

**(Office Consolidation as of Feb 5, 2024)**

**Corporation of the Town of Greater Napanee**

**By-law No. 2003-0005**

**A By-law to Regulate Smoking in Public Places and Workplaces in the Town of  
Greater Napanee**

**Originally Passed:** January 13, 2003

**As Amended By:**

<b>By-law Number:</b>	<b>Date Passed:</b>
2008-0012	March 25, 2008
2011-0047	July 19, 2011

Note: This consolidation is provided for convenience purposes only. Every effort is made to ensure the accuracy of this information, however it is not to be used in place of actual by-laws. Users should consult the original by-laws for purposes of interpretation and application.

# THE CORPORATION OF THE TOWN OF GREATER NAPANEE

## BY-LAW NO. 03-05

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### Being A By-law To Regulate Smoking In Public Places And Workplaces In The Town Of Greater Napanee

**WHEREAS** Section 115 of the *Municipal Act*, 2001, SO.2001, Chapter 25, authorizes the Council of a local municipality to pass a by-law regulating and prohibiting the smoking of tobacco in public places and workplaces within the municipality;

**AND WHEREAS** it has been determined that second hand tobacco smoke (exhaled smoke and the smoke from idling cigarettes, cigars or pipes) is a health hazard or discomfort for many inhabitants of the Town of Greater Napanee;

**THEREFORE** the Council of the Corporation of the Town of Greater Napanee enacts as follows:

#### 1. DEFINITION

In this by-law:

"amusement arcade" means a place to which the public has access and which is equipped with three (3) or more amusement machines or devices that may be used for playing games solely for the entertainment and amusement of players;

"arena" means any building, location or premises comprised of, but not restricted to, a rink, floor or ice surface, spectator seating areas, dressing rooms and canteen facilities, to which the public has access to view or participate in sporting events;

"ashtray" means a receptacle for tobacco ashes and for cigar and cigarette butts;

"bingo hall" means any building, location or premises where bingo events are conducted;

"common area" means any indoor area of a building that is open to the public for the purposes of access to a retail shop, establishment or office and includes corridors, passageways, unenclosed eating areas in corridors, public restrooms, unenclosed public seating areas and unenclosed public standing areas, whether or not the eating area, seating area or standing area is leased;

"convention facility" means a place of public assembly with space available for rent or lease for a meeting or assembly of persons, representatives or delegates, whether public or private in nature, and includes a hotel convention facility;

"Council" means the Council of the Town of Greater Napanee;

"Designated Smoking Area" means an area of a premise as established by this by-law, determined by the owner, that may allow persons to smoke;

"Designated Smoking Room" means a room that meets all the requirements set out and forming this by-law;

"employee" includes a person who:

- (i) performs any work for or supplies any service to an employer;
- (ii) receives any instructions or training in the activity, business, work, trade, occupation or profession of the employer;
- (iii) receives remuneration for services provided; but
- (iv) excludes self-employment.

"employer" includes any person who is the owner, proprietor, manager, superintendent, or overseer of any activity, business, work, trade, occupation or profession, has control over the direction of, or is directly or indirectly responsible for the employment of a person therein;

"food service establishment" means a building or structure or part of a building or structure where food or drink for human consumption is processed, prepared, stored, handled, displayed, distributed, provided, consumed, transported, sold or offered for sale, and includes a restaurant, bar, lounge, pub, cafe, doughnut shop, lunch counter, lunch stand, refreshment stand, or common area, and other areas of food and beverage consumption in common areas of other public places;

"highway" means any provincial or municipal highway within the geographic limits of the Town and includes the sidewalks and all other lands within the lateral boundaries of the highway;

"inspector" means a person appointed by Council as a Municipal Law Enforcement Officer to enforce this by-law;

"Laundromat" means any facility, premises or area within a building to which the public has access for the purposes of laundering, washing or drying;

"Municipal Building" means any building, hall or facility, or part thereof, owned or operated by the Corporation of the Town of Greater Napanee; including any sports facility, ball diamond, playground, soccer field or aquatic facility;

"Park/Public Outdoor Facility" means outdoor spectators seating areas within a Park/Public Outdoor Facility;

"patio" means an outdoor area, whether enclosed or not, to which members of the general public are invited or permitted access that is operated as part of or in conjunction with or in affiliation with food premises but does not include that part of an outdoor area which is located on a highway;

"person" includes a corporation;

"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, but does not include a place when used exclusively by one or more individuals for a private gathering or personal purpose;

"proprietor or other person in charge" means the person who owns, occupies or operates a designated public place or a work place to which this by-law applies, or the person who controls, governs, or directs the activities that are carried on in the place, and includes the person who is actually in charge at any particular time;

"public building" means any enclosed building or group of buildings to which the public has access, such as an office or school;

"public facility" means any hall, room or banquet area that is publicly owned and is rented for an event or function;

"public portion" means the area of any building to which the public has access;

"public washroom" means any restroom or washroom to which the public has access;

"public vehicle" means all vehicles such as a taxi, limousine or a vehicle owned or operated by the Town of Greater Napanee;

"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;

"retail shop" means any building or part of a building, booth, stall or place where goods are exposed for sale or offered for sale by retail;

"retirement or rest home" means a residential complex that is occupied by persons who are primarily 65 years of age or older for the purpose of receiving care services that provide assistance with the activities of daily living, whether or not receiving the services is the primary purpose of the occupancy;

"school bus" means a vehicle that is used primarily for transporting children to and from school or to or from any related activity, event or function;

"service" includes the exchange of money, sales, provision of information, transactions, advice and the transfer of money or goods;

"service counter" means an indoor counter where a person receives a service;

"shopping mall" means any enclosed building or group of buildings containing one or more retail shops;

"smoke" or "smoking" includes the carrying or holding of a lighted cigar, cigarette, pipe or any other lighted smoking equipment;

"workplace" means any enclosed area of a building or structure in which an employee works and includes washrooms, corridors, lounges, eating areas, reception areas, elevators, foyers, hallways, stairways, amenity areas, lobbies, laundry rooms and parking garages utilized by an employee, with the exception of any area of a building or structure otherwise defined within this by-law.

## **2. INTERPRETATION**

2.1 This by-law applies to the smoking of tobacco in every designated public place and in every workplace within the geographic limits of the Town of Greater Napanee.

## **3. ADMINISTRATION**

3.1 The Town of Greater Napanee By-law Enforcement Officer(s) and the Kingston, Frontenac, Lennox & Addington Health Unit are responsible for the administration and enforcement of this by-law with the support of the OPP as requirements to procure necessary evidence.

## **4. PUBLIC PLACES**

4.1 The following are designated public places for the purposes of this by-law:

- (i) an amusement arcade;
- (ii) an arena;
- (iii) a billiard hall;
- (iv) a bingo hall;
- (v) a bowling alley;
- (vi) the common area of a shopping mall;
- (vii) the common area of a condominium, apartment building and an office;
- (viii) a convention facility;

- (ix) an elevator, escalator, corridor, stairway, reception area, lobby, service counter and service line in any building to which the public has access;
- (x) a municipally owned building with the exception of a public facility;
- (xi) a park/public outdoor facility;
- (xii) a place of public assembly;
- (xiii) a public building including the common area;
- (xiv) a public facility;
- (xv) the public portion of any barber shop or hairdressing establishment;
- (xvi) the public portion of any food premises;
- (xvii) the public portion of any Laundromat;
- (xviii) the public portion of any retail shop;
- (xix) a public vehicle;
- (xx) a public washroom;
- (xxi) a reception area;
- (xxii) a retail shop;
- (xxiii) a school bus;
- (xxiv) a food service establishment not exempt under Section 8.1 of this by-law; and
- (xxv) a Municipal Building, including within six metres (6m) of the entrance, exits or boundary of any Municipal Building.

**4.2** No person shall smoke in any public place that is designated in Section 4.1 of this by-law, whether or not a No Smoking sign is posted.

## **5. WORKPLACES**

5.1 No person shall smoke in any workplace, whether or not a No Smoking sign is posted, with the exception of a private office of a

company which has no employees.

## 6. DUTIES

- 6.1 Every proprietor or other person in charge of a designated public place or a workplace in which smoking is prohibited shall ensure compliance with this by-law.
- 6.2 No proprietor or other person in charge of a designated public place or a workplace in which smoking is prohibited shall place ashtrays or cause or permit ashtrays to be placed or to remain in that designated public place or workplace.

## 7. SIGNS

- 7.1 Every proprietor or other person in charge of a designated place or a workplace in which smoking is prohibited must ensure that signs, as prescribed by Section 7.3, are posted and maintained in a sufficient number of conspicuous places in the place so as to identify clearly that smoking is prohibited.
- 7.2 In addition to complying with the requirement set out in Section 7.1, every proprietor or other person in charge of a food premises must ensure that one or more signs, as prescribed by Section 7.3, are posted and maintained at every entrance to the premises so as to identify clearly that smoking is prohibited in the food premises.
- 7.3 Every sign that is posted and maintained in accordance with Sections 7.1 and 7.2 of this by-law must comply with the following requirements and as illustrated in Schedule "B":
  - (i) The graphic symbol -- on a white background with the circle and the interdictory stroke in red -- must be used;
  - (ii) The words "No Smoking" must be included above the graphic symbol, and the words "Greater Napanee By-law" must be included below the graphic symbol in letters and figures at least five (5) percent of the diameter of the circle in the symbol;
  - (iii) In addition to the graphic symbol required by Subsection 7.3(1), other appropriate symbols may be included, such as directional arrows;
- 7.4 Despite the fact that the graphic symbol required by Subsection 7.3(1) represents a cigarette, the provisions of this by-law that prohibit smoking in designated public places and workplaces apply to all forms of the smoking of tobacco, including cigarettes, cigars, pipes and any other lighted smoking instruments.



- 7.5 A reference to a by-law of a former municipality on any sign that identifies a designated public place or a workplace in which smoking is prohibited is deemed to be a reference to this by-law.

## 8. EXEMPTIONS:

- 8.1 Sections 4.2 and 5.1 of this by-law do not apply to a food service establishment licensed by the Alcohol and Gaming Commission under the Liquor Licence Act RSO 1990, Chapter L.19 to serve liquor provided the owner or operator does not permit any person, except an employee, under the age of 18 years to enter the establishment.

1. Private Clubs - A facility in which the following criteria are met:

- (i) The club must have a fixed membership list;
- (ii) Each member must pay an annual or periodic membership fee;
- (iii) The club must have an executive/leadership that is elected by all the members on an annual or periodic basis;
- (iv) The club must have a constitution and by-laws that provide the governing rules for the membership, executive, fees, etc.;
- (v) The club is operated on a not for profit basis;
- (vi) Non-members cannot enter the premises to consume food or alcohol unless accompanied by a member; and

If a private club opens its doors to the public, or rents out or makes space available to non-members for any special occasion including but not limited to, company banquet, weddings, retirement functions, bake sale, craft sale, dance, concert, etcetera, where non-members are admitted, the facility is considered to be a place of public assembly and as of May 1, 2003, no person shall smoke in any public place, except as set out in this by-law.

2. A retirement or rest home that has been designated by the proprietor or governing body as having a room where smoking is permitted is subject to the following conditions:

- (i) The designated room is separate and fully enclosed;
- (ii) The room is equipped with a ventilation system that meets a minimum ventilation rate of thirty (30 L) litres per second per person that is ventilated directly to the exterior of the building, and exhausted at a rate of at least 110 percent of the supply;
- (iii) The room is available only to residents and their guests;

- (iv) The room is set aside specifically for the purposes of smoking;
- (v) Another room is provided where smoking is prohibited, which has an area equal to or greater than that of the smoking room; and
- (vi) The room must meet all requirements under Schedule "A", "Requirements of a Designated Smoking Room".

## **9. ENFORCEMENT**

- 9.1 In conjunction with the Health Unit, the Town's By-law Enforcement Section shall take the lead in enforcement administration with the support of the OPP as requirements to procure necessary evidence.
- 9.2 The provisions of this by-law respecting the prohibition of smoking in designated public places and in workplaces, the posting of signs, and the duties imposed on the proprietors or other persons in charge of designated public places and of workplaces will be enforced by inspectors.
- 9.3 An inspector may, at any reasonable time, enter any designated public place or any workplace in which smoking is prohibited to determine whether this by-law is being complied with and, for this purpose, may make such examinations, investigations and inquiries as are necessary.

## **10. OFFENCE AND PENALTY PROVISIONS**

- 10.1 Any person who contravenes any provision of this by-law or who hinders or obstructs or otherwise interferes with an inspector in the conduct of his or her duties is guilty of an offence and, upon conviction, is subject to a fine of not more than \$500.00 for the first offence, \$1,000.00 for the second offence and \$5,000.00 for the third offence.
- 10.2 If this by-law is contravened and a conviction entered, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty that is imposed, make an order prohibiting the continuation or repetition of the offence by the person convicted.
- 10.3 At the discretion of the inspector, on contravention of the by-law, the person contravening the by-law can be charged under the Provincial Offences Act and issued a set fine as approved by the Chief Justice Office.

**11. VALIDITY**

- 11.1 If there is a conflict between a provision of any Act, regulation or by-law and a provision of this by-law, the provision that is the most restrictive of the smoking of tobacco prevails.
- 11.2 If a court of competent jurisdiction declares any provision, or any part of the provision, of this by-law to be invalid, or to be of no force and effect, it is the intention of Council in enacting this by-law that each and every provision of this by-law authorized by law be applied and enforced in accordance with the terms to the extent possible according to law.

**12. REPEAL**

- 12.1 By-law No. 99-29 of the Corporation of the Town of Greater Napanee entitled "A By-law to Regulate Smoking in Municipal Facilities" is repealed.

**13. COMMENCEMENT**

- 13.1 This by-law shall come into effect on Monday February 24, 2003, unless otherwise indicated in the text of this by-law.

Read a First time this 25<sup>th</sup> day of November, 2002.

Read a Second Time and Finally Passed this 13<sup>th</sup> day of January, 2003.

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Mayor

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Clerk-Administrator

**SCHEDULE "A"**  
**TO BY-LAW NO. 03-05**

**Requirements of a "Designated Smoking Room"**  
**for all Buildings Constructed after February 1, 2003 or**  
**Renovated to Increase the Gross Floor Area by 30% of the**  
**Existing Floor Area on February 1, 2003.**

1. Has been set aside by the proprietor;
2. Has been registered, forthwith after such setting aside, with the Town of Greater Napanee;
3. Does not exceed the size permitted by law;
4. Meets the requirements of the Ontario Building Code;
5. Is not required by any person as a thoroughfare;
6. Is posted with Smoking Signs on the walls at a height of 1.8 metres from the floor;
7. Is completely enclosed with surfaces (floors, ceilings and walls) not readily permeable by air, such that there is no free exchange of air with any indoor areas where smoking is not permitted;
8. Has all doors fitted with automatic closures;
9. Has an air supply and exhaust system separate from the air supply and exhaust system for the rest of the place;
10. Has an interlock between the air supply system and the exhaust system to ensure continuous operation of both systems;
11. Has at least three (3 m) metres horizontal distance between each exterior opening of the intake system and each exterior opening of the exhaust system and any other exterior opening of the building;
12. Is supplied with at least thirty (30 L) litres per second (65.3 cubic feet per minute) of air per possible occupant (based on maximum possible occupancy) drawn from either the outdoors or an indoor area where smoking is not permitted; and
13. Has the air exhausted at a rate of at least 110% of the rate of supply.

SCHEDULE "B"

TO BY-LAW NO. 03-05

**No Smoking**



**Town of Greater Napanee  
Max. Penalty \$ 5,000**

The above illustration is an example of the requirements of the No smoking sign, including the size.

THE HONOURABLE BRUCE E. MACPHEE  
REGIONAL SENIOR JUSTICE  
EAST REGION  
ONTARIO COURT OF JUSTICE

COURTHOUSE  
161 ELGIN STREET, 6TH FLOOR  
OTTAWA, ONTARIO  
K2P 2L1



L'HONORABLE BRUCE E. MACPHEE  
JUGE PRINCIPAL REGIONAL  
REGION DE L'EST  
GOUR DE JUSTICE DE L'ONTARIO

PALAIS DE JUSTICE  
161, RUE ELGIN, 6<sup>e</sup> ETAGE  
OTTAWA (ONTARIO)  
K2P 2L1

TELEPHONE/ TELEPHONE (613) 239-1520  
FAX/ TELECOPIEUR (613) 239-1572

September 13, 2006

Ms. Rebecca Murphy, Clerk  
Town of Greater Napanee  
P.O. Box 97, 124 John Street  
Napanee, Ontario  
K7R 3L4

Dear Ms. Murphy,

***Re: Set Fines - Provincial Offences Act - Part I  
Town of Greater Napanee***

Enclosed herewith is a copy of an Order and a copy of the schedule of set fines for By-law No. 03-05, the By-law indicated in the schedule.

The setting of the fines does not constitute my approval of the validity of the By-law or of the short form of wording used to describe the offences.

I have forwarded the original Order and the schedule of the set fines to the Honourable Mr. Justice G.J. Griffin in Napanee, together with a certified copy of the By-law.

Yours truly,

A handwritten signature in black ink, appearing to read 'Bruce E. MacPhee', written over a printed name and title.

Bruce E. MacPhee  
Regional Senior Justice

Enclosures

***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 schedules of offences under the Provincial Statutes and Regulations thereunder and Municipal By-law No. 03-05 of the **Town of Greater Napanee** attached hereto are the set fines, including costs, for those offences. This Order is to take effect September 13, 2005.

Dated at Ottawa this 13<sup>th</sup> day of September 2005.

Bruce E. MacPhee,  
Regional Senior Justice  
Ontario Court of Justice  
East Region

**Schedule "C"**

**Set Fines for Infractions Under Part I of the *Provincial Offences Act*  
for the Town of Greater  
Napawee By-law No. 03-05  
Being a By-law to Regulate Smoking in Public Places and  
Workplaces in the Town of Greater Napawee**

<b>Item No.</b>	<b>Column 1 Short Form Wording</b>	<b>Column 2 Provision Creating or Defining Offence</b>	<b>Column 3 Set Fine</b>
1.	Smoking in a public place	4.2	\$125.00
2.	Smoking in a workplace	5.1	\$125.00
3.	Permit smoking in a public place or a workplace where smoking prohibited	6.1	\$125.00
4.	Placing or permitting ashtrays to be placed in a public place or workplace	6.2	\$125.00
5.	Failing to post no smoking signs in a public space or workplace	7.1	\$125.00
6.	Failing to post no smoking signs in a food premises	7.2	\$125.00
7.	Hinder or obstruct enforcement of by-law	10.1	\$125.00

**Note: The general offence and penalty provisions for the offences listed above are in section 10 of By-law No. 03-05, a certified copy of which has been filed, and section 61 of the *Provincial Offences Act*, R.S.O. 1990, c. P.33.**