

CORPORATION OF THE MUNICIPALITY OF CHATHAM-KENT

By-law 137-2014

being a by-law to regulate smoking of tobacco or tobacco-like products on lands within the Municipality of Chatham-Kent .

WHEREAS the Municipal Act, 2001, c. 25, s. 8 confers broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues;

AND WHEREAS the Municipal Act, S.O. 2001, c. 25, s. 10 provides that single tier municipalities have the authority to pass by-laws respecting the health, safety and well-being of persons;

AND WHEREAS the Municipal Act, S.O. 2001, c. 25, s. 115 provides that without limiting section 10, a municipality may prohibit or regulate the smoking of tobacco in public places and provide for the definition of a "public place" for the purpose of the by-law;

AND WHEREAS it has been determined that smoking tobacco or tobacco-like products is a health hazard because of the creation of secondhand smoke, which has adverse effects of health on the inhabitants residing in or visiting the Municipality of Chatham-Kent;

AND WHEREAS it is desirable for the health, safety and well-being of the inhabitants of the Municipality of Chatham-Kent to prohibit the use of waterpipes in enclosed public places and enclosed workplaces in the Municipality of Chatham-Kent to protect persons from conditions hazardous to health pursuant to the provisions of this by-law

NOW THEREFORE the Council of Municipality of Chatham-Kent enacts as follows:

SHORT TITLE

This by-law may be cited as the "Smoke-Free Chatham-Kent By-law".

Part I DEFINITIONS

1. In this by-law:

"Council" means the Council of the Municipality;

"Municipality" means the Corporation of the Municipality of Chatham-Kent;

"Municipal Facility" means any building, structure or premise to which the Municipality holds right of ownership to, and includes a building, structure or premise which is leased by the Municipality;

"Employee" means a person who performs any work for or supplies any services to an employer, or a person who receives any instruction or training in the activity, business, work, trade, occupation or profession of an employer;

"Employer" includes an owner, operator, proprietor, manager, superintendent, overseer, receiver or trustee of an activity, business, work, trade, occupation, profession, project or undertaking who has control or direction of, or is directly or indirectly responsible for, the employment of a person in it;

“Enclosed Public Place” means the inside of any place, building or structure or vehicle or conveyance or a part of any of them,

(i) that is covered by a roof, and

(ii) to which the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry, or

“Enclosed Workplace” means the inside of any place, building or structure or vehicle or conveyance or a part of any of them,

(i) that is covered by a roof,

(ii) that Employees work in or frequent during the course of their employment whether or not they are acting in the course of their employment at the time, and

(iii) that is not primarily a private dwelling;

“Enforcement Officer” means a police officer or a provincial offences officer as defined in section 1(1) of the *Provincial Offences Act*, R.S.O. 1990, c. P.33.;

“Highway” includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof;

“Mobile Home” or **“Travel Trailer”** means a prefabricated structure, built in a factory on a permanently attached chassis before being transported to site, and used as permanent residence or for temporary accommodation;

“Outdoors” means any open space which is outside of a facility, building, structure, premise including any temporary building, structure or part thereof, whether covered by a roof or not;

“Person” includes an individual or corporation and shall include the plural where the context requires. Wherever the word “he” or “him” is used, it shall mean and include the feminine or neutral gender wherever the context so requires;

“Playground Equipment” means a structure designed for children’s play and shall include but is not limited to a splash pad;

“Property” means lands which belongs exclusively to the Municipality of Chatham-Kent and to which legal rights apply, but does not include a building, structure or premise which is leased by the Municipality to another party;

“Smoke” or **“Smoking”** includes the use or carrying of any lighted or heated cigar, cigarette, pipe, Waterpipe, or any other equipment used to inhale, exhale, burn or heat any Smoking Product.

“Smoking Product” means tobacco or a tobacco-like product whose primary purpose is to be burned or heated to produce vapours, gases, or smoke, which are inhaled, and shall include but is not limited to non-tobacco herbal shisha, and other plant material or oils intended for inhalation;

“Sports Field” any field and/or land of natural and/or man-made composition that is used for athletic purposes to conduct organized or unorganized sporting activities, which includes but is not limited to a baseball field, soccer pitch, player or spectator bench, ice rink, and lawn bowling field but does not include a golf course;

“Lease Park” means lands owned by the Municipality for the purpose providing a semi-permanent or permanent area for Mobile Homes or Travel Trailers;

“Walkways” means an area of land designated or designed specifically for the passage of pedestrians and shall include a pathway but shall not include a Highway;

“Waterpipe” means a device in which the vapours, gases, or smoke of a Smoking Product passes through liquid prior to being inhaled, and shall include but is not limited to a bong or hookah.

Part II GENERAL PROHIBITIONS FOR PUBLIC PLACES

General Prohibition

2. (1) No person shall Smoke, regardless of whether or not a “No Smoking” sign is posted, in:
 - a) an Enclosed Public Place;
 - b) an Enclosed Workplace;
 - c) Outdoors on municipal Property, including but not limited to parklands, playgrounds, beaches, boardwalks and Walkways;
 - d) Outdoors within a Sports Field;
 - e) Outdoors on any land containing Playground Equipment, except for privately owned land which contains a Single Detached Dwelling as defined under the Corporation of the Municipality of Chatham-Kent Zoning Bylaw;
 - f) Outdoors within nine (9 m) metres of any entrance to a Municipal Facility;
 - g) Outdoors within four (4 m) metres of any Municipal bus stop; or
 - h) a prescribed place listed in Schedule A of this by-law

Employer obligations

- (2) Every employer shall, with respect to an Enclosed Workplace,
 - a) ensure compliance with this section;
 - b) give notice to each employee in an enclosed workplace that Smoking is prohibited in the Enclosed Workplace;
 - c) ensure that no ashtrays, Waterpipes, or similar equipment remain in the Enclosed Workplace, other than a vehicle in which the manufacturer has installed an ashtray; and
 - d) ensure that a person who refuses to comply with subsection (1) does not remain in the Enclosed Workplace.

Proprietor obligations

- (3) Every proprietor of an Enclosed Public Place shall,
 - a) ensure compliance with this section with respect to the Enclosed Public Place;
 - b) give notice to each person in the Enclosed Public Place that Smoking is prohibited in the Enclosed Public Place;

- c) ensure that no ashtrays, Waterpipes, or similar equipment remain in the Enclosed Workplace, other than a vehicle in which the manufacturer has installed an ashtray; and
- d) ensure that a person who refuses to comply with subsection (1) does not remain in the Enclosed Public Place.

(4) In this section,

“proprietor” means the owner, operator or person in charge.

Part III EXEMPTIONS

4. (1) Notwithstanding Section 2, such prohibition of Smoking shall not apply to:
- (a) a Highway, including a pedestrian sidewalk adjacent to the roadway;
 - (b) a four (4m) metre radius of the front door of a Mobile Home or Travel Trailer within a Lease Park;
 - (c) a designated area within an uncovered parking lot of municipal Property;
 - (d) special events in public parks that have designated smoking areas set up; and
 - (e) Camp sites within Mitchell's Bay and Clearville Park include the entire camp site.
- (2) The exemption provided under 4(1)(a) does not apply to a public transportation vehicle or a taxicab.

Part IV General

Offences

5. (1) Every Person who contravenes any of the provisions of this By-law is guilty of an offence.
- (2) A director or officer of a corporation has a duty to take all reasonable care to prevent the corporation from contravening this by-law.

Penalty

6. (1) Every Person who is convicted of an offence under any provision of this By-law shall be liable to a penalty as set out in the *Provincial Offences Act*, R.S.O. 1990, C. P. 33, or any successor thereof.
- (2) Where a corporation is convicted of an offence under this by-law, the maximum penalty that may be imposed on the corporation is \$100,000.
- (3) A person who has the duty imposed by section 5(2) and fails to carry it out is guilty of an offence and on conviction is liable to a fine of not more than \$25,000.

Continuation - repetition - prohibited - by order

7. The court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted, and such order shall be in addition to any other penalty imposed on the person convicted.

Enforcement

8. The provisions of this By-law may be enforced by an Enforcement Officer or other persons deemed to be an agent of Municipality.

Obstruction

9. Every Person who hinders or obstructs, or attempts to hinder or obstruct, an Enforcement Officer lawfully carrying out the enforcement of this By-law is guilty of an offence.

Conflicts

10. If a provision of this By-law conflicts with an Act, a regulation or another by-law, the provision that is the most restrictive on Smoking shall prevail.

Severability

11. If any section or sections of this By-law or parts thereof are found in any court of law to be *ultra vires* by the Municipality, such section or sections or parts thereof shall be deemed to be severed and all other sections or parts of this By-law shall remain in full force and effect.

Repeals

12. The following by-laws are hereby repealed:
265-2002 Smoking By-law
336-2002 Smoking By-law Amendment
212-2009 Smoking By-law Amendment

Commencement

13. This By-law shall come into effect on September 1st, 2014

First Reading – August 11, 2014

Second Reading – August 11, 2014

Third Reading – August 11, 2014

PASSED in Open Council on August 11, 2014

Original Signed by:

Randy R. Hope
Mayor

Original Signed by:

Judy Smith
Clerk

Schedule "A"
DESIGNATED SMOKE FREE AREAS

Name of Facility	Municipal Address