

THE CORPORATION OF THE CITY OF DUNCAN
BYLAW NO. 2084, 2010

Being a Bylaw to regulate and prohibit smoking in certain areas of the City

WHEREAS it has been determined that second-hand tobacco smoke is a health hazard and nuisance for many residents and visitors in the City of Duncan;

AND WHEREAS it is desirable for the protection, promotion and preservation of the health of the residents of the City of Duncan for Council to regulate and prohibit smoking in certain areas of the City;

AND WHEREAS the City of Duncan has satisfied the preconditions to adopting this Bylaw set out in the *Public Health Bylaws Regulation, B.C. Reg. 42/2004*;

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

TABLE OF CONTENTS

SECTION 1 – INTERPRETATION

- 1.1 Title
- 1.2 Definitions
- 1.3 Table of Contents
- 1.4 Severability
- 1.5 Enforcement
- 1.6 Duty of Administration

SECTION 2 - HEALTH REGULATIONS

- 2.1 Ban on Smoking
- 2.2 Enforcement of ban on smoking
- 2.3 Signs banning Smoking
- 2.4 Sign Requirements
- 2.5 Conditions of Signs

SECTION 3 - OFFENCES AND PENALTIES AND ENFORCEMENT

- 3.1 Notice of violation
- 3.2 Service of notice
- 3.3 Offences under Bylaw
- 3.4 Continuing Offence
- 3.5 Fines for Offence

SECTION 4 - ENACTMENT

- 4.1 Force and Effect

SECTION 1 INTERPRETATION

Title

- 1.1 This Bylaw may be cited as the “City of Duncan Public Health Smoking Protection Bylaw No. 2084, 2010”.

Definitions

- 1.2 For the purposes of this Bylaw:

“building” or “structure” means any structure used or intended for supporting or sheltering any use of occupancy.

“Building Official” as appointed by the City of Duncan.

“bus shelter” means a building or other structure located on City property and constructed near a bus stop to provide seating and/or protection from the weather for the convenience of waiting passengers.

“business” means the carrying on of a commercial undertaking of any kind or nature or the providing of professional, personal or other services for the purpose of gain or profit.

“Bylaw Enforcement Officer” means any Peace Officer or other person designated by City Council.

“City” means The Corporation of The City of Duncan.

“common public area” means an area in a building generally available for common use by the public or by a building’s occupants and visitors, including, without restricting the generality of the foregoing, hallways, lobbies, stairways, elevators, restrooms, laundry rooms, amenity areas, cloakrooms, or food services establishments.

“Council” shall mean the Council of The Corporation of the City of Duncan.

“customer service area” means a partially enclosed or unenclosed area, including a balcony, patio, yard or sidewalk, that is part of or connected to or associated with the business or use in a building or premises that includes the service of food or alcoholic drinks to customers or other persons for consumption on site.

“health officer” means the Health Officer, appointed for the City under the *Public Health Act*.

“owner” includes the registered owner or purchaser under an agreement for sale, mortgagee in possession, agent, tenant, and any person in charge or control of a building, premises, land or vehicle.

“post” means the act of keeping continuously on display.

“Peace Officer” means any person defined as a Peace Officer by the Interpretation Act R.S.B.C. 1996, Chap. 238 and includes a Bylaw Enforcement Officer appointed by Council.

“Person” shall mean and include persons of either sex, association, partnerships, corporations, whether acting by himself or herself or by a servant, agent or employee.

“premises” means a portion of a building in respect of which a person has exclusive possession.

“Public Facility” includes, but is not limited to any outdoor gathering place under the jurisdiction of the City of Duncan including public parks, sports fields, playgrounds, and public sidewalks and roads.

“public transportation” means school bus, public bus or other form of public transportation and includes, without limiting the generality of the foregoing, taxicabs, limousines, or vehicles for hire, but does not include rentals of personal vehicles for private use.

“responsible person” means a person who owns, controls, manages, supervises or operates:

- (a) a business or other use which occupies all or substantially all of a building;
- (b) business or other use which occupies premises, including a customer service area;
- (c) common public areas;
- (d) a reception area; or
- (e) a vehicle for hire.

“Smoke” or “Smoking” means the inhaling, exhaling, burning or carrying of a lighted cigarette, cigar, pipe or other lighted smoking equipment burning tobacco or any other weed or substance, but does not include the carrying of lighted incense, smoking by actors as part of a stage or theatrical performance or as part of a traditional aboriginal cultural activity.

Table of Contents

- 1.3 The table of contents for this Bylaw is for convenient reference only, and is not for use in interpreting or enforcing this Bylaw.

Severability

- 1.4 A decision by a court of competent jurisdiction that any part of this Bylaw is illegal, void or unenforceable severs that part from this Bylaw and is not to affect the balance of this Bylaw.

Enforcement

- 1.5 The Bylaw Enforcement Officers, the Building Official or a Royal Canadian Mounted Police (RCMP) officer of the City of Duncan shall be responsible for administration of this Bylaw.

Duty of Administration

- 1.6 The intent of this Bylaw is to set standards in the general public interest, and not to impose a duty on the City, its employees, Bylaw Enforcement Officers or the RCMP to enforce its provisions and:
- (a) a failure to administer or enforce its provisions or the incomplete or inadequate administration or enforcement of its provisions is not to give rise to a cause of action in favour of any person; and
 - (b) the grant of any approval or permission or issuance of any permit is not a representation, warranty or statement of compliance with the Bylaw and the issuance thereof in error is not to give rise to a cause of action.

SECTION 2 HEALTH REGULATIONS

Ban on Smoking

- 2.1 No person shall smoke:
- (a) In a building, except in:
 - (i) a dwelling unit as defined in the City of Duncan Zoning Bylaw including any balcony or patio accessible there from and immediately adjacent thereto, including a dwelling unit in which an owner or occupier also carries on a business,
 - (ii) a hotel or motel room or suite designated for smoking by a responsible person, or
 - (iii) enclosed premises:
 - (A) that are not open to the public,
 - (B) where the only occupants are the owner or owners of the business carried on in the premises;
 - (b) in any outdoor gathering place under the jurisdiction of the City of Duncan including parks, sports fields, playgrounds, any public sidewalk or roadway.

- (c) In a vehicle for hire;
- (d) On public transit, including a school bus or passenger bus;
- (e) In an enclosed or partially enclosed shelter where people wait to board a vehicle for hire or public transit;
- (f) In a vehicle when any other occupant of the vehicle is under the age of 16 years;
- (g) Within seven and a half meters measured horizontally from any door or window that opens or any air intake;
- (h) In a customer services area;
- (i) Within seven and a half meters of the perimeter of a customer service area but this subsection does not apply to smoking in a dwelling unit as defined in subsection 2.1(a)(i) herein; or

Enforcement of ban on smoking

- 2.2 Except as permitted by section 2.1, a responsible person must not suffer or allow a person to smoke in any of the areas specified in section 2.1(a) through (i).

Signs banning smoking

- 2.3 A responsible person must display or ensure the display of a sign at all times:
- (a) at each entrance to a building or customer service area or to premises or in a vehicle for hire where section 2.1 prohibits smoking, stating:

“THIS IS A SMOKE FREE ENVIRONMENT – NO SMOKING”

and

- (b) On each exterior wall or door of a building where section 2.1 prohibits smoking, stating:

“SMOKING IS PROHIBITED WITHIN 7.5 METRES OF OPENINGS INTO THIS BUILDING INCLUDING DOORS AND WINDOWS THAT OPEN AND ANY AIR INTAKE”

Sign requirements

- 2.4 All signs referred to in section 2.3 will:
- (a) display the international symbol to designate “No Smoking” which symbol must occupy at least 25% of the size of the sign;

- (b) consist of at least two contrasting colours, except that if the lettering is on a clear panel, then the lettering must contrast to the colour of the background;
- (c) be at least 30 cm by 15 cm;
- (d) be clearly visible;
- (e) consist of lettering, whether upper case or lower case, that is not less than the following heights based upon the following maximum viewing distances in direct line of sight:

<u>Viewing Distance</u>	<u>Letter Height</u>
Up to 3 m	1 cm
Up to 6 m	2 cm
Up to 7.5 m	2.5 cm
Up to 12 m	4 cm

- (f) include in the text at the bottom of each sign:

“City of Duncan Public Health Smoking Protection Bylaw No 2084, 2010” in letters not less than 1.5 cm in height for signs with letter size of 2.5 cm.

Notwithstanding the fact that the symbol in section 2.4 is a cigarette, it shall be deemed to include a lighted cigar, pipe or other lighted smoking equipment burning tobacco or any other weed or substance.

Conditions of signs

- 2.5 A person must not remove, alter, conceal, deface or destroy any sign required under this Bylaw or cause any sign required under this Bylaw to be removed, altered, concealed, defaced or destroyed.

SECTION 3 OFFENCES AND PENALTIES AND ENFORCEMENT

Notice of Violation

- 3.1 A Building Official or a Bylaw Enforcement Officer, may give notice to any person ordering or directing that person to:
- (a) discontinue or refrain from proceeding with any work or using or occupying any land or building or doing anything that contravenes this Bylaw; or

- (b) carry out any work or do anything to bring any land or building into conformity with this Bylaw;

within the time specified in such notice.

Service of Notice

3.2 A Building Official, Bylaw Enforcement Officer or a RCMP, may serve a notice under this Bylaw:

- (a) by sending it by registered mail to the owner of the premises;
- (b) by handing it to the owner or occupier of the premises; or
- (c) if the notice refers to real property, by posting it on the premises.

Offences under Bylaw

3.3 A person who:

- (a) violates any provision of this Bylaw or does any act or thing which violates any provision of this Bylaw or allows any other person to do any act or thing which violates any provision of this Bylaw;
- (b) neglects to do or refrains from doing anything required to be done by any provision of this Bylaw; or
- (c) fails to comply or allows any other person to fail to comply, with an order, direction, or notice given under any provision of this Bylaw;

is guilty of an offence against this Bylaw and liable to the penalties imposed under sections 3.4 and 3.5 of this Bylaw. A person may be subject to the penalties imposed under section 3.3(a) or (b) above regardless of whether the person has been given a prior notice under section 3.1.

Continuing Offence

3.4 If an offence is a continuing offence, each day that the offence is continued constitutes a separate and distinct offence.

Fines for Offence

3.5 Every person who violates any of the provisions of this Bylaw, or who causes, suffers, or permits any act or thing to be done in contravention or in violation of any of the provisions of this Bylaw, is guilty of committing an offence against this Bylaw and is liable on summary conviction to a fine of not less than \$100.00 or to imprisonment, or to both a fine and imprisonment, not exceeding the maximum allowed by the *Offence Act*, as amended, and the cost of prosecution.

**SECTION 4
ENACTMENT**

Force and Effect

4.1 This Bylaw comes into force and takes effect on _____, 2010.

RECEIVED PROVINCIAL MINISTRY OF HEALTH CONSENT the _____ day of _____, 2010.

READ A FIRST TIME this _____ day of _____, 2010.

READ A SECOND TIME this _____ day of _____, 2010.

READ A THIRD TIME this _____ day of _____, 2010.

ADOPTED this _____ day of _____, 2010.

DEPOSITED WITH THE PROVINCIAL MINISTRY OF HEALTH the _____ day of _____, 2010.

Lynn Ketch
Director of Corporate Services

Phil Kent
Mayor