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Smoking ban will kick in Jan. 1 Business owners plan legal battle

Emma Poole and Tony Seskus, with files from Gwendolyn Richards, Calgary Herald

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Calgary aldermen are bracing for legal challenges after voting overwhelmingly Tuesday to move up the date of the city's smoking ban to Jan. 1.

After a passionate debate that ran over two days, aldermen voted 11-4 to impose Calgary's public smoking ban a year earlier than planned.

The decision outraged bar and restaurant owners, who are vowing to fight the decision.

"You can expect that we are going to challenge it," said Mike Joseph, president of the Calgary Pub and Bar Association and vice-president of Penny Lane Entertainment, which owns several downtown nightclubs, bars and restaurants.

"I think it's a slap in the face to Calgary businesses," Joseph added. "It took a bit of wind out of our sails."

An exception to the revised bylaw allows establishments that have already built ventilated smoking rooms to continue offering a smoking environment in 2007. Bingos and casinos were also given a one-year reprieve.

However, a bid by Ald. Ric McIver to allow smoking on patios failed.

All businesses, including bingos and casinos, will have to abide by the bylaw beginning in 2008.

Ald. Diane Colley-Urquhart, who had fought for a full ban in 2007, said Tuesday's vote was a victory for Calgarians.

"I would like it truly to be a smoke-free Calgary. We're 90 per cent there," she said.

Colley-Urquhart expects bar owners will try to challenge the fairness of the bylaw.

"I think what they'll have to weigh is that they'd have to go this route one way or another in 2008," she said.

"Whether or not they challenge us, it could take them a year to do that. They may feel out of principle that they have to do that."

After a long battle for anti-smoking activists, Tuesday was a day to celebrate.

"A majority of Calgary will be smoke-free starting in 2007 and I'm ecstatic and I know the thousands of people who signed my petition are also ecstatic," Robyn Hauck told reporters following the decisive vote.

"This is a good compromise. It's a good way to satisfy public opinion in Calgary."

But bar owners believe the bylaw is anything but fair.

"We weren't consulted with the changes," said Joseph. "We thought we could find a solution for everybody."

Smoker Ondrej Pittner said business will suffer from the city's decision and he chastised council for "telling you how to live."

"It should be up to the establishment to decide if they want to be smoking or non," agreed smoker Nick Annable.

But others praised council for getting bar patrons to butt out sooner.

Barley Mill Eau Claire server Brianna Keating was happy to hear of the decision and said she doesn't believe it will affect business.

"Everyone is going to be on a level playing field," she said.

Andrea Kingissepp said even though she smokes, she is pleased.

"It's much nicer to eat food, drink and socialize in a non-smoking environment," she said.

But her non-smoking sister Saara said council should have adjusted the bylaw to allow smoking on patios.

Ald. Ric McIver, who wanted to allow smoking on patios, said restaurants and bar owners have every reason to complain.

"The original bylaw which was in place was the result of negotiations and consultations with the industry," McIver said.

"The bylaw was changed without consultation."

Not all council members were happy.

"I voted no because I truly believe that the bylaw we had in place met all the requirements for a successful bylaw," said Ald. Gord Lowe.

"It was clear, it was simple, concise, it had been in place for a year, it had not been challenged, it was working, it was enforceable and it had a firm date on which Calgary was going to be smoke-free," he added.

Lowe argued the effectiveness of the bylaw is eroded by the exemptions and has opened the door to those demanding the same treatment.

"My concern would be that somebody could challenge it on the basis of process. There's a whole series of things that could happen," he said. "I prefer bylaws that are simple and clean. They work the best."

Now, Lowe said, the bylaw has a "fuzzy grey edge around it."

But others, including the advocacy group Smoke-Free Calgary, applauded council's decision to review its smoking bylaw.

"We're getting there," said co-chairwoman Linette Soldan.

"We're pleased they took the leadership and said we've got to do what's right."

epoole@theherald.canwest.com

tsekus@theherald.canwest.com

How Council Voted

For non-smoking Jan. 1, 2007

Ald. Madeleine King

Ald. Dale Hodges

Ald. Druh Farrell

Ald. Joe Ceci

Ald. Diane Colley-Urquhart

Ald. Andre Chabot

Ald. Bob Hawkesworth

Ald. Craig Burrows

Ald. Helene Larocque

Ald. Ray Jones

Ald. Barry Erskine

Against

Ald. Linda Fox-Mellway

Ald. Gord Lowe

Ald. Ric McIver

Mayor Dave Bronconnier

This story features a factbox "How Council Voted".

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