

TO: CITY MANAGER

DATE: JULY 30, 1998

FROM: CITY SOLICITOR

SUBJECT: BURNABY SMOKING REGULATION BYLAW 1996

PURPOSE: To update City Council on recent Legislation affecting the Burnaby Smoking Regulation Bylaw.

RECOMMENDATION:

1. THAT Council receive this report for its information.

REPORT

Council will recall that on June 1, 1998 the B.C. Provincial Court declared the Burnaby Smoking Regulation Bylaw to be invalid on the basis that the Municipal Act did not empower the City to prohibit smoking in restaurants.


On July 30, 1998 Royal assent was given to Bill 50, Miscellaneous Statutes Amendment Act (No.3), 1998. This Act amends both the Municipal Act and the Municipalities Enabling and Validating Act (No.2) on matters relating to the regulation by municipalities of the smoking of tobacco. Copies of the amendments are attached to this report.

The Municipal Act amendment is basically a re-enactment of the general power to regulate matters of health under s.523(1)(a) to include a specific power to prohibit the smoking of tobacco in classes of premises as may be specified by bylaw.

The Municipalities Enabling and Validating Act (No.2) amendment has the effect of retroactively validating prohibitory smoking bylaws enacted under the old s.523 (1)(a) of the Municipal Act "despite any decision of a Court to the contrary made before or after this section came into force."

The effect of the legislation, in the view of the Legal Department, is not only to give municipalities the power to enact prohibitory smoking bylaws but, in the case of the City of Burnaby, to retroactively validate the Burnaby Smoking Regulation Bylaw and legislatively overrule the Provincial Court judgment that declared it invalid.

A new smoking regulation bylaw need not be enacted and Burnaby Smoking Regulation Bylaw 1996 can again be enforced effective July 31, 1998.


Patricia W. Flieger
City Solicitor

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Municipal Act

13 *Section 523 (1) (a) of the Municipal Act, R.S.B.C. 1996, c. 323, is repealed and the following substituted:*

- (a) regulate persons, their premises and their activities, to further the care, protection, promotion and preservation of the health of the inhabitants of the municipality, including regulating by prohibiting the smoking or other use or consumption of tobacco products in classes of premises specified in the bylaw; .

Municipalities Enabling and Validating Act (No. 2)

14 *The Municipalities Enabling and Validating Act (No. 2), S.B.C. 1990, c. 61, is amended by adding the following sections to Part 9:*

Validation of anti-smoking bylaws

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- (1) Despite section 523 (1) (a) of the *Municipal Act*, as that section read before its amendment by the *Miscellaneous Statutes Amendment Act (No. 3), 1998* and despite any decision of a court to the contrary made before or after this section came into force, a local government bylaw that
 - (a) prohibits or purports to prohibit the smoking or other use or consumption of tobacco products in classes of premises specified in the bylaw, and
 - (b) was approved by the Minister of Health before this section came into force,is conclusively deemed to be valid for all purposes.
 - (2) A bylaw referred to in subsection (1) is conclusively deemed to have been validly adopted and to have been and to continue to be valid and effective from the time of its approval by the Minister of Health.
 - (3) All resolutions, bylaws and actions of a municipality or regional district in relation to a bylaw referred to in subsection (1) are conclusively deemed to have been validly adopted and taken as of the date that they were adopted or taken, to the extent they would have been valid had this section been in force on the date they were adopted or taken.
 - (4) This section is retroactive to the extent necessary to give full force and effect to its provisions and must not be construed as lacking retroactive effect in relation to any matter because it makes no specific reference to that matter.

