

Bylaw No. 18-05
Village of Breton

Smoking Bylaw

BYLAW NO. 18-05 OF THE VILLAGE OF BRETON IN THE PROVINCE OF ALBERTA, being a bylaw respecting smoke-free public places and workplaces.

WHEREAS health officials have determined that secondhand tobacco smoke (exhaled smoke and the smoke from idling cigarettes, cigars and pipes) and smoking is a health hazard or discomfort for many persons;

AND WHEREAS the Council of the Village of Breton deems it expedient and appropriate to limit the effects of secondhand smoke and smoking for residents and visitors to the municipality;

AND WHEREAS the Council deems it expedient and appropriate to regulate smoking and tobacco use in public places and workplaces within the Village of Breton; and in accordance with the Municipal Government Act R.S.A. 2000 c. M-26 as amended, has the authority to pass bylaws respecting:

- a) the safety, health and welfare of people and the protection of people and property;
- b) people, activities and things in, on or near a public place or place that is open to the public;
- c) businesses, business activities and persons engaged in business;

NOW THEREFORE, the Council of the Village of Breton, duly assembled, hereby enacts as follows:

SECTION 1 - SHORT TITLE

1.1 This Bylaw may be cited as the “Smoking Bylaw”.

SECTION 2 - DEFINITIONS

In this Bylaw:

2.1 “Ashtray” means a receptacle for tobacco ashes and for cigar and cigarette butts;

2.2 “Building” includes anything constructed or placed on, in, over or under land, whether permanent or temporary, into which a Person could enter;

2.3 “Council” means the Council of the Village of Breton;

2.4 “Designated Public Place” means a place prescribed in Section 3;

2.5 “Educational Institution” means a public or private school or post-secondary institution;

2.6 “Employee” includes a person who performs any work for or supplies any services to any Employer;

2.7 “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;

2.8 “Enclosed Walkway” means any pedway, bridge, hallway, connecting stairway, or similar structure that is physically enclosed;

2.9 “Grandstand” means an open air seating facility primarily but not exclusively limited to use in watching sporting events.

2.10 “Hotel” includes hotels, motels and inns.

2.11 “Municipal Building” means any of the buildings owned, leased, operated or occupied by the Village of Breton;

2.12 “Municipal Manager” means the chief administrative officer or his delegate;

2.13 “Municipal Tag” means a ticket or similar document issued by the Municipal pursuant to the Municipal Government Act R.S.A. 2000, c. M-26 as amended, and as referred to in Section 8 below;

2.14 “Municipality” means the Village of Breton;

2.15 “Outdoor Patio” means an area outside of a building intended for the consumption of food or beverages by patrons of a business providing such food or beverages, and includes;
a) a public premises where food or beverages are served that is not fully contained within an enclosed building; and
b) an outside extension of an eating or drinking establishment regardless of whether it is covered.

2.16 “Outdoor Public Event” means an outdoor market, festival, fair, display, exhibition, fundraiser, race, concert or parade requiring a municipal permit, and to which the public is invited or permitted to attend.

2.17 "Outdoor Public Place" means an outdoor beach, grandstand, park, playground, pool, skate or bicycle park, sports field, trails, and water Playground open to the public from time to time.

2.18 "Park" means public space controlled by the Municipality and set aside as a park to be used for rest, recreation, exercise, pleasure, amusement and enjoyment, and includes municipal trails;

2.19 "Peace Officer" means a person appointed as a Bylaw Enforcement Officer pursuant to the Municipal Government Act, to do any act or perform any duties under this bylaw and includes a member of the Royal Canadian Mounted Police, municipal police service and, when authorized, a Special Constable;

2.20 "Person" includes an individual, proprietorship, corporation or society;

2.21 "Playground" means a structure or collection of structures designed and intended for recreational use by children and, where mounted in a distinct material such as sand, rubber, gravel, or wood chips, includes the material in which those structures are mounted;

2.22 "Private Residence" means a self-contained living premise for domestic use of one or more persons and is provided with a separate private entrance from the exterior of a building or from a common hall, lobby or stairway;

a) a private residence is a workplace if a home business is operated from the residence and the owner of the business has employees who work in the residence but do not live in the residence; and

b) only that part of a private residence in which the business is operated is a workplace for the purposes of this bylaw.

2.23 "Proprietor" means the owner, or his agent or representative of a Designated Public Place referred to in this bylaw, and includes any person in charge thereof or anyone who controls, governs or directs the activity carried on therein, where applicable includes;

a) the person who ultimately controls, governs or directs the activity carried on within any premises referred to in this Bylaw and includes the person usually in charge thereof; and

b) the Board of Governors, Board of Trustees, or President of an Educational Institution;

2.24 "Public" means any person other than the owner, lessee, proprietor or employer of a particular building or place;

2.25 "Public Building" means any enclosed building or structure as defined in this bylaw to which the public can and does have access by right or by invitation, whether or not:

a) all classes of the public are invited;

b) the proprietor has the right to exclude any particular person;

c) payment, membership or the performance of some formality is required prior to access;

d) the public has access to the building only at certain times, or from time to time;

e) a member of the public has access only if they are a member or if they are accompanied by a member;

f) Subject to subsection g) and h) below, if the public has access only to a portion of the building or structure, the entire building or structure shall be deemed to be a Public Building;

Where a building includes a private residence, the following shall apply:

g) that portion of the building containing the private residence shall be deemed to not be a public building;

h) If a building contains two or more private residences, those common areas of the building including patios, pools, other recreational areas, washrooms, corridors, reception areas, elevators, escalators, foyers, hallways, stairways, lobbies, laundry rooms and enclosed parking garages shall be deemed to be a public building;

2.26 “Public Transportation Vehicle” means a school bus, a bus, a taxicab, limousine or other similar vehicle which is being used by a passenger or passengers for hire or which is being offered for hire;

2.27 “Public Transportation Vehicle Shelter” means any structure with a roof designed to protect a passenger from the elements while waiting for a school bus, a bus, a taxicab, limousine or other similar vehicles;

2.28 “Seasonal Multi-Purpose Pad” means a surface on which members of the public are permitted to skate or engage in other physical activities, whether on payment of a fee or not, and includes, public lakes, ponds, outdoor rinks with boards or other ice support infrastructure and outdoor basketball courts;

2.29 “Skate or Bicycle Park” means an area designed and intended specifically for the use of one or more of the following:

- a) skateboards
- b) bicycles
- c) inline skates, or
- d) similar devices

2.30 “Sign” means a sign as prescribed in Section 5;

2.31 “Sports Field” means an area designed and intended for use in a specific sporting event, including spectator seating areas, and includes a soccer pitch, football field, rugby pitch, baseball diamond, tennis court and similar areas.

2.32 “Smoke” or “Smoking” means to inhale, exhale, burn, or have control over a lighted cigarette, cigar, pipe, hookah pipe, or other lighted or heated device or apparatus designed to burn or heat tobacco, cannabis, shisha or any other weed or substance for the purpose of inhaling or tasting its emissions.

2.33 “Violation Ticket” means a ticket issued pursuant to Part II of the Provincial Offences Procedure Act, R.S.A. 2000 c. P-34, as amended and regulations thereunder, and as referred to in Section 9 of this bylaw;

2.34 "Water Playground" means a structure or collection of structures that spray or release water which is designed and intended for recreational use.

2.35 “Workplace” means any enclosed area of a building or structure in which an employee performs the duties of their employment, whether or not members of the public have access to the building, structure or area as of right or by express or implied invitation and includes hotel rooms, washrooms, corridors, lounges, eating areas, outdoor patios, reception areas, elevators, escalators, foyers, hallways, stairways, enclosed walkways, amenity areas, lobbies, laundry rooms, enclosed parking garages and work vehicles. Without limiting the generality of the foregoing:

- a) a place is a workplace whether or not the employee is employed by the proprietor of the premises at which the employee works;
- b) subject to clause c) below, if an employee works in any portion of a building for any period of time, the entire building shall be deemed to be a workplace;
- c) a private residence shall not be deemed to be a workplace but that part of a private residence in which a home business is operated is a workplace if the home business is operated from the residence and the owner of the business has employees who work in the residence but do not live in the residence; and
- d) a workplace includes any group living facility and all of its adjoining units, rooms and apartments.

2.36 “Window” means a window that can be opened to admit air.

2.37 “Work Vehicle” means a vehicle owned or leased by an employer and used by employees during the course of employment.

SECTION 3 - GENERAL PROVISIONS

3.1 Subject to Section 3.2, the following are Designated Public Places for the purposes of this bylaw:

- a) Public Buildings and those areas within 10m of an entrance or exit to a Public Building;
- b) Municipal Buildings and those areas within 10m of an entrance or exit to a Municipal Building;
- c) Public Transportation Vehicles and Public Transportation Vehicle Shelters;
- d) Outdoor Public Events as described in Section 2.16;
- e) Outdoor Public Places as described in Section 2.17; and
- f) Workplaces and those areas within 10m of an entrance or exit to a Workplace.

3.2 No person shall Smoke in a Designated Public Place, whether or not a “No Smoking” sign is posted or visible.

3.3 No proprietor or employer shall permit smoking in a Designated Public Place, whether or not a “No Smoking” sign is posted or visible.

SECTION 4 - ASHTRAYS

4.1 The proprietor and employer of every Designated Public Place shall ensure that no ashtrays are placed or allowed to remain in any Designated Public Place.

4.2 The proprietor and employer of every Designated Public Place shall, if employees or members of the public from time to time gather to smoke at a location outside the Designated Public Place, ensure that ashtrays are placed more than 10m from the entrance or exit of the Designated Public Place.

SECTION 5 - SIGNS

5.1 The proprietor and employer of every Designated Public Place shall ensure that signs are posted conspicuously and in accordance with this bylaw so as to clearly identify that smoking is prohibited.

5.2 The proprietor and employer of every Workplace, Public Building or Municipal Building shall ensure that:

- a) signs are posted at every entrance, window or air intake to the Workplace, Public Building, Municipal Building, public vehicles and work vehicles and in the case of a public place or workplace, at a height of not less than 1m and not more than 2.4m, as measured from the floor of the entrance;
- b) be posted inside each public place, workplace or public vehicle in such numbers and locations as the manager of the public place, workplace or public vehicle reasonably considers adequate to ensure that the public and employees are aware of the prohibition;
- c) signs are posted at the entrance to each washroom where said washroom is not fully contained within a Workplace, Public Building or Municipal Building that has been signed in accordance with Section 5.2(a);
- d) signs are posted in the vicinity of any seating area where food or beverages are sold or consumed where said seating area is not fully contained within a Workplace, Public Building or Municipal Building that has been signed in accordance with Section 5.2(a);
- e) Where there is no public entrance to a place or premises mentioned in Section 3, signs prohibiting smoking shall be posted in a prominent location on or near the premises in such manner as to be readily visible to any member of the public using such place or premises.

5.3 The signs referred to in this bylaw shall:

- a) include the following graphic symbol to indicate the areas where smoking is prohibited pursuant to this bylaw: It must depict the symbol in black or red on a contrasting background that makes the symbol clearly legible in whatever lighting is used in the public place, workplace or public vehicle.
- b) contain the text “no smoking” in capital or lower case letters, which must be set out in a style and size that is clearly legible and be set out on a contrasting background that makes the text clearly legible in whatever lighting is used in the public place, workplace or public vehicle.

5.4 Size of Signs

- a) A sign posted under this Bylaw in a public place or a workplace other than a work vehicle must be at least 20 cm by 26 cm and must have a surface area of not less than 520 cm².
- b) A sign posted under the Bylaw in a public vehicle or work vehicle must be at least 10 cm by 10 cm and must have a surface area of not less than 100 cm².

5.5 Notwithstanding that the graphic symbol in Subsection 5.3 is a cigarette, it shall be deemed to include a reference to a lighted cigar, cigarette, pipe or other lighted smoking or heated equipment.

5.6 No person shall remove, alter, conceal, deface or destroy any sign posted pursuant to this bylaw.

SECTION 6 – PENALTIES

6.1 Any corporation which fails or neglects to perform the duties or requirements imposed upon it under the provisions of this bylaw is guilty of an offence and liable on summary conviction to a fine not exceeding ten thousand dollars (\$10,000).

6.2 Any individual, other than a corporation, who contravenes this bylaw is guilty of an offence and liable on summary conviction to a fine not exceeding one thousand dollars (\$1,000) and for a second subsequent offence, to a fine of not more than five thousand (\$5,000) dollars.

6.3 The specified fine for an offence committed pursuant to this bylaw is established at:

- a) Individual \$ 250
- b) Corporations \$ 1,000

6.4 In the case of an offence that is of a continuing nature, a contravention shall constitute a separate offence in respect of each day, or part of a day, on which that offence continues.

SECTION 7 - MUNICIPAL TAGS

7.1 A Peace Officer is hereby authorized and empowered to issue a municipal tag to any person who the Peace Officer has reasonable and probable grounds to believe has contravened any provision of this bylaw.

7.2 A municipal tag may be issued to such person:

- a) either personally;
- b) by mailing a copy to such person at his last known post office address, or
- c) if upon a corporation, by serving the municipal tag by mailing a copy by registered mail, or serving a person who is the agent, representative, or a person in charge of the Designated Public Place.

7.3 The municipal tag shall be in a form approved by the Municipal Manager and shall state:

- a) the name of the person;
- b) the offence;
- c) the municipal or legal description of the land on or near where the offence took place;
- d) the appropriate penalty for the offence as specified in Section 6 of this bylaw;
- e) that the penalty shall be paid within 30 days of the issuance of the municipal tag;
- f) any other information as may be required by the Municipal Manager.

7.4 Where a municipal tag is issued pursuant to Section 7 of this bylaw, the person to whom the municipal tag is issued may, in lieu of being prosecuted for the offence, pay the penalty to the Municipality the penalty specified within the time period indicated on the municipal tag.

7.5 Nothing in this bylaw shall prevent a Peace Officer from immediately issuing a violation ticket.

SECTION 8 - VIOLATION TICKET

8.1 In those cases where a municipal tag has been issued and if the penalty specified on a municipal tag has not been paid within the prescribed time, then a Peace Officer is hereby authorized and empowered to issue a violation ticket pursuant to Part II of the Provincial Offences Procedure Act, R.S.A. 2000, c. P-34 as amended.

8.2 Notwithstanding Section 7 of this bylaw, a Peace Officer is hereby authorized and empowered to immediately issue a violation ticket pursuant to Part II of the Provincial Offences Procedure Act, R.S.A. 2000, c. P-34 as amended, to any person who the Peace Officer has reasonable grounds to believe has contravened any provision of this bylaw.

SECTION 9 - SEVERABILITY

9.1 If any section or sections of this bylaw 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 parts thereof shall be deemed to be severable and all other sections or parts of this bylaw shall be deemed to be separate and independent therefrom and to be enacted as such.

SECTION 10 – ENFORCEMENT

10.1 For the enforcement of this bylaw, a Peace Officer, upon producing proper identification, may at all reasonable hours, enter any Designated Public Place and may make examinations, investigations and inquiries.

10.2 A Peace Officer is a Designated Officer for the purposes of ss. 542 - 545 of the Municipal Government Act, R.S.A. 2000, c.M-26 as amended.

SECTION 11 - EFFECTIVE DATE

11.1 This bylaw shall come into effect upon the date that this bylaw receives third and final reading.

READ a first time this 10th day of October, 2018.

READ a second time this 10th day of October, 2018.

READ a third and final time this 10th day of October, 2018.

Original Signed by Mayor Power
Original Signed by T. Molenkamp, C.A.O.