

Appendix B

BRANDON BY-LAW No. 6696

BEING A BY-LAW of the City of Brandon to regulate smoking in the City of Brandon.

WHEREAS Subsection 232(1) of The Municipal Act, L.M. 1996, c.58 - Chap. M225 provides inter alia authority for a municipality to pass by-laws respecting the safety, health protection and well-being of people;

AND WHEREAS Subsection 6(1) of The Non-Smokers Health Protection Act S.M. 1989-90, c.S125 provides authority for a municipality to pass a by-law to limit or ban smoking in any enclosed place in the municipality;

AND WHEREAS The City of Brandon has determined that second hand tobacco smoke (exhaled smoke and the smoke from idling cigarettes, cigars and pipes) is a risk to the health of the inhabitants and employees of the City of Brandon;

NOW THEREFORE the Council of the city of Brandon duly assembled enacts as follows:

1. This by-law shall be known as the “Smoking By-law”.

DEFINITIONS

2. Unless the context otherwise requires:

- (a) “AMUSEMENT ARCADE” means a place to which the public has access and which is equipped for five (5) more machines or devices that may be used for playing games solely for 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 area, dressing rooms and canteen facilities, to which the public has access to view or participate in sporting events;
- (c) “ASHTRAY” means a receptacle for tobacco ashes and for cigar and cigarette butts;

- (d) “BARBER SHOP” or “HAIRDRESSING ESTABLISHMENT” means any building, location or premises where hair is styled, cut, trimmed, treated or washed;
- (e) “BINGO HALL” means any building, location or premises where the conduct of bingo events takes place;
- (f) “BUS SHELTER” means any structure intended for use by patrons waiting for public transportation;
- (g) “CITY” means the City of Brandon;
- (h) “COUNCIL” means the Council of the City of Brandon;
- (i) “EMPLOYEE” includes a person who:
 - (1) performs any work for or supplies any services to an employer; or
 - (2) received any instructions or training in the activity, business, work, trade, occupation or profession of the employer; or
 - (3) provides a service under a contractual agreement;
- (j) “FOOD COURT” means an indoor area where food or drink is offered for sale or sold to the public for immediate consumption;
- (k) “HOME BASED BUSINESS” means the public portion of a private residence;
- (l) “INSPECTOR” means any Brandon Police Services Officer, By-law Enforcement Officer associated with Brandon Police Services or any other person authorized and entrusted to enforce this by-law;
- (m) “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 of clothes on a self-service basis;
- (n) “LICENSED PREMISES” means an establishment licensed by the Manitoba Liquor Control Commission;

- (o) “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;
- (p) “PRIVATE CLUB” means a not for profit corporate establishment that operates solely for the benefit and pleasure of its members;
- (q) “PROPRIETOR” means the corporation, employer, partnership, owner or any person in charge to control, govern or direct 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;
- (r) “PUBLIC BUILDING” means any enclosed building or group of buildings to which the public has access;
- (s) “PUBLIC FACILITY” means any hall, room or banquet area that is publicly owned and is rented for an event or function;
- (t) “PUBLIC PLACE” means the whole part of an indoor area to which the general public is invited or permitted access and includes a school bus;
- (u) “PUBLIC RESTROOM” means any restroom or washroom to which the public has access;
- (v) “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;
- (w) “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;
- (x) “RETAIL SHOP” means any building or part of a building, booth, stall, or place where goods and/or services are exposed for sale or offered for sale by retail;
- (y) “SCHOOL BUS” means a public vehicle licensed for the purpose of transporting children to and from school or to and from any activity, event or function associated therewith;
- (z) “SERVICE LINE” means an indoor/outdoor 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, provisions of information or advice and transfers of money or goods;
- (aa) “SHOPPING MALL” means any enclosed building or group of buildings containing one or more retail shops;
- (bb) “SMOKE” or “SMOKING” includes carrying a lighted cigar, cigarette, pipe or any other lighted smoking instrument and “smoke” has corresponding meaning; and,
- (cc) “WORKPLACE” means any enclosed area of a building or structure in which an employee is employed and includes private office areas, washrooms, corridors, lounges, eating areas, reception areas, elevators, escalators, foyers, hallways, stairways, amenity areas, lobbies, laundry rooms and parking garages utilized by an employee.

GENERAL PROHIBITIONS

3. The following are designated public places for the purposes of this by-law:
 - (a) any area within a public building;
 - (b) a service line or 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) an amusement arcade;
- (i) a municipally owned building;
- (j) a bingo hall;
- (k) a bowling alley;
- (l) a billiard hall;
- (m) a private club;
- (n) a home based business;
- (o) any restaurant;
- (p) any licensed premises;
- (q) any workplace;
- (r) an arena;
- (s) seating area at any outdoor recreational facility including but not limited to Kinsmen Stadium, Westbran Stadium, Simplot Millenium Park, Optimist Soccer Park;
- (t) any retail shop;
- (u) a shopping mall;
- (v) any laundromat;
- (w) any barber shop or hairdressing establishment;
- (x) any bus shelter; and,
- (y) public transportation including buses, taxicabs, limousines and school buses.

Whereby no person shall smoke in any such designated place.

EXEMPTIONS

4. The following are designated exemptions for the purposes of this by-law:
 - (a) a private residence or the private portion of a residence housing a home-based business;
 - (b) guestrooms in hotels, motels, inns and bed/breakfast facilities;
 - (c) an area of a nursing home designated as a smoking area for residents only, ventilated separately so air circulation does not integrate with the atmosphere of the remainder of the facility; and,
 - (d) an area of a workplace designated as a smoking area for employees only, ventilated separately so air circulation does not integrate with the atmosphere in the remainder of the facility whereby the room must be fully enclosed (door shut) and located so employees are not required to go through the designated smoking room in order to gain access to a common area or washroom.

SIGNS

5. The proprietor of any public place or workplace designated or regulated under this by-law shall ensure that a sufficient number of signs are prescribed by Section 7 are conspicuously posted so as to clearly identify that smoking is prohibited.
6. Despite Section 5, in every area referred to in Section 3, the proprietor shall ensure that signs are posted at every entrance to the building and internally, at the sole discretion of the proprietor, as considered adequate to ensure compliance.
7. (a) the signs referred to in this by-law shall consist of graphic symbols that comply with the provisions of this subsection.

- (b) the following graphic symbol shall be used to indicated “no smoking” areas:



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

- (c) With respect to the size of the graphic symbol referred to in clause (b) the diameter of the circle in the symbol shall be of a size which will make it clearly discernable by persons within the area to which the symbol relates but in any case not less than 100 millimetres.
- (d) Notwithstanding the fact that the symbol referred to in clause (b) illustrates a cigarette, it shall include a lighted cigar, cigarette, pipe or any other lighted smoking instrument.
8. No person shall remove, alter, conceal, deface or destroy any sign posted pursuant to this by-law.

ASHTRAYS

9. The proprietor of any facility regulated under this by-law shall ensure that no ashtrays are placed or allowed to remain visible in areas where smoking is prohibited pursuant to this by-law.

DUTIES

10. No person shall smoke in any area designated as an area where smoking is prohibited pursuant to this by-law.

OFFENCES

11. (a) Any person or proprietor who contravenes any portion of this by-law applicable to them or under their control is guilty of an offence.
- (b) Any proprietor who fails to make a reasonable attempt to inform a contravening person of the by-law is guilty of an offence.
11. Any person or proprietor who hinders or obstructs a person lawfully carrying out the enforcement of this by-law is guilty of an offence.

PENALTIES

13. (a) Any person who contravenes or disobeys or refuses or neglects to obey any provision of this By-law shall be liable, on summary conviction, to a fine of not less than a warning and not exceeding \$1,000.00 in the case of an individual or to a fine of not less than a warning and not exceeding \$5,000.00 in the case of a proprietor or, at the discretion of the inspector, a penalty in accordance with the City's Compliance By-law.
- (b) Where the contravention, refusal, neglect, omission or failure continues for more than one day, the person or proprietor is liable for a separate offence for each day that it continues.

ENFORCEMENT

14. (a) The provisions of this by-law respecting the designation of non-smoking areas, the posting of signs and the duties imposed on the proprietor of a facility shall be enforced by inspectors.
- (b) An inspector, upon producing proper identification may, at any reasonable time, enter any designated public place or workplace, building or structure in which a workplace is situated and make examinations, investigations and enquiries for the purposes of determining compliance with this by-law.
- (c) 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.

CONFLICTS

15. If a provisions 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.

SEVERABILITY

16. 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.

EFFECTIVE DATE

17. (a) This by-law shall come into force and take effect on the 1st day of the fourth month following its adoption.
- (b) The Council of the City of Brandon shall review the effectiveness, compliance and enforcement of this by-law not later than one year following its coming into effect.

DONE AND PASSED, in Council at the City of Brandon this 27th day of May A.D. 2003.

R.C. Atkinson
MAYOR

H. Ewasiuk
A/CITY CLERK

Read for a first time this 11th day of March A.D. 2002
Read for a second time this 8th day of May A.D. 2002
Read for a third time this 27th day of May A.D. 2002