Community Services and Operations Committee
Comité des services communautaires et des opérations

Agenda 3
Ordre du jour 3

Wednesday, January 26, 2000 - 9:15 a.m.
Le mercredi 26 janvier 2000 - 9 h 15

Victoria Hall, First Level
Bytown Pavilion, City Hall

Salle Victoria, niveau 1
Pavillon Bytown, hôtel de ville

City of Ottawa
Ville d'Ottawa

Confirmation of Minutes
Ratification des procès-verbaux

Minutes 2 (January 12, 2000)

Procès-verbal 2 (Le 12 janvier 2000)

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Councillor/Conseiller Stéphane Émard-Chabot, Chairperson/Président

Councillor/Conseillère Inez Berg, Vice-Chairperson/Vice-présidente

Councillor/Conseillère Elisabeth Arnold

Councillor/Conseillère Diane Deans

Councillor/Conseiller Allan Higdon

Councillor/Conseiller Shawn Little

LZF

City of Ottawa / Ville d'Ottawa

January 11, 2000

ACS2000-PW-ENG-0001
(File:EW01-YER-1065-1)

Department of Urban Planning and Public Works

Ward/Quartier
City Wide

- Community Services and Operations Committee / Comité des services communautaires et des opérations
- City Council / Conseil municipal

Action/Exécution

1. Access to Municipal Rights-of-Way - Telecommunications and Gas Industry

Accès aux emprises municipales - Sociétés de télécommunications et de distribution de gaz naturel

Recommendations

1. That City Council endorse the revised five right-of-way management principles of the Federation of Canadian Municipalities as contained in Document 1 as the basis for negotiating municipal access agreements with all private utility and telecommunications companies.

2. That City staff continue to participate in the Telecommunications Subcommittee of the FCM and the preparation of the FCM's submission to the CRTC.

3. That the City of Ottawa contribute a total of $6,280.00 to the Gas Franchise Defense Fund of the Association of Municipalities of Ontario.

4. That City staff participate with the Association of Municipalities of Ontario in the Ontario Energy Board process with respect to the development of a new model franchise agreement for the gas industry.

January 14, 2000 (11:57a)

Edward Robinson
Commissioner of Urban Planning and Public Works

January 17, 2000 (10:38a)

Approved by
John S. Burke
Chief Administrative Officer

LM:lm

Contact: Lise Meloche - 244-5300 ext. 1-3816
Anne Peck - 244-5300 ext. 1-3407

Financial Comment

Subject to City Council approval of these recommendations, funds in the estimated amount of $6,300.00 are available from within the 2000 Operating Estimates - Assessment Appeals Losses Reserve.

January 13, 2000 (3:10p)

for Mona Monkman
City Treasurer

CP:cds

Executive Report

Reasons Behind Recommendations

Recommendation 1

In general, telecommunications companies have a statutory right to access a municipal right of way but this right is subject to the consent of the municipality. A municipal access agreement establishes the basic terms and conditions for obtaining municipal consent

In October of 1997, City Council endorsed five principles related to management of municipal rights of way with respect to use by telecommunications companies and directed staff to negotiate Municipal Access Agreements in accordance with these principles. These principles recognized that municipalities must have the authority to manage activities and use of their rights of way in the best interests of the public. They also recognized that municipalities should recover all costs incurred by municipalities due to the presence of telecommunications companies in the rights of way as well reasonable compensation in excess of costs in return for the use of the rights of way by private companies for profit. While these principles were drafted specifically for telecommunications companies, it should be noted that these principles apply equally to any utility using the rights of way.

Since the principles were originally drafted, they have undergone further refinement as a result of ongoing discussions and the Federation of Canadian Municipalities (FCM) at its annual conference in June adopted a revised Statement of Principles. These revisions do not alter the original principles substantively but rather provide clearer direction to both municipalities and telecommunication companies on the basic terms of negotiating a Municipal Access Agreement. It is recommended that Council endorse the revised principles as detailed in Document 1 and direct staff to negotiate all municipal access agreements with all utilities in a manner consistent with these principles.

At this time, staff have received requests for access to rights of way from five telecommunications companies. As a first step, these companies have been asked to agree to negotiate a Municipal Access Agreement in accordance with the five principles. Attached as Document 2 is an outline of the basic terms that will be contained in the model municipal access agreement. On file with the City Clerk as Document 3 is a copy of the full text of the model agreement. Each agreement will be tailored to reflect the individual negotiations with the companies.

Recommendation 2

When City Council endorsed the five principles on municipal access prepared by the FCM, it also contributed to a legal defense fund managed by the FCM to retain legal counsel to present a national defense of municipal rights in proceedings before the CRTC regarding access by telecommunications companies to municipal rights of way. The FCM has retained the legal services of Nelligan, Power to represent the FCM on this issue.

Over the past year, staff from the Office of the City Solicitor and Urban Planning and Public Works have been participating on a Technical Subcommittee of the Federation of Canadian Municipalities dealing with Telecommunications. The committee is comprised of lawyers and engineers from various municipalities across Canada including Vancouver, Edmonton, Calgary, Quebec City, Toronto, Halifax and Mississauga. The original focus was to exchange information on negotiating municipal access agreements and to develop an increasing awareness amongst municipalities of the five principles. However, recently the focus has shifted to deal with a more immediate issue. The City of Vancouver is involved in a proceeding before the CRTC with Ledcor, a licensed carrier that carries on business in several provinces installing telecommunications cable for other carriers. Negotiations between Ledcor and Vancouver had been ongoing since July, 1998 regarding a municipal access agreement. In the spring of 1999, after Vancouver discovered that Ledcor had installed fibre optic cable without municipal approval or compensation across a number of Vancouver streets, Vancouver requested that Ledcor remove the cable. Ledcor then filed an application with the CRTC for an order granting it permission to access street crossings and other municipal property for the purposes of installing, operating and maintaining its fibre optic transmission system.

Vancouver in turn has been granted permission to file an application with the CRTC asking it to determine the rights and conditions Vancouver can impose in granting access to Vancouver's streets. This is the first time a Canadian municipality has asked the CRTC to clarify the terms and conditions which a municipal government may set when it grants access to municipal rights of way. It is a test case for municipal governments and FCM both of which hold that telecommunications companies installing networks on public land must compensate municipal governments for the use of the right of way.

The CRTC announced that it would consider the two applications by Ledcor and Vancouver and has launched "a public notice proceeding" (attached as Document 4). This process is intended to provide a wider opportunity for submissions on the jurisdiction of the CRTC to set terms and conditions of access and the terms and conditions of municipal access including monetary compensation. Submissions are to be made to the CRTC by interested parties on or before January 28, 2000. There are further timeframes established for Reply and interrogatories. Although some municipalities will be filing individual submissions with the CRTC, it is recommended that the City of Ottawa not file an individual submission but continue to participate in the preparation of the submission to be made by the FCM.

Pending the outcome of the CRTC proceedings, staff are pursuing cost recovery but are not pursuing the fifth principle of full compensation in current negotiations for Municipal Access Agreements and are also including a clause in the agreement to re-visit conditions when the outcome of this decision is final and binding.

In view of the importance of this matter, staff are also requesting Council to authorize their continued participation in the Telecommunications subcommittee of the FCM.

Recommendations 3 and 4

Attached as Document 5 is correspondence from the Association of Municipalities of Ontario (AMO) regarding the development of a new model gas franchise agreement. Staff from the City of Ottawa have been participating in a technical group of AMO members and representatives of the gas industry to update the model agreement that was negotiated in 1987 to reflect current conditions. While there has been a great deal of progress there are several unresolved issues on the municipal side most particularly permit fees, duration of renewals and compensation for use of municipal rights of way. It should be noted that the City of Ottawa's existing gas franchise agreement with Consumers Gas expires in June, 2001. AMO at this time feels that these issues will not be resolved without intervention by AMO at the Ontario Energy Board. AMO is requesting financial assistance from each member municipality to establish a legal defense fund to be used to support the municipal position on natural gas franchise agreements and to develop a revised model agreement between municipalities and gas utilities. Contributions from lower tier municipalities are requested in the amount of two cents per capita or in the case of Ottawa, $6,280.00. This amount is the same as provided to the FCM for the municipal right of way management issue and staff recommend contributing to AMO's legal defense fund to ensure the same co-ordinated approach is taken to resolving these matters with the gas industry. In addition, staff are requesting City Council authorization of their continued participation with AMO in the development of a model gas franchise agreement.

Consultation

This submission was jointly prepared with the Office of the City Solicitor and no further consultation was required.

Disposition

Office of the City Solicitor and Department of Urban Planning and Public Works to continue to participate in the FCM's Telecommunications subcommittee.

Department of Urban Planning and Public Works to participate with the Association of Municipalities of Ontario in the development of a model gas franchise agreement.

List of Supporting Documentation

Document 1	Five revised right of way management principles of the Federation of Canadian Municipalities
Document 2	General Provisions of Municipal Access Agreement
Document 3	Model Agreement (on file with the City Clerk)
Document 4	Telecom Public Notice CRTC 99-25 issued December 3, 1999
Document 5	Material from AMO regarding Model Gas Franchise Agreement and Gas Franchise Defense Fund

Part II - Supporting Documentation

Document 1

Revised FCM Rights -of-Way Principles

1. In pursuance of bona fide municipal purposes, municipal governments must have the ability to manage the occupancy and uses of rights-of-way, including the establishment of the number, type and location of facilities, while taking into account applicable technical constraints.

2. Municipal governments must recover all costs associated with occupancy and use of rights-of-way by other parties.

3. Municipal governments must not be responsible for the costs of relocating facilities situated along municipal rights-of-way if relocation is required for bona fide municipal purposes.

4. Municipal governments must not be liable for losses associated with the disruption of services or with damage to property as a result of usual municipal activities or the activities of other parties along municipal rights-of-way.

5. Recognizing that rights-of-way have value, municipal governments must receive full compensation for the occupancy and use of municipal rights-of-way by other parties.

Document 2

General Provisions of Municipal Access Agreement

- municipality to approve location and installation of equipment based on drawings provided
- non-interference with use and enjoyment of right-of-way
- compliance with all by-laws, legislation
- right of way to be used only for purpose specified
- specified term and termination date
- option for municipality to have company install extra capacity to reduce road cuts and trenching
- work to be completed to City's satisfaction
- no liens to be registered
- company agrees where feasible to use existing plant of other companies
- provision of "as built" drawings
- participation in utility co-ordinating committee
- 24 hour emergency contacts
- option to install dark fibre for the municipality
- company assumes environmental liabilities related to its use of the right-of-way
- relocation of plant at company's cost if required
- insurance and indemnification provisions
- notice to municipality of any third party attachment to the company's plant provision for fee
- provision for re-opening agreement to reflect significant regulatory or legislative decisions
- worker's compensation and occupation health and safety provisions
- arbitration as a means of dispute resolution
- notice
- assignment provisions

Telecom Public Notice CRTC 99-25

Ottawa, 3 December 1999

Terms and conditions for access to municipal property in the City of Vancouver

File Nos.: 8690-V15-01/99 and 8690-L8-01/99

Summary

In this Public Notice, the Commission is initiating the proceeding outlined in its 8 April 1999 letter to the City of Vancouver (the City) and Ledcor Industries Limited (Ledcor) to consider the terms and conditions of access by Canadian carriers and distribution undertakings to municipal property in Vancouver for the purpose of constructing, maintaining and operating transmission lines.

Introduction

1. On 19 March 1999, Ledcor filed a Part VII application requesting relief pursuant to sections 43 and 61(2) of the Telecommunications Act (the Act), naming the City as respondent. Ledcor stated that it and its affiliate customers seek access to street crossings and other municipal property in the city for the purpose of installing, operating and maintaining fibre optic transmission lines. Ledcor stated that the parties had been unable to reach a mutually acceptable agreement regarding terms and conditions of access.

2. In a ruling dated 8 April 1999, the Commission referred to the Ledcor application and to an application that it anticipated would be filed by the City. The Commission denied the City's request to suspend Ledcor's application pending disposition of the City's application. The Commission noted that the two applications would, in essence, raise the same issues, namely, the terms and conditions of access to municipal property in Vancouver for the purpose of constructing, maintaining and operating transmission lines. The Commission concluded that it would be in the public interest to deal with both applications concurrently. The 8 April ruling set out the procedure for answer and reply, with the record closing 28 June 1999. The Commission also stated that following closure of the record on the applications, it would issue a Public Notice initiating a proceeding to consider the issues raised.

3. On 17 May 1999, the City filed a Part VII application, naming BCT.TELUS Communications Inc. (TELUS), Call-Net Enterprises Inc. (Call-Net) and Bell Canada (Bell) (collectively the Carriers) as respondents. The City requested an order to establish the terms and conditions of access, by the Carriers, to street crossings and other municipal property to construct, operate and maintain transmission facilities. In its application, the City also requested that the Commission make an interim order for a zero rate of consideration, for the sole purpose of permitting the Commission to make its final order in this matter take effect on the date of the interim order.

4.On 27 October 1999, the Commission granted the City's request for an interim order, pending its final determination. The Commission ordered, as a condition of access, the payment of $1.00 forthwith by each of the Carriers to the City.

Scope of proceeding

5. In this proceeding, the Commission will consider what the terms and conditions of access by Canadian carriers and distribution undertakings to municipal property in Vancouver should be for the purpose of constructing, maintaining and operating transmission lines.

6. The Commission notes that while the proceeding will be limited to the terms and conditions of access in Vancouver, it expects that the principles developed in this proceeding may inform the Commission's consideration of any disputes that may arise elsewhere. There may well be other parties in negotiations for access to municipal rights-of-way in other parts of the country, and the Commission would expect that access be made available on reasonable terms and conditions pending its consideration of the principles that should be employed. Absent the availability of such access, requests for interim relief could be considered on an expedited basis.

7. The Commission invites parties to comment on the scope and nature of the Commission's jurisdiction to set the terms and conditions of access, as discussed above, in light of sections 42 - 44 of the Act, and any other provisions of the Act that may be relevant.

8. In addition, the Commission seeks comment on the terms and conditions, including for example, whether some form of monetary compensation could and should be ordered as a condition of access. Parties are also requested to comment on what form any monetary compensation should take, including submissions as to costing methodology.

9. Parties are also invited to address whether any terms and conditions imposed by the Commission in relation to the agreements for access in Vancouver that are in dispute could and should replace the terms and conditions in existing agreements that are not in dispute relating to municipal access in Vancouver.

Procedure

10. Ledcor, the City, TELUS, Call-Net, Bell, AT&T Telecom Services Company Inc., GT Group Telecom Services Corp., BC TEL, and all affiliates of these entities which are Canadian carriers with any part of their transmission facility located on municipal property within the City of Vancouver are made parties to this proceeding. The names of the affiliates must be registered with the Secretary General by 7 January 2000 for inclusion on the list referred to in paragraph 13, below.

11.Other parties wishing to participate in this proceeding must notify the Commission of their intention to do so by writing to Secretary General, CRTC, Ottawa, Ontario, K1A 0N2, fax: 819-953-0795, by 7 January 2000.

12. Parties are to indicate in the notice their e-mail address, where available. If parties do not have access to the Internet, they are to indicate in their notice whether they wish to receive disk versions of hard copy filings.

13. The Commission will issue a complete list of parties and their mailing addresses (including e-mail addresses, if available), identifying those parties who wish to receive disk versions.

14.All parties referred to in paragraphs 10 and 11, above (hereinafter "Parties") are directed to file any submissions by 28 January 2000, serving copies on all Parties. As noted above, the purpose of this proceeding is to consider the terms and conditions of access in Vancouver, and accordingly the Commission does not intend to consider in this proceeding factual contexts outside Vancouver. In order to streamline the process and reduce the workload for all concerned, the Commission encourages Parties with similar interests to file joint submissions and to participate jointly in subsequent stages of the proceeding.

15.Parties may address interrogatories to any person who files submissions pursuant to paragraph 14. Any such interrogatories must be filed with the Commission and served on the relevant person by 28 February 2000.

16. Responses to interrogatories addressed pursuant to paragraph 15 are to be filed with the Commission and served on all Parties by 29 March 2000.

17. Requests by Parties for further responses to their interrogatories, specifying in each case why a further response is both relevant and necessary, and requests for public disclosure of information for which confidentiality has been claimed, setting out the reasons for disclosure, must be filed with the Commission and served on the relevant person by 12 April 2000.

18. Written responses to requests for further responses to interrogatories and for public disclosure must be filed with the Commission and served on all Parties by 26 April 2000.

19. The Commission will issue a determination with respect to requests for disclosure and for further responses as soon as possible.

20. In the determination referred to in paragraph 19, the Commission will also establish further procedures for the filing of comment and reply arguments by all Parties.

21. Where a document is to be filed or served by a specific date, the document must be actually received, not merely mailed, by that date.

22. In addition to hard copy filings, Parties are encouraged to file with the Commission electronic versions of their submissions in accordance with the Commission's Interim Telecom Guidelines for the Handling of Machine-Readable Files, dated 30 November 1995. The Commission's e-mail address for electronically filed documents is procedure.telecom@crtc.gc.ca. Electronically filed documents can be accessed at the Commission's Internet site at http://www.crtc.gc.ca.

23. The documents made part of the record of this proceeding may be examined during normal business hours at the CRTC offices listed below:

Central Building
Les Terrasses de la Chaudière
1 Promenade du Portage
Room G-5 Hull, Quebec K1A 0N2
Tel: (819) 997-2429
Fax: (819) 953-0795
TDD: (819) 994-0423

580 Hornby Street
Suite 530
Vancouver, British Columbia V6C 3B6
Tel: (604) 666-2111
Fax: (604) 666-8322
TDD: (604) 666-0778

24. The documents made part of the record of this proceeding will be made available promptly upon request at the CRTC offices listed below:

Bank of Commerce Building
1809 Barrington Street
Suite 1007 Halifax,
Nova Scotia B3J 3K8

CRTC Documentation Centre
405 DeMaisonneuve Boulevard East
2nd Floor, Suite B2300
Montreal, Quebec H2L 4J5

CRTC Documentation Centre
55 St. Clair Avenue East
Suite 624
Toronto, Ontario M4T 1M2

Kensington Building
275 Portage Avenue
Suite 1810
Winnipeg, Manitoba R3B 2B3

CRTC Documentation Centre
Cornwall Professional Building
2125, 11th Avenue
Room 103
Regina, Saskatchewan S4P 3X3

Scotia Place Tower Two
10060 Jasper Avenue
19th Floor, Suite 1909
Edmonton, Alberta T5J 3R8

Secretary General

This notice is available in alternative format upon request, and may also be viewed at the following Internet site: http://www.crtc.gc.ca

AVI99-25_0

Document 5

OFFICE OF THE PRESIDENT

August 30, 1999

Urgent Matter

To All Heads of Council:

I am taking this opportunity to update you on AMO's ongoing work in the development of a new model natural gas franchise agreement, *and to ask for your support.* As you are aware, the model franchise agreement serves as the standard operating agreement between municipalities and gas utilities that sets out the terms and conditions under which gas utilities may distribute natural gas within a municipality.

AMO, with the support of its members, developed the original Model Gas Franchise Agreement in consultation with the gas industry in 1987, which was subsequently sanctioned by the Ontario Energy Board (OEB). As many of the current franchise agreements are coming up for renewal, AMO and the gas industry have been working on changes to the model agreement to bring it up to date and reflect current conditions.

While the AMO/Industry group have made progress in a number of areas of the agreement, there are several major unresolved issues on the municipal side, including permit fees, duration of renewals, and compensation for the use of municipal rights of way. It appears that these issues will not be resolved to our satisfaction without intervention by AMO at the Ontario Energy Board. AMO must therefore be prepared to defend its positions and provide evidence on these issues before the OEB. We expect the process will be complex and costly, and will require extensive research, specialized expertise, and external legal counsel. This is why we are asking for your immediate and urgent help.

What You Can Do:
We need your help to protect your interests. AMO's Board of Directors recently adopted a resolution calling for the establishment of a "Gas Franchise Defense Fund". The Board is asking that all AMO member municipalities voluntarily contribute to this fund, on a one time basis, as follows:

a) two cents per capita for lower-tier municipalities;
b) one cent per capita for upper-tier municipalities; and
c) three cents per capita for single-tier municipalities.

The Gas Franchise Defense Fund (see attached Backgrounder for details) will be used to prepare a defense of the municipal position on natural gas franchise agreements, and to develop legal provisions for a revised model agreement, as well as to intervene in OEB proceedings and take appropriate legal action as required. We will be seeking to allow <u>all</u> municipalities to take advantage of changes resulting from the negotiation of a new model agreement, whether they have recently renewed their franchise agreements or not.

In January, AMO requested information from its members on the timing of upcoming renewals of existing franchise agreements. If you haven't already sent this information in, we are requesting that you do so now to assist us in our efforts. The gas industry is seeking 15 and 20 year renewal terms for existing franchises - it is extremely important that municipalities not undertake to renew franchises for more than 15 years. The OEB, in decision EBO 125 (the precursor to the Model Agreement), stated that it was of the opinion that in the case of renewals a ten to fifteen year term seems to be adequate. Longer terms may affect the possible benefits achievable from a new agreement or any future changes in legislation.

Why the Defense Fund is Needed:
The OEB has not yet determined the process that they will use to approve a new model franchise agreement, but have made it clear that they would like to see a revised agreement in use by January 2000. The need to establish a defense fund is therefore pressing. We anticipate that AMO will make representation to the OEB in the Fall, and we want to have well-prepared arguments to advance our position, to counter the extensive financial and legal resources available to the gas industry lobby.

AMO's defense fund will allow us to intervene on behalf of the municipal sector in a generic hearing, or on behalf of individual municipalities seeking approval of their franchise renewals.

Your contribution to this fund is extremely important, as the costs involved in preparing and defending a case before the OEB are considerable, and represent an unbudgeted activity for AMO, requiring special assistance for research and legal representation.

When AMO launched its defense of the original model franchise agreement before the OEB in 1987, these costs were covered through a similar member-supported fund. The results of AMO's involvement then helped to secure for all municipalities the ability of municipal engineers to grant approvals and to specify the location and depth of buried facilities; special requirements or the right to refuse gas facilities on bridges; beneficial cost-sharing arrangements for relocation of gas pipelines; and guidelines for the length of initial and renewal terms.

AMO's Position on the Issues:
In current discussions with the gas industry, AMO has argued that private utilities using municipal property to earn profits should compensate municipalities and their property taxpayers on an annual basis for the economic benefit received from the use of the municipal resource. Increased operating costs related to ROW management should be borne by customers of a particular utility, and not unfairly passed on to property taxpayers.

AMO also maintains that municipalities must have the authority to collect permit fees for right of way access to offset municipal costs related to ROW administration and reduced pavement life. Discussion has also focussed on the duration of franchise agreements and the duration of franchise renewals, where AMO is proposing that renewal agreements be no longer than 10-15 years as was originally suggested by the OEB. AMO is also seeking to clarify issues surrounding the expiry and/or termination of franchise agreements. These and other issues are more fully detailed in the Backgrounder.

AMO remains committed to developing a new model gas franchise agreement that protects the interests of municipalities, and one that establishes fairness for property taxpayers. We need your help, and your financial contribution, to ensure that this objective is met. AMO's success in this initiative will have profound impacts on municipal right of way management across all energy sectors well into the future.

As always, our staff are available to answer any questions you may have. Please contact Pat Vanini, Director of Policy and Government Relations, at 416-971-9856, extension 316 or Casey Brendon, AMO Policy Advisor at extension 341.

I look forward to your prompt support of this important effort.

Yours truly,

Michael Power
AMO President

Attachment

Association of Municipalities of Ontario

BACKGROUNDER

August 30, 1999

AMO's Model Natural Gas Franchise Agreement & the Gas Franchise Defense Fund

AMO is establishing a legal defense fund to be used to support the municipal position on natural gas franchise agreements, and to develop a revised model agreement between municipalities and gas utilities. The gas franchise defense fund will also be used to allow AMO to intervene in Ontario Energy Board (OEB) proceedings, including legal representation.

The defense fund came as a result of a resolution adopted by the AMO Board of Directors on August 25, 1999. The resolution provides:

***WHEREAS** gas franchise agreements across Ontario are coming up for renewal; and*

***WHEREAS** the Association of Municipalities of Ontario (AMO) developed the original Model Gas Franchise Agreement with the gas industry in 1987; and*

***WHEREAS** AMO, through its Working Group, is currently negotiating a new model gas franchise agreement with the gas industry; and*

***WHEREAS** the negotiation process is long, complex, costly and will likely involve access to the courts and the Ontario Energy Board; and*

***WHEREAS** there are major, unresolved issues concerning, among others, permit fees, duration of renewals, and compensation for the use of municipal rights-of-way; and*

***WHEREAS** this matter is of vital importance to Ontario municipalities; and*

***WHEREAS** this exercise involves extraordinary expenses for AMO;*

***THEREFORE BE IT RESOLVED THAT** the Association of Municipalities of Ontario establish a "Gas Franchise Defense Fund"; and*

***FURTHER BE IT RESOLVED THAT** municipalities be requested to voluntarily contribute, on a one-time basis, to this fund based on:*
a) two cents per capita for lower-tier municipalities;
b) one cent per capita for upper-tier municipalities;
c) three cents per capita for single-tier municipalities; and

***FURTHER THAT** the terms of reference for the fund be as follows:*
a) to prepare a defense of the municipal position with respect to natural gas franchise agreements;
b) to develop a model agreement;
c) to intervene in Ontario Energy Board proceedings as necessary;
d) to take legal action as may be necessary.

Why the Defense Fund is Needed:
As many current franchise agreements are coming up for renewal, AMO and representatives of the gas industry (Union Gas, Enbridge-Consumers, and Natural Resources Gas (NRG) Ltd.) have been working to propose changes to the model agreement to reflect current conditions. While the AMO/Industry group have made progress in a number of areas of the agreement, there are several major unresolved issues.

AMO must be prepared to defend its position on these issues before the Ontario Energy Board (OEB), in a process which we expect will be long, complex and costly, and which will require extensive research, specialized expertise, and external legal counsel. The OEB has indicated that they would like to see a revised agreement in use by January 2000.

AMO's Position on the Issues

- ***The duration of new and renewal franchise agreements, particularly given the extent of municipal restructuring and the rapidly changing municipal scene.***
  AMO is proposing that renewal agreements be no longer than 10-15 years, to allow changes in the utility industry and municipal operations to be revisited and appropriately reflected in franchise agreements. AMO is also seeking to clarify issues surrounding the expiry and/or termination of franchise agreements.

- ***The inability of municipalities to charge permit fees***
  AMO maintains that municipalities must have the authority to collect permit fees for right of way access by utility operators, to offset municipal costs related to ROW administration and reduced pavement life, relying on Section 220.1 of the Municipal Act.

- ***The inability of municipalities to obtain compensation for use of Municipal rights-of-way***
  AMO has argued that private utilities using public property to earn profits should compensate municipalities on an annual basis for the economic benefit received from the use of the municipal resource. This recognizes that increased operating costs related to ROW management should be borne by customers of a particular utility, and not unfairly passed on to property taxpayers.

- *AMO has proposed a number of "typical municipal clauses" relating to use of highway at its own risk, insurance coverage, legislative change and remedies concerning franchise termination in the event of default on terms of the agreement or bankruptcy.*

Progress to Date

As a result of discussions to date, AMO and the gas industry have reached agreement on some areas of the Franchise agreement. We expect that areas of agreement will be forwarded to the OEB for review in a joint AMO/Industry submission. Included among these matters are:

- *Agreement has been reached on a number of minor wording changes which help to clarify the intentions of the parties and which result in a Model Agreement which is more in tune with the 21st Century.*

- *Agreement has been reached on wording to clarify the situation when a third party (usually a telecommunications provider) uses a decommissioned gas line for other purposes.*

- *It is anticipated that agreement will be reached on clauses relating to insurance requirements, the need for geodetic information as technology and practice evolves, and that permission to use the municipal right of way does not provide a warranty as to the environmental condition of the roadway.*

Please send your contribution to:	**AMO's Gas Franchises Defense Fund** **Association of Municipalities of Ontario** **393 University Avenue - Suite 1701** **Toronto ON M5G 1E6** ***Attention: Reena Feliciano***
For more information, contact:	*Pat Vanini, Director of Policy and Government Relations, AMO* *416-971-9856 ext. 316 or e-mail: pvanini@amo.municom.com; or*
	Casey Brendon, Policy Advisor, AMO *416-971-9856 ext. 341 or e-mail: cbrendon@amo.municom.com*

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City of Ottawa
Ville d'Ottawa

Backgrounder

January 7, 2000 ACS1999-PW-LTB-0058

2. Smoking - By-law 123-92 - Towards Smoke-Free Public Places

Tabagisme - Arrêté municipal 123-92 - Promouvoir des lieux publics sans fumée

Issue

- to protect patrons and workers from involuntary exposure to second-hand tobacco smoke, Ottawa has for many years either prohibited or restricted smoking in almost all workplaces in the city
- in 1992, Council confirmed an incremental approach to smoking restrictions in "public place" workplaces to mitigate economic losses but still protect workers and patrons
- in 1999, Council directed staff to work with the Region and the Cities of Nepean and Kanata to consider requiring those "public place" workplaces (restaurants, bars, billiard halls, bingo parlours and bowling alleys) to be smoke-free by September 2001

What's New

- recommended that the current by-law be amended to prohibit smoking in restaurants, bowling alleys, billiard halls and bingo parlours by January 1, 2002, except in fully enclosed, separately-ventilated designated smoking rooms
- recommended that the unregulated status that is the norm in Ottawa bars continue for two more years; by January 1, 2002, smoking be prohibited in bars before 8:00 p.m. except in designated smoking rooms; by January 1, 2005, smoking be prohibited at all times in bars except in designated smoking rooms
- recommended that businesses may substitute ventilation systems for designated smoking rooms when and if Health Canada approves such systems

Impact

- if Ottawa, Nepean and Kanata enact the same regulations, the majority of "public place" workplaces in the Region will be subject to identical smoking restrictions
- the recommendations continue the City's tradition of helping to reduce involuntary exposure to second-hand smoke which is the third leading preventable cause of death behind smoking and alcohol use

Contact: Author - Martha Boyle, 244-5300, ext. 3204
Chief Communications Officer - Lucian Blair, 244-5300, ext. 4444 - pager 780-3310

City of Ottawa / Ville d'Ottawa

January 7, 2000	ACS1999-PW-LTB-0058 (File: EW-182-33)
Department of Urban Planning and Public Works	Ward/Quartier City Wide
• Community Services and Operations Committee / Comité des services communautaires et des opérations • City Council / Conseil municipal	Action/Exécution

2. Smoking - By-law 123-92 - Towards Smoke-Free Public Places

Tabagisme - Arrêté municipal 123-92 - Promouvoir des lieux publics sans fumée

Recommendations

1. That By-law Number 123-92 respecting smoking in public places be amended as follows and forwarded to the new City of Ottawa for action:

Restaurants, Bowling Alleys and Billiard Halls

a. effective January 1, 2002, no smoking in restaurants, bowling alleys and billiard halls except in fully enclosed, separately ventilated designated smoking rooms comprising not more than 30% of useable floor space;

Bingo Halls

b. effective January 1, 2002, no smoking in bingo halls except in fully enclosed, separately ventilated designated smoking rooms comprising not more than 70% of useable floor space and not to include the bingo card sales counter or snack bar;

Bars

c. effective January 1, 2002, no smoking in bars before 8:00 p.m. each day except in fully enclosed, separately ventilated designated smoking rooms comprising not more than 30% of useable floor space;

d. effective January 1, 2005, no smoking in bars at any time except in fully enclosed, separately ventilated designated smoking rooms comprising not more than 30% of useable floor space;

e. effective upon enactment of the amending by-law and enforceable six months later,

bars be obliged to post at their entrance(s) a clear sign or signs in both official languages that identifies the current smoking policy in the bar and that reports that the bar will be smoke-free during the day by 2002 and smoke-free at all times by 2005;

f. define *bar* as an establishment licensed by the Alcohol and Gaming Commission of Ontario where at least 60% of gross annual receipts are derived from the sale and service of alcohol to the public for consumption on the premise.

2. That, if Health Canada endorses a ventilation system as capable of ensuring air quality in a smoking section that is equivalent to air quality in a smoke-free public place, installation of such a system in a public place may substitute for designated smoking rooms, with implementation details including the amending by-law to be brought back to City Council upon Health Canada's confirmation.

3. That By-law 122-92 respecting smoking in workplaces be amended to prohibit smoking in the common areas of multi-residential buildings, shelters and drop-in centres including tenant lounges and amenity areas, reception areas, foyers, hallways, elevators, stairways, lobbies, laundry rooms and parking garages.

4. That City Council request the Minister of Municipal Affairs and Housing to amend *The Municipal Act of Ontario* to grant to municipalities the power to prohibit smoking in the non-residential workplaces of the self-employed with no employees.

January 10, 2000 (1:03p)

Edward Robinson
Commissioner of Urban Planning and Public Works

January 11, 2000 (9:31a)

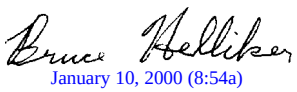
Approved by
John S. Burke
Chief Administrative Officer

MMB:mmb

Contact: Martha Boyle, 244-5300-1-3204

Financial Comment

The recommendations have no direct financial implications.



January 10, 2000 (8:54a)

for Mona Monkman
City Treasurer

CP:cds

Executive Report

Reasons Behind Recommendations

At its meeting of June 30, 1999, City Council directed as follows:

> That Ottawa staff, in conjunction with the Region of Ottawa-Carleton's Medical Officer of Health and staff of the Cities of Nepean and Kanata, undertake consultation over the next several months in relation to the Medical Officer of Health's recent recommendation that public places, including restaurants, bars, billiard halls, bingo parlours and bowling alleys, be smoke-free by September of 2001, with findings and recommendations reported to City Council before the end of this year.

The harmful effects of second-hand, or environmental, tobacco smoke (ETS) are well-known. Exposure to second-hand smoke has been identified as the third leading preventable cause of death behind smoking and alcohol use. It is estimated that in Ottawa-Carleton alone ETS is responsible for 10 lung cancer deaths and 90 cardiovascular deaths each year among non-smokers. ETS also causes serious respiratory problems among young children and infants, and aggravates allergies, asthma and environmental sensitivities.

To protect patrons and workers alike from involuntary exposure to second-hand tobacco smoke, Ottawa, like countless other North American cities, has for many years either prohibited or restricted smoking in almost all workplaces in the City. Industrial, manufacturing and office environments, retail shops, amusement arcades, arenas, hair salons, laundromats, shopping mall concourses and food courts are some of the workplaces in Ottawa that are smoke-free because of municipal regulation. Certain workplaces that generate income entirely from the public that patronizes them for extended periods of time, such as restaurants, bars, bingo parlours, billiard halls and bowling alleys, have to date benefited from a less restrictive smoking regulation, having been required to set aside a certain percentage of floor space as a non-smoking area with that percentage increasing over the years as public demand dictated that by-laws should change.

When, in 1992, Ottawa City Council undertook its most comprehensive review of smoking regulations, introducing many of the workplace smoking regulations that are in place today, it was decided that in some "public place" workplaces a smoking prohibition intended to protect the employee would as its primary effect discourage smoking clientele and result in significant business losses. As a consequence of that thinking, instead of introducing a prohibition in those sorts of workplaces eight years ago, an incremental approach to smoking regulations was confirmed, intended to allow both the business operator and the public to adjust to and accept increased smoking restrictions over time.

During the years that the City has regulated smoking, the public's knowledge of the harmful effects of ETS and its support for smoking regulations have grown considerably, and the percentage of smokers in the population has declined to less than 25%. The recommendations of this report conclude the work started in 1992 to protect workers and patrons in all workplaces in Ottawa while also mitigating general economic losses to the extent possible. The regulations proposed are consistent with this City's traditional incremental approach to smoking restrictions in "public place" workplaces and its historic position that smoking by-laws are an important part of responsible public health policy.

Recommendation 1

(The substance of this recommendation is repeated in chart form in Document 1 which also identifies how the Department's proposals compare to the regulations that Regional Council has most recently asked local municipalities to consider, and to the smoking by-law in the City of Toronto.)

Restaurants, Billiard Halls and Bowling Alleys

Currently, restaurants must designate at least 70% of useable floor space as non-smoking. Billiard halls and bowling alleys must be 50% non-smoking. There is good awareness of and compliance with the restaurant and bowling alley smoking regulation; there is poor to fair compliance in billiard halls.

For all three types of establishments, it is proposed that by January 1, 2002 there be no smoking except in designated smoking rooms (dsr's) comprising not more than 30% of useable floor space. An effective date of about two years hence provides reasonable notice to business owners.

The option of building a dsr will allow businesses to continue to serve smoking clientele without migrating smoke interfering with the comfort and health of those in the non-smoking section as happens now. The proposed maximum size of the room is slightly more than the percentage of smokers in the general population.

In addition to seeking to protect hospitality workers from exposure to ETS, health groups advocate the strongest possible non-smoking regulations in these types of establishments in particular because they attract, serve or cater to children and/or youth.

An identical smoking regulation has been approved by the City Councils of Nepean and Kanata with an effective date of May 31, 2001. Nepean and Kanata staff had proposed two years' notice as this Department has done; their Councils advanced the date by seven months, at the urging of health advocates, to coincide with World No Tobacco Awareness Day.

If Ottawa Council enacts the same regulations as have been approved in Nepean and Kanata, 80% of restaurants, 70-85% of billiard halls, and 63% of bowling alleys in the Region will be subject to identical smoking restrictions.

Bingo Halls

Currently, bingo halls must designate at least 50% of useable floor space as non-smoking. There is good awareness of the regulation and reasonable compliance with it (from time to time and hall to hall, an overflow of smoking players will be accommodated in non-smoking sections that would otherwise be empty).

It is proposed that by January 1, 2002 there be no smoking except in designated smoking rooms comprising not more than 70% of useable floor space. An effective date that is about two years from now provides reasonable notice to bingo hall operators.

The option of building a dsr will allow bingo hall operators to continue to attract smoking players without migrating ETS interfering with the comfort and health of non-smoking players. At 70% of useable floor space, the significant maximum size of the optional smoking room recognizes that the majority of bingo players smoke: a survey of bingo players conducted as part of a1996 Ottawa-Carleton Bingo Study identified that at least 50% of all bingo players are smokers; bingo hall operators and charities that run the bingos suggest from experience that the percentage of smoking players is closer to 70% or 80%.

Persons under 18 cannot play bingo (by order of the Alcohol and Gaming Commission of Ontario) which means that protection of children/youth is less an issue in bingo halls than it is in restaurants, billiard halls and bowling alleys for example. Workers however can be as young as 16 and, like their older colleagues, must be protected as much as possible from ETS. It is for that reason that the recommendation proposes quite specifically that the bingo card sales counter and the snack bar cannot be established in the dsr.

The same smoking regulation has been approved by the City Councils of Nepean and Kanata, although again with an effective date of May 31, 2001. If Ottawa Council follows suit, 11 (85%) of the 13 bingo halls in this Region will be subject to identical smoking restrictions.

Bars

Currently, bars fall within the smoking by-law definition of restaurant and, like all restaurants, must designate at least 70% of useable floor space as non-smoking. Generally, awareness of the regulation is low. Compliance ranges from fair (conscientious effort made to keep at least the daytime dining area in a pub 70% non-smoking) to poor (half-hearted effort made to comply for brief periods following an enforcement officer's visit to a tavern) to non-existent (no effort made to establish a non-smoking area in a dance bar/nightclub). Although in theory bars should have come along or been brought along incrementally as restaurants have so that they and the public that patronize them would be ready now for the next step to

smoke-free, in practice they have been largely unregulated. Any smoking regulation, conscientiously enforced and observed, will be new for the majority of bar owners and their customers.

The Proposed Bar Regulation

ETS is no less a health hazard for bar workers and patrons than it is for others in the population, and it is therefore proposed that bars too must become smoke-free except in designated smoking rooms comprising not more than 30% of useable floor space. In recognition that bars lag behind in non-smoking compliance, a two-step phase-in over a five-year period has been proposed: first, at the same time that restaurants must be smoke-free (except in dsr's), it is proposed that bars be obliged to be smoke-free every day until 8:00 p.m. (except in dsr's) after which time each day there would be no legislated non-smoking requirement; by January 1, 2005, bars would have to be smoke-free at all times (except in dsr's).

Bars that are open during the day, such as taverns and pubs, operate much like restaurants during those hours, offering meals and table service, and attracting youths and families with children for dining. It is equitable and healthful therefore that bars should be smoke-free (unless a dsr is offered) during the daytime hours and until the meal-taking time of families may be reasonably expected to be finished. After 8:00 p.m. each day, when bars tend to attract adults only for drinking and entertainment, it is proposed that there would be no regulation with respect to smoking. The January 1, 2002 effective date for "smoke-free days" provides reasonable notice to bar owners, and is consistent with the notice period recommended to be given to other businesses impacted by the proposals of this report.

By January 1, 2005 then, it is proposed that bars must be smoke-free at all times except in designated smoking rooms comprising not more than 30% of useable floor space, regulation which is identical to that proposed for restaurants come 2002. The smoking room option will allow bars to continue to serve smoking clientele without migrating smoke interfering with the comfort and health of those in the non-smoking area. The maximum size of the proposed smoking room is slightly more than the percentage of smokers in the general population.

A number of points must be made in relation to the bar regulation proposed:

- of all the recommendations in this report, the proposals relating to bars have been the most difficult to develop and the least satisfying to stakeholders: for health advocates, the regulation is not strong enough and does not come fast enough; for bars, it comes too soon; for restaurants that have bars but are not bars, it is thought unfair. Without losing sight of the inarguable health-driven purpose of the by-law, what the Department has sought to do in its bar recommendations is to honour what has been the City's historical incremental approach to smoking in public places, to acknowledge what is the current reality in bars, and to propose a course of action that is as straightforward as

possible (because that facilitates compliance) and realistic (because that makes it achievable) so that, by 2005, there will be an economically sound smoke-free bar/entertainment industry in Ottawa;

- the effect of approval of the Department's recommendations will be that bars will be permitted to set their own smoking policy until 2002; that is the case because the report proposes the creation in the by-law of a public place called "bar" but it does not make any recommendation with respect to "bar" regulation until 2002. In theory then, the proposal is a temporary step backwards in that the current by-law requires bars to be 70% non-smoking; in practice though, the proposal simply acknowledges and permits for two more years the unregulated status that is the norm in Ottawa bars now;

- City Council could direct that the current 70% non-smoking regulation continue in bars from now until 2002 with the hope that there will be voluntary compliance, and that enforcement from time to time might have some effect. The Department prefers the undoing of the 70% regulation for a number of reasons: simply having the by-law "on the books" has not been successful to date in encouraging non-smoking areas in bars but its complaint-driven enforcement standard has resulted in an inequitable and burdensome application of the by-law in a number of establishments; the Department has no more enforcement resources to assign to the regulation than it has had historically which means that a more equitable pro-active enforcement strategy is not an option, and that compliance will not be encouraged via enforcement any more than it has ever been; and in bars that are comprised mostly of standing room (with mobility and mingling the point) a non-smoking floor space percentage is not a realistic regulation even if enforcement were to be much enhanced;

- some bars (nightclubs) do not open until after 8:00 p.m. and so will not be affected by the "smoke-free days" restriction proposed for 2002. For those types of bars, there is no regulation proposed until 2005 when they will have to be smoke-free (except in dsr's). There will be no protection from ETS for nightclub workers and patrons for five more years;

- the Cities of Nepean and Kanata did not distinguish between restaurants and bars which means that, like restaurants, bars must be smoke-free, except in dsr's, by May 31, 2001. For those two cities, the decision to treat bars like restaurants was expedient: Kanata has one bar, and Nepean has about a dozen, none of which raised the issue during consultation. If Ottawa Council introduces a less restrictive regulation for bars than has been approved in Nepean and Kanata, the Councils of both those cities will give further consideration to their bar regulation upon the request of stakeholders.

The Proposed Bar Signage

Because approval of the Department's recommendations will permit bars to set their own smoking policy until 2002, it is important that prospective customers be notified at the door of what the policy is so that they can make an informed decision about whether or not to

patronize the establishment. In addition to identifying what is the house smoking policy, it is recommended that the sign or sign(s) advise patrons that the bar will be smoke-free during the day by 2002 and at all times by 2005 so that the regulation, once finally effective, cannot be said to come as a surprise.

The Proposed Bar Definition

To introduce bar regulation that differs from restaurant regulation (until 2005 when it is proposed to become identical) it is necessary for the first time to distinguish in the by-law between those two types of business activity by defining "bar". In opting for the definition it has recommended (60% of revenue is derived from alcohol sales), the Department wanted to capture what would be commonly identified as pubs, taverns and nightclubs without creating an opportunity for restaurants to meet the definition and so take a backwards step in non-smoking regulation. The receipts percentage has been proposed at a level that can be satisfied by bars but that would be unlikely to be met by restaurants.

To prove compliance with the alcohol sales percentage, the Department had in mind that the bars would submit an annual statutory declaration with respect to their alcohol sales confirming that they meet the 60% criterion. Annual renewal of the municipal business license (victualling house) could trigger regular submission of the declaration. Where there exists doubt about the veracity of a declaration, the onus would be on the business operator to prove that the establishment is a bar; in the absence of proof, the premise would be considered a restaurant for the purpose of smoking regulation.

Most cities that distinguish between restaurants and bars in their smoking by-laws define bars as drinking establishments with a "no minor patrons at any time" policy. Although that is attractive to the extent that it ensures that children at least will not be exposed to ETS, the Department has a number of difficulties with the definition which causes it not to be the one recommended for Ottawa: it would be relatively easy to report "no minors" as house policy but difficult to police; it may create opportunities for restaurants that serve few, if any, minors to adopt a "no minors" policy (with or without 100% compliance) and so move backwards from the70% non-smoking that is now quite successfully in place; and without significant changes in their business operations, pubs and taverns in Ottawa would not satisfy the definition, would therefore fall within the stricter restaurant regulation and, as the Department has already suggested, are not ready to be smoke-free in two years. Although presumably it has been a deliberate decision on the part of other cities to treat pubs and taverns like restaurants, with the more relaxed bar-related smoking regulation narrowly confined to nightclubs, it is not the Department's recommendation for such businesses in this City.

Recommendation 2

In the event that Health Canada confirms that ventilation technology is available that ensures air quality in a smoking section equivalent to the quality of air in a smoke-free public place, it is proposed that the public places addressed in this report that have installed in them such

ventilation may offer a smoking section without having to separately enclose the area or install other physical barriers.

The City of Toronto has extended that option to its public place owners/operators, and has asked Health Canada to test the one ventilation system currently on the market that claims to meet the standard prescribed. The status of that request is not known but will be monitored by Ottawa staff.

The Councils of Nepean and Kanata have approved the same ventilation option that the Department proposes here.

Recommendation 3

Although the review directed by City Council in June of 1999 did not include consideration of the Workplace By-law, some people took the opportunity presented by the public places smoking review to comment on the workplace regulation as well. This recommendation and the next one have been developed in response to comment received but have not themselves been the object of consultation.

Since its introduction in 1992, the Workplace By-law has been interpreted not to apply to the tenant lounges and amenity areas of residential buildings. Instead, such spaces have been considered extensions of private living space within which the City does not regulate smoking. It was considered reasonable to let tenants and landlords negotiate a smoking policy in those spaces that best accommodated the wishes of residents.

That has not happened. Tenants, particularly in seniors' buildings, have reported to the Department that the City must intervene to ensure a healthful living environment in shared space. Many landlords have echoed that sentiment, indicating that they would be pleased to post a non-smoking policy in common areas but that there must be the weight of a by-law behind it. The recommendation responds to those comments by imposing a smoking prohibition in lounges and amenity areas that would be enforceable under the Workplace By-law.

The proposed amendment would also ensure that the reception areas, foyers, lobbies, hallways, elevators, stairways, laundry rooms and parking garages of residential buildings are clearly captured under the Workplace By-law. Although the Department has been successful in applying the Workplace By-law to prohibit smoking in those spaces, the regulation is actually vague on that front and could be vulnerable to a Court challenge. The recommendation will make it clear that the by-law applies to those spaces which has been the Department's longstanding interpretation and enforcement position.

The workplace by-laws of both the Cities of Nepean and Kanata prohibit smoking in the common areas of multi-residential buildings as this recommendation would in Ottawa.

Recommendation 4

Ottawa's Workplace By-law derives its powers from the *City of Ottawa Act, 1991 (No. 2)*. That Act, and the Province's *Smoking in the Workplace Act*, prescribe what can be the definition of "workplace" for the purposes of regulating or prohibiting smoking, and neither include the office space of the self-employed with no employees. In perhaps a dozen cases during the last eight years, individuals have reported being bothered in their non-smoking Ottawa workplace by the tobacco smoke from the adjacent workplace of a self-employed/no employees smoker where the City cannot regulate. Although the number of cases is small, the frustration experienced by those involuntarily exposed to smoke is considerable, particularly when their own workplace is complying with the municipal by-law and would be smoke-free were it not for the smoking neighbour.

There is currently no remedy for that problem except the goodwill and voluntary abstinence of the smoker. The recommendation seeks from the Province an amendment to general legislation that would grant to municipalities the power to address the situation by way of regulation. Amendments to Provincial Acts take a considerable amount of time of course; a municipally-imposed solution should not be expected for some time to come.

Consultation

Methodology

In September, the Department mailed notice of the smoking by-law review and an invitation to comment on it to about 1600 restaurants, bars, billiard halls, bowling alleys and bingo halls in Ottawa. During the same month, it invited comment from the City's Business Improvement Areas, merchant groups and Community Associations.

To exchange information and receive comment, meetings were held with bingo hall operators and charity sponsor associations, with the Ontario Restaurant Association (Ottawa Chapter), with the By Ward Market Bar Association, and with a number of health-based organizations. To engage the general public (as patrons of public places) in the discussion, one widely advertised public meeting was hosted by the three cities and Regional Health in October; that meeting attracted about one hundred people with most of the speakers representing health organizations.

Intermittently thereafter, as possible courses of action were developed and required input, the Department consulted again with the Ontario Restaurant Association, and with individual business owners and operators who had expressed keen interest in the review from the outset.

The recommendations of the final report and notice of the Standing Committee meeting were mailed to about 1500 stakeholders including affected businesses, health groups, and members of the public who commented to staff during the review and whose names and

addresses were known to the Department.

Results

The Department received 30 comments from the general public: 65% urged smoke-free public places as soon as possible to protect their health and the health of their children; 35% opposed further government intervention, characterizing it as unnecessarily intrusive and an infringement on rights and freedom of choice.

On behalf of its 600 local restaurant and bar members, the Ontario Restaurant Association (Ottawa Chapter) expressed its opposition to strengthened regulations, preferring that the matter be considered by the new municipal government once it is in place.

The Department received 36 comments from individual business owners/operators representing about 60 businesses. Of those, 94% opposed further intervention by municipal government with the following constituting the most frequently expressed opinions: there should be no action taken until municipal restructuring is complete so that a level playing field across the Region is assured; adults should be free to choose where they want to work and play; the existing regulation is working well to satisfy all clientele; there are no complaints from customers - if there were, business would change to cater to the market; building designated smoking rooms is costly and cannot be accommodated by smaller restaurants which results in inequity; government should make smoking illegal instead of burdening businesses with smoking regulations; and there will be job losses as places that cater to smoking clientele are forced out of business. The remaining 6% of business respondents expressed support for strengthened regulations as long as sufficient enforcement resources are assigned to ensure compliance by all establishments.

Health advocacy groups, including the Ottawa-Carleton Council on Smoking and Health, the Canadian Cancer Society, Cancer Care Ontario (Eastern), Ottawa Regional Cancer Centre, the Lung Association, and Physicians for a Smoke-Free Canada support the strongest possible smoking regulations as soon as possible to protect workers and non-smoking patrons. Designated smoking rooms are generally opposed on the basis that smoke from those rooms will migrate into non-smoking areas as doors open and close to allow access and egress, and employees assigned to work in those rooms will not be protected from ETS.

Options and Analysis of Options

Alternative Recommendation to Departmental Recommendations 1 & 2

That no action be taken to strengthen Public Places By-law 123-92 until municipal restructuring is complete.

The majority of business respondents urged that no action be taken until the new City of Ottawa is in place, arguing that an essential level playing field across the Region will be assured once the new one-tier government establishes smoking regulation, and that in the meantime there is no point in the outgoing Ottawa Council approving a regulation the implementation date of which outlives the municipality that enacted it.

The Department has not made inaction its recommendation: the health issue and the arguments and positions of stakeholders will not change significantly between this organization and the next one; a strengthened Ottawa by-law will be the model and benchmark for the next municipal government as it harmonizes regulations across the Region.

Additional Recommendation Relating to Bars

Effective immediately and until January 1, 2002, no smoking in bars before 8:00 p.m. each day except that the proprietor may set aside a maximum of 30% of useable floor space as a smoking area.

As an alternative to permitting bars to set their own smoking policy between now and 2002, this recommendation would continue the maximum 30% smoking area (without physical barriers) that is the current requirement of the unamended by-law but only until 8:00 p.m. after which time each day the bar would be free to determine its own smoking policy. The recommendation offers some protection from ETS during the day (family/youth meal-taking) but recognizes that the same regulation imposed during evening hours, when adults attend to drink and socialize, is not meaningful in its effect.

The Department has not made this bar-related recommendation one of its own proposals for the same reasons that, in the body of the report, it has argued for the undoing of the 70% regulation generally: although the 30% maximum smoking area has been a requirement in bars for a number of years, compliance is poor and there are insufficient enforcement resources to implement a pro-active enforcement standard that would help ensure broad-based implementation and equitable treatment of all bars in Ottawa.

Disposition

Office of the City Solicitor to draft amending by-laws and to process them to City Council for approval.

Department of Urban Planning and Public Works to notify businesses affected.

List of Supporting Documentation

Document 1 Summary of Smoking Regulations

Part II - Supporting Documentation

Summary of Smoking Regulations

Document 1

	Regional Council Recommendations	Ottawa Existing	Ottawa Proposed	Toronto
Billiard Halls	• 10+ tables: smoke-free except in max. 90% DSR • 10 tables: max. 50% smoking - no barriers • 2 years' notice	• max. 50% smoking - no barriers	• smoke-free except in max. 30% DSR • January 2002	• smoke-free except in max. 25% DSR • June 2004
Bingo Halls	• smoke-free except in max. 90% DSR • 2 years' notice	• max. 50% smoking - no barriers	• smoke-free except in max. 70% DSR • January 2002	• smoke-free except in max. 25% DSR • June 2004
Bowling Alleys	• smoke-free except in DSR • max. size of DSR not specified • 2 years' notice	• max. 50% smoking - no barriers	• smoke-free except in max. 30% DSR • January 2002	• smoke-free except in max. 25% DSR • June 2001
Restaurants	• smoke-free except in max. 30% DSR • 2 years' notice	• max. 30% smoking - no barriers	• smoke-free except in max. 30% DSR • January 2002	• smoke-free except in max. 25% DSR • June 2001
Bars	• regulate as restaurants	• regulated as restaurants	• unregulated until 2002 • smoke-free daily to 8:00 p.m. except in max. 30% DSR January 2002 to January 2005 • smoke-free except in max. 30% DSR January 2005 • bar = 60% alcohol $$$	• smoke-free except in max. 25% DSR • June 2004 • bar = no minors

DSR = Designated Smoking Room to maximum % of useable floor space:

- ventilation at 30 litres of outdoor air per second per occupant (ASHRAE Standard 62-1989 for smoking lounge comfort)
- containment of ETS within smoking room
- exhaust to outdoors with no re-circulation to non-smoking areas