



THE CORPORATION OF THE CITY OF THUNDER BAY

BY-LAW NUMBER 052-2010

A By-law to repeal the City's prior Smoking Prohibition By-law (Number 34-2004) and to enact a replacement by-law that contains only those prohibitions that are more restrictive than the ones set out in the *Smoke Free Ontario Act, 1994* (S.O. 1994, c. 10, as amended).

Recitals

1. By-law Number 34-2004 of The Corporation of the City of Thunder Bay was enacted after a municipal referendum, and prior to certain significant amendments to the *Smoke Free Ontario Act, 1994*. Since it has been amended, the legislation duplicates many of the provisions within the by-law.
2. Subsection 115(10) of the *Municipal Act, 2001* (S.O. 2001, c. 25, as amended), provides that municipal by-laws prohibiting Smoking may contain provisions more restrictive than those in the legislation itself. Certain provisions in By-law 34-2004 are more restrictive than those in the legislation, and it is Council's intention to retain those provisions.
3. Report 2009.061 was considered by Council in April 2009. Based on the recommendations in that Report, Council resolved to further restrict Smoking at entrances to Recreational Facilities, playgrounds and Beaches.
4. This By-law is passed under Section 115 of the *Municipal Act, 2001* (S.O. 2001, c. 25, as amended), which authorizes Council to pass by-laws regulating the smoking of tobacco in public places and workplaces within the municipality and designating public places or workplaces as places in which smoking tobacco or holding lighted tobacco is prohibited.
5. It has been determined that second-hand smoke is a serious health hazard because of its adverse effects and risk to the health of all of the inhabitants and workers in Thunder Bay.

ACCORDINGLY, THE COUNCIL OF THE CORPORATION OF THE CITY OF THUNDER BAY ENACTS AS FOLLOWS:

Article 1.00: Interpretation

1.01 **Definitions:** Wherever a term set out below appears in the text of this By-law with its initial letters capitalized, the term is intended to have the meaning set out for it in this Section 1.01. Wherever a term below appears in the text of this By-law in regular case, it is intended to have the meaning ordinarily attributed to it in the English language.

- (a) **Beach** means any waterfront area owned by the Corporation. A Beach may be surfaced with sand, rock, grass, pavement, wood or any other material. A Beach may be used for access to swimming, for active or passive recreation, for sight-seeing or for other enjoyment. The term includes any docks, piers, lookout decks, boardwalks or similar structures.
- (b) **By-law** means this By-law, including its recitals which form an integral part of it, as amended from time to time.
- (c) **Corporation** means The Corporation of the City of Thunder Bay, a municipal Corporation duly incorporated pursuant to the laws of the Province of Ontario.
- (d) **Employee** means a person whose services are contracted for by an Employer. The term applies to any person, regardless of whether that person is remunerated or whether he or she provides the services as a volunteer. The term includes trainees.
- (e) **Employer** means any person who contracts for the services of one or more persons, whether or not those persons are remunerated.
- (f) **Enclosed** means surrounded by walls and a ceiling or roof. Windows and/or doors do not render an otherwise Enclosed premises Unenclosed.
- (g) **Highway** means any street, lane, roadway or highway that is under the Corporation's jurisdiction and has formally been opened to the public for vehicular travel.
- (h) **Municipal Law Enforcement Officer** means any person duly appointed to enforce the provisions of this By-law, Tobacco Enforcement Officers of the Thunder Bay District Health Unit or any member of the Thunder Bay Police Service.
- (i) **Playground Equipment** means any kind of structure or apparatus which is customarily found in a park-like setting and upon or around which a person may engage in play-like activities. Examples include structures intended for: swimming in, wading in, water play, climbing upon or through, swinging upon or within, hanging on, crawling through or on, jumping over or on, stepping along, across or on, for enjoyment or exercise. The term includes motorized playground structures such as amusement rides. The term does not include facilities for walking and biking trails, park fences, or trees.
- (j) **Public Place** means the whole of an Unenclosed place or premises where persons other than the owner or occupier have access as of right or by invitation, expressed or implied. Unless excluded, a park owned by the Corporation is a Public Place. The term does not include Highways, golf courses or camping grounds.

- (k) **Recreation Facility** means an Enclosed area owned or occupied by the Corporation which contains facilities, structures, and/or equipment (including Playground Equipment), used for entertainment and/or for recreation by the public. The term includes the Thunder Bay Community Auditorium, hockey arenas, community recreation centres, and buildings associated with recreation fields.
- (l) **Smoke** means to smoke a Tobacco Product. The term includes the holding of lighted tobacco. **Smoking** has a corresponding meaning.
- (m) **Tobacco Product** means products that contain or are made from tobacco and/or extracts of tobacco. Tobacco Products include, but are not limited to, cigarettes, cigars, cigarillos, pipe tobacco, loose-leaf tobacco, chewing tobacco, spit tobacco, snus and bidis.
- (n) **Unenclosed** means not surrounded by walls and a ceiling or roof.
- (o) **Work Place** means any one or more of the following:
- (i) an Enclosed place that Employees are required to attend within for any time duration as part of their employment duties;
 - (ii) vehicles such as school buses, taxicabs, or public transportation vehicles;
 - (iii) any Unenclosed but identifiable area where food or beverages are sold or consumed that is adjacent to, within, or operated in conjunction with, a Public Place;
 - (iv) an Unenclosed booth or stand where food and beverages are sold or offered to the public;
 - (v) the area within three (3m) metres of a refreshment vehicle located in a public place.
 - (vi) a shaft, tunnel, caisson, or similar place that Employees are required to use in order to access any other place or vehicle meeting this definition; and
 - (vii) all change rooms, wash rooms, lounges, corridors, eating areas, reception areas, elevators, escalators, stairwells, foyers, hallways, amenity areas, lobbies, laundry rooms and parking garages associated with any other place or vehicle meeting this definition.

1.02 **Construing this By-law:** The captions, article and section names and numbers appearing in this By-law are for convenience of reference only and have no effect on its interpretation. This By-law is to be read with all changes of gender or number required by the context. The words “include”, “includes”, “including” and “included” are not to be interpreted as restricting or modifying the words or phrases which precede or follow them.

Article 2.00: Offences & Exemptions

2.01 **Smoking in a Work Place:** It is an offence for a person to Smoke or to otherwise use Tobacco Products in a Work Place.

2.02 **Smoking near Entrance to Enclosed Work Place:** It is an offence for a person to Smoke or to otherwise use Tobacco Products within three (3) metres of the entrance to a Work Place.

2.03 **Smoking near Unenclosed Work Place:** It is an offence for a person to Smoke or to otherwise use Tobacco Products within three (3) metres, measured in any direction, of an Unenclosed Work Place.

2.04 **Tobacco Use near Entrance to Recreational Facilities:** It is an offence for a person to Smoke or to otherwise use Tobacco Products within a ten (10) metre radius of the entrance to a Recreational Facility.

2.05 **Recreation Facilities:** Section 2.04 prevails over Sections 2.02 and 2.03.

2.06 **Ensuring Compliance with 2.01, 2.02 and 2.03:** It is an offence for a person with temporary or permanent care and control of a Work Place to allow any person to contravene Section 2.01, Section 2.02 or Section 2.03 of this By-law.

2.07 **Tobacco Use near Municipal Playgrounds:** It is an offence for a person to Smoke or to use Tobacco Products within a ten (10) metre radius of any Playground Equipment that is located on land owned by the Corporation.

2.08 **Tobacco Use near Beaches:** It is an offence for a person to Smoke or to otherwise use Tobacco Products within a ten (10) metre distance from the edge of a Beach as determined in Section 2.09.

2.09 **Edge of Beach:** Where the water’s edge meets rock, grass, or forested area, the water’s edge is considered the edge of the Beach. Where the water’s edge meets sand, pavement, concrete, or gravel, the edge of the Beach is the endpoint of that surface material. The existence of a dock, deck, boardwalk, sidewalk, recreational trail or similar structure or facility within a Beach has no impact on the location of the edge of the Beach.

- 2.10 **Exemption for Highways:** This By-law does not apply to restrict or prohibit Smoking on a Highway, except within vehicles included in the definition of Work Place, pursuant to Subsection 115(3) of the *Municipal Act, 2001* .
- 2.11 **Exemption for Aboriginal Cultural and Spiritual Uses:** Nothing in this By-law prohibits any person from the use of a Tobacco Product as part of, and in connection with, traditional Aboriginal cultural or spiritual purposes.
- 2.12 **Exemption for Docked Watercraft:** Nothing in this By-law prohibits any person from the use of a Tobacco Product when that person is aboard a watercraft that is moored or tied. Other applicable law may prohibit such use at such time or place.

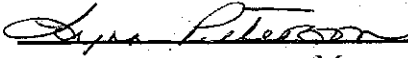
Article 3.00: Enforcement & Penalties

- 3.01 **Enforcement:** This By-law may be enforced by any Municipal Law Enforcement Officer.
- 3.02 **Penalties:** Every person who commits an offence under this By-law is, upon conviction, liable to a fine or penalty provided for offences under the *Smoke Free Ontario Act, 1994* , as if he or she had committed an offence under that Statute.


Article 4.00: Miscellaneous Matters

- 4.01 **Repeals:** By-law 34-2004 of the Corporation is repealed.
- 4.02 **Effective Date:** This By-law shall come into force and take effect on the first day of June, 2010.

Enacted and passed this 10th day of May, A.D. 2010 as witnessed by the Seal of the Corporation and the hands of its proper Officers.



Mayor



Deputy City Clerk