

## Proposed Draft

### BY-LAW NUMBER \_\_\_\_\_ OF The Corporation of the City of XXX

#### *A Bylaw to Regulate Smoking In Public Places and Workplaces in the Corporation of the City of XXX*

**WHEREAS** section 115 of the *Municipal Act, 2001*, C. 25, as amended, authorizes the council of a local municipality to pass a by-law regulating the smoking of tobacco in public places and workplaces within the municipality and designating public places or workplaces or classes or parts of such places as places in which smoking tobacco or holding lighted tobacco is prohibited;

**AND WHEREAS** it has been determined that second-hand smoke is a serious health hazard because of its adverse effects and risk to the health of all of the inhabitants and workers in the Corporation of the City of XXX;

**AND WHEREAS** it is desirable for the purpose of promoting and protecting the health, safety and welfare of the inhabitants and workers of the Corporation of the City of XXX to ensure that all public places and workplaces will be free from second-hand smoke;

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF XXX ENACTS AS FOLLOWS:**

#### **PART I**

##### 1. DEFINITIONS

1.0 In this by-law,

1.1 "**City**" means the Corporation of the City of XXX;

1.2 "**employee**" means a person who, being paid or unpaid, performs any work for or supplies any service to an employer, or a person who receives any instruction or training in the activity, business, work, trade, occupation or profession of an employer and includes a volunteer and a person who is self-employed and "employment" has a corresponding meaning;

1.3 "**employer**" means any person who, as the owner, proprietor, manager, contractor, superintendent, supervisor 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 an employee;

1.4 "**inspector**" means any employee or class of employee of the YYY Health Unit authorized by the Medical Officer of Health to carry out an inspection under and to enforce the provisions of this by-law, or a person or class of person appointed by Council of the City as a by-law enforcement officer to enforce this by-law;

1.5 "**outdoor patio**" means an outdoor area or partially enclosed outdoor area that is adjacent to an establishment where food or beverages are sold and where food or beverages or both are consumed by the public;

- 1.6 “**person**” includes a corporation;
- 1.7 “**proprietor**” means the person who ultimately controls, governs or directs the activity carried on within a public place and includes the person actually in charge of the premises at any particular time;
- 1.8 “**public place**” means any building, structure, vessel, vehicle or conveyance, or part thereof, whether covered by a roof or not, to which the public has access as of right or by invitation, expressed or implied, whether or not a fee is charged for entry but does not include an outdoor patio or a street, road or highway.
- 1.9 “**smoke**” or “**smoking**” includes the carrying of a lighted cigar, cigarette, pipe or any other lighted smoking equipment, but does not include smoke or smoking where smoke or smoking is used in a stage production of a theatrical performance.
- 1.10 “**workplace**” means a building, structure, vessel, vehicle or conveyance or part thereof, to which the public may or may not have access either express or implied, in which one or more employees work, including any other area in the building, structure, vessel, vehicle or conveyance utilized by employees, but does not include an outdoor patio.

## **PART II**

### **2. WORKPLACES**

- 2.1 No person shall smoke in any workplace within the City whether or not a No Smoking sign is posted.
- 2.2 Every employer shall:
- (i) ensure compliance with this by-law;
  - (ii) prohibit smoking in the workplace;
  - (iii) inform each employee in the workplace that smoking is prohibited in the workplace;
  - (iv) post No Smoking signs in accordance with Part IV of this bylaw in conspicuous locations at every entrance and washrooms in the workplace indicating that smoking is prohibited in the workplace; and
  - (v) ensure that no ashtrays or like paraphernalia are placed or permitted to remain in any part of the workplace.
- 2.3 Section 2.1 does not apply to,
- (i) a part of a workplace that is used as a private residence; or
  - (ii) a workplace located in a dwelling where the only employees of that workplace are persons who live in the dwelling.

## **PART III**

### **3. PUBLIC PLACES**

- 3.1 No person shall smoke in any public place within the City whether or not a No Smoking sign is posted.

- 3.2 Every proprietor of a public place shall:
- (i) ensure compliance with this bylaw;
  - (iii) prohibit smoking in the public place;
  - (iii) post No Smoking signs in accordance with Part IV of this bylaw in conspicuous locations at every entrance and washrooms in the public place indicating that smoking is prohibited in the public place;
  - (iv) ensure that no ashtrays or like paraphernalia are placed or permitted to remain in the public place .

#### **PART IV**

#### **4. SIGNAGE REQUIRED**

- 4.1 Every employer and every proprietor shall post and maintain in conspicuous locations at each entrance to the facility and in the washrooms, a sign at least 14 centimetres (5.5 inches) by 14 centimetres (5.5 inches) in size that includes depiction of the international No Smoking symbol at least 7.5 centimetres (3 inches), and lettering at least 0.8 centimetres (5/16 inch) high and at least 0.2 centimetres (1/16 inch) wide at the narrowest point, with the rest of the letter sized proportionately, which reads “The Corporation of the City of XXX; Maximum Fine (\$5000)”
- 4.2 Where a No Smoking sign is required to be placed or posted under this by-law, the sign shall have the proportions, characteristics and minimum measurements as set out in Section 4.1 as depicted in “Schedule A” and consist of two (2) contrasting colours, or if the lettering and graphic symbol is to be applied directly to surface or to be mounted on a clear panel, the lettering and graphic symbol shall contrast with the background.
- 4.3 Despite the fact that the symbol referred to in Schedule “A” is a cigarette, it may include a lighted cigar, cigarette, pipe or any other lighted smoking instrument.
- 4.4 Deviations from the colour or content of the sign prescribed by this section that do not affect the substance or that are not calculated to mislead do not vitiate the sign.
- 4.5 Any sign prohibiting smoking that refers to an old by-law of the City is deemed to be referring to this by-law.

#### **PART V**

#### **5. INSPECTIONS**

- 5.1 An inspector may, at any reasonable time, enter any public place or workplace for the purposes of determining compliance with this by-law.
- 5.2 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.

#### **PART VI**

#### **6. OFFENCES AND ENFORCEMENT**

- 6.1 Any person who contravenes any of the provisions of this by-law, or who hinders or obstructs an inspector lawfully carrying out the enforcement of this by-law, is guilty of an offence and upon conviction is liable to a fine of not more than five thousand dollars

(\$5,000.00) as provided for in the *Provincial Offences Act*, R.S.O. 1990, chapter 33, or any successor thereof.

- 6.2 If this by-law is contravened and a conviction entered, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty that is imposed, make an order prohibiting the continuation or repetition of the offence by the person convicted.

## **PART VII**

### **7. CONFLICTS**

- 7.1 If a provision of this by-law conflicts with an Act or Regulation or another by-law, the provision that is the most restrictive of smoking shall prevail.

## **PART VIII**

### **8. SEVERABILITY**

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

## **PART IX**

### **9. REPEAL**

- 9.1 By-law xxx is repealed.

## **PART X**

### **10. EFFECTIVE DATE**

- 10.1 This by-law comes into effect on (insert date).

Schedule "A"

