and helps the public understand the serious health issues behind the by-law.

Prior to implementation of the by-law, Toronto Public Health launched a multi-year education campaign to raise awareness and educate the public, employers, owners, operators and employees about the by-law and the health risks associated with ETS. The campaign helps people understand the reason for the by-law, their responsibilities under it, what the penalties are and who to call with complaints or inquiries. It encourages compliance with each phase of the by-law through community-based prevention and cessation activities, and promotes the economic and health benefits of the by-law. Examples of such benefits include healthier employees, reduced maintenance costs and an expanded customer base. In this second phase of the by-law and leading into the third phase, public health staff have been developing initiatives to continually promote smoke-free public places and have been working in collaboration with Economic Development, Culture and Tourism staff, community-based organizations and the private sector to increase awareness and encourage compliance with the by-law.

In support of the third phase implementation, a number of communication activities have been launched. With an invitation to "Step inside for a breath of fresh air", a new promotional campaign has been designed to inform all Torontonians about the next phase of the by-law and invite them to enjoy Toronto's hospitality establishments that will offer a smoke-free environment. The advertisements will appear in May and June in a variety of locations including bus shelters, subway cars and platforms, newspapers (major, local and multicultural) and in selected local theatres. Information about the by-law is also available on the City's website and by calling the Health Connection (416-338-7600) or Smoke-free helpline (416-392-0123). In consultation with Toronto area Public Health Units and with funding from Health Canada, Cancer Care Ontario has produced a number of radio advertisements in the support of smoke-free bar legislation. These radio advertisements began playing in April and will continue into June 2004.

As was done with each previous implementation phase of the by-law, Toronto Public Health has implemented a mail-out to the owner/operators of all Toronto establishments affected by this phase of the by-law. The mail-out is designed to inform the owner/operators of the changes and provide information to help them meet the by-law requirements. Public Health Inspectors are also hand delivering information during food safety inspections to make sure that food premise operators fully understand the by-law. Staff have met with Economic Development and Tourism staff to establish collaborative methods to get the by-law message out.

By-law Enforcement:

In addition to having a comprehensive awareness campaign, the successful implementation of all phases of the by-law must be supported by an effective enforcement system. In preparation for Phase 2 implementation in June 2001, when restaurants and bowling centres were required to be smoke-free, it was important to have sufficient enforcement staff to monitor the implementation and address non-compliance. At that time, eight temporary enforcement staff were hired in

support of this effort. Again in 2004, for the launch of Phase 3, eight Municipal Code Enforcement Officers (MCEOs) will be in place to join the City's 72 Food Safety Public Health Inspectors in visiting Toronto's hospitality establishments to determine the level of compliance, inform and educate owners and operators and, if necessary, take appropriate enforcement action. The hiring of the MCEOs is subject to pending budget approval.

The Public Health Inspectors will conduct most of these assessments during routine food safety inspections. While most complaints regarding non-compliance in food premises will be handled by the Food Safety Inspectors and the Enforcement Officers, the latter will also conduct enforcement activities focussed on those establishments primarily affected by the changes with Phase 3, working during hours when offences are most likely to occur and enforcement would be least expected. This includes early mornings for establishments such as donut shops, evenings and weekends to monitor most hospitality establishments and overnight to cover clubs and 24-hour food premises and workplaces. In order to respond to complaints and monitor compliance, enforcement methods include unannounced inspections and surveillance. Staff will concentrate enforcement activities in specific areas or in types of establishments where suspected non-compliance has been reported to be high. Joint enforcement activities have also been conducted with other City departments and agencies such as Toronto Licensing, Toronto Police Services and the Alcohol and Gaming Commission and are an effective means to deal with problem establishments.

Similar to the enforcement process for hospitality settings, the Public Health Inspectors assigned to Health Hazard investigations will respond to complaints from the public and employees in some of Toronto's 73,000 plus workplaces and in residential settings with the support of the Enforcement Officers. Residential complaints include complaints of smoking in common areas of apartment buildings and condominiums.

Restaurants and Bars:

One of the most challenging aspects of Toronto's No Smoking By-law has been the different requirements for restaurants and bars with respect to smoking restrictions. The decision to delay smoke-free provisions for bars and other adult oriented establishments in Toronto's by-law was viewed by many as an appropriate method of phasing in smoke-free provisions. Since the difference between restaurants and bars was based on perception and not defined in existing municipal or provincial legislation, City staff were left to define the distinct classes of establishment identified in the current by-law. The classes were developed on the basis of reducing exposure to Environmental Tobacco Smoke for persons under 19 years old, a premise supported by all stakeholders involved in preceding community and industry consultations. However, the phased in approach and associated class definitions did concern the community and hospitality industry to some extent.

By defining bars as establishments with liquor licences that prohibit admission to persons under 19 years of age at all times, many business operators had to make a decision about which patrons they would allow in to their establishments. Would they cater to smokers or young people and/or families? This has also caused concern for some parents who have been denied access to a favourite restaurant because their children were with them. Some operators have chosen to

operate as a bar because they did not want to lose their smoking customers and were unwilling or unable to install a Designated Smoking Room. Based on inspections to date, of the more than 6,000 establishments in Toronto, approximately 70% are operating as restaurants and offer smoke-free dining.

The next phase of the by-law will bring clarity to the issue. Business operators will no longer have to prevent access to their establishments to patrons under 19 years old. This change will be welcomed by many young persons, parents and tourists to the City who will have no difficulty finding a suitable restaurant to enjoy.

Patios and Private Clubs:

The next phase of the by-law will not affect the requirements for patios or private clubs. The provincial authority assigned to municipalities that allows for smoking control by-laws does not extend beyond enclosed public places or workplaces. Patios that are not enclosed by walls and a roof are not covered by the by-law, thus the operator may permit smoking on those patios.

Private clubs are exempt from the requirements of the by-law. Many operators of public places continue to label them as private clubs as a justification for permitting smoking in their establishments. Once the definition of a private club is explained to the operator, most are quite cooperative. There are some operators who remain convinced that a system as simple as selling a membership card at the door for a nominal fee makes it a private club. Many of these establishments are café type premises without a liquor license and were therefore unable to be classified as “bars” to permit smoking during Phase 2. Enforcement in these establishments is often difficult but they will be monitored closely through the implementation of the third phase of the by-law.

Designated Smoking Rooms:

In a January 27, 2003 report to the Board of Health, the Medical Officer of Health reported that permitting the installation of Designated Smoking Rooms (DSRs) had contributed significantly to the workload for enforcement staff and continued ETS exposure. In addition to staff time required for the application review, plan review and initial inspection, there were also a number of compliance issues. Those issues included such problems as DSRs having their doors propped open to the non-smoking area, ventilation systems being turned off or inadequately maintained (e.g. filter cleaning), employee exposure to ETS and access to DSRs by persons under 19 years of age. After reviewing these issues, the Board of Health forwarded recommendations to City Council to amend the by-law with respect to DSRs.

At its meeting on April 14, 15 and 16, 2003, City Council adopted some of the Board of Health's recommendations and amended the smoking by-law by changing the definition of a DSR. In addition to the existing requirements upon enactment of the by-law, a DSR was further defined as a room to which no patron under the age of 19 years is permitted and which employees are not required to work in. There were also amendments that only affected DSRs built after enactment of the by-law. These new DSRs could not include an area where food is prepared or liquor is dispensed. All of these amendments reduce ETS exposure for young persons and some hospitality workers.

At the April 2003 meeting, City Council also referred the Board of Health recommendations to not approve any new DSR applications and to phase-out existing DSRs in June 2005 to the Economic Development and Parks Committee (ED&PC). The ED&PC recommended that the Commissioner of Economic Development, Culture and Tourism arrange for discussions with representatives of the restaurant, bar and hospitality industry immediately to further discuss the phase-out of DSR's and report back to City Council, through ED&PC, on these discussions in July 2004.

Consequently, some of the problems identified by the Medical Officer of Health remain and the uncertainty regarding the future of DSRs continues to be a challenge for the hospitality industry. While the amendments have encouraged some owner/operators to not install DSRs, others simply feel that another impediment has been added to an already uneven playing field.

In January and February of this year, Toronto Public Health conducted a review to determine the number of DSR applications that had been approved and how many DSRs were actually installed and in use. It was found that 185 DSRs had been installed and were in use. Sixty-six establishments had DSR applications approved but had not installed them. There were 29 establishments that had received approval for a DSR but were no longer in business and 11 establishments with approved DSRs that were not open during the assessment period or closed for renovations.

The assessment, which was conducted during daytime hours, found that 27 of the 185 DSRs assessed were not in compliance with the DSR requirements outlined in the by-law. Eleven had exhaust fans running but with insufficient velocity to draw the smoke from the room. At 10 of the establishments, the DSR doors were propped open while the room was in use and five of the DSRs had the ventilation system turned off. Two of the rooms were much larger than the permitted 25% of occupiable space and one was occupied by a patron under 19 years of age.

Toronto Public Health continues to receive applications for DSRs but many operators have indicated that they will wait to see how their business is affected in June 2004 or until the future of DSRs is determined.

Smoke-free legislation in other communities:

For many years Toronto Public Health staff have worked with the staff of the other Greater Toronto Area (GTA) health units in the development and implementation of smoke-free by-laws. The phased-in by-laws in the regions of Peel and York are almost identical to Toronto's. In June 2004, the Regional Municipality of Durham will implement a comprehensive by-law that provides for 100% smoke-free workplaces and public places with exemptions limited to Legion halls and 50% of occupiable space for DSRs in bingo halls and casinos (see Appendix A for a by-law comparison between Toronto and neighbouring regions). Many other Ontario cities have also gone smoke-free, most notably Ottawa, where all public places including restaurants and bars became smoke-free on August 1, 2001 without the option for DSRs.

On March 29, 2004, the City of New York celebrated the first anniversary of the Smoke-free Air Act. The New York City Departments of Health and Mental Hygiene, Finance, and Small Businesses Services and the City's Economic Development Corporation jointly released a report

entitled "The State of Smoke-Free New York City," a one-year review of the economic and health impact of the law. In a media release issued to commemorate the anniversary, City Health Commissioner Dr. Thomas Frieden said, "New York City is a healthier place to work, eat, and drink. The law has not hurt the bar and restaurant industry, and 150,000 more workers in New York City breathe smoke-free air every day, reducing their risk of heart disease, stroke and lung cancer."

There have been a number of developments at the provincial/territorial level in Canada for province/territory-wide laws to require smoke-free workplaces, including all restaurants and bars. The Northwest Territories and Nunavut both have laws prohibiting smoking in all workplaces, including restaurants and bars, as of May 1, 2004. In November 2003, the Governments of Ontario and Manitoba both announced through speeches from the throne that they would ban smoking in all workplaces, including restaurants and bars. While the Ontario Government has only committed to implementation of smoke-free legislation within three years, the Minister of Health in Manitoba has since announced that legislation, once passed, would come into effect on October 1, 2004.

Prince Edward Island and British Columbia both have laws prohibiting smoking in restaurants and bars but allow for the use of DSRs. There are also many municipalities in Canada which have by-laws with 100% bans on smoking in all restaurants and bars including Victoria (Capital Regional District), Edmonton (effective in 2005), Moose Jaw, Winnipeg, Brandon, Fredericton and Cape Breton Regional Municipality.

Internationally, Ireland, Norway and New Zealand have nation-wide laws prohibiting smoking in restaurants and bars that come into force in 2004 with implementation dates of April, June, and December respectively. The Swedish Government has announced its intention to introduce a law to ban smoking in all restaurants and bars effective July 1, 2005.

Conclusions:

It is expected that implementation of the third phase of Toronto's by-law will be challenging. As with many municipal by-laws, ETS by-laws are largely self-regulating through increased voluntary compliance by owners/operators, employers, staff, and public after an introductory period. Toronto Public Health continues to receive strong support from members of the public and many food premises operators and many of them express their concerns about the health effects of ETS. Those people are happy that the City is finally achieving 100 percent smoke-free public places. In addition, Toronto Public Health has also continued to receive similar requests from members of the hospitality industry to level the playing field for restaurants and bars.

Given the current evidence of the health effects of ETS, the continued reduction in exposure to tobacco smoke for workers and the visiting public in restaurants, bars and entertainment facilities, the City is reducing an unacceptable health risk. The Board of Health must continue to address the significant risk to public health that ETS presents by continuing to support public education and enforcement efforts. With DSRs being the major remaining challenge to be addressed, the Board of Health should act to ensure that DSRs are eventually phased out in order to truly achieve the goal of 100% smoke-free public places and workplaces in the City of Toronto.

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List of Attachments:

Appendix A: A Comparison of Smoke-free By-laws in Toronto and Neighbouring Regions

Appendix A

A Comparison of Smoke-free By-laws in Toronto and Neighbouring Regions

BY-LAW PROVISION	MUNICIPALITY			
	City of Toronto	Peel Region	York Region	Durham Region
Smoke-free Restaurants	June 1, 2001 DSRs permitted indefinitely	June 1, 2001 DSRs permitted until June 2010	June 1, 2001 DSRs permitted indefinitely	June 1, 2004 No DSRs
Smoke-free Bowling Centres	June 1, 2001 DSRs permitted indefinitely	June 1, 2001 DSRs permitted until June 2010	June 1, 2001 DSRs permitted indefinitely	June 1, 2004 No DSRs
Smoke-free Bars	June 1, 2004 DSRs permitted indefinitely	June 1, 2004 DSRs permitted until June 2010	June 1, 2004 DSRs permitted indefinitely	June 1, 2004 No DSRs
Smoke-free Billiard Halls	June 1, 2004 DSRs permitted indefinitely	June 1, 2004 DSRs permitted until June 2010	June 1, 2004 DSRs permitted indefinitely	June 1, 2004 No DSRs
Smoke-free Bingo Halls	June 1, 2004 *DSRs permitted indefinitely	June 1, 2004 *DSRs permitted until June 2010	June 1, 2004 *DSRs permitted indefinitely	June 1, 2004 *DSRs permitted indefinitely
Smoke-free Casinos & Racetracks	June 1, 2004 DSRs permitted indefinitely	June 1, 2004 DSRs permitted until June 2010	June 1, 2004 DSRs permitted indefinitely	June 1, 2004 *DSRs permitted indefinitely
Smoke-free Workplaces	October 1999 DSRs permitted indefinitely	October 1999 No DSRs except for 2 workplaces in Brampton	January 2001 No DSRs	June 1, 2004 No DSRs

* These DSRs can be up to 50% of the occupiable space of the establishment. All other DSRs can be no larger than 25% of the occupiable space.