

**By-law No. 2010-01
of Nekaneet First Nation**

A By-law to Regulate Smoking

WHEREAS paragraphs 81(1)(a), (q) and (r) of the *Indian Act*, R.S.C. 1985, c.I-5, empowers the Council of a Band to enact a by-law to provide for the health of residents of Nekaneet First Nation, with respect to any matters arising out of or ancillary to the exercise of powers under section 81, and for the imposition of a penalty for a violation thereof;

AND WHEREAS the Council of Nekaneet First Nation did enact this By-law No. 2010-01 on the 26th July 2010 pursuant to paragraphs 81(a), (q) and (r) of the *Indian Act*;

NOW THEREFORE the Council of Nekaneet First Nation makes the following by-law:

Short Title

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

Purpose

2. The purpose of this by-law is to regulate smoking on Nekaneet First Nation to promote the health of residents and users of the Reserves.

Definition and Interpretation

3. In this by-law,
 - (a) **“arena”** means any building, location or premises comprised of, but not restricted to, a rink, floor or ice surface, spectator seating area, dressing rooms and canteen facilities, to which the public has access to view or participate in sporting events;
 - (b) **“Band”** means Nekaneet First Nation;
 - (c) **“bingo establishment”** means a place or portion of a place that is used for the purposes of conducting bingo which has been authorized by the Band;
 - (d) **“casino”** means a place or portion of a place that is used for the purposes of conducting a lottery scheme or gaming event other than a bingo establishment;
 - (e) **“common area”** means an enclosed area of a building that is opened to the general public for the purposes of access to a retail store, office or establishment or any enclosed area of a residential complex that is open to the general public, and includes corridors, passageways, stairways, lobbies, reception areas and public washrooms;

- (f) **“council”** means the Council of the Band;
- (g) **“designated smoking room”** means a room, where smoking is permitted, that is:
 - (i) enclosed by walls, a floor and a ceiling;
 - (ii) clearly identified as a designated smoking room;
 - (iii) equipped with ashtrays or non-combustible covered receptacles for the disposal of waste; and
 - (iv) ventilated in such a way that the air in the room is exhausted to the outside and not re-circulated within the facility or building.
- (h) **“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;
- (i) **“licensed establishment”** means a place licensed to serve alcoholic beverages;
- (j) **“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;
- (k) **“patio”** means an area outdoors that is not covered by a temporary or permanent roof, or if covered by a temporary or permanent roof, has one or more exterior openings that comprises at least 25% of the total perimeter of all patio walls and is open to the movement of outdoor air at all times;
- (l) **“person”** includes a corporation, partnership, limited partnership or unincorporated entity or association;
- (m) **“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, the Education and Recreation Complexes, Band Hall, church hall, and similar facilities, but for greater certainty, does not include a place where a private social function, bingo establishment or casino is being held;
- (n) **“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;

- (o) **“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 or an employer;
- (p) **“public area”** means the total area of a building or the total area of each separate room within a building if the building has more than one separate room, to which the public has access, excluding the areas of any public restroom, as measured by the total square footage of such area or each such area as the case may be;
- (q) **“public building”** means any enclosed building or group of buildings to which the public has access;
- (r) **“public facility”** means any hall, room, or banquet area to which the general public is invited or permitted access;
- (s) **“public place”** means the whole or part of an indoor area to which the general public is invited or permitted access and includes a public building, public facility, public restroom, retail stores and common areas;
- (t) **“public restroom”** means any restroom or washroom to which the public has access;
- (u) **“reception area”** means the public space used by an office or establishment for the receiving or greeting of customers, clients or the person dealing with such office or establishment;
- (v) **“reserve”** means all the reserves, set apart from time to time for the Band’s use and benefit, including, but not limited to, Reserves No.72, and 72A-1;
- (w) **“restaurant”** means an enclosed place or premises engaged in the sale and service of food or drink to the public for consumption on the premises;
- (x) **“retail store”** means any building or part of a building, booth, stall or place where goods and/or services are exposed for sale or offered for sale by retail;
- (y) **“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;

- (z) **“sign”** or **“signs”** means a sign as prescribed by this by-law;
- (aa) **“smoke”** or **“smoking”** means smoking tobacco and includes the carrying of a lighted cigarette, pipe or cigar or any other lighted smoking equipment;
- (bb) **“tavern”** means the establishment of an enclosed place or premises where a permit has been issued pursuant to *The Alcohol and Gaming Regulation Act, 1997*;
- (cc) **“tobacco”** means tobacco in any form in which it is consumed, and includes snuff and raw leaf tobacco;
- (dd) **“workplace”** means any enclosed area in a building or structure to which an employee is employed and includes private office area, washrooms, corridors, lounges, eating areas, reception areas, elevators, escalators, foyers, hallways, stairways, amenity areas, lobbies, laundry rooms and parking garages utilized by an employee.

Smoking Prohibitions

- 4. No person shall smoke in the following places:
 - (a) any enclosed public place, including any common areas;
 - (b) any part of a school building or grounds;
 - (c) any hospital, or health facility;
 - (d) any Band owned building, except for housing units owned by the Band;
 - (e) any building occupied by the Government of Saskatchewan or any of its Crown corporations, boards, commissions or other agencies;
 - (f) any building occupied by the Government of Canada or any of its Crown corporations, boards, commissions or other agencies;
 - (g) any enclosed portion of a workplace, retail store, or other business or commercial establishment to which the public is ordinarily permitted access;
 - (h) a video arcade;
 - (i) an enclosed amusement centre;
 - (j) a theatre;

- (k) any vehicle used for public transit or a commercial vehicle for hire that is used to transport members of the public;
 - (l) an indoor service line or service counter in any premise to which the public has access;
 - (m) a place of public assembly;
 - (n) a food court or restaurant which is not a licensed establishment;
 - (o) an arena; and
 - (p) a school bus.
5. No person shall smoke in any public place or workplace designated as “No Smoking”
6. For the purposes of complying with section 5, every proprietor of a place mentioned in section 5, shall ensure that:
- (a) no ashtrays, matches, lighters or other things designed to facilitate smoking are provided in the place;
 - (b) the signs required by this by-law are posted in accordance with this by-law.
7. If a person is contravening section 5, the proprietor shall:
- (a) request the person to immediately stop smoking or holding lighted tobacco and to immediately extinguish the lighted tobacco;
 - (b) inform the person that he or she was committing an offence; and
 - (c) refuse to provide that person with the good or service that the proprietor customarily provides in the public place until that person ceases contravening section 5.

Exceptions

8. Sections 5 and 7 of this by-law do not apply to the following, which are designated as exemptions for the purposes of this by-law:
- (a) a private residence or the private portion of a residence housing a home base business;
 - (b) guestrooms in hotels, motels, inns and bed and breakfast facilities if they have been designated as smoking rooms and the proprietor has informed the guest or occupant that smoking has been and is permitted in the room;

- (c) an enclosed public place while it is being used, with the consent of the proprietor, for traditional Aboriginal or cultural practices or ceremonies;
 - (d) a patio, which does not share open windows with a public place, or share open doors with the public place except when the doors are being opened by individuals to enter or exit the public patio; and
 - (e) a public building when used for a private social function or any other activity with the written permission of the Council;
9. Sections 5 and 7 shall not apply to an area that is not less than 20% but not more than 50% of the public area of the following, which area shall be designated as a smoking area, where smoking shall be permitted:
- (a) the public area in a building where a casino is housed;
 - (b) the public area in a building where a bingo establishment is housed;
 - (c) the public area in a building where a licensed establishment is located, including a restaurant, tavern or bar which is a licensed establishment; and
 - (d) the public area of a public facility when used for wakes and funerals;

provided that, notwithstanding anything to the contrary in this by-law, smoking shall not at any time be permitted in a public restroom.

10. For the purposes of complying with section 9, every proprietor shall ensure that:
- (a) smoking is permitted in the area required under section 9;
 - (b) the area in the building where smoking is to be permitted under section 9 must be a contiguous area in each separate location within the building; and
 - (c) the required signs, indicating smoking is permitted, are posted in accordance with this by-law.

Designated Smoking Room

11. Notwithstanding the provisions of section 10, a proprietor of a place mentioned in section 9 which must have an area where smoking is permitted, may dispense with that requirement if the place or premises is equipped with a designated smoking room, which is not less than 20%, and not more than 50% of the public area of the building.

Signs and Symbols

12. The proprietor of any public place or workplace designated or regulated under the terms of this by-law, shall ensure that a sufficient number of signs are conspicuously posted so as to clearly identify that smoking is either prohibited or permitted in accordance with this by-law.
13. In every place referred to in section 5, the proprietor shall ensure that signs are posted at every entrance to the building and internally, including at the entrance and inside each restroom and specifically in the area where food and/or beverages are purchased or consumed, at the sole discretion of the proprietor, as considered adequate to ensure compliance, indicating that smoking is prohibited.
14. In every place, which contains an area referred to in section 10 or a designated smoking room, the proprietor shall ensure that signs are posted at every entrance to the building and internally, including at the entrance of each separate public area and to a designated smoking room, indicating that smoking is permitted in public areas or in a designated smoking room.
15. Where a sign is to be posted in accordance with this by-law, such sign shall:
 - (a) in the case of smoking being prohibited, carry the text, "*NO SMOKING*", in capital letters;
 - (b) in the case of smoking being permitted, carry the text, "*SMOKING PERMITTED IN THIS AREA ONLY*", in capital letters;
 - (c) 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;
 - (d) with respect to size of lettering, be not less than a letter height of 2.54 centimetre; and
 - (e) include in the text at the bottom of each sign, "*Nekaneet By-Law No.2005/1, MAXIMUM FINE \$1,000*", in letters not less than one centimetre in height for signs with letter size of 2.54 centimetres, and not less than one-quarter (1/4) of the height of the letters on all other sizes of signs.
16. Notwithstanding the provisions of section 16, the following graphic symbol may be used to indicate no smoking areas:



Nekaneet First Nation Council
By-Law No. 2010-01
MAXIMUM FINE \$1,000 and/or 30 DAYS IMPRISONMENT

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) centimetres.

17. Notwithstanding the provisions of section 16, the following graphic symbol may be used to indicate a smoking area:



Nekaneet First Nation Band Council
By-Law No. 2010-01

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

18. Notwithstanding that the symbol referred to in sections 17 and 18 illustrates a cigarette, it shall include a lighted cigar, cigarette, pipe, cigarillos or any other lighted smoking instrument.
19. No person shall remove, alter, conceal, deface or destroy any sign posted pursuant to this by-law.

Offences

20. Any person or proprietor who contravenes any portion of this by-law applicable to them or under their control is guilty of an offence.
21. Any proprietor who fails to make a reasonable attempt to inform a contravening person of this by-law is guilty of an offence.
22. Any person or proprietor who hinders or obstructs a person lawfully carrying out the enforcement of this by-law is guilty of an offence.

Penalties

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

Enforcement

- 24. The provisions of this by-law respecting the designation of non-smoking and smoking areas, the posting of signs and the duties imposed on the proprietor of the facility shall be enforced by the proprietor and if necessary an Officer.
- 25. An Officer, upon producing proper identification, may, upon receiving the consent of the Council, at any reasonable time, enter any public place or workplace, that is not also a dwelling and make examination, investigation and inquiry for the purposes of determining compliance with this by-law.
- 26. No Officer may enter a workplace that is also a dwelling without consent of the occupant or without first obtaining and producing, the following
 - (a) the written consent of the Council; and
 - (b) a warrant.
- 27. If a provision of this by-law conflicts with an Act of the legislature of the Province of Saskatchewan or other regulation or any by-law of a municipality, the provisions of this by-law shall prevail.
- 28. If any section or sections of this by-law or parts thereof are found in any court of law to be illegal or beyond the power of Council to enact, such section or sections or part thereof shall be deemed to be severable and all other sections or parts of this by-law shall be deemed to be separate and independent therefrom and to be enacted as such.

This By-Law is hereby made at a duly convened meeting of the Council of Nekaneet First Nation this 26th day of July, 2010.

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

Alice Partridge
Chief

Christine May, J.D.
Councillor

Brandy Buffalo
Councillor

Councillor

Christine May
Councillor

being the majority of those members of the Council of the Band 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 was 4.

I, Alice Pahtayken, Chief of Nekaneet 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 DIAND Saskatchewan Regional offices of the department pursuant to subsection 82(1) of the *Indian Act*, this 26th day of July, 2010.

Witness

John Richard Lojek
Barrister and Solicitor

Chief

Alice Pahtayken