



By-Law 2003-023

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To prohibit smoking in Public Places and Workplaces.

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BY-LAW NUMBER _____

**A By-law of the Council of The Corporation of the City of
Barrie to amend By-law 88-260 to prohibit smoking in Public
Places and Workplaces**

WHEREAS the Municipal Act, S.O. 2001, c. 25, s. 115(1) provides that a municipality may pass by-laws prohibiting and regulating the smoking of tobacco in public places and workplaces within the municipality, to define “public place” for the purpose of such by-law; to require a person who owns, occupies or operates a place to which the by-law applies to post signs; to establish the form and content of such signs, and to establish the place and manner in which such signs shall be posted;

AND WHEREAS it has been determined that smoking and 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 City of Barrie;

AND WHEREAS, pursuant to resolution 84-G-396 the Council of the Corporation of the City of Barrie deemed it expedient to pass a by-law establishing “The City of Barrie Municipal Code“ which, in part, regulates smoking in public places;

AND WHEREAS, pursuant to resolution 03-G-032 the Council of The Corporation of the City of Barrie deems it expedient to amend By-law 88-260, particularly to prohibit smoking in public places and workplaces;

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

- 1. That by-law 88-260 be amended by deleting Section 4.11.0.0.0 and replacing it with the following:

“4.11.0.0.0 SMOKING IN PUBLIC PLACES AND WORKPLACES

4.11.1.0.0 Definitions :

- 4.11.1.1.0 "ashtray" means a receptacle of any type used for tobacco ashes and for cigar and cigarette butts;
- 4.11.1.2.0 "bingo hall" means any building, location or premises licensed by the Province to conduct charity bingo events;
- 4.11.1.3.0 "City" means the City of Barrie ;
- 4.11.1.4.0 "City Clerk" means the City Clerk of the City of Barrie ;
- 4.11.1.5.0 "Council" means the City Council of The Corporation of the City of Barrie;
- 4.11.1.6.0 “dwelling unit” means any building or part thereof used as the home, residence, or sleeping place of a family or individual either continuously, permanently, temporarily, or transiently;
- 4.11.1.7.0 "employee" includes a person who, being paid or unpaid,
 - 4.11.1.7.1 performs any work for or supplies any services to an employer; or
 - 4.11.1.7.2 receives any instructions or training in the activity, business, work, trade, occupation or profession of the employer or his agent and includes a volunteer and a person who is self-employed and “employment” has a corresponding meaning;
- 4.11.1.8.0 "employer" includes any person who as the owner, proprietor, manager, superintendent or overseer of any activity, business, premises, work, trade, occupation or profession, has control over or direction of, or is directly or indirectly responsible for the employment of a person therein;
- 4.11.1.9.0 "officer" means a person appointed by Council as a Municipal Law Enforcement Officer, a Police Officer, or other individual duly appointed to enforce this by-law;

- 4.11.1.10.0 “outdoor patio” means an area that:
- 4.11.1.10.1 is not covered by a temporary or permanent roof; or
- 4.11.1.10.2 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;
- 4.11.1.10.3 does not share open windows with a public place;
- 4.11.1.10.4 does not share open doors with a public place, except when doors are being opened by individuals to enter or exit the outdoor patio;
- 4.11.1.10.5 does not share thermostat controlled heating or air conditioning system with a public place; and
- 4.11.1.10.6 has a circulation of outdoor air throughout the outdoor patio.
- 4.11.1.11.0 "non-smoking policy" means a written policy that prohibits smoking in the workplace in accordance with this by-law;
- 4.11.1.12.0 "person" includes an individual or corporation and shall include the plural wherein the context requires. Wherever the word “he” or “him” is used, it shall mean and include the feminine or neuter gender wherever the context so requires;
- 4.11.1.13.0 "private club" means the whole or part 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 to be a private club when the following criteria is met:
- i) The club must have a fixed membership;
 - ii) The club requires each member to pay an annual or periodic membership fee;
 - iii) The club must have an executive/leadership that is elected by all the members on an annual or periodic basis;
 - iv) The club must have a constitution or by-laws that provide the governing rules for the membership, executive, fees, etc.;
 - v) The club must be not-for-profit;
 - vi) The club has profits and losses borne by its members;
 - vii) 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
 - viii) The club does not permit a non-member to enter the premises to consume food or alcohol unless accompanied by a member.
- 4.11.1.14.0 “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 of the premises at any particular time;
- 4.11.1.15.0 "public place" means any building, structure, vessel, vehicle or conveyance, 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, or a street, road, or highway;
- 4.11.1.16.0 "smoke" or "smoking" includes the carrying of a lighted cigar, cigarette, pipe or any other lighted smoking equipment or product but does not include smoke or smoking where smoke or smoking is used in a stage production of a theatrical performance;

4.11.1.17.0 "workplace" means a building, structure, vessel, vehicle or conveyance of part thereof, 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 in the building, structure, vessel, vehicle or conveyance utilized by employees, but does not include an outdoor patio.

4.11.2.0.0 PUBLIC PLACE

4.11.2.1.0 No person shall smoke in any public place within the City whether or not a No Smoking sign is posted.

4.11.2.2.0 No proprietor or other person in charge of a public place shall permit smoking where smoking is prohibited under this by-law.

4.11.2.3.0 Every proprietor or other person in charge of a public place shall:

4.11.2.3.1 ensure compliance with this by-law;

4.11.2.3.2 prohibit smoking in the public place;

4.11.2.3.3 post No Smoking signs in accordance with Section 4.11.5.0.0 of this by-law in conspicuous locations at every entrance and public restrooms indicating that smoking is prohibited in the public place;

4.11.2.3.4 ensure that no ashtrays or like paraphernalia are placed or permitted to remain in the public place.

4.11.2.4.0 No person shall hinder or obstruct a person lawfully carrying out the enforcement of this by-law.

4.11.3.0.0 Bingo Halls - Transition

4.11.3.1.0 Notwithstanding any other provision of this by-law to the contrary, the transition period for bingo halls shall commence June 1, 2003 and end December 31, 2006, following which the Public Place and Work Place provisions of this by-law shall apply.

4.11.3.2.0 During the transition period every proprietor or other person in charge of a bingo hall shall ensure that:

4.11.3.2.1 at least 50% of the total seating area is reserved for non-smoking, and that such non-smoking area is contiguous and clearly identified; and

4.11.3.2.2 a sufficient number of signs as prescribed in Section 4.11.5.0.0 are conspicuously posted so as to clearly identify that smoking is prohibited in the non-smoking area.

4.11.3.2.3 During the transition period, no person shall smoke in any area reserved for non-smoking in a bingo hall.

4.11.3.2.4 During the transition period, no person shall hinder or obstruct a person lawfully carrying out the enforcement of this by-law.

4.11.4.0.0 Offences – Bingo Halls

4.11.4.1.0 Any person who contravenes any provision of Section 4.11.3.0.0 is guilty of an offence.

4.11.4.2.0 Any person who hinders or obstructs a person lawfully carrying out the enforcement of Section 4.11.3.0.0 of this by-law is guilty of an offence.

4.11.5.0.0 Signs Requirements - Public Place

- 4.11.5.1.0 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 4.11.5.0.0 are conspicuously posted so as to clearly identify that smoking is prohibited.
- 4.11.5.2.0 Despite Section 4.11.5.1.0, the proprietor or other person in charge of a public place shall ensure that:
 - 4.11.5.2.1 signs are posted in accordance with Sections 4.11.5.3.0 to 4.11.5.9.0 in every public place;
 - 4.11.5.2.2 signs are posted at every entrance to the public place and are visible and in sufficient numbers, clearly indicating in that smoking is prohibited in the public place.
- 4.11.5.3.0 The signs referred to in this by-law shall consist of graphic symbols that comply with the provisions of this Section.
- 4.11.5.4.0 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.



- 4.11.5.5.0 The graphic symbol referred to in Section 4.11.5.4.0 shall include the text "City of Barrie By-law" in letters and figures at least five (5%) percent of the diameter of the circle in the symbol.
- 4.11.5.6.0 To the symbols referred to in Section 4.11.5.4.0, there may be added additional appropriate symbols such as directional arrows.
- 4.11.5.7.0 Despite the fact that the symbol referred to in Section 4.11.5.4.0 is a cigarette, it shall include a lighted cigar, cigarette, pipe or any other lighted smoking equipment or product.
- 4.11.5.8.0 With respect to size of the graphic symbol, the diameter of the circle in the symbol referred to in this section shall be not less than ten (10 cm) centimetres.
- 4.11.5.9.0 Deviations from the colour or content of the signs prescribed by this section that do not affect the substance or that are not calculated to mislead do not vitiate the signs.

4.11.6.0.0 Public Place Offences

- 4.11.6.1.0 Any person who contravenes any of the provisions of this by-law is guilty of an offence.
- 4.11.6.2.0 Any person who smokes in a public place in contravention of this by-law is guilty of an offence.
- 4.11.6.3.0 Any proprietor who permits smoking in a public place in contravention of this by-law is guilty of an offence.
- 4.11.6.4.0 Any person who hinders or obstructs a person lawfully carrying out the enforcement of this by-law is guilty of an offence.

4.11.7.0.0 **WORKPLACE**

- 4.11.7.1.0 Every employer shall, no later than June 1st, 2003, adopt and implement a non-smoking policy that prohibits smoking in respect of each workplace in the City under the control, supervision or ownership of the employer.
- 4.11.7.2.0 Where after June 1st, 2003, a workplace is created or comes into existence, the employer of such workplace shall within seven (7) days after such workplace is created or comes into existence, adopt and implement a non-smoking policy that prohibits smoking in respect of each such workplace under the control, supervision or ownership of the employer.
- 4.11.7.3.0 Every employer required by the by-law to adopt and implement a non-smoking policy shall:
 - 4.11.7.3.1 maintain the non-smoking policy in the workplace for which it was adopted;
 - 4.11.7.3.2 provide a copy of the non-smoking policy to each employee in the workplace within seven (7) days after the day upon which the non-smoking policy in respect of that workplace was adopted;
 - 4.11.7.3.3 post and keep continuously displayed a copy of the non-smoking policy in a prominent place accessible to all employees in the workplace; and
 - 4.11.7.3.4 erect signs in accordance with Section 4.11.8.0.0 at every entrance to the workplace indicating that smoking is prohibited in the workplace.
- 4.11.7.4.0 No person shall smoke in the workplace within the City whether or not a No Smoking sign is posted.
- 4.11.7.5.0 No employer or other person in charge of a workplace shall permit smoking where smoking is prohibited under this by-law.
- 4.11.7.6.0 Every employer or other person in charge of a workplace shall:
 - 4.11.7.6.1 ensure compliance with this by-law;
 - 4.11.7.6.2 prohibit smoking in the workplace;
 - 4.11.7.6.3 inform each employee in the workplace that smoking is prohibited in the workplace;
 - 4.11.7.6.4 post No Smoking signs in accordance with Section 4.11.8.0.0 of this by-law in conspicuous locations at every entrance and washrooms in the workplace indicating that smoking is prohibited in the workplace; and
 - 4.11.7.6.5 ensure that no ashtrays or like paraphernalia are placed or permitted to remain in any part of the workplace.
- 4.11.7.7.0 No person shall hinder or obstruct a person lawfully carrying out the enforcement of this by-law.

4.11.8.0.0 Sign Requirements - Workplace

4.11.8.1.0 The employer or other person in charge of any workplace designated or regulated under this by-law shall ensure that a sufficient number of signs as prescribed by Section 4.11.8.0.0 are conspicuously posted so as to clearly identify that smoking is prohibited.

4.11.8.2.0 Despite Section 4.11.8.1.0, the employer or other person in charge of a workplace shall ensure that:

4.11.8.2.1 signs are posted in accordance with Sections 4.11.8.3.0 to 4.11.8.9.0 in every workplace;

4.11.8.2.2 signs are posted at every entrance to the workplace and are visible and in sufficient numbers, clearly indicating that smoking is prohibited in the workplace.

4.11.8.3.0 The signs referred to in this by-law shall consist of graphic symbols that comply with the provisions of this section.

4.11.8.4.0 The following graphic symbol shall be used to indicate that smoking is prohibited in the workplace: on a white background with the circle and the interdictory stroke in red.



4.11.8.5.0 The graphic symbol referred to in Section 4.11.8.4.0, shall include the text “City of Barrie By-law” in letters and figures at least five (5%) percent of the diameter of the circle in the symbol.

4.11.8.6.0 To the symbols referred to in Section 4.11.8.4.0, there may be added additional appropriate symbols such as directional arrows.

4.11.8.7.0 Despite the fact that the symbol referred to in Section 4.11.8.4.0 is a cigarette, it shall include a lighted cigar, cigarette, pipe or any other lighted smoking equipment or product.

4.11.8.8.0 With respect to size of the graphic symbol, the diameter of the circle in the symbol referred to in this section shall be not less than ten (10 cm) centimetres.

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

4.11.9.0.0 Workplace Offences

4.11.9.1.0 Any person who contravenes any provision of this by-law is guilty of an offence.

4.11.9.2.0 Any person who smokes in a workplace in contravention of this by-law is guilty of an offence.

4.11.9.3.0 Any employer who fails to adopt and implement a non-smoking policy is guilty of an offence.

4.11.9.4.0 Any employer who permits smoking in the workplace in contravention of this by-law is guilty of an offence.

4.11.9.5.0 Any person who hinders or obstructs an Officer lawfully carrying out the enforcement of this by-law is guilty of an offence.

4.11.10.0.0 ENFORCEMENT

4.11.10.1.0 The provisions of this by-law respecting the designation of non-smoking areas, the posting of signs and the duties imposed on the proprietor, employer or other person in charge of a public place or workplace shall be enforced by Officers.

4.11.10.2.0 An Officer may, at any reasonable time, enter any designated public place for the purposes of determining compliance with this by-law.

4.11.10.3.0 For the enforcement of this by-law, an Officer, upon producing proper identification, may, at all reasonable hours, enter any workplace or any building or structure in which a workplace is situate and may make examinations, investigations and inquiries.

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

4.11.11.0.0 EXEMPTIONS

4.11.11.1.0 This by-law shall not apply to any part of a workplace that is used as a private dwelling unit.

4.11.11.2.0 This by-law shall not apply to any part of a Private Club that is not a public place or a workplace.

4.11.11.3.0 This by-law shall not apply to an outdoor patio.

4.11.12.0.0 CONFLICTS

4.11.12.1.0 If a provision of this by-law conflicts with an Act or a regulation or another by-law, the provision that is the most restrictive of smoking shall prevail.

4.11.13.0.0 EFFECTIVE DATE

4.11.13.1.0 This by-law shall come into effect on 1st day of June, 2003.

READ a first and second time this 10th day of February, 2003.

READ a third time and finally passed this 10th day of February, 2003.

THE CORPORATION OF THE CITY OF BARRIE

MAYOR

CLERK