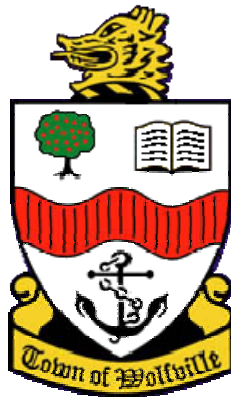


NO

Smoking in Cars

With

Children Present



*Town of Wolfville
Chief Administrative Officer Report
September 25, 2007*



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Appendix A: Current Smoking in Cars with Children Present legislation

Appendix B: Summary Offence Ticket Information 2006

Smoke-Free Kings

Smoke-Free Kings, established in 1994, consists of volunteers and professionals committed to reducing harm related to tobacco use and exposure to tobacco smoke in Kings County.

The Town of Wolfville is dedicated to the promotion of a healthy community and has demonstrated their leadership being the first municipality in Nova Scotia to adopt a by-law prohibiting smoking in indoor public places. Smoke-Free Kings was instrumental in rallying Council behind the movement to the first municipality to establish a Smoke-Free Indoor Public Places By-Law.

Once again, Smoke-Free Kings are working with the Town of Wolfville to endeavour the possibility of developing and adopting legislation that will prohibit smoking in cars with children present.

Background Information

There have been recent strides to ensure children and the general public are protected from the secondhand smoke through the widespread ban on smoking in public places in virtually all provinces. Alarming is the fact that the aforementioned legislation pertains only to indoor public places and not vehicles in which children are present. The following are recent research findings pertaining to the health risks to children subjected to secondhand smoke in vehicles:

- Infants and children are more severely affected by the exposure of secondhand smoke than adults because they are smaller, immature immune systems, and have higher respiratory rates.
- Recent studies have found secondhand smoke linked to sudden infant death syndrome (SIDS), childhood cancer, leukaemia, brain cancer, ear infections, asthma, and respiratory disease in children.
- **Levels of secondhand smoke in vehicles can be far higher than those found in smoky bars.**

Study Published in the American Journal of Preventative Medicine:

The basis of the 2006 study was to determine the levels of respirable suspended particles (RSPs) found in vehicles where smoking cigarettes occurs. A summary of the results of this study are as follows:

- RSP concentrations of $272 \mu\text{g} / \text{m}^3$ were found in vehicles where smoking for 5 minutes. Peak levels of $505 \mu\text{g} / \text{m}^3$ were found. Easily contextualized by

206 µg / m³ found in 27 bars where smoking is permitted in Massachusetts, and 412 µg / m³ found in 14 bars in New York state where smoking is permitted.

- U.S Environmental Protection Agency states RSP concentrations of > 40 µg / m³ as “unhealthy for sensitive groups” (such as the elderly and children), and > 250 µg / m³ as “hazardous for all individuals.”

Support for Legislation Prohibiting Smoking in Vehicles where Children are present:

In Ontario, CAMH (Centre for Addiction and Mental Health) conducted an ongoing monthly phone survey (2002 - 2005) and posed the question, “There should be a law that says that parents can not smoke inside their car if children are present”. Responses of “strongly agree” and “mostly agree” were considered in support of the ban. The results are as follows:

- Since 2002, overall public support for the ban has increased from 68% (2002) to 78% (2005).
- Significant increases have occurred among smokers (50% to 66%) and non-smokers (73% - 81%)

Does this Legislation Exist?

Laws prohibiting the smoking in vehicles while children are present exist in a number of jurisdictions across the United States of America, Australia, and the US Commonwealth in the Caribbean. The legislation in these jurisdictions differ in the applicable age in which is prohibited in the presence of a child and the penalty (fine) for an infraction. The table below offers a summary of the legislation across these jurisdictions.

Jurisdiction	Applicable Age	Date Law in Force	Date Law Adopted	Penalty (fine)
<u>US States</u>				
Arkansas	If car seat required	July 21, 2006	Apr. 10, 2006	\$25.00
Louisiana	13	Aug. 15, 2006	July 5, 2006	\$150.00
<u>U.S. Municipalities</u>				
Bangor, Maine	18	Jan. 18, 2007	Jan. 8, 2007	\$50.00
Keyport, New Jersey	18	Apr. 26, 2007	Apr. 24, 2007	\$75.00
Rockland County, N.Y	18	June 21, 2007	June 15, 2007	\$75.00 - \$250.00 ¹

¹ The first violation of the provisions of this local law shall be a criminal violation punishable by a fine of between \$75.00 and \$150.00. A second or subsequent violation shall be a criminal violation, punishable by a fine of between \$150.00 and \$250.00

<u>Australian states and territories</u>				
South Australia	16	May 31, 2007	Apr. 5, 2007	\$200.00
<u>Other</u>				
Puerto Rico	13	Mar. 2, 2007	Mar. 2, 2006	\$250.00 - \$2000.00 ²

In addition, there are a number of jurisdictions currently working towards similar legislation. In South Africa, there is a Government bill to ban smoking in vehicles carrying children before the Parliament of South Africa. In the state of Tasmania, a Government bill to ban smoking in cars with kids under age 18 was introduced in the Tasmanian Parliament on August 22, 2007. (*See Appendix A for detailed information on the legislated presented in the table above*).

Town Solicitor Report

The response to Council's question whether the Town has authority to control smoking by an adult in a motor vehicle when a person 16 years of age or younger is present, is "Maybe". Whether the Town has authority to control smoking in a private motor vehicle is a key issue.

Authority to enact a by-law is set out in the Municipal Government Act. The Town's current Smoke Free Indoor Public Places By-Law is authorized by that Act's Subsections 172 1 (a), (c), and (d) as follows:

"172 (l) A council may make by-laws, for municipal purposes, respecting

(a) the health, well being, safety and protection of persons;

(c) persons, activities and things in, on or near a public place or place that is open to the public;

(d) nuisances, activities and things that, in the opinion of the council, may be or may cause nuisances, including noise, weeds, burning, odours, fumes and vibrations"

² Violators face a penalty of \$250.00 for a first offense and up to \$2000.00 for repeated violations.

The prohibition of smoking in a motor vehicle may be supported as addressing "the health, well being, safety and protection of persons", as well as "activities and things that ... may be or may cause ... odours (and) fumes" (subsections a and d). However, a vehicle is not likely a "public place" (subsection c). The focus of the Provincial Smoke-free Places Act with respect to vehicles includes, "vehicle carrying passengers for hire", and "vehicles used in the course of employment while carrying two or more employees". Neither of those describes private use of a motor vehicle. As a consequence, that legislation does not provide support as a comparable legislative scheme.

Although legislation in other Provinces and States is not applicable to Nova Scotia, it may be helpful to compare what has been done elsewhere. The Smoke-Free Ontario Act does address the issue of smoking in a vehicle. It is permitted in a personal vehicle, although not in any employer provided vehicle. However, the matter of smoking with a child in the vehicle is not addressed. In Bangor, Maine and in the States of Arkansas and Louisiana and the territory of Puerto Rico, legislation prohibits smoking in a car with a child present. Similar legislation is said to be under consideration in California, Connecticut, and Maine. An examination of the legislation in those other jurisdictions may assist in considering whether to take similar action in Nova Scotia.

RCMP Report

The following are the comments provided by RCMP NCO Sgt. Mike Holland (former NCO for the Town of Wolfville) regarding the issues surrounding the implementation and enforcement of a by-law prohibiting smoking in cars when children are present. **The following comments were provided February 14, 2007.** The Town's current NCO, Sgt. Ron Smith has reviewed the comments below and concurs with those put forward by Sgt. Mike Holland.

I have had the opportunity to discuss this proposal with the Mayor and it is my understanding that the town's plans are to focus on the awareness of this problem rather than on enforcement. Enforcement would only be a measure of last resort. I see this as another way in which the town can take a leadership role in the Province through heightening the awareness of the dangers of second hand smoke. I see our local RCMP office assisting in this regard through presentations and bringing the issue to the attention of drivers noted to be in violation of the by-law.

Speaking strictly from an enforcement point of view, the questions that concerned me were as follows:

Identifying the person smoking in a vehicle:

If observed by the police and a subsequent vehicle check, not a problem. But if a citizen makes a call to police, unless the smoker is known to them, how do we identify the driver beyond a reasonable doubt. Are citizens going to be willing to confront those charged in court in order to provide evidence.

I see the potential for a number of these cases being contested which would result in extra costs for the town solicitor to deal with. It would be interesting to see how the courts would rule if it was contested as unconstitutional.

Infringement of a by-law versus lifestyle issue:

Another issue that may or may not come into play is the amount of time this takes away from other policing duties. Here, I refer again to those complaints from the public about seeing a person in a car, with children and smoking. Our members would have to track down the car, then the owner who may or may not be the driver. How do we compel the owner to tell us who the driver was? How do we prove the driver was in fact smoking? How do we prove the children were under a certain age? These questions may seem easy to answer at first blush but I can assure you that the courts want proof beyond a reasonable doubt.

I recently read with interest where the Premier of Ontario noted concerns with this proposed legislation. I believe his remarks were focused on the enforcement aspect only. I think it is safe to say that the vast majority of people would see this by-law as an excellent tool from awareness and well being point of view.

I want to assure you that the local RCMP office will certainly follow the wishes of Council, but I raise these points as food for thought during their discussions. If I can be of any further assistance, do not hesitate to give me a call.

Department of Justice Report



Town of Wolfville

359 Main Street, Wolfville, NS, B4P 1A1

Memorandum

To: Roy Brideau, CAO
From: Jeff Hanshaw, Municipal Intern
Date: February 26, 2007
Re: Summary Offense Tickets Information

Mr. Brideau:

As requested, please find the attached information regarding Summary Offense Tickets. The highlights of the information are as follows:

- All requests for a Summary Request Schedule are to go through Cathleen O'Grady, Departmental Solicitor, SNSMR. From Cathleen O'Grady's office, requested are forwarded on to the Department of Justice.
 - o Items required include:
 - Certified copy of the by-law
 - Concise synopsis of the offense
 - Fine required for out of court settlement.
 - o For a detailed listing of information required, please see enclosed information package.
- There is a substantial delay in adding or removing offenses from the Department of Justice system – according to Cathleen O'Grady's office, a delay of 2 to 3 months should be expected.

See Appendix B for additional information regarding Summary Offence Tickets. The process outlined in the attached documentation will have to be followed if Council wishes to enact the by-law in question.

CAO Recommendation

It is the recommendation of the Chief Administrative Officer for the Town of Wolfville that:

1. Council consider developing and adopting a by-law prohibiting smoking in cars with children, under the age of 18, are present.
2. As noted in the information provided by our Solicitor the legal authority to enact this by-law may be questionable. I would recommend that we proceed on the authority that relates to the health and safety of our people and if contested, let the courts and the appeal process make the final determination.
3. That staff be instructed to amend the Summary offence ticket listing for Wolfville to include the proposed by-law once it has been adopted.
4. Council continue to work with Smoke-Free Kings to promote the benefits of creating a smoke free environment for children and people of all ages.
5. Council work with the local RCMP to ensure that the wishes of Council through the by-law are enforced.
6. The Town of Wolfville share and promote research and by-law information with other municipalities as they request it.
7. That funds be budgeted on an annual basis to support the promotion and the establishment of education programs that highlight the benefits of a smoke free environment.

Frequently Asked Questions

Why is the Town of Wolfville developing a bylaw?

In the past, municipalities have demonstrated leadership and served as a role model regarding Smoke Free Public Places. If towns such as Wolfville and Berwick had not enacted Smoke Free Public Places, Nova Scotians might not have the benefit of the toughest Smoke Free legislation in Canada. It is our hope that the province will move forward with provincial legislation once again upon seeing the success of municipal bylaws in action.

Isn't common sense enough?

While common sense should be enough to prevent smoking with children present in cars, it is clear that for many adults, this is not the case. According to Statistics Canada data, one in five children under the age of 12 are exposed to second-hand smoke in cars.

Does the bylaw violate smokers' rights?

This is not a violation of smokers' rights. The bylaw will protect children from being exposed to tobacco smoke in cars just as car seats protect children from injury in cars.

Who is going to enforce a bylaw?

The Town of Wolfville will develop procedures for enforcement of the bylaw. The RCMP will enforce this by-law if and when adopted.

Will the bylaw burden the court system?

This bylaw will not clog up the courts any more than other bylaws enforced to protect the health and safety of children. As with most bylaws, once the new legislation has been in place, compliance becomes the norm.

Where else do they have similar bylaws?

Similar legislation and bylaws have been implemented in several states in the United States and abroad – Arkansas, Louisiana, New Jersey, Bangor Maine and Puerto Rico. Fourteen additional legislations in the US have recently introduced bills to ban smoking in vehicles with children present. In Canada, Ontario has made similar recommendations for legislation.

Is it enough to open the vehicle window?

Research has shown that there is no level of ventilation that will eliminate the harmful effects of second hand smoke. Opening a car window can result in air flow to the back of the car which may cause smoke to be blown directly at those in the back seat.

What are some other benefits?

The evidence is clear, legislation supports smokers quit attempts. The fewer places there are to smoke, the less you are likely to light up. Other benefits include- a cleaner, fresher smelling vehicle, the resale value of your vehicle can increase, you will be a healthier role model for your children, you will be less distracted while

driving and will lower your chances of traffic violations and collisions, you will not have to empty the ashtray in your car any more, and there will be no cigarette burns on your car upholstery. In addition, there are positive health benefits to all adults in the car including smokers and non-smokers.

What will the penalty be?

Education and awareness will be an important piece of this bylaw, however, there will be a \$\$\$\$ penalty for violations.

Why 18?

Children and youth do not have as much control over their environments as adults do. Babies and young children can neither communicate their concerns about their surroundings, nor do they understand the impact and health risks of breathing second hand smoke. Older children and youth may feel uncomfortable about speaking up or have trouble getting away from the smoke. A bylaw will remove this problem.

How supportive are people of a bylaw?

Public support banning smoking in motor vehicles carrying children has increased significantly over the past decade. A recent study found an increase in level of support from 68% in 2002 to 78% in 2005 among smokers and nonsmokers.

What are some of the health risks of second hand smoke for children?

Breathing tobacco smoke increases the likelihood of childhood ear infections, asthma attacks and Sudden Infant Death Syndrome. There is emerging evidence that exposure to second hand smoke can negatively impact behavior, attention and cognition. Second hand smoke increases the risk of cancers such as lung and cervical cancer as well as heart disease in adults.

If I smoke in my car before children enter my vehicle, will that affect my children's health?

The intention of this bylaw is to protect children and youth from the harmful effects of second hand smoke. What many parents do not realize is that second hand smoke lingers long after the fact.

Would a Smoke Free Homes Bylaw be next?

There have recently been local and provincial campaigns that have focused on the importance and impact a smoke free home can have on the health and well being of all its inhabitants. It is the intention to continue to promote the benefits and importance of smoke free homes on a local and provincial level through education and public awareness.

How can we promote this in other communities?

We can share our experiences and success!! Our leadership in the Town of Wolfville will be an inspiration to other communities to follow our lead!!

Support the Town of Wolfville's Smoke Free Vehicle Bylaw. Contact your local Councillor today!!!

For additional information please visit www.smokefreekings.org

Appendix A

Current Legislation

Laws Banning Smoking in Vehicles Carrying Children – International Overview

Michael DeRosenroll, Rob Cunningham
 Canadian Cancer Society
 August 29, 2007

Summary: Laws prohibiting smoking in vehicles carrying children have been adopted in the U.S. states of Arkansas and Louisiana, the U.S. municipalities of Bangor (Maine), Keyport (New Jersey), and Rockland County (New York), as well as Puerto Rico and the Australian state of South Australia. Bills are currently before several U.S. state legislatures, the South African Parliament and the Parliament of the Australian state of Tasmania. The Government of the Australian Capital Territory is also considering bringing forward such legislation.

Listed below are the jurisdictions, the applicable age, the date the law came into force, and the date the law was adopted. Applicable age refers to under the age, thus “18” (for example) means that smoking is prohibited in a vehicle carrying someone under age 18.

Jurisdiction	Applicable Age	Date Law in Force	Date Law Adopted
<u>U.S. states</u>			
1. Arkansas	if car seat required ¹	July 21, 2006	Apr. 10, 2006
2. Louisiana	13 ²	Aug. 15, 2006	July 5, 2006
<u>U.S. municipalities</u>			
3. Bangor, Maine	18	Jan. 18, 2007	Jan. 8, 2007
4. Keyport, New Jersey	18	Apr. 26, 2007	Apr. 24, 2007
5. Rockland County, N.Y.	18	June 21, 2007	June 15, 2007
<u>Australian states and territories</u> ³			
6. South Australia	16	May 31, 2007	Apr. 5, 2007
<u>Other</u> ⁴			
7. Puerto Rico (US Commonwealth in Caribbean)	13	Mar. 2, 2007	Mar. 2, 2006

¹ In Arkansas, a car seat is required when a child is less than six years of age and weighs less than sixty pounds (per s. 27-34-104(b) of the Arkansas State Code).

² Louisiana Revised Statute 32:295 sets out various rules for car seat and seat belt use that apply to all child passengers up to and including age 12. See: <http://www.legis.state.la.us/lss/lss.asp?doc=88231>

³ In the state of Tasmania, a Government bill to ban smoking in cars with kids under age 18 was introduced in the Tasmanian Parliament on August 22, 2007 (Bill 39 of 2007, *Public Health Amendment Bill 2007*); see http://www.parliament.tas.gov.au/bills/pdf/39_of_2007.pdf. The Australian Capital Territory is considering similar legislation; see Media Release, Jon Stanhope, Chief Minister, Australian Capital Territory, June 6, 2007: <http://www.chiefminister.act.gov.au/media.asp?media=2614§ion=53&title=Media%20Release&id=53>.

⁴ In South Africa, there is a Government bill to ban smoking in vehicles carrying kids before the Parliament of South Africa (B24B-2006, *Tobacco Products Control Amendment Bill*, section 2, to enact section 2(1)(a)(iii)).

LEGISLATIVE EXCERPTS

ARKANSAS (Act 13 of 2006)

Web source: <http://www.arkleg.state.ar.us/ftproot/acts/2006S1/public/act13.pdf>

SECTION 1. Title.

This subchapter shall be known and may be cited as the "Arkansas Protection From Secondhand Smoke for Children Act of 2006".

SECTION 2. Definition.

As used in this subchapter "motor vehicle" means any motor vehicle, except a school bus, church bus, and other public conveyance, which is *required by federal or state law or regulation to be equipped with a passenger restraint system*.

SECTION 3. Tobacco use – Prohibitions.

Upon the effective date of this act, smoking is prohibited in all motor vehicles in which a child who is less than six (6) years of age and who weighs less than sixty pounds (60 lbs.) is restrained in a child passenger safety seat properly secured to the vehicle in accordance with § 27-34-101 et seq.

SECTION 4. Penalty.

(a) A person who violates this subchapter is guilty of a violation and upon conviction shall be punished by a fine not to exceed twenty-five dollars (\$25.00).

(b) If a person is convicted, pleads guilty, pleads nolo contendere, or forfeits bond for violation of this subchapter, no court costs pursuant to § 16-10-305 or other costs or fees shall be assessed.

(c) Any person who proves to the court that he or she has entered into a smoking cessation program may have his or her fine eliminated for a first offense violation of this subchapter.

Note: Unless the Act states otherwise, all Acts passed by the Arkansas General Assembly and signed by the Governor take effect 90 days after the final adjournment of the General Assembly session in which the Act was passed. Sources:

http://www.statescape.com/resources/Effective_dates/effective_dates.asp and
www.nga.org/Files/pdf/BOS3-16.pdf.

BANGOR, MAINE (Ordinance 07-50, consolidated in the Code of the City of Bangor as Article IX, section 291-70 and 291-71)

Web source: [http://www.e-codes.generalcode.com/codebook_frameset.asp?t=tc&p=1684%2D291%2Ehtm%23ArticleIX&n=1184&n=\[1\]\[264\]\[1104\]\[1184\]](http://www.e-codes.generalcode.com/codebook_frameset.asp?t=tc&p=1684%2D291%2Ehtm%23ArticleIX&n=1184&n=[1][264][1104][1184])

ARTICLE IX Smoking in Motor Vehicles [Added 1-8-2007 by Ord. No. 07-50]

§ 291-70. Smoking in motor vehicles with child passengers prohibited.

- A. It shall be unlawful for the operator or any passenger in a motor vehicle to smoke cigarettes, pipes, or cigars in a motor vehicle, passenger van, pick-up truck or commercial vehicle when any person under the age of 18 is present in the vehicle, regardless of whether the motor vehicle's windows are down.
- B. "Smoke" as used in this article, shall mean inhaling, exhaling, burning, or carrying any lighted cigarette, cigar, pipe, weed, plant, regulated narcotic, or other combustible substance.

§ 291-71. Violations and penalties.

- A. Whoever violates any of the provisions of this article shall be punished by a fine of \$50. In any action in which the City prevails it shall be entitled to attorneys' fees and all costs of prosecution.
- B. Subsection A notwithstanding, prior to citing the operator or passenger of a motor vehicle for a violation of this article, the Police Department may give written notice to said person acting in violation of this article at the time of the violation informing the person of the use of the motor vehicle in violation of this article.

Note: City of Bangor ordinances come into force 10 days after they are passed by the city council (*Charter of the City of Bangor*, Article 3, Section 1).

KEYPORT, NEW JERSEY (Ordinance 13-07, consolidated in the Ordinances of the Borough of Keyport and s. 4-10.1)

Web source: none available

4-10.1 Smoking in Motor Vehicle – Prohibition. No person shall smoke, while occupying a motor vehicle, if a person under the age of eighteen (18) is also occupying the vehicle.

“Motor vehicle” under this section means any self propelled vehicle licensed for on-road usage, other than a motorcycle, moped, motor scooter or motorized bicycle, regardless of whether the motor vehicle is publicly or privately owned, leased or rented; whether the motor vehicle is operated for public, private or commercial purposes; or whether the windows or doors of the vehicle are in an opened or closed position.

“Smoke” under this section shall mean the burning, inhaling, exhaling, or being in possession of a lighted cigarette, cigar, pipe or any other matter or substance which contains tobacco or any other matter that can be smoked.

Enforcement of this act by State or local law enforcement officers shall be accomplished only as a secondary action when the operator of a motor vehicle has been detained for a violation of Title 39 of the Revised Statutes or another offense.

A person who violates this section shall be fined \$75.00.

No motor vehicle points or automobile insurance eligibility points pursuant to section 26 of P.L.1990, c. 8 (C.17:33B-14) shall be assessed for this offense.

LOUISIANA (Louisiana Revised Statute 32:300.3)

Web source: <http://www.legis.state.la.us/billdata/streamdocument.asp?did=388304>

§300.3. Smoking in motor vehicles prohibited; penalties

A. It shall be unlawful for the operator or any passenger in a motor vehicle to smoke cigarettes, pipes, or cigars in a motor vehicle, passenger van, or pick-up truck, when a child who is required to be restrained in a rear-facing child safety seat, a forward-facing child safety seat, a booster seat, or a motor vehicle's safety belt as required in R.S. 32:295 is also present in such vehicle, regardless of whether windows of the motor vehicle are down. For purposes of this Section, the term "smoke" shall mean inhaling, exhaling, burning, or carrying any lighted cigarette, cigar, pipe, weed, plant, or other combustible substance in any manner or in any form.

B. Whoever violates the provisions of this Section shall be fined one hundred fifty dollars per offense, or at the discretion of the judge, may be sentenced to no less than twenty-four hours of community service.

C. Probable cause for a violation of this Section shall be based solely upon a law enforcement officer's clear and unobstructed view of a person smoking as prohibited by this Section. Violation of this Section shall be considered a primary offense, and any law enforcement officer may stop a motor vehicle solely because of a violation of this Section; however, a law enforcement officer may not search or inspect a motor vehicle, its contents, the driver, or a passenger solely because of a violation of this Section.

D. A violation of this Section shall be considered a nonmoving violation, and a citation issued by a law enforcement officer for such violation shall not be included on the driver's operating record.

Note: Article 3, Section 19, of the *Louisiana State Constitution of 1974*, sets out the rules for the coming into force of Acts passed by the state legislature. All Acts passed during a regular session of the state legislature (as this one was) take effect on the next August 15, unless otherwise specified within the Act.

ROCKLAND COUNTY, NEW YORK (as passed by County Legislature, County Legislature referral number: 8757)

Web source: none available

Section 3. Definitions

As used in this law, the following terms shall have the meanings included:

- A) "Smoke" or "smoking" shall mean inhaling, exhaling, burning or carrying any lighted matter, including cigarettes, herbal cigarettes, bidis, cigars, pipes, weed, plant, regulated narcotic, any other tobacco products, or other combustible substances.
- B) "Child" or "children" shall mean any person under the age of 18.
- C) "Vehicle" shall mean any vehicle, registered or unregistered, commercial or passenger, with an enclosed compartment for driver and passengers, whether any windows on such vehicle are open or closed.
- D) "Bidi" (alt. sp. "beedi") means a thin, often flavored, south-asian-style cigarette made of tobacco wrapped in tendu (or temburini; *Diospyros melonoxylon roxb.*) leaf, and secured with colored thread at one end. Beedies are smaller than regular cigarettes, but more potent. Because they do not have a filter and are wrapped in nonporous leaves, a smoker needs to inhale more often and more deeply to keep them lit. According to the journal of the national cancer institute (November 3, 1999, pp. 1806-1807), one bidi produces three times more carbon monoxide and nicotine, and five times more tar than a regular cigarette.

Section 4. Prohibitions.

It shall be unlawful for the operator or any passenger in a vehicle to smoke when any child is present.

Section 5. Penalties

The first violation of the provisions of this local law shall be a criminal violation punishable by a fine of between \$75.00 and \$150.00. A second or subsequent violation shall be a criminal violation, punishable by a fine of between \$150.00 and \$250.00

SOUTH AUSTRALIA (s. 48 of the *Tobacco Products Regulation Act 1997*, as enacted by the *Tobacco Products Regulations (Smoking in Cars) Amendment Bill 2006*)

Web source: http://www.austlii.edu.au/au/legis/sa/consol_act/tpra1997293/

48—Smoking in motor vehicle if child present

- (1) A person must not smoke in a motor vehicle if a child is also present in the motor vehicle.

Maximum penalty: \$200.

Expiation fee: \$75.

- (2) In proceedings for an offence against this section an allegation in the complaint that a child was present in a motor vehicle at a specified time will be accepted as proved in the absence of proof to the contrary.
- (3) In this section—

child means a person under 16 years of age;

motor vehicle has the same meaning as in the *Motor Vehicles Act 1959*.



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Puerto Rico smoking ban in effect

Associated Press

SAN JUAN, Puerto Rico - People caught smoking in bars and restaurants in Puerto Rico faced fines Friday as a ban on lighting up in enclosed public spaces took effect.

The law was approved last year over the objections of some in the tourism industry. It also prohibits smoking in private cars with children under 13 inside.

Violators face a penalty of \$250 for a first offense and up to \$2,000 for repeat violations.

Opponents say the ban threatens tourism on an island where many people like to smoke while betting in the nearly two dozen casinos, which are considered key to Puerto Rico's \$3 billion tourism industry.

On Friday, Marianne Torres, a 51-year-old Puerto Rican who said she has smoked since she was 9, placed a bet in a San Juan casino with an unlighted cigarette in her mouth.

"That governor is violating the constitutional rights of the people," she said, referring to Gov. Anibal Acevedo Vila who signed the measure after it passed in the legislature.

Bar owner Maria Carrasquillo, however, said she was glad to see the end of smoke-filled workspaces.

"The law is good because it protects people who don't smoke," she said from her business in a suburb of the U.S. Caribbean territory.

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Appendix B

Summary Offence Ticket Information 2006

SUMMARY OFFENCE TICKETS

INFORMATION

2006

**THIS IS HOW TO REQUEST A SUMMARY PROCEEDINGS SCHEDULE.
REQUESTS ARE SENT THROUGH CATHLEEN O'GRADY, DEPARTMENTAL
SOLICITOR, SERVICE NOVA SCOTIA AND MUNICIPAL RELATIONS, TO THE
DEPARTMENT OF JUSTICE.**

MEMORANDUM

To: Chief Administrative Officers, Clerks or Clerk-Treasurers

From: Cathleen O'Grady, Departmental Solicitor

Re: **SUMMARY OFFENCE TICKETS**

Date: July , 2001

INTRODUCTION

Municipal by-laws may be included as offences under the *Summary Proceedings Act*. Once a by-law has been designated under the Act, a peace officer may issue a ticket in respect to the offence.

Using summary offence tickets to enforce your by-laws may save police time, court time and solicitor's time by providing for out of court payments. Standard summary offence tickets are available from the Department of Justice.

PEACE OFFICERS

Summary offence tickets must be issued by a "peace officer". Police officers are "peace officers". "Special constables" appointed by the Minister of Justice or appointed by and working for a police chief also are "peace officers". If your municipal unit employs a by-law enforcement officer who is not employed by the police force, he or she must be appointed a special constable by the Minister of Justice to be able to issue the tickets.

You should discuss who should issue tickets with the police in your municipality. Please see the attached information about "Being Appointed a Special Constable".

SOT SCHEDULES

In deciding whether or not to include a by-law in a Summary Offence Ticket Schedule you should consider the following:

- There is a time delay in adding or removing offences from the Department of Justice system, or in making changes to the level of fine, so the offence should be one that is not subject to change in the near future or often.
- In addition to the amount of fine which is levied under the by-law, the Department of Justice will add a \$100.00 administration fee (or \$30.00 for parking infractions) which the Province retains for collecting the fine and a 15% surcharge under the *Victims' Rights and Services Act*.

For example, the out of court settlement of \$215.00 in the attached Schedules represents a \$100.00 fine, a \$100.00 administration fee and a \$15.00 victims' fine surcharge.

- Recurring offences will require a new ticket for every day for which a fine is to be collected.

I receive and review the municipal information so, if your municipal unit wishes to designate some by-laws, please send the following information to me:

- a certified copy of the by-law;
- the following information in a format similar to that of Schedules 18-G and 18-H, attached. Each by-law should be listed on a separate page and include the following information:
 - the title of the by-law which creates the offence;
 - a concise synopsis of the offence (each section of a by-law which creates an offence should be listed separately and have a separate synopsis - see the attached Schedule 18-H as the example);
 - the municipal fine required for the out of court settlement (Department of Justice will calculate and add the administrative fee and the surcharge). (In deciding on the fine, you must decide whether the fine is to be the minimum penalty under the by-law or another amount. If it is to be another amount, the fine usually imposed by the courts may be used as a guide.)
- if the schedule is prepared on computer - please send a diskette or attach it to an e-

mail to me (cogrady@gov.ns.ca) and indicate the type of program used i.e. Word/WordPerfect/Lotus, etc. used to create the document.

- you should involve your municipal solicitor and police in discussing this matter.

ENFORCEMENT POLICY

It is important that Council decide whether or not tickets are to be used in the municipality. If they are to be used, the municipality should develop a policy upon which decisions to ticket can be based. In addition, municipal employees may require additional training in enforcement techniques before they commence using tickets. A sample enforcement policy is attached.



It is important that the municipal solicitor be involved in the decisions regarding tickets as any ticket may ultimately result in a prosecution in court by the municipal solicitor.

USING TICKETS

It is very important when using summary offence tickets that the offence be properly described. There are a few sections in the Schedules which should be considered carefully before a ticket is issued.

For example, for land-use by-law related offences under the *Municipal Government Act* the offence should be described as:

“contrary to section 505(1)(a), violating any provision of a by-law, specifically, placing outdoor storage of goods in the front yard of the property located at, contrary to Section ... of the ... Land-Use By-law”

Other examples:

In respect to the *Building Code Act*, failure to get a permit to construct or demolish a building or to occupy or change the class of occupancy are offences under Section 8. Failure to get a permit for a renovation as required by a municipal by-law is an offence under Section 19(1)(b). Under the *Building Code Act*, orders to comply should usually precede tickets. The offence may then be worded as:

“contrary to Section 19(1)(b), failed to comply with an order made pursuant to this Act”.

Tickets are most efficient and create less controversy if they follow a warning. You may develop a warning ticket to use, send a letter, or, if a verbal warning is used, keep written notes that it has been given.

CONCLUSION

Please see that this information is distributed to staff such as by-law enforcement officers, building inspectors or development officers who are involved in enforcement.

If you have questions, please phone me at 424-7716.

Thank you.

Cathleen O'Grady
Departmental Solicitor

enclosures

BASIC PROCEDURE FOR USING SUMMARY OFFENCE TICKETS

1. Obtain Summary Offence Tickets (SOTs) from the local Justice Centre.
2. Obtain the schedule for arraignment/plea days from the Clerk of the Provincial Court.
3. In completing the SOT, the information should be printed clearly. Information concerning the offence should repeat the synopsis in the Schedule to the *Summary Proceedings Act* and state the section number and the name of the Act. Complete the address of the courthouse where the arraignment will take place if the ticket is not paid. Where there is a satellite court serving your municipality, its address is listed. Check with your local Justice Centre. The arraignment date should be the first arraignment date which is scheduled for more than thirty days after the date of the issuance of the ticket, for example, if the ticket is issued on April 26 and the next arraignment day is May 2 (the first Monday of the month), the following arraignment day, June 6, must be used.

In the "Fine Payable" box, check "Mun." so that the Provincial Court will remit the fine to the municipal unit. Fill in the total penalty from the Schedule.

4. The back of the green page must be completed to provide information on where the fine can be paid. The fine can be paid by mail or in person at any Justice Centre. **The green copy (in English—Summons to Defendant) is served to the defendant immediately.**
5. Of the remaining pages, the pink page (Police Record) is for the municipal records. Take or send (in a secure fashion) the other two white pages (Summary Offence Information and Record of Conviction) to the Provincial Court.
6. If the defendant pays the penalty, the fine will be remitted to the municipal unit at the end of the month. If the defendant fails to pay the penalty, the offence will be called for plea on arraignment day. If the defendant pleads guilty or fails to appear, the defendant will be found guilty and ordered to pay the penalty. A notice will be sent to the defendant. If the defendant pleads not guilty, a court date will be assigned.
7. Within a day or two of arraignment day, a hearing results report will be available indicating the result of the arraignment. It is not necessary to attend on arraignment day because the hearing results report will provide the information on whether the fine is due or whether there will

be a hearing. Arrange to pick up the hearing results report shortly after arraignment day.

8. If there is to be a hearing, the municipality should prosecute the offence on the date assigned. All witnesses should be prepared and present.
9. The Justice Centre in your area may have a collection procedure for collecting fines which are not paid. The municipality may be able to use this procedure for a fee. In the alternative, the municipality may wish to turn unpaid fines over to a collection agency, have the by-law enforcement officer attempt collection through a reminder system, or in the case of substantial fine, sue and execute on the judgement.

Cathleen O'Grady
Departmental Solicitor
Service Nova Scotia and Municipal Relations
2005

BEING APPOINTED A SPECIAL CONSTABLE

Summary offence tickets must be issued by a "peace officer". If you are a by-law enforcement officer who is not employed by the police force, you must be appointed a "special constable" under the *Police Act* by the Minister of Justice to be able to issue the tickets. The appointment makes you a "peace officer".

Police officers, as peace officers, are also authorized to issue tickets and do not need special appointments.

Subsection 14(3) of the *Police Act* allows municipal units with their own police forces to have special constables appointed by the police chief. Municipal units without their own police force or whose by-law enforcement officer is not employed by the police force must request the Minister of Justice to appoint special constables. Requests should be addressed to the Director of Policing Services, Department of Justice, P.O. Box 217, Station M, Halifax, N.S., B3J 2M4.

The information required to be sent to the Director of Policing Services is:

- a request for the appointment;
- the name of the person being appointed;
- the duties, such as, enforcement of by-laws, parking offences under the *Motor Vehicle Act*, enforcement of the *Municipal Government Act* or the *Building Code Act*, etc.;
- the territorial jurisdiction of the appointee, described as "within the boundaries of the Town (Municipality) of ...";
- the duration of the appointment, described as, for example "while in the employment of the Town (Municipality) of ..."; and
- a photograph of the appointee (head size of two inches) for use on an identification badge.

SAMPLE

Enforcement Policy, Municipality/Town of _____

1. Legislation to be Enforced

Municipal Government Act	Sections:
By-laws	Sections:
Building Code Act	Sections:
etc.	

2. Persons Involved

By-law Enforcement Officer(s):
Development Officer:
Building Inspector:
Police Chief/Constable:
Municipal Solicitor:
etc.

3. Enforcement Principles

The investigation of alleged violations is the responsibility of _____ (e.g. the by-law enforcement officer). The prosecution of charges is the responsibility of the municipal solicitor.

The municipality will follow established principles in deciding whether to lay charges, which include:

The decision to lay a charge concerning a minor offence using a Summary Offence Ticket (SOT) will be the decision of the investigator. The investigator will only proceed with a charge where there are reasonable grounds to believe that an offence has occurred.

Warnings may be issued concerning a minor Offence where the investigator deems appropriate. In deciding whether to proceed with a warning or a ticket, the investigator will respect the principle of equal protection and benefit of the law. The decision will be made in a non-discriminatory and fair manner which protects the public interest at large.

The investigation of alleged offences of a more serious nature, or which involve repeat offenders will involve the investigator and _____ (supervisor, chief of police, municipal solicitor, etc.). The decision whether to lay a charge will be based on sound judgement and principles of fair and equitable treatment under the law. These decisions will be reached after consultation with the solicitor who will prosecute. Such decision shall not involve a decision based on personal matters, nor shall the members of Council be involved in the decision.

The investigator and supervisor have the ultimate right and duty to

determine the charges to be laid, subject to advice from the municipal solicitor and subject to the right of the municipal solicitor to withdraw or stay charges, for cause, after they have been laid.

4. Prosecutorial Discretion

In advising on the laying of charges or the staying of prosecutions, the solicitor will be guided by the principle that a prosecution should only go forward where there is evidence available on each essential element of the offence and the solicitor believes there is a reasonable chance that a conviction will result if the case proceeds to trial.

In the laying of charges and decisions respecting staying of prosecutions, consideration of the public interest may be relevant. In determining whether the public interest may be served, the following things should be considered:

whether there is significant risk to human life, health, property or the environment;

any record of compliance;

any relevant history;

whether the violation seems deliberate in nature or, if not deliberate, the degree of negligence or carelessness involved;

whether there has been concealment of information or any other obstruction;

whether the violation has repeated or a warning was disregarded;

whether a ticket or prosecution is likely to have a deterrent effect on this individual or others;

whether failure to enforce would tend to bring the law into disrepute or disrespect.

If a charge is dropped, the reasons must be recorded in the file.

**Schedule 18-Q
Town of Wolfville By-laws**

Offence	Section	Out of Court Settlement
Dog By-law:		
1. Failing to pay dog tax	4	\$135.75
2. Failing to keep dog tag on dog	5(3)	\$118.50
3. Failing to provide statement to Clerk	6	\$130.00
4. Owning dog which runs at large	7(1)	\$135.75
5. Owning dog which is not under control	7(2)	\$135.75
6. Owning dog which attacks, chases, bites, or injures (specify) domestic animal or person (specify)	7(3)(a)	\$164.50
7. Owning dog which damages property	7(3)(b)	\$164.50
8. Owning fierce or dangerous dog which is not confined	7(3)(c)(i)	\$164.50
9. Owning fierce or dangerous dog which is not muzzled and harnessed or leashed	7(3)(c)(ii)	\$164.50
10. Failing to remove dog defecation	7(4)(a)	\$164.50
Noise By-law:		
1. Making noise disturbing peace and tranquillity	4(1)	\$222.00
2. Permitting dog to make noise disturbing peace and tranquillity	4(2)	\$222.00
3. Operating or permitting operation of sound equipment so that sound is heard on other property or in other dwelling unit	4(3)	\$222.00
4. Causing loud and unnecessary noise heard on other property or in other dwelling unit	4(4)	\$222.00
Open Air Fires By-law:		
1. Having open air fire or any other fire other than as permitted by by-law	2(1)	\$222.00
2. Burning general waste or garden or yard waste	2(2)	\$222.00
3. Operating acceptable fire pit, outdoor fireplace or structure within 4.5 m (15 ft.) of a building	3(1)(a)	\$222.00
4. Operating acceptable fire pit, outdoor fireplace or structure without enclosed sides made of suitable non-combustible components	3(1)(b)	\$222.00
5. Operating acceptable fire pit, outdoor fireplace or structure without 1.27 cm (0.5 in.) expanded metal spark arrestor mesh screen over fire	3(1)(c)	\$222.00
Skateboarding By-law:		
1. Using or operating skateboard or scooter (specify) in Prohibited Area 1	2	\$164.50
2. Operating a skateboard or scooter (specify) in Prohibited Area 2	2	\$164.50
Smoke Free Indoor Public Places By-law:		
1. Smoking in place of public assembly	4(a)	\$222.00
2. Smoking within radius of 1 m (3.28 ft.) of public entrance or air intake to building	4(b)	\$222.00
3. Smoking at service counter	4(c)	\$222.00
4. Smoking in service line	4(d)	\$222.00
5. Smoking in reception area	4(e)	\$222.00
6. Smoking in public elevator, escalator or stairway (specify)	4(f)	\$222.00
7. Smoking in public transportation facility or vehicle	4(g)	\$222.00
8. Smoking in public rest room	4(h)	\$222.00

Schedule 18-Q amended: O.I.C. 2007-183, N.S. Reg. 201/2007.

Schedule 18-Q amendments:

Garbage By-law repealed; Noise By-law, Items 1-4 amended; Open Air Fires By-law, Skateboarding By-law

and Smoke Free Indoor Public Places By-law added: O.I.C. 2003-146, N.S. Reg. 83/2003.