

THE CORPORATION OF THE CITY OF XX

BY-LAW NUMBER YY

BEING A BY-LAW RESPECTING SMOKING IN WORKPLACES IN THE CITY OF XX

WHEREAS Subsection 213 (2) of the *Municipal Act*, R.S.O. 1990, Chap. M.45, as amended, authorizes the council of a local municipality to pass a bylaw regulating the smoking of tobacco in workplaces within the municipality and designating workplaces or classes or parts of such places as places in which smoking tobacco or holding lighted tobacco is prohibited; and

AND WHEREAS it has been determined that second hand smoke is a nuisance because of its irritating and discomforting properties and is a health hazard because of its impairment, adverse effect and risk to the health of the inhabitants and employees of XX.

The Council of the City of XX hereby enacts as follows:

Definitions

1. In this bylaw,

- a) "employee" includes a person who, performs any work for or supplies any services to an employer, or receives any instructions or training in the activity, business, work, trade, occupation or profession of the employer;
- b) "employer" includes any person who as the owner, proprietor, manager, superintendent or overseer of any activity, business, work, trade, occupation or profession, has control over or direction of, or is directly or indirectly responsible for the employment of a person therein;
- c) "inspector" means a person appointed by Council as a municipal bylaw enforcement officer to enforce this bylaw;
- d) "patio" means an outdoor area or partially enclosed outdoor area in which an employee works that is adjacent to an establishment where food or beverages are sold and where food or beverages are consumed by the public;
- e) "smoking" includes carrying a lighted cigar, cigarette, pipe or any other lighted smoking instrument and "smoke" has a corresponding meaning; and
- f) "workplace" means any enclosed area of a building or structure, to which the public may or may not have access either express or implied, in which an employee works and includes washrooms, corridors, lounges, eating areas, reception areas, elevators, escalators, foyers, hallways, stairways, amenity, areas, lobbies, laundry rooms and parking garages or other areas within the building or structure utilized by an employee and includes school buses, taxis and other vehicles for hire.

General prohibition on smoking

2. (1) No person shall smoke in a workplace or on a patio except as provided in subsection (2).

Exception for patios

(2) Despite subsection (1), an employer may designate no more than 50% of the seating area or area of a patio in use as a smoking area provided that the area so designated shall be comprised of seats or floor space forming a contiguous unit and is so located that a person using the patio is not required to pass through a smoking area to access any other part of the patio that is non-smoking or an adjacent workplace.

Exception for long-term care facilities

(3) Subsection (1) does not apply to an area that is set aside for smoking if the premises is a premises referred to in subsection 6 (6) of Ontario Regulation 613/94 and the premises meets the requirements of that subsection and subsections 6 (1) and (2) of Ontario Regulation 613/94.

Employer responsibilities

3. Every employer shall,

- (a) ensure compliance with this by-law;
- (b) inform all of their employees that smoking is prohibited in the workplace and on patios except as provided by this by-law;
- (c) prohibit smoking in the workplace and on patios except as provided by this by-law;
- (d) conspicuously post no smoking signs in accordance with section 4 at every entrance to the workplace indicating that smoking is prohibited in the workplace;
- (e) prohibit ashtrays and like paraphernalia in areas where smoking is prohibited; and
- (f) conspicuously post no smoking signs in areas where smoking is prohibited.

Requirement to post signs

4. (1) The signs referred to in this bylaw shall consist of graphic symbols that comply with the provisions of this section.

(2) The following graphic symbol shall be used to indicate that smoking is prohibited in the workplace:



on a white background with the circle and the interdictory stroke in red.

(3) The graphic symbol referred to in subsection (2) shall include the text "*insert name of municipality* Bylaw" in letters and figures at least five (5%) percent of the diameter of the circle in the symbol.

(4) With respect to size of the graphic symbol, the diameter of the circle in the symbol referred to in this section shall be not less than ten (10 cm) centimetres.

(5) Despite the fact that the symbol referred to in subsection (2) and subsection (3) is a cigarette, it shall include a lighted cigar, cigarette, pipe or any other lighted smoking instrument.

(6) Deviations from the colour or content of the signs prescribed by this section that do not affect the substance or that are not calculated to mislead do not vitiate the signs.

(7) Any sign prohibiting smoking that refers to a bylaw of an old municipality is deemed to be referring to this by-law.

Inspection of workplace

5. (1) For the enforcement of this bylaw, an inspector, upon producing proper identification, may, at all reasonable hours, enter any workplace or patio or any building or structure in which a workplace or patio is situate and may make examinations, investigations and inquiries.

(2) No inspector may enter a workplace that is also a dwelling without the consent of the occupant or without first obtaining and producing a warrant.

Offences

6. (1) Any person who smokes in a workplace or patio in contravention of subsection 2(1) is guilty of an offence.

(2) Any employer who,

- (a) fails to ensure compliance with this by-law;
- (b) fails to inform all of their employees that smoking is prohibited in the workplace and on patios except as provided by this by-law;
- (c) permits smoking in the workplace or on a patio in contravention of this by-law;
- (d) fails to conspicuously post no smoking signs in accordance with section 4 at every entrance to the workplace indicating that smoking is prohibited in the workplace
- (e) permits ashtrays and like paraphernalia in areas where smoking is prohibited; or
- (f) fails to conspicuously post no smoking signs in areas where smoking is prohibited,

is guilty of an offence.

Obstruction of inspector

7. Any person who hinders or obstructs an inspector lawfully carrying out the enforcement of this bylaw is guilty of an offence.

Fines

8. Every person who is convicted of an offence is liable to a fine of not more than Five Thousand (\$5,000.00) Dollars as provided for in the *Provincial Offences Act*, R.S.O. 1990, Chap. P.33.

Exemption, private residence

9. This bylaw does not apply to,

- (a) a part of a workplace that is used as a private residence; and
- (b) a workplace located in a dwelling where the only employees of that workplace are persons who live in the dwelling.

Conflicts

10. If a provision in this bylaw conflicts with the *Smoking in the Workplace Act*, R.S.O. 1990, Chap. S.13 or the regulations under it or any other Act or regulation, the provision that is the most restrictive of smoking prevails.

Severability

11. If any section or part of this by-law is found to be illegal or beyond the power of the City Council to enact, such sections or part shall be deemed to be severable and all other sections or parts of this by-law shall be deemed to be separate and independent therefrom and to be enacted as such.

Effective date

12. This bylaw shall come into effect on XXX, 2002.

Short title

13. This bylaw may be cited as the " No Smoking Bylaw– Workplaces".