



CITY OF VANCOUVER

ADMINISTRATIVE REPORT

Report Date: June 20, 2008
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Meeting Date: July 10, 2008

TO: Standing Committee on Planning and Environment

FROM: Domenic Losito, Regional Director of Health Protection
Barb Windsor, Deputy Chief Licensing Inspector

SUBJECT: Hookah Bars & Cigar Lounges Progress Report

RECOMMENDATION

- A. THAT Council make no further amendments to the Health By-law with regard to indoor smoking, thereby reiterating Council's intent that the prohibition on indoor smoking applies to hookah bars and that the current definition of "smoking" protects the public and workers from exposure to secondhand smoke, irrespective of what is being burned or smoked.
- B. THAT enforcement of the new Health By-law smoking requirements be withheld against residential care facilities for six months or until such time as Council has been able to hear delegations from operators of those facilities and VCH's Chief Medical Health Officer.

GENERAL MANAGER'S COMMENTS

The General Manager recommends approval of the foregoing.

CITY MANAGER'S COMMENTS

The City Manager recommends approval of the foregoing.

COUNCIL POLICY

This report is consistent with Council's leadership role in protecting the public and workers from exposure to second hand smoke.

On September 20, 2007 Council passed the following motion:

THAT Council enact an abridged health by-law, generally as set out in Appendix A, that eliminates health regulations duplicated in provincial and other municipal legislation or suitable for inclusion in more appropriate by-laws; except that 1) Council does not support section 2.2b and 2) Council retain 2.2 (a)iii but allow the existing hookah and cigar lounges to be exempted until further advice from staff.

Further, on January 17, 2008 passed the following motion:

THAT Council amend the Health By-law by deleting Sections 2.2(a)iv and 2.2(a)v of Health By-law #9535 to remove the temporary exemptions for pre-existing cigar lounges and hookah parlours, bringing the City's indoor smoking provisions into line with the recently announced Provincial Smoking regulation.

PURPOSE

The purpose of this report is to provide Council with a progress report on implementation of the new smoke-free provisions of the Health By-law and report back on the appropriateness of the definition of smoking in the current by-law.

DISCUSSION

Implementation issues:

The new provisions of the smoke-free by-law and the provincial smoke-free regulation have been in effect for over 3 months. In general the introductory period has been relatively smooth, in large part because of the experience gained from the pre-existing smoke-free by-law and the broad public acceptance of these measures. Businesses and the general public have experienced some challenges in interpreting and understanding the new buffer zone implications, especially with the existence of a 3 metre provincial requirement and a 6 metre provincial requirement. The smoke-free patio provision has not been fully tested given the inclement weather we have been experiencing.

Since April 1 the Property Use Inspection Branch, which has primary responsibility for administration of the by-law, has received 32 complaints related to the Health By-law smoke-free provisions and has followed up on these with information and instructions for compliance. During the same period VCH has received 58 smoking-related complaints under the provincial regulation and health inspectors have followed up on these.

BC Lung has been most helpful in producing signage specific to the Vancouver By-law in addition to signs they have produced for province-wide use. Volunteers continue to distribute these signs to businesses within Vancouver. Signage templates are also available on the VCH

Environmental Health web site. Vancouver transit shelters are now equipped with No Smoking signs through the City's street furniture contractor, CBS JCDecaux.

An environmental scan of the Lower Mainland indicates an increased level of interest at the local government level to adopt smoke-free bylaws at least as stringent as Vancouver's and, in the case of municipalities south of the Fraser, more stringent in terms of a 7.5 metre buffer zone. Staff anticipate that by spring of 2009 most GVRD municipalities, along with a number in the Sea to Sky and Sunshine Coast areas, will have outdoor patio bans and deeper buffer zones in effect.

Challenges:

One area of concern to VCH staff has been the continued operation of at least one, but likely two hookah bars, despite the clear prohibition under the Vancouver by-law. Discussions with the operators and visits by inspectors have indicated that they claim to not be using tobacco in their hookah pipes (which, if verified, would put them in technical compliance with the provincial regulation). They claim that all that is provided by the establishment is a fruit-based substance which is burned in the bowl. It would appear that what may be happening is that the customers are adding their own tobacco or other herbs or leaves. A recent complainant alleged that marijuana was being sold and smoked on the premises. Irrespective of what is being burned in the hookah pipes, the burning of any substance or weed in a hookah pipe is currently prohibited by the Health By-law and enforcement action is anticipated. One existing hookah bar appears to have ceased allowing hookah smoking within their restaurant. However, the apparent non-compliance by the others is generating complaints about an un-level playing field. In the meantime, City and VCH staff continue to receive numerous inquiries about the feasibility of opening new hookah bars.

Along a similar vein, VCH staff are investigating allegations of the continued use of an indoor smoking lounge at one of the cigar shops and will proceed with enforcement action under the provincial regulations as appropriate.

Finally, a number of residential care facilities in Vancouver have approached VCH staff with concerns about their ability to comply with the City By-law, specifically the elimination of indoor smoking rooms and the application of the 6 metre buffer zone at entryways. These facilities are not directly operated by VCH, but are affiliated through contracts and funding. Effective May 31, 2008, smoking has been prohibited on any VCH owned or operated property, including all buildings, grounds and parking lots. Some special considerations in terms of timing have been provided to VCH residential care facilities with respect to outdoor smoking areas. The affiliated facilities may well approach City Council for exemptions or amendments to the City by-law to address concerns they have around safety and supervision of their residents, a number of whom have other significant challenges in addition to their nicotine addiction. Should such a request for exemptions/amendments come before City Council, Vancouver Coastal's Chief Medical Health officer would like to address Council on the implications of such a consideration.

Given the amount of time such a discussion might take up at City Council and the need for staff to gather additional information, staff recommend that, should Council be approached by operators of these facilities with a request to amend the by-law, the matter be deferred to the fall with a report back on the implications of any relaxation or amendment. Further, Council should instruct staff to withhold active enforcement of the Health By-law provisions

in respect of smoking at residential care facilities until such time as staff has reported back and Council has had time to hear delegations and consider all of the options.

Definition of “smoking”:

At the January 17, 2008 Council meeting staff were asked to also report back on the appropriateness of the current definition of “smoke” or “smoking”, especially with respect to how it might impact on the “smoking” of non-tobacco products. The current definition, as far as staff can determine, has existed since the first smoke-free by-law adopted by Council in 1986, with the exception of the recently added reference to “hookah pipe”:

“smoke” or “smoking” means to inhale, exhale, burn, or carry a lighted cigarette, cigar, pipe, hookah pipe, or other lighted smoking equipment that burns tobacco or other weed or substance;

It would appear that the definition was crafted to reflect the fact that, irrespective of what is burned in a cigarette, pipe or hookah pipe, there are health risks to other occupants (workers and patrons) of the indoor space similar to the risks associated with the burning of tobacco.

A limited review of other municipal, state and federal smoking regulations reveals a mix of approaches, with federal and provincial statutes tending to restrict their definition to tobacco and tobacco products, largely based on the parent legislation which in most cases specifies tobacco products. On the other hand a number of Canadian local governments tend to use a broader definition such as:

“SMOKE or SMOKING – Includes the carrying of a lighted cigar or cigarette, pipe or any other lighted smoking equipment.” (Toronto and Ottawa)

Queensland Australia has actually incorporated “other smoking products” in the title of their Tobacco and Other Smoking Products Act - 1998 and regulations:

“*smoke* means smoke, hold or otherwise have control over an ignited smoking product.”

The following evidence is presented in support of maintaining the current definition and therefore continuing to prohibit the use of hookah pipes in indoor public places and workplaces.

- In a recent report about waterpipe smoking the World Health Organization said those exposed to secondhand hookah smoke appeared to be at risk of the same diseases as those exposed to cigarettes. WHO warned that hookah smoke could also increase the risk of adverse effects during pregnancy.
- Since hookah pipes require an ignition source (usually a small piece of charcoal) to burn the product in the pipe bowl (tobacco, herbs or dried fruit), there are products of combustion, including carbon monoxide, metals and other cancer-causing chemicals. Therefore, simply from an indoor air quality perspective, the use of hookah pipes should not be permitted in indoor public places and workplaces.

- The WHO has also warned about the increased risks of spreading communicable diseases (e.g. hepatitis, TB) from the re-use of mouthpieces and unclean tubing on hookah pipes.
- They also cited the negative impacts the proliferation of hookah bars is having on youth prevention efforts. Hookah smoking is often promoted as being a safe alternative to cigarette smoking, and the sweet smell and taste of the hookah smoke may explain why young people, who otherwise might not use tobacco, begin to use waterpipes. Not surprisingly hookah bars have tended to proliferate in commercial areas next to university campuses to attract the youth market.
- Finally, hookah bars, especially those situated in close proximity to residential uses, have tended to generate complaints about the smoke drifting into those residences.

In conclusion, while there are currently only one or two hookah bars operating, any relaxation of the by-law or of enforcement actions will signal to the numerous proponents trying to establish these businesses in Vancouver that we are not truly a “smoke-free” city. This outcome would clearly have a negative effect on all of our efforts to reduce the prevalence of smoking in the City and the associated impacts on the public and workers.

FINANCIAL IMPLICATIONS

There are no direct financial implications to the City.

SOCIAL IMPLICATIONS

The continued prohibition of hookah smoking in indoor public places and workplaces may generate complaints that certain cultural practices are being restricted. However, many other jurisdictions have enacted similar prohibitions and the cultural practices can still take place in the community without impacting on the public’s health.

CONCLUSION

The revised smoke-free by-law has been generally well-received and the current definition of smoking as well as the current prohibition of hookah pipe smoking should remain in place.

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