

CORPORATION OF THE TOWN OF NEWMARKET

BYLAW NUMBER 1987-85

A BYLAW IN RESPECT OF SMOKING.

WHEREAS it has been determined that second-hand tobacco smoke (exhaled smoke and smoke from idling 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 Newmarket;

AND WHEREAS it is desirable for the health, safety and welfare of the inhabitants of the Town of Newmarket to provide for prohibiting or regulating smoking and second-hand smoke, or both, in the Town of Newmarket in accordance with the provisions of this bylaw;

BE IT THEREFORE ENACTED by the Municipal Council of the Corporation of the Town of Newmarket as follows:

*JAK*  
1. In this bylaw:

- (1) "eating establishment" means a building or part of a building, booth, stall or place where food is offered for sale or sold to the public for immediate consumption and includes a restaurant, tavern, cafe, cafeteria, take-out restaurant, ice cream parlour, tea or lunch room, dairy bar, coffee shop, donut shop, snack bar, refreshment room or stand;
- (2) "hospital" means any public or private institution, building or other premises or place established for the maintenance, observation, medical and dental care and supervision and skilled nursing care of persons affected with or suffering from sickness, disease or injury, or for the treatment of convalescent or chronically ill patients;
- (3) "place of public assembly" means a place to which members of the general public or people at large are admitted but does not include a place of public assembly or other place of assembly when used for private or personal assemblage of persons;

- (4) "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 and includes the superintendent and the administrator of a hospital and in the case of municipal buildings includes the Mayor, Members of Council, Clerk, Department Heads, Curators and Chief Librarian;
- (5) "reception area" means the public space used by an office or other establishment for the receiving or greeting of customers, clients, patients or other persons dealing with such office or other establishment;
- (6) "retail food store" means a building or part of a building, booth, stall or place where milk, dairy or bakery products, groceries, meats, produce, or any one of them, intended for human consumption is stored, sold or offered for retail sale directly to the public, but does not include an eating establishment;
- (7) "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 a licensed hotel, or tavern, victualling house or refreshment house, nor 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;
- (8) "second-hand smoke" means
  - (i) exhaled smoke
  - (ii) smoke from an idling cigarette or cigar, or pipe, or 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 or area in which smoking is not prohibited;

- (9) "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 and includes awaiting sales service, purchase service, provision of information or advice, and the transfer of money or goods;
- (10) "smoke" or "smoking" includes the carrying of a lighted cigar, cigarette, pipe or any other lighted smoking equipment;
- (11) "theatre" means any building or part of a building intended for the screening and viewing of motion pictures or the production and staging of public performances of cultural, musical or dramatic entertainment;
- (12) "Town" means the Town of Newmarket.

HOSPITALS

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- 2. (1) Except as provided in Subsection (2), no person shall smoke in a patient care area in a hospital;
  - (2) Where a patient receives permission from his or her personal physician, and all other patients in the shared accommodation having capacity to do so, give approval, a patient shall be permitted to smoke in the portion of the patient care area allocated to that patient;
  - (3) Except as provided in Subsection (4), no person shall smoke in any area of a hospital to which members of the public have access;
  - (4) Subject to The Fire Marshals Act, the proprietor of a hospital may designate not more than 50% of the floor area referred to in Subsection (3) hereof for the purpose of smoking and such area shall bear a sign or signs marked "Smoking In This Area Only".
- JPK*
- 3. (1) Where smoking is prohibited in an area of the hospital, the proprietor shall post or cause to be posted one or more signs in accordance with the requirements of Section 17 or Section 18;

- (2) The sign or signs shall be conspicuously posted
  - (a) so as to be clearly visible from
    - (i) all parts of the area to which members of the public have access other than the patient care area;
    - (ii) all parts of the patient care area;
  - (b) so as to clearly identify the areas in which smoking is and is not prohibited.

RECEPTION AREAS

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4. (1) Except as provided in Subsection (2), no person shall smoke in a reception area;
- (2) Subject to The Fire Marshals Act, and provided the total floor area of the reception area exceeds 10 square metres, the proprietor may designate an area of not more than 40% of the floor area of the reception area for the purpose of smoking, and such areas shall bear a sign or signs marked "Smoking In This Area Only";
- (3) Where an area is designated under Subsection (2) hereof, the first 10 square metres shall be allocated as a non-smoking area.

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5. (1) Where smoking is prohibited in a reception area or part thereof, the proprietor shall post or cause to be posted one or more signs in accordance with the requirements of Section 17 or Section 18;
- (2) The sign or signs shall be conspicuously posted
  - (a) so as to be clearly visible from all parts of the reception area; and
  - (b) so as to clearly identify the areas in which smoking is and is not prohibited.

ELEVATORS, ESCALATORS AND STAIRWAYS

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6. (1) Except as provided in Subsection (2), no person shall smoke in an elevator or on an escalator or on a stairway in any building or part thereof;

(2) Subsection (1) does not apply to elevators or similar devices to which The Elevator and Lifts Act does not apply.

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7. (1) Where smoking is prohibited in an elevator or on an escalator or on a stairway, the proprietor of the building or part thereof shall post or cause to be posted one or more signs in accordance with the requirements of Section 17 or Section 18;

(2) The sign or signs shall be conspicuously posted so as to be visible to users of the elevator or escalator or stairway upon entering into the elevator or using the escalator or stairway.;

(3) Where a sign is required to be posted under Subsection (2) hereof in respect of the use of an elevator, a sign shall be posted in the interior wall facing the elevator door.

SERVICE LINES

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8. No person shall smoke in a service line in any building or part of a building.

9. (1) The proprietor of the building or part thereof in which there is a service line shall post or cause to be posted, one or more signs in accordance with the requirements of Section 17 of Section 18;

(2) The sign or signs shall be conspicuously posted as to be clearly visible to all persons in the service line.

THEATRES

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10. (1) Except as provided in Subsection (2), no person shall smoke in any part of an enclosed indoor area being used as the theatre;

(2) Subject to The Fire Marshals Act, for the purpose of Subsection (1):

(a) the proprietor may designate an area of not more than 50% of the floor area of the lobby, except that part which is occupied by a "service line" in accordance with Section (8) for the purpose of smoking and such area shall bear a sign or signs marked "Smoking In This Area Only".

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1. (1) Where smoking is prohibited in a theatre or part thereof, the proprietor shall post or cause to be posted, one or more signs in accordance with the requirements of Section 17 or 18;
- (2) The sign or signs shall be conspicuously posted:
  - (a) so as to be clearly visible from all parts of the theatre;
  - (b) so as to clearly identify the areas in which smoking is or is not prohibited;
- (3) In a theatre in which moving pictures are shown, in addition to the requirements of Subsection (2) hereof
  - (a) a notice or sign shall be shown on the screen or other means of display; or
  - (b) a verbal announcement shall be made at the beginning of each show or display, indicating the area in which smoking is prohibited and the area in which smoking is permitted.

RETAIL FOOD STORES

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12. No person shall smoke in any retail food store except in a part thereof used as a restaurant, lunch counter, rest room, lounge used by members of staff or a part used as offices by members of the staff.

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13. (1) The proprietor of a retail food store shall post or cause to be posted, one or more signs in accordance with the requirements of Section 17 or 18;
- (2) The sign or signs shall be conspicuously posted so as to be clearly visible from all parts of the area or areas to which Section 12 applies.

EATING ESTABLISHMENTS

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14. (1) Except as provided in Subsection (2), no person shall smoke in an eating establishment which has a seating capacity of more than 10 persons, between the hours of 5 a.m. and 9 p.m. of each day, except in an area used exclusively by members of staff or a part used as offices by members of the staff;
- (2) Subject to The Fire Marshals Act or other applicable provincial statute or regulation, the proprietor may designate not more than 60% of the actual eating area of the eating establishment for the purpose of smoking.
15. (1) Where part of the eating area is designated under Section 14(2), smoking shall be permitted in the area so designated;
- (2) Where smoking is prohibited in the eating area of an eating establishment or in a part thereof,
- (i) the proprietor shall post or cause to be posted one or more signs in accordance with the requirements of Section 17 or Section 18; OR
- (ii) in the alternative, the proprietor shall place or cause to be placed one or more tent signs or stand-up signs as prescribed by this bylaw on the table or other surface on which food is served for consumption therefrom;
- (3) The sign or signs shall be conspicuously placed,
- (a) so as to be clearly visible on the table or other surface; or
- (b) so as to clearly identify the table or other surface as being in the area in which smoking is prohibited.

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MUNICIPAL BUILDINGS

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16. (1) Except as provided in Subsection (2), no person shall smoke in a building owned or operated by the Town of Newmarket (hereinafter referred to as a municipal building) except in an area used exclusively by members of staff or a part used as offices by members of staff and which area or areas have been designated as smoking areas by the proprietor;

- (2) Where all or part of a municipal building is used for a private or personal assemblage of persons, such area may be designated for the purpose of smoking by the proprietor.

SIGNS

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- 17. (1) Where by any provision of this bylaw a sign is required in accordance with this section, such sign shall
  - (1) carry the text "NO SMOKING" in upper or lower case letters, or a combination of both;
  - (2) consist of two contrasting colours, or consist of lettering contrasting to the background colour where the lettering is applied directly to a surface or is mounted on a clear panel;
  - (3) consist of lettering not less than the height set out in Column 2 of Table 1, for the corresponding maximum viewing distance in direct line of sight, in Column 1;

TABLE 1

Distance in Feet (Column 1)	Height in Inches (Column 2)
10 or less	1
20	2
40	3
80	4
160	6
240	8

- (4) include in the text at the bottom of each sign, "Town of Newmarket Bylaw Number 1987-85 Maximum Fine \$1000" in letters and figures not less than,
  - (a)  $\frac{1}{2}$  inch in height for signs with letter size of 1 inch; and
  - (b)  $\frac{1}{4}$  of the height of the letters for all other sizes of signs having lettering greater than one inch.
- (5) for the purpose of Subsection (1), "letter height" means the actual height of the letter whether or not the letter is in lower case or in upper case.

*JLH*

- 18. (1) Notwithstanding Section 17, a graphic symbol may be used to indicate no smoking areas;
- (2) Notwithstanding the provisions of Section 17 hereof, one of the following graphic symbols may be used to indicate "no smoking areas". Each symbol shall
  - (i) include the text, Town of Newmarket Bylaw Number 1987-85 Maximum Penalty \$1,000" in letters and figures at least 5% of the diameter of the circle of such symbol;
  - (ii) consist of a white background having
    - (a) a circle and interdictory stroke in red upon the background;
    - (b) a cigarette with letters and figures in black in accordance with the provisions of this section;
  - (iii) be of a size not less than the diameter set out in Column 1 of Table 2 for the corresponding distance set out in Column 2:

TABLE 2

<u>Height in Inches (Column 1)</u>	<u>Distance in Feet (Column 2)</u>
4	10 or less
6	20
8	40
12	80
16	160
24	240

- (iv) every graphic symbol may contain a directional arrow;
- (3) Notwithstanding that the content of a graphic symbol contains a cigarette, the prohibition shall include a cigar, pipe or other lighted smoking equipment.

CONVICTION - FINES

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19. Every person who contravenes any provision of this bylaw is guilty of an offence and is liable to a penalty of not more than \$1,000, exclusive of costs.

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20. The provisions of this bylaw may be enforced

(a) by a Police Officer;

(b) by a Bylaw Enforcement Officer duly appointed by the Municipal Council of the Corporation of the Town of Newmarket; and

(c) by a Provincial Offences Officer duly appointed for the purpose.

PASSED this 19th day of May, A.D. 1987.

*Robert N. Scott*

Robert N. Scott, Acting Mayor

*Margaret Bowser*

Margaret Bowser, Clerk