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THE CORPORATION OF THE CITY OF PENTICTON

SMOKING BYLAW

NO. 87-15

Consolidated for convenience only.

Amended by Bylaw: 2013-5047 – March 2013
Amended by Bylaw: 2013-5047-May 6, 2013

**THE CORPORATION OF THE CITY OF PENTICTON
BYLAW 87-15**

**A BYLAW OF THE CORPORATION OF THE CITY OF
PENTICTON FOR THE PURPOSE OF REGULATING THE SMOKING AND THE USE OF
TOBACCO PRODUCTS IN THE CITY OF PENTICTON**

WHEREAS it has been determined that second-hand tobacco smoke (exhaled smoke and the smoke from idling cigarettes, cigars and pipes) is a health hazard and discomfort for many inhabitants of the Corporation of the City of Penticton;

AND WHEREAS Pursuant to Section 692 of the Municipal Act, R.S.B.C. 1979, Chapter 290, Council may be law, subject to the Health Act, regulate persons, their premises, and their activities to further the care, protection, promotion and preservation of the health of the inhabitants of the City of Penticton;

AND WHEREAS the approval of the Minister of Health is necessary for any Bylaw adopted pursuant to section 692 of the Municipal Act, R.S.B.C. 1979, Chapter 290;

AND WHEREAS it is desirable for the health, safety and welfare of the inhabitants of the City of Penticton to have clean indoor air by prohibiting or regulating smoking, or both, in the City of Penticton as in this Bylaw more particulars set out;

NOW THEREFORE, the Council of the City of Penticton, in open meeting assembled, enacts as follows:

1. In this Bylaw, unless the context otherwise requires
 - (a) "Council" means the Municipal Council of The Corporation of the City of Penticton;
 - (b) "Chief Inspector" means a person appointed by the Municipal Council of The Corporation of the City of Penticton to said position;
 - (c) "Fire Chief" means a person appointed by the Municipal Council of The Corporation of the City of Penticton to said position;
 - (d) "Medical Health Officer" means the medical health officer appointed under the Health Act to act within the limits of the jurisdiction of the local board of health for The Corporation of the City of Penticton;
 - (e) "Personal Services Establishment" means an establishment in which a person provides a service to or on the body of another person, and includes but is not limited to a barber shop, beauty parlor, health spa, massage parlor, tattoo shop, sauna and steam bath;
 - (f) "Place of Public Assembly" means a building or portion thereof used for the gathering together of persons for the purpose of education, worship,

entertainment, recreation, business or amusement, but does not include a place where a private social function is being held or a restaurant;

- (g) “Private Social Function” means a special social event for which an entire room or hall has been reserved, at which attendance is limited to people who have been specifically invited or designated by the sponsor;
- (h) “Proprietor” means the person who ultimately controls, governs, or directs the activity carried on within the kinds of premises referred to in this Bylaw and includes the person actually in charge thereof;
- (i) “Public Municipal Open Space” means a park, playing field, tennis court, playground lawn bowling green, walkway, path, trail, beach dock, marina or other outdoor public space which is owned, controlled or operated by the City for the use of pleasure of the public and which is shown on Schedule “A” attached to and forming part of this bylaw.
- (j) “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;
- (k) “Restaurant” means any food premises as defined in the British Columbia Regulations Governing the Sanitation and Operation of Food Premises, whether permanent or temporary, fixed or mobile, in which prepared food is served to the public in exchange for money or services, or any place to which the public has access for the purpose of purchasing prepared food for human consumption on the premises;
- (l) “Retail Shop” means a building or part of a building, booth, stall or place where goods are exposed or offered for sale by retail, but does not include a place where the only trade or business carried on is that of the custom blending of tobaccos, or sale of tobaccos, pipes, cigars or smokers’ sundries;
- (m) “Service Line” means 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, including but not limited to, sales, provision of information, transactions or advice and transfers of money or goods;
- (n) “Smoke” or “Smoking” includes the carrying of a lighted cigar, cigarette, pipe or other lighted smoking equipment.

2. RETAIL STORES

- (a) No person shall smoke in a retail shop except in a part thereof used as a restaurant or lunch counter subject to Section 7; or a restroom or a part of the retail shop used as offices by members of the staff;

- (b) The proprietor of every retail store may provide that the sign or signs as prescribed by Section 12 hereof or otherwise by this Bylaw permitted shall be conspicuously posted in areas to which Subsection 2(a) applies.

3. PERSONAL SERVICES ESTABLISHMENTS

- (a) Subject to Subsection 3(b), non-smoking areas may be designated by the proprietor of any personal services establishment having a seating capacity of more than ten (10) persons. The non-smoking areas shall be not less than 25% of the total seating capacity;
- (b) When a proprietor designates a non-smoking area, the seating shall be arranged to be contiguous to provide a non-smoking area;
- (c) The proprietor of every personal services establishment shall ensure that a sign or signs prescribed by Section 12 hereof or otherwise by this Bylaw permitted, shall be conspicuously posted in areas to which Subsection 3(a) applies.

4. HOSPITALS AND HEALTH CLINICS

- (a) No person shall smoke in a hospital or health clinic except in any portion thereof designated as a smoking area by the hospital or health clinic authorities;
- (b) The proprietor of every hospital and health clinic may provide that a sign or signs as prescribed by Section 12 hereof or otherwise by this Bylaw permitted, shall be conspicuously posted in areas to which Subsection 4(a) applies.

5. PLACES OF PUBLIC ASSEMBLY

- (a) Subject to Section 5(b), no persons shall smoke in an area being used as place of public assembly;
- (b) The proprietor of a place of public assembly may designate an area for smoking;
- (c) An area designated in accordance with Subsection (b) shall not include:
 - (i) The seating areas in theatres, motion picture theatres, music halls, lecture halls which include classrooms, concert halls, auditoriums, gymnasiums, swimming pools, indoor sporting areas and libraries;
 - (ii) The display areas of museums and art galleries;
 - (iii) An area in which smoking is prohibited by the Fire Chief of the City of Penticton or by another law, bylaw or regulation;

- (d) The proprietor of every place of public assembly may provide that a sign or signs as prescribed by Section 12 hereof or otherwise by this Bylaw permitted, shall be posted conspicuously in areas to which Subsection 5(a) applies.

6. PUBLIC MUNICIPAL OPEN SPACE

- (a) Except as provided in Subsection (b) no persons shall smoke in a Public Municipal Open Space listed in Schedule "A" attached to and forming part of this bylaw; and
- (b) The traditional use of tobacco in aboriginal ceremonies in Public Municipal Open Space is permitted.

7. PRIVATE SOCIAL FUNCTIONS

This Bylaw shall not apply to a private social function.

8. RESTAURANTS

- (a) The proprietor of a restaurant may display in a conspicuous place so as to be visible to persons at the entrance to the restaurant, a sign or signs indicating whether or not a non-smoking section is provided in the restaurant. The sign or signs shall consist of two contrasting colours, or if the lettering is to be applied directly to a surface or to be mounted on a clear panel, the lettering shall contrast to the background colour with capital letters having an actual height of not less than 5 centimetres (2 inches). The sign or signs shall carry one of the following texts:

SMOKING AND NON-SMOKING SEATING AVAILABLE;

NO NON-SMOKING SEATING; or

NON-SMOKING SEATING ONLY;

- (b) Subject to Subsection (c) (i), the proprietor of a restaurant may designate non-smoking areas in the restaurant;
- (c) Where a non-smoking area is designated:
 - (i) The non-smoking area shall be not less than 25% of the total seating capacity of the restaurant;
 - (ii) The non-smoking area shall have the seating arranged so as to be contiguous to provide a non-smoking area.

9. RECEPTION AREAS

- (a) Except as provided in Subsection (b), no person shall smoke in a reception area;

- (b) The proprietor may designate an area of not more than 50% of the floor area of the reception area for the purpose of smoking;
- (c) The proprietor of every reception area shall ensure that a sign or signs as prescribed by Section 12 hereof or otherwise by this Bylaw permitted, shall be posted conspicuously in areas to which Subsection 8(a) applies.

10. ELEVATORS, ESCALATORS AND INSIDE STAIRWAYS

- (a) No person shall smoke in an elevator, an escalator, or on a stairway within the confines of any building;
- (b) The proprietor of every building or any building or part thereof may provide that a sign or signs as prescribed by Section 12 hereof or otherwise by this Bylaw permitted, shall be posted conspicuously in areas to which Subsection 9 (a) applies.

11. BUSES

No person shall smoke in or on a City bus or school bus.

12. SERVICE LINES

- (a) No person shall smoke in any indoor service line in any premises;
- (b) The proprietor of a premise may provide that a sign or signs as prescribed by Section 12 hereof or otherwise by this Bylaw permitted, shall be posted conspicuously in areas to which Subsection 11(a) applies.

13. SIGNS

- (a) For the purpose of Subsection (b) hereof, the “letter height” means the actual height of the letter regardless of whether it is a capital or lower case letter;
- (b) Whereby a section of this Bylaw is to be in accordance with this Section, such sign shall:
 - (i) Carry the text “No Smoking”, in capital or lower case letters or a combination thereof;
 - (ii) Consist of two (2) contrasting colours, or if the lettering is to be applied directly to a surface or to be mounted on a clear panel, the lettering shall contrast to the background colour;
 - (iii) With respect to size of lettering, to be not less than the following height based upon the maximum viewing distance in direct line of sight for:
 - A. 3.0 metres or less, letter height of 2.5 centimetres;

- B. 6.0 metres or less, letter height of 5 centimetres;
 - C. 12 metres or less, letter height of 7.5 centimetres;
 - D. 25 metres or less, letter height of 10 centimetres;
 - E. 50 metres or less, letter height of 15 centimetres;
 - F. more than 50 metres, letter height of not less than 15 centimetres.
- (c) Include in the text at the bottom of each sign “Bylaw No. 87-15” in letters not less than .75 centimetres in height for all signs;
- (d) Notwithstanding the provisions of Subsection (a), one of the following graphic symbols may be used to indicate “no smoking areas”. Each symbol shall include the text “Bylaw No. 87-15” in letters and figures at least .75 centimetres in diameter of the circle in the symbol and there may be added appropriate symbols, such as directional arrows. Any such symbol shall be on a white background with a circle and interdictory stroke in red, with a cigarette, letters and figures in black, provided such symbol complies with the other provisions of this Section.



- (e) With respect to size of the graphic symbol, the diameter of the circle and the symbol referred to in Subsection (d) hereof, shall be not less than the number of centimetres prescribed below, based upon the maximum viewing distance and direct line of sight, as follows:
- (i) 3.0 metres or less, 10 centimetres;
 - (ii) 6.0 metres or less, 15 centimetres;
 - (iii) 12 metres or less, 20 centimetres;
 - (iv) 25 metres or less, 20 centimetres;
 - (v) 50 metres or less, 40 centimetres
 - (vi) more than 50 metres, a size of not less than 40 centimetres.
- (f) Notwithstanding that the symbol in Subsection (d) hereof is a cigarette, it shall include a lighted cigar, cigarette, pipe, or other lighted smoking equipment.

14. INSPECTION OF PREMISES

The Medical Health Officer and/or the Chief Inspector and/or the Fire Chief or their appointed representative, shall have the right of entry and may enter onto any land or into any building at all reasonable hours in order to inspect the same and ascertain whether the provisions of this Bylaw are being or have been carried out. Any person interfering with or obstructing the entry of any such official or employee of the City of Penticton onto any such land or into any such building to which said entry is made or attempted, pursuant to the provisions of this section of the Bylaw, shall be deemed to be guilty of infraction of this Bylaw and liable to a penalty of not more than \$500.

15. OFFENCE AND PENALTY

- (a) Any person who contravenes or violates any portion of this bylaw, fails or omits to do anything required under this bylaw, or who permits, suffers or allows any act or thing to be done or omitted to be done in contravention of this bylaw, commits an offence; and where the offence is a continuing one, each day that the offence is continued shall constitute a separate offence.
- (b) Upon being convicted of an offence under this bylaw, a person shall be liable to pay a fine of not more than \$500.00.
- (c) In addition to any other remedies available at law, this bylaw may be enforced by means of a prosecution under the Offence Act or by a ticket issued under the "City of Penticton Municipal Ticketing Information Bylaw 2012-5021".

16. This Bylaw may be cited as "THE CITY OF PENTICTON SMOKING REGULATION BYLAW NO. 87-15".

Read a first time by the Municipal Council on the 6th day of April, 1987.

A Public Hearing was held on the 30th day of April, 1987.

Read a second and third time by the Municipal Council on the 15 day of June, 1987.

Received the approval of the Ministry of Health on the 17th day of August, 1987.

Reconsidered and finally passed by the Municipal Council this 24th day of August, 1987.

MAYOR

CLERK

I, George A. Paul, Clerk of the Corporation of the City of Penticton, hereby certify this to be a true and correct copy of Bylaw No. 87-15 duly passed by the Municipal Council of The Corporation of the City of Penticton, on the 24th day August, 1987.

Certified this 27th day of August, 1987.

CLERK

SCHEDULE "A"

PUBLIC MUNICIPAL OPEN SPACES WHERE SMOKING IS PROHIBITED

The following areas have been designated by the Council of the City of Penticton as **"NO SMOKING AREAS"**:

- Skaha Beach
- Skaha Lake Walkway
- Sudbury Beach if leased
- Airport Beach if leased
- Okanagan Beach
- Okanagan Lake Park Beach
- Marina Way Beach
- Three Mile Beach
- Dog Beach (Lakeside Rd.)
- Behind S.S. Sicamous
- Behind Penticton Yacht Club
- Three Mile Boating Beach Area
- Rotary Park Beach (north side of park)
- Kiwanis Walking Pier Area
- West Okanagan Lake Walkway from Winnipeg St. to the S.S. Sicamous