

**By-law No. 03-2007
of the Madawaska Maliseet First Nation Band**

**A By-law for the Minimization
of the Health Risk Caused by
Second-Hand Smoke to Non-Smokers**

WHEREAS it has been determined that second-hand tobacco smoke (exhaled smoke and the smoke from idling cigarettes, cigars and pipes) is a health hazard or discomfort for many non-smoking residents of the St. Basile Indian Reserve #10;

AND WHEREAS it is desirable in the interest of promoting the health, safety and welfare of all the residents of the St. Basile Indian Reserve #10 to prohibit or regulate smoking, or both, on the St. Basile Indian Reserve #10 as hereinafter set out;

AND WHEREAS the Council of the Madawaska Maliseet First Nation Band is empowered to make a by-law pursuant to paragraphs 81(1)(a), (q) and (r) of the Indian Act, R.S.C. 1985, c.I-5 in order to carry out such purposes, and desires to make a by-law to provide for the health of the residents of the St. Basile Indian Reserve #10, with respect to any matter arising out of or ancillary to the exercise of powers under section 81, and for the imposition of a penalty for a violation thereof;

NOW THEREFORE the Council of the Madawaska Maliseet First Nation Band hereby makes the following by-law:

Short Title

1. This by-law may be cited as the "Madawaska Maliseet First Nation Smoking By-Law".

Interpretation

2. In this by-law,

"Band" means the Madawaska Maliseet First Nation Band;

"Council" means the Council of the Madawaska Maliseet First Nation Band;

"Council Chambers" means the room in which the Council Members hold their duly convened Band Council meetings of the Madawaska Maliseet First Nation Band;

"employer" includes any person who as the owner, proprietor, manager, superintendent or overseer of any 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, and, where the context so requires, includes the Council;

"licensed gaming event" means a gaming activity authorized by the Madawaska Maliseet First Nation Gaming Commission which takes place inside a building or part thereof on the St. Basile Indian Reserve No. 10;

"Officer" means any police officer, police constable or other person charged with the duty to preserve and maintain the public peace, and a by-law officer or any other person appointed by the Council for the purpose of enforcing the provisions of this by-law;

"place of employment" means any enclosed area of a building or structure in which an employee works and includes any area used exclusively by employees, but does not include parts of structures or buildings otherwise provided for within this by-law;

"place of public assembly" means a building or portion thereof used for the gathering together of persons for purposes such as deliberation, holding a meeting or workshop, entertainment, recreation, business or amusement, including but not limited to places such as the Band Office, recreational centre, and similar facilities, but does not include a place where a private social function or a licensed gaming event is being held;

"private social function" means a specific social event for which an entire room or hall has been reserved, at which attendance is limited to people who have been specifically invited or designated by the sponsor, and at which the seating arrangements are under the control of the sponsor of the event and not of the proprietor of the room or hall, but does not include events which are held primarily for the purpose of business, sales or education;

"proprietor" means the owner, or his agent or representative of the premises referred to in this by-law, and includes any person in charge thereof or anyone who controls, governs or directs the activity carried on therein, and, where the context so requires, also includes the Council;

"Reserve" means the reserve(s) of the Madawaska Maliseet First Nation Band (and includes Reserve No.10 and any other land that has been added to reserve, including designated lands).

"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 restaurant;

"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, including but not limited to sales, provision of information, transactions or advice and transfers of money or goods;

"sign" or "signs" means a sign as prescribed by subsection 12(1) or 12(2);

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

Prohibitions

Retail Shop

3. No person shall smoke in any retail shop.
4. (1) The proprietor of every retail shop shall ensure that a sign or signs prohibiting smoking are conspicuously posted on or in the proximity of every entrance door so as to be clearly visible to every person entering the retail shop.

(2) The posting of any sign in accordance with this section does not excuse the proprietor from compliance with the requirements of section 6 of this by-law.

Medical Services Building

5. (1) No person shall smoke in any patient care area in a medical services building.

(2) Subject to subsection (3), no person shall smoke in any area of a medical services building to which members of the public have access.

(3) Smoking areas may be designated by the proprietor of the medical services building in an area to which the public has access provided that not more than fifty per cent (50%) of the floor area so referred to shall be so designated, and where so designated such area shall bear a sign or signs stating, "SMOKING IN THIS AREA ONLY".

(4) Where an area has been designated in accordance with subsection (3), smoking shall be permitted in such area.

(5) The proprietor of a medical services building shall ensure that a sign or signs are conspicuously posted so as to be clearly visible from all parts of the area to which the public has access.

(6) Notwithstanding the provisions of subsection 5, a patient may be permitted to smoke with the written permission of the personal physician of such patient.

Service Counters and Service Lines

6. (1) No person shall smoke at any service counter or service line while in attendance at that counter or while in that line, as the case may be.

(2) Every proprietor shall ensure that a sign stating, "NO SMOKING WHILE AT THE COUNTER" or "NO SMOKING WHILE IN LINE", as the case may be, referring to any service counter or service line described in subsection (1), is conspicuously posted.

Place of Employment

7. (1) Every place of employment on the reserve shall be designated as a no smoking area except as provided for in subsection (2).

(2) An employer may designate a part of the place of employment as a smoking area where smoking is permitted, provided that the area so designated:

(a) is identified by means of a sign or signs stating, "SMOKING IN THIS AREA ONLY"; and,

(b) does not exceed fifty per cent (50%) of the total floor area within the place of employment.

(3) No person shall smoke in any area other than in an area designated as a smoking area in accordance with subsection (2).

Places of Public Assembly

8. (1) Subject to subsection (2), no person shall smoke in an enclosed indoor area being used as a place of public assembly.

(2) The proprietor of a place of public assembly referred to in subsection (1), may designate an area not to exceed fifty per cent (50%) of the total floor area of such place of public assembly as a smoking area, and where so designated, such area shall bear a sign or signs stating, "SMOKING IN THIS AREA ONLY".

(3) Where an area has been designated in accordance with subsection (2), smoking shall be permitted in such area.

Licensed Gaming Event

9. (1) The proprietor of a building in which licensed gaming events take place shall ensure that, in addition to any other requirements of this by-law, twenty five per cent (25%) of the seating area is set aside as a no smoking area.

(2) The proprietor shall post signs in the area described in subsection (1) stating, "NO SMOKING".

Council Chambers

10. (1) No person shall smoke in the Council Chambers.

(2) The Band Administrator shall ensure that a sign or signs prohibiting smoking are conspicuously posted:

(a) on or in the proximity of every entrance door so as to be clearly visible to every person entering the Council Chambers; and,

(b) inside of the Council Chambers so as to be clearly visible from all parts of the Council Chambers to which the Councillors and the public have access.

Ventilation

11. (1) An Employer may designate, as a Designated Smoking Area, any area in a work space under the control of the employer, including a private office, if the area is:

- (a) enclosed by walls, a floor and a ceiling;
- (b) is clearly identified as a Designated Smoking Area by a Sign;
- (c) is a well ventilated area, having at least one window that opens to the outside; and
- (d) is equipped with ashtrays or non-combustible covered receptacles for the disposal of waste.

(2) The ventilation rate in a Designated Smoking Area shall be 32 cfm per person.

Signs and Symbols

12. (1) Where, under any section of this by-law, a sign is to be in accordance with this subsection, such sign shall:

- (a) carry the text, "NO SMOKING", in capital letters;
- (b) consist of two (2) contrasting colours, or if lettering is to be applied directly to a surface or to be mounted on a clear panel, the lettering shall contrast to the background colour;
- (c) with respect to size of lettering, be not less than a letter height of 2.54 cms;
- (d) include in the text at the bottom of each sign, "Madawaska Maliseet First Nation Band By-Law No.03 - 2007, MAXIMUM FINE \$1000", in letters not less than one half (1/2) of an inch in height for signs with letter size of one inch (1"), and not less than one-quarter (1/4) of the height of the letters on all other sizes of signs; and
- (e) be in both French and English.

(2) (a) Notwithstanding the provisions of subsection (1), the following graphic symbol may be used to indicate no smoking areas:

Madawaska Maliseet First Nation Band Council
By-Law No. 02-2006
MAXIMUM FINE \$1000

(b) Any such symbol shall be on a white background with the circle and the interdictory stroke in red, with a cigarette, letters and figures in black, and provided that the diameter of the circle is at least fifteen (15) cm.

Penalties

13. (1) Any person who contravenes any of the provisions of this by-law commits an offence and is liable on summary conviction to a fine of not more than \$1,000 or to imprisonment for a term of 30 days, or to both a fine and imprisonment.

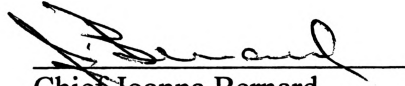
(2) Any proprietor who fails or neglects to perform the duties imposed on him by any of the provisions of this by-law commits an offence and is liable on summary conviction to a fine of not more than \$1,000 or to imprisonment for a term 30 days, or to both a fine and imprisonment.

Exemptions

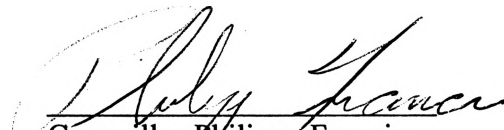
14. The Smoking of tobacco for Traditional, Ceremonial and Cultural activities and purposes is permitted in all buildings on the St. Basile Indian Reserve No. 10 and in all spaces open to the residents, non-residents, guests and visitors.

This By-Law is hereby made at a duly convened meeting of the Council of the Madawaska Maliseet First Nation this 26 day of March, 2007.

Voting in favour of the By-Law are the following members of the Council:


Chief Joanna Bernard


Councillor Patrick Wallace

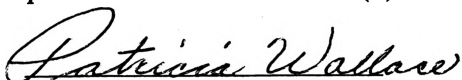

Councillor Philippe Francis

being the majority of those members of the Council of the First Nation present at the aforesaid meeting of the Council.

The quorum of the Council is 3 members.

Number of members of the Council present at the meeting: 3

I, **Joanna Bernard**, Chief of the Madawaska Maliseet First Nation, do hereby certify that a true copy of the foregoing By-Law was mailed to the Minister of Indian Affairs and Northern Development at the Amherst Atlantic Regional offices of the department pursuant to subsection 82(1) of the Indian Act, this 26 day of March, 2007.


Witness


Chief Joanna Bernard