

# THE CORPORATION OF THE TOWN OF NORTH PERTH

## BY-LAW NO. 120-AD-2001

### BEING A BY-LAW TO REGULATE SMOKING IN PUBLIC PLACES IN THE TOWN OF NORTH PERTH

**WHEREAS** Section 102 of the Municipal Act, R.S.O. 1990, Chapter M.45 provides that every Council may pass such By-laws and make such regulations for the health, safety, morality and welfare of the inhabitants of the municipality in matters not specifically provided for by this Act as may be deemed expedient and are not contrary to law, and for governing the proceedings of the Council, the conduct of its members and the call of meetings;

**AND WHEREAS** paragraph 134 of Section 210 of the said Act provides that By-laws may be passed by the Councils of local municipalities for prohibiting and abating public nuisances;

**AND WHEREAS** Section 213 of the said Act, 1994 c.10 s.21(2) provides that Council of a local municipality may pass a by-law regulating the smoking of tobacco in public places and workplaces within the municipality and designating 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** second-hand smoke (exhaled smoke and the smoke from idling cigarettes, cigars and pipes) is a public nuisance because of its irritating properties; a serious health hazard because of its impairment, adverse effect and risk to health; and a frequent source of discomfort to the inhabitants of the Town of North Perth;

**AND WHEREAS** it is desirable for the health, safety and welfare of the inhabitants of the town of North Perth, to prohibit or regulate smoking, or both, in the Town of North Perth as in this By-law more particularly set out.

**NOW THEREFORE** the Council of the Corporation of the Town of North Perth enacts as follows:

#### **SHORT TITLE:**

1. This By-law may be cited as “the Smoking By-law”.

#### **INTERPRETATION:**

2. In this By-law,
  - (1) **“Bar”** means any place or part thereof licensed for the sale of alcohol pursuant to the provision of the *Ontario Liquor Control Act*, and for which the sale of food accounts for less than 25% of total sales, but does not include a licensed dining room or licensed restaurant;
  - (2) **“Clerk”** shall mean the Clerk of the Town of North Perth;
  - (3) **“Common Area of a residential building”** includes but is not limited to a hallway, a stairwell, 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.
  - (4) **“Eating establishment”** means any place or part thereof where food or drink is offered for sale or sold to the public for immediate consumption and includes a licensed restaurant, a licensed dining room, a café, a cafeteria, a take-out restaurant, an ice cream parlour, a tea or lunch room, a dairy bar, a coffee shop, a donut shop, a snack bar, and a refreshment stand. It does not include an outdoor eating area, or outdoor bar;

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- (5) **“Enforcement Officer”** means any person authorized by the Perth District Health Unit to carry out inspections under and to enforce the provisions of this By-law;
- (6) **“Person”** includes a corporation;
- (7) **“Place of amusement”** means an indoor area of a commercial 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;
- (8) **“Proprietor”** 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;
- (9) **“Public Place”** means any place to which the general public is invited or permitted access and, for the purposes of this By-law, includes the interior of any premise so designated under this By-law;
- (10) **“Public Facility”** means any hall, room or banquet area that is publicly owned and is rented for an event or function;
- (11) **“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;
- (12) **“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;
- (13) **“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;
- (14) **“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 transfer of money or goods;
- (15) **“Smoke” or “Smoking”** includes the carrying of a lighted cigar, cigarette, pipe or any other lighted smoking equipment;
- (16) **“Smoke-free”** shall mean that no smoking is permitted; and
- (17) **“Town”** means the Corporation of the Town of North Perth;
- (18) **“Work site”** means any enclosed area of a building or structure or portion thereof in which people work and includes employee eating and lounge areas.

**GENERAL PROHIBITIONS:**

- 3. No person shall smoke in any of the following public places:
  - (1) any indoor elevator, escalator, stairway, corridor or hallway in any building to which the public has access;
  - (2) any indoor service line or any service counter in any premise to which the public has access;

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- (3) a school bus;
  - (4) a theatre or auditorium, gymnasium, indoor swimming pool, locker room, arena, community centre, library, museum, indoor auction centre or art gallery or other enclosed place of public assembly;
  - (5) a public washroom;
  - (6) a food court
  - (7) a public facility;
  - (8) a reception area;
  - (9) a place of amusement;
  - (10) a municipally owned building, save for a public facility;
  - (11) a bingo hall;
  - (12) a bar;
  - (13) an eating establishment;
  - (14) a taxi cab;
  - (15) a public transit vehicle;
  - (16) common areas of residential buildings; and
  - (17) outdoor bleacher areas to which the general public has access or is invited.
4. Section 3 of this By-law does not apply to the facilities indicated below:
- (1) **Public Facilities:**
    - (a) The proprietor must designate not more than 50% of the seating area or the area of the facility in use as a smoking area and the smoking area so designated shall be comprised of seats or floor space forming a contiguous unit, effective September 1, 2002.
    - (b) Effective June 1, 2003, the proprietor of a facility shall designate the facility as 75% smoke free.
    - (c) Effective June 1, 2004, the proprietor of a facility shall designate the facility as 100% smoke free.
  - (2) **Bingo Halls:**
    - (a) The owner or occupier of a bingo hall must designate not more than 50% of the total floor area for the purpose of smoking, effective September 1, 2002.
    - (b) Effective June 1, 2003, the owner or occupier of a bingo hall shall designate the facility as 75% smoke free.
    - (c) Effective June 1, 2004, the owner or occupier of a bingo hall shall designate the facility as 100% smoke free.
  - (3) **Bars:**
    - (a) The proprietor of a bar must designate not more than 50% of the floor area of the establishment smoke free, effective September 1, 2002.
    - (b) Effective June 1, 2003, the proprietor of a bar shall designate the entire bar as 75% smoke free.
    - (c) Effective June 1, 2004, the proprietor of a bar shall designate the entire bar as 100% smoke free.

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**(4) Eating Establishments:**

(a) Proprietors must designate not more than 50% of the dining area of an eating establishment as a smoking area, effective September 1, 2002.

(b) Effective June 1, 2003, a proprietor shall designate the entire eating establishment as 75% smoke free.

(c) Effective June 1, 2004, a proprietor shall designate the entire eating establishment as 100% smoke free. It does not include an outdoor eating area or outdoor bar.

**(5) Office and Industrial work Sites:**

(a) Subject to subsection (5)(a) herein, no person may smoke in an office or industrial work site whether or not a sign prohibiting smoking has been posted.

(b) Notwithstanding subsection (5)(a) herein, a room in an office or industrial work site may be designated by the employer for use by employees as a smoking area provided that the room is separately enclosed and ventilated to the exterior of the premises.

5. Notwithstanding any section of this By-law to the contrary, any proprietor may at any time choose to designate their facility 100% smoke free, subject to posting the requisite signs.

**6. RESTRICTED AREAS**

In the case of all non-residential buildings to be constructed or renovated where smoking is to be permitted, the building must have separate ventilated smoking rooms, or ventilation and air conditioning systems so as to prevent smoke from the smoking section from entering the non-smoking section of the building.

**7. EXCEPTION**

Nothing in this By-law shall prohibit smoking by employees of designated public places in designated smoking areas that are not accessible to the public.

**8. EXEMPTION PROVISION**

(1) Private Clubs or places are not regulated if they are private in nature. For enforcement purposes, a facility considered to be a "private club" must meet the following criteria:

(a) The club must have a fixed membership list;

(b) Each member must pay an annual or periodic membership fee;

(c) The club must have an executive/leadership that is elected by all the members on an annual or periodic basis;

(d) The club must have a constitution or by-laws that provide the governing rules for the membership, executive, fees, etc.;

(e) The club must be not-for-profit; and

(f) Non-members cannot enter the premise to consume food or alcohol unless accompanied by a member.

(2) (a) The Clerk is hereby authorized to grant exemptions for private clubs or places pursuant to criteria and requirements set out in Section 7(1).

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- (b) Any decision of the Clerk regarding exemptions for private functions may be appealed to the Council of the Town of North Perth pursuant to the requirements of Section 7(1).
- (3) The applicant shall have the burden of proof in establishing that the criteria for the exemption has been met.
- (4) Any designated private clubs or places for which an exemption has been granted shall nevertheless provide a 50% smoke-free area.
- (5) An exemption granted under the provisions of this By-law is only in effect as long as the criteria outlined in Section 8(1) continue to be met.
- (6) Applications for Exemption as shown on Schedule A attached hereto must be properly completed by the appropriate Club Officials and submitted to the Clerk with the prescribed fee.

**9. OBLIGATION OF PROPRIETOR**

- (1) Except as specified in subsection 9(2) herein, a proprietor or his or her designate shall inform a person who is smoking in an area where smoking is prohibited that the smoking activity is in violation of the law;
- (2) The obligation specified in subsection 9(1) applies only in circumstances where and when the proprietor or his or her designate has knowledge of the violation or probable violation of the By-law;
- (3) The proprietor shall take all reasonable steps to ensure that employees are familiar with the provisions of this By-law so that they will be able to assist the proprietor in achieving compliance;
- (4) Any supervisory person or employee who observes any person on the premises smoking in violation of this By-law and advises such person of same, shall immediately require such person to desist therefrom and if such person declines so to do, the said supervisory person or employee shall require such person to leave the premises;
- (5) The proprietor shall take all reasonable steps to ensure compliance by employees and persons with respect to the provisions of this by-law.

**10. SIGNS TO BE POSTED**

- (1) Every proprietor of an eating establishment, bingo hall, public facility and place of amusement shall ensure that every designated area in such eating establishment, bingo hall, public facility or place of amusement where smoking is prohibited, is identified with signs and such signs:
  - (a) are at least 35.5 centimetres (14 inches) by 22 centimetres (8.5 inches) in size with lettering at least 2.8 centimetres (1 and 1/8 inches) height and at least 0.6 centimetres (1/4 inch) wide at the narrowest point, with the rest of the letter sized proportionately;
  - (b) are posted at all entrances to the area where smoking is prohibited;
  - (c) clearly indicate that the area to which they apply is a non-smoking area;
  - (d) are clearly visible to the public;
  - (e) are in place at all times; and

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- (f) clearly indicate, in letters at least 0.3 centimetres (1/8 inch) high “This facility will become smoke-free on \_\_\_\_\_ pursuant to Town of North Perth By-law No.120-AD-2001.
- (2) Smoke-free facilities shall post at each entrance to the facility, a sign 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 at least 0.4 centimetres (1/8 inch) wide at the narrowest point, with the rest of the letter sized proportionately, which reads, “This facility is smoke-free”.
- (3) Signage shall be posted in all public washrooms. Signs shall be at least 14 centimetres (5.5 inches) by 14 centimetres (5.5 inches) in size, shall include a depiction of the international no smoking symbol at least 7.5 centimetres (3 inches) in size, and in lettering at least 1.6 centimetres (5/8 inch) high and at least 0.4 centimetres (1/8 inch) wide at the narrowest point, with the rest of the letter sized proportionately, the words “No smoking”.
11. **ASHTRAYS**
- No proprietor shall permit an ashtray or any other product which is capable of being used as ashtrays to be located in an area where smoking is prohibited by this By-law.
12. **INSPECTIONS**
- An Enforcement Officer may, at any reasonable time, enter any designated public place for the purposes of determining compliance with this By-law.
13. **SEVERABILITY**
- 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 Town 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.
14. **OFFENCES AND ENFORCEMENT**
- Any person who contravenes any of the provisions contained in this By-law shall be guilty of an offence and upon conviction shall be subject to a fine as prescribed in the Provincial Offences Act, R.S.O. 1990, c.P.33, as amended .
15. The provisions of this By-law will be enforced by an enforcement officer appointed by the municipality or the Medical Officer of Health, who shall for such purposes have all of the powers of inspection set out in Section 213 of the *Municipal Act*.
16. No person shall obstruct any person conducting an inspection to determine whether or not there is compliance with this By-law.
17. This By-law shall come into effect on the day of its final passing.

**READ A FIRST AND SECOND TIME** this 22<sup>nd</sup> day of May, 2002.

**READ A THIRD TIME AND FINALLY PASSED** this 22<sup>nd</sup> day of May, 2002.

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seal

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**MAYOR**

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**CLERK**

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**TITLE: A BY-LAW TO REGULATE SMOKING  
IN PUBLIC PLACES IN THE TOWN OF  
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**SCHEDULE “B”**

<b>ITEM</b>	<b>COLUMN 1 Short Form Wording</b>	<b>COLUMN 2 Provision Creating or Defining Offence</b>	<b>COLUMN 3 Set Fine (Includes Cost)</b>
1.	Smoking in an indoor elevator in any building to which the public has access	Section 3(1)	\$115.00
2.	Smoking on an escalator in any building to which the public has access	Section 3(1)	\$115.00
3.	Smoking in a stairway in any building to which the public has access	Section 3(1)	\$115.00
4.	Smoking in a corridor or hallway in any building to which the public has access	Section 3(1)	\$115.00
5.	Smoking in an indoor service line or at a service counter in any building to which the public has access	Section 3(2)	\$115.00
6.	Smoking on a school bus	Section 3(3)	\$115.00
7.	Smoking in a theatre or auditorium	Section 3(4)	\$115.00
8.	Smoking in a gymnasium	Section 3(4)	\$115.00
9.	Smoking in an indoor swimming pool	Section 3(4)	\$115.00
10.	Smoking in a locker room	Section 3(4)	\$115.00
11.	Smoking in an arena	Section 3(4)	\$115.00
12.	Smoking in a community centre	Section 3(4)	\$115.00
13.	Smoking in a library	Section 3(4)	\$115.00
14.	Smoking in a museum	Section 3(4)	\$115.00
15.	Smoking in an art gallery	Section 3(4)	\$115.00
16.	Smoking in an enclosed place or public assembly	Section 3(4)	\$115.00

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<b>ITEM</b>	<b>COLUMN 1 Short Form Wording</b>	<b>COLUMN 2 Provision Creating or Defining Offence</b>	<b>COLUMN 3 Set Fine (Includes Cost)</b>
17.	Smoking in a public washroom	Section 3(5)	\$115.00
18.	Smoking in a food court	Section 3(6)	\$115.00
19.	Smoking in a public facility	Section 3(7)	\$115.00
20.	Smoking in a reception area	Section 3(8)	\$115.00
21.	Smoking in a place of amusement	Section 3(9)	\$115.00
22.	Smoking in a municipally owned building	Section 3(10)	\$115.00
23.	Smoking in a bingo hall	Section 3(11)	\$115.00
24.	Smoking in a bar	Section 3(12)	\$115.00
25.	Smoking in an eating establishment	Section 3(13)	\$115.00
26.	Smoking in a taxi cab	Section 3(14)	\$115.00
27.	Smoking in a public transit vehicle	Section 3(15)	\$115.00
28.	Smoking in a common area of a residential building	Section 3(16)	\$115.00
29.	Smoking in an outdoor bleacher area	Section 3(17)	\$115.00
30.	Violation of any obligations of proprietor	Section 9	\$115.00
31.	Smoking in an indoor auction centre	Section 3(4)	\$115.00
32.	Smoking in offices or industrial work sites except in a properly designated smoking area	Section 4 (5)	\$115.00
33.	Proprietor of a private club or place for which an exemption has been granted failing to provide at least a 50% smoke-free area	Section 8(4)	\$115.00

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34.	Violation for not posting required signage	Section 10	\$115.00
35.	Violation of a proprietor who provides ashtrays in non-smoking areas	Section 11	\$115.00
36.	Violation of obstructing any person conducting an inspection	Section 16	\$115.00

**The penalty provision for the offences indicated above is Section 12 of By-law No. 120-AD-2001, certified copies of which have been filed.**