

CITY OF KINGSTON

Ontario

BY-LAW NO. 2002-231

**A BY-LAW TO REGULATE SMOKING IN PUBLIC PLACES
AND WORKPLACES IN THE CITY OF KINGSTON**

PASSED: October 22, 2002

As Amended By By-Law No:

<u>By-law No.</u>	<u>Date Passed:</u>	<u>By-law No.</u>	<u>Date Passed:</u>
2004-336	30 Nov. 2004		

(Office Consolidation)

Information packages for any City of Kingston Business
are available at our

KFL&A Health Unit 221 Portsmouth Avenue, Kingston, ON, K7M
1V5, (613) **549-1232 ext. 333**

Smoke-Free By-law and information pamphlet
are also available online
on the KLF&A Health Unit website: www.healthunit.on.ca

Copies of municipal by-laws may be obtained by contacting
Colleen Kennedy 613-546-4291 ext. 1375
ckennedy@city.kingston.on.ca

or

Janice Moran 613-546-4291 ext. 1207
jmoran@city.kingston.on.ca

Thank You

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AND WORKPLACES IN THE CITY OF KINGSTON

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CITY OF KINGSTON BY-LAW NO. 2002-231

**A BY-LAW TO REGULATE SMOKING IN PUBLIC PLACES
AND WORKPLACES IN THE CITY OF KINGSTON**

PASSED: October 22, 2002

WHEREAS section 213 of the *Municipal Act R.S.O. 1990, Chap. M.45, as amended* authorizes the Council of a local municipality to pass a by-law regulating the smoking of tobacco and the carrying of lighted tobacco products in public places and workplaces within the municipality;

AND WHEREAS section 115 of the Municipal Act, 2001, S.O. 2001, Chap.25 will continue to provide this authority when it comes into force on January 1, 2003;

AND 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 or discomfort for many inhabitants of the City of Kingston;

THEREFORE the Council of the Corporation of the City of Kingston enacts as follows:

1. DEFINITIONS:

In this by-law:

"arena" means any building, location or premises comprised of 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;

"bingo hall" means any building, location or premises where bingo events are conducted;

"City" means the City of Kingston;

"common area" means any indoor area of a building that is open to the public for the purposes of access to a retail shop, establishment or office and includes corridors, passageways, unenclosed eating areas in corridors, public restrooms, unenclosed public seating areas and unenclosed public standing areas, whether or not the eating area, seating area, or standing area is leased;

"Council" means the Council of the City of Kingston;

"convention facility" means a place of public assembly with space available for rent or lease for a meeting or assembly of persons, representatives or delegates, whether public or private in nature, and includes a hotel convention facility;

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1. cont'd:

"employee" includes a person who:

- (i) performs any work for or supplies any service to an employer;
- (ii) receives any instructions or training in the activity, business, work, trade, occupation or profession of the employer;
- (iii) receives remuneration for services provided; or
- (iv) is self-employed.

"employer" includes any person who is the owner, proprietor, manager, superintendent, or overseer of any activity, business, work, trade, occupation or profession, has control over the direction of, or is directly or indirectly responsible for the employment of a person therein;

"food court" means an area within a shopping mall or other public place where food or drink is offered for sale or sold to the public for immediate consumption;

"food premises" means a building or structure or part of a building or structure where food or drink for human consumption is processed, prepared, stored, handled, displayed, distributed, provided, consumed, transported, sold or offered for sale, and includes a restaurant, bar, lounge, pub, cafe, doughnut shop, lunch counter, lunch stand, refreshment stand, or common area, and other areas of food and beverage consumption in common areas of shopping malls or other public places;

"highway" means any provincial or municipal highway within the geographic limits of the City, and includes the sidewalks and all other lands within the lateral boundaries of the highway;

"inspector" means a person appointed by Council as a municipal law enforcement officer to enforce this by-law;

"laundromat" means any facility, premises or area within a building to which the public has access for the purposes of laundering, washing, or drying;

"local board" includes a health unit, a police services commission, a conservation authority, and a district school board;

"patio" means an outdoor area, whether enclosed or not, to which members of the general public are invited or permitted access that is operated as part of or in conjunction with or in affiliation with food premises but does not include that part of an outdoor area which is located on a highway;

"person" includes a corporation;

1. cont'd:

"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 owns, occupies or operates a designated public place or a work place to which this by-law applies, or the person who controls, governs, or directs the activities that are carried on in the place, and includes the person who is actually in charge 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" includes:

- (i) the whole or part of an indoor or enclosed area to which members of the general public are invited or permitted access and includes a public transportation vehicle, school bus, and limousine; and
- (ii) a patio.

"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;

"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;

"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;

"retirement or rest home" means a residential complex that is occupied by persons who are primarily 65 years of age or older for the purpose of receiving care services that provide assistance with the activities of daily living, whether or not receiving the services is the primary purpose of the occupancy;

"school bus" means a vehicle that is used primarily for transporting children to and from school or to or from any related activity, event, or function;

"service" includes the exchange of money, sales, provision of information, transactions, advice and the transfer of money or goods;

"service counter" means an indoor counter where a person receives a service;

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1. cont'd:

"service line" means an indoor line of two or more persons awaiting a service;

"shopping mall" means any enclosed building or group of buildings containing one or more retail shops;

"smoke" and "smoking" include the carrying or holding of a lighted cigar, cigarette, pipe, or any other lighted smoking equipment;

"Veterans Association Establishment"

means a building or premises used and occupied by a not-for-profit association or not-for-profit organization whose members served in the armed forces of His or Her Majesty or an Ally of His or Her Majesty in any war, or whose members are current or former members of the Canadian Armed Forces. The following are deemed to be ***"Veterans Association Establishments"***:

- Army Navy Airforce Unit #377 317 Gore Road
- Kingston Naval Veterans Assoc. 1138 Sydenham Street
- Royal Canadian Horse Artillery 193 Ontario St.
- Royal Canadian Legion #9 142 Railway Street
- Royal Canadian Legion #560 734 Montreal Street
- Royal Canadian Legion # 631 4024 Bath Road
- Royal Canadian Air Force Assoc. Wing 416 200 Hampton Gray Gate"

(By-Law No. 2004-336)

"workplace" means any enclosed area of a building or structure in which an employee works and includes washrooms, corridors, lounges, eating areas, reception areas, elevators, foyers, hallways, stairways, amenity areas, lobbies, laundry rooms, and parking garages utilized by an employee.

(By-law No. 2002-231)

2 INTERPRETATION:

- 2.1 This by-law applies to the smoking of tobacco in every designated public place and in every workplace within the geographic limits of the City of Kingston.

(By-law No. 2002-231)

3. ADMINISTRATION:

- 3.1 The City of Kingston, 613-384-1770 ext. 3135, and the Kingston Frontenac and Lennox & Addington Health Unit, 613-549-1232 ext. 333 are responsible for the administration and enforcement of this by-law.

(By-law No. 2002-231)

4. REGULATIONS:

Public Places

- 4.1 The following are designated as public places for the purposes of this by-law:
- (i) an arena;
 - (ii) the public portion of any barber shop or hairdressing establishment;
 - (iii) a billiard hall;
 - (iv) a bingo hall;
 - (v) a bowling alley;
 - (vi) a building or facility owned or occupied by the City, by Utilities Kingston, and by a local board of the City;
 - (vii) the common area of a condominium and of an apartment building;
 - (viii) a convention facility;
 - (ix) an elevator, escalator, corridor, stairway, reception area, lobby, service counter, and service line in any building to which the public has access;
 - (x) a food court;
 - (xi) the public portion of any food premises;
 - (xii) the public portion of any laundromat;
 - (xiii) a patio;
 - (xiv) a place of public assembly;
 - (xv) the common area of a public building;
 - (xvi) a public facility;
 - (xvii) a public transportation vehicle operated by or on behalf of the City;
 - (xviii) a public washroom;
 - (xix) a reception area;
 - (xx) the public portion of any retail shop;
 - (xxi) a school bus;
 - (xxii) the common area of a shopping mall;
 - (xxiii) a limousine; and
 - (xxiv) a Veterans Association Establishment.

(By-law No. 2002-231; 2004-336)

- 4.2 No person shall smoke in any public place that is designated in section 4.1 of this by-law, whether or not a No Smoking sign is posted.

(By-law No. 2002-231)

Workplaces

- 4.3 No person shall smoke in any workplace, whether or not a No Smoking sign is posted.

(By-law No. 2002-231)

Duties

- 4.4 Every proprietor or other person in charge of a designated public place or a workplace in which smoking is prohibited shall ensure compliance with this by-law.

- 4.5 No proprietor or other person in charge of a designated public place or a workplace in which smoking is prohibited shall place ashtrays or cause or permit ashtrays to be placed or to remain in that designated public place or workplace.

(By-law No. 2002-231)

5. SIGNS

- 5.1 Every proprietor or other person in charge of a designated public place or a workplace in which smoking is prohibited must ensure that signs, as prescribed by section 5.3, are posted and maintained in a sufficient number of conspicuous places in the place so as to identify clearly that smoking is prohibited.

- 5.2 In addition to complying with the requirement set out in section 5.1, every proprietor or other person in charge of a food premises must ensure that one or more signs, as prescribed by section 5.3, are posted and maintained at every entrance to the premises so as to identify clearly that smoking is prohibited in the food premises.

- 5.3 Every sign that is posted and maintained in accordance with sections 5.1 and 5.2 of this by-law must comply with the following requirements:

- (1) The following graphic symbol -- on a white background with the circle and the interdictory stroke in red -- must be used;



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- (2) The words "No Smoking" must be included above the graphic symbol, and the words "Kingston By-law" must be included below the graphic symbol in letters and figures at least five percent of the diameter of the circle in the symbol;
 - (3) In addition to the graphic symbol required by subsection 5.3(1), other appropriate symbols may be included, such as directional arrows;
 - (4) The diameter of the circle in the graphic symbol required by subsection 5.3(1) must not be less than the number of centimetres prescribed below, based on the maximum viewing distance, in direct line of sight:
 - (a) three (3 m) metres or less - ten (10 cm) centimeters;
 - (b) six (6 m) metres or less - fifteen (15 cm) centimeters;
 - (c) twelve (12 m) metres or less - twenty (20 cm) centimeters;
 - (d) twenty-four (24 m) metres or less - thirty (30 cm) centimeters;
 - (e) forty-eight (48 m) metres or less - forty (40 cm) centimeters;
 - (f) seventy-two (72 m) metres or less - sixty (60 cm) centimeters; and
 - (g) In limousines and other public places and workplaces where the maximum viewing distance, in direct line of sight, is less than three metres, the diameter of the circle in the graphic symbol required by subsection 5.3(1) must not be less than ten centimetres.
- 5.4 Despite the fact that the graphic symbol required by subsection 5.3(1) represents a cigarette, the provisions of this by-law that prohibit smoking in designated public places and workplaces apply to all forms of the smoking of tobacco, including cigarettes, cigars, pipes and any other lighted smoking instruments.
- 5.5 A reference to a by-law of a former municipality on any sign that identifies a designated public place or a workplace in which smoking is prohibited is deemed to be a reference to this by-law.

(By-law No. 2002-231)

6. EXEMPTIONS:

- 6.1 This by-law does not apply to:
- (1) The portion of a bingo hall that has been designated by the proprietor as a room where smoking is permitted, provided that the Designated Smoking Room (DSR) is:
 - (i) not greater than fifty percent (50%) of the total seating area;
 - (ii) separate, fully enclosed, used only for seating, and not required as a public thoroughfare;

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6.1 cont'd (1):

- (iii) equipped with a separate ventilation system, that meets a minimum ventilation rate of thirty (30) litres per second per person, based on the maximum occupancy load, that is ventilated directly to the exterior of the building, exhausted at least one hundred and ten percent (110%) of the supply, and such exhaust is located not less than three (3) metres from any air intake or building opening;
 - (iv) constructed in compliance with the Ontario Building Code; and
 - (v) not serviced by employees of the bingo hall.
- (2) The portion of a condominium or apartment building, or retirement or rest home that has been designated by the proprietor or governing body as a room where smoking is permitted, provided that:
 - (i) the designated room is separate and fully enclosed;
 - (ii) the room is equipped with a ventilation system that meets a minimum ventilation rate of thirty (30) litres per second per person that is ventilated directly to the exterior of the building, and exhausted at a rate of at least 110 percent of the supply;
 - (iii) the room is available only to residents and their guests;
 - (iv) the room is set aside specifically for the purposes of smoking; and
 - (v) another room is provided where smoking is prohibited, which has an area equal to or greater than that of the smoking room.
- (3) Any part of a workplace that is used as a private residence.
- (4) A workplace where the only employees of that workplace are the proprietors and the public has no access.
- (5) The portion of a Veterans Association Establishment that has been designated by the proprietor as a room where smoking is permitted, provided that the Designated Smoking Room (DSR) is:
 - (i) not greater than fifty percent (50%) of the total seating area;
 - (ii) separate, fully enclosed, used only for seating, used only by members of the Veterans Association and not required as a public thoroughfare;
 - (iii) equipped with a separate ventilation system, that meets a minimum ventilation rate of thirty (30) litres per second per person, based on the maximum occupancy load, that is ventilated directly to the exterior of the building, exhausted at least one hundred and ten

percent (110%) of the supply, and such exhaust is located not less than three (3) metres from any air intake or building opening;

- (iv) constructed in compliance with the Ontario Building Code; and
- (v) not serviced by employees of the Veterans Association Establishment.

(By-law No. 2002-231; 2004-336)

7. ENFORCEMENT:

- 7.1 The provisions of this by-law respecting the prohibition of smoking in designated public places and in workplaces, the posting of signs, and the duties imposed on the proprietors or other persons in charge of designated public places and of workplaces will be enforced by inspectors.
- 7.2 An inspector may, at any reasonable time, enter any designated public place or any workplace in which smoking is prohibited to determine whether this by-law is being complied with and, for this purpose, may make such examinations, investigations and inquiries as are necessary.

(By-law No. 2002-231)

8. OFFENCE AND PENALTY PROVISIONS:

- 8.1 Any person who contravenes any provision of this by-law or who hinders or obstructs or otherwise interferes with an inspector in the conduct of his or her duties is guilty of an offence and, upon conviction, is subject to a fine as provided in the *Provincial Offences Act* and to any other applicable penalties.
- 8.2 If this by-law is contravened and a conviction entered, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty that is imposed, make an order prohibiting the continuation or repetition of the offence by the person convicted.

(By-law No. 2002-231)

9. VALIDITY:

- 9.1 If there is a conflict between a provision of any Act, regulation or by-law and a provision of this by-law, the provision that is the most restrictive of the smoking of tobacco prevails.
- 9.2 If a court of competent jurisdiction declares any provision, or any part of a provision, of this by-law to be invalid, or to be of no force and effect, it is the intention of Council in enacting this by-law that each and every provision of this by-law authorized by law be applied and enforced in accordance with the terms to the extent possible according to law.

(By-law No. 2002-231)

10. REPEAL:

- 10.1 By-law No. 2000-64 of the Corporation of the City of Kingston entitled "A BY-LAW RESPECTING SMOKING IN THE CITY OF KINGSTON" is repealed.

(By-law No. 2002-231)

11. COMMENCEMENT:

- 11.1 This by-law shall come into effect on **May 1, 2003**.

(By-law No. 2002-231)
