



To: Community Safety Committee
From: Phyllis Carlyle
General Manager, Law & Community Safety
Re: **Tobacco Control Act**
Draft Regulations

Date: June 28, 2007
File: 12-8000-01/2007-Vol 01

Staff Recommendation

It is recommended that Council:

1. Give consideration to supporting:
 - a) the LMLGA Resolutions to:
 - *extend the restrictions on places where tobacco products can be consumed to include patios at any hospitality site (including cafes, restaurants, pubs, taverns, bars, casinos and bingo halls) whether enclosed or not;*
 - *extend the minimum distance between outdoor smoking and doorways, window openings and air intakes to 7.5 metres; and*
 - b) the recommendation of Richmond's Medical Health Officer that:
 - *the restrictions on the sale of tobacco products be extended to include private athletic or recreational facilities and pharmacies or retail outlets that include pharmacies*
2. Authorize staff to advise the Ministry of Health as to the results of Council's deliberations.

Phyllis Carlyle
General Manager, Law & Community Safety
(4104)

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Law	Y	<input checked="" type="checkbox"/> N	<input type="checkbox"/>		
REVIEWED BY TAG	YES	NO	REVIEWED BY CAO	YES	NO
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Staff Report

Origin

On May 14, 2007 Council passed the following resolution:

“That the item be referred to staff to (i) analyze the draft Provincial regulations, (ii) coordinate the City’s response to ensure that the Provincial regulations meet the City’s needs and that Richmond’s actions are consistent with the regulations, and (iii) report to the Community Safety Committee as soon as possible.”

Background

In March, 2007 the Province passed the *Tobacco Sales (Banning Tobacco and Smoking in Public Places and Schools) Amendment Act, 2007* which changes the name of the *Tobacco Sales Act* to the *Tobacco Control Act* and provides for restrictions on the sale, display and consumption of tobacco products.

The *Tobacco Control Act* will be augmented by the regulations, which are presently being formulated to set out in more detail many of the provisions of the *Tobacco Control Act*. The Ministry of Health has posted a Regulatory Discussion Paper (Attachment 1) and is inviting comment and feedback with a deadline for receipt of Thursday, July 19, 2007.

The provisions of the *Tobacco Control Act* and its regulations are expected to come into force on January 1, 2008.

Analysis

Under the Act, there will be:

- significant restrictions on places where tobacco can be sold including hospitals or health care locations; campuses of universities or other post-secondary institutions; public athletic or recreational buildings and buildings owned or leased by the Province or a Crown Corporation;
- significant restrictions on places where tobacco products can be consumed including any place that is ‘fully or substantially enclosed’ such as buildings, structures or vehicles where ‘the public is ordinarily invited or permitted access’; any workplace and within 3 metres of any doorway, window or air intake of these buildings, structures, vehicles or workplaces; and
- significant provisions to prohibit or severely restrict the display or retail advertising of tobacco products in any manner that can be viewed by minors from either outside or inside an establishment

However, the Act also allows Cabinet to make exemptions by regulation. In reviewing the contents of the Regulatory Discussion Paper, the major proposals for Cabinet making Regulations under the Act are as follows:

- to create some exemptions to these sales restrictions where the building may be owned by the Province, Crown Corporation or post-secondary institution but is not used to deliver related services; where the balance of the building is not leased by the Province, Crown Corporation or post-secondary institution; professional buildings not owned or leased by health authorities and buildings subleased to other persons for non-government use.
- patios including those at cafes, restaurants, pubs, taverns, bars, casinos and bingo halls would be exempted from the prohibition unless they are 'fully or substantially enclosed' but the common areas of apartments, condominiums and dormitories would be included
- the *Tobacco Control Act* and draft regulations provide that certain contraventions may be subject to an administrative penalty system – with administrative hearings versus Court procedures – and escalating financial penalties and prohibitions up to \$5,000 and / or 180 days respectively for repeat offenders

It should be noted that the *Tobacco Control Act* and regulations will establish **minimum** Provincial standards. Subject to conditions for Provincial approval under the *Community Charter*, the City of Richmond can continue to set more restrictive standards on certain matters.

The delegates attending the Annual General Meeting of the Lower Mainland Local Government Association (LMLGA) unanimously supported two tobacco control resolutions to effectively:

- *extend the restrictions on places where tobacco products can be consumed to include patios at any hospitality site (including cafes, restaurants, pubs, taverns, bars, casinos and bingo halls) whether enclosed or not*
- *extend the minimum distance between outdoor smoking and doorways, window openings and air intakes to 7.5 metres*

The Medical Health Officer for Richmond has also recommended that: *the restrictions on the sale of tobacco products be extended to include private athletic or recreational facilities and pharmacies or retail outlets that include pharmacies.*

These resolutions and recommendations are outlined in the attached letter of June 26, 2007 from Dr. James D. Lu, Medical Health Officer for Richmond.

Financial Impact

There may be significant financial and operational impact on City-owned facilities such as City hall, community centres, arenas, recreational facilities or any of the City's workplaces. Even the

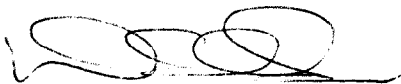
proposed minimum Provincial standards would prohibit smoking within a City-owned building or vehicle as well as within 3 metres of any doorway, window opening or air intake. These minimum proposals would impact residents, visitors and employees. The adoption of the LMLGA proposals would extend the distances at City facilities to 7.5 metres and include any open-air patio attached to a restaurant or pub.

The adoption of the LMLGA and Richmond Health proposals would include all patios at privately-owned hospitality sites within the City (whether enclosed or not), extend the distances at the doorways, window openings or air intakes to public malls, stores and private workplaces to 7.5 metres and include pharmacies and facilities such as health and exercise clubs. This will no doubt have a significant impact on the operations, customers and staff at restaurants, pubs, bars, casinos where they presently have outdoor patios.

Conclusion

Staff recommends that Council:

1. Give consideration to supporting:
 - a) the LMLGA Resolutions to:
 - *extend the restrictions on places where tobacco products can be consumed to include patios at any hospitality site (including cafes, restaurants, pubs, taverns, bars, casinos and bingo halls) whether enclosed or not;*
 - *extend the minimum distance between outdoor smoking and doorways, window openings and air intakes to 7.5 metres; and*
 - b) the recommendation of Richmond's Medical Health Officer that:
 - *the restrictions on the sale of tobacco products be extended to include private athletic or recreational facilities and pharmacies or retail outlets that include pharmacies*
1. Authorize staff to advise the Ministry of Health as to the results of Council's deliberations.



Wayne G. Mercer
Manager, Community Bylaws
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WGM:wgm



Regulatory Discussion Paper
Tobacco Control Regulations

This paper has been developed by the Ministry of Health to seek comments and feedback on the development of proposed regulations regarding tobacco control in British Columbia.

The proposed regulations will support amendments to the law that were passed by the Legislative Assembly in March 2007 under the *Tobacco Sales (Banning Tobacco and Smoking in Public Places and Schools) Amendment Act, 2007*. These amendments will change the name of the *Tobacco Sales Act* to the *Tobacco Control Act* (the 'Act'), and add new provisions that will:

- Restrict places where tobacco can be sold
- Prohibit smoking in public places and work places
- Prohibit or restrict retail tobacco displays

These provisions are expected to come into force January 1, 2008.

The information set out in this paper is for consultation purposes only and should not be relied upon to interpret the Act or the regulations. The final regulations may vary from the proposals in this paper. It should be noted that these provisions will establish minimum provincial standards. Local governments can continue to set more restrictive standards on certain matters.

Comments and feedback must be provided to the Ministry of Health no later than **July 05, 2007**.

Restriction on places where tobacco can be sold

Section 2.1(1) of the Act will prohibit people from selling or otherwise dealing in tobacco in any of the following places:

- (a) land, or a building or structure, used primarily for the purposes of a hospital or other health care services;
- (b) the campus of a public university or other public post-secondary institution;
- (c) a building or structure that is owned or leased by a public body that is used primarily for athletic or recreation purposes;
- (d) a building or structure that is owned or leased by the government or a Crown corporation or agency;
- (e) other places set out in regulation.

Addition of other places that are subject to the prohibition

The Ministry proposes that the regulations not specify at this time any other places that would be subject to the prohibition against tobacco sales (see item (e) above).

Proposed exemptions

The Ministry proposes to exempt the following places from the requirements of this section:

- Properties owned by a Crown corporation, university or other post-secondary institution for investment purposes only and which are not operated as part of a government program or used to deliver public or educational services.
- In cases where the government or a Crown Corporation leases some but not all of the building, those portions of a building or structure that are not leased by government or a Crown Corporation.
- Professional buildings which are not owned or leased by health authorities, in which health care professionals provide health care services.
- Office space leased by government or a Crown Corporation which is sub-leased to other persons where such office space is no longer required by the government agency or Crown corporation.

Proposed definitions

The Act allows words used in it to be defined by regulation. For the purposes of section 2.1 of the Act, the Ministry is proposing the following definitions:

- “public body” will mean a local government body, as defined in Schedule 1 of the *Freedom of Information and Protection of Privacy Act*.
- “campus” will mean any building or property owned, leased, controlled or managed by a public university or post-secondary institution.

However, the Ministry is willing to consider exempting specific sites from the definition of campus if it can be demonstrated that the commercial enterprises are sufficiently separate and independent from the university or other post-secondary institution. This might apply, for example, to businesses which own buildings that they have constructed on university land pursuant to long term leases, and where such buildings are not integrally connected with the remainder of a campus on which education services are provided.

Prohibition on smoking in or near public places or workplaces

Section 2.3 of the Act will prohibit people from smoking tobacco:

- (a) in any building, structure, vehicle or any other place that is fully or substantially enclosed and
 - (i) is a place to which the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry,
 - (ii) is a workplace, or
 - (iii) is a prescribed place, or
- (b) within a prescribed distance from a doorway, window or air intake of a place described in paragraph (a).

Proposed definitions

For the purposes of section 2.3 of the Act, the Ministry is proposing the following definitions:

- “fully or substantially enclosed” will mean a place where:
 - (a) more than 25% of its total floor area is covered from above by a roof, canopy or other physical barrier that is capable of excluding rain; and,
 - (b) more than 50% of its perimeter* is more than 50% enclosed by a physical barrier, including:
 - a wall;
 - a window or door, whether or not it is open;
 - paneling;
 - fabric or an awning;
 - dense vegetation;
 - fencing or lattice that impedes airflow; or,
 - any other physical barrier that impeded airflow but not including screening.

*In determining whether an area's perimeter, or a portion of it, is more than 50% enclosed, its vertical dimension would be considered to be the greater of

- (a) the distance between the serving floor and the roof, canopy or other physical barrier that is capable of excluding rain; and,
- (b) 2.15m.

- “tobacco” will mean any product derived in whole or in part from leaves or products produced from tobacco, in any form or for any use
- “workplace” will mean any place where persons perform services for which they receive compensation, and will include attendant places such as washrooms and break rooms.

Prescribed distance from doorways, windows or air intakes

The Ministry proposes the minimum distance between outdoor smoking and a doorway, opening window or air intake be 3 metres.

This “buffer zone” would not apply on patios of select facilities*, as long as:

- Any doors between the patio and the building remain closed except when being used to enter or exit the patio
- Any windows or air intakes connecting the patio to the building remain closed at all times when in use

Such patios would however be subject to the smoking prohibition if they are fully or substantially enclosed.

*Select facilities include:

- cafés, coffee shops, food and drink kiosks, restaurants;
- bars, pubs, taverns, night clubs, cocktail lounges;
- casinos and bingo halls.

Addition of other places that are subject to the prohibition

In addition to the places covered by section 2.3(1)(a)(i) and (ii), the ministry proposes to prescribe the following places as subject to the prohibition:

- Common areas of apartments, condominiums and dormitories.

Proposed exemptions

The Act already exempts ceremonial use of tobacco in relation to a traditional aboriginal cultural activity. In addition, the Ministry proposes to exempt the following places from the prohibition on smoking in public or workplaces:

- Residents of facilities licensed under the *Community Care and Assisted Living Act* who are smoking in designated smoking rooms within such facilities
- Hotel rooms (but not common areas of hotels such as lobbies, hallways and stairways).

Retail displays

Section 2.4 of the Act will provide that a person must not:

- display tobacco products, or
- advertise or promote the use of tobacco by means of a sign or otherwise

in any manner prohibited by the regulations.

Proposed regulations

The Ministry proposes regulations that will prohibit retail display of tobacco products in any manner that they can be viewed by children (from inside or outside the establishment).

The Ministry also proposes to prohibit advertising (including signs, logos on other products etc.) of tobacco products in any manner that could be viewed by minors (from inside or outside the establishment), with certain exceptions. The exceptions would allow retailers to post signs to indicate the types of products they sell (e.g. cigarettes, cigars, loose tobacco, smokeless tobacco) and prices, subject to the following:

- a maximum of one sign per till;
- a maximum of three signs in the place or premises;
- the text of the sign must not be visible from outside the place or premises;
- the maximum size of the sign is 968 cm² (150 in²);
- the sign must be white, except for its text, which must be black;
- the maximum height of a letter in the sign's text is 18 mm;
- the text size and style must be consistent in all parts of the sign, and the text must not contain italics, bold type or underlining;
- the text of the sign must not identify or reflect a brand of tobacco or tobacco-related product, or of any element of such a brand.

The proposed regulations would not allow retailers to place logos, graphics or designs on signs, or to post name brands, but would allow categories of product to be specified along with prices.

Administrative penalty system

Section 6.1(1) of the Act provides that certain contraventions of the Act or regulations may be subject to an administrative penalty system. This would involve hearings before the administrator, rather than a court, if tobacco enforcement officials chose to proceed that way. These hearings would be conducted in accordance with procedural requirements set out in the Act and regulations, as well as the principles of administrative fairness.

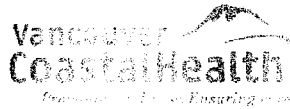
The Act allows regulations to specify which matters may be subject to this process, the range of penalties that the administrator may impose, and the factors that the administrator would need to consider when assessing penalties.

Proposed Regulation

The Ministry proposes that the regulations make the administrative penalty system applicable to violations of the sections of the Act dealing with restrictions on retail displays.

With respect to the range of penalties that could be imposed, and the factors that the administrator must consider when imposing penalties, the Ministry proposes that the regulations specify the following:

Contravention	Penalty		
	First Contravention	Second Contravention	Subsequent Contravention
Retail display contrary to the regulations (s. 2.4)	\$0-3000 fine and / or 0-30 day prohibition period	\$1000-4000 fine and / or 30-90 day prohibition period	\$4000-5000 fine and / or 90-180 day prohibition period



COPY

Richmond Health
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Administration

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June 26, 2007

City of Richmond
Mayor's Office
6911 No. 3 Road
Richmond, BC V6Y 2C1

Dear Mayor Malcolm Brodie and Council:

Re: Bill 10 and Regulatory Discussion Paper - Tobacco Sales Act

On behalf of the **Lower Mainland Multi-Agency Tobacco Control Coalition**, we would like to thank you for supporting the tobacco control resolutions that were put forward at the Lower Mainland Local Government Association (LMLGA) Annual General Meeting, and to let you know that the BC government is seeking public consultation on its proposed Regulation under the new *Tobacco Control Act*, which Regulation would address the issue of smoke-free public places, among other things.

As you know, at the LMLGA AGM, delegates unanimously supported two tobacco control resolutions, which would ask the Ministry of Health, as part of the *Tobacco Control Act* and its Regulation, to:


- Include a ban on smoking on patios of hospitality sites (restaurants and bars)
- Specify the distance smokers must be away from windows, doors and air intakes as a minimum of 7.5 metres;

The BC government is accepting submissions on the proposed Regulation up to **July 19, 2007**. The proposed Regulation does not currently include a patio ban. It actually provides for an exemption to patios, that have a closed door for entering/exiting the patio, from a buffer zone. Furthermore the proposed buffer zone of 3 metres is inadequate. The proposed Regulation will NOT protect patrons and workers from the harmful effects of second-hand smoke. We would like to encourage you to ensure your municipality is heard during this consultation process and make a submission to the BC government at www.health.gov.bc.ca/tobacco that reflects your commitment at the LMLGA AGM.

The *Tobacco Control Act* also restricts tobacco sales at specified locations. Public universities, colleges and recreation facilities are included in the ban, but private post-secondary facilities, private recreation facilities, and pharmacies are not included. We strongly suggest that the restriction be extended to private facilities and pharmacies, and would encourage you to add that to your consultation submission.

Thank you once again for your leadership, and for your ongoing support on this important public health initiative.

Yours truly,



James D Lu, MD, MHSc
Medical Health Officer, Richmond
Vancouver Coastal Health

JLU:ssc

pc. Wayne Mercer, Manager, Community Bylaws, City of Richmond
Steve Chong, Manager, Health Protection, VCH

On behalf of the Regional Tobacco Control Coalition:
**BC Lung Association - Canadian Cancer Society - Clean Air Coalition –
Fraser Health - Heart & Stroke Foundation - Vancouver Coastal Health –
City of White Rock is represented by Matt Todd**