



# Corporate Report

NO: R069

COUNCIL DATE: April 28, 2008

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## REGULAR COUNCIL

TO: Mayor & Council DATE: April 18, 2008  
FROM: City Solicitor FILE: 3900-01  
SUBJECT: Surrey Public Health Protection By-law ("No Smoking" Regulations)

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## RECOMMENDATION

Legal Services recommends that Council:

1. Endorse-in-principle the Surrey Public Health Protection By-law (the "By-law") attached as Appendix "A" to this report;
2. Direct staff to forward a copy of the proposed By-law to the Minister of Health Services and to consult with the Medical Health Officer on the proposed By-law; and
3. If the Medical Health Officer is satisfied with the By-law, direct staff to bring the By-law forward for the required readings and adoption, together with related amendments to the City's municipal ticketing by-law to allow for enforcement through ticketing.

## INTENT

The intent of this report is to have Council endorse increased restrictions in respect to the regulation of smoking in Surrey through the adoption of the new Surrey Public Health Protection By-law, which is attached as Appendix "A" to this report. This By-law imposes stricter regulations on smoking than those set by the Province.

## BACKGROUND

On November 27, 2007, it was announced by the Province that the *Tobacco Control Regulation*, which augments the *Tobacco Control Act*, had been enacted by an Order-in-Council with an effective date of March 31, 2008.

A local government enacting a by-law related to public health is subject to the restrictions and conditions of the Public Health Bylaws Regulation (B.C. Reg. 42/2004) of the *Community Charter*. In the case of the subject By-law, Council cannot adopt it without first consulting with the medical health officer and sending a copy of the By-law to the Minister of Health Services. The deposit of the By-law with the Minister is as information only and does not involve any approval.

The major restrictions of the Province's *Tobacco Control Regulation* are:

- no smoking within 3 metres of any public or workplace doorway, open window or air intake;
- no smoking in any indoor public places and workplaces;
- no tobacco sales in public buildings including hospitals and health facilities, universities and colleges, athletic and recreational facilities and provincial government buildings;
- no displays of tobacco products in all places where tobacco is sold that are accessible to youth under 19 years of age; and
- no tobacco ads that hang from the ceiling, no countertop tobacco displays, no self-serve tobacco displays and no outdoor tobacco signs.

## **DISCUSSION**

It should be noted that the above are the minimum standards set by the Province, but a municipality is permitted to set stricter standards to meet the needs of their community. The B.C. Lung Association and the Heart & Stroke Foundation of B.C., primary members of the Clean Air Coalition of B.C., continue to advocate for a smoke-free British Columbia.

The By-law for Surrey recommended in this report calls for a 7.5 metre separation of smoking from building entrances, air intake ducts and customer service areas such as patios. This is based on a recommendation of the Fraser Health Advisory Council at its meeting of April 3, 2008. The 7.5 metre separation distance is derived from studies done for the U.S. Surgeon General who determined 7.5 metres is the required distance from a smoker to remain safe from harm.

The following table provides a comparison of the proposed Surrey By-law with the smoking regulations of others (actual or proposed):

<b>Details of Initiative</b>	<b>Actual Provincial</b>	<b>Actual Vancouver</b>	<b>Actual Richmond</b>	<b>Proposed White Rock</b>	<b>Proposed Surrey</b>
Effective Date	Mar. 31, 2008	Oct. 7, 2007	Nov. 30, 2008	Jan. 1, 2009	July 31, 2008 <sup>1</sup>
Buffer Zones – Doors, Windows, Air Intakes & Patios	3 m	6 m	6 m	7.5 m	7.5 m
Smoking – Public Buildings & Workplaces	Not Permitted	Not Permitted	Not Permitted	Not Permitted	Not Permitted
Smoking – Transit Shelters	Not Permitted	Not Permitted	Not Permitted	Not Permitted	Not Permitted
Smoking – Taxicabs	Permitted	Not Permitted	Not Permitted	Not Permitted	Not Permitted
Smoking – Outdoor Patios serving food or alcohol	Restricted	Not Permitted	Not Permitted	Not Permitted	Not Permitted (effective Jan. 1, 2009) <sup>2</sup>
Smoking – With minors in vehicle	Permitted	Permitted	Not Permitted	Permitted	Not Permitted

Delta, Langley District and Langley City are relying only on the Provincial legislation and enforcement to regulate smoking. Delta and Langley District are referring all smoking complaints to Fraser Health.

Staff have consulted with a number of hospitality businesses in Surrey. They have advised that they are just entering their busiest time of year for patio use and have requested an effective date for the proposed changes related to smoking in outdoor patios of January 1, 2009, which will allow them time to adjust their business plans to reflect the expected changes in demand. This period of time will also allow City staff to work with the impacted businesses to ensure a smooth transition. Staff is proposing the regulations in the By-law take effect on July 31, 2008, except for the outdoor patio smoking restrictions, which are recommended to take effect on January 1, 2009.

If adopted by Council, the By-law (except for the patio restrictions) will come into force on July 31, 2008 subject to consultation with the Medical Officer of Health. Appropriate notification of the By-law regulations will be undertaken to inform the public, businesses and institutions of the new smoking regulations prior to the effective date of the By-law.

<sup>1</sup> Final adoption planned for July 31, 2008 except for patios.

<sup>2</sup> Final adoption planned for January 1, 2009 for patios.

### **Enforcement of the Proposed By-law**

The By-law will be enforced through the use of municipal tickets, after a reasonable period of public education. Both a smoker found smoking in an area where smoking is not permitted and the owner of a premises that permits unlawful smoking may be ticketed. Amendments to Surrey Municipal Ticket Information Utilization By-law, 1994, No. 12508, as amended, will be brought forward for Council readings at the same time as the subject By-law is before Council for readings and adoption.

### **CONCLUSION**

It is recommended that Council:

- endorse-in-principle the Surrey Public Health Protection By-law (the "By-law") attached as Appendix "A" to this report;
- direct staff to forward a copy of the proposed By-law to the Minister of Health Services and to consult with the Medical Health Officer on the proposed By-law; and
- if the Medical Health Officer is satisfied with the By-law, direct staff to bring the By-law forward for the required readings and adoption, together with related amendments to the City's municipal ticketing by-law to allow for enforcement through ticketing.

CRAIG MacFARLANE  
City Solicitor

CM:mlg  
Attach.

APPENDIX "A"

CITY OF SURREY  
BY-LAW NO. \_\_\_\_\_

Surrey Public Health Protection By-law

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- (a) WHEREAS it is desirable for the protection, promotion and preservation of health of the inhabitants of the City of Surrey for Council to regulate and prohibit smoking in the City;
- (b) AND WHEREAS Council has consulted with the medical health officer (Fraser Health) on this By-law and deposited a copy thereof with the Minister of Health Services.

Under its statutory powers, including Section 8(3)(i) of the *Community Charter*, S.B.C. 2003, c. 26 (the "Community Charter") and Public Health Bylaws Regulation, B.C. Reg. 42/2004, the Council of the City of Surrey enacts the following provisions:

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SECTION 1  
INTERPRETATION

**Title**

- 1.1 This By-law may be cited as the "Surrey Public Health Protection By-law, 2008, No. \_\_\_\_\_".

**Definitions**

- 1.2 In this By-law:

"building" includes a structure;

"business" means a business, trade, profession, or other occupation for which a person must obtain a license under the Business License By-law;

"City" means the City of Surrey;

"common areas" include lobbies, foyers, stairwells, elevators, corridors, cloakrooms, washrooms, food fair seating areas and other public areas of a building;

"customer service area" means a partially enclosed or unenclosed area, including a balcony, patio, yard or sidewalk, that is part of or connected to or associated with the business or use in a building or premises that includes the service of food or alcoholic drinks to customers or other persons for consumption on site;

"premises" means a portion of a building in respect of which a person has exclusive possession;

"responsible person" means a person who owns, controls, manages, supervises or operates:

- (a) a business or other use which occupies all or substantially all of a building,
- (b) a business or other use which occupies premises,
- (c) common areas, or

- (d) a customer service area,

and, in respect of common areas, includes a strata corporation or cooperative association and also means a person who drives a vehicle for hire;

"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 substances, and

"vehicle for hire" means a vehicle for hire defined in the City of Surrey Vehicle for Hire By-law, 1999, No. 13610.

### **Table of contents**

1.3 The table of contents for this By-law is for convenient reference only, and is not for use in interpreting or enforcing this By-law.

### **Severability**

1.4 A decision by a court that any part of this By-law is illegal, void or unenforceable severs that part from this By-law and is not to affect the balance of this By-law.

### **Duty of administration and enforcement**

1.5 The intent of this By-law is to set standards in the general public interest, and not to impose a duty on the City or its employees to enforce its provisions and:

- (a) a failure to administer or enforce its provisions or the incomplete or inadequate administration or enforcement of its provisions is not give to rise to a cause of action in favour of any person; and
- (b) the grant of any approval or permission or issuance of any permit is not a representation, warranty or statement of compliance with the By-law and the issuance thereof in error is not to give rise to a cause of action.

## **SECTION 2 HEALTH REGULATIONS**

### **Ban on smoking**

2.1 A person must not smoke:

- (a) in a building, except in:
  - (i) a dwelling unit or sleeping unit defined under Surrey Zoning By-law, 1993, No. 12000 including a dwelling unit in which an owner or occupier also carries on a business,

- (ii) a hotel or motel room or suite designated for smoking by a responsible person, or
- (iii) enclosed premises:
  - (A) that are not open to the public,
  - (B) that are not private clubs or smoking clubs, a purpose of which is to allow patrons, customers or other persons to smoke, and
  - (C) where the only occupants are the owner or owners of the business carried on in the premises;
- (b) in a vehicle for hire;
- (c) on public transit, including a school bus, passenger bus, ferry or rapid transit;
- (d) in an enclosed or partially enclosed shelter where people wait to board a vehicle for hire or public transit;
- (e) in a vehicle when any other occupant of the vehicle is under the age of 19 years of age;
- (f) within seven and one-half metres measured on the ground from a point directly below any point of any opening into any building, including any door or window that opens or any air intake;
- (g) in a customer service area; or
- (h) within seven and one-half metres of the perimeter of a customer service area.

### **Enforcement of ban on smoking**

2.2 Except as permitted by section 2.1, a responsible person must not suffer or allow a person to smoke in:

- (a) a building or customer service area;
- (b) premises or common areas;
- (c) an area described in section 2.1(f) or (h) except to the extent that all or part of such area is not part of the parcel on which the building or customer service area is situate and is not an area over which such responsible person has possession or control; or
- (d) in a vehicle for hire.



### Signs banning smoking

2.3 A responsible person must display or ensure the display of a sign at all times:

- (a) at each entrance to a building or customer service area or to premises or in a vehicle for hire where section 2.1 prohibits smoking, stating:

"THIS IS A SMOKE FREE ENVIRONMENT – NO SMOKING"

and the words

"MAXIMUM FINE \$2,000.00"

- (b) on each exterior wall of a building where section 2.1 prohibits smoking, stating:

"SMOKING IS PROHIBITED WITHIN SEVEN AND ONE-HALF  
METRES OF OPENINGS INTO THIS BUILDING INCLUDING  
DOORS AND WINDOWS THAT OPEN AND ANY AIR INTAKE."

### Sign requirements

2.4 All signs referred to in section 2.3 must:

- (a) display the international symbol to designate "No Smoking" or, in areas where smoking is permissible, the international symbol to designate "Smoking Permitted" which symbol must occupy at least 25% of the size of the sign;
- (b) consist of at least two contrasting colours, except that if the lettering is on a clear panel, then the lettering must contrast to the colour of the background;
- (c) be at least 30 cm by 15 cm;
- (d) be clearly visible; and
- (e) consist of lettering, whether upper case or lower case, that is not less than the following heights based upon the following maximum viewing distances in direct line of sight:

<u>Viewing Distance</u>	<u>Letter Height</u>
Up to 3 m	1 cm
Up to 6 m	2 cms
Up to 12 m	4 cms

### Conditions of signs

2.5 A person must not remove, alter, conceal, deface or destroy any sign required under this By-law.

### **SECTION 3 OFFENCES AND PENALTIES AND ENFORCEMENT**

#### **Notice of violation**

3.1 An inspector or official of the City, or a by-law enforcement officer, may give notice to any person ordering or directing that person to:

- (a) discontinue or refrain from proceeding with any work or using or occupying any land or building or doing anything that contravenes this By-law; or
- (b) carry out any work or do anything to bring any land or building into conformity with this By-law;

within the time specified in such notice.

#### **Service of notice**

3.2 An inspector or official of the City, or a by-law enforcement officer, may serve a notice under this By-law:

- (a) by making it by registered post to an owner who is the addressee of the notice at the address of the owner shown on the real property assessment roll prepared pursuant to the *Assessment Act*;
- (b) by handing it to the person who is the addressee of the notice; or
- (c) if the notice refers to real property, by posting it on the real property.

#### **Offences under By-law**

3.3 A person who:

- (a) violates any provision of this By-law or does any act or thing which violates any provision of this By-law or suffers or allows any other person to do any act or thing which violates any provision of this By-law;
- (b) neglects to do or refrains from doing anything required to be done by any provision of this By-law; or
- (c) fails to comply or suffers or allows any other person to fail to comply, with an order, direction, or notice given under any provision of this By-law;

is guilty of an offence against this By-law and liable to the penalties imposed under this Section 3. A person may be subject to the penalties imposed under clause (a) or (b) regardless of whether the person has been given a prior notice under Section 3.1.

**Fine for offence**

3.4 Every person who commits an offence against this By-law is punishable on conviction by a fine of not less than \$100.00 and not more than \$2,000.00 for each offence, except that a person who commits an offence under section 3.3(c) of this By-law is liable to a fine of not less than \$500.00 for each offence.

**Fine for continuing offence**

3.5 Every person who commits an offence of a continuing nature against this By-law is liable to a fine not exceeding \$50.00 for each day such offence continues.

**SECTION 4  
REPEAL AND ENACTMENT**

**Repeal**

4.1 This By-law repeals Surrey Smoking Regulation By-law, 1996, No. 12993, as amended.

**Force and effect**

4.2 This By-law comes into force and takes effect on July 31, 2008 except Sections 2.1(g) and (h) which are to come into force and take effect on January 1, 2009.

PASSED THREE READINGS on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

RECONSIDERED AND FINALLY ADOPTED, signed by the Mayor and Clerk, and sealed with the Corporate Seal on the \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_ MAYOR

\_\_\_\_\_ CLERK