

TORONTO STAFF REPORT

November 14, 2005

To: Board of Health

From: Dr. David McKeown, Medical Officer of Health

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

Purpose:

This report provides an update on Toronto's No Smoking By-law, the implementation of the third and final phase of the by-law and the passage of the Smoke-free Ontario Act.

Financial Implications and Impact Statement:

There are no financial implications or impacts associated with this report.

Recommendation:

It is recommended that this report be received for information.

Background:

On June 1, 2004, the third and final phase of Toronto's No Smoking By-law came into effect. Through each phase, the by-law has increased the level of protection from Environmental Tobacco Smoke (ETS) by prohibiting smoking within City of Toronto workplaces and public places and incrementally eliminating exemptions that were included when the by-law was first passed in August of 1999. The only exemption that remains in effect is the option to permit smoking in approved Designated Smoking Rooms (DSRs).

On June 8, 2005, the new Smoke-Free Ontario Act received third and final reading in the provincial legislature. Royal Assent was given on June 13, 2005. While the City of Toronto, along with many other municipalities across Ontario, has been quite successful in reducing exposure to ETS in public places and workplaces, the passage of new provincial smoke-free legislation in the spring of 2005 is a significant step in the effort to reduce illness caused by human exposure to tobacco smoke. The Act will come in force on May 31, 2006.

Comments:

As was the case with the two earlier phases of the by-law implementation in 1999 and 2001, Toronto Public Health launched the third phase with three major components: public education, community awareness and enforcement. The implementation of the by-law remains part of a comprehensive Toronto Public Health approach to tobacco control that includes protection, prevention and cessation initiatives. Toronto Public Health staff also worked with neighbouring regions to achieve consistency in communication and enforcement plans.

Community Awareness Campaign:

The final phase of the No Smoking By-law was highly anticipated in the City of Toronto by all stakeholders. It was critical to have an effective communications campaign in place to support the implementation and enforcement of the by-law and to ensure clarity on the bylaw requirements.

There were a number of communication activities to support the third phase implementation. For example, Toronto Public Health launched a new promotional campaign to inform all Torontonians about the next phase of the by-law. The campaign invited residents and visitors to Toronto to “Step inside for a breath of fresh air” and encouraged enjoyment of Toronto’s smoke-free hospitality establishments. The campaign included advertisements that appeared through May and June 2004 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 was also available on the City’s website and by calling the Health Connection (416-338-7600) or the smoke-free helpline (416-392-0123). In consultation with Toronto area Public Health Units and with funding from Health Canada, Cancer Care Ontario produced a number of radio advertisements in support of smoke-free bar legislation that ran April through June 2004.

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 helped 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 encouraged compliance with each phase of the by-law through community-based prevention and cessation activities. Continuing from the second phase of the by-law, public health staff have developed 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.

As with each previous implementation phase of the by-law, Toronto Public Health implemented a mail-out to the owner/operators of all Toronto establishments affected by the final phase of the by-law. The mail-out was designed to inform the owner/operators of the changes and to provide information to help them meet the by-law requirements. Public Health Inspectors also hand delivered information during food safety inspections to make sure that food premise operators fully understood the by-law.

By-law Enforcement:

In addition to a comprehensive awareness campaign, the successful implementation of all phases of the by-law has been supported by an effective enforcement process. When the final phase of the by-law came into effect, Public Health enforcement staff began an intensive campaign to determine the level of compliance and, if necessary, take appropriate enforcement action. Enforcement staff, often working in pairs, made visits throughout the City focussing on those establishments affected by the changes and visiting during hours when offences are most likely to occur and enforcement would be least expected. Surveillance, inspections and complaint response continue to be conducted in all types of establishments 7 days a week. Joint enforcement activities conducted with other City departments and agencies such as Toronto Licensing, Toronto Police Services and the Alcohol and Gaming Commission continue to be an effective means to deal with problem establishments.

From June 1, 2004 to the end of September 2005 there have been 31,589 compliance visits made to bars, restaurants and entertainment facilities that were required to become smoke-free with the implementation of Phase 3 of the by-law. During 1,139 of these visits, non compliance was observed resulting in an overall compliance rate for this period of 96.4%. While this rate is slightly lower than the 97% to 99% compliance rates experienced in the first few months of implementation it must be noted that a much higher percentage of the compliance visits are now being made to the few recalcitrant operators that are almost continually non-compliant with the by-law.

During this same period there have been 706 charges laid for non-compliance with the by-law resulting in 328 convictions to date. There have been 36 charges withdrawn or quashed leaving 342 still to be dealt with in the court system. Most of the charges have been laid upon proprietors of bars and restaurants but there have been 50 charges given to patrons as well.

For convictions registered, TPH has seen a steady increase in the fines being imposed. Early charges often resulted in fines in the \$100 to \$300 dollar range but it is now quite common to receive judgements of \$1,000 or more for each infraction. Additionally, the court quite regularly will issue probation orders that require the proprietors to comply with the by-law or face significantly more severe penalties imposed by the court above and beyond the maximum by-law fine of \$5,000. As TPH continues to get multiple convictions against some of the more non-compliant proprietors, TPH will be in a position to use options such as the City's Licensing Tribunal to gain compliance.

While most of the enforcement activity has been focussed on hospitality settings, enforcement staff have also been responding to complaints from the public and employees in some of Toronto's 73,000 plus workplaces and in residential settings. Residential complaints include complaints of smoking in common areas of apartment buildings and condominiums.

Private Clubs and Patios:

As expected, some operators of bars looked for ways to avoid compliance with the smoke-free requirements. One method that some operators chose was to identify their public establishments

as private clubs. Legitimate private clubs are exempt from the requirements of the by-law and once the definition of a private club was explained to public place operators, most were quite cooperative. However, some operators remained convinced that a system as simple as selling a membership card at the door for a nominal fee, makes their establishment a private club. However, once charged and taken to court, many of these businesses came into compliance. One proprietor of an adult entertainment establishment applied to the Ontario Superior Court of Justice seeking a declaration that his establishment is a private club. The application was not successful and the application was dismissed with legal costs to be paid to the City.

Another method employed to continue smoking in bars and restaurants was to permit smoking in outdoor patios. 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. Problems arose when proprietors started to add enclosures on the patios to protect patrons from rain, snow and cooler temperatures. Heaters were also added to these enclosed patios effectively extending the indoor area of the establishment. In order to correct this, a letter was sent to all establishments clarifying the by-law and clearly informing proprietors that smoking would not be permitted in enclosed patios. Following the letter, visits were made to offending establishments and the problems were resolved. In most cases the enclosures were completely removed. Inspections, particularly in the spring and fall, will continue to ensure compliance.

Designated Smoking Rooms:

As indicated in the 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. These include 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.

Less than 200 DSRs have been approved, installed and are in current use under the Toronto by-law. Effective May 31, 2006, smoking will no longer be permitted in these rooms when the new Smoke-Free Ontario Act comes into effect. Letters will be sent to those establishments that have DSRs and enforcement staff will remind each proprietor of the requirements of the provincial legislation in the first quarter of 2006.

Smoke-free Ontario Act:

The Smoke-free Ontario Act received Royal Assent on June 13, 2005. This Act renames and strengthens the Tobacco Control Act, repeals a weak and rarely enforced Smoking in the Workplace Act and will essentially replace municipal by-laws that regulate smoking in public places and workplaces. The current Tobacco Control Act is enforced by Toronto Public Health and regulates where, how and to whom tobacco products can be sold. It also has specific provisions to prohibit smoking on school property and in a number of institutional type settings such as hospitals and nursing homes. Toronto's no smoking by-law was written to address smoking in public places and workplaces not already covered by the Tobacco Control Act. The new legislation will prohibit smoking in all workplaces and enclosed public places throughout Ontario beginning May 31, 2006.

Once the new legislation is in place, the exemption in the Toronto by-law that permits smoking in DSRs will be superseded. The new legislation also broadly defines workplaces as "the inside of any place, building or structure or vehicle that employees work in or frequent that is not primarily a private dwelling". The workplace definition in the Toronto by-law specifically excludes workplaces that are also private clubs. Under the Smoke-Free Ontario Act all private clubs in the City will have to become smoke-free.

TPH staff will also be working with City staff to review the issue of smoking in municipal shelters and the impact of the Smoke-Free Ontario Act. Currently, the no smoking by-law does not apply to shelters because they are considered to be residential. The Smoke-Free Ontario Act has much stronger provisions to protect workers and will only permit smoking in Controlled Smoking Areas (similar to DSRs). However, these areas are only permissible in:

- (1) Residence as defined in Nursing Homes Act, Charitable Institutions Act or Homes for the Aged and Rest Homes Act;
- (2) A residential facility that is operated as a retirement home and that provides care, in addition to accommodation, to the residents of the home;
- (3) Supportive housing residence funded or administered through the Ministry of Health and Long-Term Care or the Ministry of Community and Social Services;
- (4) A psychiatric facility as designated in the regulations; or
- (5) A facility for veterans as designated in the regulations.

Use of the smoking area is limited to residents of that facility and a resident who desires to use the room must be able, in the opinion of the proprietor or employer, to smoke safely without assistance from an employee. An employee who does not desire to enter the room shall not be required to do so.

The regulations under the Act are currently being drafted and TPH staff are participating in targeted consultations through the fall of 2005. Once the regulations are written in early 2006, it will become clear how the new legislation will affect Toronto shelters.

Conclusions:

The implementation of the third phase of Toronto's by-law has been successful. While there have been some challenges, the by-law has been very effective in reducing the unacceptable health risk of exposure to tobacco smoke. The implementation of the Smoke-Free Ontario Act, in 2006 will further strengthen the City's ability to protect the health of Toronto's workers, residents and visitors who frequent Toronto's restaurants, bars and entertainment facilities.

With the continuing support of the Board of Health, public health staff will continue to address the remaining issues through public education and enforcement efforts and ensure that the goal of 100% smoke-free workplaces and public places is achieved.

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