



By-Law 2010-034

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A By-law of The Corporation of the City of Barrie to regulate smoking in public places and work places and to repeal By-law 88-260, as amended, Part 4, Section 4.11.0.0.0 to 4.11.13.1.0 regarding Smoking.

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BY-LAW NUMBER 2010-034

A By-law of The Corporation of the City of Barrie to regulate smoking in public places and work places and to repeal By-law 88-260, as amended, Part 4, Section 4.11.0.0.0 to 4.11.13.1.0 regarding Smoking.

WHEREAS Section 8 of the Municipal Act, 2001, S.O. 2001, c. 25 ("The Municipal Act, 2001") provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising the authority under the Act;

AND WHEREAS Section 9 of the Municipal Act, 2001 provides that Sections 8 and 11 shall be interpreted broadly so as to confer broad authority on municipalities to (a) enable municipalities to govern their affairs as they consider appropriate and, (b) enhance their ability to respond to municipal issues;

AND WHEREAS Section 11 of the Municipal Act, 2001 provides that a single-tier municipality may pass by-laws respecting matters within the spheres of jurisdiction set out therein;

AND WHEREAS Section 115 (1) of the Municipal Act, 2001 provides without limiting sections 9, 10 and 11, a municipality may prohibit or regulate the smoking of tobacco in public places and workplaces.

AND WHEREAS by resolution 09-G-466, the Council of The Corporation of the City of Barrie deems it expedient to enact a by-law to regulate smoking in public places and workplaces and to repeal Part 4 of By-law 88-260, as amended, Section 4.11.0.0.0 to 4.11.13.0.0 regarding smoking.

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

1.0.0.0.0 **DEFINITIONS**

For the purpose of this by-law:

1.1.0.0.0 **ASHTRAY** - means a receptacle of any type used for tobacco ashes and for cigar and cigarette butts.

1.2.0.0.0 **CITY** - means the Corporation of the City of Barrie.

1.3.0.0.0 **CITY CLERK** - means the Clerk of the Corporation of the City of Barrie.

1.4.0.0.0 **CITY EMPLOYEE** - means an officer, servant or other employee of the City but does not include:

- a) a member of Council;
- b) a Council appointee to a local board and whose remuneration from the City results from his/her membership on such local board or other body;
- c) an employee of a local board or other body; or;
- d) a municipal auditor.

1.5.0.0.0 **DWELLING UNIT** - means any building or part thereof used as a home, residence, or sleeping place of a family or individual either continuously, permanently, temporarily or transiently.

- 1.6.0.0.0 **EMPLOYEE** – includes a person who, being paid or unpaid, performs any work for or supplies any services to an employer or 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.
- 1.7.0.0.0 **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.
- 1.8.0.0.0 **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.
- 1.9.0.0.0 **OUTDOOR PATIO** – means an area that:
- a) is not covered by a temporary or permanent roof; or
 - b) 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;
 - c) does not share open windows with a public place;
 - d) does not share open doors with a public place, except when doors are being opened by individuals to enter or exit the outdoor patio;
 - e) does not share thermostat controlled heating or air conditioning systems with a public place; and
 - f) has a circulation of outdoor air throughout the outdoor patio.
- 1.10.0.0.0 **NON-SMOKING POLICY** - means a written policy that prohibits smoking in the workplace in accordance with this by-law.
- 1.11.0.0.0 **MUNICIPAL RESERVOIRS** - means a reservoir, lake, pond or other receptacle or water storage area connected with any park, open space or environmentally protected land.
- 1.12.0.0.0 **PERSON** - means and includes any individual, corporation, partnership, company, association or party and the heirs, executors, administrators, or other legal representative of such person, to whom the context can apply according to law; shall include any group of persons comprising a society or other organizations 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.
- 1.13.0.0.0 **PRIVATE CLUB** - means the whole or part of an indoor area to which the general public is not invited or permitted access.
- For greater clarification and for the purpose of enforcement of this by-law, a facility is considered to be a private club when the following criteria are met:
- a) The club must have a fixed membership;
 - b) The club requires each member to 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;
 - f) The club has profit and losses borne by its members;
 - g) 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,
 - h) The club does not permit a non-member to enter the premises to consume food or alcohol unless accompanied by a member.
- 1.14.0.0.0 **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.
- 1.15.0.0.0 **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.

- 1.16.0.0.0 **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.
- 1.17.0.0.0 **WORKPLACE** – means a building, structure, vessel, vehicle or conveyance or part thereof, to which the public may or may not have access either expressed 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.
- 2.0.0.0.0 PUBLIC PLACE**
- 2.1.0.0.0 No person shall smoke in any public place within the City whether or not a No Smoking sign is posted.
- 2.2.0.0.0 No proprietor or other person in charge of a public place shall permit smoking where smoking is prohibited under this by-law.
- 2.3.0.0.0 Every proprietor or other person in charge of a public place shall:
- 2.3.1.0.0 ensure compliance with this by-law;
- 2.3.2.0.0 prohibit smoking in the public place;
- 2.3.3.0.0 post No Smoking signs in accordance with Section 00000 of this by-law in conspicuous locations at every entrance and public restrooms indicating that smoking is prohibited in the public place; and,
- 2.3.4.0.0 ensure that no ashtrays or like paraphernalia are placed or permitted to remain in the public place.
- 2.4.0.0.0 **Sign Requirements – Public Place**
- 2.4.1.0.0 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 2.4.0.0.0 are conspicuously posted so as to clearly identify that smoking is prohibited.
- 2.4.2.0.0 Despite Section 2.4.0.0.0, the proprietor or other person in charge of a public place shall ensure that:
- 2.4.3.0.0 signs are posted in accordance with Sections 2.4.5.0.0 to 2.4.11.0.0 in every public place; and,
- 2.4.4.0.0 signs are posted at every entrance to the public place and are visible and in sufficient numbers, clearly indicating that smoking is prohibited in the public place.
- 2.4.5.0.0 The signs referred to in this by-law shall consist of graphic symbols that comply with the provisions of this Section.
- 2.4.6.0.0 The following graphic symbol shall be used to indicate the areas where smoking is prohibited pursuant to this by-law: on white background with the circle and the interdictory stroke in red.
- A graphic symbol consisting of a circle with a diagonal slash through it, superimposed over a lit cigarette. The cigarette is shown with a flame and a wisp of smoke. The entire symbol is black and white.
- 2.4.7.0.0 The graphic symbol referred to in Section 2.4.6.0.0 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.
- 2.4.8.0.0 To the symbols referred to in Section 2.4.6.0.0, there may be added additional appropriate symbols such as directional arrows.
- 2.4.9.0.0 Despite the fact that the symbol referred to in Section 2.4.6.0.0 is a cigarette, it shall include a lighted cigar, cigarette, pipe or any other lighted smoking equipment or product.
- 2.4.10.0.0 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 (10cm) centimeters.

- 2.4.11.0.0 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.
- 2.5.0.0.0 **Public Place Offences**
- 2.5.1.0.0 Any person who contravenes any of the provisions of this by-law is guilty of an offence.
- 2.5.2.0.0 Any person who smokes in a public place in contravention of this by-law is guilty of an offence.
- 2.5.3.0.0 Any person who hinders or obstructs a person lawfully carrying out the enforcement of this by-law is guilty of an offence.
- 2.6.0.0.0 **WORKPLACE**
- 2.6.1.0.0 Every employer shall, 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.
- 2.6.2.0.0 Whereas a workplace is created or comes into existence after the passing of this by-law, 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.
- 2.6.3.0.0 Every employer required by the by-law to adopt and implement a non-smoking policy shall:
- 2.6.4.0.0 maintain the non-smoking policy in the workplace for which it was adopted;
- 2.6.5.0.0 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;
- 2.6.6.0.0 post and keep continuously displayed a copy of the non-smoking policy in a prominent place accessible to all employees in the workplace; and,
- 2.6.7.0.0 erect signs in accordance with Section 2.7.0.0.0 at every entrance to the workplace indicating that smoking is prohibited in the workplace.
- 2.6.8.0.0 No person shall smoke in the workplace within the City whether or not a No Smoking sign is posted.
- 2.6.9.0.0 No employer or other person in charge of a workplace shall permit smoking where smoking is prohibited under this by-law.
- 2.6.10.0.0 Every employer or other person in charge of a workplace shall:
- 2.6.10.1.0 ensure compliance with this by-law;
- 2.6.10.2.0 prohibit smoking in the workplace;
- 2.6.10.3.0 inform each employee in the workplace that smoking is prohibited in the workplace;
- 2.6.10.4.0 post No Smoking signs in accordance with Section 2.7.0.0.0 of this by-law in conspicuous locations at every entrance and washrooms in the workplace indicating that smoking is prohibited in the workplace; and,
- 2.6.10.5.0 ensure that no ashtrays or like paraphernalia are placed or permitted to remain in any part of the workplace.
- 2.7.0.0.0 **Sign Requirements - Workplace**
- 2.7.1.0.0 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 2.7.0.0.0 are conspicuously posted so as to clearly identify that smoking is prohibited.
- 2.7.2.0.0 Despite Section 2.7.1.0.0, the employer or other person in charge of a workplace shall ensure that:
- 2.7.2.1.0 signs are posted in accordance with Sections 2.7.3.0.0 to 2.7.9.0.0 in every workplace; and,

2.7.2.2.0 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.

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

2.7.4.0.0 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.



2.7.5.0.0 The graphic symbol referred to in Section 2.7.4.0.0, 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.

2.7.6.0.0 To the symbols referred to in Section 2.7.4.0.0, there may be added additional appropriate symbols such as directional arrows.

2.7.7.0.0 Despite the fact that the symbol referred to in Section 2.7.4.0.0 is a cigarette, it shall include a lighted cigar, cigarette, pipe or any other lighted smoking equipment or product.

2.7.8.0.0 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.

2.7.9.0.0 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.

2.8.0.0.0 **Workplace Offences**

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

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

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

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

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

2.9.0.0.0 **ENFORCEMENT**

2.9.1.0.0 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.

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

2.9.3.0.0 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.

2.9.4.0.0 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.

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

- 2.10.0.0.0 **EXEMPTIONS**
- 2.10.1.0.0 This by-law shall not apply to any part of a workplace that is used as a private dwelling unit.
- 2.10.2.0.0 This by-law shall not apply to any part of a Private Club that is not a public place or a workplace.
- 2.10.3.0.0 This by-law shall not apply to an outdoor patio.
- 2.11.0.0.0 **CONFLICTS**
- 2.11.1.0.0 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.
- 2.12.0.0.0 **SEVERABILITY**
- 2.12.1.0.0 Should any section of this by-law be declared by a Court of competent jurisdiction to be ultra vires or illegal for any reason, the remaining parts shall nevertheless remain valid and binding, and shall be read as if the offending section or part had been struck out.
- 2.13.0.0.0 **PENALTIES**
- 2.13.1.0.0 Every person who contravenes any provision of this by-law is guilty of an offence and liable on conviction to a penalty not exceeding \$5,000, exclusive of costs and the provisions of the *Provincial Offences Act, R.S.O 1990, c P.33*, as amended, shall apply to said fine.
- 2.13.2.0.0 Every person who contravenes the provisions of any section of this By-law and every Director or Officer of a Corporation, who knowingly concurs in the contravention by the Corporation, is guilty of an offence under the provisions of the *Municipal Act, 2001, 2001, S.O. 2001, c.25*, as amended.
- 2.13.3.0.0 Every person who contravenes the provisions of any section of this by-law and every Director or Officer of a Corporation, who knowingly concurs in the contraventions by the Corporation, is guilty of an offence and liable on conviction to a penalty where the minimum fine shall not exceed \$500 and a maximum fine shall not exceed \$100,000 exclusive of costs under the provisions of the *Municipal Act, 2001, 2001, S.O. 2001, c. 25*, as amended.
- 2.13.4.0.0 For the purpose of continuous offences, every person who contravenes any provision of this by-law and every Director or Officer of a Corporation who knowingly concurs in the contravention of a by-law of the Corporation is guilty of an offence and liable on conviction to a penalty not exceeding \$10,000, exclusive of costs under the provisions of the *Municipal Act, 2001, 2001, S.O. 2001, c. 25*, as amended.
- 2.13.4.1.0 Despite Section 2.13.4.0.0 and the provisions of the *Municipal Act, 2001, S.O. 2001, c. 25*, the total of all daily fines for the offence is not limited to \$100,000.
- 2.13.5.0.0 For the purpose of multiple offences, every person who contravenes any provision of this by-law and every Director or Officer of a Corporation who knowingly concurs in the contravention of a by-law of the Corporation is guilty of an offence and liable on conviction to a penalty not exceeding \$10,000, exclusive of costs under the provisions of the *Municipal Act, 2001, S.O. 2001, c. 25* as amended.
- 2.13.5.1.0 Despite Section 2.13.5.0.0 and the provisions of the *Municipal Act, 2001, S.O. 2001, c. 25*, the total of all daily fines for the offence is not limited to \$100,000.
- 2.14.0.0.0 **REPEAL**
- 2.14.1.0.0 That By-law 88-260, Part 4, Section 4.11.0.0.0 to 4.11.13.1.0, as amended regarding smoking be repealed.
- 2.15.0.0.0 **FORCE AND EFFECT**
- 2.15.1.0.0 **THAT** this By-law shall come into force and effect immediately upon passing.

READ a first and second time this 22nd day of February, 2010.

READ a third time and finally passed this 22nd day of February, 2010.

THE CORPORATION OF THE CITY OF BARRIE

“ORIGINAL SIGNED”

MAYOR – D. ASPDEN

“ORIGINAL SIGNED”

CITY CLERK – DAWN A. MCALPINE

CONSOLIDATION

AMENDMENTS TO BY-LAW 2010-034

By-law 2010-072

Section 1.6.0.0.0

April 26, 2010

CONSOLIDATION