

BY-LAW NO. 35

NO TOBACCO SMOKING BY-LAW

BAIN APARTMENTS CO-OPERATIVE INCORPORATED (BACI)

BACKGROUND

- I. WHEREAS it has been determined that environmental tobacco smoke (exhaled tobacco smoke and the tobacco smoke from idling cigarettes, cigars, pipes or any other lighted smoking equipment), also known as second-hand smoke, is a health hazard because of its adverse effects and risk to the health of persons.
- II. AND WHEREAS the Province of Ontario has implemented legislation prohibiting smoking in public areas and workplaces, as has the City of Toronto.
- III. AND WHEREAS it is desirable for the health, safety, and welfare of the residents, visitors and employees of BACI to prohibit smoking and limit the effect of second-hand smoke, in accordance with the provisions of this by-law.

NOW THEREFORE Residents' Council of BACI hereby enacts as follows:

1. **DEFINITIONS** – In this by-law:

Act means the *Co-operative Corporations Act* (Ontario) (as amended or replaced).

common areas means all of the housing project except the dwelling units.

dwelling unit means a part of the housing project designated as a unit for residential purposes and includes the space enclosed by its boundaries, all structures and fixtures within this space and the exclusive use common areas.

enclosed means closed in by a roof or ceiling and walls with an appropriate opening or openings for entering and exiting.

evicted and eviction includes the termination of membership in BACI and occupancy rights in a dwelling unit.

exclusive use common areas means the common areas that are immediately adjacent to and serve a dwelling unit, including the interior stairways and hallways between dwelling units, the sun rooms, the exterior walk from the dwelling unit to the common walkways within the housing project, the exterior stairs leading to the dwelling unit, the porches of the dwelling unit and the yard or garden areas immediately adjacent to the dwelling unit.

housing project means all or part of the residential accommodation operated by BACI, including facilities used for ancillary purposes, located in one or more buildings used in whole or in part for residential accommodation.

notice of smoke-free designation means the notice referred to in paragraph 4.c, below.

smoke or smoking includes the carrying of a lighted tobacco contained in a cigar, cigarette or pipe, or any other lighted smoking equipment, but does not include smoke or smoking if the smoke or smoking is carried out for or associated with traditional aboriginal cultural or spiritual purposes.

smoke-free means those areas of the housing project, as designated by the terms of this by-law, in which smoking is prohibited.

stacked pair of dwelling units or stacked pair means, in the housing project, a lower dwelling unit and the upper dwelling unit above that lower dwelling unit.

2. **PURPOSE OF THE BY-LAW** – The purpose of this by-law is to promote the health, safety, and welfare of the residents, visitors and employees of BACI by designating dwelling units and their exclusive use common areas to be smoke-free.
3. **PROHIBITION** – No person shall smoke in a dwelling unit that has been designated to be smoke-free in accordance with this by-law.

4. **DESIGNATION OF SMOKE-FREE DWELLING UNITS**

- a. **Survey of Households** – Once this by-law is in effect, Residents' Council will conduct a survey of the households that make up BACI to determine which households are interested in having their dwelling unit designated smoke-free.
- b. **Determination of Smoke-Free Dwelling Units** – Based on the results of the survey, Residents' Council will identify the stacked pairs of dwelling units in which each household of the dwelling units that form the stacked pair has indicated a desire to have its dwelling unit designated as smoke-free. Each of these households will be informed that they can sign an agreement, substantially in the form attached to this by-law as Schedule A, agreeing to the designation of its dwelling unit as smoke-free.
- c. **Designation of Dwelling Unit as Smoke-Free** – When both households of a stacked pair of dwelling units have signed and delivered to the management office of BACI a written agreement agreeing to the designation of their respective dwelling units as being smoke-free, then the management of BACI shall deliver to each of the households a notice that their respective dwelling units are smoke-free, which notice shall be signed by the corporate secretary of BACI or such other person authorized by a resolution of Residents' Council to sign the notice of smoke-free designation.

5. REVOKING THE DESIGNATION OF STACKED UNITS AS SMOKE-FREE -

- a) When one household moves out of a designated smoke-free dwelling unit, that unit's smoke-free status may be revoked only when both the remaining household in the designated stacked pair, and the incoming new household, have delivered to the management office of BACI an agreement signed by both households and duly witnessed, consenting to the removal of the designation of both of their dwelling units as smoke free. For further clarity, in the event that only one of the households wishes to revoke the smoke-free status of a stacked pair of dwelling units, that stacked pair shall remain smoke-free.

Following receipt of that agreement then the management of BACI shall deliver to each of the households a notice that their dwelling units are no longer smoke-free, which notice shall be signed by the corporate secretary of BACI or such other person authorized by a resolution of Residents' Council to sign the notice of revocation.

- b) In the event that both households move out of a pair of stacked designated smoke-free units at the same time, the stacked pair of smoke-free units shall return to having a smoking optional status until such time as it may, under the terms of this By-law, be again designated as smoke-free.

- c) If at any time, both households in a stacked pair of designated smoke-free dwelling units wish to revoke the smoke-free status of their stacked pair of dwelling units, that smoke-free status may be revoked only when both households in the designated stacked pair have delivered to the management office of BACI an agreement signed by both households and duly witnessed, consenting to the removal of the designation of both of their dwelling units as smoke free.

Following receipt of that agreement then the management of BACI shall deliver to each of the households a notice that their dwelling units are no longer smoke-free, which notice shall be signed by the corporate secretary of BACI or such other person authorized by a resolution of Residents' Council to sign the notice of revocation.

6. SUBSEQUENT DESIGNATION OF SMOKE-FREE DWELLING UNITS – At any time and from time to time, if both households of a stacked pair of dwelling units that have not previously been designated smoke-free sign and deliver to the management office of BACI a written agreement agreeing to the designation of their respective dwelling units as smoke-free, then the management of BACI shall deliver to each of the households a notice of smoke-free designation.

7. EFFECTIVE DATE OF SMOKE-FREE DESIGNATION – A stacked pair of dwelling units shall be smoke-free as of the last date when both households of the dwelling units that make up the stacked pair have signed and delivered to the office of BACI a written agreement agreeing to the designation of their dwelling unit as smoke-free, or such other date as set out on the notice of smoke-free designation.

8. BREACH OF BY-LAW – A contravention of any provision of this by-law is a ground for eviction of a member.

9. JOINT AND SEVERAL LIABILITY – If there is more than one member occupying a dwelling unit designated as smoke-free, then each member is responsible for a contravention of any provision of this by-law by any member of his or her household, including other members of BACI, guests or sub-occupants, and also includes any person he or she, or his or her household, guests, sub-occupants or sub-tenants, invite or allow onto the housing project. Members may be evicted as a result of any such contravention by any of the persons identified in the preceding sentence of this Section.

10. SEVERABILITY OF SECTIONS – If any section or sections of this by-law, or parts of it, are found by any court of law or other tribunal with jurisdiction to be illegal, such section or sections or parts thereof shall be deemed to be severable and all other sections or parts of this by-law shall be deemed to be separate and independent therefrom and to be enacted as such.

PASSED by Residents' Council and sealed with the corporate seal of the Co-operative this 02nd day of November, 2009

Signature: Nancy Lyon
Nancy Lyon, President

Meaghan Grant
Meaghan Grant, Secretary

CONFIRMED in accordance with the requirements of the by-laws of the corporation and the Act at a general meeting of the members of the Co-operative duly called and held on the 07th day of April, 2010

Signature: Nancy Lyon
Nancy Lyon, President

Meaghan Grant
Meaghan Grant, Secretary