



1989

c Pr23 City of Hamilton Act, 1989

Ontario

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Bibliographic Citation

City of Hamilton Act, 1989, SO 1989, c Pr23

Repository Citation

Ontario (1989) "c Pr23 City of Hamilton Act, 1989," *Ontario: Annual Statutes*: Vol. 1989, Article 126.

Available at: http://digitalcommons.osgoode.yorku.ca/ontario_statutes/vol1989/iss1/126

CHAPTER Pr23

An Act respecting the City of Hamilton

Assented to July 13th, 1989

Whereas The Corporation of the City of Hamilton, herein called the Corporation, hereby applies for special legislation in respect of the matters hereinafter set forth; and whereas it is expedient to grant the application;

Preamble

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

Definitions

“employee” includes a person who,

- (a) performs any work for or supplies any services to an employer, or
- (b) receives any instructions or training in the activity, business, work, trade, occupation or profession of the employer;

“inspector” means a person appointed by the council of the Corporation under clause 2 (1) (j);

“smoking” includes carrying a lighted cigar, cigarette or pipe and “smoke” has a corresponding meaning;

“smoking policy” means a written policy that attempts to accommodate the preferences of smokers and non-smokers in a workplace;

“supervisor” means a person who has charge of a workplace or authority over an employee;

“workplace” means any enclosed area of a building or structure in which an employee works.

2.—(1) The council of the Corporation may pass by-laws,

By-laws
respecting
smoking in
the
workplace

- (a) requiring every employer in the City of Hamilton, or any class thereof, within the time specified in the by-law, to adopt and implement a smoking policy in respect of each workplace under the control, supervision or ownership of the employer;
- (b) requiring every employer required by by-law to adopt and implement a smoking policy and every such employer and every supervisor employed by such employer to maintain that smoking policy in the workplace for which it was adopted and to give notice of the adoption of the smoking policy to each employee in the workplace within the time specified in the by-law;
- (c) providing that the smoking policy shall either totally prohibit smoking in the workplace or shall prohibit smoking in the workplace except in designated smoking rooms and designated smoking areas;
- (d) providing that a reception area, lobby, hallway, washroom or private office shall not be a designated smoking room or designated smoking area;
- (e) requiring that designated smoking areas and designated smoking rooms be clearly identified as such;
- (f) providing that, in establishing designated smoking rooms and designated smoking areas, the employer shall take into account the concerns and preferences of both non-smoking and smoking employees;
- (g) requiring that a designated smoking room be enclosed and ventilated in accordance with the by-law, but no employer shall be required to make any expenditures or structural alterations to the workplace to accommodate the preferences of either non-smoking or smoking employees;
- (h) providing that parts of a dining room, cafeteria or lunch room, not exceeding a total of 80 per cent of the room's seating capacity, may be designated smoking areas, and providing that the employer shall use moveable or permanent dividers to clearly separate designated smoking areas from non-smoking areas;
- (i) prohibiting any person from smoking in a workplace contrary to the smoking policy adopted for that workplace;

- (j) appointing inspectors;
- (k) prescribing the size, location and details of the signs which an employer or supervisor is required by the by-law to erect in the workplace;
- (l) prescribing the method by which any notice is required to be given by the employer or supervisor; and
- (m) providing that any employer or supervisor who permits smoking in a workplace contrary to the smoking policy adopted for that workplace is guilty of an offence.

(2) A by-law passed under clause (1) (g) may require that designated smoking rooms in a building or structure constructed after 1991 be ventilated separately from the remainder of the building or structure. Ventilation requirements

3.—(1) For the enforcement of any by-law passed under this Act, an inspector, upon producing proper identification, may, at all reasonable hours, enter any workplace or any building or structure in which a workplace is situate, and may make examinations, investigations and inquiries. Inspection of workplace

(2) An inspector who enters a workplace under subsection (1) may request the production of property relevant to the investigation and the person in control of the property shall make it available for inspection. Inspection of property

(3) An inspector may remove a document in order to make copies but shall promptly return it to the person from whom it was taken. Copies

(4) A copy of a document removed is admissible in evidence in any proceeding as proof, in the absence of evidence to the contrary, of the original document and its contents. Admissibility of copies

(5) If a workplace is also a dwelling, Where workplace is a dwelling

- (a) no inspector may enter that workplace without the consent of the occupant or without first obtaining and producing a warrant; and
- (b) the inspection is limited to that part of the dwelling used as a workplace.

Obstruction
of inspector
prohibited

(6) No person shall hinder or obstruct an inspector lawfully carrying out the enforcement of any by-law passed under this section.

Application
for warrant

(7) An inspector may apply to a justice of the peace for a warrant if an entry and inspection is reasonably necessary to enforce the by-law and if any person,

- (a) denies entry or access to an inspector through or over a workplace or through or over any building or structure in which a workplace is situate;
- (b) instructs or directs an inspector to leave a workplace or any building or structure in which a workplace is situate;
- (c) obstructs an inspector from carrying out the enforcement of a by-law passed under this Act; or
- (d) refuses to comply with a request for the production of any thing, the production of which is requested for the purpose of an examination, investigation or inquiry.

Warrant by
justice of the
peace

(8) A justice of the peace may issue a warrant authorizing an inspector to act as mentioned in clause (a) in respect of the workplace or building or structure specified in the warrant, by force if necessary, together with such police officers as may be called upon to assist the inspector if the justice of the peace is satisfied on evidence under oath,

- (a) that there is reasonable and probable ground for believing that it is necessary,
 - (i) to enter and have access to any workplace or any building or structure in which a workplace is situate to enforce the by-law, or
 - (ii) to make examinations, investigations and inquiries for the purpose of this Act or the enforcement of any by-law passed under this Act; and
- (b) that an inspector,
 - (i) has been denied entry to the workplace or to any building or structure in which a workplace is situate,

(ii) has been instructed or directed to leave the workplace or any building or structure in which a workplace is situate,

(iii) has been obstructed, or

(iv) has been refused production of any thing related to an examination, investigation or inquiry.

(9) A warrant issued under this section shall be executed at reasonable times as specified in the warrant. Execution of warrant

(10) A warrant issued under this section shall state the date upon which it expires, which shall be a date not later than fifteen days after the warrant is issued. Expiry of warrant

(11) A justice of the peace may receive and consider an application for a warrant under this section without notice to and in the absence of the employer, owner, occupier or supervisor of the workplace or of the building or structure in which a workplace is situate. Application without notice

4. This Act comes into force on the day it receives Royal Assent. Commencement

5. The short title of this Act is the *City of Hamilton Act, 1989*. Short title

