

THE CORPORATION OF THE MUNICIPALITY OF WEST PERTH

BY-LAW NO. 62 - 2003

**BEING A BY-LAW TO REGULATE SMOKING IN
THE MUNICIPALITY OF WEST PERTH**

WHEREAS Section 130 of the Municipal Act, R.S.O. 2001, Chapter 25, provides that every Council may pass such By-laws and make such regulations for the health, safety, morality and welfare of the inhabitants of the municipality in matters not specifically provided for by this Act.

AND WHEREAS Chapter 25, Section 128 (1) of the said Act provides that a local municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of council, are or could become or cause public nuisances;

AND WHEREAS Chapter 25, Section 115(1) of the said Act, provides that a municipality may prohibit or regulate the smoking of tobacco in public places and workplaces;

AND WHEREAS second-hand smoke (exhaled smoke and the smoke from idling cigarettes, cigars and pipes) is a public nuisance because of its irritating properties; a serious health hazard because of its impairment, adverse effect and risk to health; and a frequent source of discomfort to the inhabitants of the Municipality of West Perth;

AND WHEREAS it is desirable for the health, safety and welfare of the inhabitants of the Municipality of West Perth, to prohibit or regulate smoking, or both, in the Municipality of West Perth as in this By-law more particularly set out;

NOW THEREFORE the Council of the Corporation of the Municipality of West Perth enacts as follows:

SHORT TITLE:

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

INTERPRETATION:

2. In this By-law,
 - (1) "**Bar**" means any place or part thereof licensed for the sale of alcohol pursuant to the provision of the *Ontario Liquor Control Act*, and for which the sale of food accounts for less than 25% of total sales, but does not include a licensed dining room or licensed restaurant;
 - (2) "**Clerk**" shall mean the Clerk of the Municipality of West Perth;
 - (3) "**Common Area of a residential building**" includes but is not limited to a hallway, a stairwell, a laundry room, a foyer, a reception area, a community room and a parking garage. It does not include rented or privately owned living quarters.
 - (4) "**Eating establishment**" means any place or part thereof where food or drink is offered for sale or sold to the public for immediate

consumption and includes a licensed restaurant, a licensed dining room, a café, a cafeteria, a take-out restaurant, an ice cream parlour, a tea or lunch room, a dairy bar, a coffee shop, a donut shop, a snack bar, and a refreshment stand. It does not include an outdoor eating area, or outdoor bar;

- (5) **“Enforcement Officer or Inspector”** means any person authorized or appointed by the Municipality to carry out inspections and to enforce the provisions of this By-law;
- (6) **“Person/Employee”** includes a corporation;
- (7) **“Proprietor”** 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;
- (8) **“Public Place”** means any building, structure, vessel, vehicle or conveyance, or part thereof, to which the public has access as of right or by invitation, expressed or implied, whether or not a fee is charged for entry but does not include an outdoor patio or a street, road or highway;
- (9) **“Smoke-free”** shall mean that no smoking is permitted; and
- (10) **“Municipality”** means the Corporation of the Municipality of West Perth;
- (11) **“Work place”** means a building, structure, vessel, vehicle or conveyance or part thereof, to which the public may or may not have access either express or implied, 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.

GENERAL PROHIBITIONS:

3. PUBLIC PLACES

- (1) No person shall smoke in any public place within the Municipality whether or not a No Smoking sign is posted.
- (2) Every proprietor of a public place shall:
 - (i) ensure compliance with this by-law;
 - (ii) prohibit smoking in the public place;
 - (iii) post No Smoking signs in accordance with part V 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;
 - (iv) ensure that no ashtrays or like paraphernalia are placed or permitted to remain in the public place.

- (3) A proprietor or his or her designate shall inform a person who is smoking in an area where smoking is prohibited that the smoking activity is in violation of the law;
- (4) The proprietor shall take all reasonable steps to ensure that employees are familiar with the provisions of this By-law so that they will be able to assist the proprietor in achieving compliance;
- (5) Any supervisory person or employee who observes any person on the premises smoking in violation of this By-law and advises such person of same, shall immediately require such person to desist therefrom and if such person declines so to do, the said supervisory person or employee shall require such person to leave the premises;
- (6) The proprietor shall take all reasonable steps to ensure compliance by employees and persons with respect to the provisions of this By-law.

4. WORKPLACES

- 4.1 No person shall smoke in any workplace within the Municipality whether or not a No Smoking sign is posted.
- 4.2 Every employer shall:
 - (i) ensure compliance with this by-law;
 - (ii) prohibit smoking in the workplace;
 - (iii) inform each employee in the workplace that smoking is prohibited in the workplace;
 - (iv) post No Smoking signs in accordance with Part V of this by-law in conspicuous locations at every entrance and washrooms in the workplace indicating that smoking is prohibited in the workplace; and
 - (v) ensure that no ashtrays or like paraphernalia are placed or permitted to remain in any part of the workplace.
- 4.3 Section 4.1 does not apply to,
 - (i) a part of a workplace that is used as a private residence; or
 - (ii) a workplace located in a dwelling where the only employees of that workplace are persons who live in the dwelling.

5. SIGNS TO BE POSTED

- (1) Every employer and every proprietor shall post and maintain in conspicuous locations at each entrance to the facility and in the washrooms, a sign which shall include the depiction of the international "No Smoking" symbol.;

- (2) Such signs must be clearly visible to the public;
- (3) Such signs shall be in place at all times.

6. INSPECTIONS

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

7. 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 the Municipal 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.

8. OFFENCES AND ENFORCEMENT

Any person who contravenes any of the provisions of this by-law, or who hinders or obstructs an inspector lawfully carrying out the enforcement of this by-law, is guilty of an offence and upon conviction is liable to a fine of not more than five thousand dollars (\$5,000.00) as provided for in the Provincial Offences Act, R.S.O. 1990, chapter 33, or any successor thereof.

9. The provisions of this By-law will be enforced by an enforcement officer authorized or appointed by the Municipality, who shall for such purposes have all of the powers of inspection set out in Section 115 (8) of the *Municipal Act*.

10. No person shall obstruct any person conducting an inspection to determine whether or not there is compliance with this By-law.

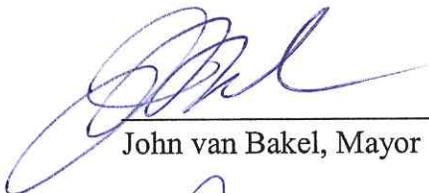
11. REPEAL OF PREVIOUS BY-LAW

Municipality of West Perth By-law 17-2001 and any or all other Municipal By-laws heretofore passed by the Corporation of the Municipality of West Perth inconsistent with the provisions of this By-law are hereby repealed.

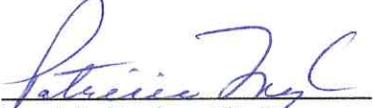
12. This By-law shall come into effect on the 1st day of July, 2004.

READ A FIRST AND SECOND TIME this 18th day of August, 2003

READ A THIRD TIME AND FINALLY PASSED this 18th day of August, 2003



John van Bakel, Mayor



Patricia Taylor, Clerk

OFFICE OF THE REGIONAL SENIOR JUSTICE
ONTARIO COURT OF JUSTICE
WEST REGION

COURT HOUSE
15TH FLOOR, UNIT "G"
80 DUNDAS STREET
LONDON, ONTARIO
N6A 6B3



CABINET DU JUGE PRINCIPAL REGIONAL
COUR DE JUSTICE DE L'ONTARIO
REGION DE L'OUEST

TELEPHONE/TÉLÉPHONE (519) 660-2292
FAX/TÉLÉCOPIEUR (519) 660-3138

October 14, 2004

Mr. Andrew Phillips
Mountain Mitchell
56 Albert Stt, PO Box 846
Stratford ON N5A 6W3

Dear Mr. Phillips:

**Re: Set Fines - Provincial Offences Act - Part I
By-law Number 62-2003, of the Municipality of West Perth**

Enclosed herewith is a copy of an Order, and a copy of a schedule of set fines for the above referenced By-Law, the By-law indicated in the schedule.

The setting of the fines does not constitute my approval of the short form of wording used to describe the offences.

I have forwarded the original of the Order and the schedule of the set fines to the Ontario Court of Justice in Stratford, together with a certified copy of the By-law.

Yours truly,

A handwritten signature in black ink, appearing to read 'Alex Graham', written over a horizontal line.

Alexander M. Graham
Regional Senior Justice
West Region

Enclosures
/ec

ONTARIO COURT OF JUSTICE
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 schedule of offences under the Provincial Statutes and Regulations thereunder and Municipal By-law No. 62-2003, of the Municipality of West Perth, attached hereto is the set fine including costs, for those offences. This Order is to take effect October 14, 2004.

Dated at London this 14th day of October, 2004.



Alexander M. Graham
Regional Senior Justice
West Region

MUNICIPALITY OF WEST PERTH

SCHEDULE B - BYLAW 62 - 2003

PART 1 PROVINCIAL OFFENCES ACT

TITLE: A By-law to regulate smoking

Item	Column 1 Short Form Wording	Column 2 Provision Creating or Defining Offence	Column 3 Set Fine (includes costs)
1	Smoke in public place	Section 3(1)	\$115.00
2	Proprietor fail to ensure compliance with by-law	Section 3(2)(i)	\$115.00
3	Proprietor fail to prohibit smoking in public place	Section 3(2)(ii)	\$115.00
4	Proprietor fail to post signage	Section 3(2)(iii)	\$115.00
5	Proprietor permit ashtrays in public place	Section 3(2)(iv)	\$115.00
6	Proprietor fail to inform person	Section 3(3)	\$115.00
7	Proprietor fail to ensure employees familiar with by-law	Section 3(4)	\$115.00
8	Supervisory person fail to require person smoking to desist	Section 3(5)	\$115.00
9	Smoke in workplace	Section 4.1	\$115.00
10	Employer fail to ensure compliance with by-law	Section 4.2(i)	\$115.00
11	Employer permit smoking	Section 4.2(ii)	\$115.00
12	Employer fail to inform employee that smoking prohibited	Section 4.2(iii)	\$115.00
13	Employer fail to post signage	Section 4.2(iv)	\$115.00
14	Employer permit ashtrays in workplace	Section 4.2(v)	\$115.00
15	Employer or Proprietor fail to post signage	Section 5	\$115.00
16	Obstruct person conducting inspection	Section 10	\$115.00

Note: The penalty provision for the offences indicated above is section 8 of By-law 62-2003, a certified copy of which has been filed.