

THE CORPORATION OF THE
TOWNSHIP OF NAIRN AND HYMAN



.....

BY-LAW # 2001-33

BEING A BY-LAW OF THE CORPORATION OF THE TOWNSHIP
OF NAIRN AND HYMAN TO REGULATE SMOKING IN PUBLIC
PLACES

WHEREAS it has been determined that environmental tobacco smoke (exhaled smoke and the smoke from idling cigarettes, cigars and pipes), also known as second hand smoke, is a health hazard because of its adverse effects and risk to the health of the inhabitants and workers of the Township of Nairn and Hyman;

AND WHEREAS it is desirable for the health, safety, and welfare of the inhabitants and workers of the Township of Nairn and Hyman to provide for the prohibiting and abating of smoking and second-hand smoke in accordance with the provisions of this By-law;

AND WHEREAS the majority of municipal Councillors in the Township of Nairn and Hyman have approved the exercise of such power by the Township pursuant to Section 213 of the Municipal Act, R.S.O. 1990, c. M.45 as amended;

NOW THEREFORE the Council of the Corporation of the Township of Nairn and Hyman hereby enacts as follows:

DEFINITIONS:

1. In this By-law:
 - a) **“Bar”** means a building or structure or portion thereof which has all of the following features:
 - i) the consumption of alcohol takes place;
 - ii) at least 75 percent of sales in the previous year are from the sale of alcohol; and
 - iii) the sale of food is incidental.

For greater certainty without limiting, the generality of the foregoing, this may include taverns, night clubs, pubs, public houses, lounges, adult entertainment parlours and other establishments, licensed under the Liquor License Act, R.S.O. 1990, c.L. 19 or its regulations as amended.

- b) **“Billiard Hall”** means a building or structure, or part thereof, the primary purpose of which is the playing of the game of snooker, pool or billiards.
- c) **“Bingo Hall”** means a premise that is used for the purpose of holding bingo lotteries licenced under the authority of an order-in-council of the Province of Ontario and the Gaming Control Act S.O. 1992, c.24 or its regulations, as amended.
- d) **“Bowling Alley”** means premises at which lanes are made available to members of the public for rental to play the game of bowling.
- e) **“Eating Establishment”** means a building or part of a building, booth, stall or place where food or drink is offered for sale or sold to the public for immediate consumption and includes a restaurant, café, cafeteria, take-out restaurants, ice cream parlour, tea or lunch room, dairy bar, coffee shop, donut shop, snack bar, and refreshment stand. This does not include outdoor eating areas and does not include a **Food Court** or **Bar**.

- f) **“Enclosed Public Places”** means an enclosed indoor area or vehicle that is **Open to the Public** and includes, but is not limited to:
- i) a building, structure or portion thereof for the gathering of persons for the purpose of education, worship, business, recreation, entertainment or amusement and includes without limiting the generality of the foregoing; **Eating Establishments, Bars, Food Courts, Billiard Halls, Bingo Halls, Bowling Alleys**, arenas, public sports facilities, retail stores, shopping centres, laundromats, commercial establishments, office buildings, education, financial, religious, **Municipal Facilities**, cinemas, theatres, concert halls, public halls, or other places or portions thereof that are normally open to the clients, patients, students, patrons or other members of the general public, except for casinos;
 - ii) multiple unit residential buildings with common access to 6 or more dwelling units, containing common areas such as corridors, passageways, laundry rooms, washrooms, amenity areas, meeting rooms and lobbies to which all residents or the public have access, except for private residential units or apartments located therein;
 - iii) a bus, including a school bus, or other vehicle, including taxi cabs, and limousines that are used to provide transportation to the general public; and
 - iv) an elevator, escalator, stairway, lobby, entrance way, corridor, public washroom, or other common area in any **Enclosed Public Place**.
- g) **“Food Court”** means an open area within a shopping centre with seating provided for the sale and consumption of food.
- h) **“Inspector”** means member of Public Health Inspectors employed by the Sudbury and District Health Unit.
- i) **“Municipal Facility”** means a building, structure or vehicle owned, leased, controlled or used by the Township of Nairn and Hyman. This includes recreational facilities including arenas, pools, locker/change rooms, indoor spectator areas and common areas (i.e., concession areas and washrooms).
- j) **“Open to the Public”** means that members of the public have access to the premises either by right or by invitation, express or implied, whether by payment of money or otherwise.
- k) **“Owner”** means the **owner** of a building containing one or more **Enclosed Public Places**.
- l) **“Private Function”** is a function or event which is not **Open to the Public**.
- m) **“Proprietor”** means the person who controls, governs or directs the activity carried on within a particular **Enclosed Public Place** and includes the **Owner** or a person who is actually in charge thereof.
- n) **“Smoke/Smoking”** includes the carrying of a lighted cigar, cigarette, pipe or any other lighted smoking material or equipment.

SMOKING IN ENCLOSED PUBLIC PLACES

2. (1) No person shall **smoke** or hold lighted tobacco in any **Enclosed Public Place** within the Township whether or not a No Smoking sign is posted.
- (2) Despite Section 2 (1) where a permitted area for **Smoking** has been designed under this By-law, **Smoking** shall be permitted in the area so designated.

EATING ESTABLISHMENTS

3. (1) Despite Section 2 (1), a **Proprietor** of an **Eating Establishment**, shall designate not more than 50 percent of the total indoor seating provided in such **Eating Establishment** as a permitted area for **Smoking** if the criteria in Section 10 are met.
- (2) Section 3 (1) is rescinded effective May 31, 2003.
- (3) Section 3 (1) is rescinded effective May 31, 2003. Effective May 31, 2003, despite Section 2 (1) a **Proprietor** of an **Eating Establishment** shall designate not more than 25 percent of the total indoor seating provided in such **Eating Establishment** as permitted area for **Smoking**, if the criteria in Section 10 are met.
- (4) Section 3 (3) is rescinded effective May 31, 2005.
- (5) Despite Sections 2 (1), 3 (1) and 3 (3) an **Eating Establishment** for which at least 50 percent of sales are from the sale of alcohol in the previous year, may after 9:00 p.m. until closing designate not more than 75 percent of the total indoor seating provided in such **Eating Establishment** as permitted area for **Smoking**, provided the criteria in Section 10 are met.

BARS

4. Despite Section 2 (1), a **Proprietor** of a **Bar**, shall designate not more than 75 percent of the total indoor seating provided in such **Bar** as a permitted area for **Smoking** if the criteria in Section 10 are met.

BILLIARD HALLS

5. (1) Despite Section 2 (1), a **Proprietor** of a **Billiard Hall** shall designate not more than 40 percent of the total floor area of the **Billiard Hall** as a permitted area for **Smoking** if the criteria in Section 10 are met.
- (2) Section 5 (1) is rescinded effective May 31, 2003.
- (3) Effective May 31, 2003 despite Section 2 (1) a **Proprietor** of a **Billiard Hall** shall designate not more than 25 percent of the **Billiard Hall** as a permitted area for **Smoking**, if the criteria in Section 10 are met.
- (4) Section 5 (3) is rescinded effective May 31, 2005.

BOWLING ALLEYS

6. Despite Section 2 (1) a **Proprietor** of a **Bowling Alley** shall during adult league bowling only, designate not more than 40 percent of the total area of the **Bowling Alley** as a permitted area for **Smoking**, if the criteria in Section 10 are met. If at any time open public bowling or youth bowling is permitted in the **Bowling Alley** then Section 2 (1) shall apply to the establishment.

BINGO HALLS

7. Despite Section 2 (1), a **Proprietor** of any **Bingo Hall** shall designate not more than 40 percent of the total area as a permitted area for **Smoking**, if the criteria in Section 10 are met.

TAXI CABS AND LIMOUSINES

8. No person shall **Smoke** in a taxicab or limousine.

PRIVATE FUNCTIONS

9. Despite any other provision of this By-law, the **Owner** or **Proprietor** of an **Enclosed Public Place** may:
 - a) permit unrestricted **Smoking** when the facility or a portion thereof is used for a **Private Function**; or
 - b) designate not more than 40 percent of the total indoor seating provided as a permitted smoking area, if the criteria in Section 10 are met, when the facility or a portion thereof is rented on a one time basis for a function to which persons under the age of 19 are prohibited entrance.

PERMITTED AREA FOR SMOKING

10. An area designated under this By-law as a permitted area for **Smoking** shall;
 - a) be comprised of seats or standee spaces that are contiguous to each other; and
 - b) shall not be required as a means of access or thoroughfare between areas in which **Smoking** is prohibited; and
 - c) shall not be located in the centre of an indoor space or the entrance to an establishment or any other area in which any person must wait to be seated; and
 - d) shall be identified by signs posted in accordance with Section 13.

SEPARATELY VENTILATED SMOKING AREAS

11. (1) Despite any other provision of this By-law, a permitted **Smoking** area may be constructed or maintained at the size limit which was permitted by this by-law or any municipal by-law in force at the time of construction, without further reduction in size over time provided the entirety of such permitted **Smoking** area;
 - a) is fully enclosed floor to floor/roof;
 - b) is not located in such a way that non smokers are required to travel through it to gain access to common facilities including washrooms, waiting areas or foyers; and

- c) has separate ventilation from the remainder of the **Enclosed Public Place**, and such separate ventilation complies at all times with (2), (3) and (4) below.
- (2) A separately ventilated **Smoking** area which meets the requirements of this By-law must have been fully established within the applicable **Enclosed Public Place** no later than May 21, 2005, and have been in compliance with municipal By-laws in force at the time of construction, in order for the exception in (1) above to apply. Subsequent transfers of ownership of the premises shall not affect the continuing availability of the exception in (1) above, so long as the separately ventilated **Smoking** area is continuous to be used for that purpose.
 - (3) The separate ventilation in (1) above must consist of mechanical ventilation to the exterior of the building in which the permitted **Smoking** area is situated.
 - (4) The mechanical ventilation system shall have been installed in accordance with the Ontario Building Code, shall be maintained in good working order, and shall be in operation whenever the separately ventilated **Smoking** area is occupied by one or more persons.

PROPRIETOR'S DUTIES

- 12. (1) Every **Proprietor** shall ensure that "No Smoking" signs are conspicuously posted so that the signs are clearly visible in all areas where **Smoking** is prohibited under this By-law;
- (2) Every **Proprietor** shall ensure that health warning signs are conspicuously posted so that the signs are clearly visible from all parts of the place where **Smoking** is permitted under this By-law;
- (3) Where **Smoking** is prohibited under this By-law, a **Proprietor** shall inform any person who is **Smoking** in a prohibited area that **Smoking** in that area is prohibited.
- (4) No **Proprietor** shall permit a person to **Smoke** in a place where **Smoking** is prohibited under this By-law.
- (5) Every **Proprietor** shall ensure that ashtrays and other paraphernalia used in connection with **Smoking** are not present in areas where **Smoking** is prohibited under this By-law.

SIGNS

- 13. (1) A "No Smoking" sign which is required to be posted under this By-law shall:
 - a) carry the text "No Smoking/Defense de Fumer" in capital or lower-case letters, or combination of them;
 - b) consist of two (2) contrasting colours, or if the lettering is to be applied directly to a surface or to be mounted on a clear panel, the lettering shall contrast to the background colour;
 - c) have the following letter heights, based on the maximum viewing distance in the area where **Smoking** is prohibited in direct line of sight;

13. (2) Notwithstanding, subsection (1) where a **Proprietor** is required to ensure that "No Smoking" signs are posted, the graphic symbol illustrated in Schedule "A" and having the proportions are characters prescribed in this subsection, may be used to indicate an area where **Smoking** is prohibited.
- a) the symbol shall include the text "The Township of Nairn and Hyman, By-law # 2001-33 maximum penalty \$5,000.00/La municipalite d'Nairn & Hyman reglement # 2001-33 amende maximum \$5,000.00" in letters and figures at least five per cent (5%) of the diameter of the circle in the symbol, and appropriate symbols such as directional arrows be added;
 - b) the graphic symbol shall be on white background with the circle and the interdictory stroke in red, with a cigarette, letters and figures in black;
 - c) the diameter of the circle in the symbol shall be not less than the size indicated below, based upon the maximum viewing distance in the area where **Smoking** is prohibited in direct line of sight:

OBSTRUCTION

14. No person shall obstruct an **Inspector** carrying out an inspection, examination, investigation, or inquiry as are necessary to determine whether there is compliance with the By-law.

PENALTY

15. (1) Any **Proprietor** who fails or neglects to perform the duties imposed by this By-law, or who otherwise contravenes this By-law is guilty of an offence pursuant to the Provincial Offences Act, R.S.O. 1990, C.P. 33, as amended, and upon conviction, is liable to a fine of not more than \$5,000.00 exclusive of costs.
- (2) Any person who **smokes** or otherwise contravenes the provisions of this By-law is guilty of an offence pursuant to the Provincial Offences Act, R.S.O. 1990, C.P. 33, as amended, and upon conviction, is liable to a fine of not more than \$5,000.00 exclusive of costs.
- (3) A **Proprietor** who fails or neglects to post or cause to be posted signs in accordance with the provisions of this By-law or who establishes or maintains a **Smoking** area which does not comply with all requirements of this By-law is guilty of an offence pursuant to the Provincial Offences Act, R.S.O. 1990 C.P. 33, as amended, and upon conviction, is liable to a fine of not more than \$5,000.00 for each offence.

INTERPRETATION

16. (1) Nothing in this By-law shall be interpreted to permit **Smoking** in any location where the same is prohibited under the Tobacco Control Act, 1994, S.O. 1994 10 of its regulations as amended, the Smoking in the Workplace Act, R.S.O. 1990 C.S. 13, or its regulations as amended, or the Fire Protection and Prevention Act, 1997, S.O. 1997, c.4, or its regulations as amended.

- (2) In the event of any conflict between the provisions of this By-law and the provisions of any act or regulation relating to **Smoking**, then the provisions of those acts or regulations which are most restrictive of **Smoking** shall prevail.
- (3) Nothing in this By-law shall prohibit employees who work in **Enclosed Public Places** from **Smoking** in designated **Smoking** areas that are not accessible to the public.
- (4) Different components of the definition of **Enclosed Public Place** may be present within the same building or structure, and as components or one another. In a "mixed use" establishment or facility", where separate portions of the establishment or facility can be clearly distinguished and each portion meets separate definition, the definition most appropriate to the use in that area of the establishment or facility will apply, but in the event of two or more conflicting definitions applying, the one most restrictive of **Smoking** shall apply.
- (5) Subsection (4) above is intended to assist in the recognition of circumstances where legitimate variations of use may result in different applications of the rule under this By-law than might otherwise occur. It is intended that such recognitions shall relate to substantive variations in which an actual distinction is apparent, and not to mere variations or form or nomenclature.

SEVERABILITY OF SECTIONS

17. If any section or sections of this By-law, or parts thereof are found by 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 independent therefrom and to be enacted as such.

EFFECTIVE DATE

18. This By-law shall not come into effect until March 1st, 2002.

READ A FIRST AND SECOND TIME
THIS 3rd DAY OF DECEMBER, 2001.

REEVE

CLERK

READ A THIRD TIME AND FINALLY
PASSED IN OPEN COUNCIL THIS
7TH DAY OF JANUARY, 2001.

REEVE

CLERK

**THE CORPORATION OF THE
TOWNSHIP OF NAIRN AND HYMAN**

SCHEDULE "A"

TO

BY-LAW # 2001-33

