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YORK REGION NO-SMOKING BY-LAW PHASE III IMPLEMENTATION PLAN

The Health and Emergency Medical Services Committee recommends that:

- 1. The communication from City of Toronto, Board of Health, dated March 10, 2004, regarding 'Sunsetting of smoking bylaw designated smoking rooms (DSRs) be received**
- 2. That Health and Emergency Medical Services Committee Chair J. Frustaglio be directed to attend a joint meeting of the participating municipalities, being the Regions of Peel and Durham and the City of Toronto to discuss a sunset date for DSRs and other aspects of the by-law**
- 3. That the recommendations contained in the following report, April 1, 2004, from the Commissioner of Health Services be adopted**

1. RECOMMENDATIONS

It is recommended that:

1. Health and Emergency Medical Services Committee and Regional Council receive the York Region No-Smoking By-law Phase III implementation plan.
2. The Premier of Ontario and the Minister of Health and Long-Term Care be requested to make a timely decision regarding province-wide legislation banning smoking in public places.

2. PURPOSE

The purpose of this report is to provide Health and Emergency Medical Services Committee and Regional Council with an update on the York Region No-Smoking By-law Phase III implementation plan.

3. BACKGROUND

3.1 The Regional Municipality of York's No-Smoking By-law

The Regional Municipality of York passed a by-law regulating the smoking of tobacco in public places and workplaces in York Region on October 26, 2000. The by-law was implemented using a phased-in approach:

- As of January 26, 2001 (Phase I), all workplaces became 100% smoke-free.

- As of June 1, 2001 (Phase II), places used for the sale and service of food and/or drinks, such as restaurants and banquet halls, and places used for bowling, skating, curling and similar uses, became 100% smoke-free or built a completely enclosed and separately ventilated designated smoking room (DSR) no larger than 25% of the occupiable public space that met the York Region By-law requirements. Bingo halls, however, have the option to construct a DSR that does not exceed 50% of the occupiable public space.
- On June 1, 2004 (Phase III), all public places used for the sale and service of food and/or drinks that are licensed to serve alcohol, such as bars, taverns, adult entertainment lounges and night clubs, and public places used for playing billiards and games of chance including bingo halls and casinos will become smoke-free or construct a completely enclosed and separately ventilated DSR that does not exceed 25% of occupiable public space with the exception of bingo halls at 50%. York Region's Phase III implementation date is consistent with that of the City of Toronto and the Regions of Peel and Durham. This implementation date has been extensively communicated throughout York Region since the by-law was implemented in October 2000.

3.1.1 Designated Smoking Rooms (DSRs) in York Region

In 2001, York Region developed a two-phase DSR approval process. Part I DSR approval involves the review of engineering drawings and approval of the DSR occupancy load. Part II DSR approval requires an onsite inspection and review of an independent air balance report. As of March 15, 2004, 117 applications for DSRs had been received. Of the 117 applications, a total of 16 DSRs had been approved under Part I, 91 had been approved under Part II, and 10 DSR applications had been discontinued due to the closing of the premise or the removal of its DSR. The 91 premises which have an approved DSR represent less than 1% of all hospitality establishments in York Region.

The experience of the Health Services Department staff indicates that approximately 3/4 of approved DSRs fail to meet the DSR requirements under the No-Smoking By-law once they have been constructed. The majority of these failures are due to poor maintenance or inferior air supply and exhaust requirements of the ventilation systems. Other regions in Ontario have identified similar issues with their respective DSRs. The implementation and enforcement of the DSRs continue to be a challenge as they have a major impact on staffing and program resources.

In July 2003, the Health Services Department staff notified all individuals applying for DSRs, as well as all premise-owners with prior Phase I and Phase II applications, that DSRs may be phased out and/or not acceptable in the future.

As of March 31, 2004, all three bingo halls (but no other premises) in York Region have applied for Part I DSR approval in preparation for Phase III implementation. However, it is anticipated that the demand for DSR applications may increase as the timeline for Phase III approaches.

The cost incurred to contract services for DSR compliance for the period of January 2001 to December 2004 is approximately \$96,000.

4. ANALYSIS AND OPTIONS

Within the current Ontario government platform there is a commitment to implement province-wide legislation to ban smoking in public places; however, timing for this legislation has not been committed to. This legislation would create a consistent approach across Ontario. Should this legislation come into effect, Health Services staff will prepare a report detailing the impacts on The Regional Municipality of York. As that legislation has not yet been put in place, York Region Health Services is proceeding with plans to implement Phase III of the York Region No-Smoking By-law on June 1, 2004.

4.1 Implementation Activities

The implementation plan for Phase III of the York Region No-Smoking By-law is multifaceted and integrates an educational campaign, GTA-wide communications, local media initiatives, and enforcement activities.

4.1.1 Education Campaign

The first priority in implementing Phase III is to educate the public, business owners and their staff about the content of the York Region No-Smoking By-law and its implications. The educational campaign commenced in January 2004 and will continue throughout the year. This campaign includes the development and distribution of fact sheets, mall displays and information kits.

Two different information kits have been designed, one for members of area municipal and Regional Council, and another for business owners of affected public establishments. The members of area municipal and Regional Council were sent information kits via mail-out from the Regional Chair's Office on March 10, 2004. There are approximately 300 York Region business owners directly affected by Phase III of the No-Smoking By-law. Each business owner will be delivered an information kit in person and will sign an acknowledgement form stating that a kit has been received. Information kits will also be available at the public education sessions. Public education sessions will be held twice in each municipality (one in the morning and one in the afternoon) starting in April. Councillors, municipal staff, business owners and the general public will be invited to attend.

4.1.2 GTA Communication

The City of Toronto and the Region of Peel are also planning Phase III implementation of their respective no-smoking by-laws on June 1, 2004. The Region of Durham plans to enact their new, one-phase no-smoking by-law on the same date which will make all public places 100% smoke-free with no DSR option.

A collaborative partnership of York Region, Peel Region, Durham Region and the City of Toronto has resulted in the development of a multi-faceted GTA-wide promotional campaign to complement what is planned at local levels.

York Region staff meet with their Peel Region, Durham Region and City of Toronto partners in the Smoke-free By-law GTA Communications and Enforcement Strategies Group on an ongoing basis to share information and explore further potential areas for collaboration.

4.1.3 Local Media Campaign

In addition to the GTA communications initiative, a York Region specific media campaign is planned to further raise public awareness that, as of June 1, 2004, Phase III of the York Region No-Smoking By-law will come into force. Components of the plan include:

- newspaper advertisement campaign in York Region newspapers, including external press
- transit (interior advertisements)
- posters in community facilities
- area municipality recreation guide advertisements
- postcard distribution to York Region households
- York Region website, with links to area municipalities websites
- community/mall displays

4.1.4 Enforcement Activities

Prior to June 1, 2004 priority will be given to raise public and business awareness regarding the implementation of Phase III of the York Region No-Smoking By-law. The emphasis on education will continue past June 1, 2004, however, at this point enforcement will be gradually introduced. Initially, warnings will be given, followed by issuing of tickets for violation of compliance with the No-Smoking By-law.

4.2 Status of No-Smoking By-laws and DSRs in Surrounding Jurisdictions

4.2.1 City of Toronto

On April 14, 15 and 16, 2003, Toronto City Council considered a report from the Board of Health recommending that the exemption for DSRs be deleted from the City's Environmental Tobacco Smoke By-Law effective June 1, 2005, and that no new applications for DSRs be approved effective immediately. Toronto City Council did not approve these recommendations, and instead referred this matter to the Economic Development and Parks Committee. Toronto City Council also requested staff to hold discussions with the hospitality industry representatives regarding the phasing out of DSRs. On August 29, 2003, the Economic Development and Parks Committee received a report recommending that consideration of the phase-out of DSRs be deferred due to the impact of SARS on the hospitality industry. As of March 17, 2004, recommendations regarding the future of DSRs in Toronto have not been forwarded to the Toronto City Council.

4.2.2 Durham Region

In December 2002, the Region of Durham enacted a region-wide No-Smoking By-law that prohibits smoking in all workplaces and public places. DSRs are only permitted in bingo halls, casinos, and racetracks and must not exceed 50% of the occupiable public space. The implementation date for this by-law is June 2004.

4.2.3 Peel Region

At the May 22, 2003 Special Council meeting, Peel Regional Council moved that as of June 1, 2010, DSRs would no longer be permitted in public places. The lengthy phase-out time was due to “tough economic conditions and impactive issues such as the Severe Acute Respiratory Syndrome”.

4.3 Constitutional Challenge

On July 2, 2002, a Notice of Application and Constitutional Issues was served on The Region, the Attorney General for the Province of Ontario and the Solicitor General of Canada concerning the validity of The Regional Municipality of York’s No-Smoking By-law, By Law #A-0285-2000-105 as well as the provisions in the *Municipal Act* which gives municipalities the power to regulate smoking in workplaces and public places. Subsequently, an identical constitutional challenge was brought against the City of Toronto’s Environmental Tobacco Smoke By-law and a decision was made to have the cases heard together.

The hearing commenced on February 26 and 27, 2004, before Mr. Justice Bigelow and further evidence will be presented on April 14, 15 and 16, 2004. Final arguments will then be presented, likely in late June 2004. Since this is a defence application in the context of a prosecution, The Region has no choice but to defend the application.

4.4 Relationship to Vision 2026

The implementation of Phase III of the York Region No-Smoking By-law supports Vision 2026 by making York Region a cleaner, safer and healthier environment for those who live, work and visit here.

5. FINANCIAL IMPLICATIONS

Table 1 outlines the estimated total cost of implementing Phase III of the York Region No-Smoking By-law. All costs for 2004 have been included in the proposed 2004 Public Health Budget. The costs are 50% funded by the MOHLTC.

Table 1
Estimated Costs of Implementation of Phase III
of the York Region No-Smoking By-law to end of 2004

	2003 Estimated Cost Incurred	2004 Budget	Total
Proportion of Salaries & Benefits for Phase III	\$51,009	\$199,693	\$250,702
Program Related Costs	45,000	148,984	193,984
Total Gross Expenditures	\$96,009	\$348,677	\$444,686
Net Expenditures after 50% Provincial Subsidy	\$48,004	\$174,339	\$222,343

6. LOCAL MUNICIPAL IMPACT

All municipalities will benefit from the implementation of Phase III of the York Region No-Smoking By-law as the businesses affected exist throughout the nine municipalities. The educational campaign includes the provision of relevant information to all local municipalities. York Region residents and visitors will benefit from not being exposed to second-hand smoke in public places.

7. CONCLUSION

York Region Health Services has been recognized by other constituencies as a leader in its implementation of Phases I and II of the York Region No-Smoking By-law. This leadership continues with the implementation plan for Phase III. The Health Services staff are placing a priority on education and communications in order to foster By-law compliance and ensure a smoke-free environment for York Region.

It is recommended that the Regional Chair write a letter to the Premier of Ontario and the Minister of Health and Long-Term Care requesting a timely decision regarding a ban on smoking in public places through province-wide legislation.

The Senior Management Group has reviewed this report.