

THE REGIONAL MUNICIPALITY OF DURHAM

BY-LAW NUMBER 66-2002

**A BY-LAW TO REGULATE SMOKING IN PUBLIC PLACES AND IN
THE WORKPLACE**

PASSED: December 4, 2002

As Amended by By-law Number:

<u>By-law Number:</u>	<u>Date Passed:</u>
39-2004	June 16, 2004
51-2004	July 7, 2004
23-2007	March 28, 2007

(Office Consolidation)

Updated: June 1, 2007

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THE WORKPLACE**

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BY-LAW NUMBER 66-2002
OF
THE REGIONAL MUNICIPALITY OF DURHAM
BEING A BY-LAW TO REGULATE SMOKING IN PUBLIC PLACES AND IN THE
WORKPLACE
Passed: December 4th, 2002

WHEREAS research has proven the adverse effects and risks to health posed by second-hand tobacco smoke (exhaled smoke and smoke from idling cigarettes, cigars or pipes);

AND WHEREAS second-hand tobacco smoke is a serious health hazard to inhabitants and workers within the Region;

AND WHEREAS second-hand tobacco smoke is a public nuisance because of its irritating and discomforting properties;

AND WHEREAS subsection 213(2) of the *Municipal Act*, R.S.O. 1990, c. M.45, as amended (the "*Municipal Act*") authorizes the council of a local municipality to 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 in which smoking tobacco or holding lighted tobacco is prohibited;

AND WHEREAS subsection 213(14) of the *Municipal Act* provides that a regional municipality may exercise the powers under subsection 213(2) if a majority of the councils of the area municipalities within the regional municipality approve the exercise of such powers;

AND WHEREAS a majority of the councils of the area municipalities in the Regional Municipality of Durham have requested that Regional Council pass a by-law regulating the smoking of tobacco in public places and workplaces within the Regional Municipality of Durham;

NOW THEREFORE the Council of The Regional Municipality of Durham enacts as follows:

Definitions

1. In this by-law,
 - (a) "**ashtray**" means a receptacle of any type being used for tobacco ashes and for cigar and cigarette butts;
 - (b) "**bar**" means an establishment licensed by the Alcohol and Gaming Commission of Ontario where persons under 19 years of age are not permitted to enter, either as a patron or as an employee;
 - (c) "**billiard hall**" means any building, structure or premises at which billiard or pool tables are made available for use by the public;

- (d) “**bingo hall**” means any building, structure or premises where bingo events are conducted;
- (e) “**casino**” means a place which is kept for the purpose of playing a lottery scheme conducted and managed by the Ontario Lottery and Gaming Corporation under the authority of paragraph 207(1)(a) of the Criminal Code;
- (f) “**common area**” means any indoor area of a building or structure that is open to the public for the purpose of access and includes elevators, escalators, corridors, stairways, passageways, hallways, foyers, parking garages, and space for the receiving or greeting of customers, clients or other persons;
- (g) “**designated smoking room**” means a room within a building or structure or part thereof in which smoking is permitted and that,
 - (i) is completely enclosed on all sides and not required by any person for a thoroughfare;
 - (ii) is equipped with a separate ventilation system that maintains a minimum ventilation rate of thirty (30) litres per second per person, based on maximum occupancy load, that is ventilated directly to the outside air and exhausted at a rate of at least one hundred and ten percent (110%) of supply, with any exhaust no less than three (3) metres from any air intake or building opening;
 - (iii) does not occupy more than fifty percent (50%) of the occupiable public space within the building or structure or part thereof; and
 - (iv) is approved in accordance with the terms and provisions of this By-law by an inspector appointed by the Medical Officer of Health;
- (h) “**employee**” means a person who performs any work for or supplies any service to an employer with or without compensation and includes a volunteer but does not include a person who is a member of a private club;
- (i) “**employer**” means a person who, as an owner, manager, contractor, superintendent, or overseer of any activity, business, work, trade, occupation or profession, has control over or direction of, or is indirectly or directly responsible for, the employment or services of an employee;
- (j) “**enclosed**” means closed in by a roof or ceiling and walls with an appropriate opening or openings for ingress or egress, provided that such openings are kept closed when not in use for such ingress or egress;
- (k) “**inspector**” means a person appointed by the Region to enforce this by-law;
- (l) “**municipal building**” means any building or structure owned, leased, controlled or used by the Region or any area municipality in the Region including libraries, community centres and recreational facilities;
- (m) “**no-smoking sign**” means a sign at least 10 centimetres in diameter showing an illustration of a black, lit cigarette on a white circle surrounded by a red border with a width equal to one tenth of the diameter, with a red diagonal stroke of the same

width crossing over the cigarette from the upper left to the lower portion of the circle;

- (n) “**private club**” means a not for profit corporate establishment that operates solely for the benefit and pleasure of its members, that directs its publicity and advertisements to its members, and has passed by-laws regulating the admission of persons and the conditions of membership, the fees and dues of members, the issue of memberships cards, the suspension and termination of memberships, the qualification of and remuneration of directors, the time for and the manner of electing directors and the time, place and notice to be given for the holding of meetings of the members and of the board of directors;
- (o) “**proprietor**” includes the person or persons who own, occupy, operate, maintain, manage, control or direct the activities carried on within any premises referred to in this by-law;
- (p) “**public place**” means the whole or part of an indoor area of any place that is open to the public or to which the public has access by right, permission or invitation, express or implied, whether by payment of money or not, and whether publicly or privately owned and includes, without limiting the generality of the foregoing, the indoor area of those places designated as public places in section 2 of this by-law but does not include a private club;
- (q) “**public transport vehicle**” means any vehicle used for transporting the public and includes a bus and a passenger vehicle used for hire such as a taxi or limousine;
- (r) “**racetrack**” means a horse racing track operated under the authority of a licence issued under the *Racing Commission Act, 2000*, S.O. 2000, c.20, as amended;
- (s) “**recreational facility**” includes an arena, swimming pool, concert hall, theatre, auditorium, gymnasium, museum and art gallery;
- (t) “**Region**” means the geographic area of the Regional Municipality of Durham or The Regional Municipality of Durham acting as a body corporate, as the context requires;
- (u) “**restaurant**” means an establishment engaged in the sale and service of food or drink or both food and drink to the public for consumption on the premises but does not include a bar;
- (v) “**service line**” means an indoor line of two or more persons providing, receiving, or awaiting service of any kind, regardless of whether or not such service involves the exchange of money, including but not limited to sales services, provision of information, transactions or advice and transfers of money or goods;
- (w) “**smoke or smoking**” includes the carrying or holding of a lighted cigar, cigarette, pipe or any other lighted smoking equipment, but does not include the carrying or holding of any lighted cigar, cigarette, pipe or any other lighted smoking equipment that is being used in a stage production or theatrical performance;

- (x) “**theatre**” means any building or part of a building intended for the screening and viewing of motion pictures or the production and staging of public performances of culture, musical or dramatic entertainment; and
- (y) “**workplace**” means a building or structure or part thereof in which one or more employees work, including amenity areas, corridors, eating areas, elevators, entrances, escalators, exits, foyers, hallways, laundry rooms, lobbies, lounges, meeting rooms, parking garages, reception areas, stairways and washrooms, and includes a public transport vehicle and any other vehicle in which an employee works but does not include a private dwelling.

Smoking in Public Places

2. The following places are designated as public places for purposes of this by-law:
 - (a) those places set out in subsection 9(1) of the *Tobacco Control Act*, S.O. 1994, c.10;
 - (b) common area;
 - (c) public washroom;
 - (d) municipal building;
 - (e) funeral home;
 - (f) racetrack;
 - (g) casino;
 - (h) bingo hall;
 - (i) billiard hall;
 - (j) bowling alley;
 - (k) restaurant;
 - (l) bar;
 - (m) recreational facility;
 - (n) service line; and
 - (o) public transport vehicle.
3. Except as set out below in sections 4, 5, 6 and 7, no person shall smoke in a public place.
4. The proprietor of a bingo hall may establish a designated smoking room no greater in size than fifty percent (50%) of the occupiable public space of the premises.

5. The proprietor of a casino may establish a designated smoking room no greater in size than fifty percent (50%) of the occupiable public space of the premises.
6. The proprietor of a racetrack may establish a designated smoking room no greater than fifty percent (50%) of the occupiable public space of the premises.
- 6.1 Hillsdale South Building and Lakeview Manor, two Homes for the Aged owned and operated by the Region, may continue to use their existing designed smoking rooms and sections 3, 8, 9 and 10 shall not apply to such designated smoking rooms.
(By-law Number 39-2004)
- 6.2 The prohibitions and regulations in this by-law shall not apply to the Great Blue Heron Charity Casino.
(By-law Number 51-2004)
7. The prohibitions and regulations in this by-law shall not apply to private clubs during such time periods when such private clubs are closed to members of the public.
8. Subject to sections 4, 5, 6 and 7 above, no person shall place an ashtray for the use of smokers in a public place.
9. Subject to sections 4, 5, 6 and 7 above, no proprietor shall permit a person to smoke in a public place.
10. Subject to sections 4, 5, 6 and 7 above, no proprietor shall permit a person to place an ashtray for the use of smokers in a public place.

Smoking in Workplaces

11. No person shall smoke in an enclosed workplace.
12. No person shall place an ashtray for the use of smokers in an enclosed workplace.
13. No employer shall permit a person to smoke in an enclosed workplace.
14. No employer shall permit a person to place an ashtray for the use of smokers in an enclosed workplace.

Signs

15. The proprietor of a public place shall ensure that such public place is posted with no-smoking signs in a conspicuous manner at each entrance to the public place to indicate that smoking is prohibited.
16. Every employer shall ensure that the enclosed workplace is posted with no-smoking signs in a conspicuous manner at each entrance to the workplace to indicate that smoking is prohibited.

Enforcement

- 17. The Medical Officer of Health of the Region may, from time to time, appoint inspectors for the purpose of enforcing this by-law.
- 18. An inspector may, at any reasonable time, enter any public place or workplace (other than a private dwelling) without warrant or notice for the purpose of determining whether there is compliance with this by-law.
- 19. An inspector may make such examinations, investigations and inquiries as are necessary to determine whether there is compliance with this by-law.
- 20. No person shall hinder, obstruct or interfere with an inspector carrying out an inspection under this by-law.

Offence

- 21. Any person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to a fine of not more than \$5,000.00 exclusive of costs, as provided in the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended.

Conflict

- 22. If any provision of this by-law conflicts with any Act, regulation or other by-law, the provision that is the most restrictive of smoking shall prevail.

Severability

- 23. If any section of this by-law or parts thereof are found by any Court to be illegal or beyond the power of the Region to enact, such section 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.

Set Fines

- 24. Set fines for contraventions of this by-law shall be in accordance with Schedule "A" to this by-law, attached hereto and forming part of this by-law.

Effective Date

- 25. This by-law shall come into effect on June 1, 2004.

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SCHEDULE "A"

The Regional Municipality of Durham
Part I Provincial Offences Act
By-law 66-2002; being a by-law to regulate smoking
in public places and in the workplace

SET FINE SCHEDULE

ITEM	COLUMN 1 Short Form Wording	COLUMN 2 Offence Creating Provision	COLUMN 3 Set Fine (includes costs)
1	Smoke tobacco in a public place	Section 3	\$105.00
2	Place ashtray in a public place	Section 8	\$205.00
3	Failure to prohibit persons from smoking in a public place	Section 9	\$205.00
4	Failure to prohibit persons from placing ashtray in a public place	Section 10	\$205.00
5	Smoke tobacco in an enclosed workplace	Section 11	\$105.00
6	Place ashtray in an enclosed workplace	Section 12	\$205.00
7	Failure to prohibit persons from smoking in an enclosed workplace	Section 13	\$205.00
8	Failure to prohibit persons from placing ashtray in an enclosed workplace	Section 14	\$205.00
9	Failure to post No Smoking signs in a public place	Section 15	\$205.00

SCHEDULE "A" (cont'd)

SET FINE SCHEDULE

10	Failure to post No Smoking signs in an enclosed workplace	Section 16	\$205.00
11	Obstruct inspector	Section 20	\$205.00

NOTE: THE PENALTY PROVISION FOR THE OFFENCES INDICATED ABOVE IS Section 21 of By-law 66-2002, a certified copy of which has been filed.

(By-law Number 23-2007)