

## ROSEAU RIVER ANISHINABE FIRST NATION

### SMOKING BY-LAW NO. 2004-01

A By-law of the Roseau River Anishinabe First Nation to regulate, control and prohibit smoking in enclosed public places.

WHEREAS Paragraph (a) of Section 81 of the *Indian Act*, R.S.C., ch. 1-5, empowers the Chief and Council of a Band to provide for the health of residents on the reserve and to prevent the spreading of contagious and infectious diseases;

AND WHEREAS, Paragraph (c) of Section 81(1) of the *Indian Act*, R.S.C., ch. 1-5, empowers the Chief and Council of a Band to make By-laws for the observance of law and order;

AND WHEREAS, Paragraph (q) of Section 81(1) of the *Indian Act*, R.S.C., ch. 1-5, empowers the Chief and Council of a Band to enact By-laws with respect to any matter arising out of or ancillary to the exercise of its powers;

NOW THEREFORE, The Council of the Roseau River Anishinabe First Nation hereby makes the following By-law:

#### SHORT TITLE

1. This by-law may be cited as the *Smoking By-law*.

#### PURPOSE

2. The purpose of this by-law is to promote the safety, health and welfare of people through:
  - (a) the adoption of the restrictions on the smoking or holding of lighted tobacco in certain places; and
  - (b) the imposition of additional provisions respecting the smoking or holding of lighted tobacco in certain enclosed public places.

## DEFINITIONS AND SCHEDULES

3.(1) In this By-law:

“accommodation units” means portions of hotels, motels or resorts set aside for guest living and sleeping quarters where:

- (i) the proprietor has asked the guest or occupant as to whether or not a room where smoking is permitted would be satisfactory,
- (ii) the guest or occupant has accepted the room with the knowledge that smoking has been and is permitted in the room, and
- (iii) the room is marked with a sign on the door advising that smoking has been and is permitted in the room;

“bingo establishment” means the portion of any enclosed place or premises for which a bingo license has been issued by the Roseau River Anishinabe First Nation;

“gaming facility” means an enclosed place or premises for which a gaming facility license has been issued;

“Council” means the Council of the Roseau River Anishinabe First Nation as defined in the *Indian Act*;

“employee” means a person, including a volunteer, who performs any work for or supplies any service to an employer, but does not include a person who is a member of a private club;

“employer” means a person who, as an owner, manager, contractor, superintendent, or overseer of any activity, business, work, trade, occupation or profession, has control over or direction of, or is indirectly or directly responsible for the employment of a person, whether paid or not;

“enclosed” means any premises, place, space, building or structure with at least three walls and a roof and includes the interior of a vehicle;

“enclosed public place” means all or any part of any building or other enclosed place that is open to the public or to which the public is customarily admitted or invited;

“enclosed workplace” means any workplace that is enclosed;

“hospital” includes a hospital, private hospital, psychiatric facility, nursing home, home for special care, charitable institution, or home for the aged or rest home, that provides acute or chronic care;

“officer” means any police officer, by-law enforcement officer or other person charged with the duty to preserve and maintain the public peace, and any person appointed by the Council for the purpose of maintaining law and order on the reserve;

“No-Smoking Sign” means the depiction of the International “No-Smoking” Symbol as set out in Schedule “A”;

“private club” means a place:

- (i) that is operated by an organization which:
  - 1. has a fixed membership list;
  - 2. is composed of members, each of whom must pay a periodic membership fee;
  - 3. is led by an executive group who are elected by all the members on a periodic basis;
  - 4. has by-laws or other governing documents that set out the rules for admission, conditions of membership, executive, meetings, fees, etc;
  - 5. is not for profit;
  - 6. has any profits and/or losses borne by its members; and
  - 7. operates for the benefit and enjoyment of its members.
- (ii) which non-members may not enter unless accompanied bona fide by a member as a guest of that member;

“proprietor” of a place includes any person who owns, occupies, operates, maintains or controls the place or directs the activity carried on within the place;

“restaurant” means an enclosed place or premises for which a public eating establishment license has been issued and includes any lounge or other area maintained or operated in conjunction therewith for which a restaurant permit has been issued, or an endorsement obtained, pursuant to Roseau River Anishinabe First Nation By-laws and regulations;

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

“tobacco” means tobacco in any form in which it is used or consumed, and includes snuff and raw leaf tobacco, but does not include any food, drug or device that contains nicotine to which the *Food and Drug Act (Canada)* applies.

(2) The following schedules, appendixes and forms are attached to, and for part of, this By-law:

Schedule “A” – International “no smoking” symbol.

Schedule “B” – Places included in the definition of “enclosed public place”.

### **SMOKING IN CERTAIN PLACES PROHIBITED**

4.(1) No person shall smoke or hold lighted tobacco in any enclosed public place where such activity is prohibited pursuant to this by-law.

(2) in addition to subsection (1), in the Roseau River Anishinabe First Nation, no person shall smoke or hold lighted tobacco in the following places:

(a) any enclosed portion of an office building, retail store, or other business or commercial establishment to which the public is ordinarily permitted access;

(b) a vehicle used for public transit or a commercial vehicle for hire that is used to transport members of the public;

(3) No proprietor of a place or premises to which section 4 applies:

(a) shall fail to post and display the No-Smoking Signs in the manner, size, and location prescribed in Schedule “A”;

(b) shall allow persons to smoke or hold lighted tobacco products in such place or premises.

### **DEFINITIONS – PUBLIC PLACE**

5.(1) For the purposes of this by-law, “public place” means, except where expressly provided in section 8 of this by-law, a place that is open to the public or to which the public has access by right, permission or invitation, express or implied, whether or not by payment of money or otherwise, and whether publicly or privately owned.

(2) For greater certainty, and without limiting the generality of section 4(1), a public place includes the places set out in Schedule “B” to this by-law.

(3) In the event of any uncertainty as to whether or not a particular place is a public place, the place in question shall be deemed to be a public place.

### **DEFINITIONS – WORKPLACE**

6.(1) For the purposes of this by-law “workplace” includes any place or vehicle where one or more employees work, including amenity areas, corridors, eating areas, elevators, entrances, escalators, exits, foyers, hallways, laundry rooms, lobbies, lounges, meeting rooms, reception areas, stairways and washrooms used by an employee.

(2) In the event that a place or premises is both a workplace and a public place within the meaning of this by-law, the provisions regarding public place shall govern.

### **DESIGNATIONS**

7. For the purposes of this by-law, all premises meeting the definition of “enclosed public place” herein or the definition of “enclosed workplace” herein shall be and are hereby designated as places in which smoking tobacco or holding lighted tobacco is prohibited.

### **EXEMPTIONS**

8.(1) The Council shall ensure that an area that is not less than 40% (percent) of the public areas of the following facilities shall be designated as smoking areas:

- (i) bingo halls;
- (ii) gaming facilities; and
- (iii) accommodation units.

(2) Public facilities and businesses when used for Wakes and Funerals.

(3) Any activity exclusive to traditional First Nations cultural or spiritual practices and purposes involving tobacco and smoke carried out within a Public area or business.

(4) Notwithstanding anything herein to the contrary, the prohibitions and regulations in this by-law shall not apply to private clubs during such time periods when such private clubs are closed to members of the public.

### **SMOKING IN PUBLIC PLACES**

9.(1) No person shall smoke in an enclosed public place within the Roseau River Anishinabe First Nation.

(2) No proprietor shall place an ashtray for the use of smokers in an enclosed public place within the Roseau River Anishinabe First Nation.

10.(1) No proprietor shall permit a person to smoke in an enclosed public place within the Roseau River Anishinabe First Nation.

(2) No proprietor shall permit a person to place an ashtray for the use of smokers in an enclosed public place within the Roseau River Anishinabe First Nation.

### **SMOKING IN WORKPLACES**

11.(1) No person shall smoke in an enclosed workplace within the Roseau River Anishinabe First Nation.

(2) No person shall place an ashtray for the use of smokers in an enclosed workplace within the Roseau River Anishinabe First Nation.

12.(1) No employer shall permit a person to smoke in an enclosed workplace within the Roseau River Anishinabe First Nations.

(2) No employer shall permit a person to place an ashtray for the use of smokers in an enclosed workplace within the Roseau River Anishinabe First Nation.

### **SIGNS**

13. The proprietor of an enclosed public place shall ensure that such enclosed public place is posted with –no smoking signs in a conspicuous manner at each entrance to the enclosed public place, to indicate that smoking is not permitted there. The employer of employees whose workplace is an enclosed workplace shall ensure that such enclosed workplace is posted with no-smoking signs in a conspicuous manner at each entrance to the enclosed workplace, to indicate that smoking is not permitted there.

### **SIGN REMOVAL, ALTERATION, ETC. PROHIBITED**

14. No person shall remove, cover up, mutilate, deface or alter any No-Smoking Sign displayed or posted pursuant to the By-law.

### **ENFORCEMENT**

**15.(1)** No person shall obstruct an Enforcement Officer who is acting pursuant to the authority of this By-law.

(2) No person shall knowingly made a false or misleading statement to an Enforcement Officer or produce a false document or thing to an Enforcement Officer who is acting pursuant to the authority of this By-law.

**16.** Where any person is acting in violation of any of the provisions of this By-law an Officer may direct that person to cease the action and the person so directed shall forthwith comply with that directive or risk being charged with an offence pursuant to this by-law.

#### **PENALTY**

**17.** A person who violates any provision of this by-law commits an offense and is liable on summary conviction to a fine not exceeding \$1,000.00 or to imprisonment for a term not exceeding thirty days, or to both.


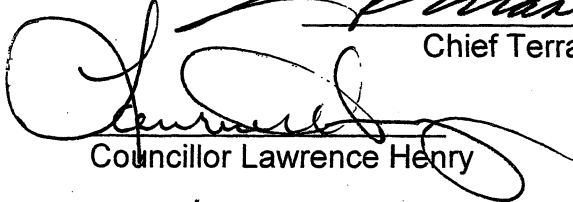
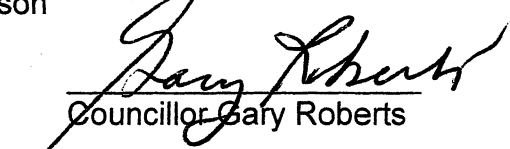

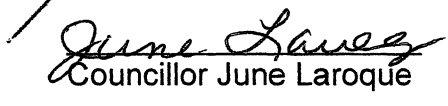
**18.** The Chief and Council reserve the right to revisit this issue and amend the By-law at a duly convened Chief and Council Meeting of the Roseau River Anishinabe First Nation.

**COMING INTO FORCE**

19. This By-law shall come into force on April 15, 2008.

THIS BY-LAW IS HEREBY made a duly convened meeting of the Band Council of the Roseau River Anishinabe First Nation this 25<sup>th</sup> day of March, 2008.

Quorum of the Council is three (3) members.

|   |  |
|---|--|
| <br>_____<br>Chief Terrance Nelson    |  |
| <br>_____<br>Councillor Lawrence Henry | <br>_____<br>Councillor Gary Roberts |
| <br>_____<br>Councillor Keith Henry    | <br>_____<br>Councillor June Laroque |

I, Terrance Nelson, Chief of the Roseau River Anishinabe 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 pursuant to subsection 82(1) of the *Indian Act*, this 25<sup>th</sup> day of March, 2008.

  
\_\_\_\_\_  
Witness

  
\_\_\_\_\_  
Chief Terrance Nelson



SCHEDULE "A"



## SCHEDULE "B"

### Places included in the definition of "enclosed public place"

- (1) Amusement arcades which includes places equipped with one (1) or more machines or devices that may be used for playing games solely for the entertainment and amusement of the players.
- (2) Arenas which include any buildings, location or premises comprised of, but not restricted to, a rink, floor or ice surface, spectator seating areas, dressing rooms and canteen facilities.
- (3) Bars which include any place where alcoholic beverages are purchased, consumed by, or given to and consumed by the public.
- (4) Common areas of building which include amenity areas, corridors, eating areas, elevators, entrances, escalators, exits, foyers, hallways, laundry rooms, lobbies, lounges, meeting rooms, parking garages, reception areas, stairways and washrooms.
- (5) Food courts which include any area within a shopping mall where food or drink is offered for sale, sold or made available to the public.
- (6) Places of public assembly, which include the whole or part of an indoor area to which the public has access by right or by invitation, express or implied, whether by payment of money or not, but does not include a place when used exclusively by one or more individuals for a private gathering or personal purpose.
- (7) Public facilities which include any hall, room or banquet area that is owned by the Roseau River Anishinabe First Nation and is rented for an event or function.
- (8) Public restrooms which include any restroom or washroom to which the public has access.
- (9) Public transit vehicles which include buses, school buses and passenger vehicles used for hire, including taxicabs and limousines.
- (10) Reception areas which include the public space used by an office or establishment for the receiving or greeting of customers, clients or other persons dealing with such office or establishment.
- (11) Recreational facilities which includes a place where a least one recreation activity is carried out.

(12) Restaurants which include places where food is purchased and consumed by or is given to and consumed by the public, including a food court in a shopping mall.

(13) Retail shops which include any building or part of a building, booth, stall or place where goods are exposed for sale or offered for sale by retail.

(14) School buses which includes a public vehicle licensed for the purpose of transporting children to and from school or to or from any activity, event or function associated therewith.

(15) Service counters which include an indoor counter 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.

(16) 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, provision of information or advice and transfers of money or goods.

(17) Sports facility which includes a place where at least one sport is carried out.