

THE CORPORATION OF THE

TOWN OF WASAGA BEACH

BY-LAW # 2003-19

**A BY-LAW TO REGULATE SMOKING IN
ALL PUBLIC PLACES WITHIN THE
TOWN OF WASAGA BEACH**

WHEREAS the Council of The Corporation of the Town of Wasaga Beach has the authority to pass by-laws prohibiting and regulating the smoking of tobacco and the carrying of lighted tobacco products in public places within the municipality pursuant to the *Municipal Act*, as amended;

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

NOW THEREFORE the Council of The Corporation of the Town of Wasaga Beach enacts as follows:-

1.0 DEFINITIONS:

In this By-Law:

- 1.1 “**amusement arcades**” means 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;
- 1.2 “**arena**” means 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;
- 1.3 “**ashtray**” means any receptacle for tobacco ashes and for cigar and cigarette butts;
- 1.4 “**bar**” means an establishment licensed by the Alcohol and Gaming Commission of Ontario where persons under 19 years of age are not permitted to enter, save and except as an employee and which is used primarily for the sale and service of alcoholic beverages;
- 1.5 “**barber shop**” or “**hairdressing establishment**” means any building, location or premises where hair is styled, cut, trimmed, treated or washed;
- 1.6 “**bingo hall**” means any building, location or premises where the conduct of bingo events is licensed;
- 1.7 “**common area**” means 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, eating areas in corridors or passageways, public restrooms, public seating areas and public standing areas, whether or not the eating area, seating area or standing area is leased;

- 1.8 “**Council**” means the Council of The Corporation of the Town of Wasaga Beach;
- 1.9 “**food court**” means an area within a shopping mall where food or drink is offered for sale or sold to the public for immediate consumption;
- 1.10 “**inspector**” means a person appointed by Council as a Municipal Law Enforcement Officer and designated by the Town Clerk to enforce this By-Law or the Medical Officer of Health or any employee of the Simcoe County Health Unit, designated by the Simcoe County Health Unit, to enforce this By-Law;
- 1.11 “**laundromat**” means 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;
- 1.12 “**limousine**” means a luxury class motor vehicle that has been stretched, with a seating capacity of not less than six passengers, excluding the driver, and which is kept for hire;
- 1.13 “**Municipal or Town Clerk**” means the Clerk of the Town of Wasaga Beach;
- 1.14 “**outdoor patio**” means an area that 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;
- does not share open windows with a public place;
- does not share open doors with a public place, except when doors are being opened by individuals to enter or exit the outdoor patio;
- has a circulation of outdoor air throughout the outdoor patio.
- 1.15 “**person**” includes a corporation;
- 1.16 “**place of public assembly**” means 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;
- 1.17 “**playground area**” means an outdoor area established and fitted with equipment (slides, swings, etc.) for the enjoyment of youth (within a distance of 10 meters);
- 1.18 “**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 a private club when the following criteria is met:

- the club must have a fixed membership;
 - the club requires each member to pay an annual or periodic membership fee;
 - the club must have an executive/leadership that is elected by all the members on an annual or periodic basis;
 - the club must have a constitution or by-laws that provide the governing rules for the membership, executive, fees, etc.;
 - the club must be for not-for-profit;
 - the club has profits and losses borne by its members;
 - 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
 - the club does not permit non-members to enter the premises to consume food or alcohol unless accompanied by a member.
- 1.19 “**proprietor or other person in charge**” means the person who controls, governs or directs the activity carried on within the premises designated as prohibited areas under this By-Law and includes the person who is actually in charge thereof at any particular time;
- 1.20 ”**public building**” means the enclosed building or group of buildings to which the public has access;
- 1.21 “**public facility**” means any hall, room or banquet area that is publicly owned and is rented for an event or function;
- 1.22 “**public place**” means the whole or part of an indoor area to which the general public is invited or permitted access and includes a school bus;
- 1.23 “**public portion**” means the area of any building to which the public has access;
- 1.24 ”**public restroom**” means any restroom or washroom to which the public has access;
- 1.25 “**public transit bus**” means 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;
- 1.26 “**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;
- 1.27 “**restaurant**” means 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;
- 1.28 “**retail shop**” means any building or part of a building, booth, stall or place where goods are exposed for sale or offered for sale by retail;
- 1.29 “**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;

- 1.30 “**service counter**” means an indoor counter where a person receives a service including, but not limited to, the exchange of money, sales, provision of information or advice and transfers of money or goods;
- 1.31 “**service line**” means any 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;
- 1.32 “**shopping mall**” means any enclosed building or group of buildings containing one or more retail shops;
- 1.33 “**smoke**” or “**smoking**” includes the carrying of a lighted cigar, cigarette, pipe or any other lighted smoking equipment;
- 1.34 “**theatre**” means an indoor area to which the public has access to view movies, CD’s etc.;
- 1.35 “**Town**” means The Corporation of the Town of Wasaga Beach;

2.0 **DESIGNATION OF PUBLIC PLACES**

2.1 The following are designated public places for the purposes of this By-Law:

- 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 building, public facility, public place;
- 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) private club;
- u) a school bus;
- v) a taxi cab;
- w) a limousine;
- x) a municipally owned vehicle;
- y) a theatre.

3.0 **GENERAL PROHIBITION ON SMOKING**

3.1 No person shall smoke in any public place, including but not limited to those designated under Section 2 of this By-Law;

a) Section 3.1 shall not apply to an outdoor patio as defined in Section 1.

3.3 This By-Law does not apply to:

- a) a hospital as defined in the *Public Hospitals Act*,
- b) a private hospital as defined in the *Private Hospitals Act*,
- c) a psychiatric facility under the *Mental Health Act* or *Mental Hospitals Act*,
- d) a nursing home as defined in the *Nursing Homes Act*,
- e) a home for special care as defined in the *Homes for Special Care Act*,
- f) an approved charitable home as defined in the *Charitable Institutions Act*, and
- g) a home for special care as defined in the *Homes for the Aged and Rest Homes Act*.

4.0 **REQUIREMENTS TO POST SIGNS**

4.1 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 are conspicuously posted as to clearly identify that smoking is prohibited.

5.0 **POSTING OF SIGNS IN SPECIFIC PREMISES**

5.1 Despite Section 4, in every shopping mall or other public building referred to in Section 2, the proprietor or other person in charge of the shopping mall or other public buildings shall ensure that,

- a) signs are posted in accordance with Section 6 in every common area of the shopping mall or other public building,
- b) signs are posted at every entrance to the shopping mall or other public building, which are visible and in sufficient numbers, clearly indicating in English and/or in French that smoking is prohibited in the common areas of the shopping mall or other public buildings, and
- c) signs referred to in clauses a) and b) are in accordance with Section 6.

6.0 **DESCRIPTION OF SIGNAGE**

6.1 The signs referred to in this By-law shall consist of graphic symbols that comply with the provisions of Schedule "A" attached hereto and forming a part of this By-Law.

6.2 Deviations from the color or content of the signs prescribed by this By-Law that do not affect the substance or misleads the public does not vitiate the signs.

6.3 Any sign prohibiting smoking that refers to a By-Law of a former municipality is deemed to be referring to this By-Law.

7.0 **ASHTRAYS**

7.1 The proprietor or other 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 **APPLICATION TO MUNICIPAL PROPERTIES**

8.1 Council approved non-smoking policies with respect to the public portions of the Town's buildings are deemed to be specified within this By-Law.

8.2 No person shall smoke in any area designated as an area where smoking is prohibited by any Council-approved policy referred to in Section 8.1.

9.0 **DUTIES**

9.1 No proprietor or other person in charge of a public place shall permit smoking where smoking is prohibited under this By-Law.

10.0 **OFFENCES**

10.1 Any person who contravenes any of the provisions of this By-Law is guilty of an offence.

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

11.0 **FINES/PENALTY**

11.1 Every person who is convicted of an offence under any provision 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 a successor thereof.

12.0 **ENFORCEMENT**

12.1 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 appointed by Council.

12.2 An inspector may, at any reasonable time, enter any designated public place for the purpose of determining compliance with this By-Law.

13.0 **CONFLICTS**

13.1 If a provision of this By-Law conflicts with an Act or a regulation or other By-Law, the provision of that is the most restrictive of smoking shall prevail.

14.0 **SEVERABILITY**

14.1 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 there from and to be enacted as such.

15.0 **REPEALS**

15.1 The Smoking Policy is hereby repealed.

16.0 **EFFECTIVE DATE**

16.1 This By-Law shall come into effect on June 2nd, 2003 for all public places as designated under Section 2 and, as defined under Section 1 of this By-Law.

17.0 **SHORT TITLE**

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

17.2 That the Mayor and Clerk be authorized to execute the said By-Law on behalf of the Corporation and affix thereto the Corporate Seal.

Read a first and second time this

8th day of April, 2003.

Walter J. Borthwick
MAYOR

Eric E. Collingwood
CLERK

Read a third time and finally passed

this 8th day of April, 2003.

Walter J. Borthwick
MAYOR

Eric E. Collingwood
CLERK

SCHEDULE "A" TO BY-LAW #2003-19

The following graphic symbol shall be used to indicate the areas where smoking is prohibited pursuant to this By-Law:

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

The graphic symbol referred to above shall include the text "Wasaga Beach By-Law" in letters and figures at least five percent (5%) of the diameter of the circle in the symbol.

To the symbols referred to above there may be added an additional appropriate symbol such as directional arrows.

Despite the fact that the symbol referred to above is a cigarette, it shall included a lighted cigar, cigarette, pipe or any other lighted smoking instrument.

With respect to the size of the graphic symbol the diameter of the circle in the symbol referred to above shall be not less than the number of centimeters prescribed below, based upon the maximum viewing distance in direct line of sight, as follows:

- a) three (3m) meters or less – ten (10cm) centimeters;
- b) six (6m) meters or less – fifteen (15cm) centimeters;
- c) twelve (12m) meters or less – twenty (20cm) centimeters;
- d) twenty-four (24m) meters or less – thirty (30cm) centimeters;
- e) forty-eight (48m) meters or less – forty (40cm) centimeters;
- f) seventy-two (72m) meters or less – sixty (60cm) centimeters;

Despite the above, the diameter of the circle in the symbol referred to above to be erected at the entrance to every shopping mall or other public building shall be a minimum of ten (10cm) centimeters.

Despite the above, with respect to taxicabs or limousines, the diameter of the circle in the graphic symbol referred to above shall be not less than ten (10cm) centimeters.