Minute No. 297
Report - Standing Policy Committee on Protection and Community Services - March 3, 2003

Item No. 1 One-Year Review of the Smoking Regulation By-law No. 7870/2001
File EH-1.2 (Vol. 10)

COUNCIL DECISION:

Council amended the recommendation of the Standing Policy Committee on Protection and Community Services, as amended by the Executive Policy Committee, and adopted the following:

1. A. That a further exemption to Option 2 be added as follows:

"Total smoking ban that exempts tobacconist shops that manufacture/sell specialty tobacco products only, provided no smoke is allowed to drift or in any way be re-circulated to any other area of the building other than the tobacco shop itself."

B That Option 2 be amended by deleting the words:

"A room or hall used exclusively for a private social function"

C That the Administration be directed to develop a by-law that will prohibit smoking in all enclosed public places within Winnipeg (as outlined in Option 2 in the administrative report dated February 25, 2003 and titled "One Year Review of the Smoking Regulation By-law, and as amended by 1.A and 1.B. above) and become effective July 1, 2003.

2. That a one-time additional appropriation in the amount of $113,406.00 to the 2003 operating budget of the Community Services Department for the additional enforcement required for the implementation of the Smoking Regulation By-law, be approved.

3. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing, including the preparation of the necessary by-law for submission to Council.

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DECISION MAKING HISTORY:

Moved by Councillor Gerbasi,
That the recommendation of the Standing Policy Committee on Protection and Community Services, as amended by the Executive Policy Committee, be adopted.

Moved by Councillor De Smedt,
That this matter be referred back to the Standing Policy Committee on Protection and Community Services for further review and discussion.

The motion to refer the item was put.

Councillor De Smedt called for the yeas and nays which were as follows:-

Yea: Councillors De Smedt, Wyatt and Lazarenko. 3

Nay: His Worship Mayor Murray, Councillors Eadie, Angus, Clement, Gerbasi, Lubosch, Pagtakhan, Smith, Steek, Steeves, Thomas, Vandal and O'Shaughnessy. 13

and the motion for referral was declared lost.

Moved by Councillor Angus,
That Rule 27 be suspended in order that Council may hear all motions concurrently.

Carried

In amendment,

Moved by Councillor Wyatt,
Seconded by Councillor De Smedt,
WHEREAS tobacco products are not a declared illegal substance;

AND WHEREAS the provincial government regulates the sale of tobacco products;

AND WHEREAS the proposed smoking ban will attempt to regulate private clubs, such as legion halls, religious clubs and ethnic cultural clubs;

AND WHEREAS our Common Law system has a tradition of protecting and defending private property and private property rights;

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DECISION MAKING HISTORY (continued):

THEREFORE BE IT RESOLVED that the proposed smoking ban being proposed as "Option #2: Total Smoking Ban" be amended to include "Private Clubs" under the words "The following minor exceptions apply only to situations that can be considered to be 'people's private spaces'."

The amendment proposed by Councillors Wyatt and De Smedt, was put.

His Worship Mayor Murray called for the yeas and nays, which were as follows:-

Yea: Councillors De Smedt, Wyatt and Lazarenko. 3

Nay: His Worship Mayor Murray, Councillors Eadie, Angus, Clement, Gerbasi, Lubosch, Pagtakhan, Smith, Steek, Steeves, Deputy Mayor Thomas, Vandal and O'Shaughnessy. 13

and the amendment was declared lost.

In amendment,

Moved by Councillor Eadie,
Seconded by Councillor Angus,
WHEREAS the Government and Legislative Assembly of Manitoba have refused to take any action to date to implement legislation that would ban smoking in all indoor public places in Manitoba, including casinos;

AND WHEREAS the proposed new by-law to replace the Smoking Regulation By-law would contain clauses prohibiting smoking in all community centres at all times, including those times at which adults only are in attendance to play bingo;

AND WHEREAS community centers rely heavily on their bingo revenues for the funds required to keep their centres in operation;

AND WHEREAS a smoking ban in community centres may cause numerous bingo patrons to take their business to local casinos where smoking is presently allowed at all times, thereby causing serious financial losses for community centres;

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DECISION MAKING HISTORY (continued):

THEREFORE BE IT RESOLVED that the proposed new by-law to replace the current Smoking Regulation By-law contain clauses that would specifically prohibit smoking in all casinos within the City of Winnipeg.

The amendment proposed by Councillors Eadie and Angus was put.

His Worship Mayor Murray called for the yeas and nays, which were as follows:-

Yea: Councillors Eadie, Angus, Clement, De Smedt, Wyatt and Lazarenko. 6

Nay: His Worship Mayor Murray, Councillors Gerbasi, Lubosch, Pagtakhan, Smith, Steek, Steeves, Deputy Mayor Thomas, Vandal and O'Shaughnessy. 10

and the amendment was declared lost.

In amendment,

Moved by Councillor Lazarenko,
Seconded by Councillor Wyatt,
WHEREAS a level playing field is a key consideration in the development and implementation of a by-law that will prohibit smoking in all enclosed public places in Winnipeg;

AND WHEREAS the City cannot regulate smoking at casinos, which are under provincial jurisdiction;

AND WHEREAS casinos are a particular concern to private non-profit clubs and community centres because casinos also operate bingos;

THEREFORE BE IT RESOLVED that Recommendation 1 of the Report of the Standing Policy Committee on Protection and Community Services dated March 3, 2003 be amended by deleting the words "May 20, 2003." in the fourth line and substituting therefore the words "at the same time and on the same day as a total smoking ban comes into force at casinos operated by the provincial Lotteries Corporation" .

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DECISION MAKING HISTORY (continued):

The amendment proposed by Councillor Lazarenko and Wyatt was put.

His Worship Mayor Murray called for the yeas and nays, which were as follows:-

Yea: Councillors De Smedt, Wyatt, and Lazarenko. 3

Nay: His Worship Mayor Murray, Councillors Eadie, Angus, Clement, Gerbasi, Lubosch, Pagtakhan, Smith, Steek, Steeves, Deputy Mayor Thomas, Vandal and O'Shaughnessy. 13

and the amendment was declared lost.

In amendment,

Moved by Councillor Gerbasi,
Seconded by Councillor Lubosch,
WHEREAS tobacco smoke is a health hazard, is a nuisance to or detriment to persons, and that it is necessary to protect the safety, health and well-being of persons;

THEREFORE BE IT RESOLVED that Item 1 of the Report of the Standing Policy Committee on Protection and Community Services dated March 3, 2003, be amended by deleting the words:

"A room or hall used exclusively for a private social function;'

from the section of the report labeled "Option #2: Total Smoking Ban".

The amendment proposed by Councillors Gerbasi and Lubosch was put.

His Worship Mayor Murray called for the yeas and nays, which were as follows:-

Yea: His Worship Mayor Murray, Councillors Eadie, Angus, Clement, Gerbasi, Lubosch, Pagtakhan, Smith, Steek, Steeves, Deputy Mayor Thomas, Vandal and O'Shaughnessy. 13

Nay: Councillors De Smedt, Wyatt and Lazarenko. 3

and the amendment was declared carried.

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DECISION MAKING HISTORY (continued):

Moved by His Worship Mayor Murray,
That the recommendation of the Executive Policy Committee be adopted.

The motion for the adoption of the Executive Policy Committee recommendations was put.

His Worship Mayor Murray called for the yeas and nays, which were as follows:-

Yea: His Worship Mayor Murray, Councillors Eadie, Angus, Clement, De Smedt, Gerbasi, Lubosch, Pagtakhan, Smith, Steek, Steeves, Deputy Mayor Thomas and Vandal. 13

Nay: Councillors Wyatt, Lazarenko and O'Shaughnessy. 3

and the motion for adoption of the Executive Policy Committee recommendation was declared carried.

Moved by Councillor Gerbasi,
That the recommendation of the Standing Policy Committee on Protection and Community Services, as amended by the Executive Policy Committee recommendation and further amended by Council, be adopted.

The motion for the adoption of the recommendation of the Standing Policy Committee on Protection and Community Services, as amended by the Executive Policy Committee recommendation and further amended by Council, was put.

His Worship Mayor Murray called for the yeas and nays, which were as follows:-

Yea: His Worship Mayor Murray, Councillors Eadie, Angus, Clement, Gerbasi, Lubosch, Pagtakhan, Smith, Steek, Steeves, Deputy Mayor Thomas, Vandal and O'Shaughnessy. 13

Nay: Councillors De Smedt, Wyatt and Lazarenko. 3

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DECISION MAKING HISTORY (continued):

And the recommendation of the Standing Policy Committee on Protection and Community Services as amended by Executive Policy Committee recommendation and further amended by Council was declared carried.

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On March 18, 2003, the Executive Policy Committee amended the recommendation of the Standing Policy Committee on Protection and Community Services by:

- Adding a further exemption to Option 2 as follows:

  "Total smoking ban that exempts tobacconist shops that manufacture/sell specialty tobacco products only, provided no smoke is allowed to drift or in any way be re-circulated to any other area of the building other than the tobacco shop itself".

- Deleting the words "May 20, 2003" in the fourth line of Recommendation 1 and substituting therefore the words "July 1, 2003".

For the information of Council, the Administration has been requested to investigate funding that may be available from the Province of Manitoba for education purposes as well as discuss enforcement of the by-law with the Manitoba Health Services Commission.

STANDING COMMITTEE RECOMMENDATION:

On March 3, 2003, the Standing Policy Committee on Protection and Community Services concurred in the administrative recommendation that the report be received as information, and submitted the following recommendation to Executive Policy Committee and Council, namely:

WHEREAS Environmental Tobacco Smoke is a serious health hazard and there is no known safe level of exposure;

AND WHEREAS Council has determined that Environmental Tobacco Smoke in enclosed public places is injurious to or tends to create conditions adversely affecting public health, particularly for children;

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DECISION MAKING HISTORY (continued):

AND WHEREAS City of Winnipeg Council implemented, effective January 2002, a By-law that successfully moved towards more smoke-free public places and reduced the exposure to environmental tobacco smoke for all Winnipeg citizens, particularly children;

AND WHEREAS the current By-law has raised significant concerns within the business community regarding financial implications associated with the development of a non-level playing field. As well, the current By-law has posed enforcement difficulties;

AND WHEREAS there is support both locally and nationally towards one hundred percent (100%) smoke-free public places. The majority of the public (fifty-four percent (54%) from the Probe Research survey of December 2002) agree with a move to ban smoking in all indoor public places;

THEREFORE BE IT RESOLVED

1. That Council direct the Administration to develop a by-law that will prohibit smoking in all enclosed public places within Winnipeg (as outlined in Option 2 in the administrative report dated February 25, 2003 and titled “One Year Review of the Smoking Regulation By-law”) and become effective May 20, 2003.

2. That Council approve a one-time additional appropriation in the amount of $113,406.00 to the 2003 operating budget of the Community Services Department for the additional enforcement required for the implementation of the Smoking Regulation By-law.

3. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing, including the preparation of the necessary by-law for submission to Council.

Re:	**One-year Review of the Smoking Regulation By-law #7870/2001**
For submission to:	**Standing Policy Committee on Protection & Community Services**
Original report signed by:	**U. Stelman, Director of Community Services Department**
Report date:	**February 25, 2003**
In camera item:	**No**

Recommendation(s):

That this report be received as information with regards to a one year review post the implementation of the Smoking Regulation By-law that took effect January 1, 2002.

Report Summary

Key Issues:
The Smoking Regulation By-law #7870/2001 came into effect January 1, 2002. This report provides a one-year review following implementation of the by-law.

Findings of the review include:

In general, the move towards smoke-free public places and workplaces continues to grow rapidly. A societal trend towards acceptance of smoke-free by-laws is spreading throughout North America.

The recent Probe Research Omnibus Survey of December 2002 confirms significant support in Manitoba, and Winnipeg specifically, for a move to ban smoking in all indoor public places in Winnipeg.

With the implementation of the Smoking Regulation By-law #7870/2001, the City of Winnipeg has successfully moved towards more smoke-free public places, particularly where children are allowed to attend.

Issues that have arisen with respect to implementation of the by-law include:

- Significant concern within the community regarding the development of a non-level playing field for businesses and other service organizations. Local businesses identify serious financial implications related to this non-level playing field.
- The practice of restricting access of children as a means to allow smoking within a facility has raised human rights issues.
- The need for changes to the technical wording within the By-law in order to ensure effective enforcement.

Three policy options are presented for Council consideration:

- Option #1 – Status quo with minor wording changes to the by-law
- Option #2 – A Total Smoking Ban
- Option #3 – No City By-law to Regulate Smoking

Implications of the Recommendation(s):

General Implications

	None
x	For the organization overall and/or for other departments
x	For the community and/or organizations external to the City of Winnipeg
	Involves a multi-year contract

Comment: Exposure to environmental tobacco smoke continues to generate significant public attention. The recent Probe Research Omnibus Survey of December 2002 confirms significant support in Manitoba, and Winnipeg specifically, for a move to ban smoking in all indoor public places in Winnipeg. The public health profession continues to identify the dangerous effects of environmental tobacco smoke and has called for a 100% ban of smoking in all enclosed public places in order to protect the health of citizens. Businesses have identified serious financial implications associated with a non-level playing field that develops when non-smoking legislation allows smoking in some circumstances and not in others.

Policy implications

	No
x	Yes

Comment: In its efforts to protect the health of Winnipeg's citizens, City of Winnipeg Council implemented the Smoking Regulation By-law #7870/2001 effective January 1, 2002. Although not a total smoking ban, this by-law has significantly decreased exposure to environmental tobacco smoke in enclosed public places for all citizens, particularly children. The by-law has served as an interim step in a move toward a total smoking ban, similar to progressive step approaches that have been used in hundreds of American and Canadian municipalities.

Following one year of implementation of the by-law, City Council now has the opportunity to consider impacts of the current by-law and possible changes to future smoking regulation within Winnipeg. In so doing, the following factors are important considerations:

- A non-level playing field has developed and is a critical issue for local businesses who state this is resulting in undue financial hardship for them.
- Public Health and Medical professionals indicate that the current by-law does not yet adequately protect the public's health – a total smoking ban is required if the dangerous effects of environmental tobacco smoke are to be eliminated.

- Technical wording within the current by-law requires changes in order to ensure consistency with the intent of council and an ability to adequately enforce the by-law.

Financial Implications

	Within approved current and/or capital budget
X	Current and/or capital budget adjustment required

Comment: *Option 1 - Retaining status-quo with minor wording changes to the current by-law* does not require any changes to the approved current budget.

Option 2 - If a by-law comprising a "total-ban were implemented, the Community Services Department would require an additional appropriation of $113,406 in the year 2003. This would cover costs of one Environmental Health Officer and two By-law Enforcement Officers to carry out targeted enforcement in the first 7 months following implementation. Based on the enforcement experience and compliance within the community during the first seven months, recommendations for resources if required beyond 2003 would be submitted to the 2004 budget process.

Option 3 – No City By-law to Regulate Smoking, does not require any changes to the approved current budget.

Report

Recommendation(s):

That this report be received as information with regards to a one year review post the implementation of the Smoking Regulation By-law that took effect January 1, 2002.

Reason for the report:

On July 18, 2001 Council passed By-law 7870/2001, The Smoking Regulation By-law. The By-law came into force on January 1, 2002.

On November 26, 2001 the Standing Policy Committee on Protection and Community Services proposed an amendment to the Smoking Regulation By-law that:

> *The City of Winnipeg undertake to extend the 2002 new smoking by-law to include all of the City of Winnipeg's existing and future civic-owned community centers, consistent with the City of Winnipeg smoking policy as it currently extends to all other civic owned and occupied buildings*
>
> *And be it further resolved that the City of Winnipeg undertake to include all of the City's community centers in the January 2002 smoking by-law implementation of the new smoking by-law.*

On December 5, 2001 Executive Policy considered the above motion and recommended that a 365 day extension of time be granted in order to refer the clause back to the Standing Policy Committee on Protection and Community Services, with instructions to conduct a

comprehensive review, in consultation with the General Council of Winnipeg Community Centres and the Administration, for report back after a one year period.

On December 12, 2001 Council referred the above *Proposed Amendment to the Smoking Regulation By-law* back to the Standing Policy Committee on Protection and Community Services. Subsequently on January 10, 2002 Standing Policy Committee referred the proposed amendment to the Smoking Regulation By-law back to the Ad Hoc Committee to Review Smoking and Environmental Tobacco Smoke in Public Places.

History:

On January 1, 2002 The City of Winnipeg Smoking Regulation By-law No. 7870/2001 came into effect.

Based on one year's experience of enforcing the Smoking Regulation By-law that is currently in place, this review provides Council with the following:

- An update regarding the effectiveness of the current by-law, overall compliance within the community, and issues that have arisen within the business industry
- An opportunity for changes to the technical wording within the By-law to ensure consistency with the intent of Council and the ability to enforce the By-law adequately
- Information on the outcome of the City's requests to the Province for changes to over-riding Provincial Legislation
- An update on the status of Smoking Regulations in other Canadian and American jurisdictions
- An opportunity to consider if changes are required to the existing Smoking Regulation By-law No. 7870/2001.

Discussion:

Compliance has been generally high during the first year of the implementation of the new by-law. Public phone calls to the Smoking Regulation Information Line and to Environmental Health Services have consistently demonstrated a strong support for smoke free environments.

Over the past few months however, issues have arisen which have resulted in the development of a non-level playing field. This has lead to some backsliding with respect to compliance with the original intent of the by-law. It is expected that this trend will continue as businesses attempt to avoid the financial implications associated with the non-level playing field.

Key Issues

- ***Development of a non-level playing field***

The development of a non-level playing field has become the key issue for Winnipeg businesses. In fact, almost every business owner that has been in contact with Environmental Health Services has stated that in order to ensure equity, they would support an across-the-

board smoking ban at the least in Winnipeg, even if this is not going to occur on a province-wide level. They have reiterated the philosophy highlighted in the Report submitted to Council in June 2001, that is: "Stakeholders have expressed that if a ban is necessary, it must apply equally to all businesses in the entertainment industry."

Many businesses indicate that the resulting non-level playing field has caused undue financial hardship for several factions of the hospitality industry, in particular unlicensed facilities.

Further, proprietors indicate that the non-level playing field is further exacerbated by the fact that this issue has not been dealt with in a similar manner at a Provincial level. Since many other municipalities border on the outskirts of Winnipeg, patrons can easily choose to utilize restaurants and other facilities that are in close proximity to City boundaries and are not affected by smoking regulations.

The following issues have contributed to the non-level playing field:

- An estimated 12% of Winnipeg restaurants (approximately 216 establishments) have restricted access to minors as a means to permit smoking.
- Many places have opted to "flip-flop" the hours when children may or may not enter the establishment in an attempt to capture both smoking and non-smoking patrons. This is confusing for patrons, makes enforcement difficult, and is resulting in public complaints about lingering smoke.
- Designating smoking areas based on a liquor license type that is legislated and enforced by another level of government is confusing for proprietors. Many feel it discriminates against establishments that do not have or cannot meet the requirements to obtain a liquor license.
- Some establishments have subdivided their space into smoking and non-smoking areas, which was not the intent of the by-law.

The Manitoba Human Rights Commission states that the by-law has prompted numerous human rights violation complaints. Although the Commission has publicly stated that exclusion of children from establishments based on age is discriminatory, each complaint and its resolution are confidential.

➢ ***Need for Changes to technical wording within the By-law to ensure consistency with the intent of Council***

Now that the by-law has been in place for several months, a variety of situations have been tested against the policy set by council. Examples of some of the difficulties that have arisen with regards to application and interpretation of the by-law include:

- ✓ The wording of the by-law with respect to "under the age of 18 is allowed to attend or be present" is open to some interpretation and has resulted in the practice of restricting minors and thereby permitting smoking. Some establishments have used this section to subdivide into smoking and non-smoking areas and in some instances have created smoking rooms. This practice does not match the stated intent of Council and needs to be clarified within the by-law itself. These wording changes would clarify the intent and level the playing field by removing the opportunity for interpretive differences.

- ✓ The requirement for proprietors to "take reasonable steps to minimize the drifting of smoke", is open to subjective interpretation. Drifting of smoke from establishments into common areas has been the most common public complaint received by Environmental Health Services (250+ complaints, representing 50 – 60% of the total 550 complaints). Unless a total ban is implemented, this section of the By-law will continue to raise enforcement difficulties. If the current by-law is retained (Option 1), then the current wording, which flows out of the wording in the Provincial Non-Smokers Health Protection Act, will have to be made more restrictive within the City's by-law.

  Further criteria would be required within the by-law in order to reduce the drifting of smoke from public areas where smoking may be permitted. These criteria could require the smoking area to be totally separated from the non-smoking area by solid walls, a ceiling, and closed doors; and/or be separately ventilated directly to the outside using standards set by the National Institute of Occupational Safety and Health. It is important to note however that the building of such spaces would be cost prohibitive for many businesses and therefore further increase the non-level playing field. If such requirements were set, it would be important that the by-law then remain in effect for a significant period of time due to costs incurred by businesses in order to comply.

- ✓ The posting of signage to indicate where smoking is or is not allowed is a critical component in the by-law. The by-law should state specifically that it is the responsibility of the owner/operator to post the required signs.

- ***Outcome of the City's requests to the Province for changes to Provincial Legislation***

The Province of Manitoba passed the Non-Smokers' Health Protection Amendment that came into force on October 8, 2002. Key changes in this legislation will prohibit the display of tobacco products in retail outlets effective January 1, 2004.

The City of Winnipeg had requested that the Non Smokers' Health Protection Act be amended to place the onus on the proprietor of any business or premise to comply with the municipal by-law by following specified steps for enforcement. This did not occur when the Province amended the Act earlier this year. City of Winnipeg Legal Services advises that the City of Winnipeg does not have the legal power to require the proprietor to ensure compliance with the by-law by taking specific steps to require patrons to stop smoking. If the current by-law is retained (Option 1), this power is crucial in order to allow for effective enforcement of the by-law. If a total ban is implemented (Option 2), then the by-law should be amended to state that no proprietor shall permit any person to smoke within an enclosed public place.

- ***Consultation with the Greater Council of Winnipeg Community Centres***

Civic administration has met with GCWCC to review the effects of the Smoking Regulation By-law in community centres. Over the past year, community centres have not experienced significant change due to the by-law. Generally, smoking is not allowed in Community Centres. Exceptions to this relate to bingos and hall rentals. In implementing the by-law, currently,

almost all community centres have elected to make their bingos age-restricted in order to permit smoking. The by-law does not restrict smoking when halls are rented for private functions. GCWCC states that about 90% of the hall renters still opt to allow smoking at their events.

GCWCC has recently surveyed its members on how the Smoking By-law has been implemented in their facilities; what the impact has been; and the potential financial implications if community centres are required to be totally non-smoking.

Of the 71 community centres in Winnipeg, 56 responded to the survey. Of these 56 centres, 32 (57%) have stated that they would support a total non-smoking ban if it applied equally to all public places, particularly those who operate bingos; and hotels who rent out rooms for private social functions. A total ban would eliminate smoking at public bingos. Casinos, which are provincial jurisdiction, and therefore the City cannot regulate, are of particular concern for Community Centres because casinos also operate bingos.

For GCWCC a level playing field is also the key issue. Community Centres rely heavily on revenues generated from hall rentals and bingo, generating $1.7 million annually. This revenue source funds the majority of programming and operating costs within the community centres. Loss of a portion of these revenues would have serious financial implications for Community Centres.

▪ ***Municipalities in North America with Smoke-free laws for Restaurants and Bars***

Hundreds of Canadian municipalities have adopted smoking bylaws, with over 100 having 100% smoke-free bans in restaurants and over 60 banning smoking in bars. Many extend smoke-free requirements to bingos, bowling, gaming areas, etc.

Seven provinces have adopted province-wide laws that restrict smoking in some way. Of these jurisdictions, an ever-growing number require restaurants and bars to be 100% smoke-free. Two provinces – Newfoundland and British Columbia – have provincial laws requiring smoke-free restaurants; these came into force on January 1, 2002 and April 30, 2002 respectively.

Some of the recent smoking regulations implemented within Canada and the USA include:

- **Hamilton, Ontario** - passed a new by-law effective June 1, 2002 that requires most public places to be 100% smoke-free. Smoking in workplaces, restaurants, and bowling centres is restricted to fully enclosed and separately ventilated designated smoking rooms. Bars, billiard halls, bingo halls, gaming centres and nightclubs may allow smoking in an unenclosed designated smoking area until May 31, 2004. After that date, they must also restrict smoking to designated smoking rooms. On May 31, 2008 the use of designated smoking rooms will be discontinued and all public places and workplaces in Hamilton will be 100% smoke-free.

- **North-western Ontario** - a new ban on smoking in all public places was implemented effective January 1, 2003 based on the Ontario Public Health Act. As environmental tobacco smoke is a recognized health hazard, this ban was implemented by the Medical Health Officer who legislation allows to take appropriate measures to protect the public from risk.

- **New York City** - has recently passed new legislation effective March 30, 2003 to prohibit smoking in public places and places of employment. It has been described as "one of the toughest anti-smoking by-laws in the nation". The ban extends to restaurants, bars, offices, pool halls, bingo parlors and bowling alleys and virtually all work places. Smoking will still be allowed in some portions of outdoor cafes; in private clubs such as American Legion halls; in nursing homes and other residential facilities that have smoking rooms; and in existing cigar bars. Existing bars that are owner-operated and have no employees would be permitted to have smoking. Bars, but not restaurants, have been given the option of building specially ventilated smoking rooms to be used exclusively for the purpose of smoking and where employees would not enter. This exemption for bars will expire in three years.

- **Boston** - has recently expanded its smoking ban so that effective May 5, 2003, private homes, hotel rooms and some cigar bars will be the only indoor paces in Boston where smoking is allowed.

- **California and Delaware** have statewide legislation that bans smoking in all public places. **Utah** has statewide legislation banning smoking in restaurants, and both **South Dakota** and **Florida** have passed statewide legislation in 2002 to make all enclosed workplaces 100% smoke-free.

▪ ***Local Community Context***

- **The City of Brandon** passed a smoke-free by-law effective September 2002 to make restaurants and bars smoke-free. After much public and media attention, on January 13, 2003, Brandon City Council considered a motion to amend the by-law to allow designated smoking rooms with specific criteria for their use, in any enclosed public place. This motion was narrowly defeated. During these debates, the Hospitality Industry commissioned Probe Research to complete a telephone public opinion survey of Brandon residents. Results indicated that 61% of those surveyed supported the current 100% smoke-free ban, with 45% strongly supporting it. The municipality of Brandon has a requirement for a public review of their by-law in June of 2003 with a report to follow by September one year after the implementation of the smoking by-law.

Other activities include:

- The Association of Manitoba Municipalities, at their annual meeting on November 28, 2002, tabled a motion recommending this group put pressure on the Provincial Government through Intergovernmental Affairs to enact a province-wide approach to restricting smoking in public places. The issue is unresolved.

- Nationally, Health Canada has recently implemented a public education and awareness campaign to highlight that environmental tobacco smoke is harmful and is a Workplace Safety and Health issue. Heather Crowe, who is a central figure within the campaign, is a 57 year old waitress who has never smoked but is dying from inoperable lung cancer caused by workplace exposure to second-hand smoke. She is strongly advocating for smoke-free workplaces and has recently written to all 14

provincial, federal and territorial ministers responsible for workplace health and safety. Heather was very recently in Winnipeg and met with City of Winnipeg Councillors and Provincial Ministers to request they do whatever possible to legislate smoke-free places and protect the health of their citizens.

- The Manitoba Legislature has reached agreement to form an all-party Committee to study the issue of a province-wide smoking ban later this year. The Provincial government has also announced total provincial funding of $125,000 available for one-time assistance to municipalities, which enact smoking by-laws.

- Manitoba Justice has just announced that by the end of the year all jails will be smoke-free.

▪ *Probe Research Omnibus Survey – December 2002: Public View on Smoking Bans*

A province-wide Omnibus survey was designed and conducted by Probe Research for the Winnipeg Free Press via telephone interviews taken between November 30 and December 2 2002, among a random and representative sampling of 1002 adults residing in Manitoba.

Findings included:

- There is significant support in Manitoba for a Winnipeg-wide ban on smoking in indoor public places.

- A majority of citizens either “completely” agree or “somewhat” agree with a move to ban smoking in all indoor public places in Winnipeg (54%). This support is considerably higher than the one-third of Manitobans (34%) who oppose such a ban. One-in-ten (10%) are neutral on this issue.

- Support for a total smoking ban in Winnipeg is highest among Manitobans who are themselves non-smokers (68%), although just fewer than one-in-five smokers (18%) also support a city-wide smoking ban.

- Support for a city-wide public places smoking ban correlates significantly with educational levels, with university graduates (68%) being much more inclined to support a total ban than those with some post-secondary (53%), high school (49%) or less than high school education (45%).

- Manitobans aged 55 years and older (59%) are more inclined to support a total ban on smoking in Winnipeg.

- Support for a total smoking ban in Winnipeg is slightly higher among residents of the city (56%) than among residents of other regions of the province (52%).

▪ ***Future Options***

In general, the move towards smoke-free public places and workplaces continues to grow rapidly. A societal trend towards acceptance of smoke-free by-laws is spreading throughout North America.

In Manitoba, public support for smoking bans in indoor public places is high. Significant attention is focused on a province-wide approach to this issue.

With its current by-law the City of Winnipeg has successfully moved towards more smoke-free public places, particularly where children are allowed to attend. The current by-law however, has raised significant concerns within the community regarding the development of a non-level playing field. Local businesses identify serious financial implications related to this non-level playing field. The practice of restricting access of children as a means to allow smoking within a facility has raised human rights issues.

Based on the above findings of the one-year review of the Smoking Regulation By-law #7870/2001, the following three options are presented for Council consideration with respect to the ongoing regulation of smoking within enclosed public places in Winnipeg.

Three Policy Options for Council Consideration

Option #1: Status Quo with minor wording changes.

Retain Current Smoking Regulation By-law #7870/2001 with technical wording changes.

Pros

Has significantly decreased exposure to environmental tobacco smoke in enclosed public places for all citizens, particularly children

Has served as an interim step in a move toward a total smoking ban – progressive step approaches have been used in hundreds of American and Canadian municipalities

Provides the City of Winnipeg with the option of retaining status quo while waiting for the Provincial Government to take action with regard to regulating smoking.

Probe Research Omnibus Study – December 2002 indicates significant support in Manitoba for a Winnipeg-wide ban on smoking in indoor places.

> "A majority of citizens either 'completely' agree or 'somewhat' agree with a move to ban smoking in all indoor public places in Winnipeg (54%). This support is considerably higher than the one-third of Manitobans (34%) who oppose such a ban. One-in-ten (10%) are neutral on this issue."

Cons

A non-level playing field has developed and is a critical issue for local businesses who state this is resulting in undue financial hardship for them

- Proprietors restricting access to children in order to allow smoking
- Smoking based on liquor license categories has allowed advantages for certain businesses over others

Public Health and Medical professionals indicate that the current by-law does not yet adequately protect the public's health - a *total* smoking ban is required if the dangerous effects of environmental tobacco smoke are to be eliminated within enclosed public places

Majority of public complaints responded to by Environmental Health demonstrate that drifting smoke continues to be a problem associated with current by-law

Technical wording requires changes in order to ensure consistency with the intent of Council and an ability to adequately enforce the by-law. For example

- In order to deal with the issue of drifting smoke, criteria requiring physically separated and ventilated smoking from non-smoking areas would be necessary. This would result in considerable expense for operators and therefore further contribute to the non-level playing field. If political direction were given to include these requirements, the by-law may then need to remain in place for a significant time as changes to physical environments would result in significant expense to proprietors;
- the bylaw must state that the proprietor is responsible for the posting of signage;
- it would be critical that the Province amend the Non-smokers Health Protection Act in order that the by-law could require proprietors to ensure compliance by taking specific steps to require patrons to stop smoking.

Financial Implications
No adjustment required to 2003 current budget.

Option #2: Total Smoking Ban

That administration be directed to develop a By-law which prohibits smoking in all enclosed public places.

The following minor exceptions apply only to situations that can be considered to be "people's private space":

An area of a residential health care facility designated by the proprietor and for use by residents only;
A room or hall used exclusively for a private social function;
Hotel and motel guest rooms.

In order to minimize further impacts of the non-level playing field, an implementation date of May 20, 2003 is suggested.

Pros
This is essentially a total smoking ban in all enclosed public places

Eliminates the non-level playing field

This option recommends that smoking not be permitted in private clubs. This further eliminates the non-level playing field

Eliminates the discrimination against children when businesses opt to restrict access to minors as a means to allow smoking in a facility

The problems associated with drifting smoke are eliminated

Public Health and Medical professionals state that a total smoking ban is the only option that protects citizens from the dangerous effects of environmental tobacco smoke - they may continue to have concerns regarding the above minor exceptions

The rules are clear and consistent and enforcement becomes straight forward

The Province is not required to change legislation to make it possible for the City to require the proprietor to ensure compliance with the by-law by taking specific steps to require patrons to stop smoking. The by-law would simply be amended to state that no proprietor shall permit any person to smoke within an enclosed public place

Cons

Some business factions such as bars state that the very nature of their business is particularly associated with patrons smoking and therefore a total ban would have larger negative financial implications for their particular business

Over the past year, some businesses chose to spend significant dollars to renovate their businesses in order to take advantage of the opportunities in the current by-law that allowed smoking associated with certain liquor license categories

The non-level playing field continues to exist with regard to bingos, unless the Manitoba Government agrees to prohibit smoking in casinos as they also operate bingo. The City of Winnipeg has no jurisdiction over casinos. This has serious financial implications for Community Centres in particular

Financial Implications

Implementation of a "total smoking ban" would require a one-time increase of $113,406 in the 2003 Community Services current budget. This would allow for one Environmental Health Officer and two By-law Enforcement Officers to carry out the increased demand for evening enforcement required in the 7 months following implementation of a "total ban" by-law. Increased enforcement efforts would be necessary beyond normal day-time working hours (evenings) in establishments that were not affected by the current by-law. Based on the enforcement findings and compliance within the community during the first seven months, recommendations for continued resources, if required beyond 2003, would be submitted to the 2004 budget process

Option #3: No City of Winnipeg By-law to Regulate Smoking

That the City of Winnipeg Smoking Regulation By-law #7870 be repealed. This would result in smoking being regulated by the Province of Manitoba's current Non-Smokers Health Protection Act.

The Provincial Non-Smokers Health Protection Act requires that:

No person shall smoke in an enclosed public place, meaning any part of an enclosed place to which members of the public have access, including:
- ***an office building, a retail store or other commercial establishment,***
- ***the common areas of a residential building or shopping mall,***
- ***a health care facility, a daycare centre or nursery,***
- ***an educational institution or facility,***
- ***a restaurant, and an elevator***

except that
- ***A proprietor may designate a smoking area if he takes reasonable steps to minimize the drifting of smoke into the non-smoking area***
- ***In restaurants the proprietor shall ensure that the smoking area does not exceed in size an area capable of accommodating 50% of the seats***

Pros
Places responsibility for regulation of a health issue with the Provincial level of Government rather than the Municipality

A level playing field would exist between Winnipeg and its neighbouring municipalities, whose only form of smoking regulation is the current Provincial Non-Smokers Health Protection Act

Eliminates the non-level playing field by allowing smoking or smoking sections in businesses who claim Smoking Regulations have had financial implications for them

Cons
Is a major step backward in protecting the health of Winnipeg citizens from the serious health effects of environmental tobacco smoke. Will be unacceptable to the public health and medical community.

Repeal of the City's Smoking Regulation By-law and a reliance on the Non-Smokers Health Protection Act, in essence returns the community to the same level of regulation experienced with the City of Winnipeg's By-law to Regulate Smoking #3541/83, originally passed in 1983.

Extensive effort on the part of the City of Winnipeg, associated with the development and implementation of a more restrictive by-law over the past year, will have been lost. The current by-law has significantly decreased exposure to environmental tobacco smoke in enclosed public places for all citizens, particularly children

Winnipeg would not be keeping pace with hundreds of other American and Canadian municipalities that have recognized smoking as a serious health issue and implemented stricter smoking regulations in a progressive step approach toward total smoking bans

Will be seen as a regressive step by the high percentage of Manitoba citizens who in the Probe Research Omnibus Study - December 2002 indicated significant support for a Winnipeg-wide ban on smoking in indoor places

> "A majority of citizens either 'completely' agree or 'somewhat' agree with a move to ban smoking in all indoor public places in Winnipeg (54%). This support is considerably higher than the one-third of Manitobans (34%) who oppose such a ban. One-in-ten (10%) are neutral on this issue."

Drifting smoke between smoking and non-smoking sections would continue to be an enforcement problem

Financial Implications
No adjustment required to 2003 current budget.

Financial Impact Statement:

Project Name: One-year review of Smoking Regulation By-law #7870/2001
Date: February 24, 2003 First Year of Program **2003**

	2003	2004	2005	2006	2007
Capital					
Capital Expenditures Required					
Less: Existing Budgeted Costs					
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal					
Debt - External					
Grants (Enter Description Here)					
Reserves, Equity, Surplus					
Other - Enter Description Here					
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ 113,406				
Less: Incremental Revenue/Recovery					
Net Cost/(Benefit)	$ 113,406	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts					
Net Budget Adjustment Required	$ 113,406	$ -	$ -	$ -	$ -

Additional Comments: If a by-law comprising a "total-ban" (Option 2) were implemented, the Community Services Department would require an additional appropriation of $113,406 in the year 2003. This would cover costs of one Environmental Health Officer and two By-law Enforcement Officers to carry out targeted enforcement in the first 7 months following implementation. Costs include: Salaries & Payroll Buden of $104,586; Car Allowance $7920;Cellular phones $900. Based on the enforcement experience and compliance within the community during the first seven months, recommendations for resources if required beyond 2003 would be submitted to the 2004 budget process.

Manager of Finance & Administration

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In preparing the report, there was consultation with and concurrence by:
Corporate Services Department - Legal Services Division

This Report Submitted By:

Department	Community Services
Division	Community Resource, Protection, & Safety Services
Prepared by:	Kelly Goldstrand, Manager
File No.	