

THE CORPORATION OF THE TOWNSHIP OF ESSA

BY-LAW NO. 2002-8

A By-law prohibiting and regulating the smoking of tobacco and the carrying of lighted tobacco products in public places within the municipality.

WHEREAS the Council of the Township of Essa has the authority to pass by-laws prohibiting and regulating the smoking of tobacco and the carrying of lighted tobacco products in public places within the municipality pursuant to Section 213 of the Municipal Act, R.S.O. 1990, Chap. M.45, as amended;

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 Essa;

THEREFORE the Council of the Township of Essa enacts as follows:

1.0 DEFINITIONS

In this By-law:

- a) "amusement arcade" means a place to which the public has access and which is equipped with five (5) or more machines or devices that may be used for playing games solely for the entertainment and amusement of the players;
- b) "arena" means any building, location or premises comprised of, but not restricted to, 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;
- c) "ashtray" means a receptacle of any kind being used for tobacco ashes and for cigar and cigarette butts;
- d) "bar/tavern" means an establishment licensed by the Alcohol and Gaming Commission of Ontario where persons under 19 years of age are not permitted to enter, either as a patron or as an employee;
- e) "barber shop" or "hairdressing establishment" means any building, location or premises where hair is styled, cut, trimmed, treated or washed;
- f) "billiard hall" means a building or part thereof, the primary purpose of which is the playing of the game of snooker, pool or billiards;
- g) "bingo hall" means any building, location or premises where the conduct of bingo events is licensed;
- h) "Essa" means the Municipality of the Township of Essa;
- i) "Municipal Clerk" means the Clerk of the Township of Essa;
- j) "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, passageways, public restrooms, unenclosed public seating areas and unenclosed public standing areas, whether or not the eating area, seating area or standing area is leased;
- k) "Council" means the Council of the Corporation of the Township of Essa;

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- l) “food court” means an area within a shopping mall where food or drink is offered for sale or sold to the public for immediate consumption;
- m) “inspector” means a person appointed by Council as a Municipal By-law Enforcement Officer or a person or persons or Agency contracted by the Municipality to enforce this By-law;
- n) “laundromat” means any facility, premises or area within a building to which the public has access established for the purposes of laundering, washing or drying on a self-service basis;
- o) “person” includes a corporation;
- p) “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;
- q) “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;
 - 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.
- r) “proprietor or other person in charge” means the person who controls, governs or directs the activity carried on within the premises designated as prohibited areas under this By-law and includes the person who is actually in charge thereof at any particular time;
 - s) “public building” means any enclosed building or group of buildings to which the public has access;
 - t) “public facility” means any hall, room, or banquet area that is publicly owned and is rented for an event or function;
 - u) “public place” means the whole or part an indoor area to which the general public is invited or permitted access and includes a school bus, public transportation, taxi or limousine;
 - v) “public portion” means the area of any building to which the public has access;

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- w) "public restroom" means any restroom or washroom to which the public has access;
- x) "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;
- y) "restaurant" means an establishment engaged in the sale and service of food or drink or both food and drink to the public for consumption on the premises but does not include a bar;
- z) "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;
- aa) "school bus" means a public vehicle licensed for the purpose of transporting children to and from school or to or from any activity, event or function associated therewith;
- bb) "service counter" means an indoor counter where a person receives a service including, but not limited to, the exchange of money, sales, provision of information, transactions, advice or the transfer of money or goods;
- cc) "service line" means an indoor line of two (2) or more persons awaiting service of any kind regardless of whether or not such service involves the exchange of money, including but not limited to sales, transactions, provision of information or advice and transfers of money or goods;
- dd) "shopping mall" means any enclosed building or group of buildings containing one or more retail shops; and
- ee) "smoke" or "smoking" includes the carrying of a lighted cigar, cigarette, pipe or any other lighted smoking equipment.
- ff) "theatre" means an indoor area to which the public has access to view movies.

2.0 DESIGNATION OF PUBLIC PLACES

The following are designated public places for the purposes of this By-law:

- a) the common area of a public building;
- b) an indoor service line or service counter in any premise to which the public has access;
- c) a place of public assembly;
- d) a public restroom;
- e) a food court;
- f) a public facility;
- g) a reception area;
- h) the public portion of an amusement arcade;
- i) a municipally owned building;
- j) a bingo hall;
- k) a bowling alley;
- l) a billiard hall;
- m) the public portion of any restaurant;
- n) the public portion of any bar;
- o) an arena;
- p) the public portion of any retail shop;
- q) the common area of a shopping mall;

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- r) the public portion of any laundromat;
- s) the public portion of any barber shop or hairdressing establishment;
- t) a school bus;
- u) a taxicab;
- v) a limousine; and,
- w) a theatre.

3.0 GENERAL PROHIBITION ON SMOKING

No person shall smoke in any public place including, but not limited to, those designated under Section 2 of this By-law.

4.0 REQUIREMENT TO POST SIGNS

The proprietor or other person in charge of any public place designated or regulated under this By-law shall ensure that a sufficient number of signs as prescribed by Section 6 are conspicuously posted so as to clearly identify that smoking is prohibited.

5.0 POSTING OF SIGNS IN SPECIFIC PREMISES

Despite Section 4, in every shopping mall or other public building referred to in Section 2, the proprietor or other person in charge of the shopping mall or other public building shall ensure that,

- a) signs are posted in accordance with Section 6 in every common area of the shopping mall or other public building,
- b) signs are posted at every entrance to the shopping mall or other public building, which are visible and in sufficient numbers, clearly indicating in English or in French and English that smoking is prohibited in the common areas of the shopping mall or other public building, and
- c) signs referred to in clauses (a) and (b) are in accordance with Section 6.

Despite Section 4, in every bar, the proprietor or other person in charge of a bar shall ensure that a sign or signs is posted at every entrance to the bar that clearly identifies in English or French and English that the bar will be smoke-free.

6.0 DESCRIPTION OF SIGNAGE

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 the areas where smoking is prohibited pursuant to this By-law:

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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 "**Essa Township By-law**" in letters and figures at least five (5%) percent of the diameter of the circle in the symbol.
4. To the symbols referred to in subsection (2) there may be added additional appropriate symbols such as directional arrows.
5. Despite the fact that the symbol referred to in subsection (2) is a cigarette, it shall include a lighted cigar, cigarette, pipe or any other lighted smoking instrument.
6. With respect to size of the graphic symbol, the diameter of the circle in the symbol referred to in subsection (2) shall be not less than the number of centimetres prescribed below, based upon the maximum viewing distance in direct line of sight, as follows:
 - a) three (3 m) metres or less - ten (10 cm) centimetres,
 - b) six (6 m) metres or less - fifteen (15 cm) centimetres,
 - c) twelve (12 m) metres or less - twenty (20 cm) centimetres,
 - d) twenty-four (24 m) metres or less - thirty (30 cm) centimetres,
 - e) forty-eight (48 m) metres or less - forty (40 cm) centimetres,
 - f) seventy-two (72 m) metres or less - sixty (60 cm) centimetres.
7. Despite subsection (6), the diameter of the circle in the symbol referred to in subsection (6) used pursuant to Section 5 to be erected at the entrance to every shopping mall or other public building shall be a minimum of ten (10 cm) centimetres.
8. 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.
9. Any sign prohibiting smoking that refers to a By-law of an old municipality is deemed to be referring to this By-law.

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10. Despite subsection (6), with respect to taxicabs or limousines, the diameter of the circle in the graphic symbol referred to in subsection (2) and used pursuant to Section 6 shall be not less than ten (10) centimetres.

7.0 ASHTRAYS

The proprietor or other person in charge of a public place regulated under this By-law shall ensure that no ashtrays are placed or allowed to remain in any public place where smoking is prohibited pursuant to this By-law.

8.0 APPLICATION TO MUNICIPAL PROPERTIES

1. Council-approved non-smoking policies with respect to the public portions of the Municipality's buildings are deemed to be specified within this By-law.
2. No person shall smoke in any area designated as an area where smoking is prohibited by any Council-approved policy referred to in Section 8.1.

9.0 DUTIES

No proprietor or other person in charge of a public place shall permit smoking where smoking is prohibited under this By-law.

10.0 OFFENCES

1. Any person who contravenes any of the provisions of this By-law is guilty of an offence.
2. Any person who smokes in a public place in contravention of this by-law is guilty of an offence.
3. Any person who hinders or obstructs a person lawfully carrying out the enforcement of this By-law is guilty of an offence.

11.0 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.

12.0 ENFORCEMENT

1. The provisions of this By-law respecting the designation of non-smoking areas, the posting of signs and the duties imposed on the proprietor or other person in charge of a public place shall be enforced by inspectors.

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2. An inspector may, at any reasonable time, enter any designated public place for the purposes of determining compliance with this By-law.

13.0 EXEMPTIONS

This By-law shall not apply to any part of a Private Club that is not a public place or a workplace.

14.0 CONFLICTS

If a provision of this By-law conflicts with an Act or a regulation or another By-law, the provision that is the most restrictive of smoking shall prevail.

15.0 SEVERABILITY

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

16.0 REPEALS

By-law 96-52 is hereby repealed.

17.0 EFFECTIVE DATE

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

18.0 SHORT TITLE

This By-law may be cited as the "No Smoking By-law - Public Places".

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



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. 2002-8 as amended, of the Township of Essa, attached hereto is the set fine for those offences. This Order is to take effect April 24th, 2002.

DATED at Lindsay

This 24th day of April, 2002.



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

ART I PROVINCIAL OFFENCES AC

TOWNSHIP OF ESSA

BY-LAW 2002-8

A By-law to Prohibit and Regulate the Smoking of Tobacco and
the Carrying of Lighted Tobacco Products in Public Places within the Municipality

Item	Column 1 Short form wording	Column 2 Offence creating provision	Column 3 Set Fine including costs
1.	Smoking in the common area of a public building.	3.0	\$175.00
2.	Smoking in an indoor service line or service counter in any premise to which the public has access.	3.0	\$175.00
3.	Smoking in a place of public assembly.	3.0	\$175.00
4.	Smoking in a public restroom.	3.0	\$175.00
5.	Smoking in a food court.	3.0	\$175.00
6.	Smoking in a public facility.	3.0	\$175.00
7.	Smoking in a reception area.	3.0	\$175.00
8.	Smoking in the public portion of an amusement arcade.	3.0	\$175.00
9.	Smoking in a municipally owned building.	3.0	\$175.00
10.	Smoking in a bingo hall.	3.0	\$175.00
11.	Smoking in a bowling alley.	3.0	\$175.00
12.	Smoking in a billiard hall.	3.0	\$175.00
13.	Smoking in the public portion of any restaurant.	3.0	\$175.00
14.	Smoking in the public portion of any bar.	3.0	\$175.00
15.	Smoking in an arena.	3.0	\$175.00
16.	Smoking in the public portion of any retail shop.	3.0	\$175.00
17.	Smoking in the common area of a shopping mall.	3.0	\$175.00
18.	Smoking in the public portion of any laundromat.	3.0	\$175.00
19.	Smoking in the public portion of any barber shop or hairdressing establishment.	3.0	\$175.00

TOWNSHIP OF ESSA

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Item	Column 1 Short form wording	Column 2 Offence creating provision	Column 3 Set Fine including costs
20.	Smoking in a school bus.	3.0	\$175.00
21.	Smoking in a taxicab.	3.0	\$175.00
22.	Smoking in a limousine.	3.0	\$175.00
23.	Smoking in a theatre.	3.0	\$175.00
24.	Proprietor or other person in charge fail to ensure no-smoking signs are posted in conspicuous places.	4.0	\$175.00
25.	Proprietor or other person in charge fail to post signs at every common area of a mall or other public building.	5.0(a)	\$175.00
26.	Proprietor or other person in charge fail to post signs at every entrance to a shopping mall.	5.0(b)	\$175.00
27.	Proprietor or other person in charge fail to ensure that no ashtrays are placed or allowed to remain in any public place where smoking is prohibited.	7.0	\$175.00
28.	Proprietor or other person in charge permit smoking where smoking is prohibited.	9.0	\$175.00

The penalty provision for By-law 2002-8 is Section 11, a certified copy of which has been filed.