



How to Create a Non-Smoking Bylaw for an EXISTING Strata Complex

If the vast majority of members on a strata council are supportive of creating a non-smoking bylaw, getting the resolution on the agenda at an Annual General Meeting should be easy to do. However, regardless of whether this process is driven by strata council members, or individual strata owners, a non-smoking bylaw will still need to be supported by three-quarters of the voting members at the general or special meeting.

It is thus a good idea to do the groundwork first before putting this issue before the general strata membership. It will be important to build support for the issue, and go to a council meeting, special general meeting or annual general meeting well prepared to address resident concerns and opposition. Due diligence is important, and building support over time may result in the best outcome.

Note: It will be important to convey that your non-smoking bylaw is not about targeting or passing judgment on smokers, but about protecting non-smokers from a hazardous and known cancer causing substance. Residents with chronic health problems are especially at risk.

Here are some issues to consider as you move forward to create a smoking limitation or prohibition bylaw:

a. Collect information to support a smoking bylaw

- If migrating second-hand smoke is a problem, collect as much information as possible about how the smoke is infiltrating units in the building, the number of residents experiencing the problem and the impact on the health of residents.
- Collect information on the dangers of second-hand smoke and the benefits of going smoke-free
- Review the legal section of this website to learn about the legalities of going smoke-free in strata corporations. It is legal to do, and our legal opinion can be accessed for educational purposes.
- Review our survey research section which contains information confirming that smoke infiltration is a problem for over one-third of British Columbians living in multi-unit dwellings, and there is strong support for smoke-free multi-unit housing in BC. Plus, the vast majority of condo owners don't smoke, and those that do are already taking it outside.

b. Share information and seek support

- Talk to your neighbours to identify support for a non-smoking bylaw.
- Talk to your strata council members to raise awareness that this is an emerging issue and to seek support.
- Consider conducting a survey of owners to determine whether others have had a problem with smoke migration and identify support for a bylaw. A survey will help gauge support, as well as help identify the type of bylaw that would be supported by the majority of residents.
- Attend Council meetings to propose the idea of creating a smoking prohibition or limitation bylaw for the complex. This is a good opportunity to present the information collected on the benefits of and support for adopting a non-smoking bylaw.

- If Council is not supportive, consider conducting a petition to support a resolution to place the issue on the agenda of an annual general meeting, or requisition for a special general meeting to be held to address the non-smoking bylaw.

c. Choose the type and scope of smoking bylaw

Strata corporations can restrict smoking either by creating or amending a Bylaw or Rule:

- With Bylaws, a strata corporation can prohibit smoking in strata lots by amending the bylaws. Amending the Bylaws to address smoking is recommended.
- Rules are narrower in scope than bylaws and only apply to common property and common assets. Smoking cannot be addressed in strata lots through rules, and therefore this method is not recommended as a way to prohibit smoking throughout the building. If you do create a no-smoking rule, consider adding the rule to the bylaws so it will be filed in the Land Title Office and new owners will be aware of it at point of purchase.

Consider the scope of the bylaw. In choosing the appropriate bylaw for your complex, keep in mind the nature and layout of the complex, and ensure it is connected to protecting the health of strata residents. Remember that the more comprehensive the scope of the bylaw is, the better for the health of residents, but it can also provoke greater opposition. Be prepared to address resident concerns and needs.

It is important to clearly set out which areas will be designated as smoke-free. Examples of the types of Bylaws that you can adopt include:

- Smoking Prohibition Bylaw: bans smoking on the common property, limited common property such as balconies; and in strata lots.
- Smoking Limitation Bylaw: bans smoking on the interior common property, but not in individual strata lots or on the limited common property (balconies).
- Smoking Limitation Bylaw: bans smoking on the interior common property and on limited common property (balconies), but not on strata lots.

While the *Tobacco Control Act* banning smoking in common areas and entrances of public buildings applies to condo complexes, strata corporations wanting to enforce a non-smoking bylaw on the common property may want to consider adopting a bylaw that includes this provision. This is to ensure that owners can't argue that they didn't know about the provincial laws.

Regardless of the scope of the bylaw chosen, it must comply with all relevant legislation, including:

- Strata Property Act
- Residential Tenancy Act
- Human Rights Code

Consider commissioning a legal opinion to help draft a bylaw and address potential challenges and accommodation issues.

d. Consider 'grandfather' issues

Consider whether a 'grandfather' clause in the bylaw is appropriate for your complex. Some issues to consider include:

- Unlike in new developments, owners and tenants might argue that they be exempted from any newly amended smoking prohibition bylaw because they occupied or owned the unit before the bylaw came into effect.
- If there are no smoking residents in the building, there may not be much opposition to a complete prohibition bylaw without a grandfather clause.
- While section 123 of the *Strata Property Act* recognizes pre-existing rights in relation to pet and age bylaws, it does not deal with pre-existing rights for a behaviour such as smoking. We are not aware of any case law to support the

premise that an owner is exempt from a bylaw affecting behaviour because it came into effect after the purchase. (see Legal Opinion on website)

- Argument that a smoking prohibition bylaw would be unenforceable because it would reduce the ability of owners to sell a strata lot or the value of the property. However, there are many restrictive bylaws that may impact the ability to sell strata lots, including flooring, age and pet restrictions, so this argument is unlikely to be successful in court.
- Special considerations regarding tenants - a tenant who already has a signed tenancy agreement, there are conflicts between the Residential Tenancy Act and the Strata Property Act. It is recommended that legal advice be sought before enforcing a smoking prohibition bylaw against a tenant who resided in the complex prior to the smoking prohibition bylaw being passed and registered. (See Legal Opinion on website)

e. Address potential challenges to smoking limitation or prohibition bylaw

While having the owner/developer create a smoking prohibition bylaw is most effective, and there is legislative support to adopt a non-smoking bylaw in a strata complex, there is also case law that could challenge the bylaw, including: (See Legal Opinion on website)

- The Human Rights Code: argument that smoking prohibition bylaw discriminates against heavily addicted smokers. The HRC contains several provisions applicable to smoking bylaws, including:
 - Section 8: Discrimination in accommodation, service and facility
 - Section 9: Discrimination in purchase of property
 - Section 10: Discrimination in tenancy premises
- Section 121, Strata Property Act – argument could be made that the smoking prohibition bylaw is not enforceable because it contravenes the Humana Rights Code
- Section 141, Strata Property Act –argument that the smoking prohibition bylaw establishes a screening criteria for tenants

Note: While these issues have not made it to the Courts, the issues may need to be considered when creating a smoking prohibition bylaw. It should be clarified that the posted legal opinion argues that smoking prohibition bylaws are legal and can be justified if smoking is banned in areas where non-smoking residents of the complex are put at risk. See sample smoking prohibition bylaw on our website developed by legal counsel to address issues of accommodation.

f: Implement Bylaw Amendment Procedures

Once the Strata Council has explored all the issues concerning the type and scope of the bylaw, and there is sufficient support to move forward on a Resolution vote, specific bylaw amendment procedures must be followed to ensure legality and enforceability.

- Section 128 of the *Strata Property Act* outlines the bylaw amendment procedures needed to pass a smoking prohibition bylaw:
- Draft the bylaw and have reviewed by legal counsel (if appropriate). See sample Bylaw.
- Send out written notice of annual or special general meeting, including the proposed new bylaw wording Bylaw must be passed by a $\frac{3}{4}$ vote of the owners in attendance, either in person or by proxy at the meeting
- For strata corporations with both commercial and residential strata lots, the voting formula is different, requiring a $\frac{3}{4}$ vote of the residential owners and a $\frac{3}{4}$ vote of the commercial owners.
- Ensure that the Council member or Managing Agent registers the bylaw in the Land Title Office within 60 days of approval to be effective and enforceable. Check that a filed copy is returned by the Land Title Office and included in the records.
- Inform owners and tenants of the new bylaw as soon as feasible after approved



Note: Consider presenting the smoking prohibition or limitation bylaw by separate resolution. Given that a smoking bylaw can be a controversial provision, you would not want to jeopardize an entire bylaw amendment package because of this provision.

g. Promote non-smoking bylaw

- Post “no-smoking” signage in appropriate locations on the property. (Download official no-smoking signage at www.bc.lung.ca) free of charge, which complies with the amended BC *Tobacco Control Act* banning smoking in common areas of apartments and three metres from entrances (depending on which municipality you reside in).
- Register your smoke-free building on our online Smoke-Free Housing [Registry](#).

For more information visit www.smokefreehousingbc.ca