

Bill 23

THE REGIONAL MUNICIPALITY OF NIAGARA

BY-LAW NO. 22-2002

A BY-LAW REGULATING THE SMOKING OF
TOBACCO IN PUBLIC PLACES AND WORKPLACES

WHEREAS Section 213 of the *Municipal Act, R.S.O. 1990, c. M. 45*, as amended, permits the council of a 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 a majority of the Councils of the area municipalities within the Regional Municipality of Niagara have approved the passage of such a by-law by the Region;

AND WHEREAS research has proven the adverse effects and risk to health posed by environmental tobacco smoke (exhaled smoke and the smoke from idling cigarettes, cigars or pipes);

AND WHEREAS environmental tobacco smoke is a health hazard to the inhabitants, visitors and workers of the Region;

AND WHEREAS environmental tobacco smoke is also a public nuisance because of its irritating and discomforting properties;

NOW THEREFORE the Council of The Regional Municipality of Niagara enacts as follows:

DEFINITIONS

1. In this by-law:

- (a) "**Designated smoking room**" means a room that meets all the requirements set out in Schedule "A" to and forming part of this by-law;
- (b) "**Employee**" means a person, including a volunteer, who performs any work for or supplies any service to an Employer, but does not include a person who is a member of a Private club, when performing work for or supplying service to that Private club;
- (c) "**Employer**" means a person who, as an owner, manager, contractor, superintendent, or overseer of any activity, business, work, trade, occupation or profession, has control over or direction of, or is indirectly or directly responsible for, the employment of a person, whether paid or not;
- (d) "**Enclosed**" means indoors or inside a building, structure or vehicle composed of surfaces (floors, ceilings and walls) not readily permeable by outdoor air, such that there is no free exchange of air with the outdoors;
- (e) "**Inspector**" means a person appointed for the purpose of enforcing this by-law;
- (f) "**No-smoking sign**" means a sign at least 10 centimetres in diameter, showing an illustration of a black, lit cigarette on a white circle surrounded by a red border with a width equal to one tenth of the diameter, with a red diagonal stroke of the same width crossing over the cigarette from the

upper left to the lower right portion of the circle;

- (g) **"Proprietor"** of a place includes any person who owns, occupies, operates, maintains or controls the place or directs the activity carried on within the place;
- (h) **"Public place"** means a place or Public transit vehicle that is open to the public or to which the public has access by right, permission or invitation, express or implied, whether by payment of money or otherwise, and whether publicly or privately owned;
 - (i) for greater certainty, and without limiting the generality of the foregoing, a Public place includes the places set out in Schedule "B" to and forming part of this by-law; and
 - (ii) for greater certainty, and without limiting the generality of the foregoing, a Public place does not include the places set out in Schedule "C" to and forming part of this by-law;
- (i) **"Region"** means The Regional Municipality of Niagara;
- (j) **"Smoking sign"** means a sign at least 10 centimetres in diameter showing an illustration of a black, lit cigarette on a white circle surrounded by a black border with a width equal to one tenth of the diameter, with the words "You may smoke here." and/or the words "Vous pouvez fumer ici." in black and in at least 40 point type;
- (k) **"To Smoke"** includes to hold lighted tobacco including a cigarette, cigar, pipe or other lighted smoking material or equipment; and

- (l) **"Workplace"** means a place or vehicle where one employee (or more) works;
 - (i) for greater certainty, and without limiting the generality of the foregoing, a Workplace includes the places set out in Schedule "D" to and forming part of this by-law;
 - (ii) for greater certainty, and without limiting the generality of the foregoing, a Workplace does not include the places set out in Schedule "E" to and forming part of this by-law.

SMOKING IN ENCLOSED PUBLIC PLACES

- 2. (1) Subject to Section 6, no person shall Smoke in an Enclosed Public place within the Region.
 - (2) Subject to Section 6, no person shall place an ashtray (for the use of smokers) in an Enclosed Public place within the Region.
- 3. (1) Subject to Section 6, no Proprietor shall permit a person to Smoke in an Enclosed Public place within the Region.
 - (2) Subject to Section 6, no Proprietor shall permit a person to place an ashtray (for the use of smokers) in an Enclosed Public place within the Region.

SMOKING IN ENCLOSED WORKPLACES

- 4. (1) Subject to Section 6, no person shall smoke in an Enclosed Workplace within the Region.
 - (2) Subject to Section 6, no person shall place an ashtray (for the use of smokers) in an Enclosed Workplace within the Region.

5. (1) Subject to Section 6, no Employer shall permit a person to Smoke in an Enclosed Workplace within the Region.
- (2) Subject to Section 6, no Employer shall permit a person to place an ashtray (for the use of smokers) in an Enclosed Workplace within the Region.

DESIGNATED SMOKING ROOMS

6. Sections 2, 3, 4 and 5 of this by-law do not apply in a Designated smoking room.
7. (1) A Proprietor of a Workplace, Restaurant, Bar or Bingo hall may set aside a portion of the place as a Designated smoking room.
- (2) A Proprietor of a Workplace, Restaurant, Bar or Bingo Hall, forthwith after setting aside a portion of the place as a Designated smoking room, shall register the Designated smoking room with the Public Health Department of the Region (Regional Niagara Public Health Department).
- (3) The maximum size of the Designated smoking room shall not exceed:
 - (a) 25% of the floor area open to Employees of an Enclosed Workplace;
 - (b) 25% of the floor area open to the public of a Restaurant;
 - (c) 50% of the floor area open to the public of a Bar; or
 - (d) 60% of the floor area open to the public of a Bingo hall.
- (4) If an Enclosed place should fall into more than one of the above-mentioned four categories (Workplace, Restaurant, Bar or Bingo Hall) it shall nevertheless be entitled to only one category's percentage: the

percentages shall not be added. By way of example, if an Enclosed place should be both a Workplace, and also a Bingo Hall, the maximum size of the Designated smoking room is 60% of the floor area of the Enclosed place.

- (5) Notwithstanding any other provision of this by-law, there shall be no requirement until May 31, 2004, that a Designated smoking-room in a Bingo hall must have air supply and exhaust systems separate from the air supply and exhaust systems for the rest of the Bingo hall.
- (6) No Proprietor shall set aside a portion of an Enclosed place for smoking except in accordance with this by-law.

SIGNS

8. (1) The Proprietor of an Enclosed Public place shall ensure that such Enclosed Public place is posted with No-smoking signs in a conspicuous manner at each entrance to the Enclosed Public place, to indicate that Smoking is not permitted there.
- (2) The Proprietor of an Enclosed Public Place which contains a Designated smoking room may add to the no-smoking signs the words "No smoking except in designated areas." and/or the words "Defense de fumer sauf dans les endroits autorises." in black and in at least 35 point type.
- (3) No Proprietor of an Enclosed Public place shall post a Smoking sign, permit a Smoking sign to be posted, or permit a Smoking sign to remain posted in a room in the Enclosed Public place if the room does not meet or continue

to meet all the requirements set out in this by-law in the definition of Designated smoking room.

9. (1) The Employer of an Employee whose Workplace is an Enclosed Workplace shall ensure that such Enclosed Workplace is posted with No-smoking signs in a conspicuous manner at each entrance to the Enclosed Workplace, to indicate that Smoking is not permitted there.
- (2) The Employer of an Employee whose Workplace is an Enclosed Workplace that includes a Designated smoking room may add to the No-smoking signs the words "No smoking except in designated areas." and/or the words "Defense de fumer sauf dans les endroits autorises." in black and in at least 35 point type.
- (3) No Employer of an Employee whose Workplace is an Enclosed Workplace shall post a Smoking sign, permit a smoking sign to be posted, or permit a Smoking sign to remain posted in a room in an Enclosed Workplace if the room does not meet or continue to meet all the requirements set out in this by-law in the definition of Designated smoking room.

ENFORCEMENT

10. The Medical Officer of Health of the Region may, from time to time, appoint Inspectors for the purpose of enforcing this by-law.
11. An Inspector may, at any reasonable time, enter any Public place or Workplace, as designated in this by-law, for the purpose of determining whether there is compliance with this by-law.

12. An Inspector may make such examinations, investigations and inquiries as are necessary to determine whether there is compliance with this by-law.
13. No person shall obstruct an Inspector carrying out an inspection under this by-law.

OFFENCE

14. Any person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to a fine of not more than \$5,000.00 exclusive of costs, as provided in the *Provincial Offences Act, R.S.O. 1990, c. P.33*, as amended.
15. It shall not be a defence to any charge made pursuant to this by-law that:
 - (a) no or insufficient No-smoking signs were posted;
 - (b) a Proprietor or Employer did not warn that Smoking was not permitted; or
 - (c) at some other time smoking was permitted or will be permitted in the place where the offence is alleged to have occurred.
16. Set fines for contraventions of this by-law shall be in accordance with Schedule "F" to and forming part of this by-law.

SEVERABILITY

17. If any section or sections of this by-law, or parts thereof, is or are found by any Court or tribunal to be illegal or beyond the power of the Region's 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.

18. This by-law shall come into force and take effect on May 31, 2003, and thereupon By-law No. 8901-97 (as amended) shall be repealed.

THE REGIONAL MUNICIPALITY OF NIAGARA



(Debbie M. Zimmerman, Regional Chair)



(Thomas R. Hollick, Regional Clerk)

Passed: April 4, 2002

SCHEDULE "A"

Requirements of a "Designated smoking room"

- (i) has been set aside within a place by the proprietor of the place, for smoking;
- (ii) has been registered, forthwith after such setting aside, with the Public Health Department of the Region (Regional Niagara Public Health Department);
- (iii) does not exceed the size permitted by this by-law;
- (iv) meets the requirements of the Ontario Building Code;
- (v) is not required by any person for a thoroughfare;
- (vi) is posted with Smoking signs on the walls at a height of 1.8 metres from the floor;
- (vii) is the Workplace of only Employees who have agreed to work in this smoking area;
- (viii) is completely enclosed with surfaces (floors, ceilings and walls) not readily permeable by air, such that there is no free exchange of air with any indoor areas where smoking is not permitted;
- (ix) has all doors fitted with automatic closers;
- (x) has air supply and exhaust systems separate from the air supply and exhaust systems for the rest of the place;
- (xi) has an interlock between the air supply system and the air exhaust system to ensure continuous operation of both systems;
- (xii) has at least 3 metres horizontal distance between each exterior opening of the intake system and each exterior opening of the exhaust system and any other exterior opening of the building;

- (xiii) is supplied with at least 30 litres per second (65.3 cubic feet per minute) of air per possible occupant (based on maximum possible occupancy) drawn from either the outdoors or an indoor area where smoking is not permitted; and
- (xiv) has the air exhausted at a rate of at least 110% of the rate of the air supply.

SCHEDULE "B"

Places included in the definition of "Public place"

"**Bar**" includes a place where alcoholic beverages are purchased and consumed by the public and admittance is restricted to persons 19 years of age or older;

"**Billiard parlour**" includes a place where five or more billiard or pool tables are available for use by the public;

"**Bingo hall**" includes a place where bingo games are played by the public;

"**Bowling centre**" includes a place where one or more bowling lanes are available for use by the public;

"**Common area of a building**" includes amenity areas, corridors, eating areas, elevators, entrances, escalators, exits, foyers, hallways, laundry rooms, lobbies, lounges, meeting rooms, parking garages, reception areas, stairways and washrooms;

"**Funeral home**" includes premises where funeral services are supplied;

"**Public transit vehicle**" includes a bus, school bus and a passenger vehicle used for hire, including a taxicab and limousine;

"**Recreational facility**" includes a place where at least one recreation activity is carried out;

"**Restaurant**" includes a place where food is purchased and consumed by the public, including a food court in a shopping mall, but does not include a place where admittance is restricted to persons 19 years of age or older;

"**Shopping mall**" includes a group of commercial establishments enclosed together and includes any food court; and

"**Sports facility**" includes a place where at least one sport is carried out.

SCHEDULE "C"

Places not included in the definition of "Public place"

"**Casino**" includes a place which is kept for the purpose of gambling;

"**Dwelling**" includes a residence as well as the residence portions of a hotel, motel, bed and breakfast and similar accommodations;

"**Hospital**" includes a hospital, private hospital, psychiatric facility, nursing home, home for special care, charitable institution, or home for the aged or rest home, that provides acute or chronic care;

"**Private club**" means a place:

- (i) that is operated by an organization which:
 1. has a fixed membership list;
 2. is composed of members, each of whom must pay a periodic membership fee;
 3. is led by an executive group who are subject to election by the members on a periodic basis;
 4. has a constitution, by-laws or other governing documents that set out the rules for admission, conditions of membership, executive, meetings, fees, etc.;
 5. is not-for-profit; and
 6. operates for the benefit and enjoyment of its members; and
- (ii) which non-members may not enter unless accompanied bona fide by a member as a guest of that member;

"**Private function facility**" means a place that would otherwise be a Public place, but at the relevant time is not open to the public; and

"**Racetrack**" includes a place where wagering on races and/or slot machines is carried on.

SCHEDULE "D"

Places included in the definition of "Workplace"

"Common areas of a building used by an employee" includes amenity areas, corridors, eating areas, elevators, entrances, escalators, exits, foyers, hallways, laundry rooms, lobbies, lounges, meeting rooms, parking garages, reception areas, stairways and washrooms used by an employee;

"Construction structure" includes a shaft, tunnel, caisson or similar space; and

"Public transit vehicle" includes a school bus and a passenger vehicle used for hire.

SCHEDULE "E"

Places not included in the definition of "Workplace"

"Casino" as defined in Schedule "C";

"Dwelling" as defined in Schedule "C";

"Hospital" as defined in Schedule "C";

"Private Club" as defined in Schedule "C";

"Private function facility" as defined in Schedule "C"; and

"Racetrack" as defined in Schedule "C".

SCHEDULE "F"

THE REGIONAL MUNICIPALITY OF NIAGARA

By-law No. 22-2002, being a By-law Regulating the Smoking of Tobacco
in Public Places and Workplaces

Part 1 *Provincial Offences Act* SET FINE SCHEDULE

ITEM	COLUMN 1 Short Form Wording	COLUMN 2 Offence Creating Provision	COLUMN 3 Set Fine (Includes costs)
1	Smoke tobacco in a prohibited place	Section 2 (1) and 4 (1)	\$105.00
2	Place ashtray in a prohibited place	Section 2 (2) and 4 (2)	\$210.00
3	Failure to prohibit persons from smoking in a prohibited place	Section 3 (1) and 5 (1)	\$210.00
4	Failure to prohibit persons from placing ashtray in a prohibited place	Section 3 (2) and 5 (2)	\$210.00
5	Set aside smoking area not in accordance with by-law	Section 7 (6)	\$210.00
6	Failure to post No Smoking signs where smoking is prohibited	Section 8 (1) and 9 (1)	\$210.00
7	Post signs contrary to by-law	Section 8 (3) and 9 (3)	\$210.00
8	Obstruct inspector	Section 13	\$105.00

NOTE: the penalty provision for the offences indicated above is Section 12 of By-law No. 22-2002, a certified copy of which has been filed.