

# MODEL SMOKING BYLAW

## BYLAW NO. XXX

A BYLAW OF THE *(City/Town*<sup>1</sup>) OF \_\_\_\_\_, IN THE PROVINCE OF ALBERTA, RESPECTING SMOKE FREE PUBLIC PLACES AND WORKPLACES.

WHEREAS, health officials have 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 persons;

AND WHEREAS, the Council of the *(City/Town)* of \_\_\_\_\_ deems it expedient and appropriate to limit the effects of second hand smoke for residents and visitors to the *(City/Town)* of \_\_\_\_\_;

AND WHEREAS, the Council deems it expedient and appropriate to regulate the smoking of tobacco products in public places and workplaces within the *(City/Town)* of \_\_\_\_\_; and, in accordance with the *Municipal Government Act R.S.A. 2000 c. M-26 as amended*, has the authority to pass bylaws respecting:

- a) the safety, health and welfare of people and the protection of people and property;
- b) people, activities and things in, on or near a public place or place that is open to the public;
- c) businesses, business activities and persons engaged in business;

NOW THEREFORE, the Council of the *(City/Town)* of \_\_\_\_\_, duly assembled, hereby enacts as follows:

### SECTION 1 - SHORT TITLE

- 1.1 This Bylaw may be cited as the “Smoking Bylaw”.

### SECTION 2 - DEFINITIONS

In this Bylaw:

- 2.1 “**Ashtray**” means a receptacle for tobacco ashes and for cigar and cigarette butts;
- 2.2 “**Building**” includes anything constructed or placed on, in, over or under land, whether permanent or temporary, into which a Person could enter;
- 2.3 “**City/Town**” means the *(City/Town)* of \_\_\_\_\_;
- 2.4 “**City/Town Building**” means any of the buildings owned, leased, operated or occupied by the *(City/Town)* of \_\_\_\_\_;

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<sup>1</sup> The term *City/Town* may be replaced with the appropriate municipal type including but not limited to City, Town, Village, Specialized Municipality of, Municipal District of (or equivalent terminology), Metis Settlement, or Summer Village as appropriate.

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- 2.5 “**Council**” means the Council of the *(City/Town)* of \_\_\_\_\_ ;
- 2.6 “**Designated Public Place**” means a place prescribed in Section 3;
- 2.7 “**Educational Institution**” means a public or private school or post-secondary institution;
- 2.8 “**Employee**” includes a person who:
- a) performs any work for or supplies any services to any Employer; or
  - b) receives any instructions or training in the activity, business, work, trade, occupation or profession of the Employer;
- 2.9 “**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;
- 2.10 “**Enclosed Walkway**” means any pedway, bridge, hallway, connecting stairway, or similar structure that is physically enclosed;
- 2.11 “**General Manager**”<sup>2</sup> means the chief administrative officer or his delegate;
- 2.12 “**Municipal Tag**” means a ticket or similar document issued by the *(City/Town)* pursuant to the *Municipal Government Act R.S.A. 2000, c. M-26, as amended*, and as referred to in Section 8 below;
- 2.13 “**Outdoor Patio**” means an area outside of a building intended for the consumption of food or beverages by patrons of a business providing such food or beverages, and includes;
- a) a public premises where food or beverages are served that is not fully contained within an enclosed building; and
  - b) an outside extension of an eating or drinking establishment regardless of whether it is covered;
- 2.14 “**Peace Officer**” means a person appointed as a Bylaw Enforcement Officer pursuant to the Municipal Government Act, to do any act or perform any duties under this bylaw and includes a member of the Royal Canadian Mounted Police and, when authorized, a Special Constable;
- 2.15 “**Person**” includes an individual, proprietorship, corporation or society;

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<sup>2</sup> The term “General Manager” may be replaced with appropriate terminology consistent with the type of municipality implementing this bylaw.

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- 2.16 **“Private Residence”** means a self contained living premise for domestic use of one or more persons and is provided with a separate private entrance from the exterior of a building or from a common hall, lobby or stairway, but does not include any portion of such area used as a workplace with the exception of a hotel room or motel room;
- 2.17 **“Proprietor”** means the owner, or his agent or representative of a Designated Public Place referred to in this bylaw, and includes any person in charge thereof or anyone who controls, governs or directs the activity carried on therein, where applicable includes;
- a) the person who ultimately controls, governs or directs the activity carried on within any premises referred to in this Bylaw and includes the person usually in charge thereof;
  - b) a Regional Health Authority Board appointed pursuant to the provisions of the Regional Health Authority Act;
  - c) the Board of Governors, Board of Trustees, or President of an Educational Institution;
- 2.18 **“Public”** means any person other than the owner, lessee, proprietor or employer of a particular building or place;
- 2.19 **“Public Building”** means any enclosed building or structure as defined in this bylaw to which the public can and does have access by right or by invitation, whether or not:
- a) all classes of the public are invited;
  - b) the proprietor has the right to exclude any particular person;
  - c) payment, membership or the performance of some formality is required prior to access;
  - d) the public has access to the building only at certain times, or from time to time;
  - e) a member of the public has access only if they are a member or if they are accompanied by a member;
  - f) Subject to subsection g) and h) below, if the public has access only to a portion of the building or structure, the entire building or structure shall be deemed to be a Public Building;

Where a building includes a private residence, the following shall apply:

- g) that portion of the building containing the private residence shall be deemed to not be a public building;
- h) If a building contains two or more private residences, those common areas of the building including washrooms, corridors, reception areas, elevators, escalators, foyers, hallways, stairways, lobbies, laundry rooms and enclosed parking garages shall be deemed to be a public building;

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- 2.20 **“Public Transportation Vehicle”** means a school bus, a bus or light-rail transit vehicle owned or operated by or on behalf of the *(City/Town)* of \_\_\_\_\_, a taxicab, limousine or other similar vehicle which is being used by a passenger or passengers for hire or which is being offered for hire;
- 2.21 **“Public Transportation Vehicle Shelter”** means any structure with a roof designed to protect a passenger from the elements while waiting for a school bus, a bus or light-rail transit vehicle owned or operated by or on behalf of the *(City/Town)* of \_\_\_\_\_, a taxicab, limousine or other similar vehicles;
- 2.22 **“Sign”** means a sign as prescribed in Section 5;
- 2.23 **“Smoke” or “Smoking”** includes the carrying, holding or otherwise controlling of a lighted cigar, cigarette, pipe or any other lighted smoking equipment;
- 2.24 **“Violation Ticket”** means a ticket issued pursuant to *Part II of the Provincial Offences Procedure Act, R.S.A. 2000 c. P-34, as amended* and regulations thereunder, and as referred to in Section 9 of this bylaw;
- 2.25 **“Workplace”** means any enclosed area of a building or structure in which an employee works and includes washrooms, corridors, lounges, eating areas, outdoor patios, reception areas, elevators, escalators, foyers, hallways, stairways, enclosed walkways, amenity areas, lobbies, laundry rooms and enclosed parking garages utilized by an employee. Without limiting the generality of the foregoing:
- a) a place is a Workplace whether or not the employee is employed by the proprietor of the premises at which the employee works;
  - b) subject to clause d) below, if an employee works in any portion of a building, the entire building shall be deemed to be a workplace;
  - c) home offices that employ non-residents or that require public access shall be deemed to be a workplace; and
  - d) any portion of a building that is used exclusively as a private residence, including a hotel room or a motel room shall not be deemed to be a workplace.

### SECTION 3 - GENERAL PROVISIONS

- 3.1 Subject to Section 3.2, the following are Designated Public Places for the purposes of this bylaw:
- a) Public Buildings and those areas within 6m of an entrance or exit to a Public Building;
  - b) Town Buildings and those areas within 6m of an entrance or exit to a Town Building;
  - c) Public Transportation Vehicles and Public Transportation Vehicle Shelters; and

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- d) Workplaces and those areas within 6m of an entrance or exit to a Workplace.
- 3.2 No person shall Smoke in a Designated Public Place, whether or not a “No Smoking” sign is posted or visible
- 3.3 No proprietor or employer shall permit smoking in a Designated Public Place, whether or not a “No Smoking” sign is posted or visible.

## SECTION 4 - ASHTRAYS

- 4.1 The proprietor and employer of every Designated Public Place shall ensure that no ashtrays are placed or allowed to remain in any Designated Public Place.
- 4.2 The proprietor and employer of every Designated Public Place shall, if employees or members of the public from time to time gather to smoke at a location outside the Designated Public Place, ensure that ashtrays are placed more than 6m from the entrance or exit of the Designated Public Place.

## SECTION 5 - SIGNS

- 5.1 The proprietor and employer of every Designated Public Place shall ensure that signs are posted conspicuously and in accordance with this bylaw so as to clearly identify that smoking is prohibited.
- 5.2 The proprietor and employer of every Workplace, Public Building or *City/Town* Building shall ensure that:
  - a) signs are posted at every entrance to the Workplace, Public Building or *City/Town* Building;
  - b) signs are posted at the entrance to each washroom; and,
  - c) signs are posted in the vicinity of any seating area where food or beverages are sold or consumed.
- 5.3 The signs referred to in this bylaw shall consist of graphic symbols that comply with the provisions of this section.
- 5.4 The following graphic symbol shall be used to indicate the areas where smoking is prohibited pursuant to this bylaw:

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on a white background with the circle and the interdictory stroke in red.

- 5.5 The graphic symbol referred to in Subsection 5.4 shall include the text “*City/Town of \_\_\_\_\_*” or “*City/Town of \_\_\_\_\_ Smoking Bylaw*” not less than 1.3 centimeters in height for signs with letter height of 2.54 centimeters, and not less than one-quarter (1/4) of the height of the letters on all other letters of the sign.
- 5.6 The graphic symbol referred to in Subsection 5.4 shall include the text “No Smoking” in letters at least five (5%) percent of the diameter of the circle or symbol, and of a letter height not less than 2.54 cm.
- 5.7 The lettering of signs may be in either upper or lower case or combination thereof but the words “letter height” when used in Subsections 5.5 and 5.6 shall mean the actual height of a letter whether it is in upper or lower case.
- 5.8 In addition to the graphic symbol referred to in Subsection 5.4 there may be added appropriate symbols such as directional arrows.
- 5.9 With respect to size of the graphic symbol, the diameter of the circle in the symbol referred to in Subsection 5.4 shall be a minimum of 15 cm.
- 5.10 Deviations from the colour or content of the signs prescribed by this section that do not affect the substance or that do not mislead do not invalidate the signs.
- 5.11 Notwithstanding that the graphic symbol in Subsection 5.4 is a cigarette, it shall be deemed to include a reference to a lighted cigar, cigarette, pipe or other lighted smoking equipment.
- 5.12 Any sign prohibiting smoking that refers to a former smoking bylaw of the (*City/Town*) of \_\_\_\_\_ is deemed to be referred to this bylaw.
- 5.13 No person shall remove, alter, conceal, deface or destroy any sign posted pursuant to this bylaw.

## SECTION 6 - PENALTIES

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- 6.1 Any corporation which fails or neglects to perform the duties or requirements imposed upon it under the provisions of this bylaw is guilty of an offence and liable on summary conviction to a fine not exceeding ten thousand dollars (\$10,000).
- 6.2 Any individual, other than a corporation, who contravenes any of the provisions or requirements of this bylaw is guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars (\$1,000).
- 6.3 The specified fine for an offence committed pursuant to this bylaw is established at:
- |              |           |
|--------------|-----------|
| Individual   | \$250.00  |
| Corporations | \$1000.00 |
- 6.4 In the case of an offence that is of a continuing nature, a contravention shall constitute a separate offence in respect of each day, or part of a day, on which that offence continues.

### SECTION 7 – MUNICIPAL TAGS

- 7.1 A Peace Officer is hereby authorized and empowered to issue a municipal tag to any person who the Peace Officer has reasonable and probable grounds to believe has contravened any provision of this bylaw.
- 7.2 A municipal tag may be issued to such person:
- either personally;
  - by mailing a copy to such person at his last known post office address, or
  - if upon a corporation, by serving the municipal tag by mailing a copy by registered mail, or serving a person who is the agent, representative, or a person in charge of the Designated Public Place.
- 7.3 The municipal tag shall be in a form approved by the General Manager and shall state:
- the name of the person;
  - the offence;
  - the municipal or legal description of the land on or near where the offence took place;
  - the appropriate penalty for the offence as specified in Section 6 of this bylaw;
  - that the penalty shall be paid within 30 days of the issuance of the municipal tag;
  - any other information as may be required by the General Manager.
- 7.4 Where a municipal tag is issued pursuant to Section 7 of this bylaw, the person to whom the municipal tag is issued may, in lieu of being prosecuted for the offence, pay the penalty to the *City/Town* the penalty specified within the time period indicated on the municipal tag.

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- 7.5 Nothing in this bylaw shall prevent a Peace Officer from immediately issuing a violation ticket.

## SECTION 8 - VIOLATION TICKET

- 8.1 In those cases where a municipal tag has been issued and if the penalty specified on a municipal tag has not been paid within the prescribed time, then a Peace Officer is hereby authorized and empowered to issue a violation ticket pursuant to *Part II of the Provincial Offences Procedure Act, R.S.A. 2000, c.P-34 as amended*.
- 8.2 Notwithstanding Section 7 of this bylaw, a Peace Officer is hereby authorized and empowered to immediately issue a violation ticket pursuant to *Part II of the Provincial Offences Procedure Act, R.S.A. 2000, c.P-34, as amended*, to any person who the Peace Officer has reasonable grounds to believe has contravened any provision of this bylaw.

## SECTION 9 - SEVERABILITY

- 9.1 If any section or sections of this bylaw 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 bylaw shall be deemed to be separate and independent therefrom and to be enacted as such.

## SECTION 10 - ENFORCEMENT

- 10.1 For the enforcement of this bylaw, a Peace Officer, upon producing proper identification, may at all reasonable hours, enter any Designated Public Place and may make examinations, investigations and inquiries.
- 10.2 A Peace Officer is a Designated Officer for the purposes of *ss. 542 – 545 of the Municipal Government Act, R.S.A. 2000, c.M-26, as amended*.

## SECTION 11 - ABANDONMENT, REPEAL AND EFFECTIVE DATE

- 11.1 The *(City/Town)* of \_\_\_\_\_ Bylaw XXX/XX is repealed and this bylaw shall come into effect all as of July 1, 2005.

Read a first time this \_\_\_ day of MONTH, YEAR.

Read a second time as amended, this \_\_\_ day of MONTH, YEAR.

Read a third and final time this \_\_\_ day of MONTH, YEAR.

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# **MODEL SMOKING BYLAW**

Mayor

Chief Administrative Officer