



CITY OF MOOSE JAW

Office Consolidation

The Smoking Bylaw

Bylaw No. 5192

Date of Passage November 10, 2003
(effective date February 11, 2004)

Including amendments to June 10, 2019

Disclaimer:

This information has been provided solely for research convenience. Official bylaws are available at the Office of the City Clerk and must be consulted for purposes of interpretation and application of the law.

This Bylaw has been consolidated under the authority of the City Clerk. It represents proof, in absence of evidence to the contrary of:

- (a) the original bylaw and of all bylaws amending it; and**
- (b) the fact of passage of the original and all amending bylaws.**

AMENDMENTS	DATE PASSED	FORCE/EFFECT
Bylaw No. 5205	Feb. 9, 2004	Feb. 11, 2004
Bylaw No. 5575	June 10, 2019	June 10, 2019

BYLAW NO. 5192

A BYLAW OF THE CITY OF MOOSE JAW TO REGULATE, CONTROL AND PROHIBIT SMOKING IN ENCLOSED PUBLIC PLACES

NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CITY OF MOOSE JAW ENACTS AS FOLLOWS:

Short Title

1. This bylaw may be cited as *The Smoking Bylaw*.

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Purpose

2. The purpose of this bylaw 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 as set forth in *The Tobacco Control Act*, S.S., 2001 c.T-14.1; and
- (b) the imposition of additional provisions respecting the smoking or holding of lighted tobacco in certain enclosed public places in the City of Moose Jaw that are more restrictive than the provisions in *The Tobacco Control Act*.
- (c) the adoption of the restrictions on the smoking or holding of lighted cannabis as set forth in The Cannabis Control (Saskatchewan) Act, Chapter C-2.111.

Bylaw No. 5192 and Bylaw No. 5575

Definitions and Schedules

- 3(1) In this bylaw, in any amending bylaws, and in any schedules attached hereto, the following words and terms shall have the following meanings unless there is something in the subject matter inconsistent therewith:

- (a) the term “**bingo establishment**” means the portion of any enclosed place or premises for which a bingo licence has been issued by the Liquor and Gaming Authority;
- (a.1) the word “cannabis” means a cannabis plant or any substance or mixture of substances that contains or has on it any part of a cannabis plant.

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- (b) the word “**casino**” means:
- (i) a casino as defined in *The Saskatchewan Gaming Corporation Act*, S.S., 1984 c.S-18.2; or
 - (ii) an enclosed place or premises for which a casino licence has been issued by the Liquor and Gaming Authority;
- (c) the word “**City**” means the Municipal Corporation of the City of Moose Jaw or, where the context requires, the geographical area within the city limits of the City of Moose Jaw;
- (c.1) the term “city facilities” means all city owned, operated and leased facilities;
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- (c.2) the term “common areas” means lobbies, foyers, stairwells, hallways, elevators, corridors, cloakrooms, amenity areas, washrooms, food seating areas and outdoor theatre of a city-owned building or public premise;
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- (c.3) the term “customer service area” means a partially enclosed or unenclosed area, including a balcony or patio that is part of or connected to or associated with a city facility or public premise that includes the service of food or alcoholic drinks to customers or other persons for consumption on site;
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- (d) the term “**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;
- (e) the term “**Enforcement Officer**” means the person appointed pursuant to section 6 as the Enforcement Officer for the purpose of enforcing this Bylaw;
- (f) the term “**Liquor and Gaming Authority**” means the authority continued as the Liquor and Gaming Authority pursuant to section 3 of *The Alcohol and Gaming Regulation Act*, S.S., 1997, c.A-18.011;
- (g) the term “**No-Smoking Sign**” means the depiction of the International “No-Smoking” Symbol as set out in Appendix “1”;
- (g.1) the word “parks” means any open green space that is used for the enjoyment

of the public for both passive and active recreational activities, which may have facilities for rest or recreation;

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(g.2) the term “play area” means an outdoor area for children to play on, which includes skate parks, bicycle parks, outdoor pools, and water spray parks;

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(h) the term “**private club**” means an establishment that operates solely for the benefit and pleasure of the members of a non-profit corporation or service club and to which a special use permit has been issued pursuant to *The Alcohol and Gaming Regulations Act*;

(h.1) the word “**proprietor**” means a person who controls, governs or directs the activities carried on within a place or premises and includes the person who is actually in charge of that place or premises at any particular time;

(i) the word “**restaurant**” means an enclosed place or premises for which a public eating establishment licence has been issued pursuant to *The Public Health Act, 1994*,

(i.1) the words “smoke” or “smoking” means to inhale, exhale, burn, or carry a lighted cigarette, cigar, e-cigarette, hookah pipe, pipe, or other lighted smoking equipment that burns tobacco or other substance;

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(i.2) the term “sports field” means a field used for outdoor games or activities;

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(j) S.S., 1994 c.P-37.1 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 *The Alcohol and Gaming Regulations Act*;

(k) the word “**Summons**” means a summons within the meaning of the *Criminal Code of Canada*, R.S., c.C-34;

(l) the word “**tavern**” means the portion of an enclosed place or premises for which a tavern permit has been issued pursuant to *The Alcohol and Gaming Regulations Act* and includes any private club to which the public is customarily admitted or invited;

(m) the word “**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 form part of, this Bylaw:

Appendix “1” - International “no smoking” symbol.

Schedule “A” - Offences for which Notice of Violation may be issued.

Form “1” - Notice of Violation.

Form “2” - Information.

Form “3” - Modified Criminal Code Summons.

Bylaw Nos. 5192 and 5205

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 section 11 of *The Tobacco Control Act*.

(2) In addition to subsection (1), in the City 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 video arcade, an enclosed amusement centre or a theatre;
- (c) a vehicle used for public transit or a commercial vehicle for hire that is used to transport members of the public;
- (d) a billiard hall;
- (e) a bingo establishment;
- (f) a bowling centre;
- (g) a restaurant;
- (h) a casino;
- (i) a tavern;
- (j) in any city facilities, common areas, or customer service area;

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(k) within 10 (ten) metres of a recreational activity area, playground or facility within a park;

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(l) within 10 (ten) metres of the perimeter of any sports field including bleachers;

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(m) within 10 (ten) metres of the perimeter of a common area or customer service area.

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(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 *The Tobacco Control Act*;

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

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Smoking in certain places exceptions

4.1(1) Nothing in this Bylaw prohibits a person from smoking for the purposes of traditional spiritual or cultural practices or ceremonies, if smoking is an integral part of the traditional spiritual or cultural practices or ceremonies being carried out with the consent of the owner of that place.

(2) The onus to prove that the exemption in Section 4.1(1) applies shall be on the person alleged to be in violation.

(3) Nothing in this Bylaw prohibits a person from vaping for the purpose of testing the device, or sampling products used with the device, prior to purchase within a vape retail store.

(4) Section 4 does not apply to any places exempted from the application of Section 11(3) of *The Tobacco Control Act*.

(5) Council may consider and approve any further exemption for an outdoor public event on terms and conditions established for that event.

Bylaw No. 5575

Sign removal, alteration, etc., prohibited

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

Bylaw No. 5192

Obstruction, False Statement, etc. Prohibited

5.1(1) No person shall obstruct an Enforcement Officer who is acting pursuant to the authority of this Bylaw.

(2) No person shall knowingly make 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 Bylaw.

Bylaw No. 5205

Enforcement Officers appointed

6. The following persons are appointed as bylaw enforcement officers and are authorized to enforce the provisions of this Bylaw and, for such purposes, are deemed to be designated officers pursuant to section 324 of *The Cities Act* for the purposes of inspecting places and premises:

- (a) a peace officer within the meaning of the *Criminal Code of Canada*, R.S., c.C-34;
- (b) a public health officer within the meaning of *The Public Health Act, 1994*;
and
- (c) any other person appointed by City Council for the purpose of enforcing this Bylaw.

Bylaw No. 5192

Evidence

7. In a prosecution for an offence pursuant to this Bylaw, the trial judge may infer that any substance or object in question is tobacco within the meaning of this Bylaw from the fact that a witness describes it as tobacco or by a name that is commonly applied to tobacco.

Bylaw No. 5192

Offences and Penalties

8(1) Subject to section 9, every person who contravenes the provisions of this Bylaw is guilty of an offence and liable, on summary conviction:

- (a) in the case of an individual, to a fine not exceeding \$10,000.00, or imprisonment for not more than one year, or both;
- (b) in the case of a corporation, to a fine not exceeding \$25,000.00, or imprisonment of the directors of the corporation for not more than one year, or both.

Bylaw No. 5192

Notice of violation

9(1) Where a person commits or is alleged to have committed an offence for which a penalty is set out in Schedule "A" of this Bylaw, an Enforcement Officer shall issue a Notice of Violation to such person.

(2) The Notice of Violation shall be in the form or substantially in the form of Form "1" and shall provide for the voluntary payment of a penalty in the amount set forth in Column A of Schedule "A" for the offence which the person is alleged to have committed. If no amount is set forth in Column A for that particular offence, the penalty shall be in the amount set forth in Column B of Schedule "A" for that offence.

(3) Voluntary payment of a penalty specified in a Notice of Violation shall be made on or before the date indicated on the Notice of Violation. Voluntary payment shall be made in person at the front counter of the Finance Department at City Hall during normal business hours.

(4) If payment of the amount specified on the Notice of Violation is made on or before the date indicated on the Notice of Violation, the person alleged to have committed the offence shall not be liable to prosecution for the offence indicated.

(5) If payment of the amount specified on the Notice of Violation is not made on or before the date indicated on the Notice of Violation, a peace officer or the Enforcement Officer, as the case may be, shall lay an information under oath as to the offence before a Justice of the Peace for the purpose of obtaining a Summons.

(6) The Summons shall be in the form or substantially in the form of Form 3 and shall provide for the voluntary payment of a penalty in the amount set forth in Column B of

Schedule “A” for the offence which the person is alleged to have committed. The Summons shall be issued by a Justice of the Peace and shall be served by a peace officer or other authorized person.

(7) Voluntary payment of a penalty specified in a Summons shall be made on or before the date indicated on the Summons. Voluntary payment shall be made in person at the front counter of the Moose Jaw Police Service at the Moose Jaw Police Station during normal business hours.

(8) If payment of the amount specified on the Summons is made on or before the date indicated on the Summons, the person alleged to have committed the offence shall not be liable to prosecution for the offence indicated.

(9) If payment of the amount specified on the Summons is not made on or before the date indicated on the Summons, the person to whom the Summons has been issued shall be liable to prosecution for the alleged contravention of the Bylaw.

(10) Nothing in this section shall be construed to prevent any person from exercising his or her right to defend a charge of contravention of any provision of this Bylaw.

Bylaw Nos. 5192 and 5205

Disposal of evidence

10. Any tobacco seized as evidence in a prosecution of an offence under this Bylaw shall be disposed of in accordance with the provisions set forth in *The Tobacco Control Act*.

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Bylaw repealed

11. Bylaw No. 4327, a Bylaw of the City of Moose Jaw to prohibit, control and regulate smoking in any enclosed public place, is repealed.

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Coming Into Force

12. This Bylaw shall come into force on the day that is three (3) months from the day of its final passing.

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PASSED AND ENACTED ON THE 10th DAY OF NOVEMBER A.D. 2003.

(Sgd.) "Al Schwinghamer"
MAYOR

(Seal)

(Sgd.) "Steven Schiefner"
CITY CLERK

READ A FIRST TIME the 11th day of August, A.D. 2003

READ A SECOND TIME the 11th day of August, A.D. 2003

READ A THIRD TIME the 10th day of November A.D. 2003

APPENDIX “1”
Bylaw No. 5192, the Smoking Bylaw

International “No Smoking” Symbol



SCHEDULE “A”
Bylaw No. 5192, the Smoking Bylaw

Offences for which a Notice of Violation May be Issued

<u>Section #</u>	<u>Description of Offence</u>	<u>Column “A”</u>	<u>Column “B”</u>
4(1) & (2)	Smoking or holding lighted tobacco in prohibited place.	\$100.00	\$150.00
4(3)(a)	Failing to post “No-Smoking” signs as required.	\$75.00	\$100.00
5.	Removing, covering up, mutilating, defacing or altering a “No-Smoking” sign.	\$100.00	\$150.00

FORM "1"

Bylaw No. 5192, the Smoking Bylaw

Notice of Violation (Front)

**CITY OF MOOSE JAW
NOTICE OF VIOLATION**

MJPS File #: _____

Ticket # (Pre-printed)

Date of Offence: _____
Day / Month / Year

Time: _____ AM/PM

Name of Accused: _____
Last / First / Other

Date of Birth: _____
Day/Month/Year

P.I.C. # _____

Address of Accused: _____

Location of Violation: _____

Description of Violation: _____

You are charged with a violation of the City of Moose Jaw's Bylaw Section _____

Bylaw # 4495 (Dog Bylaw)

Bylaw # 5152 (Sewer and Water Utility Bylaw)

Bylaw # 5192 (Smoking Bylaw)

Bylaw # 5156 (Waste Management Bylaw)

Other _____

A voluntary payment of \$ _____ may be paid at City Hall in accordance with the instructions on the back.

If the voluntary payment is received no later than the _____ day of _____, 20____, you will not be prosecuted for this offence.

Issued by: _____

Avoid prosecution by paying promptly. Unless payment is received by the City of Moose Jaw in accordance with the instructions contained herein, a Criminal Code (Canada) Summons will be issued commanding you to appear in Court with respect to this matter. In addition, the penalty will increase to the maximum specified in the Bylaw for this offence.

Payment instructions are on the back

(Revised: 2004 Jan 20)

PAYMENT INSTRUCTIONS

1. Make all cheques or Money Orders payable to the “City of Moose Jaw”.
2. Do not mail cash. The City of Moose Jaw assumes no responsibility for cash sent through the mail.
3. Where a receipt is required, payment may be made in person at the City Cashier – City Hall, 228 Main Street North, Moose Jaw, Saskatchewan, during normal business hours. Ticket must be presented with payment.
4. Where a receipt is not required, payment may be mailed to the City Treasurer, City of Moose Jaw, 228 Main Street North, Moose Jaw, Saskatchewan, S6H 3J8. Enclose ticket and payment in envelope.
5. Avoid prosecution by paying promptly. If prompt payment is not received in accordance with the instructions contained herein, a *Criminal Code (Canada)* Summons will be issued commanding you to appear in Court with respect to this matter.
6. The voluntary payment provided herein is reduced from the full penalty prescribed in the bylaw. If prompt payment is not received in accordance with the instructions contained herein, the penalty will increase in accordance with the provisions of the bylaw.
7. For enquiries, please contact 694-7660.

FORM "2"

Bylaw No. 5192, the Smoking Bylaw

Information

INFORMATION

Information No. _____

Ticket No. _____

Canada }
Province of Saskatchewan } **ON BEHALF OF HER MAJESTY THE QUEEN**
Provincial Court, City of Moose Jaw }

THIS IS THE INFORMATION OF [insert name, address and occupation of informant]

(hereinafter called the Informant). The informant says that he/she has reasonable and probable grounds to believe and does believe that:

[insert name, address and birth date of accused] did;

on or about the _____ day of _____, A.D. _____ at the City of Moose Jaw, in the Province of Saskatchewan, commit the following offence:

[insert description of offence]

contrary to the provisions of the Smoking Bylaw, being Bylaw No. 5192 of the said City.

AND FURTHER the Informant says that a Notice of Violation for the above captioned offence was issued and that no payment has been received in accordance with the instructions contained in the said Notice.

SWORN BEFORE ME this _____ day of _____ A.D. _____, at Moose Jaw in the Province of Saskatchewan.

Signature of Informant

A JUSTICE OF THE PEACE IN AND FOR THE PROVINCE OF SASKATCHEWAN

FORM "3"

Bylaw No. 5192, the Smoking Bylaw

Modified Criminal Code Summons (Front)

**SUMMONS TO A PERSON
CHARGED WITH A VIOLATION**

Ticket No. _____

Canada }
Province of Saskatchewan } ON BEHALF OF HER MAJESTY THE QUEEN
Provincial Court, City of Moose Jaw }

TO _____ Date of Birth: ____/____/____

WHEREAS YOU HAVE THIS DAY BEEN CHARGED BEFORE ME that, on or about the _____ day of _____, A.D. _____ at the City of Moose Jaw, in the Province of Saskatchewan, you did commit the following offence:

contrary to the provisions of the Smoking Bylaw, being Bylaw No. 5192 of the said City.

AND WHEREAS a Notice of Violation for the above captioned offence was issued and our records indicate that no payment has been received in accordance with the instructions contained in the said Notice.

IF VOLUNTARY PAYMENT IN THE AMOUNT OF _____ IS NOT RECEIVED ON OR BEFORE _____, YOU ARE COMMANDED, IN HER MAJESTY'S NAME:

(1) to appear before the presiding judge of **The Provincial Court of Saskatchewan at 110 Ominica Street West**, Moose Jaw, Saskatchewan, on the _____ day of _____ A.D. _____ at _____ o'clock in the _____ noon (Moose Jaw Time) or before any justice for the said Province who is there, and to attend thereafter as required by the Court in order to be dealt with according to law; and

YOU ARE WARNED THAT FAILURE WITHOUT LAWFUL EXCUSE TO ATTEND COURT IN ACCORDANCE WITH THIS SUMMONS IS AN OFFENCE UNDER SUBSECTION 145(4) OF THE CRIMINAL CODE (CANADA).

DATED this _____ day of _____ A.D. _____, at Moose Jaw in the Province of Saskatchewan.

A JUSTICE OF THE PEACE IN AND FOR THE
PROVINCE OF SASKATCHEWAN

SUBMIT THIS STUB WITH PAYMENT

Payment Instructions on the Back

Ticket No. _____

Payment to:

FORM “3”, continued

Bylaw No. 5192, the Smoking Bylaw

Modified Criminal Code Summons (Back)

SUMMONS TO A PERSON CHARGED WITH A VIOLATION

PAYMENT AND OTHER INSTRUCTIONS

1. Payment may be made in person at the front counter of the Moose Jaw Police Station, 21 Fairford Street West, during normal business hours.
2. Payment may also be made by mailing this Summons, together with the exact amount of the penalty specified therein for voluntary payment, to the following address:

The City of Moose Jaw, c/o
The Moose Jaw Police Service
21 Fairford Street West
Moose Jaw, Saskatchewan
S6H 1V2.
3. **Payment must be received prior to the date specified in the summons. Voluntary payment can not, and will not, be accepted after the date specified for voluntary payment. If you choose to send your payment by mail, it is your responsibility to ensure that your payment is posted in sufficient time to be received prior to the date specified.**
4. **Avoid prosecution by paying promptly. If payment is not received by the City of Moose Jaw in accordance with the instructions contained herein, a mandatory court appearance is required at the time and place specified herein.**
5. You are warned that failure, without lawful excuse, to attend court in accordance with this summons is an offence under subsection 145(4) of the Criminal Code (Canada), which provides as follows:

“(4) Every one who is served with a summons and who fails, without lawful excuse, the proof of which lies on him, to appear at a time and place stated therein, if any, for the purposes of the Identification of Criminals Act (Canada) or to attend Court in accordance therewith, is guilty of:

 - (a) an indictable offence and is liable to imprisonment for a term not exceeding two years; or
 - (b) an offence punishable on summary conviction.”