

BYLAW 34-18

A BYLAW OF THE TOWN OF OKOTOKS IN THE PROVINCE OF ALBERTA TO REGULATE SMOKING IN PUBLIC PLACES AND WORK PLACES

WHEREAS pursuant to the provisions of the *Municipal Government Act (MGA)*, Revised Statutes of Alberta 2000, Chapter M-26 and amendments thereto, Council may pass a bylaw for municipal purposes respecting the safety, health and welfare of people and the protection of people and property, people activities and things in, on or near a public place or place that is open to the public, and persons engaged in business, business activities and businesses in the municipality; and

WHEREAS The Town of Okotoks operates multiple facilities within the Town and deems it appropriate to protect the health and wellness of families and children utilizing these facilities; and

WHEREAS Council deems it desirable to limit the effects of known health hazards or discomfort from secondhand smoke by regulating smoking in public places and work places;

NOW THEREFORE the Council of the Town of Okotoks enacts as follows:

1. SHORT TITLE

This Bylaw may be known as the "Smoking Bylaw".

2. DEFINITIONS

In this Bylaw, unless the context otherwise requires:

- 2.1 **building** means anything constructed or placed on, in, over or under land, whether permanent or temporary, into which a person could enter;
- 2.2 **cannabis** has the meaning given to it in the *Cannabis Act*;
- 2.3 **Chief Administrative Officer (CAO)** means the person appointed to the position of chief administrative officer for the Town of Okotoks, by Council, within the meaning of the *MGA*;

2.4 **common area** means any areas forming part of a private residence, building or structure that are deemed to be a public building and include but are not limited to:

- a) patios;
- b) pools;
- c) recreational areas;
- d) washrooms;
- e) corridors;
- f) reception areas;
- g) elevators;
- h) escalators;
- i) foyers;
- j) hallways;
- k) stairways;
- l) lobbies;
- m) laundry rooms; or
- n) enclosed parking garages.

2.5 **Council** means the Mayor and Councillors duly elected pursuant to the provisions of the *Local Authorities Election Act*;

2.6 **designated public place** means any:

- a) municipal building and the area within 10 metres of an entrance or exit to any municipal building;
- b) public building and the area within 5 metres of an entrance or exit to any public building
- c) workplace and the area within 5 metres of an entrance or exit to any workplace;
- d) public sidewalk and area within 10 metres of a public sidewalk;
- e) public pathway and area within 10 metres of a public pathway;
- f) outdoor public event;
- g) outdoor public place
- h) public transportation vehicle; or
- i) public transportation vehicle shelter;

2.7 **employee** means any person who performs work for or supplies any services to any employer;

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

2.9 **grandstand** means an open air seating facility that is primarily, but not exclusively, used for watching sporting events;

- 2.10 **municipal building** means any building owned, leased, operated or occupied by the Town;
- 2.11 **outdoor patio** means any area outside of a building intended for the consumption of food or beverages by patrons of any business providing such food or beverages, and includes:
- a) any public premises that is not fully contained within a building; and
 - b) any outside extension of an eating or drinking establishment regardless of whether it is covered or not;
- 2.12 **outdoor public event** means any outdoor event requiring a municipal permit to which the public is invited or permitted to attend, including but not limited to:
- a) markets;
 - b) festivals;
 - c) fairs;
 - d) displays;
 - e) exhibitions;
 - f) fundraisers;
 - g) races;
 - h) concerts; or
 - i) parades;
- 2.13 **outdoor public place** means any outdoor location that is open to the public from time to time, including but not limited to:
- a) outdoor patios;
 - b) grandstands;
 - c) playgrounds;
 - d) water playgrounds;
 - e) skate parks;
 - f) bicycle parks;
 - g) seasonal multipurpose pads;
 - h) sports fields;
 - i) pools; or
 - j) beaches;
- 2.14 **Peace Officer** means:
- a) a member of the Royal Canadian Mounted Police;
 - b) a Community Peace Officer as appointed by the Solicitor General of Alberta; or
 - c) a Bylaw Enforcement Officer as appointed by the Town to enforce bylaws of the Town;

2.15 **person** means any:

- a) individual;
- b) proprietorship;
- c) corporation; or
- d) society;

2.16 **playground** means a structure or collection of structures designed and intended for recreational use by children and includes the material in which such structures are mounted when that material is a distinct material such as:

- a) sand;
- b) rubber;
- c) gravel; or
- d) wood chips;

2.17 **private residence** means any self-contained living premise for domestic use with a separate private entrance from the exterior of the building or from a common hall, lobby or stairway, except:

- a) when a business is operated within a private residence then a private residence is considered a workplace during all hours of operation; and
- b) when a private residence contains two or more private residences and includes common areas, then the common areas are considered a public building;

2.18 **proprietor** means the owner, or his agent or representative, of a designated public place, and includes any person in charge thereof or anyone who controls, governs or directs the activity carried on therein, and where applicable includes:

- a) the person who ultimately controls, governs or directs the activity carried on within any premises referred to in this Bylaw and includes the person usually in charge thereof;
- b) a Regional Health Authority Board appointed pursuant to the provisions of the *Regional Health Authority Act*; and
- c) the Board of Governors, Board of Trustees, or President of a public school, private school, or post-secondary institution;

2.19 **public** means any person other than the owner, lessee, proprietor or employer of a building, structure or place;

2.20 **public building** means any building or structure to which the public has access as of right or by invitation, express or implied, whether or not:

- a) the public has been invited;
- b) the public has access only at certain times, or from time to time;
- c) the public has access only if they are a member or accompanied by a member;
- d) payment, membership or the performance of some formality is required prior to access;
- e) a proprietor has the right to exclude any particular person;
- f) the public has access to only a portion of the building or structure; or
- g) the building or structure is a private residence if it contains two or more private residences and includes common areas;

2.21 **public sidewalk** means that part of a highway or open space especially adapted to the use of or ordinarily used by pedestrians;

2.22 **public pathway** means a multi-purpose thoroughfare accessible to the public which is improved by asphalt, concrete, brick, stone, shale, gravel or any other surface treatment whether or not it is located in an open space, and includes any bridge or structure with which it is contiguous;

2.23 **public transportation vehicle** means a vehicle which is being used by a passenger or passengers or which is being offered for hire for a passenger or passengers, including but not limited to:

- a) a school bus;
- b) a bus;
- c) a taxicab;
- d) a limousine; or
- e) other similar vehicles;

2.24 **public transportation vehicle shelter** means any structure with a roof designed to protect a passenger from the elements while waiting for a public transportation vehicle;

2.25 **seasonal multi-purpose pad** means a surface on which members of the public are permitted to engage in physical activities, whether on payment of a fee or not, and includes, but is not limited to:

- a) outdoor basketball courts;
- b) lakes;
- c) ponds;
- d) outdoor rinks; or
- e) other ice support infrastructure;

2.26 **skate park or bicycle park** means an area designed and intended specifically for the use of one or more of the following:

- a) skateboards;
- b) bicycles;
- c) in-line skates; or
- d) similar devices;

2.27 **sports field** means an area designed and intended for use in a specific sporting event, including spectator seating areas, and includes, but is not limited to:

- a) soccer pitches;
- b) football fields;
- c) rugby pitches;
- d) baseball diamonds;
- e) tennis courts; or
- f) other similar areas;

2.28 **smoke or smoking** means to inhale, exhale, burn, or have control over a lighted cigarette, cigar, pipe, hookah pipe, or other lighted or heated device or apparatus designed to burn, heat, or vaporize, tobacco, cannabis, any other weed, or any other substance for the purpose of inhaling or tasting its emissions;

2.29 **Town** means the Town of Okotoks, a municipal corporation in the Province of Alberta, and where the context so requires, means the area of land within the corporate boundaries thereof;

2.30 **violation tag** means a notice or tag in a form as approved by the CAO, issued by the Town, allowing a voluntary payment option of a fine established under this Bylaw;

2.31 **violation ticket** means a ticket issued pursuant to Part II of the *Provincial Offences Procedure Act*, and any amendments or regulations thereto;

2.32 **water playground** means a structure or collection of structures designed and intended for recreational use by children that sprays or releases water;

2.33 **workplace** means any enclosed area of a building, structure or area in which an employee performs the duties of their employment, whether or not the employee is employed by the proprietor of the building at which the employee works, or whether or not members of the public have access by right, or by express or implied invitation, and includes but is not limited to:

- a) a private residence during any hours a business is operated from the private residence;
- b) hotel or motel rooms;
- c) washrooms;
- d) corridors;
- e) lounges;
- f) eating areas;
- g) outdoor patios;
- h) reception areas;
- i) elevators;
- j) escalators;
- k) foyers;
- l) hallways;
- m) stairways;
- n) amenity areas;
- o) lobbies;
- p) laundry rooms;
- q) work vehicles;
- r) enclosed parking garages;
- s) pedways;
- t) bridges;
- u) connecting stairways; or
- v) other similar physically enclosed structures;

2.34 **work vehicle** means a vehicle owned or leased by an employer and used by employees during the course of employment.

3. **SMOKING**

- 3.1 No person shall smoke in a designated public place whether or not “no smoking” signs are posted or visible.
- 3.2 No person shall smoke within 10 metres of any child under the age of 18 who is not under their direct custody, care or control.
- 3.3 No proprietor or employer shall permit smoking in a designated public place whether or not “no smoking” signs are posted or visible.

- 3.4 No person shall smoke within the Town of Okotoks while in a motor vehicle when any minor is present in the vehicle regardless of whether or not the vehicle's windows or doors are open; or where it is moving or stationary, while on public property. (Bylaw 19-08)

4. DESIGNATED SMOKING AREAS

- 4.1 The CAO may designate a portion of any designated public place as a designated smoking area where:
- a) the restrictions of this bylaw reasonably create an undue hardship for any designated public place;
 - b) the presence of multiple public sidewalks or public pathways leading to a municipal building, public building or workplace create an unreasonable restriction;
 - c) there are no reasonable alternatives to establishing a designated smoking area;
 - d) the presence of a designated smoking area would not reasonably create a risk to the health and wellbeing of the general public; and
 - e) the designated smoking area does not exceed a 6-metre diameter.
- 4.2 An owner or operator of a designated public place may apply for a permit to designate an area of the premises as a designated smoking area.

5. SIGNS

- 5.1 The proprietor or employer of any designated public place shall ensure all signs prohibiting smoking are posted:
- a) conspicuously and clearly visible to any person entering a designated public place;
 - b) in a prominent location so as to be readily visible on or near any designated public place where there is no public entrance;
 - c) inside each designated public place in such numbers and locations as the proprietor or employer reasonably considers adequate to ensure that the public and employees are aware of the prohibition;
 - d) at each entrance, window that can be opened, or air intake to a designated public place at a height of not less than one meter and not more than 2.4 metres, as measured from the floor of the entrance;
 - e) at the entrance to any washroom that is not fully contained within a designated public place that has been signed in accordance with Section 5.1 (c)4.1(e); and
 - f) in the vicinity of any seating area where food or beverages are sold or consumed where the seating area is not fully contained within a designated public place that has been signed in accordance with Section 5.1 (c)4.1(e).

5.2 All posted signs prohibiting smoking must:

- a) be at least 20cm by 26cm and must have a surface area of not less than 520cm² when posted in a designated public place;
- b) be at least 10cm by 10cm and must have a surface area of not less than 100cm² when posted in a work vehicle;
- c) contain the graphic symbol set out in Schedule “B” of this Bylaw, which must depict the symbol in black or red on a contrasting background that makes the symbol clearly legible in whatever lighting is used in the designated public place; and
- d) contain the text “no smoking” in capital or lower case letters, which must:
 - i. be set out in a style and size that is clearly legible; and
 - ii. be set out on a contrasting background that makes the text clearly legible in whatever lighting is used in the designated public place.

5.3 A sign must be posted at or near every designated smoking area that:

- a) clearly identifies that smoking is permitted within a 6 metre diameter of that area,
- b) is clearly visible to persons at or near a designated smoking area,
- c) is at least 20cm by 26cm and must have a surface area of not less than 520cm² when posted in a designated public place;
- d) contains the graphic symbol set out in Schedule “C” of this Bylaw, which must
 - i. depict the symbol in green or black on a contrasting background that makes the symbol clearly legible in whatever lighting is used in the designated smoking area; and
 - ii. be of a size that makes it clearly discernible to the persons to whom it is directed, and
- e) contains the text “smoking permitted” in capital or lower case letters, which must
 - i. be set out in a style and size that is clearly legible; and
 - ii. be set out on a contrasting background that makes the text clearly legible in whatever lighting is used in the designated smoking area.

5.4 Notwithstanding that the graphic symbol as per section 5.2 c) and 5.3 d) 4.2 (c) is a cigarette, it shall be deemed to also include a reference to a lit:

- a) cigar;
- b) cigarette;
- c) pipe; or
- d) any other smoking equipment.

- 5.5 No person shall remove, alter, conceal, deface or destroy any sign posted pursuant to this bylaw

6. PENALTIES AND ENFORCEMENT

- 6.1 Any person who contravenes any provision of this Bylaw is guilty of an offence and is liable on summary conviction to a fine of not more than Ten Thousand (\$10,000) Dollars.
- 6.2 Where there is a specified penalty listed for an offence in Schedule "A" to this Bylaw, that amount is the minimum specified penalty for the offence.
- 6.3 In the case of an offence that is of a continuing nature, a contravention constitutes a separate offence in respect of each day or part of a day on which it continues.
- 6.4 The levying and payment of any fine provided in this Bylaw shall not relieve a person from the necessity of paying any fees, charges or costs from which that person is liable under the provisions of this Bylaw or any other Bylaw.
- 6.5 Any Peace Officer who has reasonable and probable grounds to believe that any person has contravened any provision of this Bylaw may issue and serve:
- a) a violation tag allowing a payment of the specified penalty to the Town; or
 - b) a violation ticket allowing payment according to the provisions of the *Provincial Offences Procedure Act*, Revised Statutes of Alberta 2000, Chapter P-34 and amendments thereto.
- 6.6 Service of a violation tag will be sufficient if it is:
- a) personally served; or
 - b) served by regular mail to the person's last known mailing address.
- 6.7 If a violation ticket is issued in respect to an offence, the violation ticket may:
- a) specify the fine amount established by this Bylaw for the offence; or
 - b) require a person to appear in Court without the alternative of making a voluntary payment.

6.8 A person who commits an offence may:

- a) if a violation ticket is issued in respect of the offence; and
- b) if the violation ticket specified the fine amount established by this Bylaw for the offence;

make a voluntary payment equal to the specified fine by delivering the violation ticket and the specified fine to the Provincial Courthouse specified on the violation ticket.

7. SEVERABILITY

- 7.1** It is the intention of Council that each separate provision of this Bylaw shall be deemed independent of all other provisions herein and it is the further intention of Council that if any provision of this Bylaw is declared invalid, all other provisions hereof shall remain valid and enforceable.

8. GENERAL

- 8.1** Any Person who contravenes any provision of this Bylaw by:

- a) doing any act or thing which the person is prohibited from doing; or
- b) failing to do any act or thing the person is required to do;

is guilty of an offence and any offence created pursuant to this Bylaw is a strict liability offence for the purposes of prosecution under this Bylaw.

- 8.2** Nothing in this Bylaw relieves a Person from complying with any provision of any federal or provincial law or regulation, other Bylaw, or any requirement of any lawful permit, order or license.

- 8.3** Words in the singular include the plural and words in the plural include the singular.

- 8.4** This bylaw is gender-neutral and, accordingly, any reference to one gender includes the other.

- 8.5** Schedule "A" shall form a part of this Bylaw and may, from time to time, be amended by Council.

- 8.6** No provision of this Bylaw or any action taken pursuant to any provision of this Bylaw shall restrict, limit, prevent or preclude the Town from pursuing any other remedy in relation to a premises as provided by the *Municipal Government Act*, or any other law of the Province of Alberta.

8.7 Bylaw 19-08 of the Town and any amendment(s) thereto are hereby repealed upon this Bylaw coming into effect.

This Bylaw shall come into full force and effect upon third and final reading.

READ A FIRST TIME this 11th day of June, 2018.

READ A SECOND TIME this 25th day of June, 2018.

READ A THIRD TIME AND PASSED this 25th day of June, 2018.

Mayor

Chief Administrative Officer

Schedule “A”

SECTION	OFFENCE	PENALTY	SECOND & SUBSEQUENT PENALTY
3.1	Smoke in designated public place	\$250.00	\$500.00
3.2	Person smoke within 10 metres of any child not under their direct custody, care or control	\$250.00	\$500.00
3.3	Permit smoking in designated public place	\$500.00	\$1000.00
3.4	Smoke with minor in motor vehicle in public place	\$250.00	\$500.00
4.2	Fail to post proper signage prohibiting smoking in a designated public place	\$500.00	\$1000.00
4.4	Remove, alter, conceal, deface or destroy smoking sign in a designated public place	\$500.00	\$1000.00

Schedule "B"
Examples of Smoking Not Permitted Signs



Schedule "C"
Examples of Smoking Permitted Signs

