

THE REGIONAL MUNICIPALITY OF YORK

BILL NO. 106

BY-LAW NO. A-0285-2000-105

A By-law to Regulate the Smoking of Tobacco in  
Public Places and Workplaces within The Regional Municipality of York

WHEREAS continued exposure to environmental tobacco smoke in public places and workplaces is an unacceptable health risk;

AND WHEREAS it is desirable to promote the health and well being of the inhabitants and workers within The Regional Municipality of York;

AND WHEREAS subsection 213(14) of the *Municipal Act*, R.S.O. 1990, c. M.45, as amended, authorizes the council of a regional 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 as places in which smoking tobacco or holding lighted tobacco is prohibited provided that the 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 York have requested by resolution that Regional Council exercise its powers under subsection 213(14) of the *Municipal Act*.

NOW, THEREFORE, THE COUNCIL OF THE REGIONAL MUNICIPALITY OF YORK HEREBY ENACTS as follows:

PART I

DEFINITIONS

1. In this by-law,

“Class “A” Public Place” means a building or structure or part thereof that is used for the sale and service of food or drink or both food and drink to the public for consumption on the premises, which includes but is not limited to a dinner theatre, a restaurant, a banquet hall, a food court and an indoor patio, but does not include a Class “E” Public Place;

“Class “B” Public Place” means a building or structure or part thereof that is used for bowling, skating, curling or other similar use;

“Class “C” Public Place” means a building or structure or part thereof that is used for playing billiards and where the principal business is the provision of billiard tables for direct or indirect hire or gain;

“Class “D” Public Place” means a building or structure or part thereof that is used for or in conjunction with the playing of games of chance as defined by the *Gaming Control Act, 1992*, S.O. 1992, c. 24, as amended, which includes but is not limited to a bingo hall, a casino and a race track;

“Class “E” Public Place” means a building or structure or part thereof that is used for the sale and service of food or drink or both food and drink to the public for consumption on the premises and which has been licenced to serve alcohol under the *Liquor Licence Act* subject to a condition that no patron under the age of nineteen (19) years of age may be admitted to the premises. A Class “E” Public Place includes but is

not limited to a bar, a tavern, an entertainment lounge or a night club with the required liquor licence condition;

“Common Area” means that part of any building or structure, including but not limited to a commercial or retail establishment, residential condominium or multiple dwelling unit apartment building, to which the public may have access, whether as-of-right or by express or implied invitation. A “Common Area” includes but is not limited to reception areas, receiving areas, waiting rooms, elevators, escalators, hallways, stairwells, foyers, lobbies, laundry rooms, washrooms and amenity areas;

“Designated Smoking Room” or “DSR” means a room within a building or structure or part thereof in which Smoking is permitted and that,

- (a) is completely Enclosed on all sides and not required by any person for a thoroughfare;
- (b) 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. Such exhaust must be no less than three (3) metres from any air intake or building opening; and
- (c) does not occupy more than twenty-five percent (25%) of the occupiable public space within the building or structure or part thereof.

“Employee” means a person who performs any work for or supplies any service to an Employer with or without remuneration, and includes but is not limited to a volunteer and a person who is self-employed;

“Employer” means any person who, as the owner, proprietor, manager, contractor, 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 or services of an Employee, whether paid or unpaid;

“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;

“Food Court” or “Indoor Patio” means an area located within a Public Place that is used in conjunction with a restaurant or take-out eating establishment, where unenclosed seating accommodation is provided or where meals or refreshments are consumed by the public;

“Medical Officer of Health” means the Medical Officer of Health for The Regional Municipality of York, duly appointed under the *Health Protection and Promotion Act*, R.S.O. 1990, c. H.7, as amended, and includes any person acting under his or her authority;

“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 membership cards, the suspension and termination of memberships, the qualification of and the 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;

“Proprietor” means any person who owns, occupies or controls, governs or directs in any way the activity carried on within a Public Place, and includes but is not limited to the person actually in charge of a premises;

“Public Place” means the whole or part of an indoor area, whether covered by a permanent roof or not, to which the public has access as of right or by invitation, expressed or implied, which includes but is not limited to transit shelters, public transit vehicles, public washrooms, Common Areas and Class “A” to Class “E” Public Places;

“Public Transit Vehicle” means any vehicle used for transporting the public and includes but is not limited to a school bus and a passenger vehicle used for hire;

“Smoke” or “Smoking” means the carrying of a lighted cigar, cigarette, pipe or any other lighted smoking equipment, but does not include the carrying of any lighted cigar, cigarette, pipe or other lighted Smoking equipment which is being used in a stage production or a theatrical performance; and

“Workplace” means a building or structure or part thereof in which one or more Employees work, including Employees’ eating and lounge areas and washrooms and includes a Public Transit Vehicle and any other vehicle in which an Employee works and which is provided by an Employer.

## PART II

### WORKPLACES

2.(1) Where a Workplace is also a Public Place, the provisions of this By-law respecting Public Places shall prevail.

(2) Where a Workplace is also a Private Club, the provisions of this By-law do not apply, except that whenever non-members of a Private Club are admitted to the enclosed areas thereof, the provisions of this By-law respecting Public Places shall apply to any of the common

areas and rooms to which the non-members have access. Temporary members of a Private Club shall be considered non-members thereof for the purposes of this By-law.

3. No person shall Smoke in a Workplace.
4. Section 3 and subsection 5(a) of this By-law do not apply to those areas of a Workplace where Smoking is otherwise permitted by the provisions of this By-law respecting Public Places.
5. Every Employer shall,
  - (a) prohibit Smoking in the Workplace;
  - (b) conspicuously post any no Smoking signs required by this By-law; and
  - (c) prohibit ashtrays and like paraphernalia in the Workplace.

### PART III

#### PUBLIC PLACES

- 6.(1) No person shall Smoke in a Public Place.
- (2) The prohibition set out in subsection 6(1) does not apply to,
  - (a) a Designated Smoking Room in a Public Place; or
  - (b) a Smoking area established and designated pursuant to subsections 6(3), 6(4), 6(5), 6(6) or 6(7) of this By-law.

(3) Despite subsection 6(1), a Proprietor of a Class “A” Public Place may establish and designate an unenclosed smoking area no greater in size than twenty-five percent (25%) of the occupiable public space in the premises. The unenclosed Smoking area must be contiguous and clearly identifiable.

(4) Despite subsection 6(1), a Proprietor of a Class “B” Public Place may establish and designate an unenclosed Smoking area no greater in size than twenty-five per cent (25%) of the occupiable public space in the premises. The unenclosed Smoking area must be contiguous and clearly identifiable.

(5) Despite subsection 6(1), a Proprietor of a Class “C” Public Place may establish and designate an unenclosed Smoking area no greater in size than twenty-five per cent (25%) of the occupiable public space of the premises. The unenclosed Smoking area must be contiguous and clearly identifiable.

(6) Despite subsection 6(1), a Proprietor of a Class “D” Public Place may establish and designate an unenclosed smoking area no greater in size than twenty-five per cent (25%) of occupiable public space in the premises. The unenclosed Smoking area must be contiguous and clearly identifiable.

(7) Despite subsection 6(1), a Proprietor of a Class “E” Public Place may establish and designate an unenclosed smoking area no greater in size than twenty-five per cent (25%) of occupiable public space in the premises. The unenclosed Smoking area must be contiguous and clearly identifiable.

(8) This By-law does not apply to,

(a) a hospital as defined in the *Public Hospitals Act*;

- (b) a private hospital as defined in the *Private Hospitals Act*;
- (c) a psychiatric facility under the *Mental Health Act* or *Mental Hospitals Act*;
- (d) a nursing home as defined in the *Nursing Homes Act*;
- (e) a home for special care as defined in the *Homes for Special Care Act*;
- (f) an approved charitable home as defined in the *Charitable Institutions Act*; and
- (g) a home for special care as defined in the *Homes for the Aged and Rest Homes Act*.

7. Every Proprietor shall,

- (a) prohibit Smoking and enforce Smoking restrictions within the Public Place which is under the control, supervision or ownership of that Proprietor, except where Smoking is permitted by this By-law;
- (b) conspicuously post all no Smoking and health warning signs required by this By-law;
- (c) prohibit ashtrays and like paraphernalia in areas where Smoking is prohibited; and
- (d) ensure that an unenclosed Smoking area is contiguous and clearly identifiable.

PART IV

SIGNAGE REQUIREMENTS

8. Health warning signs shall be conspicuously posted at the entrance of a premises where unenclosed Smoking is permitted and at the entrance of a Designated Smoking Room. Where a health warning sign is required to be posted by this by-law the sign shall,

- (a) carry the text “Warning: This area contains tobacco smoke which causes cancer, heart disease, lung disease and can harm your baby”;
- (b) display the graphic symbol having the measurements, proportions and characteristics as illustrated in Schedule “A” to this By-law; and
- (c) be posted in English and any other language that the Medical Officer of Health may determine is advisable.

9. No Smoking signs shall be conspicuously posted at the entrance of a Workplace and a Public Place where Smoking is prohibited or, where Smoking is permitted within part of a Public Place under the terms of this By-law, in all locations within such Public Place where Smoking is prohibited. Where a no Smoking sign is required to be placed or posted pursuant to this By-law, the sign shall,

- (a) have the proportions, characteristics and minimum measurements illustrated in Schedule “B” to this By-law;
- (b) consist of two (2) contrasting colours, or if the lettering and graphic symbol is to be applied to a surface or to be mounted on a clear panel, the lettering and the graphic symbol shall contrast to the background colour; and

- (c) be posted in English and any other language that the Medical Officer of Health may determine is advisable.

## PART V

### OFFENCES AND ENFORCEMENT

- 10. Any person who contravenes any provision of this By-law is guilty of an offence and upon conviction thereof is liable to a fine of up to \$5,000 or such higher amount as may be provided for in the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended.
- 11. The provisions of this By-law may be enforced by a municipal law enforcement officer or a public health inspector appointed by 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*.
- 12. No person shall obstruct any person conducting an inspection to determine whether or not there is compliance with this By-law.

## PART VI

### TRANSITION PROVISIONS

- 13.(1) Subsections 6(3) and 6(4) of this By-law are repealed on June 1, 2001.
- (2) Subsections 6(5), 6(6) and 6(7) of this By-law are repealed on June 1, 2004.

(3) Despite subsections 13(1) and 13(2), this By-law, as it read before subsections 6(3), 6(4), 6(5), 6(6) and 6(7) were repealed, continues to apply to proceedings in respect of offences that occurred before those subsections were repealed.

14. This By-law comes into force three months after the date of adoption by Regional Council.

ENACTED AND PASSED this 26<sup>th</sup> day of October, 2000.

Denis Kelly  
Clerk

Bill Fisch  
Chair