

Council for a **Tobacco-Free** Community
LONDON-MIDDLESEX

November 1, 2001

City Council
City of London

Dear Mayor, Board of Control and Councillors:

The members of the Council for a Tobacco Free Community, London and Middlesex (CTFC) By-law Subcommittee would like to respond to: the Smoking Control By-Law- "Bar" and "Restaurant" Definitions Recommendation submitted to Community and Protective Services by Mr. Blackwell, Commissioner of Legal Services and City Solicitor and; the Position Statement submitted by the London Licensed Restaurants Association to City Councillors.

Response to the Smoking Control By-Law- "Bar" and "Restaurant" Definitions Recommendation submitted to Community and Protective Services by Mr. Blackwell, Commissioner of Legal Services and City Solicitor.

The Council for Tobacco Free Community, London-Middlesex attended a meeting on Wednesday October 24th organized by Mr. Blackwell, City Solicitor. The intent of the meeting was to clarify the definitions of "bar" and "restaurant" as they are identified in the by-law. The meeting lasted one hour and included four separate interest groups. There was no consensus or agreement on either definition, merely a cursory sharing of ideas. There was no consensus with regards to developing a panel, who would sit on it, who would pay for it and how a non-binding arbitration would work.

We were shocked to see that solicitor's submission on the bar-restaurant definitions to CAPS changed the agreed upon meaning of the definition that was developed in 1995 by the Ontario Restaurant Association, the City Solicitor's department and the Council for Tobacco Free Community to reflect that a bar can exist in a restaurant. The agreement between the two parties in 1995 was that in January 2002 bars could no longer exist in restaurants. We were reassured in 1995 that the City Solicitor's department had written it to reflect our agreement.

The restaurant owners also understood that to be the agreement. "On January 1st, 2002, the final stage of London's smoking bylaw will take effect. This stage will forbid London restaurants with bars from having even the smallest smoking section-not even in the bar area." (London Licensed Restaurant Association, October 2001, Submission to City Council)

Randy Mills, a volunteer with our Council for Tobacco Free Communities, took the initiative to review the wording of the by-law and wrote a response to Mr. Blackwell expressing his analysis of the current by-law to reflect that a bar cannot exist in a restaurant in January 2002.

See Appendix A- Mr. Mill's letter to Mr. Blackwell

Response to London Licensed Restaurants Association Position Statement

Our Council for a Tobacco Free Community supports smoke free places because we are concerned with protecting the health of the citizens of London. There is a large amount of research showing the negative health effects of smoking and exposure to environmental tobacco smoke (E.T.S.):

- Adults: heart disease, lung, breast and cervical cancer, respiratory diseases such as asthma, chronic obstructive lung disease, miscarriages
- Children: Sudden Infant Death Syndrome, low birth-weight, ear infection, asthma exacerbation, bronchitis, pneumonia

(Physicians for a Smoke-Free Canada, April 2001)

We have been involved with the City of London Smoking Control By-law development since 1993. In reviewing the submission from the London Licensed Restaurants Association (LLRA) we were concerned that information in the Position Statement is incomplete or misleading and that added information was required for Council to make an informed decision on this important issue. We have italicized the issues shared with you in the LLRA report and followed it with research and added information.

1. *“If Council allows the by-law to stand as is, it would deliver a serious financial blow to many small businesses in this city and could conceivably result in the closure of a large number of licensed restaurants”*

What scientific based research is this comment based on? The Region of Kitchener-Waterloo implemented their 100% smokefree by-law for bars and restaurants in January 2000 and nearly two years later it is still in place. When the by-law was put in place, we heard that 30 establishments had closed. In almost all cases, there were other factors not related to the bylaw that contributed to their closing. Not one of those establishments that closed could prove that the by-law was a factor in closing.

The Region of Kitchener- Waterloo was sued by 150 owners/companies for 106 million dollars for economic loss. In court not one establishment could or would provide any information to substantiate any financial hardship. In fact, in only one occasion the financial statement was requested. When the financial statement was submitted as evidence in court, the statements indicated a loss in the first three months in 1999 and a significant profit in the first three months of 2000 when the bylaw started.

Since the bylaw was implemented in Waterloo there has been an increase in the number of restaurant establishments. (Correspondence from Brian Hatton, Director Environmental Health, Regional Municipality of Waterloo October, 2001)

2. Cost of enforcement in the Kitchener Waterloo area is ridiculous

All enforcement costs money. The enforcement for Kitchener-Waterloo began with 6 enforcement officers and within a year and a half is down to 2.5 tobacco enforcement officers (presentation by Brian Hatton September 2001).

Once the by-law is in place it is self enforcing as the public expects business owners to uphold their end of the bargain in providing a smoke-free environment.

The cost of enforcement needs to be balanced with the health costs:

- There are 12,000 annual deaths from all diseases caused by tobacco use in Ontario, compared to 3,000 annual deaths from traffic accidents, suicides, homicide and AIDS combined. (Ontario Campaign for Action on Tobacco website)
- Food service workers have a 50% higher rate of lung cancer than the general population (The Economic Impact of Smoke-Free Workplaces: An Assessment of Nova Scotia. September, 2001)
- Direct health care and other economic costs of tobacco use in Ontario have been estimated at \$3.7 billion per year. This compares with social and economic costs of illicit drug use in Ontario of \$0.5 billion/year. In contrast, provincial revenue from tobacco taxation in 1998-99 was approximately \$475 million. (Ontario Campaign for Action on Tobacco website)
- According to Health Canada, smoking is the number one preventable cause of death in Canada and second hand smoking is the Number three preventable cause of death (www.hc-sc.gc.ca/healthpromotion).

3. Hamilton's smoking by-law subcommittee voted to unanimously to relax the legislation that was proposed to their City Council in September 2001.

Currently there hasn't been a submission to Hamilton City Council with regards to the Smoking By-law. A subcommittee has been struck consisting of 4 councillors to look at tobacco by-law development. This committee, their interagency by-law committee and the health unit will be submitting recommendations to Council with regards to the by-law. No dates have been set as of yet. Hamilton is looking at an all-inclusive by-law for restaurants, bars, bingo halls, billiard establishments, bowling alleys and all workplaces.

4. Tobacco is a legal product

Tobacco is a legal product, but just like many other products such as alcohol, there are regulations that affect its use to help protect the health of people.

5. *“Licensed restaurants are significantly different from the local family eatery or fast food chains and require separate treatment under the law.”*

The concern for the health of staff and patrons should not differ related to where they work or eat. Food service workers have 50% higher rate of lung cancer. Do these employees know and understand the unhealthy conditions they are working in?

This concept also creates an unlevel playing field for restaurant operators and creates unnecessary problems with enforcement. This also poses restrictions on the patrons who prefer to dine in a smoke-free restaurant that serves alcohol. Swiss Chalet is an example of a licensed family restaurant that has gone smoke free and remain a viable business.

When looking at history, we must remember that in the 1970's it was a crisis that movie theatres went nonsmoking. Twenty plus years later they are still in business. In the late 1980's and early 90's airlines went smoke free. Ten years later they are still in business and we now expect them to be smokefree. Passengers who smoke actually use the airlines and last on seven to eight hour plane rides. Compare that to a 30 minute to 3 hour meal. Fortunately for restaurant patrons, they can step outside to smoke where as on a plane, that is not a good idea.

We must also remember that Waterloo's by-law has been in place for a year and a half and the inspection staff dealing with it is less than half the staffing level is less than half of what it was in the beginning. Also, there has not been one news article in their paper about the smoking by-law for 6 months (Staff at the Kitchener-Waterloo Record) which demonstrates media and community acceptance of smoking restrictions.

6. *The bylaw is an obstacle for the revitalization of the downtown core.*

Since no businesses in Kitchener-Waterloo could demonstrate economic hardship in court after the smoke free by-law was implemented, we can assume that because both our cities include a university and college, are a similar size and climate that a similar economic experience should occur in London.

This should not be an obstacle to the revitalization of the downtown core, especially since roughly 75% of adults in London do not smoke. The restaurant owners and operators could focus their marketing and business plans to cater to 75% of the adult market rather than the 25% minority. They have had 5 years to change their business and marketing plans, prepare staff and patrons to get ready for the by-law

British Columbia is in the process of implementing a province-wide smoking ban effective April 2002. On January 1, 2000 the Workers Compensation Board of British Columbia (WCB) extended its workplace smoking restriction to all hospitality, public entertainment and long-term facilities in the province. These facilities included all stand-alone and hotel-based restaurants, pubs and cabarets, as well as bingo halls and the like. The smoking restrictions were in effect for just over two-and-one half months. On March 22, 2000 Justice Stromberg-Stein ruled that the WCB had not consulted stakeholders

sufficiently and overturned the extension of the regulation to both undertake proper consultation. As part of its review of the issue, WCB retained Pacific Analytics Inc to provide a report on what economic impacts the proposed amendment would have on hospitality businesses. The study was designed to answer the question: did the introduction of the WCB smoking restrictions between January 1, 2000 and March 22, 2000 impact hospitality businesses in a measurable way. The conclusion in the study stated: “The over-riding conclusion of this study is that the introduction of the proposed WCB amendment would likely have some negative short-term impacts. However, in the longer term, no measurable impact on either employment or sales would be likely.”

In the summer of 2001, *Toronto* restaurants went smoke-free. The Toronto bylaw was interrupted and amended in 1997 due to an outcry from the vocal minority of restaurants and bar owner/operators. Toronto City Council amended its precedent-setting anti-smoking bylaw to allow for a small increment of unenclosed smoking and larger separately ventilated smoking areas. Among the allegations made prior to the bylaw’s amendment by the restaurant industry were statements to the effect that beer sales had dropped in the City of Toronto by comparison with other areas of Metro Toronto in the month of March (the bylaws first month of operation). In fact when figures were reviewed back to January 1997, the 6% drop in March was seen compared to a 7% drop in January. When restaurateurs were asked how they could account for a larger drop in a month, which preceded the bylaw’s implementation compared to the bylaws first month of operation, they replied that January is a winter month. Restaurateurs had no response when it was pointed out that March is also a winter month.

Sales tax data for *15 cities* with smoke-free ordinances in *United States* showed that smoke-free ordinances do not adversely affect either restaurant or bar sales (American Journal of Public Health 87 (10), 1997. “The effect of ordinances requiring smoke-free restaurants and bars on revenues: a follow-up” Glantz et al.)

7. Ventilation option

Expert assessments, empirical evidence, risk assessment procedures, and internationally accepted indoor air quality a ventilation standards have determined that ventilation and non-smoking sections do not remove the toxic components of tobacco smoke from the air. There are no safe levels of environmental tobacco smoke in the air. (The Economic Impact of Smoke-Free Workplaces: An Assessment of Nova Scotia. September, 2001)

An example of a recent attempt in London related to state of the art ventilation is the Casino in London. To determine the effectiveness of this system “all you have to do is go in and sniff”.

See Appendix B “**Ventilation**”

8. Bars and restaurants to have a smoke free dining hour and become smoking at night.
Smoke and carcinogens stay in the air and the particles from carcinogens stick to furniture, curtains etc. so will still be in the room for patrons to inhale and absorb, when

they are there during the nonsmoking (not smoke-free) time. This does not deal with the health issue which is the purpose for restaurants becoming smoke free.

The Council for Tobacco Free Community asks that you support the current by-law based on the 1995 agreement in order to protect the health of the workers in our restaurants and the citizens of London. The CTFC urges London City Council to continue on the evolutionary path that was set out when the Council of the day passed this By-law in 1995. The agreement was that restaurants and bars would be separate establishments, so that restaurants would be smokefree and bars would still allow smoking. A bar that allows smoking cannot exist within a restaurant. Do not take backward steps toward the days of smoke filled theatres, buses, trains, and workplaces that was the norm a few short years ago. But rather take this opportunity to add restaurants to the growing list of smoke-free spaces. In 1995 London was a leader in protecting its citizens from unwanted exposure to ETS. Now many municipalities have surpassed us. Let's not widen the gap in the negative direction and honour the agreement that was originally struck between the Ontario Restaurant Association and the Council for Tobacco Free Community, London-Middlesex.

Sincerely

Janet McAllister
Council for Tobacco Free Community, London-Middlesex
By-law Subcommittee

Appendix B

There is no national, provincial or state agency, or independent research body, which has specified either a safe level of exposure to second-hand smoke, or ventilation technology which is capable of creating smoke-free air where smoking is permitted indoors. The U.S. National Institute for Occupational Health and Safety (NIOSH) specifies that "the most direct and effective method of eliminating second-hand smoke from the workplace is to eliminate smoking in the workplace."

A May 2001 report from the University of Toronto's Ontario Tobacco Research Unit (OTRU) concludes that ventilation systems do not protect against the cancer-causing effects of second-hand smoke, and actually contravene current provincial occupational health and safety legislation. The authors point to the American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHRAE), the world's leading ventilation rate standard-setting agency, which no longer accepts ventilation for tobacco-contaminated air, but only for smoke-free buildings.

The Tobacco Research Unit's Director, Dr. Roberta Ferrence, has pointed out that the most advanced ventilation techniques can reduce environmental tobacco smoke by up to 90%, but even with this drastic reduction, the remaining 10% is still 2000 times greater than what would be considered acceptable. Dr. Ferrence has also noted that any cleaning staff or other employees entering a designated room after a smoker has gone, would be still be exposed to toxic contaminants lingering in the air, a situation in clear violation of provincial health and safety legislation.

*The OTRU report was published partly in response to ongoing lobbying efforts by the Ontario Restaurant Motel and Hotel Association during the past 3 years to promote a ventilation-based approach to the second-hand smoke problem. The ORHMA's campaign has centred around a demonstration project at the Black Dog Pub in Scarborough, Ontario. A ventilation system was installed at this facility, and the Association claimed that it would produce the equivalent of air in non-smoking buildings. The Association brought results of its demonstration forward to Toronto City Council in June 1999 with a request to approve this technology as a compliance option under the City's bylaw. Council responded by asking Health Canada to independently test the Association's results, a procedure with which the Association agreed.

In a March 17, 2000 memorandum, Health Canada Assistant Deputy Minister Ian Potter stated that Health Canada would not test the system, and pointed out in part that "the problem with ventilation as an exposure reduction strategy is that is exposure, even if the system is operating at maximum efficiency, is never zero. In other words, in the best case scenario, there is an explicit acceptance of some level of exposure to non-smokers. In the worst case scenario, where the ventilation system is never maintained and becomes inoperative, exposure of non-smokers to tobacco smoke is maximized... Since no ventilation system will protect everybody, and might even delude non-smokers into a false sense of protection, it is concluded that such systems are not as good a total ban."

The ORHMA responded to this refusal by concluding an agreement with an American scientist to prepare an article based on the results of the Black Dog demonstration, and by finding a journal in which to publish this article. The Association announced publication of the article in May of this year, and once again claimed that the City of Toronto should adopt ventilation as a compliance option. Following a review of the credentials of the article's author and the journal, The Ontario Tobacco Research Unit and provincial health charities discovered the following:

The study was funded by the Hotel Association of Canada, an organization which has received at least \$3 million from the Canadian tobacco industry to promote a ventilation-based program called "Courtesy of Choice". In fact, ventilation has long been advocated by the tobacco industry in Canada and elsewhere as a "solution" to the health effects caused by second-hand smoke exposure. As the tobacco industry's statements about the health effects of first-hand or second-hand smoke exposure have no credibility, an organization which agrees to be supported by the industry to promote approaches like ventilation, should not itself be considered credible.

It was also discovered that the lead author of the ORHMA's article, Roger Jenkins, has completed research for the tobacco industry on second-hand smoke on numerous occasions. Indeed, Mr. Jenkins' relationship with the U.S. tobacco industry is close enough that Dade County Circuit Judge Robert P. Kaye barred Mr. Jenkins from testifying about his second-hand smoke studies in a 1996 lawsuit brought against the tobacco industry by Florida flight attendants, on the grounds that the tobacco industry's assistance with his field work and lab analysis made the research suspect. I would be please to supply you with more information on this matter upon request.

It is also been discovered that the journal which the article was published, Regulatory Toxicology and Pharmacology, is funded in part by the tobacco company RJ Reynolds. One of the journal's lead editors is Gio Gori, an American scientist whose ties to the U.S. tobacco industry are also well-documented.

We are providing this detailed account of the relationship between the Ontario Restaurant, Hotel and Motel Association's ventilation strategy and the tobacco industry, because it is our experience that the Association continues to vigorously promote the Black Dog Pub demonstration approach, and that it is likely that this approach will be referenced in the upcoming Friday meeting.

In addition to the suspect credibility of the Canadian hospitality industry concerning ventilation, there are a number of practical reasons which have been identified by researchers, which make successful application of ventilation to address the second-hand smoke issue implausible. To begin with, airflow systems in buildings usually promote air mixing, both within and between rooms. Segregation of airflow within rooms and spaces of public buildings is not advanced to the point where protection of non-smokers from second-hand smoke can be guaranteed. As well, commercial kitchen exhaust systems can offset the effect of other airflow systems, and air turbulence within rooms, especially

when staff and patrons are moving about, strongly promotes air mixing. Indoor air movements change with seasons and with the number of people in premises.

Even if some form of airflow separation were plausible, much research, design, laboratory testing, field trials and demonstration programs would be necessary in order to establish confidence that such systems would work properly. Adequate training of builders, tradespersons, and inspectors would also be needed. Finally, any system which could entirely separate air flow within indoor premises would be complex in its set-up, operation, and cleaning. Maintenance protocols would have to be developed so business operators would know how to keep the systems functioning at optimum efficiency: otherwise, their purpose would be defeated. And last but not least, there is the matter of cost, which for the type of system which could potentially eliminate exposure of workers and non-smokers, would be very significant.

The Council for Tobacco Free Community supports the elimination of exposure to second-hand smoke is the only effective means of addressing this serious health problem. To accept the hospitality industry's promotion of ventilation is to accept a strategy which has its origins with the tobacco industry and which, according to the province's leading researchers, cannot effectively address this serious public health problem.