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**TO:** CITY MANAGER **DATE:** 2020 Nov 17

**FROM:** DIRECTOR - PUBLIC SAFETY AND  
COMMUNITY SERVICES

**SUBJECT: PROPOSED REGULATION OF SMOKING IN BUSINESS PREMISES  
FURTHER INFORMATION AND AMENDMENTS**

**PURPOSE:** To provide information on the feedback received in regard to the proposed regulation of smoking in business premises and recommend delaying the effective date of the regulations to 2021 July 01.

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#### **RECOMMENDATIONS:**

1. **THAT** Council receive for information the feedback from the public and Fraser Health Authority in regard to the proposed regulation of smoking in business premises, as summarized in Sections 3.0 and 4.0 of this report.
2. **THAT** Council approve delaying the effective date of the proposed smoking in business premises regulations and related enforcement penalties to 2021 July 01, as outlined in Section 5.0 of this report.
3. **THAT** Council rescind second and third readings of Burnaby Business Licence Bylaw 2017, Amendment Bylaw No. 2, 2020 (Bylaw No. 14220) and Burnaby Bylaw Notice Enforcement Bylaw 2009, Amendment Bylaw No. 2, 2020 (Bylaw No. 14221).
4. **THAT** Council direct the City Solicitor to bring forward Bylaw No. 14220 and Bylaw No. 14221, amended to provide for an effective date of 2021 July 01, for consideration of second and third readings, as outlined in Section 5.0 of this report.

### **REPORT**

#### **1.0 BACKGROUND**

At the 2020 September 14 regular meeting, Council received a staff report seeking Council authority to establish regulations in respect to smoking in business premises and bring forward bylaw amendments required to implement the regulations and related enforcement mechanism. Following approval of the report, staff brought forward a further report to the 2020 September 28 Council meeting, together with bylaws to amend the

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*Burnaby Business Licence Bylaw 2017 and Burnaby Bylaw Notice Enforcement Bylaw 2009* to regulate smoking in business premises and impose related bylaw violation enforcement penalties. At that meeting, Council gave first, second and third readings to *Burnaby Business Licence Bylaw 2017, Amendment Bylaw No. 2, 2020* (Bylaw No. 14220) and *Burnaby Bylaw Notice Enforcement Bylaw 2009, Amendment Bylaw No. 2, 2020* (Bylaw No. 14221).

Following the 2020 September 28 Council meeting, notices of the proposed smoking regulations were advertised in two consecutive editions of the *Burnaby Now* (2020 October 8 and 15), as part of the *Community Charter* notice requirement. The purpose of the notices was to provide an opportunity for interested parties to make written submissions to Council.

This report provides Council with:

- information on the feedback received from businesses, employees and others as a result of the public notification and by other means;
- input from the Fraser Health Authority and Medical Health Officer in regard to the proposed regulations;
- a recommendation to delay the effective date of the proposed amendment bylaws to 2021 July 01; and
- clarifications with respect to the zoning and business licence categories of Burnaby businesses that currently offer hookah smoking in their premises, as the majority of public feedback received relate to such businesses.

## **2.0 POLICY SECTION**

The recommended action is aligned with the City of Burnaby's Corporate Strategic Plan by supporting the following goal and sub-goals of the plan:

### **A Healthy Community**

- Healthy life - Encourages opportunities for healthy living and well-being
- Healthy environment - Enhance our environmental health, resilience and sustainability

## **3.0 FEEDBACK FROM PUBLIC AND DELEGATIONS**

As a result of the public notification, 37 written submissions were received by the City Clerk's Office. Of these, 10 were from owners and/or operators of Burnaby businesses that currently offer hookah smoking in their premises, four were received from employees of these businesses, and the remaining 23 were from the general public, some of whom were customers of businesses that offer hookah smoking in their premises. Of the 37 submissions received, one was provided by a citizen in support of the proposal to regulate smoking in business premises and the remaining 36 were opposed to the proposed regulations.

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The correspondence submitted by the 10 business owners and operators cited the potential loss of the investments made to their businesses premises and the loss of future income. The four letters that were received from employees of Burnaby businesses offering smoking of hookah expressed concerns over the prospective loss of employment due to the introduction of the proposed smoking regulations.

Of the 23 submissions received from the general public, there was one submission in support of the proposed regulations, citing the negative health impact of smoking as the reason for supporting the bylaw amendment. The remaining 22 submissions were against the regulations for various reasons, including; the ability of individuals to choose what is “healthy” for themselves; more pressing issues for Council to focus on (e.g. homelessness); and skepticism of the negative health impacts of hookah.

As well as the submissions received by the City Clerk’s Office, at the 2020 October 05 and October 26 Council meetings, two separate delegations spoke on the proposed regulations. Both were owners of Burnaby businesses that offer hookah smoking in their premises. The 2020 October 05 delegation was presented by Ms. Pascal Berro, on behalf the Living Room Lounge located at #116 3787 Canada Way, and the 2020 October 26 delegation was presented by Ms. Oula Hamadeh, on behalf of the Kayan Shisha Café located at 5593 Kingsway. Both delegations spoke against the smoking regulations.

Council also received a delegation at the 2020 November 09 Council meeting from Ms. Marilyn Bergstra, BC Policy Specialist for Action on Smoking and Health (ASH) Canada. Mr. Bergstra spoke in support of the smoking regulations.

#### **4.0 FEEDBACK FROM FRASER HEALTH AUTHORITY**

City staff had consulted with the Fraser Health Authority prior to bringing forward the smoking regulations, as required by the *Public Health Bylaws Regulation*. By letter dated 2020 October 5, the Fraser Health Authority provided its formal support for the proposed amendment to the *Burnaby Business Licence Bylaw 2017* to include regulation of smoking in business premises (see Attachment #1).

In addition to the 2020 October 5 letter, Dr. Aamir Bharmal, Medical Health Officer – New Westminster and Burnaby, and Medical Director, Communicable Disease and Harm Reduction, Fraser Health Authority, also provided a letter in support of the proposed smoking regulations (see Attachment #2). In the letter, Dr. Bharmal cited various studies that examined the consequences of smoking on human health and opined as to the harmful effect of smoking any substance in business premises. Specifically Dr. Bharmal stated: “Inhalation of all combusted materials is harmful to lung health, and in most instances result in other harmful health effects. This is due to the toxins and carcinogens that are released regardless of the source – whether it is burning wood, tobacco, cannabis, or hookah”. Dr. Bharmal offered support for the proposal to include smoking

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regulations in the *Burnaby Business Licence Bylaw 2017* and also recommended that the City consider other smoking control policies in addition to the regulations pertaining to business premises.

## **5.0 PROPOSED DELAYED EFFECTIVE DATE FOR BYLAW AMENDMENTS**

Balancing the concerns of the Burnaby businesses that currently offer hookah smoking in their business premises and the medical evidence of the harmful effects of smoking any substance, City staff are proposing that the effective date for the amendments to the *Burnaby Business Licence Bylaw 2017* and *Burnaby Bylaw Notice Enforcement Bylaw 2009* to implement the smoking regulations and related penalties be delayed to 2021 July 01. The delayed implementation will provide businesses that currently allow smoking in its premises (i.e. those with smoking patios and that offer hookah smoking) additional time to adjust their business operations to the revised regulations. This follows the example of some Canadian municipalities (i.e. Edmonton) that introduced similar smoking regulations.

Section 136 of the *Community Charter* provides that a bylaw comes into force on the later of (a) the date it is adopted by Council, and (b) a date set by the bylaw. Since *Burnaby Business Licence Bylaw 2017, Amendment Bylaw No. 2, 2020* (Bylaw No. 14220) and *Burnaby Bylaw Notice Enforcement Bylaw 2009, Amendment Bylaw No. 2, 2020* (Bylaw No. 14221) have already received 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> readings, it is necessary to rescind 2<sup>nd</sup> and 3<sup>rd</sup> readings of the bylaw and then bring forward amended bylaws that include the delayed effective date of 2021 July 01. In addition, as the delayed effective date involves a change to Bylaw No. 14220 since the earlier consultation with Fraser Health Authority and the publishing of the public notices, it is proposed that City staff complete these procedural requirements for the amended bylaw. Once all procedural requirements are satisfied, City staff will bring forward the amended bylaws for Council consideration of Final Adoption.

## **6.0 ZONING AND BUSINESS LICENCE CATEGORIES OF CURRENT BUSINESSES THAT OFFER HOOKAH SMOKING**

As the majority of submissions received in respect to the proposed smoking regulations related to hookah smoking, staff wish to clarify the zoning and business licence categories of current Burnaby businesses that offer hookah smoking in their business premises. There are currently 11 businesses operating in Burnaby that offer water pipe smoking, commonly referred to as “hookah”, to their customers. Of the 11 businesses offering hookah, six have received Burnaby business licences to operate as a “Restaurant” and the remaining five are licenced as a “Public Hall”. Despite the common use of the word hookah in their business names and advertising, a hookah lounge or establishment is not recognized as a permitted land use in the *Burnaby Zoning Bylaw 1965*, nor is it defined as a business licence category within the *Burnaby Business Licence Fees Bylaw 2017*. The premises fall within the “Restaurant” or “Public Assembly” land use under the

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*Burnaby Zoning Bylaw 1965* and “Restaurant” or “Public Hall” business licence category under the *Burnaby Business Licence Bylaw 2017* and *Burnaby Business Licence Fees Bylaw 2017*.

The smoking of hookah is an activity that can take place within these 11 business premises, as such activity is currently not regulated by any City bylaws. Should the proposed amendment to the *Burnaby Business Licence Bylaw 2017* to regulate smoking in business premises be adopted, these 11 businesses will no longer be able to offer or allow the smoking of hookah in their premises. These businesses, however, would continue to be able to carry operations as a “Restaurant” or “Public Hall”, as authorized by their business licences, and use their business premises for “Restaurant” or “Public Assembly” land uses, as authorized by the *Burnaby Zoning Bylaw 1965*.

## **7.0 CONCLUSION**

The City has received submissions and delegations supporting as well as opposing the proposed regulation of smoking in business premises. Further, the Fraser Health Authority and Medical Health Officer have written in support of the regulations and provided information on the harmful effects of smoking any substance in business premises.

After reviewing the submissions and information, staff recommend that Council proceed with implementing the smoking regulations and related enforcement penalties, as set out in *Burnaby Business Licence Bylaw 2017, Amendment Bylaw No. 2, 2020* (Bylaw No. 14220) and *Burnaby Bylaw Notice Enforcement Bylaw 2009, Amendment Bylaw No. 2, 2020* (Bylaw No. 14221). However, staff recommend that Council delay the implementation date of the proposed bylaws until 2021 July 01 in order to provide affected businesses with additional time to adjust their business operations to the revised regulations.

In order to establish an implementation date of 2021 July 01, it will be necessary for Council to rescind 2<sup>nd</sup> and 3<sup>rd</sup> readings of the amendment bylaws and authorize the City Solicitor to bring forward amended bylaws that include the delayed effective date of 2021 July 01. No other changes to the amendment bylaws are recommended. Staff will undertake the consultation and public notice requirements in respect to the amended bylaws.

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Dave Critchley  
DIRECTOR - PUBLIC SAFETY AND COMMUNITY SERVICES

DC:dl

Attachments 1 - Fraser Health Authority  
2 - Dr. Aamir Bharmal

cc: Director Planning and Building  
Director Parks, Recreation and Cultural Services  
Director Corporate Services  
City Solicitor  
City Clerk  
Chief Licence Inspector

## Attachment 1



SENT VIA EMAIL

October 5, 2020

Dan Layng, Chief Licence Inspector  
City of Burnaby  
4949 Canada Way  
Burnaby BC V5G 1M2

Dear Dan Layng:

**RE: AMENDMENTS TO BURNABY BUSINESS LICENCE BYLAW AND BYLAW NOTICE ENFORCEMENT BYLAW TO REGULATE SMOKING IN BUSINESS PREMISES**

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Fraser Health enforces the Provincial Tobacco and Vapour Products Control Act and regulations that restricts smoking or vaping tobacco in indoor public places and workplaces. This Provincial legislation does not control the smoking or vaping of non-tobacco products.

The proposed amendments to the Burnaby Business Licence Bylaw 2017 (Schedule F) Smoking Regulations will restrict the smoking or vaping of non-tobacco products. This requirement protects the public from the adverse health effects of second hand smoke from smoking products such as hookah or shisha.

Fraser Health fully endorses the proposed amendment contained in Schedule F of the above named bylaw that will regulate smoking of non-tobacco products.

Sincerely,

Gordon Stewart  
Manager - Health Protection  
Burnaby/New Westminster

GS/hc

cc Dr. Amir Bharmal, Medical Health Officer, by email

cc Ms. Oonagh Tyson, Director of Health Protection, by email



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## Attachment 2

November 4, 2020

Dave Critchley - Director  
City of Burnaby - Public Safety and Community Services  
4949 Canada Way  
Burnaby, BC V5G 1M2

Dear Mr. Critchley

**Re: Harmful effects of smoking any substance in business premises**

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As the Medical Health Officer for Burnaby, I commend the City of Burnaby for considering bylaw amendments to go beyond the minimum requirements set by British Columbia's Tobacco and Vapour Products Control Act and associated Regulation. The proposed bylaw amendments for regulating smoking in customer service areas and regulating tobacco and non-tobacco products will help create more consistent smoking control requirements across municipalities in Metro Vancouver. Increasing consistency of municipal bylaws for controlling smoking will help reduce the overall harm from smoking substances and exposure to secondhand smoke and other by-products resulting from the burning/heating of smoking substances.

Inhalation of all combusted materials is harmful to lung health, and in most instances result in other harmful health effects. This is due to the toxins and carcinogens that are released regardless of the source – whether it is burning wood, tobacco, cannabis, or hookah (in the case of hookah, charcoal is combusted to heat the herbal or tobacco product). Outlined below are the health impacts towards people who smoke or vape and people around them (e.g., workers and other patrons), from the inhalation of different substances.

### **Tobacco**

Tobacco use has a significant impact on mortality, morbidity and disability. In 2015, in BC, over 6,500 deaths were caused by smoking, which is more than deaths from alcohol, falls, drugs, and suicide or motor vehicle accidents.<sup>1</sup> As a major risk factor for a number of chronic diseases, tobacco use leads to hospitalization and has a large impact on healthcare expenses. In 2013, the economic burden of tobacco use in BC exceeded \$2 billion.<sup>2</sup>

Smoking harms nearly every organ of the body.<sup>3</sup> Smoking tobacco remains the leading cause of preventable death and has negative health impacts on people of all ages. Serious health problems resulting from smoking tobacco includes chronic obstructive pulmonary disease (emphysema, chronic







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bronchitis and asthmatic bronchitis), cardiovascular disease (heart attack, angina peripheral vascular disease, and stroke) as well as lung and other types of cancer.<sup>4</sup>

Second-hand smoke exposure poses health risks as well. It has been causally linked to cancer, respiratory and cardiovascular diseases, and to adverse effects on the health of infants and children.<sup>5</sup> Scientific evidence indicates that there is no safe level of exposure to second-hand smoke.<sup>5</sup>

### **Cannabis**

While there are potential therapeutic uses for cannabis, it is important to understand the potential harmful effects of using cannabis, especially when smoked. The chemical delta-9-tetrahydrocannabinol (THC) affects how the brain and body respond to cannabis, and for this reason is used by some for therapeutic purposes.<sup>6</sup>

Apart from the effects on mood and cognition that are well documented, the long-term effects of smoking cannabis on the body are similar to the effects of smoking tobacco on lung health. These include bronchitis, lung infections, chronic cough, and increased mucus buildup in the throat.<sup>6</sup>

Smoking of cannabis by people who also smoke tobacco is of particular concern, as there is evidence that tobacco and cannabis act together to increase the risk of respiratory issues and chronic obstructive pulmonary disease (COPD).<sup>7</sup> Second-hand cannabis smoke contains many of the same toxins and chemicals found in directly inhaled cannabis smoke.<sup>8</sup> Though more research on the health effects of second-hand cannabis smoke is needed, the Canadian Lung Association remains concerned about the potential harmful effects – especially among children and youth.

### **Hookah**

Hookah refers to waterpipes used to smoke heated herbal or tobacco mixtures called shisha.<sup>9</sup> Hookah users often perceive it to be less harmful than smoking cigarettes, but studies show that the smoke contains many of the same toxic components found in cigarette smoke.<sup>9</sup>

Cigarette smoke contains carbon monoxide (CO) which contributes to cardiovascular disease, polycyclic aromatic hydrocarbons (PAH) that cause cancer, and volatile aldehydes (VA) that cause lung disease. With the exception of the different nicotine levels between two popular brands of shisha – one tobacco-based and the other tobacco-free, one study found similar concentrations of CO, PAH, and VA in the smoke of the two shisha products. Compared to cigarettes, the same toxins were generally found to be at higher concentrations in the smoke from the two shisha products than cigarette smoke.<sup>10</sup> High levels of PAH residues can also originate from the burning of coal or coconut-shell based products.<sup>11</sup> Furthermore, the cytotoxic effects of electronically heated shisha smoke are significant, and indicate that neither tobacco or charcoal are needed in order for cytotoxic effects to occur.<sup>12</sup>

Short-term hookah use is associated with acute health effects, which include increased heart rate and blood pressure, reduced pulmonary function, and carbon monoxide intoxication.<sup>13</sup> Long-term effects



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include impaired pulmonary function, chronic obstructive pulmonary disease, esophageal cancer and gastric cancer.<sup>13</sup> Like cigarette smoking, hookah use has also been linked to adverse health effects such as lung, bladder and oral cancers and heart disease.<sup>14</sup>

Another concern is that while a typical cigarette requires about 8 to 10 puffs,<sup>15</sup> an hour-long hookah session may involve 100 to 200 puffs,<sup>16</sup> potentially exposing the user to more smoke and toxic components over a greater period of time.<sup>15,17</sup>

Given the COVID-19 pandemic it should be noted that the air, hose, and water bowl of the water-pipe apparatus can be a potential source for transmission of pathogenic agents. Transmission of tuberculosis, meningitis, hepatitis and herpes among water-pipe smoking individuals has been documented.<sup>18,19</sup>

#### **Vapour Products**

The use of vapour products or 'vaping' is an emerging trend. First introduced for smoking cessation, these devices have rapidly become a lifestyle consumer product, particularly among youth. Vaping is the act of inhaling and exhaling an aerosol produced by a vaping product, such as an electronic cigarette. Unlike smoking tobacco, vaping does not require burning, but rather, the device heats a liquid into a vapour, which is turned into an aerosol.

The evidence of long-term effects of vapour products is emerging. The evidence suggests that e-cigarette vapour can affect respiratory airway function resulting in cough and asthma symptoms, particularly among adolescents.<sup>20</sup> In addition, nicotine exposure presents significant health concerns for youth and pregnant women. During adolescence nicotine exposure can cause addiction and harm the developing adolescent brain.<sup>21</sup> In pregnancy, nicotine can cross the placenta and contribute to substantial adverse health outcomes in infants.<sup>21,22</sup>

#### **Smoking control policies**

The proposed bylaw amendments will help regulate where tobacco and non-tobacco products may be smoked to prevent and limit exposure to bystanders and workers from secondhand smoke.

In light of the significant health impacts from the smoking and vaping of substances, additional smoking control policies could complement the proposed bylaw amendments by limiting access to tobacco and other smoking products to help reduce smoking/vaping behavior. Additional smoking control policies to consider include limiting the proximity of tobacco and vapour product retailers to places where youth congregate, and limiting the density of tobacco and vapour product retailers in the city. Higher tobacco retailer density has been shown to be associated with greater smoking rates and tobacco sales among youth, and greater relapse rates during quit attempts.<sup>23</sup> Another policy approach is to introduce licensing fees for tobacco and vapour product retailers, these fees are charged in addition to the required business license fee. This practice has been implemented in



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municipalities in Alberta and Ontario with annual licensing fees ranging from \$40-\$1100. Revenue generated from the fees could be earmarked for health promotion activities, specifically youth tobacco and vapour product cessation programs and services.

**Recommendation**

- Based on the evidence of the health impacts of smoking of any substance, I support the amendment of the Burnaby Business License Bylaw 2017 to include regulation of smoking in business premises.
- I also recommend the City consider other smoking control policies to promote cessation, prevent cessation and to reduce second-hand exposure.

Please feel free to contact me if you have any question or require further information.

Dr. Aamir Bharmal, MD MPH CCFP FRCPC  
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