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## CITY OF KELOWNA

# MEMORANDUM

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**Date:** March 6, 2002  
**File No.:** Bylaw No. 5980-86  
**To:** City Manager  
**From:** City Clerk  
**Subject:** Smoking Regulations

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### **Recommendation:**

THAT the City of Kelowna continue to lobby both the Provincial and Federal Governments to have them enact legislation with the ultimate goal of having a 100% smoking ban in public areas and workplaces;

AND THAT the City urge the Central Okanagan Regional District, the District of Lake Country, and the District of Peachland to do the same.

### **Background:**

The City of Kelowna's Clean Indoor air and Smoking Regulation Bylaw No. 5980-86 underwent a comprehensive review in 1996, by the 1996 Clean Indoor Air Bylaw Review Task Force. The Task Force consisted of five representatives of the local hospitality industry, of five representatives from the health fields, and two representatives of the Chamber of Commerce. After a very lengthy process, a number of recommendations with regard to technical aspects of the Bylaw were made, as well as recommendations that the City urge senior levels of government to enact legislation banning smoking in public places, which would apply equally to all jurisdictions. In 1997 Council adopted those recommendations, and the Bylaw was amended accordingly.

On May 1, 2002, new provincial regulations restricting smoking in any workplace (the "WCB Regulations") will come into force. City Council recently directed staff to review the Bylaw once again, in light of the new WCB Regulations, and bring forward a recommendation considering enhancement of the Bylaw requirements.

### **Recent Consultation with Members of the 1996 Task Force:**

Over recent weeks, the City Clerk's Office has attempted to contact each of the members of the 1996 Clean Indoor Air Bylaw Review Task Force to inform them that a recommendation was being prepared for Council regarding the new WCB Regulations and any effect on Bylaw No. 5980-86. Each of them was reminded of 1996 recommendation of the Task Force, and the new WCB Regulations, and was asked to provide their comments. The general positions of the individual members have not changed since the extensive review conducted in 1996/97.

### **Provincial vs. Local Regulation of Smoking:**

There is no legal requirement for the provisions of Bylaw No. 5980-86 to meet or exceed the provisions in the new WCB Regulations. In general, where enabling legislation permits, a local

government may legislate in an area that is also regulated by the Province, so long as compliance with the local legislation does not require a person to violate the provincial regulations. In other words, in the case of regulating smoking in places or buildings open to the public in British Columbia, a local government may choose to not regulate, to regulate to a lesser degree than the Province, to regulate to the same degree, or to regulate to a greater degree. Which of these paths a particular local government chooses is entirely a policy decision of its governing body.

To date, very few local governments have chosen to regulate to a greater degree than the Province, most notably, the City of Vancouver, and the Capital Regional District. Both of these jurisdictions have chosen to prohibit smoking in all publicly accessible places (including bars, restaurants, and other eating establishments). The applicable bylaws have been in effect for some time, previous to the consideration by the Province of a similar ban.

### **Summary:**

At the moment, with the existing Bylaw No. 5980-86 in place, employers in Kelowna will be faced with compliance with the new WCB Regulations, as of May 1, 2002.

If Council were to amend its Bylaw to a level of concurrence with those Regulations, or if Council were to amend its Bylaw to restrict smoking to a greater extent than the Regulations, additional demands would be placed on the City's bylaw enforcement resources in order to enforce the restrictions. As always, actual enforcement levels are affected by priorities set by Council, either directly or indirectly, through, for example, budgetary decisions. The Planning & Development Services Department has advised that present bylaw enforcement resources would NOT be sufficient to enforce any increased regulation by the City through an amendment to Bylaw No. 5980-86.

As a result, staff are recommending that, rather than amend or enact new local restrictions on smoking, the City continue to lobby senior levels of government to have them enact legislation with the ultimate goal of a 100% smoking ban in public areas and work places, which would apply equally to all local jurisdictions. In addition, it is recommended that other local governments in the Central Okanagan be urged to do the same.

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D.L. Shipclark  
City Clerk

cc: Director of Planning & Development Services  
Bylaw Enforcement Supervisor