

CITY OF ST. ALBERT

BYLAW 1/2004

Being a bylaw regulating smoking activity within the City of St. Albert

Whereas:

- i. the *Municipal Government Act* RSA 2000 cM-26 (and all amendments and succeeding legislation) authorizes Council to pass and enforce bylaws for municipal purposes respecting the safety, health and welfare of people and the protection of people and property;
- ii. the *Municipal Government Act* RSA 2000 cM-26 (and all amendments and succeeding legislation) authorizes Council to pass and enforce bylaws for municipal purposes respecting people, activities and things in, on or near a public place or place that is open to the public;
- iii. second hand smoke is known to cause detrimental health-related effects; and
- iv. Council deems it appropriate to restrict Smoking activity within the City in a manner that addresses the public's health-related concerns as well as the local business community's economic concerns,

the Council of the City of St. Albert, duly assembled, hereby enacts as follows:

Title

1. This Bylaw may be referred to as the "Smoking Bylaw".

Definitions

2. In this Bylaw:
 - (a) "Building" means a fully or substantially enclosed structure constructed such that it may accommodate human occupation. A bus shelter shall be considered a building for the purposes of this Bylaw;
 - (b) "Bylaw" means a City bylaw;
 - (c) "City" means the municipal corporation of the City of St. Albert or, where the context so requires, the area contained within the boundaries of the City;
 - (d) "City Manager" means the City's chief administrative officer;
 - (e) "Council" means the City's municipal council;
 - (f) ~~"Designated Smoking Area" means an area of a Building or other place, as designated by or under the authority of the Proprietor of that area, within which Smoking is permitted;~~
 - (f) "Electronic Smoking Device" means an electronic device used to deliver nicotine, marijuana or other substances to the person inhaling from the device and

includes, but is not limited to, an electronic cigarette, vaporizer cigarette, personal vaporizer, cigar, cigarillo, or pipe.

- (g) ~~“Hospital” means an approved hospital as defined in the *Hospitals Act* RSA 2000 cH-12 (and any amending or succeeding legislation);~~
- (h) ~~“Licensed Gaming Event” means a casino or bingo event held pursuant to a license that has been issued in accordance with the *Gaming and Liquor Act* RSA 2000 cG-1 (and any amending or succeeding legislation);~~
- (g) “Lounge” means a place of business, including its Patio, that is open to the public and is governed by a:
- (i) “Class A – Minors Prohibited” liquor license; or
 - (ii) special event liquor license (with a Minors-prohibited endorsement)
- as issued in accordance with the *Gaming and Liquor Act* RSA 2000 cG-1 (and any amending or succeeding legislation). For the purposes of this Bylaw, a place is a Lounge only for those hours during which the license permits the sale and service of liquor and prohibits entry to Minors;
- (h) “Minor” means an individual who has yet to reach the age of majority, as described by the *Age of Majority Act* RSA 2000 cA-6 (and any amending or succeeding legislation);
- (i) “Municipal Violation Tag” means a City-issued notice that alleges a Bylaw offence and provides a person with the opportunity to pay an amount to the City in lieu of prosecution for the offence;
- (j) ~~“Outdoor Pool” means an outdoor structure or a partially enclosed structure that contains water which is designated and intended for recreational use, and includes a spray park or wading pool;~~
- (k) “Outdoor Public Event” means an outdoor market, festival or concert;
- (l) “Patio” means an outdoor area or structure, including a balcony, that adjoins or is adjacent to a Restaurant or Lounge and is regularly used for the consumption of food and beverages by patrons of the adjoining Restaurant or Lounge;
- (m) “Peace Officer” is as defined in the *Provincial Offences Procedures Act* RSA 2000 cP-34 (and any amending or succeeding legislation);
- (n) ~~“Playground” means any kind of structure or collection of structures which is designed and intended for recreational uses such as climbing, swinging, hanging, crawling, jumping, stepping whether over, across, under, through and includes the distinct material in which the structure or apparatus is mounted;~~
- (o) “Private Living Accommodation” means any Building or portion thereof that is used as a residence or that is used exclusively by person(s) living in the residence. In a Building containing multiple residential units, common use areas such as parkades, washrooms, waiting rooms, meeting rooms, storage areas, fitness facilities, kitchens, eating areas, cloak rooms and hallways shall not be considered parts of a Private Living Accommodation. For the purposes of this Bylaw, a room to let in a hotel, motel, lodge or inn, or any similar place, shall be considered a Private Living Accommodation;

- (p) "Proprietor" means the owner of, or any person controlling, governing or directing activities within, a place referred to in this Bylaw;
- (q) "Public Transportation Vehicle" means a vehicle normally used for the transportation of people in exchange for the payment of a fee;
- (r) "Restaurant" means a place of business that is primarily established for the purpose of food and beverage sales, service and consumption. A Lounge shall not shall be considered part of a Restaurant;
- (s) "Seasonal Skating Rink" means an outdoor ice surface that is designed and intended for recreational skating or playing hockey and includes public lakes, ponds and outdoor rinks;
- ~~(t) "Seniors' Living Facility" means a Building or portion thereof that forms part of a senior citizens' lodge, independent living facility, assisted living facility, long-term care facility or nursing home;~~
- (t) "Sports Field" means an area designed and intended for use in a specific sporting event and includes, but is not limited to, a soccer pitch, football field, rugby pitch, baseball diamond, tennis court and similar areas, but does not include golf courses;
- (u) "Smoking" means holding or otherwise controlling or using an ignited cigarette, cigar or pipe containing tobacco, marijuana or other product, or an Electronic Smoking Device; and
- (v) "Violation Ticket" is as defined in the *Provincial Offences Procedures Act* RSA 2000 cP-34 (and any amending or succeeding legislation); and
- ~~(w) "Workplace" means that portion of a Building (except a Private Living Accommodation) wherein persons normally work as employees of a business operating from that portion of the Building. For the purposes of this Bylaw, Public Transportation Vehicles and structural facilities owned by the City shall not be considered Workplaces.~~

Smoking Prohibited

- 3. (1) Unless an exception applies under this Bylaw, no person may engage in Smoking activity:
 - (a) at or in any City-owned structural facility;
 - (b) within a Building;
 - ~~(c) within 3 metres of any Building entrance or exit, except on a public sidewalk adjacent to a roadway;~~
 - (d) on the grounds of an Outdoor Public Event, except in an area reserved for motor vehicle parking, or an area specifically reserved for smoking by the Proprietor of the Outdoor Public Event;
 - (e) on a Patio; and

- (f) inside a Public Transportation Vehicle.
- (2) Unless an exception applies under this Bylaw, no person may engage in Smoking activity within 5 metres of a(n):
 - (a) doorway, window or air intake of a Building;
 - (b) Outdoor Pool;
 - (c) Playground.
- (3) Unless an exception applies under this Bylaw, no person may engage in Smoking activity within 5 metres of a:
 - (a) Seasonal Skating Rink;
 - (b) Skate Park; or
 - (c) Sports Fieldwhile it is being used for its intended purpose.
- (4) Subsection (1) does not apply to
 - (a) a Private Living Accommodation; or
 - (b) a Hospital.

Proprietor's Responsibility

- 4. (1) No Proprietor of a place where Smoking is prohibited by this Bylaw shall permit Smoking in that place.
- (2) Where a Proprietor permits Smoking in a Designated Smoking Area, the Proprietor shall not allow a Minor to enter or remain in that Designated Smoking Area.

Exceptions

- 4. Notwithstanding any other provision of this Bylaw a person may, inside an enclosed premises, where the primary function of the premises is the sale of Electronic Smoking Devices, use an Electronic Smoking Device to sample a product prior to purchase.

Seniors' Living Facilities

- 5. (1) No person shall engage in Smoking activity in a Seniors' Living Facility except within:
 - (a) a private residential unit; or
 - (b) a Designated Smoking Area.

- (2) Where a Proprietor of a Seniors' Living Facility permits Smoking in a Designated Smoking Area, the Proprietor shall ensure that:
- (a) the Designated Smoking Area is fully ventilated and enclosed such that no smoke escapes therefrom to any place where Smoking is prohibited by this Bylaw;
 - (b) combined, the Designated Smoking Areas do not exceed 10% of the Seniors' Living Facility's total floor area;
 - (c) common use areas of the Seniors' Living Facility (including but not limited to washrooms, waiting rooms, meeting rooms, recreation facilities, eating areas, cloak rooms, hallways and other such areas) do not form any part of a Designated Smoking Area; and
 - (d) signage is clearly and prominently posted within or at the entrance to each Designated Smoking Area indicating that Smoking is permitted therein.

Workplaces

6. (1) No person shall engage in Smoking activity in a Workplace except within a Designated Smoking Area.
- (2) Where a Proprietor of a Workplace permits Smoking pursuant to subsection (1), the Proprietor shall ensure that:
- (a) combined, the Designated Smoking Areas do not exceed 30% of the total area of a Workplace that is normally accessible only to employees;
 - (b) common use areas of the Workplace (including but not limited to washrooms, waiting rooms, meeting rooms, recreation facilities, kitchens, lunch rooms, cloak rooms, hallways, concourses and other such areas) do not form any part of a Designated Smoking Area; and
 - (c) signage is clearly and prominently posted within or at the entrance to each Designated Smoking Area indicating that Smoking is permitted therein.
- (3) This section is in effect until June 30, 2005.

Licensed Gaming Events

7. (1) No person shall engage in Smoking activity in a place used for the purpose of holding a Licensed Gaming Event except:
- (a) within a Designated Smoking Area; and
 - (b) during such hours as the Licensed Gaming Event is authorized to be held.
- (2) Where a Proprietor permits Smoking pursuant to subsection (1), the Proprietor shall ensure that:

- (a) combined, the Designated Smoking Areas do not exceed 90% of the place's total customer service and seating area;
 - (b) common use areas of that place (including, but not limited to, washrooms, waiting rooms, cloak rooms, hallways and other such areas) do not form a part of any Designated Smoking Area; and
 - (c) signage indicating that Smoking is prohibited is clearly and prominently posted within or at the entrance to any customer service and seating area within which Smoking is prohibited.
- (3) This section is in effect until June 30, 2005.

Lounges

8. (1) No person shall engage in Smoking activity in a Lounge except within a Designated Smoking Area.
- (2) Where a Proprietor permits Smoking pursuant to subsection (1), the Proprietor shall ensure that:
- (a) combined, the Designated Smoking Areas do not exceed 90% of the Lounge's customer service and seating area;
 - (b) common use areas of that Lounge (including, but not limited to, washrooms, waiting rooms, cloak rooms, hallways and other such areas) do not form a part of any Designated Smoking Area; and
 - (c) signage indicating that Smoking is prohibited is clearly and prominently posted within or at the entrance to any customer service and seating area within which Smoking is prohibited.
- (3) This section is in effect until June 30, 2005.

Legislative Exception

95. (1) Subject to the provisions of this section, the Proprietor of a place where Smoking is otherwise prohibited by this Bylaw may permit Smoking therein pursuant to provincial or federal legislation.
- (2) Except where a legislative conflict would arise, a Proprietor referenced under subsection (1) shall ensure that:
- (a) no smoke emits from a permitted Smoking area so as to enter any place where Smoking is prohibited by this Bylaw;
 - (b) signage is clearly and prominently posted at each entrance to a permitted Smoking area indicating that Smoking is permitted therein;
 - (c) no Minor enters or remains in a permitted Smoking area.

Enforcement

Offence

- 106.** A person who contravenes any provision of this Bylaw is guilty of an offence.

Continuing Offence

- 117.** In the case of an offence that is of a continuing nature, a contravention of a provision of this Bylaw constitutes a separate offence with respect to each day, or part of a day, during which the contravention continues, and a person guilty of such an offence is liable to a fine in an amount not less than that established by this Bylaw for each such separate offence.

Fines and Penalties

- 128.** A person who is guilty of an offence under this Bylaw is liable:
- (a) to a specified fine of \$250.00; or
 - (b) on summary conviction, to a fine not exceeding \$10,000.00 or to an order of imprisonment for not more than one (1) year, or both.

Municipal Violation Tag

- 139.** (1) A Peace Officer may issue, with respect to an offence under this Bylaw, a Municipal Violation Tag specifying the fine amount established by this Bylaw.
- (2) Where a Municipal Violation Tag is issued, the fine amount indicated thereon may be paid as directed in lieu of prosecution.

Violation Ticket

- 1410.** (1) A Peace Officer may issue, with respect to an offence under this Bylaw, a Violation Ticket:
- (a) specifying the fine amount established by this Bylaw; or
 - (b) requiring an appearance in court without the option of making a voluntary payment.
- (2) Where a Violation Ticket specifies a fine amount, a voluntary payment equal to the specified fine amount may be made as directed.

General

City Manager

- 1511.** Without restricting any other power, duty or function granted by this Bylaw, the City Manager may:
- (a) carry out whatever inspections are reasonably required to determine compliance with this Bylaw; and
 - (b) delegate any powers, duties and functions under this Bylaw to a City employee.

Certified Copy of Record

- 4612.** A copy of a record of the City, certified by the City Manager as a true copy of the original, shall be admitted in evidence as *prima facie* proof of the facts stated in the record without proof of the appointment or signature of the person signing it.

Proof of Exception

- 4713.** The burden of proving, on a balance of probabilities, that an exception referred to by this Bylaw applies in a particular case is on the person alleging such exception.

Repeal of By-law No. 5/90

- 4814.** By-law No. 5/90 is hereby repealed.

Effective Date

- 4915.** This Bylaw shall take effect on July 1, 2004.

READ a first time this 5th day of April 2004.

READ a second time this 17th day of May 2004.

READ a third and final time this 17th day of May 2004.

SIGNED AND PASSED this _____ day of _____, 2004.

MAYOR

CHIEF LEGISLATIVE OFFICER