

PROTECTION

Chapter 570 SMOKING - CLEAN AIR

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Article 1 INTERPRETATION

570.1.1 Bus - defined

“bus” means a public transit bus or school bus.

570.1.2 Customer service area - defined

“customer service area” means that portion of a public place where patrons partake of the services, entertainment, or recreational facilities offered at the public place, but does not include restrooms, change rooms, reception areas, telephone booths, elevators, stairways, corridors, hallways, service lines, operational and administrative areas, or any areas to which the public is not generally admitted.

570.1.3 Elevators - escalators - stairways - corridors - defined

“elevator, escalator, stairway, corridor, hallway” means any enclosed elevator, escalator, stairway, corridor, or hallway to which the general public has access and includes elevators, stairways, corridors, and hallways in apartment buildings.

570.1.4 Enclosed - defined

“enclosed” means closed in by a roof or ceiling and four walls with an appropriate opening or openings for ingress and egress.

570.1.5 Gaming establishment - defined

“gaming establishment” means an enclosed building or structure 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 the Province of Ontario or such other person or authority in the Province as may have been specified by the Lieutenant Governor in Council.

570.1.6 Includes - defined

“includes” means “includes but not limited to” and the word “including” has a corresponding meaning.

570.1.7 Local board - defined

“local board” means a local board within the meaning of the *Municipal Affairs Act*.

570.1.8 Municipal office - defined

“municipal office” means an enclosed office of The Corporation of the City of Brantford or an enclosed office of a local board thereof.

570.1.9 Municipal workplace - defined

“municipal workplace” means any enclosed building or structure in which an employee of The Corporation of the City of Brantford or local board thereof works, and includes a shaft, tunnel, caisson or similar enclosed space.

570.1.10 Place of instruction - defined

“place of instruction” means enclosed premises used for instruction of members of the public, including enclosed premises at which recreational courses in arts, crafts or athletics are given, but does not include:

- (a) a school as defined in the *Education Act*;
- (b) a private vocational school as defined in the *Private Vocational Schools Act*;
- (c) a college of applied arts and technology, a university or any other institution of post-secondary education; or
- (d) a day nursery as defined in the *Day Nurseries Act*.

570.1.11 Proprietor - defined

“proprietor” means any person who has control of, is in charge of, or manages a public place.

570.1.12 Public hall - defined

“Public Hall” means enclosed premises to which Chapter 381 [City of Brantford Municipal Code] applies, but only in respect of a function or gathering to which the general public has access.

570.1.13 Public place - defined

“public place” means any of the following places:

- (a) all gaming establishments;
- (b) all recreation facilities;
- (c) all municipal workplaces;
- (d) all municipal offices;
- (e) all public restrooms;
- (f) all reception areas;
- (g) all public halls;
- (h) all elevators, escalators, stairways, corridors, and hallways;
- (i) all restaurants;
- (j) all retail stores;
- (k) all theatres;
- (l) all service lines;
- (m) all buses;
- (n) all places of instruction;
- (o) all taxicabs
- (p) all churches.

570.1.14 Public restroom - defined

“public restroom” means any enclosed restroom in any building or structure to which the general public has access, and includes any change room in any building or structure to which the general public has access.

570.1.15 Reception area - defined

“reception area” means the enclosed public space used by an office or other establishment for greeting or receiving clients, customers or other persons dealing with such office or establishment.

570.1.16 Recreational facility - defined

“recreational facility” means enclosed premises used by the public for athletic or other recreational activities, and includes enclosed bowling alleys, billiard halls, bingo halls, and indoor golf facilities.

570.1.17 Restaurant - defined

“restaurant” means any enclosed building or part of a building where food and/or drink are sold to the public for consumption on the premises, including a food court within an enclosed shopping mall, and for purposes of this definition “drink” includes alcoholic beverages.

570.1.18 Retail store - defined

“retail store” means an enclosed structure, or portion thereof within which goods, wares or merchandise are offered to the public for sale or rent.

570.1.19 Service line - defined

“service line” means any enclosed place within any building or structure where members of the public queue awaiting service of any kind, whether or not such service involves the exchange of money, including sales, provision of information, transactions, advice, or transfers of money or goods.

570.1.20 Smoke or smoking - defined

“smoke” or “smoking” includes the carrying of a lighted cigar, a cigarette, pipe or other lighted smoking equipment.

570.1.21 Theatre - defined

“theatre” means any enclosed place where film or a live stage performance is exhibited to the public and includes cinemas and concert halls, but does not include a drive-in theatre.

570.1.22 Interpretation - rules

This Chapter shall be interpreted and applied in accordance with the following:

- (a) nothing in this Chapter shall be interpreted to permit smoking in any location where the same is prohibited under the *Tobacco Control Act*, the *Smoking in the Workplace Act*, or the *Fire Protection and Prevention Act*;
- (b) depending on the activity taking place at any particular time, certain premises or portions thereof may be a public place at some times and not at other times, and different components of the definition of public place may apply to premises at some times and not at other times. The same location may therefore be subject to regulation under this Chapter at some times and not at other times, and the type of regulation imposed by this

Chapter may also change from time to time depending on the activity taking place;

- (c) different components of the definition of public place may be present within the same building or structure, and as components of one another;
- (d) public use or access to any premises shall be deemed to exist where the general public has access either by right or by invitation, express or implied, whether by payment of money or otherwise; and
- (e) Sections 570.1.22(b) and 570.1.22(c) are intended to assist in the recognition of circumstances where legitimate variations of use may result in different applications of the rules under this Chapter than might otherwise occur. It is intended that such recognition shall relate to substantive variations in which an actual distinction is apparent, and not to mere variations of form or nomenclature.
- (f) in determining whether or not a particular premises falls within one or more of the categories of public place defined in this Chapter, regard shall be had to the substance of the activities occurring on the premises and not the form or nomenclature attached to those activities by the Proprietor. In particular, where a club, fraternal society, service organization, association, fraternity, sorority, or other similar organization is established within any premises, such club, fraternal society, service organization, association, fraternity, sorority, or other similar organization shall be deemed to offer public use or access to its premises, services, entertainment, or recreational facilities in the following circumstances:
 - (i) where the general public has use or access to such premises, services, entertainment or recreational facilities either by right or by invitation, express or implied, whether by payment of money or otherwise,
 - (ii) where membership in the club, fraternal society, service organization, association, fraternity, sorority, or other similar organization is available to the general public,

- (iii) where the constitution, by-laws or other rules and regulations of the club, fraternal society, service organization, association, fraternity, sorority, or other similar organization purport to prohibit public use or access to such premises, services, entertainment or recreational facilities but such prohibition is not uniformly and consistently enforced,
 - (iv) where the constitution, by-laws or other rules and regulations of the club, fraternal society, service organization, association, fraternity, sorority, or other similar organization purport to contain restrictions on membership which would deny membership to the general public, but such restrictions are not uniformly and consistently enforced; or
 - (v) generally, where any restrictions on public use, access or membership are mere formalities.
- (g) where use or access to premises is restricted to:
- (i) either the male or female sex,
 - (ii) persons either above or below a certain age, or
 - (iii) a combination of (i) and (ii),

the existence of such restrictions shall not, in the absence of other factors, cause the premises to become a private place.

Article 2 PROHIBITION

570.2.1 Smoking - prohibited - general rule

No person shall smoke in any public place.

Article 3 COMPLIANCE

570.3.1 Proprietor - duty to ensure compliance

The proprietor of any public place shall ensure that all persons present at the public place comply with Article 2.

570.3.2 Proprietor - defence - reasonable efforts

In any proceeding for a breach of Section 570.3.1, it shall be a defence for a proprietor of the public place to show that he or she made reasonable efforts under the circumstances to ensure compliance with Article 2 by all persons present at the public place.

570.3.3 Smoking - preference - seating - reservations

Where a proprietor of a restaurant or an employee thereof:

- (a) directs patrons to a seating or waiting area; or
- (b) takes advance reservations by telephone,

the proprietor shall determine in advance of seating, the preference of the patron as between a smoking or non-smoking area and shall seat the patron in accordance with that preference. By-law 107-2002, 27 May, 2002.

**Article 4
INSPECTION****570.4.1 Inspectors - appointment**

Members of the City of Brantford Police Service and staff employed by the Brant County Health Unit, are appointed inspectors for the purpose of this Chapter and may, in accordance with and subject to the *Municipal Act, 2001*, enter any public place for the purpose of determining whether there is compliance with this Chapter and otherwise enforce the provisions of this Chapter. By-law 107-2002, 27 May, 2002; By-law 48-2004, 8 March, 2004.

**Article 5
EXCEPTIONS****570.5.1 Exception - general**

Article 2 shall not apply in respect of the public places, or components and portions thereof, at which and to the extent that smoking is permitted in this Article.

570.5.2 Deleted - By-law 107-2002, 27 May 2002**570.5.3 Exception - designated smoking areas**

Where a designated smoking area is established and operated in accordance with this Article, smoking is permitted in designated smoking areas in the following public places:

- (a) public halls;
- (b) restaurants;
- (c) gaming establishments;

- (d) bowling alleys;
- (e) billiard halls;
- (f) bingo halls.

570.5.4 Designated smoking areas - other public places

Designated smoking areas may only be established and operated in the varieties of public places listed in Section 570.5.3, and not in any other public places.

570.5.5 Designated smoking areas - regulations

The proprietors of the public places named in Section 570.5.3 may establish and operate one designated smoking area within the customer service area of the public place, provided the designated smoking area so established and operated fully complies with the following at all times:

- (a) the designated smoking area shall be fully enclosed;
- (b) the designated smoking area shall consist of one contiguous area located entirely within the customer service area of the public place;
- (c) the floor area of the designated smoking area shall not exceed 30% of the floor area of the entire customer service area of the public place in which such designated smoking area is allowed pursuant to Section 570.5.3;
- (d) the designated smoking area shall not be located in such a way as to require non-smokers to travel through it to gain access to common facilities including restrooms, waiting areas, reception areas, and exits;
- (e) the designated smoking area shall have a ventilation system which is separate from the remainder of the public place, and such ventilation system shall:
 - (i) provide mechanical ventilation to the exterior of the building in which the designated smoking area is situate,
 - (ii) be put into and maintained in continuous operation whenever the designated smoking area is occupied by one or more persons,
 - (iii) be designed, sized and installed so that either:

1. the rate of mechanical ventilation is not less than 30 litres per second for each person permitted in the designated smoking area pursuant to its allowable capacity determined in accordance with the Ontario Building Code, or,
 2. the rate of mechanical ventilation is variable with a base rate of not less than 15 litres per second which shall be increased automatically by mechanical or electronic sensors as necessary to ensure that the level of carbon dioxide in the designated smoking area does not exceed 1000 parts per million at any time,
- (f) either of the mechanical ventilation systems installed pursuant to Section 570.5.5(e) shall have been inspected upon initial installation and thereafter at least once in every twelve month period by a professional engineer who has certified the compliance of the mechanical ventilation system with the requirements of Section 570.5.5(e), and
- (g) a copy of the certificate of the professional engineer issued pursuant to Section 570.5.5(f) shall be forthwith filed with the Medical Officer of Health of the County of Brant.

570.5.6 Designated smoking area - conditions - failure to meet

Where an established designated smoking area ceases to meet any of the conditions set forth in Sections 570.5.5(a) through 570.5.5(g) or otherwise does not comply with the requirements of Sections 570.5.5(a) through 570.5.5(g) the exception provided in this Article shall cease to apply to such designated smoking area until compliance with Sections 570.5.5(a) through 570.5.5(g) is restored. Smoking shall not occur within such designated smoking area during such period of non-compliance.

**Article 6
ERECTION OF SIGNS**

570.6.1 Signs - posted - public places

The proprietors of public places shall post clearly visible and conspicuous signs in the form specified in this Article to delineate the area or areas where smoking is prohibited pursuant to this Chapter.

570.6.2 Deleted - By-law 107-2002, 27 May 2002**570.6.3 Signs - posted - restaurants**

Proprietors of restaurants shall place or cause to be placed one or more signs prohibiting smoking in the area of the restaurant where smoking is prohibited.

570.6.4 Signs - requirements - general

Every sign that prohibits smoking shall comply with the following requirements:

- (a) carry the text "No Smoking";
- (b) consist of two contrasting colours, or consist of lettering which contrasts with the background colour where the lettering is applied directly to a surface or is mounted on a clear panel; and
- (c) include the following text "City of Brantford Municipal Code Chapter 570 - Maximum Fine \$5,000.00" with lettering not less than 8 millimetres in height.

570.6.5 Graphic Symbol - indicate - no smoking

Despite Section 570.6.4, a graphic symbol in accordance with Section 570.6.6 may be used to indicate no smoking areas.

570.6.6 Graphic symbol - requirements

Every graphic symbol which indicates a no smoking area shall comply with the following requirements:

- (a) include the following text "City of Brantford Municipal Code Chapter 570 - Maximum Fine \$5,000.00" with lettering not less than 8 millimetres in height;
- (b) consist of a white background having:
 - (i) a circle and interdictory stroke in red upon the background; and
 - (ii) a cigarette, letters and figures in black, in accordance with the provisions of this Article,

- (c) consist of the following symbol, or a symbol which is substantially similar thereto:



CITY OF BRANTFORD MUNICIPAL CODE
CHAPTER 570
MAXIMUM FINE \$5,000

570.6.6 Graphic symbol - inclusive - any smoking equipment

Despite that the content of the graphic symbol within a sign which indicates a no smoking area contains a cigarette, the prohibition shall include a cigar, pipe, or any other lighted smoking equipment.

570.6.7 Signs - showing where smoking permitted

The proprietor of any public place at which a designated smoking area has been established pursuant to Article 5 may erect signs advertising and delineating the presence of the designated smoking area.

**Article 7
ENFORCEMENT**

570.7.1 Smoking - contrary to Chapter

Any person who smokes in contravention of this Chapter is guilty of an offence and upon conviction is liable to a fine as provided for in the *Provincial Offences Act*.

570.7.2 Proprietor - failing to perform duties

Any proprietor who fails or neglects to perform the duties imposed by this Chapter or otherwise contravenes this Chapter is guilty of an offence and upon conviction is liable to a fine as provided for in the *Provincial Offences Act*.

570.7.3 Proprietor - designated smoking area - non complying

Any Proprietor who establishes or maintains a designated smoking area which does not comply with all requirements of Article 5 of this Chapter is guilty of an offence and upon conviction is liable to a fine as provided for in the *Provincial Offences Act*.

Article 8
TRANSITIONAL

570.8.1 Designated smoking area - transitional provision

Where a proprietor operates a designated smoking area which does not comply with Section 570.5.5(c) of this Chapter, such operation shall not be deemed to be a contravention of this Chapter if the following conditions are satisfied:

- (a) the area of the designated smoking area complied with the requirements of the version of this Chapter which existed at one minute before midnight on May 31, 2002; and
- (b) a building permit to allow the construction of the designated smoking area was issued on or before the 27th day of May, 2002 and the designated smoking area was constructed in exact accordance with such permit.

570.8.2 Effective date

This Chapter, with the exception of Sections 570.1.5, 570.1.13(a) and 570.5.3(c), shall come into effect at midnight on May 31, 2002.

570.8.3 Effective date - gaming establishments

Sections 570.1.5, 570.1.13(a) and 570.5.3(c) shall come into effect at 12.01 a.m. on September 1, 2002. By-law 107-2002, 27 May, 2002.