

COUNCIL AGENDA/INFORMATION

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<input type="checkbox"/> Supplemental	Date: _____	Item # _____

<u>AB.</u>	<u>[Signature]</u>
A. Director	CAO

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DISTRICT OF WEST VANCOUVER  
750 – 17<sup>TH</sup> STREET, WEST VANCOUVER, BC V7V 3T3

## COUNCIL REPORT

Date: June 25, 2009 File: 1605-01  
From: E.S. (Liz) Holitzki, Manager of Permits, Inspections and Bylaws  
Subject: **Smoking Regulation Bylaw No. 4607, 2009**

### RECOMMENDED THAT:

1. Smoking Regulation Bylaw No. 4607, 2009 be introduced and read a first, second and third.

### Purpose

The purpose of this report is to introduce Smoking Regulation Bylaw No. 4607, 2009 (Appendix 1) which is intended to replace the Clean Indoor Air and Smoking Regulation Bylaw No. 4021, 1996. This new Bylaw incorporates all of the indoor smoking control regulations and also introduces additional outdoor smoking control regulations.

### 1.0 Background

#### 1.1 Prior Resolutions

February 18, 2008 Council instructed staff to report back regarding a new smoking regulation bylaw after discussing the Vancouver Coastal Health model bylaw with the City of North Vancouver and the District of North Vancouver.

#### 1.2 History

On March 31, 2008 the Provincial government introduced new smoking control measures regulating outdoor smoking. Specifically, the regulations prohibit smoking within three (3) metres of any exterior doorway, windows that open or air intakes to all public buildings. Smoking was also prohibited in all transit shelters and common areas in apartment buildings, condominiums and dormitories.

Since that time numerous Lower Mainland municipalities have either adopted new bylaws enhancing the Provincial regulations or are currently working on new legislation in this area. A spreadsheet providing information on the progress of individual communities is provided in Appendix 2.

## **2.0 Analysis**

### **2.1 Discussion**

The Provincial regulations regarding outdoor smoking have been in place for more than a year and for the most part compliance has been achieved. However these regulations are limited in so much as they do not deal with outdoor patios in restaurants or pubs and they do not deal with outdoor recreational facilities.

At the February 18, 2008 Council meeting, Dr. B. O'Connor from Vancouver Coastal Health presented a "model bylaw" that provides for an extension of the new provincial regulations from 3 metres to 6 metres and starts from the position that smoking is prohibited in all indoor spaces, entryways and on restaurant/liquor establishment patios and the perimeter of patios. For the purposes of the bylaw, patios would be defined as "customer service areas" associated with food and beverage establishments. There is an additional request for the District to adopt policies to further restrict smoking on playing fields, within 6 metres of playgrounds and other places where children gather or play.

As directed, staff have met with representatives from the District of North Vancouver, the City of North Vancouver and Vancouver Coastal Health to discuss the new provincial smoking regulations and potential recommendations to amend existing municipal bylaws to expand on these regulations.

Staff are introducing Smoking Regulation Bylaw No. 4607, 2009 following the completion of discussions with the District and City of North Vancouver and Vancouver Coastal Health as well as researching bylaws already adopted in other lower mainland communities and Whistler. The proposed bylaw has been drafted by the three North Shore municipalities and Vancouver Coastal Health. The basic bylaw provisions are identical for all three communities with a few differences that are required to reflect the uniqueness of each individual community. For instance, each municipality has to define their individual Zoning and Vehicle for Hire Bylaws. Staff were directed to find a "North Shore" solution to this issue and believe the proposed Bylaw meets that direction.

Residents are frequently requesting amendments to our smoking bylaw regulations to include outdoor smoking requirements, in particular for outdoor patios in restaurants and in some areas of our parks. From complaints that have been received it appears that the community is becoming less tolerant of smoking and of secondhand smoke intrusion. The Public Health Officer advises that in British Columbia the percentage of the population that continues to smoke tobacco products has been reduced to less than 20%. In West Vancouver this

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number is further reduced to approximately 6% of the population and is predicted to diminish further as demographic changes occur.

One of the key differences between the Provincial legislation on outdoor smoking and the proposed Bylaw is the requirement for the display of signage. The Province opted to not require signs to be displayed for its outdoor smoking regulations (which is different than their indoor smoking requirements). The proposed District Bylaw has the provision of required signs for those areas where smoking is prohibited whether indoors or in outdoor service areas which will include patio areas for restaurants and pubs. We understand that the BC Lung Society has agreed to provide signs at their cost for anyone requiring them. However, due to the volume they will need to supply each municipality will be responsible for ensuring individual municipal bylaw information is encoded at municipal cost. Alternatively, individual businesses or building owners can create their own signs provided they meet Bylaw requirements.

#### Enforcement

The Vancouver Coastal Health Department that enforces the District's current Clean Air and Indoor Smoking Bylaw has informed staff that they intend to continue to be the primary enforcement agency for our Bylaw. Coast Health's goal is to achieve compliance through education of the public and of course will respond to complaints regarding secondhand smoke issues that are regulated in their Provincial legislation and in our Bylaw if adopted. Staff would also ensure educational information is provided to the public through use of printed material and articles in Tidings and on our website.

#### Approval Process

Under the *Community Charter* both municipalities and the provincial government have concurrent jurisdiction over certain regulatory subject matters. Pursuant to section 9(1)(a), public health is one of the spheres of concurrent jurisdiction. Under the regime set out in section 9, municipalities may not adopt a bylaw pertaining to public health unless it is in accordance with the Province's Public Health Bylaws Regulation. This Regulation prohibits municipalities from adopting a bylaw in relation to either the protection, promotion or preservation of the health of individuals or the maintenance of sanitary conditions in the municipality, unless the bylaw is deposited with the Minister of Health and until such time as Council has consulted with the regional board of health or medial health officer responsible for public health matters in the District.

The consultation process with the medical health officer has been completed. If Council gives the proposed bylaw three readings, staff will forward it to the Minister of Health for review as required. Once staff have been advised by the Province that the proposed bylaw is deposited, it will be returned to Council for consideration of adoption.

## 2.2 Environmental Implications

Smoke-free public places reduce smoking rates and protect people from the hazards of second hand smoke. Furthermore they model healthy behaviour for children and youth and help smokers to smoke less, possibly quitting altogether.

## 2.3 Social Implications

Government agencies, business owners and landlords in private industry have the legal right to establish reasonable safety policies for their property, including no-smoking policies. To abide by such a policy, a person who is smoking may refrain from smoking, step to an unpopulated area to smoke, or choose to become a non-smoker. On the other hand, a non-smoker, a smoker who is trying to quit smoking or parents with children cannot avoid smoke-filled air at entrances of public and private buildings. In concentrated levels, second hand smoke is as much of an outdoor hazard as an indoor hazard. Failure to ban smoking in outdoor venues may expose a non-smoker to levels of second hand smoke as high or higher than received in indoor spaces where smoking is unrestricted.

## 2.4 Financial Implications

The economic impact of smoke-free regulations on restaurants and bars has been the subject of significant debate. However, studies have found no evidence of negative economic impacts to these types of businesses. Workplace smoking restrictions are effective in reducing second hand smoke exposure.

With respect to financial impacts to the District if the proposed bylaw is adopted, the Vancouver Coastal Health Department will be responsible for the majority of enforcement. Therefore there will be little to no enforcement costs to the municipality. With the BC Lung Association volunteering to produce the required signs the District can use these signs for municipal buildings with minimal cost in adding the District logo and bylaw number to the individual signs.

## 2.5 Consultation

Staff consulted with representatives from the District of North Vancouver, the City of North Vancouver and Vancouver Coastal Health Authority. Discussions were also held with representatives from other communities who have adopted new outdoor smoking regulations since March 2008 to determine the extent of their regulations, their enforcement practices and compliance ratios.

The municipal solicitor has reviewed the proposed bylaw.

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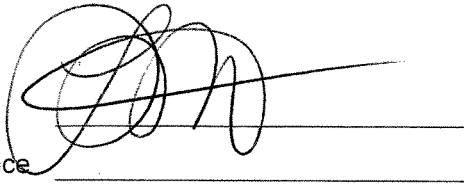
### **3.0 Options**

3.1 To approved the proposed bylaw.

3.2 To not approve proposed bylaw at this time and provide staff with further direction

Author: \_\_\_\_\_

Concurrence  
(optional) \_\_\_\_\_

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Appendices:

1. Smoking Regulation Bylaw No. 4607, 2009

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# APPENDIX 1



District of West Vancouver

## **Smoking Regulation Bylaw No. 4607, 2009**

Effective Date – [Date]

# Smoking Regulation Bylaw No. 4607, 2009

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District of West Vancouver

## **Smoking Regulation Bylaw No. 4607, 2009**

A bylaw to regulate smoking in the District of West Vancouver under the  
*Community Charter*

WHEREAS the Council of The Corporation of the District of West Vancouver deems it expedient to provide for the protection, promotion and preservation of the health, safety and welfare of the inhabitants of the District of West Vancouver to regulate smoking in the District of West Vancouver, as in this bylaw more particularly set out;

NOW THEREFORE, the Council of the District of West Vancouver enacts as follows:

### **Part 1 Citation**

1.1 This bylaw may be cited as Smoking Regulation Bylaw No. 4607, 2009.

### **Part 2 Severability**

2.1 If a portion of this bylaw is held invalid by a Court of competent jurisdiction, then the invalid portion must be severed and the remainder of this bylaw is deemed to have been adopted without the severed section, subsequent, paragraph, subparagraph, clause or phrase.

### **Part 3 Previous Bylaw Repeal**

3.1 Clean Indoor Air and Smoking Regulation Bylaw No. 4021, 1996. (adopted on January 6, 1997) and the following amendment bylaws are hereby repealed:

<b>Amendment Bylaw</b>	<b>Effective Date</b>
Bylaw No. 4158	April 26, 1999

## Part 4 Definitions

4.1 In this bylaw:

“building” means a structure or portion of a building or structure which is used or intended for supporting or sheltering any use or occupancy and includes premises;

“business” means a business, trade, profession, or other occupation for which a person must obtain a license under Business Licence Bylaw No. 4455, 2005;

“common areas” include, but are not limited to, lobbies, foyers, stairwells, elevators, corridors, cloakrooms, washrooms, food fair seating areas, and other public areas of a building;

“customer service area” means a partially enclosed or unenclosed area, including a balcony, patio, yard or sidewalk, that is part of or connected to or associated with a business or use in a building or premises that includes the service of food or beverages, including alcoholic drinks, to customers or other persons for consumption on site;

“District” means the District of West Vancouver;

“dwelling unit” means a dwelling unit as defined in Zoning Bylaw No. 2200, 1968, as amended from time to time;

“enforcement officer” means the Medical Health Officer serving the District of West Vancouver, a delegate of the Medical Health Officer, a Bylaw Enforcement Officer, a member of the West Vancouver Police Department, a member of the West Vancouver Fire Department, and any other person designated by Council;

“premises” means a portion of a building in respect of which a person has exclusive possession;

“Public Transit” includes a school bus, a passenger bus, a ferry and a rapid transit vehicle;

“responsible person” means a person who owns, controls, manages, supervises, or operates:

- (a) a business or other use which occupies all or substantially all of a building,
- (b) a business or other use which occupies premises,
- (c) common areas which includes a strata corporation or cooperative association;
- (d) a customer service area, and
- (e) a person who drives a vehicle for hire.

“School Property” means property that is

- (a) owned or leased by, or operated under the authority of, a board established under the *School Act* or the *Independent School Act*, and
- (b) used for the purposes of delivering educational programs or other learning programs,

and includes real property and improvements.

“smoke” or “smoking” means to inhale, exhale, burn, or carry a lighted cigarette, cigar, pipe, hookah pipe, or other lighted smoking equipment that burns tobacco or other weed or substance;

“swimming beach” includes the sand, rocks and logs adjacent to those areas designated as swimming or bathing beaches by the District;

“vehicle for hire” means a vehicle for hire defined in the Vehicle For Hire (Taxi-Cab) Regulation Bylaw No.4381, 2004, as amended from time to time.

“Zoning Bylaw” means the District of West Vancouver Zoning Bylaw No. 2200, 1968, as amended from time to time.

## **Part 5 Ban on Smoking**

5.1 A person shall not smoke:

5.1.1 In a building, except in:

- (a) A dwelling unit defined under the Zoning Bylaw including a dwelling unit in which an owner or occupier also carries on a business.
- (b) A hotel or motel room or suite designated for smoking by a responsible person, or
- (c) Enclosed premises:
  - (i) That are not open to the public,
  - (ii) Where the only occupants are the owner or owners of the business carried on in the premises;

- 5.1.2 In a vehicle for hire;
- 5.1.3 On public transit including a school bus, passenger bus, ferry, or rapid transit;
- 5.1.4 In, or within six (6) metres of, an enclosed or partially enclosed shelter where people wait to board a vehicle for hire or public transit;
- 5.1.5 In a customer service area;
- 5.1.6 In common areas;
- 5.1.7 Within six (6) metres of the perimeter of a customer service area; or
- 5.1.8 Within six (6) metres measured on the ground from a point directly below any point of any opening into any building including any door or window that opens or any air intake;

#### Ban on Smoking in Parks or Municipal Facility Sites

- 5.2 A person shall not smoke:
  - 5.2.1 On any swimming beach or in a wading or swimming pool;
  - 5.2.2 within the areas of a municipal park, or playground where there are playing fields, picnic eating areas and picnic areas, food concessions or children's play equipment present, or organized fitness activities taking place;
  - 5.2.3 in any Municipal and/or Public building including daycares, recreation and community centres;
  - 5.2.4 on the grounds of any municipal recreational facility, including skate board parks; or
  - 5.2.5 Within six (6) metres of those places outlined in section 5.2.1, 5.2.2, 5.2.3 or 5.2.4.

## **Part 6 Required Signage and Duties of Responsible Person**

- 6.1 Except as permitted by Section 5.1, a responsible person must not suffer or allow a person to smoke in:
  - 6.1.1 A building or customer service area;

- 6.1.2 Premises or common areas;
  - 6.1.3 An area described in section 5.1.5 or 5.1.7 except to the extent that all or part of such area is not part of the parcel on which the building or customer service area is situated and is not an area over which such responsible person has possession or control; or
  - 6.1.4 In a vehicle for hire.
- 6.2 Where smoking is prohibited pursuant to sections 5.1 and 6.1 a responsible person must display, at all times, or ensure the display of, a sign:
- 6.2.1 At each entrance to a building or customer service area or to premises, or in a vehicle for hire. The sign must state  
"THIS IS A SMOKE FREE ENVIRONMENT – NO SMOKING"
  - 6.2.2 on each exterior wall of a building. The sign must state:  
"SMOKING IS PROHIBITED WITHIN SIX (6) METRES OF OPENINGS INTO THIS BUILDING INCLUDING DOORS AND WINDOWS THAT OPEN AND ANY AIR INTAKE"
  - 6.2.3 on outdoor customer service areas, clearly visible from each table or placed on each table. The sign must state:  
"THIS OUTDOOR CUSTOMER SERVICE AREA IS A SMOKE FREE ENVIRONMENT – NO SMOKING"
  - 6.2.4 on the exterior wall, fence or other structure demarking an outdoor customer service area. The sign must state:  
"SMOKING IS PROHIBITED WITHIN SIX (6) METRES OF CUSTOMER SERVICE AREAS"
- 6.3 All signs referred to in section 6.2 must:
- 6.3.1 Include the text "Bylaw 4607" in letters not less than one-quarter of the height of all other letters on the sign;
  - 6.3.2 Display the international symbol to designate "No Smoking", or, in areas where smoking is permitted, the international symbol "Smoking Permitted", which symbol must occupy at least 25% of the size of the sign;
  - 6.3.3 Consist of at least two contrasting colours, except that if the lettering is on a clear panel then the lettering must contrast to the colour of the background;

- 6.3.4 Be at least 30 cm by 15 cm;
- 6.3.5 Be clearly visible; and
- 6.3.6 Except for the text specified in subsection 6.3.1, consist of lettering, whether upper case or lower case, that is not less than the following heights based upon the following maximum viewing distances in direct line of sight:

Viewing Distance	Letter Height
3 metres or less	1 centimetre
3 metres to 6 metres	2 centimetres
6 metres to 12 metres	4 centimetres

- 6.4 A person must not remove, alter, conceal, deface or destroy any sign required under this Bylaw.

## **Part 7 Power to Inspect**

- 7.1 An enforcement officer has the right of entry and may enter onto any land, into any vehicle, or into any building to which this bylaw applies, at all reasonable hours, in order to ascertain whether the provisions of this bylaw are being complied with.

## **Part 8 Obstruct/Interfere with Enforcement Officer**

- 8.1 No person may hinder, delay or obstruct in any manner, directly or indirectly, an Enforcement Officer carrying out duties in accordance with this Bylaw.

## **Part 9 Offence and Penalty**

- 9.1 Every person who violates a provision of this bylaw, or who consents, allows or permits an act or thing to be done in violation of a provision of this bylaw, or who neglects to or refrains from doing anything required to be done by a provision of this bylaw, is guilty of an offence and is liable, upon summary conviction, to a fine not exceeding \$10,000.00.
- 9.2 Each day that a violation continues or exists under this Bylaw is a separate offence.

READ A FIRST TIME on [Date]

READ A SECOND TIME on [Date]

READ A THIRD TIME on [Date]

APPROVED BY MINISTER OF HEALTH [DATE]

ADOPTED by the Council on [Date].

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Mayor

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Municipal Clerk

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