



**BY-LAW NUMBER 174-2003
OF THE CORPORATION OF
THE CITY OF STRATFORD**

BEING a By-law to regulate smoking in public places and work places in the City of Stratford and to repeal By-law 62-93 as amended.

WHEREAS section 115 of the *Municipal Act, 2001, S.O. 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 work places within the municipality and designating public places or work places 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 the inhabitants, visitors and workers in the municipality;

AND WHEREAS it is desirable for the purpose of promoting and protecting the health, safety and welfare of the inhabitants, visitors and workers of the City to ensure that public places and work places will be free from second-hand smoke, except those places or areas exempted by by-law;

NOW THEREFORE BE IT ENACTED by Council of Corporation of the City of Stratford as follows:

1.0 DEFINITIONS

In this By-law:

"bar or night club" means a building or structure, or a portion thereof, which has both of the following features:

- 1) the predominant purpose is the serving of alcohol and entry is intended to be restricted to those of the age of majority; and,
- 2) the food served, if any, would generally be described as a "snack" rather than a full meal;

and includes, without limiting the generality of the foregoing, bars, taverns, nights clubs, adult entertainment establishments;

"beer garden, beer tent or tent" means a delineated outdoor area where beverages are sold or offered to the public for immediate consumption that:

- 1) is not covered by a temporary or permanent roof; or
- 2) if covered by a temporary or permanent roof;
 - i) has no permanent walls surrounding the roofed area; and
 - ii) has a circulation of fresh air through the area.

"bingo hall" means any building, location or premises where bingo events within the meaning of the *Gaming Control Act, 1992* are conducted;

"casino" means an establishment within the meaning of the *Gaming Control Act, 1992* and includes any building, location or premises or portion thereof, where the conduct of one or more gaming events is held for the purpose of raising money for a charity or non-profit organization;

"City" means The Corporation of the City of Stratford;

"common area" means any indoor area of a building that is open to the public for the purposes of access to a retail establishment, office, hotel, motel, inn, hostel, shopping mall, shopping plaza, and includes an elevator, escalator, stairway, corridor, passageway, hallway, 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;

"common area of a residential building" includes, but is not limited to an elevator, escalator, stairway, hallway, corridor, a laundry room, a foyer, a reception area, a community room and a parking garage. It does not include rented or privately owned living quarters;

"convention facility" means a place of public assembly with space available for rent or lease for a meeting or assembly of persons, representatives or delegates, whether public or private in nature and includes a hotel convention facility;

"designated public place" means a public place as designated under section 2 of this By-law;

"designated smoking room (DSR)" means a room designated by the employer or proprietor for use as a smoking area provided that the room is separately enclosed and ventilated to the exterior of the premises in accordance with the standards as prescribed in the *Tobacco Control Act Ontario Regulation 613/94* and any amendments thereto. Further, the room designated as a DSR must be:

- 1) not located in an essential part of the building through which persons must travel to get to another area of the premises, such as but not limited to a work site, an office, storage area, eating area, washroom, stairwell or reception area;
- 2) either:
 - i) set aside specifically for the purpose of smoking; or
 - iii) set aside for the purpose of smoking and for the purpose of carrying on another activity if there is another area on the premises, that is equal to or greater in size than the smoking area, in which smoking is not permitted and in which that other activity may be carried on; and
- 3) is signed by the proprietor as a DSR in prominent locations in the DSR and at entrances to the DSR so as to be conspicuous at all times

"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;

"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 and with respect to public transportation vehicles, taxicabs or limousines, the owner or operator of the public transportation vehicle or taxicab service;

"food court" means an area within an enclosed shopping area or shopping mall where food or drink is offered for sale or sold to the public for immediate consumption;

"inspector" means any employee or class of employee of the City or the Perth District Health Unit, authorized by the City to carry out an inspection 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, or any police officer of the Stratford Police Services;

"laundromat" means any facility, premises or areas within a building to which the public has access for the purposes of laundering, washing or drying;

"outdoor area" means an existing area as of the date of this By-law coming into force, where food or beverages are sold or offered to the public for immediate consumption that:

- 1) is not covered by a temporary or permanent roof; or
- 2) if covered by a temporary or permanent roof:

- i) has one or more unobstructed, exterior openings in the walls surrounding the roofed area which are:
 - a) located between the floor and a height of 2.44 metres above the floor, and
 - b) equal to or greater in area than 35% of the total wall surface, such wall surface to be calculated as if the roofed area were surrounded by walls 2.44 metres in height;
- ii) does not share open windows with a place of refreshment;
- iii) does not share open doors with a place of refreshment, except when doors are being opened by individuals to enter or exit the outdoor area;
- iv) does not have a thermostat controlled heating or air conditioning system nor does it share a thermostat controlled heating or air conditioning system with a place of refreshment; and,
- v) has a circulation of fresh air throughout the area.

"**person**" includes a corporation;

"**place of amusement**" means an indoor area of a building or structure or portion thereof, whether privately or publicly owned, in which the predominant use is that of the playing of games or amusement and includes without limiting the generality thereof, bowling, billiards or pool, video games arcade machines;

"**place of public assembly**" means the whole or part of an 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 an outdoor area;

"**place of refreshment**" means any premises where food or drink is offered for sale or is sold to the public for immediate consumption together with any part where the public has access and includes without limiting such, a restaurant, a dining room, a dairy bar, a coffee shop, a donut shop, a snack bar, a refreshment stand, a banquet hall or facility, a bar or night club, a tavern, an adult entertainment establishment, a beer garden, beer tent or tent, but does **not** include an outdoor area;

"**private club**" means a club that:

- 1) has a membership list;
- 2) where each member is required by the club to pay an annual or periodic membership;
- 3) has an executive/leadership that is elected by all the members on an annual or periodic basis;
- 4) has a constitution or by-laws that provide the governing rules for the membership, executives, fees, etc.,
- 5) is not-for-profit;
- 6) that has a requirement in its by-laws where non-members cannot enter the premises to consume food or alcohol unless accompanied by a member.

"**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;

"**public facility**" means any hall, room or banquet area whether publicly owned or privately owned, and is rented for an event or function but does **not** include an outdoor area;

"**public place**" means the whole or part of any building to which the public has access;

"**reception area**" means 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;

"**retail establishment**" means any building or part of a building, booth, stall or place where goods are exposed for sale or offered for sale by retail;

"school bus" means a public vehicle licensed for the purpose of transporting children to and from school or to or from any activity, event or function associated therewith;

"seating capacity" means the number of legal seats available for use by patrons or customers engaging in the immediate consumption of food or drink while seated;

"service counter" means an indoor counter where persons receive a service including, but not limited to, the exchange of money, sales, provision of information, transactions, advice or the transfer of money or goods;

"service line" means an indoor line of two 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, provision of information, transactions, advice or the transfer of money or goods;

"shopping mall" means any enclosed building or group of buildings containing one or more retail establishments;

"smoke" or **"smoking"** means the smoking of tobacco in any form and includes the holding or carrying of a lighted cigar, cigarette or pipe or any other lighted smoking equipment, but excludes smoke or smoking where smoke or smoking is used in a stage production of a theatrical rehearsal or performance;

"smoke-free" means that no smoking is permitted;

"taxi-cab service" means the use of a taxi-cab or other vehicle for the conveyance of one or more passengers in exchange for a fee or other consideration;

"work place" 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.

2.0 GENERAL PROHIBITIONS

2.1 No person shall smoke in any of the following designated public places, whether or not a no smoking sign is posted:

- a) a common area;
- b) any indoor service line or any service counter in any premise to which the public has access;
- c) a school bus;
- d) a theatre or auditorium, gymnasium, indoor swimming pool, locker room, arena, community centre, library, museum or art gallery or other enclosed place of public assembly;
- e) a public washroom;
- f) a food court;
- g) a public facility;
- h) a reception area;
- i) a place of amusement;
- j) a municipally owned or leased building, structure, vehicle, vessel or conveyance;
- k) a bingo hall;
- l) a place of refreshment;
- m) a taxi-cab service;
- n) a public transit vehicle;

- o) a common area of a residential building;
- p) a retail establishment or a shopping mall;
- q) a transit waiting room, including a transit shelter;
- r) a convention facility;
- s) an enclosed parking garage to which the public has access;
- t) a laundromat;
- u) a barber shop or hairdressing establishment;
- v) a casino, race track or premises with slot machines;
- w) a shelter or drop in centre;
- x) a common area of a public place; and
- y) a private club.

2.2 No person shall smoke in any work place whether or not a no smoking sign is posted.

2.3 Every proprietor and every employer shall ensure compliance with this By-law.

2.4 Every operator of a taxi-cab service shall ensure compliance with section 2.1 of this By-law within his or her own taxi-cab or limousine, while it is being operated as a taxi-cab or limousine.

2.5 Every employer shall inform each employee in the work place that smoking is prohibited in the work place.

3.0 SIGNS TO BE POSTED

3.1 Every proprietor of a public place enumerated in section 2.1 and every employer shall post and maintain signs at each entrance to their building or premises and in each washroom, in conspicuous locations that are visible to all persons, at least 14 centimetres (5.5 inches) by 14 centimetres (5.5 inches) in size that includes a depiction of the international no smoking symbol at least 7.5 centimetres (3 inches) in size and lettering at least 1.6 centimetres (5/8 inch) high and a least 0.4 centimetres (1/8 inch) wide at the narrowest point with the rest of the letter sized proportionately which reads "City of Stratford By-law, Maximum Fine \$5,000" as shown in Schedule "A" attached hereto.

3.2 Deviations from the content of the sign prescribed in this section that do not affect the substance or that are not calculated to mislead, do not affect the validity of the sign.

3.3 Any sign prohibiting smoking that refers to a previous By-law of the City is deemed to be referring to this By-law.

4.0 ASHTRAYS

4.1 Every employer shall ensure that no ashtrays or like paraphernalia are placed or permitted to remain in any part of the work place.

4.2 Every proprietor shall ensure that no ashtrays or like paraphernalia are placed or permitted to remain in any part of the premises referred to in this By-law, where smoking is not permitted.

5.0 EXEMPTIONS AND RESTRICTED AREAS

5.1 Notwithstanding sections 2.1 and 2.2, this By-law does not apply to:

- a) a Designated Smoking Room (DSR) in a private club that has been designated by a majority of the bona fide members of the club as a DSR, provided that the DSR:
 - i) has a floor area not exceeding 50% of the total floor area of the club; and

- ii) is separate, fully enclosed, used for the exclusive use of the members of the club and not available to the public;

and provided that the proprietor ensures that only employees, bona fide members of the private club, and their guests are allowed within the DSR;

- b) a Designated Smoking Room (DSR) that was lawfully established after January 1, 2001 under By-law 62-93, as amended, or the *Tobacco Control Act* and before April 1, 2005, provided that the employer or proprietor continues:

- i) to operate and maintain the DSR ventilation system to the standards as prescribed by the *Tobacco Control Act Ontario Regulation 613/94* and any amendments thereto;

- ii) to ensure that the DSR is signed as a DSR in prominent locations in the DSR and at entrances to the DSR, so as to be conspicuous at all times; and

- iii) to ensure compliance with this By-law.

- c) a Designated Smoking Room (DSR) in a bingo hall provided that the DSR :

- i) is up to a maximum of 50% of the total floor area of the bingo hall used for the playing of bingo;

- ii) is signed by the proprietor as a DSR in prominent locations in the DSR and at entrances to the DSR so as to be conspicuous at all times;

and provided that the proprietor ensures compliance with this By-law

- d) an area that on the date this By-law comes into force is set aside for smoking, if the area is in a premises referred to in subsection 6(3), (5) or (6) of *Ontario Regulation 613/94* and the area meets the requirements of those subsections and subsections 6(1) and (2) of *Ontario Regulation 613/94*;

- e) an outdoor area, provided that the outdoor area is signed in prominent locations and at the entrances to the outdoor area, so as to be conspicuous at all times, as an area where smoking is permitted.

- f) a room or rooms in a hotel, motel or other place where rooms are rented for sleeping accommodation, provided that:

- i) the room is used for sleeping accommodation only;

- ii) each room is identified and specifically set aside as a room in which smoking is permitted; and

- iii) the proprietor indicates that smoking is permitted in the identified room(s) by installing and maintaining a sign that is at the entrance to the identified room(s) so as to be conspicuous at all times;

- g) short term accommodation units in private residence buildings;

- h) a bed and breakfast establishment, a guest home;

- i) private dwellings;

- j) any part of a workplace that is used as a private residence, whether temporarily or permanently;

5.2 Notwithstanding section 5.0 of this By-law, a Designated Smoking Room (DSR) shall not be permitted to be installed after April 1, 2005 in premises where a DSR, in accordance with this by-law, did not previously exist. This provision does not prohibit maintenance after April 1, 2005, of a lawfully established DSR.

5.3 A new outdoor area established after this by-law comes into effect, in which smoking is permitted in accordance with all other provisions of this By-law, shall be restricted to a maximum seating capacity of 50.

6.0 INSPECTIONS

- 6.1 An inspector may, at any reasonable time, enter any designated public place or work place for the purposes of determining compliance with this By-law.
- 6.2 No inspector may enter a work place that is also a dwelling without the consent of the occupant or without first obtaining and producing a warrant.
- 6.3 No person shall hinder or obstruct, or attempt to hinder or obstruct, an inspector in the exercise of a power or performance of a duty under this By-law.

7.0 OFFENCES AND PENALTY

- 7.1 Every person who is convicted of an offence under any provisions of this By-law shall be liable to a penalty as set out in section 61 of the *Provincial Offences Act, R.S.O. 1990 chapter P.33* or any successor thereof.
- 7.2 If this By-law is contravened and a conviction entered, in addition to any other remedy and to any penalty that is imposed, the court in which the conviction is entered and any court of competent jurisdiction thereafter may make an order prohibiting the continuation or repetition of the offence by the person convicted.

8.0 CONFLICTS

- 8.1 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.

9.0 SEVERABILITY

- 9.1 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 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.

10.0 REPEAL

- 10.1 By-law 62-93 and any amendments thereto are repealed upon this By-law coming into effect.

11.0 EFFECTIVE DATE

- 11.1 This By-law comes into effect on April 1, 2004.

12.0 SCHEDULES


- 12.1 Schedule "A" attached hereto forms part of this By-law.

13.0 TITLE

- 13.1 This By-law may be cited as the City of Stratford "**Smoking in Public Places By-law**".

Read a FIRST, SECOND and THIRD time and

FINALLY PASSED this 22nd day of September, 2003.



Mayor – Karen Haslam



Clerk – Joan L. Thomson

This is Schedule "A" to By-law Number 174-2003

enacted this 22nd day of September, 2003

