

City of Brockville

Ontario, Canada



**Being a By-law of the Corporation of the
City of Brockville
To Regulate Smoking in Public Places**

**By-law No. 093-2003
Consolidated Copy**

Enacted by Council July 22, 2003

The Corporation of the City of Brockville

By-law Number 093-2003

Being a By-law of the Corporation of the City of Brockville To Regulate Smoking in Public Places

WHEREAS pursuant to the *Municipal Act*, 2001, Chapter 25, Section 115, the Council of every municipality may pass such by-laws and make such regulations to provide for the health, safety, and control of nuisance for the inhabitants of the municipality including prohibiting and regulating smoking of tobacco in public places and workplaces; and

WHEREAS it has been determined that secondhand smoke is a health hazard or discomfort for many inhabitants of the City of Brockville; and

WHEREAS it is desirable for the health, safety and welfare of the inhabitants of the City of Brockville to prohibit or regulate smoking, or both, in the City of Brockville as in this By-law more particularly set out;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE City of Brockville ENACTS AS FOLLOWS:

1. Definitions

In this by-law,

- (b) “amusement video arcade” means a place to which the public has access and which is equipped with four (4) or more mechanical or electronic games used solely for the entertainment or amusement of the players;
- (c) “arena” means any facility, premises or area within a building or part thereof, 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;
- (d) “ashtray” means a receptacle for tobacco ashes and for cigar and cigarette butts;
- (e) “bar” means any facility, premises or area within a building or part thereof approved by the Government of Ontario or such other person or authority in the Province as may have been specified, for the sales and service of alcohol for the public consumption on the premises; to which the sales and service of food is incidental to the sale and service of liquor;

for illustration purposes Appendix “A” includes a list of restaurants, pubs and bars;

“barbershop” or hairdressing establishment” means any facility, premises or area within a building or part thereof where hair is styled, cut, trimmed, treated or washed;

- (f) “bingo hall” means any facility, premises or area within a building or part thereof to which the general public has access and which is used for the purposes of operating bingo games as approved by the Government of the Province of Ontario or such other person or authority in the Province as may have been specified by the Lieutenant Governor in Council;
- (g) “children” means any person who is less than nineteen (19) years of age;
- (h) “City” means the City of Brockville
- (i) “common area” means any indoor area of a building that is open to the public for the purpose of access to a retail shop, establishment or office, and includes corridors, passageways, eating areas in corridors, passageways, public restrooms, public seating areas and public standing areas;
- (j) “corporation” means the Corporation of the City of Brockville;
- (k) “Council” means the City Council of the City of Brockville;
- (l) “designated smoking area” or “DSA” means any facility, premises or area within a building or part thereof as permitted by the by-law, determined by the proprietor, that may allow persons to smoke, and shall not be located in any area in which any person must wait to be seated or through which any person must pass to acquire access to the non-smoking areas or the public restroom;
- (m) “designated smoking room” or “DSR” means a room that meets all the requirements as set out in Schedule “A” to this by-law;
- (n) “enclosed” means indoors or inside a building, structure or vehicle composed of surfaces (floors, ceilings and walls) not readily permeable by outdoor air, such that there is no free exchange of air with the outdoors;
- (o) “includes” means “includes but not limited to” and the word “including” has a corresponding meaning;
- (p) “inspector” means a person appointed by Council as a municipal by-law enforcement officer to enforce this by-law;
- (q) “laundromat” means any facility, premises or area within a building or part thereof established for the purpose of providing the use of any washing machines, dryers or dry cleaning machines by the public and shall include any coin operated or self-service washing machine, dryer and dry cleaning machine service or establishment;
- (r) “Legion” means a municipal branch of the Royal Canadian Legion;
- (s) “local board” shall include but not be limited to, a police service board, museum board, public library board, cemetery board;
- (t) “municipal law enforcement officer” means a by-law enforcement officer of the City of Brockville;

- (u) “municipal offices, facilities, establishments and vehicles” shall mean any building or structure and vehicles, owned, leased or used by the City of Brockville and includes any municipally owned facility which is rented out by the City for a private gathering, not open to the general public;
- (v) “person” includes a corporation;
- (w) “place of public assembly” means a place to which members of the general public at large are admitted, but does not include a place of public assembly or other place of assembly when admittance is restricted to a private or personal assemblage of persons;
- (x) “private club” means a facility which meets the following criteria:
 - (a) the club must have a fixed membership list
 - (b) each member must pay an annual or periodic membership fee
 - (c) the club must have an executive/leadership that is elected by all the members on an annual or periodic basis
 - (d) the club must have a constitution and by-laws that provide the governing rules for the membership, executive, fees, etc
 - (e) the club is operated on a **not for profit** basis
 - (f) non-members cannot enter the premises to consume food or alcohol unless accompanied by a member
- (y) “proprietor” or “person in charge” means the person who ultimately controls, governs, or directs the activity carried out within the kinds of premises referred to in this by-law and includes the person actually in charge thereof;
- (z) “pub” means any facility, premises or area within a building or part thereof where food is prepared and offered for retail sale to the public for immediate consumption either on or off the premises and is approved by the Government of Ontario or such other person or authority in the Province as may have been specified, for the sales and service of alcohol for the public consumption on the premises, and also contains a bar as defined herein;

for illustration purposes Appendix “A” includes a list of restaurants, pubs and bars;

- (aa) “public building” means any enclosed building or group of buildings to which the public may have access;
- (bb) “public facility” means any hall, room or banquet area that is publicly owned and is rented for an event or function;
- (cc) “public place” means the whole or part of an indoor area to which the general public is invited or permitted access, and includes a school bus;
- (dd) “public portion” means any areas of any building to which the public may have access and excludes areas used as offices by members of staff;
- (ee) “public restroom” means any restroom or washroom to which the public has access;
- (ff) “reception area” means the public space used by an office or other establishment for the receiving or greeting of customers, clients or other persons dealing with such office or establishment;
- (gg) “restaurant” means any facility, premises or area within a building or part thereof where food is prepared and offered for retail sale to the public for immediate consumption either on or off the premises, but excludes a bar or pub as defined herein; and
 - for illustration purposes Appendix “A” includes a list of restaurants, pubs and bars;
- (hh) “retail shop” means any facility, premises or area within a building or part thereof, booth, stall or place where goods are exposed for sale or offered for sale by retail;
- (ii) “school bus” means a public vehicle licensed for the purpose of transporting children to and from school or to and from any activity, event or function associated therewith;
- (jj) “seating capacity” means the number of seats available for use by patrons or customers engaging in the immediate consumption of food while seated;
- (kk) “secondhand smoke” means;
 - (a) exhaled smoke
 - (b) smoke from an idling cigarette, cigar, pipe or any other tobacco using or constructed device;
- (ll) “service counter” means an indoor counter or desk where a person receives a service including, but not limited to, the exchange of money, sales, provision of information, transactions, advice or the transfer of money or goods;
- (mm) “service line” means an indoor line of two (2) 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, transactions, purchase transaction, provision of information or advice, and the transfer of money or goods;

- (nn) “shopping mall” means any enclosed building or group of buildings containing one or more retail shops;
- (oo) “slot machine facility” means any facility, premises or area within a building or part thereof to which the general public has access and which is used for the purposes of operating games of chance, or of mixed chance and skill, including slot machines and table games, or any other casino-style game, device or lottery scheme as approved by the Government of Ontario or such other person or authority in the Province as may have been specified by the Lieutenant Governor in Council, but does not include a bingo hall as herein defined;
- (pp) “smoke” or “smoking” means produce or production of second hand smoke, and includes the holding of lighted tobacco;
- (qq) “sports area” means an enclosed area used for public entertainment including, but not limited to the conduct of sports event;
- (rr) “taxi cab” means a motor vehicle having normal seating capacity of not more than six (6) persons plus the driver, kept or used for hire for the conveyance of passengers either wholly within the City of Brockville or to any point not more than five kilometers beyond its limits, but shall not include a public vehicle as defined in the Public Vehicles Act, RSO 1990, an ambulance, a funeral hearse or a limousine;

2. Public Places

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

- (b) the public portion of an amusement video arcade;
- (c) an arena;
- (d) the public portion of any barber shop or hairdressing establishment;
- (e) the common area of an apartment building;
- (f) an elevator, corridor, stairway, reception area, lobby, service counter, service line in any building to which the public has access;
- (g) a laundromat;
- (h) a municipal office, facility, vehicle and establishment owned or operated by the City of Brockville and by a local board of the City;
- (i) a place of public assembly;
- (j) a public building;
- (k) a public facility;
- (l) a public place;
- (m) the public portion of any retail shop;
- (n) a public washroom;

- (o) a reception area;
- (p) a school bus;
- (q) a common area of a shopping mall;
- (r) a sports area;
- (s) a shopping mall;
- (t) a taxi cab;
- (u) parks;
- (v) athletic fields;
- (w) Brock Trail.

for illustration purposes Appendix "B" includes a list of parks and athletic fields;

- 2.2 Upon passing of this by-law no person shall smoke in any public place that is designated in section 2.1 of this by-law, whether or not a No Smoking sign is posted, except as set out in Sections 3, 4 and 5.

3. General Prohibitions

- 3.1 **Bars** that permit smoking in their establishment shall not permit customers who are under the age of 18 years to enter the premises.
- 3.2 **Billiard places** shall only permit smoking in a Designated Smoking Room (DSR) that shall not occupy greater than 50% of the area occupied by billiard tables.
- 3.3 **Bingo Halls** shall only permit smoking in a Designated Smoking Room (DSR) that shall not occupy greater than 50% of the floor space open to the public.
- 3.4 **Bowling Alleys** effective August 18, 2003 shall only permit smoking in a Designated Smoking Area (DSA) that shall not occupy greater than 15% of floor space (not including bowling lanes). Notwithstanding the foregoing, effective July 1, 2004, smoking will not be permitted in bowling alleys.
- 3.5 **Designated Smoking Areas** within facilities, premises or area within a building or part thereof established by this by-law;
- (a) shall not be located in any area in which any person must wait to be seated or through which any person must pass to acquire access to the non-smoking areas or to a public restroom or service counter.
 - (b) despite subsection 3.5(a) hereof, the proprietor of an establishment which has a Designated Smoking Area shall ensure that at least 50 percent of the useable floor space which is not in the Designated Smoking Area;
 - 1. is indoors;
 - 2. is not located in an area temporarily closed for the service of food or drink, and

3. forms a contiguous unit separate from a Designated Smoking Area
 - (c) Where barriers or partitions exist, a proprietor may have more than one contiguous unit separate from a Designated Smoking Area;
 - (d) In calculating the useable floor space for the purposes of subsection (b) hereof;
 - one seat shall be allotted for each 1.12 square metres of useable seating area;
 - useable outdoor seating areas shall not be included in the calculation.
 - (e) Where a designated smoking area is permitted, the proprietor shall not permit children to enter the designated smoking area.

- 3.6 **Designated Smoking Rooms** within facilities, premises or area within a building or part thereof established by this by-law shall not be designated in an area through which any person must wait to be seated or through which any person must pass to acquire access to the non-smoking areas or the public restroom. Where a designated smoking room is permitted, the proprietor shall not permit children to enter the designated smoking room.
- 3.7 **Legions** shall be exempt from complying with smoking prohibitions for nine (9) months from the passing of this by-law after which smoking shall only be permitted in a Designated Smoking Room (DSR) that shall not occupy greater than 75% of the public floor area. Notwithstanding any of the foregoing, effective July 1, 2005, the percentage of public floor area that may be used for the purpose of smoking shall be reduced to 50%.
- 3.8 **Private clubs** when open to the public, or rented out or make space available to non-members for any special occasion including but not limited to, company banquets, weddings, retirement functions, bake sales, craft sales, dances, concerts, etcetera, where non-members are admitted, the facility is considered to be a place of public assembly and subject to Section 2 of this by-law.
- 3.9 **Pubs** shall, subject to the following regulations, effective August 18, 2003 only permit smoking in a Designated Smoking Area (DSA) that shall not occupy greater than 15% of the useable floor space.
- Notwithstanding any of the foregoing, effective July 1, 2004 smoking will not be permitted in Pubs.
- 3.10 **Restaurants** shall, subject to the following regulations, effective August 18, 2003 only permit smoking in a Designated Smoking Area (DSA) that shall not occupy greater than 15% of the useable floor space.
- Notwithstanding any of the foregoing, effective July 1, 2004 smoking will not be permitted in Restaurants.
- The City of Brockville encourages the use of "No Smoking" tent signs on all tables in non-smoking areas of restaurants.
- 3.11 **Slot Machine Facility** shall only permit smoking in a Designated Smoking Room (DSR) that shall not occupy greater than 50% of the area occupied by the slots.

4. Functions of a Private Nature

- 4.1 When restaurants or banquet halls are rented for a private gathering and not open to the general public, the proprietor or person in charge shall designate whether smoking is permitted. Should smoking be permitted there must be a designated smoke free area, the floor space to be determined by the Management in consultation with the lessee.

5. Exceptions

- 5.1 Billiard Halls shall be exempt from complying with the requirements for a Designated Smoking Room for nine (9) months from the passing of this by-law. They shall be permitted a designated smoking area of not more than 25% of the public floor area for up to nine (9) months from the passing of this by-law, after which they shall comply with the requirements for a Designated Smoking Room as specified in Section 3.
- 5.2 Bingo Halls shall be exempt from complying with the requirements for a Designated Smoking Room for twelve (12) months from the passing of this by-law. They shall be permitted a designated smoking area of not more than 50% of the public floor area for up to twelve (12) months from the passing of this by-law, after which they shall comply with the requirement for a Designated Smoking Room as specified in Section 3.

6. Signs

- 6.1 The proprietor or person in charge of any public place designated or regulated under this by-law shall ensure that a sufficient number of signs as prescribed in section 6.3 are conspicuously posted so as to clearly identify the areas in which smoking is prohibited.
- 6.2 In every area referred to in section 6.1, the proprietor or person in charge of such place shall ensure that, in addition to the requirements of section 6.1 hereof, signs are posted in accordance with section 6.1 at every entrance to such area, clearly indicating that smoking is prohibited in that area.
- 6.3 Every sign that is posted and maintained in accordance with section 6.1 and 6.2 of this by-law must comply with the following requirements:
- (1) The following graphic symbol – on a white background with the circle and the interdictory stroke in red – must be used;

No Smoking



Brockville By-law No. 093-2003

- (2) The words “No Smoking” must be included above the graphic symbol, and the words “Brockville By-law” must be included below the graphic symbol in letters and figures at least five percent of the diameter of the circle in the symbol;

- (3) In addition to the graphic symbol required by subsection 6.3(1), other appropriate symbols may be included, such as directional arrows.
 - (4) With respect to the size of the graphic symbol, the diameter of the circle in the symbol referred to subsection (2) hereof shall be not less than the number of centimetres prescribed below, based upon the maximum viewing distance in direct line of sight, as follows:
 - (a) viewing distance of 3.05 metres (10 feet) or less
- diameter 10.16 centimetres (4 inches);
 - (b) viewing distance of 6.10 metres (20 feet) or less
- diameter 15.24 centimetres (6 inches);
 - (c) viewing distance of 12.20 metres (40 feet) or less
- diameter 20.32 centimetres (8 inches);
 - (d) viewing distance of 24.40 metres (80 feet) or less
- diameter 30.48 centimetres (12 inches);
 - (e) viewing distance of 48.80 metres (160 feet) or less
- diameter 40.64 centimetres (16 inches);
 - (f) viewing distance of 73.20 metres (240 feet) or less
- diameter 60.96 centimetres (24 inches);
 - (g) in other public places where the maximum viewing distance, in direct line of sight, is less than three meters, the diameter of the circle in the graphic symbol required by subsection 6.3(1) must not be less than ten (10) centimeters.
 - (6) Despite the fact that the symbol referred to in Section 6.3(1) represents a cigarette, the provisions of this by-law that prohibit smoking in designated public places apply to all forms of smoking of tobacco, including cigarettes, cigars, pipes or other lighted smoking instruments.
 - (7) Deviations from the colour or content of the signs prescribed by this section that do not affect the substance or that are not calculated to mislead do not invalidate the signs maybe permitted. Such signs to be approved by the City Clerk and one other member of City Administration.
- 6.4 Where smoking is permitted in a Designated Smoking Room or a Designated Smoking Area in accordance with this By-law, signs must be conspicuously posted at all entrance ways to the smoking areas or rooms, so as to clearly identify the area in which smoking is permitted.

7. Duties

- 7.1 Every proprietor or other person in charge of a designated public place in which smoking is prohibited shall ensure compliance with the by-law.

7.2 No proprietor or other person in charge of a designated public place in which smoking is prohibited shall place ashtrays or cause or permit ashtrays to be placed or to remain in that designated public place.

7.3 Where a Designated Smoking Area or Designated Smoking Room is permitted under this by-law, no proprietor shall permit children in any Designated Smoking Area or Designated Smoking Room.

8. Offences

8.1 Any person who contravenes any of the provisions of this by-law is guilty of an offence.

8.2 Any person who hinders or obstructs a person lawfully carrying out the enforcement of this by-law is guilty of an offence.

9. Fines

9.1 Any person found to be in contravention of any of the provisions of this By-Law shall, upon conviction, be liable to a fine of not more than Five Thousand (\$5,000.00) Dollars as provided for in the Provincial Offences Act.

10. Enforcement

10.1 Municipal Law Enforcement Officers of the City of Brockville and members of the Brockville Police Service are appointed inspectors for the purpose of the By-law and may, in accordance with and subject to the Municipal Act, enter any Public Place for the purpose of determining whether there is compliance with the By-law and otherwise enforce the provisions of this By-law.

11. Validity

11.1 If there is a conflict between a section, clause or provision of any Act, regulation or by-law and a section, clause or provision of this by-law, the section, clause or provision that is the most restrictive of the smoking of tobacco prevails.

11.2 If any section, clause or provision of this By-law is for any reason declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of the By-law as a whole or part thereof, other than the section, clause or provision declared to be invalid. It is hereby declared that all the remaining sections, clauses or provisions of this By-law shall remain in full force and effect until repealed or amended, notwithstanding that one or more provisions shall have been declared to be invalid.

12. Repeal

By-law 206-93 is hereby repealed.

13. **Effective date**

This by-law shall come into force on the day of passing.

14. This by-law shall be mandatorily reviewed within five years from the original date of passing.

**GIVEN UNDER THE SEAL OF THE CORPORATION OF
THE CITY OF BROCKVILLE AND PASSED
THIS 22ND DAY OF JULY, 2003**

[signed: B.W. TeKamp]

Mayor

[signed: S. M. Seale]

City Clerk

Appendix "A" to By-law No. 093-2003

Restaurants

1000 Island Mall Food Court (✓)	Heritage Tea House (✓)	Pizza Pizzazz
1000 Island Restaurant	Highland Golf Club	Relax Restaurant
1000 Island Seafood	Jon's Restaurant (✓)	Relics & Thyme (Royal Brock)
241 Pizza	Kevin K's	RePete's Restaurant
Blue Hen Café (✓)	KFC (Kentucky Fried Chicken)	River Walk Mill
Boboli (✓)	King's Street Café	Robin's Donuts
Brockberry Café (✓)	Lee Garden	Subway (all locations) (✓)
	Luna Pizzeria Restaurant (✓)	Swiss Chalet Chicken & Ribs (✓)
Bud's on the Bay Patio (2 nd floor) (✓)	Mai Vietnamese Restaurant	Tait's (✓)
Buell Street Bistro (✓)	McDonald's Restaurants (✓) (all locations)	Tango Restaurant (✓)
Burger King (✓)	Milano's Pizzeria	Tata's House of Pasta & Pizza
	My Place/Robertson House	Tim Horton's (all locations) (✓)
Checker's Dinner	New Wave Restaurant	Tony's Restaurant
CJ's Banquet Hall	New York Restaurant, The	Zellers Restaurant (✓)
Dairy Queen (✓)	Pizza Pizza	
Diana Sweets Restaurant	Pizza Hut	
Golden Gate Restaurant (✓)		
Harvey's Restaurant		
Hepp's Lunch (✓) - designated as a non-smoking establishment by the proprietor.		

Pubs

Bud's Pub (main floor)	Isaac Brock, The	KeyStorm Pub
East Side Mario's	JukeBox	Kelsey's Restaurant

Bars

Christopher's	J.R. Baileys	Sudsy's
401 Sports Bar (Days Inn)	Commercial Hotel	Sunken' Sailor (Royal Brock)
Dark Side	Arthur's Gentleman's Club	Rockin' Roadies (Royal Brock)
Phoenix Bar & Eatery	Filling Station	Poor Man's Pub
The Brass Bracks		

Schedule "A"

Requirements of a Designated Smoking Room (DSR):

1. The room has been designated and set aside by the proprietor as a Designated Smoking Room.
2. The room has been registered by the proprietor with the City of Brockville as a Designated Smoking Room.
3. The room cannot exceed the maximum size permitted as specified under Section 3 and/or Section 6 of this By-law.
4. The room meets the requirements of the Ontario Building Code.
5. The room is not required by any person as a thoroughfare.
6. The room is posted with Smoking Signs on the walls at a height of 1.8 meters from the floor as set out in Section 6.
7. The room must be 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. The room must have all doors fitted with automatic closures.
9. The room must have an air supply and exhaust system separate from the air supply and exhaust system for the rest of the building.
10. The room must have an interlock between the air supply system and the exhaust system to ensure continuous operation of both systems.
11. The room must have at least three (3) metres horizontal distance between each exterior opening of the intake system and each exterior opening of the exhaust system and any other air intake or exterior opening of the building.
12. The room must be supplied with at least 30 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.
13. The room must have the air exhausted at a rate of at least 110% of the rate of supply.

Appendix "B" to By-law No. 093-2003

PARKS

Alwington Park
Armagh S. Price Park
Baker Park
Bi-Centennial Park
Bisley Park

Ball Bramshot Park
Brock Street Park
Brookview Park
Butterfield Park
Centeen Park
Centennial Park
Cunningham Park
Court House Green
Court House Square
Dana Street Park
Davison Park
Duke Street Park
George Street Park
Hardy Park
Henry Street Park
John Knox Park
Kensington Park East
Kensington Park West
Kingswood Park
Linden Park
Little Fulford Park
MacOdrum Park
Matthew Fraser Park
Museum
Perth Street Park
Pilgrim Park
Rotary Park & Splash Pad
Ruskin Crescent
Scace Avenue Park

ATHLETIC FIELDS

Brackinreid Ball Park
Fulford Athletic Grounds
Kelly Ball Park
Memorial Park
Goldie Christopher Ball Park
2 Kinsmen Slo-Pitch
Diamonds
5 Soccer Fields
Rotary Field House
Civitan Skatepark
Schofield Tennis Court
Butler's Creek Tennis Court