

# By-law Number #265-2002

Of

## The Municipality of Chatham-Kent

### Being a By-law to Regulate Smoking in Public Places and Workplaces in the Municipality of Chatham-Kent

A by-law of the Municipality of Chatham-Kent respecting smoking in public places and workplaces,

WHEREAS it has been determined that second hand tobacco smoke (exhaled smoke and the smoke from idling cigarettes, cigars and pipes) is a health hazard for the inhabitants and workers in the Municipality of Chatham-Kent;

AND WHEREAS it is desirable for the health, safety, and welfare of the inhabitants and workers in the Municipality of Chatham-Kent to provide for a smoke-free environment;

AND WHEREAS the Council of the Municipality of Chatham-Kent has the authority to pass by-laws prohibiting and regulating the smoking of tobacco and the carrying of lighted tobacco products in public places and workplaces within the municipality pursuant to Section 213 of the Municipal Act, R.S.O. 1990, Chap. M.45, as amended;

THEREFORE the Council of the Municipality of Chatham-Kent enacts as follows:

#### Definitions

1. In this by-law:

- **“amusement arcade”** means a place to which the public has access to machines or devices that may be used for playing games solely for the entertainment and amusement of the players;
- **“arena”** means any building, location or premises comprised of, but not restricted to, a rink, floor or ice surface, spectator seating areas, dressing rooms and canteen facilities, to which the public has access to view or participate in sporting events;
- **“ashtray”** means a receptacle for tobacco ashes and for cigar and cigarette butts;
- **“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;
- **“barber shop” or “hairdressing establishment”** means any building, location or premises where hair is styled, cut, trimmed, treated or washed;
- **“bingo hall”** means any building, location or premises where the conduct of bingo events is licensed;
- **“bus”** means any public transit bus, school bus or other bus used for hire;

- **“casino”** means an establishment within the meaning of the Gaming Control Act, 1992;
- **“common area”** means any portion of any building or structure including a retail establishment, residential condominium or multiple dwelling unit apartment building, to which the public or residents may have access, whether as of right or by invitation, express or implied and includes but is not limited to a reception area for receiving or greeting customers, clients, patients, guests or other persons, service lines, elevators, escalators, hallways, stairwells, foyers, lobbies, laundry rooms, amenity areas and public washrooms;
- **“Council”** means the Council of the Municipality of Chatham-Kent;
- **“employee”** includes a person who, performs any work for or supplies any services to an employer, for remuneration or not, or receives any instructions or training in the activity, business, work, trade, occupation or profession of the employer;
- **“employer”** includes any person who as the owner, proprietor, manager, superintendent 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 a person therein;
- **“food court”** means an area within a shopping mall where food or drink is offered for sale or sold to the public for immediate consumption;
- **“enforcement officer”** means any person appointed by Council as a municipal tobacco by-law enforcement officer, any person appointed by the Minister of Health as a Provincial Offences Officer under the Tobacco Control Act, or any police officer of the Municipality of Chatham-Kent;
- **“laundromat”** means any facility, premise or area within a building to which the public has access established for the purpose of laundering, washing or drying on a self-serve basis;
- **“Municipality”** means the Municipality of Chatham-Kent;
- **“Municipal Building”** means any building owned by the Municipality of Chatham-Kent;
- **“non-smoking policy”** means a written policy that prohibits smoking in the workplace in accordance with this by-law;
- **“person”** includes a corporation;
- **“place of public assembly”** means the whole or part of an indoor area to which the public has access by right or by invitation, express or implied, whether by payment of money or not, but does not include a place when used exclusively by one or more individuals for a private gathering or personal purpose;
- **“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 thereof at any particular time;

- **“public building”** means any enclosed building or group of buildings to which the public has access;
- **“public facility”** means any hall, room, or banquet area that is publicly owned and is rented for an event or function;
- **“public place”** means the whole or part of an indoor area to which the general public is invited or permitted access and includes a school bus;
- **“public portion”** means the area of any building to which the public has access;
- **“public restroom”** means any restroom or washroom to which the public has access;
- **“private club”** means an establishment that meets all of the following criteria:
  - i) the club must have a fixed membership list;
  - ii) each member must pay an annual or periodic membership fee;
  - iii) the club must have an executive/leadership that is elected by all of the members on an annual or periodic basis;
  - iii) the club must have a constitution or by-laws that provide the governing rules for the membership, executive, fees, etc;
  - iv) the club must be not for profit; and
  - v) non-members cannot enter the premise to consume food or alcohol unless accompanied by a member;
- **“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;
- **“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;
- **“retail shop”** means any building or part of a building, booth, stall or place where goods are exposed for sale or offered for sale by retail;
- **“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;
- **“service counter”** means an indoor counter where a person receives a service including, but not limited to, the exchange of money, sales, provision of information, transactions, advice or the transfer of money or goods;

- **“service line”** means an indoor line of two (2) 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, transactions, provision of information or advice and transfers of money or goods;
- **“shopping mall”** means any enclosed building or group of buildings containing one or more retail shops;
- **“smoke” or “smoking”** includes the carrying of a lighted cigar, cigarette, pipe or any other lighted smoking equipment and smoke has a corresponding meaning; and
- **“workplace”** means any enclosed area of a building or structure in which an employee or employer works and includes, but is not limited to, washrooms, corridors, lounges, eating areas, reception areas, elevators, escalators, foyers, hallways, stairways, amenity areas, lobbies, laundry rooms and parking garages utilized by an employee or employer.

## **Part I General Prohibitions for Public Places**

2. The following are designated public places for the purposes of this by-law:

- the common area of a public building;
- an indoor service line or service counter in any premise to which the public has access;
- a place of public assembly;
- a public restroom;
- a food court;
- a public facility;
- a reception area;
- the public portion of an amusement arcade;
- a municipally owned building with the exception of a public facility;
- a bingo hall;
- a bowling alley;
- a billiard hall;
- the public portion of any restaurant;
- the public portion of any bar;
- the public portion of any casino
- a private club
- an arena;

- the public portion of any retail shop;
  - the common area of a shopping mall;
  - the public portion of any barber shop or hairdressing establishment;
  - the public portion of any laundromat;
  - a bus;
  - a taxicab; and
  - a limousine;
3. No person shall smoke in a designated public place.

## **Part II Smoking in the Workplace**

4. a) Every employer shall, on or before June 1, 2003, adopt and implement a non-smoking policy that prohibits smoking in respect of each workplace in the Municipality under the control, supervision or ownership of the employer.
- b) Where, after June 1, 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, will adopt, implement and post a copy of a non-smoking policy that prohibits smoking in respect of each such workplace under the control, supervision or ownership of the employer.
5. Every employer required by the by-law to adopt and implement a non-smoking policy shall:
- a) thereafter maintain the non-smoking policy in the workplace for which it was adopted;
  - b) 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;
  - c) post and keep continuously displayed a copy of the non-smoking policy in a prominent place accessible to all employees in the workplace; and
  - d) erect signs in accordance with Section 10 at every entrance to the workplace indicating that smoking is prohibited in the workplace.
6. When the non-smoking policy has been adopted for a workplace, no person shall smoke in the workplace.
7. When the non-smoking policy has been adopted for a workplace, no employer shall permit smoking in the workplace.

## **Part III Sign Requirements**

8. 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 10 are conspicuously posted at each entrance so as to clearly identify that smoking is prohibited.

9. Despite Section 8, in every shopping mall or other public building referred to in Section 2 , the proprietor or other person in charge of the shopping mall or other public building shall ensure that:
- a) signs are posted in accordance with Section 10 in every common area of the shopping mall or other public building,
  - b) signs are posted at every entrance to the shopping mall or other public building, which are visible and in sufficient numbers, clearly indicating that smoking is prohibited in the common areas of the shopping mall or other public building, and
  - c) signs referred to in clauses (a) and (b) are in accordance with Section 10.
10. a) The signs referred to in this by-law shall consist of graphic symbols that comply with the provisions of this section.
- b) The graphic symbol as show in Appendix A shall be used to indicate the areas where smoking is prohibited pursuant to this by-law: a black cigarette on a white background with the circle and the interdictory stroke in red.
- c) To the symbols referred to in subsection (b) there may be added additional appropriate symbols such as directional arrows.
- d) Despite the fact that the symbol referred to in subsection (b) is a cigarette, it shall include a lighted cigar, cigarette, pipe or any other lighted smoking instrument.
- e) With respect to size of the graphic symbol, the diameter of the circle in the symbol referred to in subsection (b) shall be not less than the number of centimetres prescribed below, based upon the maximum viewing distance in direct line of sight, as follows:
- i) three (3 m) metres or less - ten (10 cm) centimetres,
  - ii) more than three (3 m) metres - fourteen (14 cm) centimetres,
- f) Despite subsection (e), the diameter of the circle in the symbol referred to in subsection (e) used pursuant to Section 10 to be erected at the entrance to every shopping mall or other public building shall be a minimum of ten (10cm) centimetres.
- g) 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.
- h) Despite subsection (e), with respect to taxicabs or limousines, the diameter of the circle in the graphic symbol referred to in subsection (b) and used pursuant to Section 10 shall be not less than ten (10) centimetres.

## **Part IV General**

### **Ashtrays**

11. The proprietor or other person in charge of a public place regulated under this by-law shall ensure that no ashtrays are placed or allowed to remain in any public place where smoking is prohibited pursuant to this by-law.

### **Duties**

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

### **Offences**

13. Any person who contravenes any of the provisions of this by-law is guilty of an offence.

14. a) Any person who smokes in a workplace in contravention of Section 6 is guilty of an offence.

b) Any employer who permits smoking in the workplace in contravention of Section 7 is guilty of an offence.

15. Any employer who refuses, fails or neglects to perform any of the duties imposed upon him, her or it under any of the provisions of this by-law is guilty of an offence.

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

### **Fines**

17. Every person who is convicted of an offence is liable to a fine of not more than Five Thousand (\$5,000.00) Dollars as provided for in the Provincial Offences Act, R.S.O. 1990, Chap. P.33.

### **Enforcement**

18. a) Enforcement officers shall enforce the provisions of this by-law respecting the designation of non-smoking areas, the posting of signs and the duties imposed on the proprietor, owner or tenant of a public place.

b) An enforcement officer may, at any reasonable time, enter any designated public place for the purposes of determining compliance with this by-law.

c) An enforcement officer, upon producing proper identification, may, at all reasonable hours, enter any workplace or any building or structure in which a workplace is situated and may make examinations, investigations and inquiries.

d) No enforcement officer may enter a workplace that is also a dwelling without the consent of the occupant or without first obtaining and producing a warrant.

### **Conflicts**

19. 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.

### **Severability**

20. 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 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 there from and to be enacted as such.

## **Effective Dates**

21. This by-law shall come into effect on June 1, 2003.

## **Short Title**

22. This by-law may be cited as the "Smoke Free Public Places and Workplaces By-law".

## **Repeals**

23. The following by-laws are hereby repealed:

By-law 9145 Corporation of the City of Chatham;  
By-law 93-25 Corporation of the Town of Ridgetown;  
By-law 87-70 Corporation of the Town of Wallaceburg;

ENACTED AND PASSED this Xth day of Month, 2002

CLERK - MAYOR

Revised 2/28/03 1:46 PM



BY-LAW NUMBER 336-2002

OF THE CORPORATION OF THE MUNICIPALITY OF CHATHAM-KENT

A By-law to amend By-law Number 265-2002 of The Corporation of The Municipality of Chatham-Kent (Smoke Free Public Places and Workplaces By-law)

FINALLY PASSED the 16th day of December, 2002.

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WHEREAS Council of The Corporation of The Municipality of Chatham-Kent passed By-law 265-2002 at its meeting on the day of October 7<sup>th</sup>, 2002;

AND WHEREAS The Corporation of the Municipality of Chatham-Kent now deems it expedient to amend certain provisions contained in said By-law 265-2002.

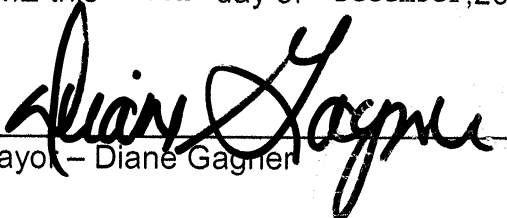
NOW THEREFORE the Municipal Council of The Corporation of the Municipality of Chatham-Kent enacts as follows:

1. Paragraph 21 of said by-law 265-2002 is hereby deleted and the following inserted in lieu thereof:

Save as herein provided, this by-law shall come into effect on June 1, 2003. The provisions of this by-law with respect to municipally owned buildings with the exception of a public facility shall come into effect on January 1, 2003.

THIS by-law shall come into full force and effect upon the final passing thereof.

READ A FIRST, SECOND AND THIRD TIME this 16th day of December, 2002

  
Mayor - Diane Gagner

  
Clerk - Brian W. Knott