

**Staff Report to the Capital Regional District Board  
Meeting of Wednesday, May 9, 2007**

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**SUBJECT:** Proposed amendment to Bylaw No. 2401, "Capital Regional District Clean Air Bylaw No. 1, 1996"

**PURPOSE:**

To decide upon the proposed amendment to the Clean Air Bylaw which would prohibit smoking on patios of establishments where food and/or beverages are served or consumed.

**BACKGROUND:**

In 1996 the Capital Regional District was the first local government in Canada to prohibit smoking in indoor public places and on school playgrounds. This bylaw enjoys a high level of public support with 90% of respondents in a 2005 Ipsos Reid public opinion survey in favour.

The current bylaw did not define any parameters for acceptable outdoor patios. Since its enactment in 1999 some bars and restaurants have constructed outdoor areas for patrons to smoke while being served food and beverages. Some outdoor areas are constructed in a way that they are essentially indoor spaces with unacceptable concentrations of smoke.

The original intent of the amendment to the bylaw was to define an acceptable outdoor patio or deck. Without such an amendment it was not possible for the Vancouver Island Health Authority (VIHA) to obtain orders from the Court to intervene in cases where business owners disputed or ignored the health risks to staff and patrons associated with unacceptable concentrations of tobacco smoke.

Last May the VIHA Chief Medical Health Officer (CMHO) recommended changing the bylaw amendment to a prohibition of smoking on patios and decks. His reasons for the change included; recent additional evidence of the health risks of exposure to second-hand smoke, the legal and administrative limitations of the originally proposed amendment and a trend in other jurisdictions to prohibit smoking on patios. A detailed explanation of these factors was submitted to the Board in August 2006 at which time it agreed to move forward with the modified amendment by calling for public consultations.

The public consultation process included a website with an on-line survey and three public hearings; Sidney and Victoria on April 19 and Colwood on April 26. Persons interested in the issue also had the opportunity to email, fax, mail or phone in responses until April 27, 2007.

**FINDINGS OF THE PUBLIC CONSULTATION PROCESS:**

**1. Public Hearings**

The public hearings saw very few people in attendance and a small number of people making presentations. A total of 52 people attended the hearings (excluding media, CRD Directors and CRD/VIHA staff) with 20 presentations. Of the 20 presentations, 14 (70%) spoke in favour of the amendment, five (25%) were opposed and one (5%) was unclear. Of the 14 presentations in favour of the bylaw amendment, ten favoured extending the bylaw amendment to include all outdoor public places including parks, beaches, stadiums, bus stops, event line-ups, etc. Four of the five opposed represented pubs, night clubs and other businesses. Their concerns were mainly the effect on their businesses.

## **2. On-Line Survey, Faxes and Mail-Ins**

There were a total of 687 individual responses with 79% in favour, 20% opposed and 1% unclear. Of those in favour of the bylaw amendment, 181 or 33% suggested the Board go further by prohibiting smoking in all outdoor public spaces where people congregate. Of those opposed to the bylaw amendment, the comments included, "smoking is legal", "smokers have rights", "too much government" and "government should be more worried about other sources of pollution."

The July 26, 2006 Committee report provided evidence of the harmful effects of second-hand smoke in both outdoor and indoor public places. This evidence is resubmitted as Attachment A.

The international research findings were reinforced in a study of 20 outdoor smoking areas (bars and restaurants) in Greater Victoria conducted by VIHA last winter. Using a compact air quality device to measure fine particulate air pollution the study and found these toxic particles to be 16 times higher than outdoor background levels, three times higher than indoor air in smoke-free hospitality venues and similar to venues where smoking is permitted.

### **ALTERNATIVES:**

1. The Board maintains the current Clean Air Bylaw.
2. The Board approves an amendment to the Clean Air Bylaw prohibiting smoking on patios of establishments where food and/or beverages are served or consumed.
3. The Board approves an amendment to the Clean Air Bylaw to prohibit smoking in all outdoor public areas.

### **DISCUSSION:**

The public consultation process shows the public is overwhelmingly in favour of the banning of smoking on patios. The very low turnout at the public hearings suggests that smoking in selected outdoor public place is not as contentious an issue as it was in 1996. The public attitude toward smoking in public places has changed. To some degree these changes may reflect introduction of provincial legislation, Bill 10 – Smoke Free Amendment to the Tobacco Control Act (March 6, 2007). Amongst other actions, Bill 10 bans smoking in all indoor public places, buffer zones (prescribed distances from doorways, windows and air intakes) and substantially enclosed public spaces. The legislation is scheduled to take effect in 2008 after regulations have been approved.

The recent provincial legislation reinforces key arguments and reasons related to both the CRD's 1996 Clean Air Bylaw and the current proposed amendment. The provincial legislation included the following key facts and explanatory notes:

- Smoking is the single most preventable cause of disease and death in B.C. Tobacco use kills over 6,000 British Columbians each year and costs the economy \$2.7 billion annually.
- The legislation is a major step forward to prevent chronic diseases associated with tobacco use.
- The smoke-free law is aimed at reducing the harm of smoke inhaled by non-smokers (and workers/employees) and balances the right to smoke a legal but highly addictive drug, with the right to health for people who are exposed to harmful health effects of second-hand smoke.
- Research indicates that smoke-free provisions do not negatively impact business. A review of nearly 100 international studies found that every objective study, including those in the USA, Canada and Australia, showed a neutral to positive economic impact for business from smoke-free provisions. Several studies found that smoke-free legislation was good for business because

non-smokers (who are in the majority – estimated at 80-81% in the Capital Region) eat out and drink out more often than smokers. Many jurisdictions are embracing smoke-free policies. Hawaii, New York City, Ireland and France – all major tourism centres – have or will soon implement similar laws.

- There will be no reimbursement for investments made in smoking rooms.
- The smoke-free changes will not apply to outdoor spaces such as patios, parks, sporting events, parking lots, sidewalks, outdoor workplace grounds or any other unenclosed area. Local governments, if they wish, can still bring in more restrictive measures.

For the above reasons Alternative 2 is clearly favoured over Alternative 1. Alternative 1 leaves an unenforceable bylaw and does not offer sufficient protection from second-hand smoke.

Alternative 3 arises from the significant numbers of supporters of the amendment who suggest that it should be extended to all outdoor public places. There are pros and cons with this alternative. Two main supporting factors include:

- Within a certain distance (7 meters – 23 feet) second-hand smoke inhaled at a beach has the same toxicity and does the same harm to a non-smoker as someone seated on a patio.
- Other jurisdictions, including Vancouver and White Rock, are considering a ban on smoking in parks and beaches (Attachment B shows jurisdictions which ban patio smoking *and/or* have a ban on other outdoor public places).

Opposing factors include:

- The public consultation process dealt with the more restricted coverage of patios not a comprehensive outdoor public place ban.
- Smoking in other outdoor public places is different than patio smoking. The frequency of smokers, their increased mobility/movement and the effect of second-hand smoke on staff may not be as concentrated as on patios. More work would need to be done to assess the situation, present the evidence and make recommendations. This would invariably delay the proposed implementation of the patio ban.

While there appears to be reasonable support for a ban on smoking in all outdoor public places, there is a view that successful implementation of smoking bans is based on voluntary compliance. Providing public education on the negative effects of tobacco smoke and taking incremental steps to regulate smoking in public places has the benefit of creating significant public support for the bylaw and high levels of voluntary compliance. There may come a time when further prohibitions of outdoor public places are considered by the Board. While Alternative 3 is not recommended there will be a process, led by the Chief Medical Health Officer, which will review the merits of an expanded outdoor public place smoking ban and report back in twelve months. This report is laid out in Attachment C.

### **IMPLICATIONS:**

There are various implications from the adoption of the amendment to the Clean Air Bylaw which would ban smoking on patios.

#### **Health:**

There are serious adverse health effects of second-hand smoke on patrons and staff. These have been previously reported to the Board (Attachment A).

The US Environmental Protection Agency has labelled second-hand smoke as a class A, cancer-causing substance, considered the most dangerous of cancer agents for which there is no known safe level of exposure. Second-hand smoke causes disease and death in healthy non-smokers.

**Business Implications:**

All independent and/or peer reviewed studies show that smoke-free policies and regulations do not adversely affect the hospitality industry. Some businesses encounter a drop in patronage immediately after smoke-free regulations are introduced but usually their business returns with new clientele who previously avoided bars and restaurants because of their dislike of a smoking environment. Any short-term business losses are small in comparison to the significant public costs of treating the diseases caused by tobacco smoke.

**Inter-governmental Relations:**

The provincial government's Bill 10 (March 2007) bans smoking in all indoor public places, buffer zones and substantially enclosed areas. It does not apply to outdoor patios. Local governments are free to impose additional regulations as they see fit (supported by the evidence) to protect the public's health as the CRD did in 1996 with its ban on indoor public places and school playgrounds.

**OTHER ISSUES/FACTORS:**

**Effective Date:**

If the Board agrees to Alternative 2, a decision is required on the effective date of the amendment. VIHA, who is responsible for enforcing the Clean Air Bylaw, advise they are ready to implement it immediately. July 1, 2007 is therefore the proposed date at which the amendment would come into effect.

**CONCLUSION:**

The public consultation process for the Clean Air Bylaw amendment to prohibit smoking on patios of establishments where either or both food and beverages are served or consumed, revealed significant support with 79% of respondents in favour. Coincidentally, this is virtually the same distribution of smokers and non-smokers in the Region (80/20). Approximately 26% of the survey respondents suggested that the bylaw amendment prohibit smoking in all outdoor public places (parks, beaches, playgrounds, bus stops, entrances and exits to buildings, etc.). The Board has the option of considering expanding the ban. The serious health risks of second-hand smoke (within certain distances) occur in all outdoor public places but the public consultation did not deal with these other places and more work needs to be done to prepare for a possible expansion of outdoor public places ban.

Scientific evidence shows serious adverse health risks to staff and patrons in outdoor public places. The health system treats the consequences of tobacco smoking at significant expense. Objective studies show that the hospitality industry is not negatively affected by smoking bans. More and more jurisdictions are enacting bans on smoking on patios as the City of Vancouver did last month.

**RECOMMENDATION:**

1. That CRD Bylaw No. 3300, "Capital Regional District Clean Air Bylaw No. 1, 1996, Amendment Bylaw No. 3, 2007", prohibiting smoking tobacco smoking on patios of businesses where either or both food and beverages are served or consumed or both served and consumed, be introduced and read a first time, read a second time and read a third time.
2. That, in accordance with the Public Health Bylaw Regulation, the Board deposit the Amendment with the Minister of Health.



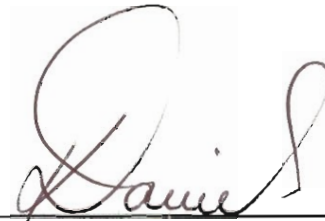
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Health Facilities Planning Division  
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Robert Lapham, General Manager  
Planning and Protective Services  
Concurrence



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Kelly Daniels, CAO Concurrence

COMMENTS:

**ATTACHMENT A: EVIDENCE OF THE PUBLIC HEALTH RISKS OF TOBACCO SMOKE  
STAFF REPORT TO THE CAPITAL REGIONAL DISTRICT BOARD  
MEETING OF WEDNESDAY, MAY 9, 2007**

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**I. U.S. Department of Health and Human Services**

- i. Second-hand smoke causes premature death and disease in children and adults who do not smoke.
- ii. Exposure of adults to second-hand smoke has immediate adverse effects on the cardiovascular system and causes coronary heart disease and lung cancer.
- iii. Even brief exposures could pose significant acute risks to older adults or to others at high risk for cardiovascular disease.
- iv. Non-smokers exposed to second-hand smoke see their risk of developing heart disease increase 25 to 30 % and their risk of lung cancer increase by 20 – 30%.
- v. The scientific evidence indicates there is no risk-free level of exposure to second-hand smoke.<sup>1</sup>

**II. California Environmental Protection Agency**

- i. A recent California Environmental Protection Agency document designated second-hand smoke as a toxic air contaminant.<sup>2</sup>

**III. Outdoor Air Pollution from Second-hand Smoke; Repace, James L., Tufts University**

**Method:** Experiments were conducted to measure respirable particles (carcinogens) to investigate the levels of second hand smoke on two cruise ships in the Caribbean and five outdoor cafes in Helsinki, Finland.

**Results:** Smoking in outdoor areas of cruise ships tripled the level of particulate carcinogens relative to indoor and outdoor areas in which smoking did not occur, despite strong breezes and unlimited dispersion. Outdoor smoking areas were contaminated to nearly the same extent as the ship's casino. Particulate levels in five outdoor cafes were 5 to 20 times higher than on sidewalks along busy streets. Second-hand smoke outdoors increases the exposure of outdoor hospitality workers such as wait staff, bartenders and musicians as well as members of the public to harmful fine particle air particles and carcinogens.<sup>3</sup>

"Second-hand smoke levels do not decrease to background levels for fine particles or carcinogens until about 7 metres or 23 feet from the source."<sup>4</sup>

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<sup>1</sup>U.S. Department of Health and Human Services. *The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General – Executive Summary*. U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Coordinating Center for Health Promotion, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2006.

<sup>2</sup> California Environmental Protection Agency Air Resources Board. *Proposed Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant*, 2005. <http://www.arb.ca.gov/toxics/ets/finalreport/finalreport.htm>

<sup>3</sup> Summaries of research presented at the 13<sup>th</sup> World Conference on Tobacco OR Health, July 12 - 15, Washington, D.C. USA.

<sup>4</sup> J. Repace. *Measurements of Outdoor Air Pollution from Secondhand Smoke on the UMBC Campus*, 2005. <http://www.repace.com/pdf/outdoorair.pdf>

#### **IV. Tobacco Smoke Pollution in Outdoor Hospitality Settings - The Results of Monitoring on Patios and Inside Bars: Kennedy D.K. et al, University of Waterloo**

**Method:** Indoor and outdoor air quality was assessed at six bars with patios in South western Ontario on the evening of July 15, 2005 to determine whether tobacco smoke pollution (TSP) reaches hazardous levels and whether TSP in outdoor settings compromises indoor environments

**Results:** The findings demonstrate that TSP on outdoor patios represents a potentially significant health threat that, in some circumstances, may approach the level of TSP in indoor settings. Readings inside a bar were related to readings on its patio. Average indoor readings over 90 micrograms /m<sup>3</sup> inside one bar location (3 times that of background readings) demonstrate that smoke from outside can and does drift inside.

**Implications:** The results demonstrate that smoking on outdoor patios (1) represents a potential health hazard on those patios and (2) leads to smoke exposure indoors that may compromise the protection against TSP intended by indoor smoke-free laws.<sup>5</sup>

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<sup>5</sup> IBID Footnote 2

**ATTACHMENT B: OUTDOOR PUBLIC PLACE SMOKING BANS – CANADIAN PROVINCES/MUNICIPALITIES**

**STAFF REPORT TO THE CAPITAL REGIONAL DISTRICT BOARD  
MEETING OF WEDNESDAY, MAY 9, 2007**

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| <b>Province</b>         | <b>Restaurant &amp; Bar Patios (100% Ban)</b>  | <b>Restaurant Patios (100% Ban)</b>     | <b>Playgrounds &amp; Outdoor Public Events</b> |
|-------------------------|--|---|--|
| Newfoundland & Labrador | Entire province as of July 1, 2005   |   | 0  |
| Nova Scotia             | Entire province as of December 1, 2006   |   | 0  |
| Alberta                 | Airdrie<br>Banff<br>Calgary<br>Devon<br>Edmonton<br>Jasper<br>Red Deer<br>St. Albert<br>Stettler | Drayton Valley<br>Redcliff              | Devon<br>St. Albert                            |
| Saskatchewan            | Saskatoon  | 0                                       | 0  |
| Ontario                 | Brighton<br>Burpee & Mills<br>Haldimand County<br>Kingston<br>Tehkummah<br>Thunder Bay           | 0                                       | Collingwood<br>New Tecumseth                   |
| British Columbia        | City of Vancouver  | Delta<br>Pitt Meadows<br>Port Coquitlam | Delta  |

**ATTACHMENT C: PROCESS TO REVIEW BAN ON SMOKING IN ALL OUTDOOR PUBLIC PLACES  
STAFF REPORT TO THE CAPITAL REGIONAL DISTRICT BOARD  
MEETING OF WEDNESDAY, MAY 9, 2007**

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1. Develop a public education campaign of the health risks of second-hand tobacco in outdoor public places:
  - a paper reviewing the international research
  - a public message which interprets the research and spells out in lay terms what the health risks are of coming into contact with second-hand smoke in outdoor public places (e.g. "23 feet and less")
  - circulate the message through media stories, bus advertisements, schools parks departments/recreational authorities, etc.
2. Conduct a public opinion survey on the support for a smoking ban in all outdoor public places.
3. Review what other jurisdictions are doing in smoking regulations for outdoor public places.
4. Report back to the Planning and Protective Services Committee in May 2008.

CAPITAL REGIONAL DISTRICT

BYLAW NO. 3300

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CAPITAL REGIONAL DISTRICT CLEAN AIR BYLAW NO. 1, 1996,  
AMENDMENT BYLAW NO. 3, 2007

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The Board of the Capital Regional District in open meeting assembled enacts as follows:

1. Bylaw No. 2401 cited as the "Capital Regional District Clean Air Bylaw No. 1, 1996" is amended as follows:

(1) by deleting all recital clauses and replacing them with the following new recital clauses:

"A. By Supplementary Letters Patent dated May 16, 1974, the powers, duties and obligations of all participating member Municipalities and any other local authorities to perform the function conferred on the Capital Regional District pursuant to Division XI - Community Health were transferred to the exclusive jurisdiction of the Capital Regional District, including, but without limiting the generality of the foregoing, the health powers conferred upon the Council of a municipality by the *Community Charter* S.B.C. 2003, c. 26.

B. The Board of the Capital Regional District may, by bylaw, pursuant to section 523 of the *Local Government Act*, R.S.B.C. 1996, c. 323, regulate and prohibit for the purposes of maintaining, promoting and preserving public health and maintaining sanitary conditions and undertake any other measures it considers necessary for those purposes;

C. The Capital Regional District has been granted the additional power to exercise the powers conferred on a council of a municipality under section 8(3)(i) of the *Community Charter*, S.B.C. 2003, c. 26, in accordance with section 14 of the Capital Regional District Regulation, B.C. Reg. 65/90;

D. Section 9(4) of the *Community Charter*, S.B.C. 2003, c. 26, and the Public Health Bylaws Regulation, B.C. Reg. 42/2004, requires that a

bylaw to be adopted under section 2(a) or (b) of B.C. Reg. 42/2004 not be adopted unless the bylaw or a copy of it is first deposited with the Minister of Health and the local government has consulted with the Medical Health Officer responsible for health matters within the Capital Regional District;

E. A copy of this bylaw has been deposited with the Minister of Health and the Board of the Capital Regional District has consulted with the Medical Health Officer;

F. Environmental Tobacco Smoke has been designated a Class A carcinogen, similar to benzene and asbestos, by Health Canada and the Environmental Protection Agency of the United States of America, and is a health hazard to the inhabitants of the Capital Regional District;

G. The Surgeon General of the United States of America has determined that no level of Environmental Tobacco Smoke exposure is safe and scientific research has determined that outdoor areas where smoking occurs contain significant levels of Environmental Tobacco Smoke; and

H. It is desirable for the purposes of maintaining, promoting and preserving the public health of the inhabitants of the Capital Regional District to prohibit, regulate and impose requirements in relation to smoking in the Capital Regional District;"

(2) by deleting paragraph 2(2) and replacing it with the following:

"(2) No proprietor of a business shall permit a person to carry or have in his possession a burning cigarette or pipe containing burning tobacco, or to burn tobacco in any manner in, on, over or upon any part of the business building, structure or vehicle and any area of the business place where either or both food and beverages are served or consumed, or both served and consumed."

2. This bylaw may be cited for all purposes as "Capital Regional District Clean Air Bylaw No. 1, 1996, Amendment Bylaw No. 3, 2007".
3. The effect of this bylaw is suspended until July 1, 2007 and this Bylaw shall come into force effective July 1, 2007.

