

THE CORPORATION OF THE CITY OF TEMISKAMING SHORES
BY-LAW NO. 2004-147
BEING A BY-LAW TO REGULATE SMOKING IN PUBLIC PLACES
AND WORKPLACES IN THE CITY OF TEMISKAMING SHORES.

WHEREAS in accordance with Section 115 of the Municipal Act, 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 or workplaces 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 all of the inhabitants and workers in the Corporation of the City of Temiskaming Shores;

AND WHEREAS it is desirable for the purpose of promoting and protecting the health, safety and welfare of the inhabitants and workers of the Corporation of the City of Temiskaming Shores to ensure that all public places and workplaces will be free from second hand smoke;

NOW THEREFORE the Council of The Corporation of the City of Temiskaming Shores enacts as follows:

1. That the Council of the City of Temiskaming Shores adopts a Smoke-Free Policy for Public Places and Workplaces in the City of Temiskaming Shores, hereto attached as Schedule "A";
2. That the effective date of this by-law shall be April 1, 2005; and
3. That all by-laws of the former municipalities of Dymond, Haileybury and New Liskeard with respect to regulating smoking in public places in the City of Temiskaming Shores are hereby repealed; and
4. That if any section, clause, or provision of this By-law, is for any reason declared by a court of competent jurisdiction to be invalid, the same shall not effect the validity of the By-law as a whole or any part thereof, other than the section, clause or provision so declared to be invalid and it is hereby declared to be the intention that all remaining sections, clauses or provisions of this By-law shall remain in full force and effect until repealed, notwithstanding that one or more provisions thereof shall have been declared to be invalid.
5. That the Clerk is hereby permitted to make minor modifications to the policy provided the purpose and intent is not changed in any way.

READ a FIRST AND SECOND TIME this 13th day of December, 2004.

Mayor

Clerk

READ a THIRD TIME and FINALLY PASSED this 13th day of December, 2004.

Mayor

Clerk

SCHEDULE "A" TO
SMOKE-FREE BY-LAW

SECTION 1 TITLE, APPLICATION AND SCOPE

1.1 Short Title

This By-Law may be cited as the "Smoking By-law".

1.2 Application

The Provisions of this By-law shall apply to all property within the geographic limits of the City of Temiskaming Shores.

1.3 Scope of By-law

Where a provision of this By-law conflicts with a provision of another By-law in force in the City of Temiskaming Shores, the provisions that establish the higher standard shall prevail in order to protect the health, safety and welfare of the general public.

1.4 Conflicts

When any provision of this By-law is declared invalid for any reason by a court of competent jurisdiction, the remainder of this By-law still continues in force.

An invalid provision will not operate to void the entire By-law.

SECTION 2 DEFINITIONS

For the purpose of this By-law, the definitions and interpretations given in this section shall govern.

2.1 CARE SERVICES means health care services, rehabilitative or therapeutic services, or services that provide assistance with the activities of daily living.

2.2 CITY means the Corporation of the City of Temiskaming Shores.

2.3 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.

2.4 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.

2.5 INSPECTOR means any employee or class of employee of the Temiskaming Health Unit authorized by the Medical Officer of Health to carry out an inspection under 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.

2.6 OUTDOOR PATIO means an outdoor area or partially enclosed outdoor area that is adjacent to an establishment where food or beverages are sold and where food or beverages, or both are consumed by the public.

2.7 PERSON includes a corporation.

2.8 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.

2.9 PUBLIC PLACE means any building, structure, vessel, vehicle or conveyance including a taxi cab or part thereof, whether covered by a roof or not, to which the public has access as of right or by invitation, expressed or implied, whether or not a fee is charged for entry but does not include an Outdoor Patio, a street, road or highway.

- 2.10 **SMOKE OR SMOKING** means the smoking of tobacco and includes the carrying of a lighted cigar, cigarette, pipe or any other lighted smoking equipment, but does not include smoke or smoking where smoke or smoking is used in a stage production of a theatrical performance.
- 2.11 **WORKPLACE** means any enclosed area of a building, structure, vessel, vehicles used by employees or conveyance or part thereof, including elevators, bathrooms, 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 utilized by employees, but does not include an Outdoor Patio.

SECTION 3 WORKPLACES

3.1 Restriction in Workplace

No person shall Smoke in any Workplace within the City whether or not a No Smoking sign is posted.

3.2 Responsibility of Employer

Every employer shall:

- i) ensure compliance with this by-law;
- ii) prohibit Smoking in the Workplace;
- iii) inform each Employee in the Workplace that Smoking is prohibited in the Workplace;
- iv) post No Smoking signs in accordance with Section 5 of this by-law in conspicuous locations at every entrance and washrooms in the Workplace indicating that smoking is prohibited in the Workplace; and
- v) ensure that no ashtrays or like paraphernalia are placed or permitted to remain in any part of the Workplace.

3.3 Exception

This section does not apply to:

- i) a part of a workplace that is used as a private residence; or
- ii) a room in a hotel, motel or other place where rooms are rented for sleeping accommodation, provided the room is used for sleeping accommodation and the room is designated and specifically set aside as a room in which Smoking is permitted.

SECTION 4 PUBLIC PLACES

4.1 Restrictions

No person shall Smoke in any Public Place within the City whether or not a No Smoking sign is posted.

4.2 Responsibility of Proprietors

Every Proprietor of a Public Place shall:

- i) ensure compliance with this by-law;
- ii) prohibit Smoking in the Public Place;
- iii) post No Smoking signs in accordance with Section 5 of this by-law in conspicuous locations at every entrance and washrooms in the Public Place indicating that Smoking is prohibited in the Public Place;
- iv) ensure that no ashtrays or like paraphernalia are placed or permitted to remain in any Public Place.

4.3 *Exception*

Sections 4.1 and 4.2 do not apply to a room in a hotel, motel or other place where rooms are rented for sleeping accommodation, provided the room is used for sleeping accommodation and the room is designated and specifically set aside as a room in which Smoking is permitted.

Sections 4.1 and 4.2 do not apply to an Outdoor Patio as defined herein.

SECTION 5 SIGNAGE REQUIRED

5.1 *Required Signage*

Every employer and every proprietor shall post and maintain in conspicuous locations at each entrance to the facility and in the washrooms, a sign at least 14 centimetres (5.5 inches) by 14 centimetres (5.5 inches) in size that includes depiction of the international No Smoking symbol at least 7.5 centimetres (3 inches), and lettering at least 0.8 centimetres (5/16 inch) high and at least 0.2 centimetres (1/16 inch) wide at the narrowest point, with the rest of the letter sized proportionately, which reads "Corporation of the City of Temiskaming Shores; Minimum Penalty \$155"

5.2 *Signage Characteristics*

Where a No Smoking sign is required to be placed or posted under this by-law, the sign shall have the proportions, characteristics and minimum measurements as set out in Section 5.1 as depicted in Appendix "A" and consists of two (2) contrasting colours, or if the lettering and graphic symbol is to be applied directly to surface or to be mounted on a clear panel, the lettering and graphic symbol shall contrast with the background.

5.3 *Symbol*

Despite the fact that the symbol referred to in Appendix "A" is a cigarette, it may include alighted cigar, cigarette, pipe or any other lighted smoking instrument.

5.4 *Deviation*

Deviations from the colour or content of the sign prescribed by this section that do not affect the substance or that are not calculated to mislead do not vitiate the sign.

5.5 *Prior Signage Deemed Included*

Any sign prohibiting Smoking that refers to an old by-law of the City is deemed to be referring to this by-law.

SECTION 6 INSPECTIONS

6.1 *Inspections*

An Inspector may, at any reasonable time, enter any Public Place or Workplace for the purposes of determining compliance with this By-law.

6.2 *Inspections in Workplace in a Dwelling*

No Inspector may enter a Workplace that is also a dwelling without the consent of the occupant or without first obtaining and producing a warrant.

SECTION 7 OFFENCES AND ENFORCEMENT

7.1 *Contravention*

Any person who contravenes any of the provisions of this by-law shall be subject to a penalty as set out in Appendix "B" – Penalties of this by-law, and all such penalties shall be recoverable under the provisions of the *Provincial Offences Act, R.S.O. 1990, Chapter 33*, or any successor thereof.

7.2 *Further Prohibition*

If this by-law is contravened and a conviction entered, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty that is imposed, make an order prohibiting the continuation or repetition of the offence by the person convicted.

APPENDIX "A" TO SMOKE-FREE POLICY**STANDARDS FOR NO SMOKING SIGNS**

"No Smoking" signs shall:

1. Be of sufficient size and conspicuously posted so as to clearly identify that smoking is prohibited;
2. consist of a white background with a black symbol of a lit cigarette within a red circle with an interdictory stroke, together with the words, "City of Temiskaming Shores – Minimum Penalty \$155", 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, and;
3. shall be posted upon a surface that contrasts with the background of the sign so that it can easily be read.

CITY OF TEMISKAMING SHORES

MINIMUM FINE \$ 155
MAXIMUM FINE \$5,000

APPENDIX “B” TO SMOKE-FREE POLICY
PENALTIES

Item	Short Form Wording	Section	Set fine
1.	Smoking in any workplace within the Municipality whether or not a NO SMOKING Sign is posted.	3.1	\$ 155
2.	Failure to ensure compliance with No-Smoking By-law in a Workplace.	3.2 i)	\$ 155
3.	Failure to prohibit Smoking in a Workplace.	3.2 ii)	\$ 155
4.	Failure to inform each employee of the No Smoking By-law.	3.2 iii)	\$ 155
5.	Failure to post No Smoking signs in a Workplace.	3.2 iv)	\$ 155
6.	Failure to ensure no ashtrays or like in a Workplace.	3.2 v)	\$ 155
7.	Failure to ensure compliance with the No Smoking By-law in a Public Place.	4.1	\$ 155
8.	Failure to prohibit Smoking in a Public Place.	4.2 i)	\$ 155
9.	Failure to post No Smoking signs in a Public Place.	4.2 ii)	\$ 155
10.	Failure to ensure no ashtrays or like in a Public Place.	4.2 iii)	\$ 155
11.	Smoking in any Public Place within the Municipality whether or not a No Smoking sign is posted.	4.2 iv)	\$ 155
12.	Hinder or Obstruct an Officer enforcing the Smoking By-law	4.2 v)	\$ 155

NOTE:

The penalty provision for the offences indicated above is Section 61 of the ***Provincial Offences Act, R.S.O. 1990***, which reads as follows:

Except as otherwise expressly provided by law, every person who is convicted of an offence is liable to a fine of not more than \$5,000. R.S.O. 1990, c. P. 33, s. 61.

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