


Halifax Regional Council

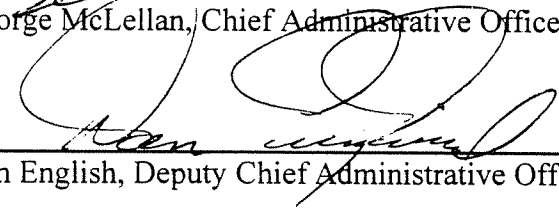
June 25, 2002

July 2, 2002
July 9, 2002

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:


George McLellan, Chief Administrative Officer


Dan English, Deputy Chief Administrative Officer

DATE: May 22 , 2002

SUBJECT: **Review of By-law S-200, Smoking in Public Places - Working Group
Terms of Reference and Membership**

ORIGIN

Follow-up on Information Report at Council session of January 22, 2002 regarding the re-establishment of an Ad Hoc Working Group to Review the By-law S-200, a by-law respecting smoking in Public Places.

RECOMMENDATION

It is recommended that Halifax Regional Council :

- 1) Approve the terms of reference and membership for Council's Ad Hoc Smoking By-law Review Working Group, as discussed in this report, and outlined in Attachment 3;**
- 2) Request a report from the Working Group before the end of this calendar year.**

BACKGROUND

- 1997** **October 7, 1997 Council approved third reading** and the first HRM by-law S-200 came into effect October 11, 1997. This new harmonised by-law required all open spaces in malls and lobbies to become smoke free. Before amalgamation this restriction was only available in Bedford. The County of Halifax did not have a by-law and the City of Halifax and Dartmouth had by-laws that did not cover malls and interior open spaces. At the same time it was recommended that an advisory group look into the feasibility of expanding the scope of the by-law.
- 2000** **An amended By-law S-200 came into effect February 1, 2000.** It required all restaurants to provide designated no smoking in 50 per cent of seating space, introduced 25 per cent designated no smoking area in bars and lounges and required that where food service was provided restaurant restrictions must be followed. Bowling alleys and bingo halls also received a form of restriction. These initial steps were seen as symbolic rather than real in impact. These first steps were to prepare community for potential further increases.
- 2001** **Council directed staff to re-activate the smoking by-law review process** to advise Council on possible amendments.
- 2002** **On April 26, the Province of Nova Scotia** introduced legislation entitled **An Act to Protect Young Persons and Other Persons From Tobacco Smoke**. An overview is found in **ATTACHMENT 2**. The Act was passed in June and becomes effective January 1, 2003. A final version of the Act is not yet available. Regulations are now being developed and should be available in the fall. **The Act permits municipalities to enact more restrictive smoking by-laws.**

For a full description of the Municipality's actions with regard to regulating smoking, please refer to Attachment 5.

DISCUSSION

While there is new and fairly comprehensive legislation to restrict smoking in public places the municipality still appears to have a vested interest in reviewing its own by-law, as well as the provincial legislation. There are differing views on how strong such laws and by-laws ought to be. **As noted above, the Municipality is permitted to enact a Smoking By-law which is more restrictive than the Provincial Act which will take effect on January 1, 2003.** An examination by a panel selected by the Regional Council can review and recommend further actions to Council.

Council can give direction without fear of limiting full discussion on the topic. Without Council direction each group may only reflect its own position and thus not be able to make best use of all the available knowledge and expertise in order to give new insight on the matter.

The history of the process has involved finding ways to introduce more smoke-free public places in such a manner that the public, as well as, commercial interests have had time to accommodate themselves to new expectations for public behaviours.

A copy of the Executive Summary of the GPI Atlantic Report¹ is found at the back in ATTACHMENT 1. Council received a copy of the full report in January this year. This report:

- highlights the growth in the abilities of medical research to make more linkages and enlarge the scope of harm done by smoking and second hand smoke;
- focusses on the ethical principles and the responsibility to act when one has serious concerns, and reasonable evidence of harm to the health of all citizens; and,
- concludes that the studies on the impacts of restricting smoking do not show any economic harm. There do not seem to be any reputable studies that can demonstrate that being smoke-free is bad for business.

There are several changes in representatives from the last ad hoc work group. The Metropolitan Halifax Chamber of Commerce declined to participate in the working group but indicated it would respond to a Council request for a Chamber view on 'smoking in public places'. The Chamber has recently announced its support for a total ban on smoking in all indoor public places in Nova Scotia and will take that position to the Law Amendment Committee hearings. See ATTACHMENT 4. Some representatives are no longer holding the same position or have relocated, and some organizations have changed. Therefore members recommended vary from the original Work Group. In seeking out candidates, consideration was made to include strong representation from the hospitality industry, as well as, business advocacy organizations, health educators and health practitioners, community based advocates for healthy communities, health stakeholder advocates and a representative of citizens at large.

The proposed Terms of Reference for the Smoking By-law Review Work Group and the proposed members are found in ATTACHMENT 3.

Staff support for the work group will be made available from Administrative Services, Planning & Development Services, and Community Projects.

BUDGET IMPLICATIONS

None.

¹ **The Economic Impact of Smoke-Free Workplaces:** An Assessment for Nova Scotia, Ronald Coleman, PhD GPI Atlantic, for Tobacco Control Unit, Nova Scotia Department of Health September 2001.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

Council could do nothing at this time and accept the Provincial legislation that will be passed. This would involve repeal of the current HRM by-law. This is not recommended because there will be issues of inequity or unfairness in the legislation that local business may wish to address and other stakeholders may wish to put forth arguments for more stringent municipal legislation to Regional Council. Review is still desirable.

ATTACHMENTS

ATTACHMENT 1: Executive Summary: GPI Atlantic Report on the Economic Impact of Smoke-Free Workplaces: An Assessment for Nova Scotia, 2001

ATTACHMENT 2: Summary Tabled legislation on smoking in public places Government of Nova Scotia

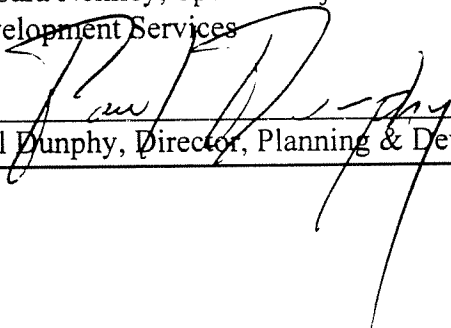
ATTACHMENT 3: Terms of Reference and Membership of the HRM Smoking By-law Review Work Group

ATTACHMENT 4: Metropolitan Halifax Chamber of Commerce

ATTACHMENT 5: Summary of the Municipality's Role with regard to Regulating Smoking

Additional copies of this report, and information on its status, can be obtained by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

Report Prepared by: Barbara Nehiley, Special Projects Advisor, 490-4612, Planning & Development Services

Report Approved by: 
Paul Dunphy, Director, Planning & Development

ATTACHMENT 1:

GPI Atlantic Executive Summary http://www.gpiatlantic.org/ab_smoke-free.shtml



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The Economic Impact of Smoke-Free Workplaces: An Assessment for Nova Scotia

(119 pages including charts; October 12, 2001; \$35)

Prepared by:

Ronald Colman, Ph.D, GPI Atlantic

With research assistance from Catherine M. Urbonas
for Tobacco Control Unit, Nova Scotia Department of
Health

Exposure to Second-Hand Smoke is a Serious Health Risk

- There is a consensus among the most reputable scientific and medical academies and government agencies on the serious health hazards of second-hand smoke or environmental tobacco smoke (ETS).

Exposure to second-hand smoke causes heart disease, lung cancer, nasal sinus cancer and respiratory ailments in adults, and it causes sudden infant death syndrome, fetal growth impairment and a wide range of respiratory conditions in infants and children, including bronchitis, pneumonia, middle ear disease and asthma exacerbation. ETS exposure causes about 200 deaths per year in Nova Scotia and is the leading cause of workplace death.

More recent research has linked ETS exposure to cervical and breast cancer, stroke, and miscarriages in adults; and to asthma induction, decreased lung function, cystic fibrosis, and cognition and behaviour problems in children.

- Restaurant, bar and casino workers are particularly at risk from workplace exposure to second-hand smoke. In restaurants, second-hand smoke levels are twice as high as in other workplaces that do not have smoking restrictions. In bars and casinos they are 3-6 times as high. Food service workers have a 50% higher rate of lung cancer than the general population.

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Excess mortality for workers in smoking lounges, bars, restaurants, casinos and bowling alleys is 15-26 times higher than OSHA's "significant risk" level.

- Smoke-free workplace legislation would reduce ETS exposure among Nova Scotians by 80%, cut cigarette consumption among smokers by 20%, and save Nova Scotia an estimated \$200 million a year in avoided health care costs (\$50 million) and productivity losses (\$150 million).

Ventilation Does Not Remove Toxins or Prevent ETS Exposure

- Expert assessments, empirical evidence, risk assessment procedures, and internationally accepted indoor air quality and ventilation standards have determined that ventilation and non-smoking sections do not remove the toxic constituents of tobacco smoke from the air and provide no solution to the problem of exposure to second-hand smoke.

Instead, the recommendations of expert scientific panels on ETS exposure are "clear, consistent and unanimous - all involuntary exposure is harmful and should be eliminated." The U.S. Surgeon-General has called for "100% smoke-free environments in all public areas and workplaces, including all restaurants and bars."

Smoke-free Policy Has No Adverse Impact on Business and May be Good for Business

- Without exception, every objective study using official sales tax data demonstrates that smoke-free legislation has no adverse impact on restaurant, bar, hotel and tourism receipts. Two studies find an initial decline in receipts in the first 1-2 months following enactment, but no evidence of any overall or aggregate decline in the longer term. Indeed, several studies find that restaurant, bar, hotel and tourism receipts increase following smoke-free legislation, indicating that it may be good for business as non-smokers frequent eating and drinking establishments more often and smokers adjust to the new rules.
- Given the consistency of the evidence, the enormous and costly toll of second-hand smoke exposure, the economic benefits of smoke-free workplace legislation, and the demonstrated lack of any adverse impact on business, there is a clear case for such legislation in Nova Scotia. This is particularly true in light of the growing body of legal precedent indicating that governments and employers are bound by law to ensure safe working environments for

employees and to remove known health hazards from the workplace.

Tobacco Industry Arguments Have Been Proven False

- Past obstacles to smoke-free workplace legislation can only be understood by reference to tobacco industry resistance and opposition. Tobacco industry documents reveal extensive industry efforts to prevent public smoking restrictions by denying the overwhelming evidence on the health hazards of second-hand smoke and working through and funding arms-length third parties to lobby against smoke-free legislation.
- Industry claims of declining revenues after implementation of smoking bans, when checked against objective sales tax receipts, have always been proven false.
- Active involvement by the health community has been shown to be the most determining element in ensuring the successful passage of smoke-free legislation in other jurisdictions.

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ATTACHMENT 2

Overview

An Act to Protect Young Persons and Other Persons From Tobacco Smoke

April 26, 2002

An Act to Protect Young Persons and Other Persons from Tobacco Smoke represents a significant step forward in the fight against tobacco in Nova Scotia. It protects people, especially children and youth, from second-hand tobacco smoke. This legislation is one element of the province's comprehensive tobacco strategy aimed at significantly reducing smoking rates and the burden of tobacco-related illness.

Key Components of the Legislation

No smoking in any of the following enclosed places:

- daycare
 - school, community college or university [also, no smoking on school grounds]
 - library, art gallery or museum
 - health-care facility
 - cinema or theatre
 - video arcade
 - pool hall, billiards room
 - recreational facility where the primary activity is physical recreation, including, a bowling alley, fitness centre, gymnasium, pool or rink
 - multi-service centre, community centre/hall, arena, fire hall or church hall
 - meeting or conference room or hall, ballroom or conference centre
 - retail shop, boutique, market or store or shopping mall;
 - ferry, ferry terminal, bus, bus station or shelter, taxi, limousine or vehicle carrying passengers for hire
 - vehicle used in the course of employment while carrying two or more employees
 - common area of a commercial building or multi-unit residential building including corridors, lobbies, stair-wells, elevators, escalators, eating areas, washrooms and rest-rooms
 - offices of the Government of the Province, a municipality, a village or a school board
 - provincial jail, detention centre, or reformatory
 - any building or facility designated by the regulations

but is allowed in

- (a) a private home
- (b) at private functions where minors are not allowed

Workplaces (other than restaurants, bars, bingos, nursing homes, psychiatric facilities, veterans acute/long term care facilities)

- no smoking in indoor areas except in a designated smoking room that is enclosed and separately ventilated.
- youth under 19 years of age not permitted to enter the smoke room

Restaurants

- no smoking except in a designated smoking room that is enclosed and separately ventilated.
- designated smoking room cannot comprise more than 25% of seating area.
- youth under 19 years of age not permitted to enter the smoke room

Bars & lounges

- if youth under 19 are permitted to enter, no smoking except in a designated smoking room that is enclosed and separately ventilated.
- between 6:00AM and 9:00PM, the designated smoking room cannot comprise more than 25% of seating area.
- youth under 19 years of age not permitted to enter the smoke room

Bingo halls & Private clubs

- if youth under 19 are permitted to enter, no smoking except in a designated smoking room that is enclosed and separately ventilated.
- youth under 19 years of age not permitted to enter the smoke room

Outdoor eating places (i.e. patios, decks)

- restaurant patio/deck: no smoking
- bar/lounge patio/deck: no smoking between 6:00AM and 9:00PM

Psychiatric facility, nursing home or residential care facility or a part of a health-care facility used for the acute or long-term care of veterans:

- no smoking in indoor areas except in smoking room that is separately enclosed and separately ventilated
- youth under the age of nineteen years not permitted to enter smoking room

Municipal by-laws

- municipalities or other bodies may enact more restrictive by-laws.

Traditional tobacco use

- nothing affects traditional aboriginal spiritual or cultural practices/ceremonies using tobacco

Enforcement

- by inspectors appointed under the Act
- existing government infrastructure will be utilized

Tobacco Possession by Youth

- no youth under the age of 19 may possess tobacco
- tobacco possession is not an offence, however, peace officers with reasonable and probable grounds to believe that a person under 19 may be in possession of tobacco may search the person and confiscate tobacco in his/her possession.

Effective Date

- Comes into force on January 1, 2003²

²

Source: Nova Scotia Health Department web site www.gov.ns/health/

ATTACHMENT 3

Terms of Reference Halifax Regional Municipality Smoking By-law Review Work Group

1. Mission:

The Work Group made up of appointed individuals with expertise and knowledge of community, health, business, hospitality industry and health stakeholder interests will meet, discuss, review and consider all sides of the issue to advise Regional Council on a course of action that considers the best interests of resident and visitors of all ages in the Halifax Regional Municipality respecting the amendment of By-law S-200 Respecting Smoking In Public Places.

2. Objectives:

- 2.1 Review, with the aide of staff, the current by-law for administrative matters that include needed refinements, and clarifications.
- 2.2 Review the GPI Atlantic Report on **The Economic Impacts of Smoke-Free Work Places**, and use as resource in coming to conclusions.
- 2.3 Consider any verifiable benefits and impacts of the current smoking by-law S-200 on the residents and visitors in HRM, as well as the business community and:
 - 2.3.1 Identify the potential impact on business, both positive and negative, should Halifax Regional Council either weaken or strengthen the restrictions on smoking in public places.
 - 2.3.2 Identify the potential beneficial impact on the broader community, both positive and negative, should Council either weaken or strengthen the restrictions on smoking in public places.
- 2.4 Make recommendations to Halifax Regional Council on any amendments in the by-law which will provide benefit to the residents of HRM; affect the scope of bans on smoking in public spaces in HRM; public awareness and education and enforcement considerations.
- 2.5 The work group will also address where possible and feasible:
 - 2.5.1 The costs of implementation - immediate and long term,
 - 2.5.2 Budget implications for HRM,
 - 2.5.3 Possible allies and partners,
 - 2.5.4 Possible barriers and opponents,
 - 2.5.5 Implementation strategies, ie. Incremental versus total one step ban,
 - 2.5.6 The impacts on business, positive and negative,
 - 2.5.7 Strategies for mitigating possible negative impacts on business,
 - 2.5.8 Possible benefits of achieving plan,
 - 2.5.9 Impacts on public health, including children and seniors.

3. Reporting

- 3.1 The Work Group shall make a public presentation to Council on the issues of smoking in public places, with regard to:
 - 3.1.1 The major positions held by work group members;
 - 3.1.2 The existence of evidence based research on medical impacts of second hand smoke,
 - 3.1.3 The impacts in the work place and business costs;
 - 3.1.4 community advocates for health communities,
- 3.2 The Work Group shall submit a final report to Council after the summer break with recommendations on:
 - 3.2.1 Amending the By-law S-200 respecting smoking in public places;
 - 3.2.2 Enforcement,
 - 3.2.3 Education and awareness.

4. Term

- 4.1 The Working Group will dissolve upon Council action related to the report of the Working Group.
- 4.2 Council can re-activate such a group again should it so desire.

5. Staff Support

Staff support regarding policy development, legislation language and legal issues, and communications will be made available.

6. Membership

- 6.1 The Chairperson is to be elected from among the members of the Committee.
- 6.2 The Committee should also have the Authority to add, by invitation, two temporary voting members (example, terms of 2 weeks or 2 months) as a way to include representation of specific activities or businesses such as bingo halls, bowling alleys, community centres with bingo activities.
- 6.3 Representatives may provide the name of alternate representatives to sit in their stead, and the nominated alternate representative shall be approved by Council.
- 6.4 Membership is based on association with an interest group but the appointed member will participate and act as an individual who has an understanding of an interest group and is not to limit themselves to the opinions/positions of their associated group.
- 6.5 Membership of the committee is to be comprised of 15 voting members who shall be volunteer, non elected community representatives from those individual and group stakeholders.

7. Voting/Decision making

- 7.1 The Chair of the Work Group shall have no vote but can participate in reaching the consensus decisions of the group.

- 7.2 The decisions of the Work Group will be based on consensus agreement and not on a “one person one” vote system. This means that the Group must come up with recommendations that all are willing to support even if the decision is not totally agreeable to the individual.
- 7.3 Where the group reaches an impasse, and no agreement can be reached, this is what will be reported to Council along with explanation of the inability to reach a consensus.

Members as recommended for approval by Regional Council are:

*alternates

	Organization or Constituency	Member *alternates
1	Canadian Restaurant Association	Luc Erjavac, Vice President
2	Restaurant Association of Nova Scotia	Dan Hewitt, President and business operator
3	Lounge & Beverage Room Association of Nova Scotia	John O’Hearn, business person
4	Hotel Association of Nova Scotia	Richard O’Bierne, Hotel executive
5	Tourism Association of Nova Scotia	Judith Cabrita, Executive Director
6	Downtown Dartmouth Development Corporation	Marion Currie, Executive Director
7	Downtown Halifax Business Commission	Holly Richardson
8	Spring Garden Area Business Association	Linda Lewis, Manager/*Paul McKinnon
9	Lung Association of Nova Scotia	Charles Crosby, Board Director
10	Heart & Stroke Foundation of Nova Scotia	Elaine Shelton
11	Nova Scotia Medical Society	Dr. Jerry Brosky, family medicine practitioner
12	Medical Health Officer Capital Health Authority NS Dept. of Health	Dr. Rob Strang, public health physician
13	Health Educator, NS Dept. of Health Tobacco and Alcohol Control Unit	Nancy Hoddinnot, Health Educator
14	Community Health Boards Council of Chairs	Dr. Ed McKinley/*Ryan Sommers
15	Canadian Cancer Society -NS Division	Kitty Wylie/*Steve Machet
16	Citizen at Large	Helen McGaw, retired educator
	2 MAY BE ADDED LATER	

ATTACHMENT 4:
Halifax Chamber of Commerce Statement on Smoking in Public Places

May 10, 2002

The Metropolitan Halifax Chamber of Commerce announced its support today for pro-health legislation that would ensure a total smoking ban in all indoor public places in Nova Scotia.

"A key strategic goal of the Chamber is to promote a healthy workforce for Metro Halifax," says Chamber General Manager Valerie Payn, who will appear before the Law Amendments Committee at Province House this morning. "Accordingly, the Chamber supports a total smoking ban in all indoor public places in Nova Scotia."

Guided by the Chamber's strategic goal of promoting a healthier workforce for Metro Halifax, the pro-health message on smoking in the workplace was further substantiated by Chamber members who responded to an online survey conducted by the Chamber. In that survey, 77% of respondents said they supported a total ban on smoking in all indoor public places in Nova Scotia. The survey was conducted online from April 2-12 and generated a response rate of 22%. The 2,000-plus Chamber members employ more than 60,000 people, representing over one quarter of Metro Halifax's labour force of 204,000.

"Attitudes change. Certain activities that were commonplace only a decade ago, such as smoking in the workplace, are now unacceptable. We believe that there is no better time than now to change the attitude towards the promotion of a healthy workplace," says Payn. "As we promote efficiency in our health care system, Chamber members will be hearing more on the advocacy front and what businesses -large and small - can do to improve health in the workplace," she said, referring to the planned activities of the Chamber's newly-formed health committee, chaired by the Bank of Montreal's Carol Snider.

The Chamber feels that the Province's proposed Smoke Free Places Act shows that the Province is serious about addressing preventative health issues for Nova Scotians. However, the Chamber also believes that in order to operate competitively, businesses need a level playing field. A total ban on smoking in all indoor public places, including bars and restaurants, is the only option that ensures this. The Chamber believes fairness to business and a healthy workforce can be achieved simultaneously through a total ban on smoking in all indoor public places. The Metropolitan Halifax Chamber of Commerce is a best-practice business organization that continuously strives to make Halifax an even more attractive city in which to live, work and play. It is the oldest Chamber in North America - celebrating 250 years in 2000 - and was the first certified to the ISO 9002 international standard of quality.

Attachment 5:
Summary of Municipality's Role with regard to Regulating Smoking

1997 Approved resolution January 29, 1997 Moved by Councillors Harvey and Epstein that requested staff to prepare a report for the consideration of Council which would lead to legislating a clean air by-law to eliminate tobacco smoke from public places.

First staff report August 19, 1997. The original staff report recommended that Council approve a policy that supports the reduction and/or elimination of exposure to environmental (second hand) tobacco smoke in all public areas, the work place, and the home, wherever possible and appropriate. The first phase would be to harmonise existing policies of the former municipal units. The second step would see Council consider the future issue of a complete ban on smoking. Further, the report provided an analysis of research on the impact of second hand smoke and listed actions by other municipalities to ban smoking in public places. A consultation process was suggested.

First reading took place August 26, 1997.

Second reading September 9, 1997.

Supplementary report September 30, 1997 introduced the consultation process in the form of a community-based working group to provide a forum for the various interests involved and to provide advice and recommendations to Regional Council on the matter.

October 21, 1997 Council set the terms of reference for membership on the Working Group so that a majority was comprised of business interests to insure impact on business be considered.

1998 In July 7, 1998 the Smoking By-law Work Group presented a report which supported the incremental approach and recommended small step increases in restrictions on smoking. Council did not approve the report but referred to staff for a report asking that staff prepare a by-law that would move toward a full ban, as well as look at the possible use of ventilation in resolving the issue.

July 14, 1998 Council directed staff to prepare a by-law. The staff report is to take the following matters into consideration:

1. Concern that the incremental approach will stop with no further increments;
2. Inclusion of a timetable for implementation and when 100% will be reached
-Goals and objectives could be included in the time frame.
3. Legal ramifications of private clubs and the province's involvement;
4. Consideration for the application of a percentage over the long term would be much more beneficial than hour restrictions re bowling alleys;
5. The taxi recommendations should be referred to the Taxi Committee;
6. HRM, as a government body, dictate to private enterprise what they can do in an environment where patrons have the option of choice (this is a public health issue);
7. Research into the value of ventilation and whether or not it is a safe alternative.

1998 Staff report came back to Council in October. A draft by-law provided for an incremental move towards a 100 per cent ban over a three year period. Ventilation was also discussed. It was received with some controversy by the business community and applauded by the medical community. Business community asked that the By-law Working Group be allowed to review the report and report back.

The Group urged the Council to reject the staff report and the proposed by-law that provided for full ban by 2001 and approve the Work Group recommendations and that another review take place in two years with an eye to further increments in restrictions of smoking in public places and also look at the impact of the smoking by-law on business. The need for added enforcement resources was identified as well as an information and education program. Council accepted the Working Group report and did not proceed with considering a more restrictive by-law at that time.

1999 In accordance with the intent of the Smoking By-law Working Group, as approved by Council, the further amended By-law Amendment S-201 came to Council with first reading November 9, 1999.