COUNCILLOR

CITY OF VANCOUVER
CANADA

10011

POLICY AND REGULATION
JUN 28 2000
DEVELOPMENT BUREAU

June 23, 2000

Policy & Regulatory Development Bureau
Workers' Compensation Board
P.O. Box 5350
Station Terminal
Vancouver, BC
V6B 5L5

Re: WCB Hearings on Proposed Amendments to ETS provisions of Occupational Health & Safety Regulations

As requested, I am attaching a copy of my presentation to the WCB on June 12, 2000 in support of the proposed amendments to the ETS Provisions of the Occupational Health & Safety Regulations. Also enclosed are copies of correspondence and telephone calls to me from the public regarding the smoking issue, which I referred to during my presentation.

Sincerely,

Lynne Kennedy
Councillor

CITY HALL • 453 WEST 12TH AVENUE • VANCOUVER, B.C. • V5Y 1V4 • PHONE 873-7273 • FAX 873-7750

Presentation to the WCB
Public Hearing on Proposed Amendments
to the ETS Provisions
of the Occupation Health and Safety Regulation
6/12/2000

Introduction

Good Morning. My name is Lynne Kennedy and I am a Councillor in the City of Vancouver, the largest city in the Province, which means the largest number of seats in hospitality establishments and possibly the largest number of workers who could be exposed to second hand smoke. I am also an executive member of the Union of British Columbia Municipalities, the body that represents approximately 180 cities, towns, villages, electoral areas and regional districts in this province. I am also a director of the Greater Vancouver Regional District and was the chair of the GVRHD health committee when the regional discussion on Municipal clean air bylaws began. You will be hearing from many heath professionals and others who work in this field. It is not my intent today to convince you about data you already know is correct. My plan today is to give you an overview of the municipal perspective.

Municipal Perspective

I would like to start by giving some background on what brought us to this discussion today but first I think we should be clear today about what our roles as local government are.

By following WCB regulations, local government has the ability to control safety in the workplace. Clearly our issue is not to try to usurp the provincial role in the control and regulation of tobacco products. Our regulations are not"anti-smoker" and are not intended to compromise legal rights. Rather, they simply regulate where one can smoke when smoking impacts on the rights and health of others.

Or following the maxim of one California smoking message which states "You have the right to kill yourself but not the right to kill others."

We now know that indoor exposure to second-hand smoke is a proven and avoidable health risk to all of us. The "us" includes the general public, especially children and particularly workers.

Two main areas of concern for municipalities are liability and accessibility. There is a growing body of evidence that businesses and employers (and that includes municipalities) who neglect to appropriately protect workers may be opening themselves up to liability for past and future health consequences . We know as municipalities, we have an obligation to remove hazardous substances. Look at how much we have all spent on asbestos removal. None of us would relish the idea of a class action suit because we did not act appropriately to put in place the needed legislation. While once these suits were only in the USA, it is not so any longer.

One wonders why the WCB could even consider a lower standard of protection for employees in the hospitality industry (which is what the bars are advocating), given that they are experiencing lung cancer rates 1.5 times higher that the rest of the workforce.

The adoption of second hand smoke regulations for indoor environments is quite similar to the adoption of "access for the disabled" regulations or policies at the local level that municipalities have had in place for some time now. Municipalities are familiar with making workplaces accessible for disabled persons. While in the past, we may have thought this meant wheelchair accessibility, we now have to turn our thoughts to those citizens who have respiratory disabilities such as asthma, emphysema, allergies and other respiratory diseases. A good percentage of our citizens that have respiratory disabilities are excluded from buildings where smoking is permitted.

If the WCB allows even a minimized level of ETS in a workplace, you will unfairly restrict access of workers with respiratory sensitivity or disability. Given your emphasis on protecting young workers, anything short of the proposed amendments will have direct negative impacts on the very group we need to protect - tomorrow's workforce.

History

About ten to fifteen years ago municipalities in the Lower Mainland, realizing that second hand smoke was a health hazard, began to take steps to regulate smoking in the workplace and public areas. Some of the early bylaws started with a 25% no-smoking area but many soon moved to 50% and more recently 80 and 100%.

Throughout the region there has always been an inconsistency in the application of local bylaws. Some municipalities moved faster than others and some moved in different directions. However, there has always been the recognition that coordinated legislation, regulation and enforcement is needed.

And it's needed between provincial, municipal and regional authorities to provide equitable protection from a province-wide health risk and to provide a "level playing field" for the hospitality industry. We've been good at moving the agenda forward. We just haven't been very good at moving forward together. That's why we were grateful to the WCB for giving us a common "bench mark".

Realizing the need for some consistency, the Metropolitan Board of Health of Greater Vancouver in 1994 encouraged us all to move to a 100% smoke free indoor environment. They suggested that we try to have a coordinated approach in the Lower Mainland.

In 1995 the Regional Medical Health officers approached us in our respective municipalities requesting support for the 100% no smoking bylaw initiative.

Following up on this, the the Chair of the GVRD requested input on proposed regional coordination which would promote regional harmonization.

There was consensus reached at our November 1995 GVRD Council of Councils that a regional approach could be the best way of resolving this issue. A task force consisting of one Council member from all of the GVRD's member municipalities was formed. At our May 1996 meeting, the task force took the position to unanimously endorse the 100% Smoke Free Indoor Air Bylaw Initiative which stated that: *as there is nearly unanimous consent from the majority of the municipalities of the GVRD, we urge all Councils to adopt a generic bylaw for the cessation of smoking in all public places by January 1, 2000.*

And then of course, we all went out and did our own thing. This left us open to attack from industry that we were not playing fairly.

We did however as local government take motions to UBCM in 1997 that had some effect. While we were waiting to debate these resolutions, the Worker's Compensation Board surprised us all by enacting new regulations for us to follow. This gave the whole province consistency.

UBCM Motions

A20 Vancouver - Workplace Exposure to Environmental Tobacco Smoke

THEREFORE BE IT RESOLVED that the UBCM work with the Works Compensation Board to implement regulations which will protect all workers in BC from exposure to Environmental Tobacco Smoke, including those workers in the food and beverage industry.

(84% support)

A21 Port Moody - Implementation of Provincial Smoking Regulations

THEREFORE BE IT RESOLVED that the UBCM petition the Ministry of Health of the Province of BC to implement legislation to enforce non-smoking in all public facilities to include restaurants, commercial establishments, all work spaces, adult oriented establishments (bars, pubs, cabarets, casinos, bingo halls) throughout the Province of BC.

(66% support)

Vancouver Experience

But now to the specific Vancouver experience. In the mid 80's, Vancouver was the first city in Canada to bring in restrictive measures which gave some respite to workers and we have continued to lead the way since then as we have gradually increased our percentages of protection. Starting in 1994, the City of Vancouver put in place a strategy and a timeline to achieve 100% smoke free workplaces. We brought in speakers such as the Executive Director of the San Luis Obispo Chamber of Commerce to hear the California experience. We polled and conducted surveys and we held several nights of public consultation, where over one hundred people came out to speak to us. All the while we were being bombarded with information from the smoking lobby which claimed dire economic consequences would result from the bylaw. We knew this was not the case from other jurisdictions.

California Experience

I was fortunate to be part of Fact finding mission the Ministry of Health sent to Sacramento and San Francisco to see first hand the California experience. Although many American cities have smoking regulations, California and British Columbia are the only

two North American jurisdictions to set province or state wide restrictions on smoking in all workplaces. On January 1, 1995, legislation made most California workplaces smoke-free, including restaurants. On January 1, 1998, these same provisions were extended to bars. We saw ourselves that it was not a failed experiment. Of course there are those who play on the edge but overall compliance has been remarkable. Apparently, US cities and resorts towns can fill their smoke free seats on a consistent basis without the added cost of air cleaning, higher fire insurance rates and potential health litigation and occupational health costs.

Opposition

It was become clear to us over the last six years, that the opposition has mostly come from a small group of establishments. Council would be foolish to set or modify healthy public policy in response to less than 5% of the industry. I sit on the Provincial Advisory Panel reviewing the upcoming changes to Liquor Licensing that are coming to us. Month after month I hear from the economic stakeholders that we live in a saturated market. There are too many places chasing too few dollars. There are too many establishments and too few customers for everyone to survive. Claims of economic loss are suspect given the other variables and environmental factors that influence the hospitality business. We have been told that business is very cyclical and often prone to failures. There is a significant turn over every year.

We have the added irony that many of the operators who are complaining about the loss of business are the very ones who are not complying --- so how could they be losing business - the very fact they are being fined means they have not been complying ..... so how could they be losing business due to the loss of smoking customers?

We are dealing with small group of malcontents, many of whom have never complied. The last protest group we had appear at City Hall on this issue was filled with people we recognized that had

never complied with the bylaw. Why were they there? We weren't sure. But what we did know is that they were the ones that were hurting their colleagues who were living up to the bylaw and protecting their workers. A real level playing field would be in place if they all complied.

Part of the industry is refusing to move to the future. They are fighting to protect their old customer base of a few smokers and are not cultivating the customer base of non-smokers that outnumbers smokers 3 to 1.

When the WCB regulations were put on hold Vancouver acted quickly to bring in our own bylaw to protect workers. Of course our local bylaws do not give us the power to levy the same type of fines that WCB can, so some businesses continue to flout the law, assuming our fines are just the cost of doing business.

The majority of the public likes this. The majority of workers like this. We know we have support from the stacks of letters, emails, voice mails and conversations that we are having with the public and establishment owners. Not everyone is opposed to these health regulations. The Restaurant Association of BC recently spoke out in support of the Vancouver bylaw amendments which largely mirrors what the WCB is proposing in your amended regulation. Council has received overwhelming support from the public and vocal support from businesses and employees alike.

We urge you to reinstate you original provisions of the occupation health and safety regulation to protect all workers. Before I close I would like to read into the record some examples of correspondence that we have received.

<u>Correspondence</u>
Steamworks
Casino Worker

Voice-mail messages to Cllr Lynne Kennedy
mid-April, 2000

1. Lynne, my name's Gil Melaney, and I live in the West End, and I just wanted to congratulate you guys for bringing in this non-smoking ban in the bars, because it was actulaly quite good there for a few weeks, and it shows you do have some guts. Anyway, thanks a lot - bye.

2. Hi Cllr Kennedy, it's Danielle LeDuc calling, I'm just a private citizen and I wanted to tell you how much I appreciate your work with the non-smoking bylaw - thanks.

3. Eli Gershkovitch, Steamworks Pub
(March 24/00) I wanted to let you know that at this point Steamworks is remaining non-smoking at the request of my staff, and if business doesn't drop we will continue the no-smoking policy. I also wanted to point out that traditionally profits always drop off after the Christmas and New Year's Season, and usually don't pick up again until the tourist seaason begins, so complaints about pubs etc. losing money purely because of the WCB smoking ban is not true. I would encourage you to bring forth a municipal bylaw that wll make it easier for us to maintain our no-smoking policy.

Lehto, Jacqueline

From: Stephen Hammond

Sent: Wednesday, March 29, 2000 10:54 PM

To:

Subject: Fuming but happy

I've been so upset about the WCB decision being struck down that I didn't take the time to ask for City Council to do it's part.

As per usual, I understand you were instrumental in this latest move by COV to get us smoke-free again. Looking forward to when it's back in place, if for no other selfish reason than I can go out to a bar again.

Keep up the good work. There are some things in life that are right and wrong. Saving the health of employees (and patrons) is just plain right.

Thanks again, Stephen.

Stephen Hammond

Sent: Wednesday, March 29, 2000 11:00 AM

Subject: Anti-Smoking Bylaw

ayor Owen & Councillors,

I encourage City Council to enact (or enforce if one is already in effect) as soon as possible the non smoking bylaw in Vancouver bars and pubs.

As a non smoker who patronizes the bars and spends money in these establishments I feel smoking is not an option. I have never found the ventilation systems effective and in the places that I frequented there has never been a section allocated to non-smokers.

I enjoyed the two months of smoke-free bars and therefore I find the overturning of the WCB ruling on a procedural matter and the return to the old situation especially repugnant. It makes little difference to me whether the regulations benefits employees (WCB) or the non smoking public as long as the underlying concern of legislators is the elimination of the health hazards caused by second hand smoke.

The precedents in banning smoking in movie theatres, airplanes, bingo halls and restaurants, etc. have not proven to be detrimental to business in the long run.

I thank you in advance for your actions and consideration.

David Stuart

Vancouver, V5T 1M5

From: Sidjak, Daria on behalf of City Clerk's Office
Sent: Friday, March 24, 2000 12:18 PM
To:
Subject: FW: Smoking ban

-----Original Message-----
From: Sidjak, Daria On Behalf Of City Clerk's Office
Sent: Friday, March 24, 2000 12:17 PM

Subject: RE: Smoking ban

Thank you for your email which has been forwarded for information to the Mayor, Councillors, City Manager, and Director of Environmental Health.

-----Original Message-----
From: Dave Roy
Sent: Friday, March 24, 2000 9:33 AM
To:
Subject: Smoking ban

Dear Council

I read in the Vancouver Sun that the city of Vancouver is considering applying the municipal smoking ban to bars and pubs.

This is good news indeed. The striking down of the WCB smoking ban was a blow to the health of workers everywhere, and I'm glad to hear that you are ready to fight back. The atmosphere in some of those places is so oppressive that it's no longer an option for me to visit them. I greatly enjoyed the almost three months of freedom I had to go to these places without being forced out by smoke.

If the pub owners fight you on this, you will have my support. At the very least, even if pubs and bars are exempted, I believe that casinos should be smoke free. In a pub, workers are moving around a lot. While it is still dangerous for them due to second-hand smoke, and I do feel that smoking should be banned in them as well, they at least have the option of leaving the work area temporarily.

Casino workers do not have that option. They are tied to their tables for 45 minutes to an hour with rude customers blowing smoke directly into their faces. It isn't even a matter of smoke permeating the air, it's direct inhalation by the workers. This has got to stop.

I applaud you in your efforts, and I hope you continue the fight.

Sincerely
David Roy

Hill, Debbie

From: Sidjak, Daria on behalf of City Clerk's Office
Sent: Friday, March 24, 2000 12:19 PM
To:
Subject: FW: Smoking Ban

#2

-----Original Message-----
From: Sidjak, Daria **On Behalf Of** City Clerk's Office
Sent: Friday, March 24, 2000 12:17 PM
To: 'John Malo'
Subject: RE: Smoking Ban

Thank you for your email which has been forwarded for information to the Mayor, Councillors, City Manager, and Director of Environmental Health.

-----Original Message-----
From: John Malo
Sent: Thursday, March 23, 2000 4:45 PM
To:
Subject: Smoking Ban

Mr. Mayor,
As more and more places go smoke free, it's unfortunate that a Supreme Court judge ruled that the hospitality industry needs more time and more consultation to find a 'compromise' or a 'ventilation alternative' solution to the problem of smoke in the workplace and smoke in a public place generally. Perhaps it's time for Council to implement a more complete ban with changes to the existing City By-Law that made most public places in BC smoke free. The business community wanted a 'level playing field', but the minute the WCB created one, they went to court to overturn it! As a person who was delighted with being able to go out and socialize without having someone smouldering away beside me, I ask you to consider changes to the By-Law to make all indoor spaces covered by city business licenses and health permits smoke free. Thank You
John Malo
Vancouver

Sidjak, Daria

From: Sidjak, Daria on behalf of City Clerk's Office
Sent: Wednesday, March 29, 2000 3:07 PM
To:
Subject: RE: SMOKING BYLAW

Thank you for your email which has been forwarded for information to the Mayor, Councillors, City Manager, and Director of Environmental Health.

-----Original Message-----
From: Irene Clarkson
Sent: Wednesday, March 29, 2000 2:59 PM
To:
Subject: SMOKING BYLAW

My congratulations to Mayor Philip Owen and all Councilors who voted to enact the revised "smoking" bylaw. After enjoying smoke free public places these past three months, I was disappointed to learn of the judges decision to overturn the WCB regulation. I have not been a smoker for 10 years and tolerated smokers while in restaurants, bars or lounges which permitted smoking. I now realize that I do not have to tolerate indoor smoking any more. Had you not revised your bylaw to include all public places, I was going to start "voting" with my finger and feet. In otherwords, I would call first to determine if the place allowed smoking and if they did, then my feet would take me elsewhere along with my wallet.

Anyway ... thank you for having the courage to protect the majority of us non-smokers from the stupidity of the minority.

Irene Clarkson

Sidjak, Daria

From: Sidjak, Daria on behalf of City Clerk's Office
`ent: Monday, April 03, 2000 9:52 AM
o: 'Marshall Norgan'
Subject: RE: Proposed Smoking Bylaw

Thank you for your email which has been forwarded for information to the Mayor, Councillors, City Manager, Chief Medical Officer, and Director of Environmental Health.

-----Original Message-----
From: Marshall Norgan
Sent: Monday, April 03, 2000 9:54 AM

Subject: Proposed Smoking Bylaw

I am becoming upset by the fact that I voted for the majority of this council and parks board. I thought I was voting for a reasonable and level headed group of people. Instead I've seen the Parks Board ram through a ridiculous plan to widen the Stanley Park Causeway and now this Smoking By-law proposal. I am a former smoker and certainly do not advocate smoking but I also choose to not drive and am a avid cyclist yet even though cars pollute far more then cigarettes I don't think I have the right to impose my views on the entire city! The market place will respond to consumer demand. This council is apparently oblivious to any world outside of their own sheltered little existence. Your agenda is offensive and I am greatly disappointed that I gave you my vote. I might as well have voted for some radical group that would impose MY agenda. No Smoking No Cars. Be reasonable and don't punish the businesses that pay such high taxes and suffer from such heavy draconian liquor licensing laws to further abuse. Your thinly veiled excuse that your protecting the worker is a joke. Your cutting their jobs! If your so concerned about the workers health you would e better off to outlaw the automobile rather then eliminating their jobs.

Marshall Norgan

Yuen, Louisa

From: City Clerk's Office
Sent: Monday, January 10, 2000 3:09 PM
To: Yuen, Louisa; Rogers, Judy; Mayor's Office (COV); Domenic Losito
Cc: Ulli Watkiss
Subject: FW: Smoke

From: City Clerk's Office
To: Russell Botten
Subject: RE: Smoke
Date: Monday, January 10, 2000 3:08PM

Thank you for your email which has been forwarded for information to the Mayor, Councillors, City Manager, and Director of Environmental Health.

From: Russell Botten

Subject: Smoke
Date: Monday, January 10, 2000 1:46PM

To Vancouver City Council:
There is talk of the government backing down on the smoking ban.
Please support the WCB smoking ban law and keep my workplaces (restaurants and bars) free of smoke! I don't want my health compromised!
Sincerely,
Russ Botten

Van. BC
V5T 2E3

Congratulations

MESSAGE:

Just wanted to send you a quick note in support of your recent stand on smoking in Bars and Pubs. It is about time and shows great vision! As a Bartender who has worked well over ten years behind a bar I welcome the decision to level the playing field. My quality of life has improved with this decison !!!
Thank You Soooooooo Much!!!

Phone:		
To: City Clerk		
From : Lionel King	Pages: 1	Date: 3/30/00

Vancouver BC V6H 4B9 Canada

Ian Bullen

Fax

To:	Mayor and Council	**From:**	Ian Bullen
Fax:		**Pages:**	1
Phone:		**Date:**	March 29, 2000
Re:	New Vancouver Smoking By-Law	**CC:**	

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

• **Comments:**

This morning I heard on the news that you are planning to enact a Vancouver By-law to ban smoking in certain establishments.

I was disappointed to learn of WCB's failure to complete the process of protecting our health in all areas of the province, but took heart when I learned of the initiative that you are taking to ensure that our health is protected.

Thank you for taking the long-term view and pushing for the largest net benefit to our health and finances over the next decades.

Sidjak, Daria

From: Sidjak, Daria on behalf of City Clerk's Office
Sent: Thursday, March 30, 2000 9:04 AM
To: 'Mika Sissonen'
Subject: RE: No-smoking bylaw

Thank you for your email which has been forwarded for information to the Mayor, Councillors, City Manager, and Director of Environmental Health.

-----Original Message-----
From: Mika Sissonen
Sent: Wednesday, March 29, 2000 10:50 PM

Subject: No-smoking bylaw

Thank you for voting to amend the no-smoking bylaw to include pubs and bars. I've worked in the food service industry and appreciate the fact that most Vancouver workers should now be able to work in a smoke-free environment.

Regards,
Mika Sissonen

Mika Sissonen

Sidjak, Daria

From: Sidjak, Daria on behalf of City Clerk's Office
Sent: Wednesday, March 29, 2000 11:31 AM
To: Debbie Hill; Judy Rogers; Mayor's Office
Cc: Watkiss, Ulli
Subject: FW: smoking bylaw - 3 Emails attached

----Original Message----
From: Sidjak, Daria On Behalf Of City Clerk's Office
Sent: Wednesday, March 29, 2000 11:24 AM
To: 'beth gunderson'
Subject: RE: smoking bylaw

Thank you for your email which has been forwarded for information to the Mayor, Councillors, City Manager, and Director of Environmental Health.

----Original Message----
From: beth gunderson
Sent: Wednesday, March 29, 2000 10:25 AM
To:
Subject: smoking bylaw

I just want to thank you all for acting so quickly to ban smoking in public places, I am a non smoker as of January 2000 and the wcb ban helped myself and many others to become healthier people.

I hope this works this time.

Beth Gunderson

----Original Message----
From: Dave Roy
Sent: Wednesday, March 29, 2000 10:50 AM
To:
Subject: Municipal smoking ban

Hello.

I wish to thank you for taking such swift action to extend the smoking ban in Vancouver to pubs and bars. I understand that it was not originally on the agenda, so I am glad that somebody brought it up. It is nice to see that somebody still cares about the workers instead of giving in to the killer smoking lobby.

I also wish to extend my appreciation to your Correspondence Clerk, Daria Sidjak, for her swift response to my two emails concerning this issue. I wrote many emails the day after the WCB ban was lifted, and Daria was the only one to respond, and she did so to both of my emails. It is nice to see that the stereotype of government workers does not extend to everybody. It is also nice to see that there are people in politics who will take quick action when it is necessary to protect the people in this city.

Thank you again, and I look forward to the municipal ban being imposed after the next council meeting.

Sincerely
David Roy