

TOWN OF MIDLAND
BY-LAW 2003-38

A by-law to prohibit smoking in public places and work places
and to repeal By-law 2002-31

WHEREAS the Municipal Act, S.O. 2001, c.25, s.115(1) provides that a municipality may pass by-laws prohibiting and regulating the smoking of tobacco in public places and work places within the municipality, to define ‘public place’ for the purpose of such by-law; to require a person who owns, occupies or operates a place to which the by-law applies to post signs; to establish the form and content of such signs, and to establish the place and manner in which such signs shall be posted;

AND WHEREAS the Municipal Act, S.O. 2001, c.25, s.115(3) provides that a by-law shall not apply to a highway but may apply to public transportation vehicles and taxicabs on a highway;

AND WHEREAS it has been determined that smoking and second-hand tobacco smoke (exhaled smoke from idling cigarettes, cigars and pipes) is a health hazard or discomfort for many inhabitants of the Town of Midland;

AND WHEREAS the Council of the Town of Midland passed By-law 2002-31 on the Twenty-eighth day of May, 2001 to require the posting of health warning signs and now deems it appropriate to repeal said by-law;

NOW THEREFORE THE COUNCIL OF THE TOWN OF MIDLAND ENACTS AS FOLLOWS:

1.0 DEFINITIONS

1.1 ‘**ashtray**’ shall mean any receptacle for tobacco ashes and for cigar and cigarette butts;

1.2 ‘**Council**’ shall mean the Town Council of the Town of Midland;

1.3 ‘**dwelling unit**’ shall mean any building or part thereof used as the home, residence, or sleeping place of a family or individual, either continuously, permanently, temporarily, or transiently;

1.4 ‘**employee**’ includes a person who, being paid or unpaid, 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 or his agent and includes a volunteer and a person who is self-employed and ‘**employment**’ has a corresponding meaning;

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

1.6 ‘**officer**’ means a person appointed by Council as a Municipal Law Enforcement Officer, or a Police Officer, or other individual duly appointed to enforce this by-law;

- 1.7 **‘outdoor patio’** means an area that:
- i) is not covered by a temporary or permanent roof; or
 - ii) if covered by a temporary or permanent roof, has one or more unobstructed exterior openings in the walls surrounding the roofed area to provide at least forty percent (40%) of the perimeter enclosed walls to be open to the movement of outdoor air at all times;
 - iii) does not share open windows with a public place;
 - iv) does not share open doors with a public place, except when doors are being opened by individuals to enter or exit the outdoor patio;
 - v) does not share thermostat controlled heating or air conditioning system with a public place;
 - vi) has a circulation of outdoor air throughout the outdoor patio.
- 1.8 **‘person’** includes an individual or corporation and shall include the plural wherein the context requires. Whenever the word ‘he’ or ‘him’ is used, it shall mean and include the feminine or neuter gender wherever the context so requires;
- 1.9 **‘proprietor** or **‘other person in charge’** shall mean the person who controls, governs or directs the activity carried on within the premises designated as prohibited areas under this bylaw and includes the person who is actually in charge thereof at any particular time;
- 1.10 **‘public place’** shall mean any building, structure, vessel, vehicle or conveyance, or part thereof, whether covered by a roof or not, to which the public has access as of right or by invitation either expressed or implied, whether or not a fee is charged for entry, but does not include an outdoor patio, a street, a road, or a highway;
- 1.11 **‘smoke’** or **‘smoking’** includes the carrying of a lighted cigar, cigarette, pipe or any other lighted smoking equipment or product but does not include smoke or smoking where smoke or smoking is used in a stage production or a theatrical performance, or in the traditional use of tobacco that forms part of Aboriginal culture and spirituality;
- 1.12 **‘Town’** shall mean the Town of Midland;
- 1.13 **‘work place’** shall mean a building, structure, vessel, vehicle or conveyance or part thereof that is used as a public transportation vehicle or a taxicab to which the public may or may not have access either express or implied, and in which one or more employees work, including any other area in the building, structure, vessel, vehicle or conveyance utilized by employees, but does not include an outdoor patio;

2.0 GENERAL REQUIREMENTS FOR PUBLIC PLACES

- 2.1 No person shall smoke in any public place within the Town whether or not a No Smoking sign is posted.
- 2.2 No proprietor or other person in charge of a public place shall permit smoking where smoking is prohibited under this by-law.
- 2.3 Every proprietor or other person in charge of a public place shall:
- i) ensure compliance with this by-law;
 - ii) prohibit smoking;
 - iii) post No Smoking signs in accordance with Sections 3.1 to 3.8 of this by-law in conspicuous locations at every entrance and public restroom indicating that smoking is prohibited;
 - iv) ensure that no ashtrays or like paraphernalia are placed or permitted to remain in the public place.
- 2.4 No person shall hinder or obstruct a person lawfully carrying out the enforcement of this by-law.

3.0 SIGN REQUIREMENTS FOR PUBLIC PLACES

- 3.1 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 are conspicuously posted so as to clearly identify that smoking is prohibited.
- 3.2 The proprietor or other person in charge of a public place shall ensure that:
- i) signs are posted in accordance with Sections 3.1 to 3.8 in every public place;
 - ii) signs are posted at every entrance to the public place and are visible and in sufficient numbers, clearly indicating that smoking is prohibited in the public place.
- 3.3 The signs referred to in this by-law shall consist of graphic symbols that comply with the provisions of this Section.

- 3.4 The following graphic symbol shall be used to indicate the areas where smoking is prohibited pursuant to this by-law and shall display a white background with the circle and the interdictory stroke in red.



- 3.5 The graphic symbol referred to in Section 3.4 shall include the text “Town of Midland By-law” in letters and figures at least five percent (5%) of the diameter of the circle in the symbol.
- 3.6 Despite the fact that the symbol referred to in Section 3.4 is a cigarette, it shall include a lighted cigar, cigarette, pipe or any other lighted smoking equipment or product.
- 3.7 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 centimetres (10cm).
- 3.8 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.

4.0 OFFENCES FOR PUBLIC PLACES

- 4.1 Any person who contravenes any provision of this by-law is guilty of an offence.
- 4.2 Any person who smokes in a public place in contravention of this by-law is guilty of an offence.
- 4.3 Any proprietor who permits smoking in a public place in contravention of this by-law is guilty of an offence.
- 4.4 Any person who hinders or obstructs a person lawfully carrying out the enforcement of this by-law is guilty of an offence.

5.0 GENERAL REQUIREMENTS FOR WORK PLACES

- 5.1 Every employer shall prohibit smoking in respect of each work place in the Town under the control, supervision or ownership of the employer.
- 5.2 No person shall smoke in the work place within the Town whether or not a No Smoking sign is posted.
- 5.3 No employer or other person in charge of a work place shall permit smoking where smoking is prohibited under this by-law.

- 5.4 Every employer or other person in charge of a work place shall:
- i) ensure compliance with this by-law;
 - ii) prohibit smoking in the work place;
 - iii) inform each employee in the work place that smoking is prohibited in the work place;
 - iv) post No Smoking signs in accordance with Sections 6.1 to 6.8 of this by-law in conspicuous locations at every entrance and washrooms in the work place indicating that smoking is prohibited in the work place;
 - iv) ensure that no ashtrays or like paraphernalia are placed or permitted to remain in any part of the work place.
- 5.5 No person shall hinder or obstruct a person lawfully carrying out the enforcement of this by-law.

6.0 SIGN REQUIREMENTS FOR WORK PLACES

- 6.1 The employer or other person in charge of any work place designated or regulated under this by-law shall ensure that a sufficient number of signs are conspicuously posted so as to clearly identify that smoking is prohibited.
- 6.2 The employer or other person in charge of a work place shall ensure that:
- i) signs are posted in accordance with Sections 6.1 to 6.8 in every work place;
 - ii) signs are posted at every entrance to the work place and are visible and in sufficient numbers, clearly indicating that smoking is prohibited in the work place.
- 6.3 The signs referred to in this by-law shall consist of graphic symbols that comply with the provisions of this section.
- 6.4 The following graphic symbol shall be used to indicate that smoking is prohibited in the work place pursuant to this by-law and shall display a white background with the circle and the interdictory stroke in red.



- 6.5 The graphic symbol referred to in Section 6.4 shall include the text “Town of Midland By-law” in letters and figures at least five percent (5%) of the diameter of the circle in the symbol.

- 6.6 Despite the fact that the symbol referred to in Section 6.4 is a cigarette, it shall include a lighted cigar, cigarette, pipe or any other lighted smoking equipment or product.
- 6.7 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 centimetres (10cm).
- 6.8 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.

7.0 OFFENCES FOR WORK PLACES

- 7.1 Any person who contravenes any provision of this by-law is guilty of an offence.
- 7.2 Any person who smokes in a work place in contravention of this by-law is guilty of an offence.
- 7.3 Any employer who fails to comply with the provisions of this by-law is guilty of an offence.
- 7.4 Any employer who permits smoking in a work place in contravention of this by-law is guilty of an offence.
- 7.5 Any person who hinders or obstructs a person lawfully carrying out the enforcement of this by-law is guilty of an offence.

8.0 PENALTY AND ENFORCEMENT

- 8.1 The provisions of this by-law respecting the designation of non-smoking areas, the posting of signs and the duties imposed on the proprietor, employer or other person in charge of a public place or work place, shall be enforced by Municipal Law Enforcement Officers, Police Officers, or other individuals duly appointed for the purpose of enforcing this by-law.
- 8.2 Any Officer may enter at any reasonable hour any public place for the purposes of determining compliance with this by-law.
- 8.3 For the enforcement of this by-law, an Officer, upon producing proper identification, may, at all reasonable times, enter any work place or any building or structure in which a work place is situate and may make examinations, investigations and inquiries.
- 8.4 Every person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to the penalties specified in accordance with the Provincial Offences Act, R.S.O. 1990, c.P33, as amended or any successor legislation thereto.

9.0 EXEMPTIONS

9.1 This by-law shall not apply to any part of a work place that is used as a private dwelling unit.

9.2 This by-law shall not apply to an outdoor patio.

10.0 CONFLICTS

10.1 If a provision of this by-law conflicts with an Act or a regulation or any other by-law of the Municipality, the provision that is the most restrictive of smoking shall prevail.

11.0 BY-LAW REPEAL

11.1 That By-law 2002-31 be hereby repealed.

12.0 SEVERABILITY

12.1 Should a court of competent jurisdiction declare a part or whole of any provision of this by-law to be invalid or of no force and effect, the provision or part is deemed severable from this by-law, and it is the intention of Council that the remainder survive and be applied and enforced in accordance with its terms to the extent possible under law.

13.0 EFFECTIVE DATE

13.1 This by-law shall come into full force and effect on the First day of September 2003.

By-law read a first, second and third time and finally passed at a meeting of Open Council on the Twenty-sixth day of May 2003.

Mayor

Clerk