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TO BROEN / MCDONALD P.02/05

Toronto

MEMORANDUM

TO: David Small

FROM: Susan Walsh

DATE: April 8, 1997

RE: UPDATE ON TORONTO SMOKING BAN

Copy

ADD: [unclear]

in [unclear]

M. Walsh

J. [unclear]

Yesterday, the Economic Development Committee of Toronto City Council met to consider a "request for a report on the anticipated economic impact of the City of Toronto By-law regulating smoking in restaurants." The Committee, is comprised of 10 Councillors and 10 members of the public. There were a number of Councillors who are not on the committee who were also sitting in on the meeting -- including Peter Tabbuns. About 130 deputations were made to the Committee, primarily by restaurant owners a few by staff and a few by anti-smoking groups.

The most notable presentations presentation by anti-smoking groups included: Dr. Michael Cummings, Roswell Park Cancer Institute, Department of Cancer Control; Michael Krashinsky, and economics prof from U of T; Garfield Mahood; and, Michael Pearly. Along with about 80-100 restaurateurs, the key presentations for the food service industry included Ken Baxter, Chair of the Ontario Restaurant Association (ORA) and owner of the Fish House Restaurant; Fred Luck, Past Chair of ORA; Rod Seiling of the Ontario Hotel and Motel Association; and Paul Clifford, President-Administrator of the Hotel Employees Restaurant Employees Union Local '75.

Dr. Cummings started the meeting with a comparison between the New York City by-law and Toronto. His hypothesis was that the doom and gloom predictions of New York had been unfounded as he claimed a study using sales tax receipts showed taxable sales up by 6%, hotel sales up by 11.2% and new restaurant permit applications increased. He stated the New York media had predicted non-compliance and referred to a survey that found that 87% of the restaurateurs polled supported the by-law or didn't care. He also said that random unannounced visits had shown that restaurants were complying with the law.

Under questioning by Councillor Steve Ellis, Cummings admitted that in New York the by-law extends across all 5 boroughs and includes extensive exemptions. He also admitted that his survey sample included visits to 350 restaurants and calls to 500 out of a total of 15,000 licensed establishments.

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One of the key points made by Cummings was that any study of economic impact would require a lag time of a least one year after the implementations of the by-law. This point was stressed by Michael Krashinsky who stated that it was too early to tell the impact in Toronto. He also said that Council should be suspicious of anecdotal reports. Tabbuns asked him if he had looked at the ORA economic impact study and he said that it had "problematic techniques" because people who smoke had said that they would stop visiting restaurants by a greater frequency than the original number of visits.

Dr. Krashinsky was followed by Ken Baxter on behalf of the ORA said that he would be willing to accept the New York City by-law. The first part of Mr. Baxter's presentation focused on what Mr. Pearly would say later, anticipating that Pearly would table information about Long Beach and asking the committee to ask Pearly about previous examples that did not turn out to be 100% bans like Toronto.

Mr. Baxter tabled information from Coca Cola showing a 16% drop in sales to food service establishments with the bag in the box syrup having dropped 20% since the ban. He also had a letter from Brewers' Retail stating that sales are up slightly in East York, Massasauga and Scarborough but have dropped by 6% in Toronto since the ban. He also presented a report by KPMG that shows that for every 10% loss in sales in the food service industry, 1.5 jobs are lost. He also noted that his sales have dropped 12.75% comparing March '97 to March '96.

Tabbuns asked Mr. Baxter if ORA would support the New York City model with exemptions for restaurants under 35 seats and for bar areas etc and Baxter said that he could sell it. After some questions by Councillor Tabbuns on how Mr. Baxter would define a bar, which Mr. Baxter would not answer, Mr. Baxter stated that ORA's position is 75/25 non-smoking to smoking split with adoption of ASHRAE standards. Tabbuns asked about cost and Baxter said he didn't know.

Garfield Mahood's presentation was notable in two respects: first, he said that he would be willing to table his audited statement for his organization and questioned where the ORA receives its funding and second, he quoted a BC economist who said that if money is not being spent in restaurants it will be spent elsewhere like hairdressing salons. In response to the first accusation, Fred Luk, Past Chair of the ORA tabled their '96 financial statement and called for a retraction by Mahood, Pearly and Tabbuns. In response to the second statement, a restaurateur later pointed out that if food service workers lose their jobs, they will not have any money to spend in hairdressers or any where else.

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Rod Seiling of the Ontario Hotel and Motel Association stated that the economic impact in the hotel industry has been a 12-15% drop in food sales. He spoke about the impact on tourism and then presented Courtesy of Choice as a solution. He noted that there are pilots in the Toronto area and invited Councillors to tour the Toronto Hilton hotel. (In a later conversation with Rod, I made sure that he understands that a tour won't work unless we have CSS representatives on hand to do a demonstration.)

Michael Pearly tabled a report by Glance & Smith that examined the impact of smoke bans on a number of places where the ordinance has been in place for one year and compares these locations to similar cities without a ban. He also said that other studies can't be trusted -- he noted that the ORA tabled a study about job losses in New York last summer that had been funded by a tobacco company. He also spoke about a past President of the Beverly Hills Restaurant Association who later came forward and claimed that they had been funded by the tobacco companies.

Mr. Pearly did not respond to anything said by Mr. Baxter, he did not table information on Long Beach California nor did he respond to Mr. Luk's presentation by tabling an audited statement for his organization and/or apologizing to ORA.

Paul Clifford, the new President of the Hotel Employees Restaurant Employees Union (HERE), Local 75 stated that they have over 7,000 members working in the hospitality industry, most of whom are in Toronto. He stated that this by-law does not work and "it is killing our workers not less than second hand smoke." He said that second hand smoke is a hazard that should be minimized but that he is getting reports of between 20 and 50% drop in income for tipped employees. He also noted that workers must not be the enforcers of the by-law and that they are caught between two bosses -- the owners and the customers who provide their salary. He said that Council must turn their attention to air quality and that workers need to be able to choose whether or not to work in a smoking section.

He was asked if HERE would be willing to participate in a task force if one were set up and Clifford agreed. Barbara Hall asked if he had thought about changes to the by-law and he stated that they need to look at returning to smoking and non-smoking sections but look at air quality.

The overwhelming message delivered by restaurant after restaurant was that sales are down and staff are being laid off. Many restaurants and bars tabled financial statements for March '97 compared to March '96 showing their sales have declined by as much as 35% (an often quoted number for bars). Coffee Time Donuts tabled records from their Toronto stores showing revenue down by 13.88% across the city and Coffee Time announced that they had closed one restaurant and are laying off staff. They said that if the by-law continues, they would close more stores.

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Direction of Council:

It became clear that Councillors heard the message that the restaurant industry can not wait 6 months for an impact study and that jobs are being lost now. Tom Jacobek and Chris Korwin Kosinski and Steve Ellis said that the Council had just witnessed the economic impact study through the figures tabled by individual restaurants. Peter Tabbuns (through Dan Lecke) tried to put forward a motion to undertake an economic impact study which was defeated by the committee because it would send a message to Council that it's OK to wait for a solution.

Steve Ellis put forward a successful motion to have staff prepare an economic impact study based on the information received through deputations and submissions prior to the April 14th Council meeting.

Barbara Hall's questions focused on how many seats an establishment had and what their liquor to food sales ration was. Tabbuns also asked similar questions -- clearly showing that they would consider the New York model as a compromise.

Jacobek recognized the mayors direction and started asking restaurateurs late in the day if they supported an exemption for restaurants under 35 seats or if this would make matters worse. Restaurants who would be able to get an exemption (due to seats or by having a bar area) said that they don't want to see the by-law made even more confusing.

While there are 9 votes to over-turn the by-law, the problem next week will be a lack of consensus on how to amend the by-law. Steve Ellis stated that he will move to rescind the by-law and return to 50/50 while a working group including all key stakeholder groups get together to work on air quality solutions. He also said that he would put forward another motion that he had suggested in the past that would grandfather all restaurants in business prior to March 3, 1997 and have them return to 50/50 while new establishments have to live by the current by-law.

Korwin Kosinski said that he personally supports a 60/40 split with signs in the windows. He said that he will put forward a motion to have the by-law re-opened, return to the old by-law and re-work it (this differs from Ellis' by-law slightly but I can't remember how).

Committee member John Combs asked Chair Mario Sylva to put forward a motion on his behalf to have the by-law rescinded while an in-depth study is conducted and another committee members asked Sylva to put forward a similar amendment but to keep the current by-law in place until a study is completed.

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Action Required:

In order to create a consensus around a common solution, it is important to move Mayor Barbara Hall towards a ventilation solution and away from the New York City model. This can best be accomplished by Paul Clifford of HERE (particularly as an exemption for restaurants under 35 seats harms his members more than helps). I am encouraging ORA Paul Oliver (who returns today from out of town) and Rod Seiling (who called me this morning) to meet with Clifford as soon as possible. Having spoken briefly with Clifford after his presentation, I know that he is aware of Courtesy of Choice and believes it might present a solution.

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