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BILL 164 – THE SMOKE-FREE ONTARIO ACT

The Health and Emergency Medical Services Committee recommends the adoption of the recommendations contained in the following report, May 5, 2005, from the Regional Solicitor and the Commissioner of Health Services:

1. RECOMMENDATIONS

It is recommended that:

1. The following report be received for information by Committee and Council.
2. Staff be directed to prepare a further report on Public Health program implications once the *Smoke-Free Ontario Act* is in force.

2. PURPOSE

The purpose of this report is to provide an overview of Bill 164 and its implications for York Region's No-Smoking By-Law (NSBL).

3. BACKGROUND

At the April 7, 2005 meeting of the Health and Emergency Medical Services Committee, staff were directed to bring forward a report on the status of Bill 164 the new *Smoke-Free Ontario Act* and its implications for York Region's NSBL.

3.1 Ontario Tobacco Strategy

In December 2004, the Province of Ontario announced its Ontario Tobacco Strategy and the role public health units would undertake in its implementation.

The goal of the Ontario Tobacco Strategy is to eliminate tobacco related illness and death by:

- Eliminating involuntary exposure to environmental tobacco smoke.
- Preventing smoking initiation and habitual use among children and young adults.
- Reducing smoking in Ontario.

The Province of Ontario has undertaken a number of key initiatives in support of the Ontario Tobacco Strategy goals including providing grants to public health units to enhance no-smoking initiatives and the tabling of Bill 164.

3.2 Provincial Legislation

There are several complementary pieces of legislation that currently regulate smoking in the Province of Ontario. At present, the *Tobacco Control Act (TCA)* governs the sale and use of tobacco in public places, and the *Smoking in the Workplace Act (SIWA)* governs smoking within enclosed workplaces.

Bill 164 will consolidate existing legislation by renaming the *TCA* as the *Smoke-Free Ontario Act* (“the Act”) and repealing the *SIWA*. The new *Act* will prohibit smoking in both workplaces and public places, tighten restrictions on selling tobacco to youth and restricting the “counter top display” of tobacco products.

Bill 164 was tabled in the Ontario Legislature on December 15, 2004. It received second reading on April 14, 2005 and is currently being reviewed by the Standing Committee on Finance and Economic Affairs. The *Act* is scheduled to come into force on May 31, 2006.

3.3 York Region’s No-Smoking By-Law

Section 115 of the *Municipal Act, 2001 (MA)* permits the Council of an area or regional municipality to pass a by-law regulating or prohibiting the smoking of tobacco in public places and workplaces. On October 26, 2000, Regional Council enacted the NSBL (No. A-0285-2000-105) to regulate smoking in public places and workplaces within York Region. The York Region NSBL was implemented in three phases:

- Phase I – Effective January 1, 2001, all workplaces in York Region became 100% smoke-free.
- Phase II – Effective June 1, 2001, 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 were required to build a completely enclosed and separately ventilated Designated Smoking Room (DSR) no larger than 25% of the occupiable public space.
- Phase III – Effective June 1, 2004, all public places used for the sale and services of food and/or drinks that are licensed to serve alcohol, such as bars, taverns, adult entertainment lounges and nightclubs, and public places used for playing billiards and games of chance including bingo halls and casinos were either required to be 100% smoke-free or to construct a completely enclosed and separately ventilated DSR that did not exceed 25% of acceptable public space, with the exception of bingo halls (up to 50%),.

The NSBL does not apply to hospitals, psychiatric facilities, nursing homes and other residential health facilities, which are regulated under the *TCA*.

The *Municipal Act* provides that the most restrictive provision in a by-law or an Act prevails. The Region's NSBL is more restrictive than the TCA and the SIWA, as it prohibits smoking in all public places and workplaces, with the exception of DSRs and private clubs (including legions). In York Region, there are currently 110 establishments with DSRs, two private clubs and seven legions. Currently the NSBL prevails over the TCA and SIWA with respect to the restriction of smoking.

4. ANALYSIS

4.1 Implications for York Region's NSBL

The NSBL currently permits smoking in DSRs and private clubs (including legions). The new *Act* will eliminate this exemption. As the *Act's* requirements are more restrictive, it will prevail over the current NSBL once it comes in to force, thereby prohibiting smoking in DSRs, private clubs and legions.

4.2 Bill 164 Amendments

4.2.1 Sale of Tobacco to Persons under 19

The *Act* requires tobacco vendors to request photo identification from any person who appears to be under the age of 25 to ensure tobacco purchasers are 19 years of age or older. This is applicable even if the seller/supplier knows that the intended purchaser is 19 years of age or older as it removes the statutory defence in section 3(4) of the TCA.

The *Act* also removes the ability of the court during a trial to assess the age of the person who received the tobacco from that person's appearance "and from other relevant circumstances".

The *Act* would also deem the owner of a business, in addition to the individual salesperson as stipulated in the TCA, liable for the action of any employee who sells tobacco to a person under 19, or to a person under 25 without verifying photo identification unless the owner can establish that they exercised due diligence to ensure that the sale did not take place.

4.2.2 Countertop Display, Handling, Promotion

The *Act* bans the counter-top display of tobacco products in retail stores and prevents the purchaser from handling the tobacco product before purchase. In addition, the *Act* prohibits the display of tobacco products and material promoting tobacco products in retail stores except in accordance with regulations. It is anticipated that "power walls" of tobacco products behind cash registers may be prohibited.

4.2.3 Prohibition of Smoking

The *Act* prohibits smoking in all enclosed public places or workplaces. In particular, while the TCA only prohibits smoking in public day nurseries, the *Act* would prohibit smoking in a private home day care within the meaning of the *Day Nurseries Act*.

Like the NSBL, the *Act* deals with two situations: enclosed workplaces and enclosed public places. The definitions of each are simpler than that in the NSBL as it merely requires either place to be covered by a roof. Issues such as outdoor patios that are enclosed during the winter months would more easily be subject to enforcement as these structures all have roofs and would constitute an enclosed public place.

Unlike the NSBL, the *Act* does not indicate in those situations where the workplace is also a public place (e.g. restaurant) that the workplace shall be considered a public place. As the obligations are the same for employers and proprietors, confusion may arise when it comes to enforcement in such places since the officer would be able to lay a charge under either section of the *Act*.

4.2.4 Employer and Proprietor Obligations

The NSBL currently requires employers and proprietors to prohibit smoking, to post no smoking signs and to prohibit ashtrays and like paraphernalia in workplaces and public areas. The *Act* places stricter obligations on every employer and proprietor to ensure compliance, including ensuring that no person remains in an enclosed workplace or public place if they refuse to comply with the prohibition against smoking. This would allow York Region's enforcement staff greater flexibility in enforcing the *Act* as an employer or proprietor may be charged when a person is found smoking/holding lighted tobacco and the person refuses to identify themselves to the officer.

4.2.5 Exemption for Residential Care Facilities

Currently the *TCA* allows for smoking inside designated smoking areas in residential care facilities. The *Act* further allows private living quarters of retirement homes, that provide care and supportive housing services and that are funded by the Ministry of Health and Long-Term Care or the Ministry of Community and Social Services, to not be considered as an enclosed workplace, thereby allowing smoking to take place in residents' rooms.

The *Act* further stipulates that a resident who wishes to smoke must be able to do so without the assistance of an employee of the facility and that an employee who does not desire to enter the room will not be required to do so.

4.2.6 Scientific Research and Testing Facilities

Prohibition of smoking will be exempted in a scientific research facility utilized for the purpose of conducting research concerning tobacco and/or tobacco products.

4.2.7 Protection for Home Health-Care Workers

The *TCA* currently does not provide protection for health care workers. The *Act* allows home health-care workers, including the Region's public health nurses and other staff, to refuse entry into a premise or residence if smoking is occurring, and to leave the premise in accordance with regulations without providing any further services, unless doing so would present an immediate serious danger to the health of any person. The *Act* also

protects employees against reprisals from “whistle-blowing” of employers not in compliance with the *Act*.

4.3 Relationship to Vision 2026

The *Act* supports Vision 2026 by making the Region a cleaner, safer, and healthier environment for those who live, work and visit in York Region.

5. FINANCIAL IMPLICATIONS

As the implementation of Bill 164 is scheduled for May 2006, there are currently no financial implications to the 2005 approved Business Plan and Budget.

6. LOCAL MUNICIPAL IMPACT

All municipalities will benefit from the implementation of the strategies outlined in the Ontario Tobacco Strategy and the new *Smoke-Free Act*. People throughout York Region will benefit by reduced exposure to second-hand smoke and increased access to information and services to help those who want to quit smoking. Children and young adults will benefit from strategies to limit the access to tobacco and reduce the urge to start smoking.

7. CONCLUSION

The proposed *Smoke-Free Ontario Act* seeks to consolidate existing anti-smoking legislation including the *TCA* and the *SIWA*. The *Act* intends to prohibit smoking in all workplaces, protect all workers regardless of where they are employed, and to prohibit smoking in all enclosed public places which are not primarily a place of residence. The *Act* will also further limit the sale, distribution and use of tobacco products. As the *Act*'s requirements are more restrictive, it will prevail over the current York Region No-Smoking By-law. It is anticipated that the most significant change for the Region is the disallowance of DSRs and smoking in private clubs.

The Senior Management Group has reviewed this report.