

**BROKENHEAD OJIBWAY NATION
(BON)**

By-Law No. 001-2007



A BY-LAW TO REGULATE SMOKING WITHIN BON LANDS

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1.0 TITLE

This By-Law shall be cited as the "Brokenhead Ojibway Nation Smoking By-Law No. 001-2006".

2.0 INTERPRETATION

All the provisions in this By-Law form part of this By-Law.

2.1 As an exercise of self-government, the Brokenhead Ojibway Nation Council has regulated smoking and tobacco use within their lands for health purposes since 1986 and continues to be of the view that regulating smoking and tobacco use is in the interest of promoting health, safety and wellbeing, since tobacco smoke is a health hazard in public places, enclosed public places and the work space.

2.2 The Brokenhead Ojibway Nation Council has authority to make a By-Law under Paragraphs 81(1) (a), (c), (h), (p), (q) and (r) of the *Indian Act* R.S.C. 1985 c.I-5, in order to carry out such purposes, and desires to enact a By-Law not inconsistent with such Act on the Brokenhead Ojibway Indian Reserve No. 4, and other Brokenhead Ojibway Indian Reserves as follows:

- (a) to provide for the health of residents on the reserve and to prevent the spreading of contagious and infectious diseases;
- (c) the observance of law and order;
- (h) the regulation of the construction, repair and use of buildings, whether owned by the band or by individual members of the band;
- (p) the removal and punishment of persons trespassing on the reserve or frequenting the reserve for prohibited purposes;
- (q) with respect to any matter arising out of or ancillary to the exercise of powers under this section; and
- (r) the imposition on summary conviction of a fine not exceeding one thousand dollars or imprisonment for a term not exceeding thirty days, or both, for violation of a By-Law made under this section.

2.3 The Brokenhead Ojibway Nation Council enact this law utilizing the Indian Act R.S.C. 1985 c.I-5 By-Law authority, in the interim until such time as the Brokenhead Ojibway Nation deem necessary, to otherwise regulate smoking.

3.0 PURPOSE

This By-Law is to regulate smoking on the Brokenhead Ojibway Nation Reserve No. 4 and other Brokenhead Ojibway Nation reserve lands.

4.0 DEFINITIONS

In this By-Law:

“Band member” means a registered member of the Brokenhead Ojibway Nation, being a Band of Indians within the meaning of the Indian Act, R.S.C. 1985, c. I-5;

“By-Law Officer” means a person duly appointed by the Brokenhead Ojibway Nation Council;

“Common areas” means an enclosed area of a building that is open to the general public for the purposes of access of a retail store, office or other business establishment or any enclosed area of a residential complex that is open to the members of the public, and includes corridors, passageways, stairways, lobbies, reception areas, waiting areas and public washrooms;

“Council” means the duly elected Chief and Councillors of the Brokenhead Ojibway Nation;

“Designated Smoking Area” means a room or area marked as a designated area and identifiable by a sign indicating that the smoking room or area conforms to the provisions where smoking is permitted, that is:

- (a) enclosed by walls, a floor and a ceiling;
- (b) clearly identified as a designated smoking room or area;
- (c) equipped with ashtrays or non-combustible covered receptacles for the disposal of waste; and
- (d) ventilated to meet standards for quality air circulation.;

“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;

- (a) all or any part of any building or other enclosed place that is open to the members of the public or to which the public is customarily admitted or invited;
- (b) all or any part of a building that is generally open to and accessible by the general public or generally available for common use by the occupants including, but not limited to, hallways, foyers, stairways, stairwells, elevators, laundry rooms, washrooms, and amenity areas; and

- (c) A motor vehicle used for the public transit or a commercial transportation vehicle for hire that is used to transport members of the general public including a bus, taxi or limousine.

“Member” means a member of the Brokenhead Ojibway Nation;

“Licensed Premises” means licensed premises as defined in the *Liquor Control Act (Manitoba)*, C.C.S.M. c. L160;

“Person” means any individual whether or not s/he is a Member;

“Private Social Function” means a specific event for which an entire room has been reserved, at which the attendance is limited to people who have been specifically invited or designated by the special event sponsor, and at which the seating arrangements are under the control of the special event sponsor and not of the proprietor of the room, but does not include events which are held primarily for the purposes of business, sales or education;

“Proprietor” means

- (a) any person who is the owner or the agent or representative of the public place or premises, and includes a person who controls, manages, governs or directs any activity carried on within the place or premises, and includes a person who is actually in charge of the place or premises at any particular time;
- (b) any owner or operator of an enclosed public place, and includes a person who carries on or manages the activities carried on in an enclosed public place and includes any person in a supervisory position at any time;
- (c) any person who is the registered owner of the vehicle or the operator in charge of the vehicle at any particular time; and
- (d) the owner or the agent of the owner or representative of the place or premises defined in this By-Law and includes any person in charge of the place or premises or anyone who controls, governs or directs the activity carried on and where the which may also include the Brokenhead Ojibway Nation Council or their designate or agent.;

“Public Place” means any place or premises that are open to the general 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, including a public building, public washroom, retail stores, common areas and the interior of public vehicles;

“Reception Area” means the public place used by an office or establishment for the receiving and greeting of customers, guests, clients or the person dealing with such office or establishment;

“Reserve” means the Brokenhead Ojibway Nation No.4 lands;

“Resolution” means a motion or resolution passed and approved by a majority of the Brokenhead Ojibway Nation Council present at a duly convened meeting;

“School” means an educational institution, including primary, secondary and post-secondary, including vocational, trade institutions and the space used to deliver employment and education training programs;

“Smoking” means an act of inhaling or exhaling tobacco smoke from a cigarette, cigar or pipe, and otherwise holding and having control of a lighted cigarette, cigar, pipe or other equipment used for smoking tobacco;

“Smoke” means any form of tobacco which includes cigarette, cigar, pipe, snuff, raw leaf tobacco and for greater certainty, does not include the smoke created by any activity carried on exclusively for traditional First Nation cultural or spiritual purposes regardless of the substance used that causes the smoke;

“Ventilation standards” means ventilated in accordance with ANSI/ASHRAE Standard 62.1-2004, *Ventilation for Acceptable Indoor Air Quality*;

“Workplace” means any place, premises, space, building or structure where one or more employees work and includes private offices, washrooms, corridors, lounges, eating areas, reception areas, waiting areas, elevators, escalators, foyers, hallways, stairway, amenity areas, lobbies, laundry rooms, and parking garages utilized by an employee.

5.0 APPLICATION OF BY-LAW

This By-Law shall apply to;

- 5.1 Brokenhead Ojibway Nation Reserve No. 4 and other Brokenhead Ojibway Nation reserve lands.
- 5.2 All persons, residents, members, general public, visitors, business proprietors, employees, on the Brokenhead Ojibway Nation Reserve lands.
- 5.3 Any enclosed public place, public place or workplace on the Brokenhead Ojibway First Nation reserve lands.

6.0 SMOKING NOT PERMITTED:

- 6.1 No person shall smoke in any public place, enclosed public place or workplace that contains a sign for "No Smoking".
- 6.2 No person shall smoke in any public place, enclosed public place or workplace, including in;
- (a) any enclosed public place, including any common areas;
 - (b) any part of a school building or school grounds;
 - (c) any hospital, health facility or health authority;
 - (d) any day care facility;
 - (e) any Band owned building, except for housing units owned by the Band, unless otherwise designated as smoking areas;
 - (f) any building occupied by the Government of Canada or any of its Crown corporations, boards, commissions or other agencies;
 - (g) any building occupied by the Government of Manitoba or any of its Crown corporations, boards, commissions or other agencies;
 - (h) any enclosed portion of a workplace, retail store, or other business or commercial establishment to which the public is ordinarily permitted access;
 - (i) a video arcade;
 - (j) an enclosed amusement center;
 - (k) a theatre;
 - (l) an indoor service line or service counter in any premises to which the public has access;
 - (m) a food court or restaurant establishment;
 - (n) an arena;
 - (o) a school bus;
 - (p) a vehicle owned by the Brokenhead Ojibway Nation;
 - (q) an office building, a retail store, or other business or commercial establishment to which the general public is ordinarily permitted access, and
 - (r) any vehicle used for public transit or a commercial vehicle for hire that is used to transport members of the public.
- 6.3 No person shall smoke within ten 10 meters of an entrance or exit of any public place, enclosed public place or workplace.

7.0 SMOKING PERMITTED – DESIGNATED SMOKING AREA:

- 7.1 Sections 6 and section 8 shall not apply to a public floor space that has been duly designated by the Brokenhead Ojibway Nation Council as a Designated Smoking Area as:
- (a) the public area in a building where gaming activities are situated, including bingo;
 - (b) the public area in a building where an establishment is located, including a restaurant, tavern or bar which is a licensed establishment; and
 - (c) the public area of a public facility only when used for wakes and funerals.
- 7.2 Subject to Section 7 and with the approval by resolution of the Brokenhead Ojibway Nation Council, a proprietor may designate a smoking area within an enclosed public place.
- 7.3 For the purposes of this By-Law by Brokenhead Ojibway Nation Council, designated smoking areas may include:
- (a) a portion of a private residence housing a home based business;
 - (b) guestrooms in hotels, motels, inns and bed and breakfast facilities if 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 First Nation 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 that meets the ventilation standards set out in this By-Law when used for a private social function after normal business hours with the express written permission by Brokenhead Ojibway Nation Council resolution.
- 7.4 Traditional First Nation Practices;
Subject to the ventilation standards of this By-Law, nothing in this By-Law shall prohibit a First Nation person from using tobacco within a public place if the use of the tobacco is carried out for a traditional First Nation spiritual or cultural practice or ceremony that has been previously approved by the Brokenhead Ojibway Nation Council through resolution.

- 7.5 Where smoking is permitted in a designated smoking area, the designated smoking area shall be:
- (a) a place or area that is generally open to and actively used by the public but not including hallways, foyers, stairways, elevators, escalators, laundry rooms, washrooms and amenity areas;
 - (b) enclosed by four (4) walls, a floor and a ceiling;
 - (c) clearly defined as a designated smoking area;
 - (d) equipped with ashtrays;
 - (e) equipped with non-combustible covered receptacles for the disposal of waste;
 - (f) designed to prevent the transfer of smoke from the smoking area to the non-smoking areas; and
 - (g) in accordance with ANSI/ASHRAE Standard 62.1-2004, *Ventilation for Acceptable Indoor Air Quality* and ventilated in a way that the air in the room is exhausted to the outside and not re-circulated within the facility or building.

8.0 DUTIES OF PROPRIETOR:

- 8.1 A proprietor shall ensure that signs are posted at every entrance to the building and inside the building, including at the entrance and inside each restroom and the food service and beverage areas are purchased or consumed in sufficient numbers to ensure compliance indicating that smoking is not permitted pursuant to Section 6;
- 8.2 A proprietor of any public place or work space designated or regulated by this By-Law, shall ensure that a sufficient number of signs are visibly posted so as to clearly identify that smoking is permitted in compliance with this By-Law pursuant to section 7;
- 8.3 A proprietor of a public place, enclosed public place or work space to which prohibitions apply in this By-Law applies shall ensure that sufficient ashtrays or similar receptacles are placed and available in any designated room or area in which smoking is permitted by this By-Law;
- 8.4 A proprietor of a place or premises to which Section 6 applies shall ensure that ashtrays and similar receptacles are not placed or available for use in the place or premises in any areas in which smoking is not permitted by this By-Law;
- 8.5 A proprietor of a food service establishment shall ensure that no smoking is allowed in any area where food is prepared;
- 8.6 A proprietor or managing body of a business or institution to which the By-Law applies shall post signs at the entrances to the facility carrying the text "SMOKING PERMITTED IN DESIGNATED AREAS ONLY", or similar clear wording, in capital letters at least 2.54 centimeters and place at the bottom of the Sign the words "BON By-Law NO. 001-2006" in letters at least 1.27 centimeters;
- 8.7 Every Proprietor or managing body where smoking is prohibited shall post signs with the words NO SMOKING PERMITTED in capital letters at least 2.54 centimeters and place at the bottom of the Sign the words "BON By-Law NO. 001-2006" in letters at least 1.27 centimeters; and
- 8.8 Where a smoking area is utilized by the proprietor of a place or premises, a sign must be posted at each entrance to the designated smoking area with the words "SMOKING AREA, SMOKING PERMITTED" in capital letters at least 2.54 centimeters and place at the bottom of the Sign the words "BON By-Law NO. 001-2006" in letters at least 1.27 centimeters.

9.0 SIGNS AND SYMBOLS

Signs shall be posted in compliance with this By-Law, as follows:

- 9.1 The signs and symbols referred to in this section shall consist of two contrasting colours and the size of the lettering must not be less than a letter height of 2.54 centimeters;
- 9.2 The signs referred to in this section must include the text at the bottom of each sign "Brokenhead Ojibway Nation By-Law No. 001-2006, MAXIMUM FINE \$1000.00 and/or 30 DAYS IMPRISONMENT, in letters not less than 2.54 centimeters in height;
- 9.3 Where smoking is not permitted: the text shall read "NO SMOKING" in capital letters, or similar clearly understandable language;
- 9.4 Where smoking is permitted: "SMOKING PERMITTED" or SMOKING PERMITTED IN THIS ROOM OR AREA ONLY" or similar, clearly understandable language; and
- 9.5 The use of any other symbol "SMOKING" or "NO SMOKING" graphic symbol is allowed so long as such symbol is universally understood.

10. ENFORCEMENT AND ADMINISTRATION

- 10.1 The provision of this By-Law where smoking is permitted and where smoking is not permitted, the posting of signs and symbols and the duties imposed on the proprietor of the enclosed public place or public place or work place, shall be enforced by the proprietor and as necessary the By-Law Officer;
- 10.2 Appointment of By-Law Officer;
- The Brokenhead Ojibway Nation Council may:
- (a) by Resolution, appoint persons to act as a By-Law Officer for the purpose of enforcing this By-Law and remunerate a reasonable rate of pay;
 - (b) in appointing persons under this section, impose any restrictions on the powers of the person that the Council deems appropriate; and
 - (c) in the event the appointed person fails to carry out the duties of the By-Law Officer, be dismissed from the position or where the person has been convicted of an employment related offence under the *Criminal Code of Canada*.
- 10.3 Powers of By-Law Officer:
- For the purposes of enforcing and administering this By-Law, a By-Law Officer shall upon directive approvals in writing from the Council:
- (a) at any reasonable time, enter and inspect any place or premises where smoking is prohibited pursuant to this By-Law;
 - (b) ensure that any required Sign is posted in accordance with this By-Law;
 - (c) report to the Brokenhead Ojibway Nation Council from time to time or as requested, and not less than monthly, on the By-Law Officer activities governed under this By-Law;
 - (d) make any inspection, investigation, report or inquiry that the By-Law Officer considers necessary;
 - (e) direct any person committing an offence in violation of this By-Law to cease the action immediately and the person so directed shall comply with the Officers direction or face charges pursuant to this By-Law; and
 - (f) attend to the enforcement provisions of this By-Law.
- 10.4 A By-Law Officer shall not enter a private dwelling without the consent of the occupant or without a warrant; and
- 10.5 Upon receipt of a complaint or information pursuant to the provisions of this By-Law, the By-Law Officer of the Brokenhead Ojibway Nation Council shall investigate such complaint and enforce the applicable provisions of this By-Law.

11.0 OFFENCE AND PENALTY

- 11.1 No person shall remove, cover up, mutilate, deface or alter any sign displayed or posted as a result of this By-Law;
- 11.2 No person shall obstruct a By-Law Officer or knowingly make a false statement or misleading statement to the By-Law Officer or produce a false document to the By-Law Officer who is acting pursuant to the By-Law authority;
- 11.3 Any person who contravenes any of the provisions of this By-Law is guilty of an offence and upon a summary conviction is liable to a fine of not to exceed \$1,000.00 or imprisonment for a term not more than thirty (30) days, or both imprisonment and fine, for a violation of this law, for each offence; and
- 11.4 The summary conviction procedures of Part XXVII of the Criminal Code of Canada, as amended from time to time, apply to offences under this By-Law.

12.0 SEVERABILITY:

In the event a decision of a Court of competent jurisdiction determines that one or more provisions of this By-Law are invalid in whole or in part, the affected provision shall be severable from this By-Law and such decision does not affect the validity, effectiveness, or enforceability of the other provisions or parts of the provisions of this By-Law, which remain in full force and effect.

13.0 CONFLICT OF LAWS

In the event a provision of this By-Law conflicts with an Act of the legislature of the Province of Manitoba or other regulation, the provisions of this By-Law shall prevail.

14.0 AMENDMENT OF BY-LAW

The Brokenhead Ojibway Nation Council may, as deemed necessary and in its discretion amend this By-Law.

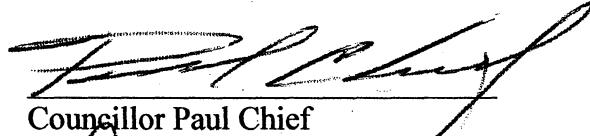
15.0 ENACTMENT

This By-Law shall come into full force and effect under the authority of the Brokenhead Ojibway Nation Council during a duly convened Council meeting called to enact this By-Law.

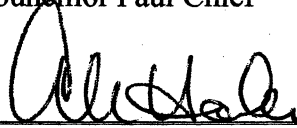
16.0 THIS BY-LAW IS HEREBY APPROVED AND ADOPTED at a duly convened Meeting of the Brokenhead Ojibway Nation Council held this 6 day of MARCH, 2007.

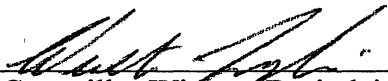
Voting in favor of the By-Law are the following members of Brokenhead Ojibway Nation Council:


Chief Deborah Chief


Councillor Paul Chief

Councillor Remi Olson

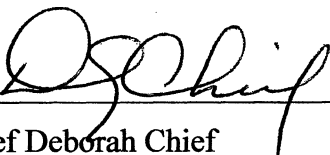

Councillor Allan (Sam) Hocaluk


Councillor Winston Desjarlais

A quorum of the Council consists of three (3) Council members.

The number of members of the Council present at the meeting: 4.

I, Deborah Chief, Chief of the Brokenhead Ojibway Nation, do hereby certify that a true copy of the this Brokenhead Ojibway Nation Smoking By-Law No. 001-2007 was **mailed** to the Minister of Indian Affairs and Northern Development at the Manitoba Region office of the department pursuant to subsection 82(1) of the *Indian Act*, this 6th day of March, 2007.


Chief Deborah Chief


Witness