THE CORPORATION OF THE MUNICIPALITY OF PORT HOPE

BY-LAW NO. 88/2004

Being a By-law to regulate smoking in public places and workplaces of the Municipality of Port Hope.

WHEREAS Section 115 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, authorizes councils of local municipalities to pass by-laws to prohibit or regulate the smoking of tobacco in public places and workplaces;

AND WHEREAS the Council of the Corporation of the Municipality of Port Hope considers the enactment of such a by-law to be advisable and in the interests of the health, safety and welfare of its inhabitants;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF PORT HOPE ENACTS AS FOLLOWS:

PART I - DEFINITIONS

1. In this By-law:

1.1 "ashtray" means any type of receptacle for tobacco ashes and for cigar and cigarette butts;

1.2 "municipal by-law enforcement officer" includes any person appointed by by-law to enforce this or any other municipal by-law and includes police officers in the employ of the Port Hope Police Service and the Ontario Provincial Police in Ward 2;

1.3 "Port Hope" means the Corporation of the Municipality of Port Hope;

1.4 "public park" means any park or common area owned and maintained by the Municipality of Port Hope and which is open to the public but does not include the grassed area adjacent to the Town Hall;

1.5 "outdoor patio" means an outdoor area that has no more than one wall and that is adjacent to an establishment where food or beverages are sold and consumed by the public, and that is completely open to the elements save and except for one wall and a roof or awning or similar overhead cover;

1.6 "owner" means the owner of any land, building, structure, vessel, vehicle or conveyance which contains one or more public places or workplaces;

1.7 "person" includes an individual, corporation or a partnership;

1.8 "proprietor" means the person, governing body or agency which controls, governs or directs activity carried on within a public place and includes the person actually in charge of the premises at any particular time;

1.9 "public place" means any land, building, structure, vessel, vehicle or conveyance, or any part thereof, whether covered by a roof or not, to which the public has access as of right or by invitation, express or implied, whether or not a fee is charged for entry. For greater certainty:

1.9.1 a public place does not include any dwelling while it is being used exclusively as a dwelling; and

1.9.2 a public place does not include any street, road or highway or part thereof;

1.10 "smoke" or "smoking" includes holding or carrying a lighted cigar, cigarette, pipe or any other lighted smoking material or equipment;

1.11 "workplace" means any portion of any land, building, structure, vessel, vehicle or conveyance:

1.11.1 in which an employee works; or

1.11.2 in which an independent contractor or sole practitioner or individual carries on business but only at such times as the public may have access to such premises, as of right or by invitation either express or implied;

1.11.3 And includes a public transportation vehicle and a taxi cab.

PART II - NO SMOKING IN PUBLIC PLACES AND WORKPLACES

2. No person shall smoke in any public place within Port Hope whether or not a No Smoking sign has been posted pursuant to the provisions of this By-law.

3. No person shall smoke in any workplace, whether or not a No Smoking sign has been posted pursuant to the provisions of this By-law

4. Every proprietor or owner of a public place shall:

4.1 ensure compliance with this By-law;

4.2 prohibit smoking in the public place;

4.3 post No Smoking signs in accordance with Part III of this By-law in conspicuous locations at every entrance and washroom in the public place, indicating that smoking is prohibited in the public place;

4.4 Ensure that no ashtrays or any other paraphernalia associated with smoking are placed or permitted to remain in the public place.

5.1 Every employer shall:

5.1.1. ensure compliance with this By-law;

5.1.2 prohibit smoking in the workplace;

5.1.3 inform each employee in workplace that smoking is prohibited in the workplace;

5.1.4 post No Smoking signs in accordance with Part III of this By-law in conspicuous locations at every entrance and washroom in the workplace, indicating that smoking is prohibited in the workplace;

5.1.5 Ensure that no ashtrays or any other paraphernalia associated with smoking are placed or permitted to remain in the workplace.

5.2 Despite the provisions of Section 3 and Section 5.1.2, 5.1.3, and 5.1.4 of this By-law, an employer may designate an outdoor area located on the employer's premises where employees only may smoke provided that the area designated as a smoking area is outdoors and completely open to the elements save and except for no more than one wall and a roof or awning or similar overhead cover.

6. Subject to Section 10.1 of this By-law, no person shall smoke within 10 metres of any door or window of any building owned or leased by Port Hope, which includes, but is not limited to, the buildings listed on Schedule "A" of this By-law.

PART III - SIGNS

7. Every proprietor or owner of a public place or workplace shall ensure that a sufficient number of signs indicating that smoking is prohibited are conspicuously posted at every entrance thereto and within the public place or workplace, including all common areas, in a manner that clearly identifies that smoking is prohibited in such public place or workplace.

8. Every sign required to be posted pursuant to the requirements of this By-law shall be of a sufficient size so as to be clearly visible to persons entering or being within the public place or workplace.

9.1 Every sign required to be posted pursuant to the requirements of this By-law shall be at least 14 cm (5.5 inches) by 14 cm (5.5 inches) in size and include a depiction of the international NO SMOKING symbol, which symbol shall be at least 7.5 cm (3 inches) in diameter.

9.2 Despite the fact that the graphic symbol required by subsection 8.1 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.

PART IV - SCOPE OF BY-LAW

10. The provisions of this By-law shall not apply to:

10.1 any street, road or highway or any part thereof within Port Hope;

10.2 an outdoor patio as that term is defined in this By-law;

10.3 any part of a workplace that is used as a private residence;

10.4 a workplace where the only employees of that workplace are the proprietors or owners of the workplace, and the public has no right of access, either express or implied; or

10.5 Any public park.

PART V – OFFENCES, FINES AND ENFORCEMENT

11.1 The provisions of this By-law shall be enforced by one or more municipal by-law enforcement officers;

11.2 Any municipal by-law enforcement officer may, at any reasonable time, enter any public place or workplace in which smoking is prohibited for the purpose of determining compliance with this By-law and for this purpose may make such examinations, investigations, testing and inquiries as are necessary.

12. Every person who hinders or obstructs a person lawfully carrying out the enforcement of this By-law is guilty of an offence.

13. Any person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to such fines and penalties as may be provided for in the Provincial Offences Act, R.S.O. 1990, c.P.33, as amended.

PART VI - GENERAL

14. If a provision of this By-law conflicts with a provincial statute or a regulation in a by-law of the County of Northumberland, the provision that is the most restrictive of smoking shall prevail.

15. If any term or provision of this By-law or the application thereof to any person shall to any extent be held to be invalid or unenforceable, the remainder of this By-law or the application of such term or provision to all persons other than those to whom it was held to be invalid or unenforceable, shall not be affected thereby and each term and provision of this By-law shall be separately valid and enforceable to the fullest extent permitted by law.

16. The headings in this By-law are for the use of reference only and shall not be read or construed so as to abridge or modify the meaning of any provision of this By-law.

17. In this By-law, words importing the neuter gender shall include the feminine gender and masculine gender and vice versa and words importing the singular shall include the plural where the context requires.

PART VII - EFFECTIVE DATE AND SHORT TITLE

18. This By-law shall come into effect at June 1, 2005.

19. This By-law may be cited as the "Smoke Free By-law".

READ A FIRST AND SECOND TIME and passed in Open Council this 9th day of November, 2004.

Rick Austin, Mayor

Frances M. Aird, Clerk

READ A THIRD TIME and finally passed in Open Council this 23rd day of November, 2004.

Rick Austin, Mayor

Frances M. Aird, Clerk