

Re: 11.1




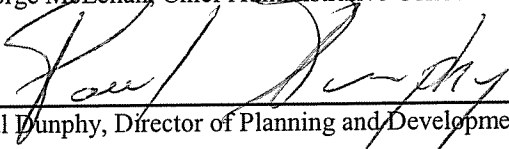
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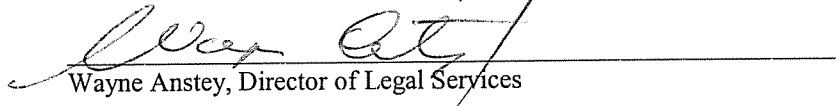
Halifax Regional Council
May 6, 2003

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:


George McLellan, Chief Administrative Officer


Paul Dunphy, Director of Planning and Development Services


Wayne Anstey, Director of Legal Services

DATE: May 2, 2003

SUBJECT: Smoke Free Places Bylaw

SUPPLEMENTARY REPORT

ORIGIN

- Regional Council held Public Hearings on April 1, 2 and 8th 2003 to consider adoption of a 100% ban on smoking in public places.
- On April 15, 2003 Regional Council adopted an amended version of the Smoke Free Places Bylaw, with a 100% ban deferred to 2008. The bylaw came into effect on April 19, 2003.
- At the April 22, 2003 Regional Council session, a Notice of Motion was introduced to allow smoking in restaurants within enclosed and ventilated rooms. The Notice of Motion also proposes that smoking on the outdoor patios/sidewalk cafes of restaurants be exempted from municipal regulations.
- At the April 22, 2003 Regional Council session staff was asked to respond to a number of questions about the bylaw.

RECOMMENDATION

It is recommended that Regional Council:

1. Amend the Smoke Free Places Bylaw to exempt smoking on sidewalk cafes, sidewalks or other outdoor patio associated with a restaurant from municipal regulations (Attachment "B");
2. Amend the Smoke Free Places Bylaw to allow food service within a licensed drinking establishment's separately enclosed and ventilated smoking room (Attachment "B");
3. Provide a three month phase-in (July 31, 2003) to allow time for licensed drinking establishments and to install separately enclosed and ventilated smoking rooms, after which enforcement of the smoking bylaw will take place; and
4. Regional Council not amend the Smoke Free Places Bylaw to allow separately enclosed and ventilated smoking rooms in restaurants (Attachment "A").

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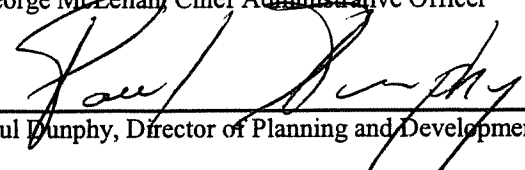
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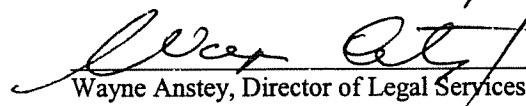
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DISCUSSION

Proposed Amendments

Restaurants

During the recent public hearings, it was reported that approximately 90% of restaurants in the Region are smoke free. In addition, the Canadian Restaurant and Food Service Association reports that there are only approximately 3-4 restaurants in the Region which currently have enclosed and ventilated smoking rooms. Of these at least two are national chains which are smoke free in the remainder of their locations and are therefore expected to go smoke free in these two locations in the near future.

Council has established a clear policy direction that the Region is moving toward a complete smoking ban in five years. The rationale for allowing designated smoking rooms within licensed drinking establishments was in recognition of the fact that this segment of the hospitality industry reports they still have a strong reliance upon smoking clientele. Going smoke free immediately was thought to be too big a step. For this reason smoking will be allowed in designated rooms. As pointed out above, this does not appear to be the case with the restaurants.

It is therefore recommended that the bylaw not be amended to allow designated smoking rooms in restaurants.

Outdoor Patios and Sidewalk Cafes

The primary purpose of the Smoke Free Places Bylaw is to reduce exposure to second hand smoke. These health risks are greatest in enclosed spaces where smoke does not quickly dissipate the way it does outdoors. During the public hearing, speakers supporting the Smoke Free Places Bylaw indicated that they did not have the same level of concern with regards to smoking outdoors.

The Bylaw currently distinguishes between outdoor patios/cafes associated with a licensed drinking establishment versus those with restaurants. The result is that on adjacent patios/cafes you will either be allowed to smoke or not, with no clear public policy rationale. In addition to creating an uneven playing field within the hospitality industry, it is also extremely difficult to enforce. This is particularly true for example in the case of establishments which have both a lounge and a restaurant sharing a common patio.

It is recommended that the bylaw be amended to allow smoking on restaurant patios/cafes. It should be noted that the Provincial regulations will still apply. Fifty percent of the area will still have to be non-smoking and no one under 19 will be allowed in the smoking area. The Province will be responsible for enforcement of all outdoor patios/cafes.

Licensed Drinking Establishments - Food Service in Smoking Rooms

The current bylaw allows food service in the non-smoking portion of licensed drinking establishments. Food service is not allowed in their smoking rooms. Patrons are allowed to eat in

these rooms, however they must leave the room to order their food and they must bring the food to the table themselves. Council debated and voted on this item several times at its April 15, 2003 meeting. Nevertheless, prior to enforcing this provision staff feels it is important to bring to Council's attention some issues which did not get raised at that meeting.

Prohibiting food service in the smoking room does not advance the bylaw's primary policy objective, which is to reduce exposure to second hand smoke. Patrons in these rooms have chosen to be there for the purpose of smoking. They will receive the same level of smoke exposure regardless of whether they receive food service at their table or they have to leave the room to order and pick up their food. Serving staff who agree to work in these rooms will not be significantly protected either. They will still have to enter the room on numerous occasions to take drink orders, deliver them and clear the tables. In addition, rather than bringing the food order to the table, they will still have to make equivalent trips to the room to tell patrons their order is ready and then return to clear the table.

This provision expands the scope of enforcement and difficulty of enforcement. Previous advice to Council indicated that HRM staff would only be required enforce the bylaw within licensed establishments after 9:00 p.m.. This is because the Provincial regulations already ban smoking before 9:00 p.m. and the Province is therefore responsible for enforcement during the day and early evening. Since HRM's ban on food service is throughout the day, HRM staff will therefore be responsible for enforcing this provision throughout the day. Responding to complaints will require witness testimony for a successful prosecution since HRM inspectors will arrive well after the food has been served. Given other work priorities that response could be several days later. In order to carry out enforcement more effectively will require inspectors to spend time in establishments which are suspected of serving to obtain first hand evidence. Finally it should be noted that rather than prosecuting establishments or individuals for smoking, the Municipality would now be prosecuting establishments for serving food!

It is therefore recommended that the bylaw be amended to allow food service within the smoking rooms of licensed drinking establishments.

Phase-in for Smoking Rooms

Most licensed establishments postponed installing enclosed and ventilated smoking rooms pending the outcome of Council's deliberations on a 100% smoking ban. Now that Council has confirmed these rooms are allowed it is reasonable to allow some time for businesses to install them prior to the bylaw being enforced in licensed establishments. Consultation with the food and beverage industry indicates that a three month phase-in is sufficient. July 31, 2003 is approximately three months from the date of the bylaw coming into force and is a simple date to remember.

For clarity on this issue it is recommended that Council endorse the July 31, 2003 phase-in date. This does not require an amendment to the bylaw.

Questions

Enforcement

The key to enforcement is successful communication and public education. In the majority of cases this will lead to voluntary compliance. HRM has received a Federal grant through FCM to assist in public education. This program will be undertaken once Council has finalized any bylaw amendments in order to ensure that the message does not have to be changed.

As outlined above, the bylaw as adopted, has additional enforcement responsibilities which were not raised in previous staff reports. If the proposed amendments are adopted, the original advice will still apply. Staff could reasonably enforce the bylaw using existing resources. If the bylaw is not adopted, the enforcement implications are as outlined above. Staff has not identified any additional funds for enforcement.

Legions - Preferential Treatment?

Notwithstanding the respect and admiration the community has for this veterans' organization, there is little evidence to show that legions are substantively different from the many other private clubs which also make significant contributions to the community. In addition, many members are social members and not veterans or retired service personnel.

It is possible that someone could challenge the fairness of exempting legions from the Smoke Free Places Bylaw. It should be noted however that Council has the authority to treat certain classes of uses as different. Section 172(2)(b) of the MGA provides that:

“172(2) Without restricting the generality of subsection (1) but subject to Part VIII, a council may, in any by-law...
(b) regulate any development, activity, industry, business, animal or thing in different ways, divide each of them into classes and deal with each class in different ways.”

Accordingly, Regional Council does have the legislative authority to define classes of businesses and to deal with each class in different ways. If challenged, legal counsel would rely on this provision as the authority to distinguish legions from other private clubs as well as to differentiate between restaurants and drinking establishments, etc.

Affiliation with Legions

There is some concern expressed that other facilities could seek to subvert the organization of the Royal Canadian Legion and affiliate with them to undermine the intent of the bylaw. This is not something that Council should be concerned about. The Royal Canadian Legion was founded in 1926 by an act of parliament. The structure of the Legions is very clear. The national command and provincial commands guard the integrity of the local member commands.

Time Constraints for Revisiting Bylaws

Council can at any time revisit approved bylaws for the purpose of repeal or amendment. If a proposed bylaw amendment has been defeated during the previous two months, two thirds of Council must agree before a matter may be brought forward again within that time frame.. Failing that it can be brought before Council after two months.

Bingos

During the past week, there appears to have been some confusion with regards to when bingos were required to comply with the bylaw. There is no need to delay enforcement of smoke free bingos because there are no alternative actions that can be taken to provide for smoking, as there is for bars and beverage rooms, which can decide to install designated smoking rooms. This matter has been addressed and the offending parties have been contacted and directed to comply. All bingos are being contacted and informed that this is the policy of HRM. Those who do not comply will be charged. It appears that we are now obtaining full compliance. Additional inspections will be carried out to ensure this.

BUDGET IMPLICATIONS

None. Additional resources have been found to assist with public awareness and education. Staff can work cooperatively with the business community and health community to provide information and clarification on the implications of the bylaw.

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

1. Council can defeat 1st reading of the proposed amendment for restaurant smoking rooms and patios in its entirety. There is no debate on 1st reading.
2. Council can approve the 1st reading and set a public hearing.
3. Council can defeat 1st reading of the amendments to allow restaurant smoking rooms and consider the amendments proposed by staff.
4. Council could direct staff to prepare additional amendments which have not been identified in this report. This is the recommended course of action.
5. Council can choose to confirm the proposed three month phase-in period for installation of smoking rooms in licensed drinking establishments or choose a longer period, a shorter period or immediate compliance.

ATTACHMENTS

- Attachment "A" - April 22, 2003 Notice of Motion to amend the Smoke Free Places Bylaw.
Attachment "B" - Bylaw amendments proposed by staff.
Attachment "C" - Summary of Existing Provisions of Smoke Free Places Bylaw

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, Planning & Development Services 490-4612

Attachment "A"

TAKE NOTICE that at the next regular meeting of Halifax Regional Council to be held on Tuesday, the 6th day of May 2003, I propose to move First Reading of By-law S-204, the purpose of which is to amend the Smoke Free Places By-law to

- (1) Repeal Clause (g) of Section 2 of the said By-law and substitute the following therefor:
 - (b) "restaurant" means an establishment engaged in the sale and service of food to the public for consumption on the premises, and includes an Eating Establishment licensed under the Liquor Control Act, but does not include a sidewalk café, a sidewalk or other outdoor patio associated with the restaurant;
- (2) add Section 3AA as follows:

3AA Notwithstanding Clauses (a) of subsection (1) of Section 3, smoking is permitted in that area of a restaurant

 - (a) that is separately enclosed and ventilated in accordance with the standards prescribed for smoking areas by the regulations adopted pursuant to the Smoke-free Places Act, Acts, N. S. 2022, C. 12, from any part of the restaurant in which smoking is prohibited;
 - (b) that does not exceed twenty-five percent of the total indoor eating area of the restaurant; and
 - (c) that no person under the age of nineteen years is permitted to enter or be in.
- (3) Amend Section 8 of the By-law to read:
 8. Sections 3A and 3AA of this By-law shall have no effect on and after the 1st day of January 2008.

- (1) Repeal Clause (g) of Section 2 of By-law S-203 and substitute the following therefor:
 - (b) “restaurant” means an establishment engaged in the sale and service of food to the public for consumption on the premises, and includes an Eating Establishment licensed under the Liquor Control Act, but does not include a sidewalk café, a sidewalk or other outdoor patio associated with the restaurant;
- (2) Section 3A of By-law S-203 is amended by deleting the words "provided that food is not served in that area"

Attachment “C”

Summary of Existing Provisions of Smoke Free Places Bylaw

| <u>Establishment</u> | <u>Smoking Status</u> |
|---|---|
| Restaurants | No Smoking |
| Bingos | No Smoking, includes Legion bingos |
| Drinking Establishments (except tobacco bars) | <p>Until January 1, 2008. smoking permitted only in separated constructed and ventilated smoking areas which do not exceed 25% of the drinking area of the facility.</p> <p>Persons under 19 years of age not permitted in the smoking area.</p> <p>Food service not permitted in the smoking areas.</p> <p>After January 1, 2008, no smoking</p> |
| Casinos | |
| Private Clubs (except legions) | |
| Tobacco bars | Governed by Provincial Statute |
| Legions | Governed by Provincial Statute, except when operating a bingo they must abide by bingo smoking ban. |
| Signs | <p>Signs are to be placed at all entrance doors at a height of 1.25 m(4.10 Ft.) to 1.75 m(5.74 ft) from the floor and shall be clearly visible from the outside of the facility.</p> <p>The sign shall indicate that the place is is smoke-free and that smoking is not permitted in accordance with HRM By-law S-203</p> <p>The sign may be in keeping with the architectural character of the place.</p> <p>If you already have a sign pertaining to a previous by-law of the Municipality or of a previous municipality is deemed to be referring to this by-law.</p> |