

# THE CORPORATION OF THE TOWNSHIP OF ESSA

## BY-LAW NO. 2002-7

A By-law to regulate or prohibit smoking in the workplace.

WHEREAS Section 213 of the Municipal Act, R.S.O. 1990, Chap. M.45, as amended, enables Councils of local municipalities to pass by-laws to regulate or prohibit the smoking of tobacco in workplaces in the municipality;

AND WHEREAS it has been determined that second hand smoke is a nuisance because of its irritating and discomforting properties and is a health hazard because of its impairment adverse effect and risk to the health of the inhabitants and employees of the Township of Essa.

The Council of the Township of Essa enacts as follows:

### 1.0 DEFINITIONS

In this By-law,

- a) “dwelling unit” means any building or part thereof used as the home, residence, or sleeping place of a family either continuously, permanently, temporarily, or transiently.
- b) “employee” includes a person who, performs any work for or supplies any services to an employer, or receives any instructions or training in the activity, business, work, trade, occupation or profession of the employer;
- c) “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;
- d) “inspector” means a person appointed by Council as a Municipal By-law Enforcement Officer to enforce this By-law;
- e) “non-smoking policy” means a written policy that prohibits smoking in the workplace in accordance with this By-law;
- f) “private club” means the whole or part of an indoor area to which the general public is not invited or permitted access.

For greater clarification and for the purpose of enforcement of the by-law, a facility is considered to be a private club when the following criteria is met:

- The club must have a fixed membership;
- The club requires each member to pay an annual or periodic membership fee;
- The club must have an executive/leadership that is elected by all the members on an annual or periodic basis;
- The club must have a constitution or by-laws that provide the governing rules for the membership, executive, fees, etc.;
- The club must be not-for-profit;
- The club has profits and losses borne by its members;

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- The club has publicity and advertisements directed exclusively to members for their information and guidance and does not solicit business from the general public; and
  - The club does not permit non-members to enter the premises to consume food or alcohol unless accompanied by a member.
- g) “smoking” includes carrying a lighted cigar, cigarette, pipe or any other lighted smoking instrument and "smoke" has a corresponding meaning; and
- h) “workplace” means any enclosed area of a building, structure or vehicle in which an employee works and includes washrooms, corridors, lounges, eating areas, reception areas, elevators, escalators, foyers, hallways, stairways, amenity, areas, lobbies, laundry rooms, parking garages and vehicles or motorized equipment utilized by an employee.

**2.0 RESPONSIBILITIES OF THE EMPLOYER RESPECTING ADOPTION OF A NON-SMOKING POLICY**

1. Every employer shall, on May 31, 2002 adopt and implement a non-smoking policy that prohibits smoking in respect of each workplace in the Township of Essa under the control, supervision or ownership of the employer.
2. Where, after May 31, 2002 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, adopt and implement a non-smoking policy that prohibits smoking in respect of each such workplace under the control, supervision or ownership of the employer.
3. 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 5 at every entrance to the workplace indicating that smoking is prohibited in the workplace.

**3.0 GENERAL PROHIBITION ON SMOKING**

When the non-smoking policy has been adopted for a workplace, no person shall smoke in the workplace.

#### **4.0 DELEGATED DUTY TO AN EMPLOYER**

When the non-smoking policy has been adopted for a workplace, no employer shall permit smoking in the workplace.

#### **5.0 REQUIREMENT TO POST SIGNS**

1. The signs referred to in this By-law shall consist of graphic symbols that comply with the provisions of this section.
2. The following graphic symbol shall be used to indicate that smoking is prohibited in the workplace:



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

3. The graphic symbol referred to in subsection (2) shall include the text "Township of Essa By-law" in letters and figures at least five (5%) percent of the diameter of the circle in the symbol.
4. With respect to size of the graphic symbol, the diameter of the circle in the symbol referred to in this section shall be not less than ten (10 cm) centimetres.
5. Despite the fact that the symbol referred to in subsection (2) and subsection (3) is a cigarette, it shall include a lighted cigar, cigarette, pipe or any other lighted smoking instrument.
6. 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.
7. Any sign prohibiting smoking that refers to a by-law of an old municipality is deemed to be referring to this by-law.

#### **6.0 INSPECTION OF WORKPLACE**

1. For the enforcement of this by-law, an inspector, upon producing proper identification, may, at all reasonable hours, enter any workplace or any building or structure in which a workplace is situate and may make examinations, investigations and inquiries.

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2. No inspector may enter a workplace that is also a dwelling without the consent of the occupant or without first obtaining and producing a warrant.

**7.0 OFFENCES FOR SMOKING OR PERMITTING SMOKING**

1. Any person who smokes in a workplace in contravention of Section 3 is guilty of an offence.
2. Any employer who permits smoking in the workplace in contravention of Section 4 is guilty of an offence.

**8.0 OFFENCES FOR EMPLOYERS FAILING TO PERFORM DUTIES**

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.

**9.0 OFFENCE FOR OBSTRUCTION**

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

**10.0 FINES**

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.

**11.0 EXEMPTIONS**

1. This by-law shall not apply to any part of a workplace that is used as a private dwelling unit.
2. This by-law shall not apply to any part of a Private Club that is not a public place or a workplace.

**12.0 CONFLICTS**

If a provision in this by-law conflicts with the Smoking in the Workplace Act, R.S.O. 1990, Chap. S.13 or any other Act or a regulation, the provision that is the most restrictive of smoking prevails.

**13.0 REPEALS**

By-law 96-52 is hereby repealed.

**14.0 EFFECTIVE DATE**

This by-law shall come into effect on May 31, 2002.

**15.0 SHORT TITLE**

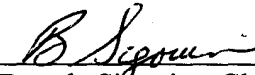
This by-law may be cited as the "No Smoking By-law - Workplaces".

READ A FIRST, AND TAKEN AS READ A SECOND AND THIRD TIME AND FINALLY PASSED on this the 6<sup>th</sup> day of February, 2002.

<b>Amended / <del>Repealed</del> by</b>
By-law: <u>2002-34</u>
Initials: <u>KP.</u>



Robert Davis - Mayor



Brenda Sigouin - Clerk-Administrator

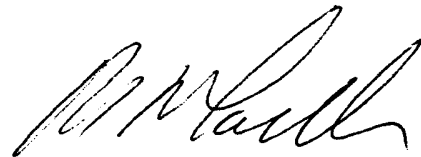
**PROVINCIAL OFFENCES ACT**

**PART I**

IT IS ORDERED pursuant to the provisions of the Provincial Offences Act and the rules for the Ontario Court of Justice, that the amount set opposite each of the offences in the attached schedule of offences under the Provincial Statutes and Regulations thereunder and the By-law No. 2002-7 as amended, of the Township of Essa, attached hereto is the set fine for those offences. This Order is to take effect April 24<sup>th</sup>, 2002.

DATED at Lindsay

This 24<sup>th</sup> day of April, 2002.



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Justice R. P. Taillon  
Regional Senior Justice  
Central East Region  
Ontario Court of Justice

PART I PROVINCIAL OFFENCES ACT

TOWNSHIP OF ESSA BY-LAW 2002-7 A By-law to Prohibit Smoking in the Workplace			
Item	Column 1 Short form wording	Column 2 Offence creating provision	Column 3 Set Fine including costs
1.	Employer fail to adopt a policy that prohibits smoking in a workplace.	2.0(1)	\$175.00
2.	Employer fail to adopt a policy prohibiting smoking within seven days after a workplace is created.	2.0(2)	\$175.00
3.	Employer fail to maintain the non-smoking policy in the workplace for which it was adopted.	2.0(3)(a)	\$175.00
4.	Employer fail to provide a copy of the non-smoking policy to each employee in the workplace.	2.0(3)(b)	\$175.00
5.	Employer fail to post and continually display a copy of the non-smoking policy in a prominent place.	2.0(3)(c)	\$175.00
6.	Employer fail to erect signs in accordance with Section 5 at every entrance to the workplace.	2.0(3)(d)	\$175.00
7.	Smoking in a workplace.	3.0	\$175.00
8.	Employer permit smoking in the workplace.	4.0	\$175.00
9.	Hinder or obstruct inspector carrying out enforcement of this by-law.	9.0	\$175.00

The penalty provision for By-law 2002-7 is Section 10, a certified copy of which has been filed.