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**TO:** CITY MANAGER **DATE:** 2013 October 30

**FROM:** DIRECTOR PLANNING AND BUILDING **FILE:** 42000-20  
*Reference: Smoking bylaw*

**SUBJECT:** BURNABY SMOKING REGULATION BYLAW

**PURPOSE:** To seek Council authority to repeal the Burnaby Smoking Regulation Bylaw.

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**RECOMMENDATIONS:**

1. **THAT** Council authorize the repeal of the Burnaby Smoking Regulation Bylaw.
2. **THAT** a copy of this report be sent to the Fraser Health Authority, Burnaby Health Protection Office, Suite 300 - 4946 Canada Way, Burnaby, BC V5G 4H7.
3. **THAT** a copy of this report be sent to Ms. Honeyeh Adibi-Larijani, Hafez Tea House, 6649 Hastings Street, Burnaby, V5B 1S1.

**REPORT****1.0 INTRODUCTION**

At the 2013 October 21 meeting, Council received a delegation from the Hafez Tea House at 6649 Hastings Street regarding current provisions under the Burnaby Smoking Regulation Bylaw. The delegation advised that the required designated smoking room which separates smoking and non-smoking areas within a premise, as required under the current Bylaw, imposes undue hardship on their hookah lounge business, which does not use tobacco based products as part of their operations. As such, the delegation is requesting an amendment to the Bylaw to accommodate hookah smoking lounges, in cases where tobacco based products are not used. Arising from discussion, Council requested that staff look into the matter, as well as review approaches in other jurisdictions in which hookah lounges have been approved.

Staff have reviewed current Bylaw requirements; Provincial smoking regulations under the *Tobacco Control Act*; and, approaches to smoking regulations (both tobacco and non-tobacco<sup>1</sup> based smoking) in other local jurisdictions. Arising from the review, staff determined that many aspects of the current Bylaw are redundant and/or no longer consistent with current Provincial smoking regulations (2008). The purpose of this report is to highlight changes to current Provincial smoking regulations, which meet and/or exceed the provisions in the Burnaby Smoking Regulation Bylaw, and to propose that the Bylaw be repealed, given the comprehensive

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<sup>1</sup> Excluding marijuana or other controlled-substances

nature of current Provincial smoking regulations. With regard to the issue of the subject hookah lounge (Hafez Tea House), under the proposed repeal of the Bylaw, the smoking activity related to hookah lounges would be regulated through the Fraser Health Authority. All other aspects of the lounge would be subject to Zoning Bylaw requirements.

## **2.0 DISCUSSION**

### **2.1 Burnaby Smoking Regulation Bylaw**

The current Burnaby Smoking Regulation Bylaw prohibits smoking in buildings except within a designated smoking room or area. The Bylaw also regulates the size and orientation of smoking rooms within a building; building requirements; and, smoking signage. With regard to vehicles, the Bylaw currently prohibits smoking in school buses and other forms of public transportation, except for taxis and limousines if the driver gives permission. Burnaby Smoking Regulation Bylaw is currently enforced by the Fraser Health Authority, in coordination with the City's Licence Office.

The Burnaby Smoking Regulation Bylaw was adopted by Council in 1996 in response to the *Tobacco Control Act* that had been introduced by the Provincial government the same year. The intent of the Bylaw was to provide further clarification as to where smoking was permitted within a building, namely, within a designated smoking room or area. In rooms/areas where smoking was permissible, the Bylaw also provided clarification on the measures the proprietor of the premise would have to implement to protect non-smoking persons, employees, customers/clients, and patrons in public places and commercial establishments (particularly where minors may be present) from the health effects of exposure to second-hand tobacco smoke.

It is noted that the Burnaby Smoking Regulation Bylaw was adopted during a period in which the Burnaby Health Department was responsible for environmental health (i.e. food safety, water quality, tobacco control, air quality, etc.) within the City. Shortly thereafter (1997), these responsibilities were transferred from the City to the Province under the administration of the Fraser Health Authority (previously Simon Fraser Health Authority).

While no significant changes have been made to the Burnaby Smoking Regulation Bylaw since its adoption, the Provincial government has made significant changes to the *Tobacco Control Act* which place further limitations on smoking both within and outside of a building. As such, the current Bylaw is no longer consistent with the prevailing Provincial regulations of this matter.

## 2.2 Changes to Provincial Smoking Regulations<sup>2</sup>

In 2008, the Provincial government introduced broad sweeping changes to the *Tobacco Control Act*, which are summarized below. The current Provincial regulations:

- prohibit smoking within school property;
- prohibit smoking within any fully or substantially enclosed public or workplace building, structure or vehicle (such that smoking rooms are no longer needed);
- prohibit smoking within 3 m from a doorway, window or air intake of an enclosed building or workplace; and,
- limits smoking to an outdoor unenclosed shed or outdoor patio, provided that such outdoor space is not within 3 m of a doorway, window or air intake of an enclosed building or work place.

The *Tobacco Control Act* also makes provisions to allow local governments to establish more stringent regulations regarding smoking in public places and commercial establishments, which is discussed in a subsequent section of this report.

It is also noted that changes were made to the *Motor Vehicle Act* which prohibits smoking in passenger vehicles, in which minors are present.

## 2.3 Proposal to repeal the Burnaby Smoking Regulation Bylaw

In view of the above noted Provincial changes, many aspects of the Burnaby Smoking Regulation Bylaw are redundant and/or inconsistent with current Provincial regulations, particularly as it relates to designated smoking rooms/areas within public and commercial establishments, and smoking within taxis and limousines. It is the opinion of City staff that current Provincial regulations adequately meet the intent of the Bylaw to protect non-smoking persons, employees, customers/clients, and patrons in public places and commercial establishments (particularly where minors may be present) from the health effects of exposure to second-hand tobacco smoke. The City also no longer maintains a Burnaby Health Department to administer the Bylaw. Therefore, it is proposed that the Burnaby Smoking Regulation Bylaw be repealed, in reference to the broader Provincial regulations. The enforcement of smoking regulations would continue to be under the jurisdiction of the Fraser Health Authority.

Staff have reviewed Smoking Bylaws in other local jurisdictions, including, Vancouver, Surrey, Port Moody, Richmond and North Vancouver. A number of municipalities have established Bylaw regulations that exceed provincial requirements including:

- Prohibition of smoking within an outdoor customer service area (Vancouver, Richmond);

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<sup>2</sup> This report does not review aspects of the Tobacco Control Act related to the display, sale or promotion of Tobacco products.

- Increased minimum smoking distance from a door, window, or air intake (Vancouver, Richmond, Port Moody, and Surrey);
- Prohibition of smoking in public park/recreational areas (North Vancouver, Port Moody); and,
- Creation of “smoking clubs”, which allow smoking within a building, subject to restrictions (Surrey and Port Moody).

The enforcement of these regulations is administered by their respective health authorities (Vancouver Coastal/Fraser Health Authority).

With regard to hookah smoking, based on a staff survey of the above noted jurisdictions, Port Moody allows hookah lounges within “smoking rooms” provided that the substance being smoked does not contain tobacco products and that patrons of such establishments are nineteen (19) years or older. Surrey allows hookah lounges which use tobacco-based products, provided that such businesses are classified as a “smoking club” and not open to the general public.

From a Burnaby land use perspective under the proposed approach, the Burnaby Zoning Bylaw already accommodates the establishment of clubs and lounges. Smoking within such clubs and lounges would be subject to Provincial regulations, including conditions under which tobacco products may be used, accessibility by the general public and minimum age restrictions.

#### **2.4 Implications of the proposed Burnaby Smoking Regulation Bylaw Repeal for the Hafez Tea House**

With regard to the business operations of the Hafez Tea House, the proposed repeal of the Burnaby Smoking Regulation Bylaw would remove the City requirement for such businesses using non tobacco products to provide a separate designated smoking room. Regulation of hookah smoking, and smoking involving tobacco in the product would continue to be subject to the *Tobacco Control Act* under the administration of the Fraser Health Authority.

From a zoning perspective, hookah lounges would be classified as a public assembly and entertainment use, which is permitted in the C2 Community Commercial District, C3 General Commercial District, C4 Service Commercial District, C8 Urban Village (Hastings) District, and C9 Urban Village Commercial District. Hookah lounges would also be subject to all other City bylaws and regulations, including but not limited to applicable building permits, business licensing, and other applicable land use regulations (i.e. parking, conditions of use).

City staff have consulted with the Fraser Health Authority on the matter and have been advised that any activity involving the use of tobacco and tobacco-based products, including hookah lounges, are subject to the *Tobacco Control Act*.

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From: Director Planning and Building  
Re: Burnaby Smoking Regulation Bylaw  
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### 3.0 CONCLUSION

Given that public health programs are no longer administered by the City (Burnaby Health Department), and that current Provincial regulations adequately protect non-smoking persons and minors from exposure to smoking, it is recommended that the Burnaby Smoking Regulation Bylaw be repealed. With regard to hookah smoking lounges within the City, such as the Hafez Tea House, under the recommended repeal of the Bylaw, the regulation of the hookah smoking not involving tobacco, and smoking activity involving tobacco in the product would be under the sole jurisdiction of the Fraser Health Authority. All other aspects of the business would be subject to applicable City bylaws and regulations. It is also recommended that a copy of this report be provided to the Fraser Health Authority and Ms. Honeyeh Adibi-Larijani of the Hafez Tea House, 6649 Hastings Street, Burnaby, V5B 1S1.

  
Lou Pelletier, Director  
PLANNING AND BUILDING

ZT:tn/spf

cc: Director Engineering  
Chief Licence Inspector  
Chief Building Inspector  
City Solicitor  
City Clerk