

THE CITY OF WINNIPEG

BY-LAW NO. 88/2003

A By-law of The City of Winnipeg to ban smoking in public places.

WHEREAS after reviewing the representations and material submitted, Council has determined that tobacco smoke is a health hazard, is a nuisance to or detriment to persons, and that it is necessary to protect the safety, health and well-being of persons;

AND WHEREAS *The City of Winnipeg Charter* S.M. 2002, c. 39 authorizes Council to enact by-laws respecting, among other things, the protection, safety, health and well-being of people; health hazards; activities or things that in the opinion of Council are or may become a nuisance or detriment to persons or property; and people and activities in, on or near public places or places open to the public including private clubs;

AND WHEREAS *The Non-Smokers Health Protection Act* S.M. 1989-90, c. S125 authorizes a municipal council to pass a by-law limiting or banning smoking in any enclosed public place in the municipality;

NOW THEREFORE THE CITY OF WINNIPEG, in Council assembled enacts as follows:

Title

1. This By-law shall be known as "The Smoking Regulation By-law".

Definitions

2. In this By-law

"ashtray" means a receptacle for tobacco ashes and for cigar and cigarette butts;

"enclosed public place" means any part of an enclosed place to which members of the public have access, including, without restricting the generality of the foregoing,

- (a) any part of
 - (i) an office building,
 - (ii) a retail store or other commercial establishment, or the common areas of a residential building or shopping mall,
- (b) a health care facility,
- (c) a day care centre or nursery,

- (d) an educational institution or facility,
- (e) a restaurant, and
- (f) an elevator, pedestrian walkway, pedestrian corridor or pedestrian tunnel or bus shelter;

“health care facility” means a place where a person may receive medical examination, treatment or care, and includes a hospital, hospice, clinic and medical practitioner’s office;

“licensed premises” means licensed premises as defined in *The Liquor Control Act*;

“personal care home” means a personal care home as defined in *The Health Service Insurance Act* and regulations;

“private function” means a specific event for which an enclosed room or hall or a portion thereof has been reserved and at which attendance is limited to people who have been specifically invited, permitted or designated by the host, whether or not an admission fee is charged and regardless of the purpose for which the event is held, but excluding private residences;

“proprietor” means the owner of an enclosed public place, private club, tobacconist shop or the premises in which a private function is held and includes a person who carries on or manages the activities carried on in any of these places and includes the person present who is in charge at any particular time;

“restaurant” includes any part of a coffee shop, cafeteria, sandwich stand, food court or other eating establishment that is located in an enclosed public place and is open to members of the public, whether or not it is licensed premises or a portion of licensed premises;

“shopping mall” means a complex of commercial establishments designed for the sale of goods or services or both to members of the public;

“smoke” & “smoking” means

- (a) smoking a cigarette, cigar, pipe or other device used for smoking tobacco; or
- (b) carrying or having control of a lighted cigarette, cigar, pipe or other device used for smoking tobacco;

“smoking area” means an area marked and identifiable by a sign indicating that smoking is permitted in that area;

“tobacco product” means tobacco leaves and any product manufactured from tobacco that is intended to be used for smoking, inhaling or chewing and includes nasal and oral snuff, cigarette paper, tubes, pipes and filters;

“tobacconist shop” means any business that manufactures, sells or distributes tobacco products only;

Smoking Prohibited

3. Subject to Section 4 no person shall smoke in, and no proprietor shall permit any person to smoke in:

- (a) any enclosed public place;
- (b) any motor vehicle used for the public transportation of persons or property including buses, taxis and limousines;
- (c) any area of a private club or private function to which a member or person invited has access;

Exceptions

4. A proprietor may allow smoking in

- (a) an area of a health care facility, or personal care home designated by the board of the health care facility or personal care home and for use by residents or in patients of the facility or home only;
- (b) guest rooms in hotels, motels and inns;
- (c) any tobacconist shop;

provided that the area, room or tobacconist shop is physically separated and enclosed by a ceiling and floor to ceiling walls and doors from any adjacent or attached enclosed public place, private club; or private function.

Drifting Smoke

5. No person or proprietor shall permit smoke to drift or be recirculated into an enclosed public place, private club, or private function.

Signs

6.
 - (a) In every enclosed public place, motor vehicle, private club, or private function to which this By-law applies, a proprietor shall clearly and conspicuously post and keep in place at all times a sufficient number of signs as prescribed by Section 7, which signs shall be clearly visible.
 - (b) The signs referred to in this By-law shall be posted in such number of places as, having regard to size of the printed text or symbol thereon and the place of posting, will give every person in the place or area to which the sign relates, a clear and unobstructed view of at least two of the signs.
 - (c) No person shall remove, alter, conceal, deface or destroy any sign posted pursuant to this By-law.
7. The requirements of section 6 shall be met by either:
 - (a) posting a sign that
 - (i) carries the text "no smoking" in capital or lower case letters or a combination thereof, either alone or in conjunction with other words which do not detract from the purpose of the sign of indicating a place or area in which smoking is prohibited;
 - (ii) consists of at least two (2) contrasting colours which make the text of the sign clearly legible in whatever lighting is used in the place or area in which the sign is posted or if the text is to be applied directly to a surface or to be mounted on a clear panel, set the text out in a colour which contrasts with the background so that the text is clearly legible in whatever lighting is used in the place or area; and
 - (iii) sets the text out in letters of such a style and size and be posted in such places as will make them clearly legible to persons within the place or area in which the smoking is prohibited, but in any case the text shall not be less than 28 millimetres in height; or
 - (b)
 - (i) posting a sign consisting of the following graphic symbol that shall be used to indicate "no smoking" areas:



on a white background with the circle and interdictory stroke in red and the diameter of the circle in the symbol shall be of such size as will make it clearly discernible by persons within the place or area to which the symbol relates but in any case not less than 100 millimetres in size.

- (ii) Notwithstanding that the symbol in clause (a) illustrates a cigarette, it shall also refer to and represent a lighted cigar or pipe.

Ashtrays

8. A proprietor shall ensure that no ashtrays or similar receptacles are placed or allowed to remain in any area in which smoking is prohibited pursuant to this By-law.

Enforcement

9. The Director of Community Services and his/her delegates may conduct inspections and take steps to administer and enforce this By-law or remedy a contravention of this By-law in accordance with *The City of Winnipeg Charter* and, for those purposes, have the powers of a "designated employee" under *The City of Winnipeg Charter*.

Penalties

10. A person or proprietor who contravenes a provision of this By-law is guilty of an offence and is liable on summary conviction to the following penalties:

- (a) For a first offence, to a fine of not less than One Hundred (\$100.00) Dollars in the case of an individual and Five Hundred (\$500.00) Dollars in the case of a corporation or partnership;
- (b) For a second offence, to a fine of not less than Two Hundred (\$200.00) Dollars in the case of an individual and Seven Hundred (\$700.00) Dollars in the case of a corporation or partnership;
- (c) For a third offence or subsequent offence, to a fine of not less than Three Hundred (\$300.00) Dollars in the case of an individual and One Thousand (\$1,000.00) Dollars in the case of a corporation or partnership.

Severability

11. A decision of a Court that one or more of the provisions of this By-law are invalid in whole or in part does not affect the validity, effectiveness or enforceability of the other provisions or parts of the provisions of this By-law.

Repeal

12. By-law No. 7870/2001 is repealed.

Effective Date

13. This by-law comes into force on July 1, 2003.

DONE AND PASSED in Council assembled this day of
A.D. 2003.

Mayor

City Clerk

Certified as to form:

City Solicitor/
Manager of Legal Services