

THE CORPORATION OF THE TOWN OF OAKVILLE

BY-LAW NUMBER 2001-218

A by-law respecting smoking in public places

WHEREAS it has been determined that environmental tobacco smoke (exhaled smoke and the smoke from idling cigarettes, cigars or pipes), also known as second-hand smoke, is a health hazard because of its adverse effects and risk to the health of the inhabitants of the Town of Oakville;

AND WHEREAS the Medical Officer of Health for the Region of Halton has declared that second-hand smoke is a serious health hazard;

AND WHEREAS it is desirable for the health, safety and welfare of the inhabitants of the Town of Oakville to provide for the prohibiting and abating of second-hand smoke in accordance with the provisions of this by-law;

AND WHEREAS section 213 of the *Municipal Act*, R.S.O. 1990, c. M.45 as amended authorizes Councils of local municipalities to pass by-laws regulating the smoking of tobacco in public places within the municipality and designating public places or classes or parts of such places in which smoking tobacco or holding lighted tobacco is prohibited;

THE COUNCIL ENACTS AS FOLLOWS:

Definitions

1. In this by-law:

- (1) “bingo hall” means a building, location or premises where the conduct of bingo events is licensed;
- (2) “common area” means that part of any building or structure including a commercial or retail establishment, residential condominium or multiple dwelling unit apartment building, other than a dwelling unit, to which the public may have access, whether as of right or by invitation, express or implied and includes, but is not limited to, a reception area for receiving or greeting customers, clients, patients, guests or other persons, elevators, escalators, hallways, stairwells, foyers, lobbies, laundry rooms, washrooms, and amenity areas;
- (3) “common areas of enclosed shopping malls” means those areas of the mall that are open to the public and that are not part of a particular retail establishment or other business within the mall;
- (4) “designated smoking room” means an enclosed, separately ventilated room within a building or structure in which smoking is permitted subject to the provisions of this by-law;

- (5) “enclosed”, except as noted, means closed in by a roof or ceiling and walls with appropriate openings for ingress and egress;
- (6) “food court or indoor patio” means an area located within a public place that is used in conjunction with a restaurant or take-out eating establishment, where unenclosed seating is provided or where meals or refreshments are consumed by the public;
- (7) “gasoline kiosk” means a building, booth, stall or enclosed place where goods or services are sold or offered for sale to the public on the premises or an automobile service or gasoline station;
- (8) “private club” means a building or part thereof meeting the requirements of Schedule “C” to this by-law;
- (9) “proprietor” means any person who owns or occupies or ultimately controls, governs or directs the activities carried on within a public place, and includes the person actually in charge of the premises;
- (10) “public hall” means premises, including banquet facilities, licensed as a public hall by the Town of Oakville;
- (11) “public place” means the whole or part of any place designated as a public place under Section 2 of this by-law;
- (12) “public transit vehicle” means any vehicle used for transporting the public and includes a school bus and a passenger vehicle used for hire;
- (13) “reception area” or “lobby” means the indoor public space used by an office, establishment, residential building or hotel for the receiving or greeting of customers, clients, residents or other persons dealing with such office, establishment, residential building or hotel;
- (14) “restaurant” means an establishment engaged in the sale and service of food or drink or both to the public for consumption on the premises and includes those portions of a hotel, bar or tavern where such sale and service is carried on and a cafeteria;
- (15) “service line” means a line of two or more persons awaiting service of any kind available to the public, regardless of whether or not such service involves the exchange of money, including but not limited to sales, provision of information, transactions or advice and transfers of money or goods;

- (16) “smoke or smoking” includes the carrying of a lighted cigar, cigarette, pipe or other lighted smoking equipment;
- (17) “Town” means The Corporation of the Town of Oakville;
- (18) “video or amusement arcade” means premises to which the public has access and which contain electrical or mechanical machines or devices that may be used for playing games for the entertainment or amusement of the players.

Designation of Public Places

- 2. The whole or part of every enclosed area to which the public has access as of right or by invitation, express or implied is designated as a public place for the purposes of this by-law and without limiting the generality of the foregoing, the places listed in Schedule “A” to this by-law are designated as public places.
- 3. Notwithstanding Section 2 of this by-law:
 - ~~(1)~~(19) a private club shall not be considered a public place while being used exclusively for the private or personal assemblage of persons; and
 - ~~(2)~~(20) a public hall shall not be considered a public place while used exclusively for the private or personal assemblage of persons.

General Prohibition

- 4. No person shall smoke in a public place.

Exception – Bingo Halls

- 5. Notwithstanding section 4, a bingo hall shall be permitted to establish a designated smoking room, and smoking shall be permitted within the designated smoking room, provided:
 - ~~(1)~~(21) the designated smoking room shall not comprise more than fifty (50) percent of the seating area available for patrons;
 - ~~(2)~~(22) the designated smoking room is completely enclosed on all sides by solid floor-to-ceiling walls, windows or solid floor-to-ceiling partitions;
 - ~~(3)~~(23) no non-smoking patron requires access through the designated smoking room to reach any service line or washroom;
 - ~~(4)~~(24) every entrance to the designated smoking room is clearly marked with a sign indicating that the room is a designated smoking room;

~~(5)~~(25) the designated smoking room is equipped with a separate ventilation system that:

- (a) maintains a minimum ventilation rate of thirty (30) litres per second per person, based on the maximum occupancy;
- (b) is ventilated directly to the exterior of the building;
- (c) is exhausted at a rate of at least one hundred and ten percent (110%) of supply; and
- (d) has no output vent located within three (3) metres of any air intake or opening.

Proprietor Obligations

6. Every proprietor of a public place shall:

- (1) ensure that no person is permitted to smoke within the public place;
- (2) ensure that “No Smoking” signs are conspicuously posted in the public place in compliance with the standards set out in this by-law so as to clearly identify that smoking is prohibited;
- (3) ensure that no ashtrays or like paraphernalia are placed or allowed to remain in the public place other than ashtrays installed in a vehicle by the manufacturer.

Signage Requirements

7. Where a “No Smoking” sign is required to be posted under this by-law, the sign shall have the proportions and characteristics set out in Schedule “B” to this bylaw. Without limiting the generality of Section 6(2) of this by-law, every proprietor of a public place shall ensure that a “No Smoking” sign is posted:

- (1) at every entrance to the public place;
- (2) within any public washroom;
- (3) within every food court or indoor patio area.

Offence and Penalty

8. Every person who contravenes a provision of this by-law is guilty of an offence and upon conviction is liable to a fine of not more than Five Thousand Dollars (\$5,000.00) exclusive of costs as provided for under the *Provincial Offences Act*, R.S.O. 1990, c. P.33 as amended.

Enforcement

9. Municipal Law Enforcement Officers employed by the Town and Public Health Inspectors employed by the Regional Municipality of Halton Health Department are hereby appointed as Inspectors for the purposes of enforcing this by-law and may:
- (1) at any reasonable time, enter any public place, other than a dwelling unit, for the purpose of determining whether there is compliance with the by-law;
 - (2) make such examinations, investigations and inquiries as are necessary to determine whether there is compliance with this by-law.

Conflict

10. 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.

Schedules

11. The Schedules to this by-law shall be deemed form part of this by-law.

Severability

12. If any section or sections of this by-law or parts thereof are found by a 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.

Implementation Date and Repeal

13. This by-law shall come into full force and effect on May 31, 2002.
14. By-law 1994-216, as amended is hereby repealed, effective upon the coming into force of this by-law.

Short Title

15. This by-law may be cited as the “Smoking in Public Places By-law”.

PASSED by the Council this day of , 2001.

MAYOR

CLERK

SCHEDULE “A”
Examples of Public Places

Without limiting the generality of Section 2, the following enclosed places are included within the definition of public places:

1. the common areas of residential, commercial or office buildings
2. the common areas of shopping malls
3. a food court
4. a restaurant
5. a bar
6. a public restroom
7. a public elevator or stairwell
8. the reception or waiting areas of offices, service facilities
9. a bingo hall
10. a bowling alley
11. a cinema
12. a theatre
13. a retail shop
14. a laundromat
15. a barber shop or hairdressing establishment
16. a public transit vehicle
17. a school bus
18. a taxicab
19. a limousine
20. a transit shelter
21. a gasoline kiosk
22. an indoor service line
23. a video arcade or place of amusement
24. a public hall
25. an enclosed sports facility
26. an entertainment lounge
27. a municipal office

**SCHEDULE “B”
Signage**

STANDARDS FOR NO SMOKING SIGNS

1. “No Smoking” signs shall:
- (1) be of sufficient size and conspicuously posted so as to clearly identify that smoking is prohibited within a public place or area within the public place;
 - (2) include a symbol of a cigarette within an interdictory symbol together with the words “Town of Oakville By-law”, in similar proportion to the diagram set out below, and may include additional wording that does not detract from the message that smoking is not permitted within the public place;
 - (3) shall consist of letters and graphic symbol of colour(s) which contrast with the background colour of the sign or the surface to which it is applied.



SCHEDULE “C”

Private Clubs

1. An enclosed facility which might otherwise fall under the definition of a public place, will be considered to be a “Private Club” for the purposes of this by-law, if the facility is under the exclusive possession and control of a club meeting the following criteria:
 - (1) the club has a fixed membership list;
 - (2) each member must pay an annual or periodic membership fee;
 - (3) the club must have an executive/leadership that is elected by all the members on an annual or periodic basis;
 - (4) the club must have a constitution and/or by-laws that provide for the governing rules of the club;
 - (5) the club must be not-for-profit;
 - (6) non-members cannot enter the premises unless accompanied by a member;

except for such periods that the private club opens its doors to the public or rents out space to a member or non-member for a special event to which non-members are admitted.