

THE CORPORATION OF THE TOWNSHIP OF TAY

BY-LAW NO. 2003-45

**Being a by-law to regulate smoking in all public places
within the Township of Tay**

WHEREAS the Council of the Township of Tay has the authority to pass bylaws prohibiting and regulating the smoking of tobacco and the carrying of lighted tobacco products in public places within the municipality pursuant to Section 213 of the Municipal Act, R.S.O. 1990, Chap. M.45, as amended;

AND WHEREAS it has been determined that second hand tobacco smoke (exhaled smoke and the smoke from cigarettes, cigars and pipes) is a health hazard or discomfort for many inhabitants of the Township of Tay;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF TAY ENACTS AND BE IT ENACTED AS FOLLOWS:

1.0 Definitions

In this by-law:

- (1) **'amusement arcade'** shall mean a place to which the public has access and which is equipped with five (5) or more machines or devices that may be used for playing games solely for the entertainment and amusement of the players;
- (2) **'arena'** shall mean any building, location or premises comprised of, but not restricted to, a rink, floor or ice surface, spectator seating areas, dressing rooms and canteen facilities, to which the public has access to view or participate in sporting events;
- (3) **'ashtray'** shall mean any receptacle for tobacco ashes and for cigar and cigarette butts;
- (4) **'bar'** shall mean an establishment licensed by the Alcohol and Gaming Commission of Ontario;
- (5) **'barber shop'** or **'hairdressing establishment'** shall mean any building, location or premises where hair is styled, cut, trimmed, treated or washed;
- (6) **'bingo hall'** shall mean any building, location or premises where the conduct of bingo events is licensed;
- (7) **'common area'** shall mean any indoor area of a building that is open to the public for the purposes of access to a retail shop, establishment or office, and includes corridors, passageways, unenclosed eating areas in corridors, public restrooms, unenclosed public seating areas and unenclosed public standing areas, whether or not the eating area, seating area or standing area is leased;
- (8) **'Council'** shall mean the Council of the Corporation of the Township of Tay;
- (9) **'food court'** shall mean an area within a shopping mall where food or drink is offered for sale or sold to the public for immediate consumption;
- (10) **'inspector'** shall mean a person appointed by Council as a municipal by-law enforcement officer to enforce the provisions of this by-law and shall include a Police Officer or any other individual duly appointed to enforce this by-law.
- (11) **'laundromat'** shall mean any facility, premises or area within a building to which the public has access established for the purposes of laundering, washing or drying on a self-service basis;
- (12) **'limousine'** shall mean a luxury class motor vehicle that has been custom cut and stretched, with a seating capacity for not less than six passengers, excluding the driver, and is within five model years of the current year, and which is kept for hire by reservation only and solely on an hourly basis, and shall not include a station wagon type vehicle, a bus, or a taxi cab.
- (13) **'outdoor patio'** means an area that:
 - (a) is not covered by a temporary or permanent roof; or if covered by a temporary or permanent roof, has one or more unobstructed exterior openings in the walls surrounding the roofed area to provide at least 40% of the perimeter enclosed walls to be open to the movement of outdoor air at all times;
 - (b) does not share open windows with a public place;

- (c) does not share open windows with a public place; except when doors are being opened by individuals to enter or exit the outdoor patio;
 - (d) does not share thermostat controlled heating or air conditioning system with a public place; and
 - (e) has a circulation of outdoor air throughout the outdoor patio.
- (14) **'place of public assembly'** shall mean the whole or part of an indoor area to which the public has access by right or by invitation, express or implied, whether by payment of money or not, but does not include a place when used exclusively by one or more individuals for a private gathering or personal purpose;
- (15) **'private club'** means the whole or part of an indoor area to which the general public is not invited or permitted access. For greater clarification and for the purpose of enforcement of the by-law, a facility is considered to be a private club when the following criteria is met:
- (a) the club must have a fixed membership;
 - (b) the club requires each member to pay an annual or periodic membership fee;
 - (c) the club must have an executive/leadership that is elected by all the members on an annual or periodic basis;
 - (d) the club must have a constitution or by-laws that provide the governing rules for the membership, executive, fees, etc.;
 - (e) the club must be not-for-profit;
 - (f) the club has profits and losses borne by its members;
 - (g) the club has publicity and advertisements directed exclusively to members for their information and guidance and does not solicit business from the general public; and
 - (h) the club does not permit a non-member to enter the premises to consume food or alcohol unless accompanied by, or signed in by a member.
- (16) **'proprietor** or **'other person in charge'** shall mean the person who controls, governs or directs the activity carried on within the premises designated as prohibited areas under this bylaw and includes the person who is actually in charge thereof at any particular time;
- (17) **'public building'** shall mean any enclosed building or group of buildings to which the public has access;
- (18) **'public facility'** shall mean any hall, room, or banquet area that is publicly owned and is rented for an event or function;
- (19) **'public place'** shall mean the whole or part of an indoor area to which the general public is invited or permitted access and includes a school bus;
- (20) **'public portion'** shall mean the area of any building to which the public has access;
- (21) **'public restroom'** shall mean any restroom or washroom to which the public has access;
- (22) **'public transit bus'** shall mean any licensed coach or private passenger vehicle used for hire for transporting the public, and shall include a school bus, a passenger vehicle used for hire, and a taxicab vehicle.
- (23) **'reception area'** shall mean the public space used by an office or establishment for the receiving or greeting of customers, clients or other persons dealing with such office or establishment;
- (24) **'restaurant'** shall mean an establishment engaged in the sale and service of food or drink or both food and drink to the public for consumption on the premises but does not include a bar;
- (25) **'retail shop'** shall mean any building or part of a building, booth, stall or place where goods are exposed for sale or offered for sale by retail;
- (26) **'school bus'** shall mean any licensed public coach or private passenger vehicle used for hire for the purpose of transporting children to and from school or to or from any activity, event or function associated therewith, and shall include a coach ;
- (27) **'service counter'** shall mean an indoor counter where a person receives a service including, but not limited to, the exchange of money, sales, provision of information, transactions, advice or the transfer of money or goods;

- (28) **'service line'** shall mean an indoor line of two (2) or more persons awaiting service of any kind regardless of whether or not such service involves the exchange of money, including but not limited to sales, transactions, provision of information or advice and transfers of money or goods;
- (29) **'shopping mall'** shall mean any enclosed building or group of buildings containing one or more retail shops; and
- (30) **'smoke'** or **'smoking'** includes the carrying of a lighted cigar, cigarette, pipe or any other lighted smoking equipment;
- (31) **'taxicab'** shall mean a vehicle having a normal seating capacity of not more than nine persons, kept or used for hire for the conveyance of passengers;
- (32) **'Township'** shall mean the Corporation of the Township of Tay.

2.0 Designation of Public Places

The following are designated public places for the purposes of this bylaw:

- a) the common area of a public building;
- b) an indoor service line or service counter in any premise to which the public has access;
- c) a place of public assembly;
- d) a public restroom;
- e) a food court;
- f) a public facility;
- g) a reception area;
- h) the public portion of an amusement arcade;
- i) a municipally owned building;
- j) a bingo hall;
- k) a bowling alley;
- l) a billiard hall;
- m) the public portion of any restaurant;
- n) the public portion of any bar;
- o) an arena;
- p) the public portion of any retail shop;
- q) the common area of a shopping mall;
- r) the public portion of any laundromat;
- s) the public portion of any barber shop or hairdressing establishment;
- t) a school bus;
- u) a public transit bus;
- v) a taxicab;
- w) a limousine.

3.0 General Prohibition on Smoking

- (1) No person shall smoke in any public place designated under Section 2.0 of this by-law.

4.0 Requirement to Post Signs

- (1) The proprietor or other person in charge of any public place designated or regulated under this by-law shall ensure that a sufficient number of signs as prescribed by Section 6.0 are conspicuously posted so as to clearly identify that smoking is prohibited.

5.0 Description of Signs

Despite Section 4.0, in every public building referred to in Section 2.0, the proprietor or other person in charge of the public building shall ensure that,

- (1) signs are posted in accordance with Section 6.0 in every common area of the public building,
- (2) signs are posted at every entrance to the public building, and are visible and in sufficient numbers, clearly indicating that smoking is prohibited in the common areas of the public building. The following graphic symbol shall be used to indicate the areas where smoking is prohibited pursuant to this bylaw, and
- (3) signs referred to in Subsection 5(1) and 5(2) are in accordance with Section 6.0.

6.0 Description of Signage

- (1) The signs referred to in this by-law shall consist of graphic symbols that comply with the provisions of this section.
- (2) The following graphic symbol shall be used to indicate the areas where smoking is prohibited pursuant to the by-law: on a white background with the circle and the interdictory stroke in red – as provided in Schedule “A” attached hereto and forming part of this by-law.
- (3) The graphic symbol referred to in section 6.0 (1) shall include the text “Township of Tay By-Law” in letters and figures at least five (5%) percent of the diameter of the circle in the symbol.
- (4) Despite the fact that the symbol referred to in Section 6.0(2) is a cigarette, it shall include a lighted cigar, cigarette, pipe or any other lighted smoking equipment or product.
- (5) With respect to the size of the graphic symbol, the diameter of the circle referred to in this section shall be not less than ten (10) centimetres.

7.0 Ashtrays

The proprietor or any person in charge of a public place regulated under this by-law shall ensure that no ashtrays are placed or allowed to remain in any public place where smoking is prohibited pursuant to this by-law.

8.0 Duties of Proprietor

A proprietor or other person in charge of a public place shall not permit smoking where smoking is prohibited under this by-law.

9.0 Entry and Inspection

Any person who hinders or obstructs a person lawfully carrying out the enforcement of this by-law is guilty of an offence.

10.0 Penalty

Any person who contravenes any of the provisions of this by-law is guilty of an offence and upon conviction is liable to a fine as provided for in the provincial offences Act.

11.0 Enforcement

- (1) The provisions of this by-law respecting the designation of non-smoking areas, the posting of signs and the duties imposed on the proprietor or other person in charge of a public place shall be enforced by inspectors.
- (2) An inspector may, at any reasonable time, enter any designated public place for the purposes of determining compliance with this by-law.

12.0 Conflicts

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

13.0 Severability

If any section or sections of this by-law or parts thereof are found in any court of law to be illegal or beyond the power of Council to enact, such section or sections or parts thereof 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.

14.0 Exception

- (1) A Private Club may apply for an exemption to this by-law in accordance with Section 14 (2) of this by-law.
- (2) An application by a Private Club for a one year exemption to this by-law must be submitted in writing to Council annually, prior to August 15th in 2003 and June 1st, in each of the years 2004 and 2005. No exemptions to this by-law will be granted beyond August 31st, 2006.
- (3) Private club premises, or portion thereof, when rented to and/or attended by the public shall constitute a place of public assembly for the respective function and any exemption granted through 14 (1) shall not apply.
- (4) Outdoor patio as described in Section 1(13) of this by-law.

15.0 Effective Date

This by-law shall come into full force and effect on September 1st, 2003.

16.0 Short Title

This by-law may be cited as the “No Smoking By-Law – Public Places”.

BY-LAW READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 10th DAY OF JULY, 2003.

THE CORPORATION OF THE TOWNSHIP OF TAY

Mayor

Clerk

EKW/rd

SCHEDULE "A" TO BY-LAW NO. 2003-45

- (1) The following graphic symbol and wording shall be used to indicate the areas where smoking is prohibited pursuant to this by-law.



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

- (2) The graphic symbol referred to in Subsection 6(2), may include the text "Township of Tay By-Law".

**THE CORPORATION OF THE TOWN OF THE TOWNSHIP OF TAY
PART I Provincial Offences Act**

By-law No. 2003-45, Smoking in Public Places

ITEM	COLUMN 1 Short Form Wording	COLUMN 2 Provision Creating or Defining Offence	COLUMN 3 Set Fine (Includes Court Costs) (Does not include surcharge)
1	Smoke in a public place	Section 3.0	\$200.00
2	Fail to post signs	Section 4.0	\$175.00
3	Provide ashtray	Section 7.0	\$175.00
4	Permit smoking	Section 8.0	\$175.00
5	Hinder or obstruct enforcement of By-law	Section 9.0	\$300.00

NOTE: Penalty provisions for the offences indicated above are 10.0 of By-law 2003-45, a certified copy of which have been filed.

THE CORPORATION OF THE TOWN OF THE TOWNSHIP OF TAY
PART I Provincial Offences Act

By-law No. 2003-45, Smoking in Public Places

ITEM	COLUMN 1 Short Form Wording	COLUMN 2 Provision Creating or Defining Offence	COLUMN 3 Set Fine (Includes Court Costs) (Does not include surcharge)
1	Smoke in a public place	Section 3.0	
2	Fail to post signs	Section 4.0	
3	Provide ashtray	Section 7.0	
4	Permit smoking	Section 8.0	
5	Hinder or obstruct enforcement of By-law	Section 9.0	

NOTE: Penalty provisions for the offences indicated above are 10.0 of By-law 2003-45, a certified copy of which have been filed.