

THE CORPORATION OF THE TOWN OF PELHAM

BY-LAW NO. 1394 (1991)

BEING A BY-LAW TO REGULATE SMOKING IN BUILDINGS UNDER THE JURISDICTION OF THE CORPORATION OF THE TOWN OF PELHAM AND TO REPEAL BY-LAW NO. 1316 (1990).

WHEREAS it has been determined that second-hand tobacco smoke (exhaled smoke and smoke from lighted cigarettes, cigars and pipes or any other tobacco using or constructed device) is a public nuisance because of its irritating and discomforting properties and is a health hazard because of its impairment, adverse effect and risk to health for many inhabitants of the Town of Pelham;

AND WHEREAS it is desirable for the health, safety, welfare and enjoyment of the inhabitants of the Town of Pelham and for the better protection of persons from conditions injurious to health, to prohibit or regulate smoking and second-hand smoke in buildings under the jurisdiction of the Corporation of the Town of Pelham;

AND WHEREAS Section 104 of the Municipal Act, R.S.O. 1980, Chapter 302 provides that "Every Council may pass such by-laws and make such regulations for the health, safety, morality and welfare of the inhabitants of the Municipality in matters not specifically provided for by this Act as may be deemed expedient and are not contrary to law...";

AND WHEREAS paragraph 134 of Section 210 of the Municipal Act, R.S.O. 1980, Chapter 302 provides that "By-laws may be passed by the Council of local Municipalities for prohibiting and abating public nuisances.";

AND WHEREAS the Smoking in the Workplace Act, S.O. 1989 prohibits smoking in an enclosed workplace except in those areas designated as smoking areas;

AND WHEREAS it is desirable for the health, safety and welfare of the Municipal Staff and any other person who may from time to time have occasion to be present in certain municipal facilities, to prohibit or regulate smoking and second-hand smoke within these buildings;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE
TOWN OF PELHAM ENACTS AS FOLLOWS:

(1) In this By-law:

- A) TOWN shall mean the Corporation of the
Town of Pelham.
- B) TOWN HALL shall mean that building
municipally known as 20 Pelham Town
Square.
- C) RECREATIONAL FACILITY shall mean any
building, herefore or hereafter under the
control and management of the Town and
shall include arenas community centres,
meeting halls, outdoor swimming pools,
wading pools, washrooms, change rooms,
storage facilities and all other
buildings of public congregation.
- D) WORKS BUILDING shall mean that building
municipally known as 675 Tice Road.
- E) FIRE STATIONS shall mean the buildings
municipally known as 792 Welland Road and
177 Highway #20.
- F) SMOKE or SMOKING shall refer to the
production of fumes or other volatile
products through the burning of tobacco
or tobacco substitutes resulting in the
production of second-hand smoke and
includes the lighting up or carrying of a
lighted cigarette, cigar, pipe or any
other lighted smoking device.
- G) SECOND-HAND SMOKE shall mean:
 - (i) exhaled smoke
 - (ii) smoke from an idling (a)
cigarette, (b) cigar, (c) pipe,
or (d) any other tobacco using
or constructed device;

but does not include smoke that has drifted into a place or area in which smoking is prohibited from a place in which smoking is not prohibited.

- H) WORKPLACE shall mean any enclosed area of a building or structure in which an employee works, but shall not include those part of a municipal building or facility that are otherwise described as "public access areas".
- I) MUNICIPAL BUILDINGS and/or FACILITIES shall mean any enclosed building or structure that is owned or operated or otherwise comes under the jurisdiction of the Town.
- J) SERVICE LINE shall mean an indoor line of two or more persons awaiting service of any kind, regardless of whether or not such service involves the exchange of money, and includes awaiting sales service, purchase service, provision of information or advice, and the transfer of money or goods.
- K) PUBLIC ACCESS AREA shall mean that part of a building available to and open for use by the general public, but does not include those areas wherein the public acquires access by specific invitation of the proprietors or employees of the establishment such as offices, staff rooms or allocated work areas.
- L) OPEN SERVICE COUNTER AREA shall mean an indoor desk or counter at which is provided service of any kind, whether or not such service involves the exchange of money, including sales service, purchase service, provision of information or advice, and the transfer of money or goods.

- M) PROPRIETOR shall mean the person who ultimately controls, governs or directs the activity carried on within the kinds of premises referred to in this by-law and includes the person actually in charge thereof.
- N) PLACE OF PUBLIC ASSEMBLY shall mean an indoor area in a building or structure or a portion thereof, whether privately or publicly owned, to which the public have access by right or by invitation, express or implied, whether by payment of money or not and which is used for the gathering together of persons for the purpose of education, entertainment, worship, business, recreation or amusement but does not include an indoor pedestrian area in a retail shopping centre or complex, a restaurant, a reception area or any place of assembly which is used for the private or personal assemblage of persons.
- O) PRIVATE OR PERSONAL ASSEMBLAGE shall mean a gathering of persons who have come together at the invitation of the organizers. Admission to the event is restricted on the basis of membership, invitation, the purchase of an admission ticket, or some other means.
- (2) Subject to Paragraph (3) of the By-law smoking shall be prohibited in all municipal buildings and facilities save and except for that area of an enclosed workplace which is designated as a smoking area in accordance with the Smoking in the Workplace Act and identified on Schedule "A" which is attached hereto and made part of this by-law.
- (3) Smoking shall be prohibited in all service lines, public access areas, open service counter areas, and places of public assembly occurring within any municipal building or facility including recreational facilities save and except for the instance where all or part of a municipal building is used for a private or personal assemblage of

persons and where this assemblage is classified as an adult-oriented, non-sporting special event. In this case the area in use, or a portion thereof, may be designated for the purpose of smoking by the organizers of the aforementioned private or personal assemblage. The organizers will further be responsible for ensuring that the area is appropriately signed during their use of the municipal building or facility and returning the area to its former state if any changes are required.

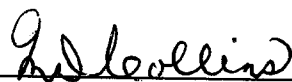
- (4) It will be the responsibility of each Municipal Department Head to ensure that the appropriate signage is installed in the various areas of the buildings for which they are responsible.
- (5) The details of what will constitute "appropriate signage" are identified on Schedule "B" which is attached hereto and made part of this by-law.
- (6) Each person who contravenes any of the provisions of this by-law shall be liable to conviction under the Provincial Offenses Act and will be subject to a fine of not less than Fifty Dollars (\$50.00) and not more than One Thousand Dollars (\$1,000.00) exclusive of costs.
- (7) Administration and enforcement of the provisions contained in this by-law will be the responsibility of the Municipal By-law Enforcement Department and the Niagara Regional Police Force.
- (8) This By-law comes into effect on May 1st, 1991.
- (9) That By-law No. 1316(1990) be and is hereby repealed.

READ A FIRST TIME THIS 4th. DAY OF FEBRUARY, 1991.


MAYOR


CLERK

READ A SECOND AND THIRD TIME AND FINALLY PASSED BY
COUNCIL THIS 18th DAY OF FEBRUARY , 1991 A.D.


MAYOR


CLERK