

RE: LETTER FROM MRS. W. VAN DELFE WHICH APPEARED ON THE AGENDA FOR THE
1986 MAY 26 MEETING OF COUNCIL (Item 5 c)
MUNICIPAL BYLAW CONTROLLING SMOKING

MUNICIPAL MANAGER'S RECOMMENDATION:

1. THAT the recommendation of the Medical Health Officer be adopted.

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TO: MUNICIPAL MANAGER
FROM: MEDICAL HEALTH OFFICER
RE: LETTER DATED 1986 MAY 05 FROM MRS. W. VAN DELFE
8391 TENTH AVENUE, BURNABY, B.C.
REGARDING A MUNICIPAL BYLAW CONTROLLING SMOKING

1986 June 3

RECOMMENDATION:

1. THAT a copy of this report be sent to Mrs. W. Van Delfe, 8391 Tenth Avenue, Burnaby, B.C., V3N 2S7.

R E P O R T

Further to a 1986 May 05 letter addressed to Mayor and Council from Mrs. W. Van Delfe, 8391 Tenth Avenue, Burnaby, which requested that this Municipality pass a bylaw to control smoke from cigarettes, cigars and pipes, we would advise as follows.

Recently municipalities such as Richmond, the City of Vancouver and the Capitol Regional District have passed bylaws which regulate tobacco smoking in public places such as restaurants, government offices, hospital and health clinics and places of public assembly. In addition to public places, the City of Vancouver's bylaw also regulates tobacco smoking in private sector businesses.

Health Department staff are currently examining the above-noted bylaws and having discussions with health officials on the success of their enforcement and any legal implications. The Municipal Solicitor has been forwarded copies of the bylaws and has submitted the following opinion:

"Does the Municipality have authority to enact a non-smoking bylaw?"

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The Municipality of Burnaby is vested with authority to pass regulations in respect of health matters. It appears that a non-smoking bylaw would fall within the ambit of Section 692 (1)(a) which provides that the Council may, by bylaw 'regulate persons, their premises and their activities to further the care, protection, promotion and preservation of the health of the inhabitants of the municipality'.

This must be read subject to the following important qualifications:

1. The Municipality's authority to enact such regulations is expressly subject to the Health Act. Therefore, the Municipality could be deprived of its jurisdiction under the Municipal Act in respect of non-smoking bylaws if similar regulations were passed by the Ministry of Health under the Health Act.
2. A health bylaw adopted under Section 692 of the Municipal Act is not valid until approved by the Minister of Health. Accordingly, before initiating a non-smoking bylaw it would be strongly advisable to secure, in advance, the approval of the Minister of Health. Present indications from our Health Department are that the Ministry of Health would be responsive to this proposal.
3. The foundation of any bylaw should be established by a report indicating that tobacco smoke constitutes a health hazard. This would lend support and justification for tabling a bylaw pursuant to the health provisions of the Municipal Act. Furthermore, it would be beneficial if the findings of this report paralleled Section 692 by confirming that the restriction on smoking would be conducive to the care, protection, promotion and preservation of health.
4. There remains a possibility that the bylaw could be challenged under such legislation as the Charter of Rights.

It may be noted that the City of Vancouver recently enacted a general smoking bylaw pursuant to the health bylaws of the Vancouver Charter, Section 330(a). In view of the recency of this bylaw, there are no reported cases challenging its validity."

At this time, the Health Department is not prepared to forward a smoking control bylaw for Council's consideration due to:

- A. It is felt that the Municipality should lead by example, first establishing its own policies to control tobacco smoking in Municipal buildings. The experience gained in the establishment of policies for our own Municipal employees will be beneficial in understanding problems that the private sector will have, should our Municipality pass a bylaw to control tobacco smoking which would cover their businesses.
- B. The Health Department, Environmental Health Division, is currently reviewing other municipal bylaws, discussing strengths and weaknesses with health officials and communicating with the private sector, i.e. food premises operators, on workable solutions to control smoking.

On Friday, 1986 May 30, the Municipal Manager announced to employees of the Main Hall and West Building that, effective 1986 September 02, smoking would be permitted only in the lunchrooms. The adopted policy was the result of a recommendation to the Manager from the "Clean Air Committee", which is chaired by this department's Chief Public Health Inspector.

The public will be informed of the smoking policy through notices posted at entrances to the Municipal Hall and West Building. The experience of the B.C. Lung Association, private and public sector companies is that the vast majority of the general public do respect posted smoking policies. However, until such time as a municipal bylaw prohibiting smoking in public and private places is enacted, the individual non-employee's preference regarding smoking in the Municipal Hall and West Building will prevail.

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Work is progressing to recommend a smoking policy for all other Municipal buildings, including Fire, R.C.M.P., Library, Parks and Recreation and the Engineering Works Yard.

After adoption of a smoking policy which would cover all Municipal Buildings, and benefiting from the experience elsewhere in British Columbia and other Provinces, the Health Department will then be in a position to report to Municipal Council on a smoking bylaw for this Municipality.

We anticipate a report on this subject will be forwarded for Council's consideration in 1987 February.

George V. Hamid

For S.L. Hemming, M.B., D.P.H., F.R.C.P.(C)
MEDICAL HEALTH OFFICER

SLH/GVH:1a

cc: Fire Chief
Municipal Solicitor
Director Administrative & Community Services

