

DRAFT MODEL OF SMOKING AND VAPING BY-LAW

DRAFT MODEL

By-law 2018 –

A By-law to prohibit the smoking or vaporizing of tobacco or recreational cannabis and vaporizing of any substance in public places and workplaces in the [name of municipality]

WHEREAS Section 8 of the *Municipal Act, 2001*, c. 25, as amended ("*Municipal Act, 2001*") provides that the powers of a municipality shall be interpreted broadly so as to confer broad authority on the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues; and

WHEREAS clause 6 of subsection 11(2) of the *Municipal Act, 2001* provides that a municipality may pass by-laws in the interest of the health, safety and well-being of its residents; and

WHEREAS the Council of the Corporation of [name of municipality] has the authority to pass a by-law to prohibit or regulate the smoking of tobacco and cannabis in public spaces and workplaces pursuant to Section 115(1) of the *Municipal Act, 2001*, and to define "public place" for purposes of such by-law; and

WHEREAS Section 128 of the *Municipal Act, 2001* provides that a municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of council are or could become or cause public nuisances; and

WHEREAS Section 129 of the *Municipal Act, 2001*, provides that a local municipality may prohibit and regulate with respect to odours; and

WHEREAS subsection 115(3) of the *Municipal Act, 2001* provides that section 115 of the Act shall not apply to a highway; and

WHEREAS the Council of the Corporation of the [name of municipality] (the "Council") has deemed it desirable for the health, safety and well-being of the residents of the [name of municipality] to prohibit or regulate smoking or vaporizing of tobacco and cannabis and vaporizing of any substance in public places within the [name of municipality] in accordance with the provisions of this By-law; and

WHEREAS Section 18 of the *Smoke-Free Ontario Act, 2017*, S.O. 2017, c. 26, Schedule 3, contemplates that where there is a conflict between a provision of this Act and a provision of another Act, a regulation or a municipal by-law that deals with a matter to which this Act applies,

the provision that is more restrictive of the matter to which this Act applies prevails, subject to section 19 in the said Act.

NOW THEREFORE THE COUNCIL ENACTS AS FOLLOWS:

1.0 BY-LAW TITLE

1.1 This By-law may be cited as the "Tobacco, Cannabis and Vaporizing By-law".

2.0 DEFINITIONS

2.1 For the purpose of this By-law:

- (a) "Cannabis" means cannabis as defined in the *Cannabis Act* (Canada);
- (b) "Community Centre" means a building or enclosed area owned and operated by the Municipality that is used for public recreation, entertainment or cultural purposes;
- (c) "Council" means the Council of the Corporation of the [name of municipality];
- (d) "Electronic Cigarette" means a vaporizer or inhalant-type device, whether called an Electronic Cigarette or any other name, that contains a power source and heating element designed to heat a substance and produce a vapour intended to be inhaled by the user of the device directly through the mouth, whether or not the vapour contains nicotine.
- (e) "Health Care Facility" means any building wherein medical, dental, psychological or chiropractic services or advice regarding any illness, disease or injury, physical or mental, is or may be provided and without limiting the generality of the foregoing, includes a pharmacy, a community health centre, the offices of doctor, dentist, chiropractor, optometrist, psychologist or any other health care practitioner. The area so defined includes the administrative offices, food service and eating areas thereof;
- (f) "Municipal Building" means any building, facility or structure owned, leased, controlled or used by the Municipality for municipal purposes, including without limitation municipal offices, transit facilities, bus shelters, community centres, libraries, indoor swimming pools, arenas, museums, art galleries, public washrooms, concession stands, recreational centres, fire halls, ambulance stations and police stations;
- (g) "Municipality" means The Corporation of the [name of municipality];

- (h) "Officer" means:
- (i) A Provincial Offences Officer of the Municipality or other person appointed by or under the authority of a Municipal by-law to enforce Municipal by-laws; or
 - (ii) A Police Officer employed by the police service of the [name of municipality], Ontario Provincial Police or the Royal Canadian Mounted Police.
- (i) "Outdoor Recreational Facility" means any area located on municipal property that is designed, designated or delineated for the playing of sports or for activities, together with any lane, walkway or public parking area leading thereto including but not limited to: swimming pools, splash pads, soccer fields, baseball diamonds, tennis courts, football fields, player benches, side lines, player warm up areas and spectator areas;
- (j) "Park" means lands owned by the Municipality that is designed or used for public recreation including, but not limited to, parklands, parkettes, trails, community gardens, sports fields, playing fields, beaches including any adjacent bodies of water, and includes any lane, walkway or public parking area leading thereto and any spectator or player seating areas;
- (k) "Playground Area" means any part of an outdoor area fitted with play equipment, including but not limited to slides, swings, and climbing equipment, and includes any surrounding natural or man made safety surface of sand, rocks, wood chips, rubber or any similar material that may typically define its border and any trail or pathway within a nine metre radius of a Playground Area;
- (l) "Public Place" includes any place to which the public has access as of right or invitation, express or implied, regardless of whether it is owned by a public or private entity, and also includes any motor vehicle located in a public place or in any place open to public view whether or not such vehicle is in motion;
- (m) "Smoking" means smoking (exhaling and inhaling) or holding lighted tobacco or lighted cannabis.
- (n) "Tobacco" means tobacco, in whatever manner it may be used or consumed, and in any processed or unprocessed form, and includes any product made in whole or in part of tobacco and/or tobacco leaves, including without limitation, pipe tobacco, waterpipe tobacco, cigarettes, cigars, and cigarillos.
- (o) "Use" with respect to Electronic Cigarettes, includes any of the following:

- 1) Inhaling vapour from an Electronic Cigarette.
- 2) Exhaling vapour from an Electronic Cigarette.
- 3) Holding an activated Electronic Cigarette.

(p) "Vaporizing" means:

- (i) to inhale and exhale the vapour produced by an Electronic Cigarette or similar device containing Cannabis or tobacco or any substance, or
- (ii) holding or otherwise having control of an Electronic Cigarette that is producing vapour, emissions or aerosol from Cannabis or tobacco or any substance.

3.0 GENERAL PROHIBITIONS

3.1 In addition to the prohibitions set out in the Smoke-Free Ontario Act, S.O. 2017, c.26, as amended from time to time, no person shall smoke or vaporize Cannabis or tobacco, or hold or otherwise use lighted Cannabis or tobacco, or use an Electronic Cigarette, or vaporize any substance, in or on any Public Place, including, but not limited to, the following:

- (a) Municipal Buildings identified in Schedule "A" or within a 9 metre radius of any public entrance of a Municipal Building;
- (b) the outdoor grounds of any Municipal Building identified in Schedule "A";
- (c) all Health Care Facilities and the outdoor grounds thereof;
- (d) Parks and natural areas located within the Municipality or within a 20 metre radius of the perimeter of such areas;
- (e) public and private parking lots;
- (f) all Outdoor Recreational Facilities or within a 20 metre radius of the perimeter of an Outdoor Recreational Facility;
- (g) all Playground Areas, or within a 20 metre radius of the perimeter of Playground areas;
- (h) sidewalks and municipal boulevards, except to the extent the sidewalk or boulevard is located within a road allowance;
- (i) all schools, daycare facilities, and other child care facilities, or within 20 metres of the boundaries of the properties on which these facilities are situated;
- (j) all retail, commercial and business establishments, including but not limited to shopping malls.

4.0 APPLICABILITY

4.1 This By-law does not apply to privately-owned property that is primarily a private dwelling.

4.2 This By-law does not apply to any highway or any portion of a public road allowance highway.

4.3 This By-law does not apply to a person who is entitled to possess Cannabis pursuant to a medical document, registration certificate or other document related to medical possession issued pursuant to the Cannabis Regulations (SOR/2018-144) or successor legislation or regulations made thereunder.

5.0 ENFORCEMENT

5.1 The provisions of this By-law may be enforced by an Officer.

5.2 Where any person contravenes any provision of this By-law, an Officer may direct such person to comply with this By-law. Every person so directed shall comply with such direction without undue delay.

5.3 Where an Officer has reasonable grounds to believe that a person has contravened any provision of this By-law, the Officer may require the name, address and proof of identity of that person, and the person shall supply that information. Failure to provide sufficient or any identification shall constitute obstruction of the Officer as set out in section 6.2 of this By-law.

6.0 OFFENCES

6.1 Any person, who contravenes or fails to comply with any provision of this By-law is guilty of an offence and upon conviction is liable to a fine as provided for in the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended.

6.2 No person shall hinder or obstruct, or attempt to hinder or obstruct, an Officer who is exercising a power or performing a duty under this By-law.

7.0 CONTINUATION, REPETITION PROHIBITED BY ORDER

7.1 Where a person has been convicted of an offence under this By-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may, in addition to any penalty imposed on the person convicted, issued an order:

- (i) prohibiting the continuation or repetition of the offence by the person convicted; and
- (ii) requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

8.0 ADMINISTRATIVE PENALTIES

- 8.1 Instead of laying a charge under the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, as amended, for a breach of any provision of this By-law, an Officer may issue an administrative penalty to the person who has contravened this By-law.
- 8.2 The Officer has the discretion to either proceed by way of an administrative penalty or a charge laid under the *Provincial Offences Act*, R.S.O. 1990, c. P. 33. If an administrative penalty is issued to a person for the breach, no charge shall be laid against that same person for the same breach.
- 8.3 The amount of the administrative penalty for a breach of a provision of this By-law, issued under this By-law, is fixed as set out in By-law No, [insert number and title of by-law], as amended or any successor by-law.
- 8.4 A person, who is issued an administrative penalty shall be subject to the procedures as provided for in By-law [insert number and title of by-law], as amended or any successor by-law.
- 8.5 An administrative penalty imposed on a person pursuant to this By-law that is not paid within 15 days after the day it becomes due and payable, constitutes a debt of the person to the Municipality and may be added to a municipal tax roll and collected in the same manner as municipal taxes.

9.0 PENALTIES

- 9.1 Every person who is guilty of an offence under this By-law shall be subject to the following penalties:
- (a) Upon a first conviction to a fine of not less than \$100 and not more than \$500;
 - (b) Upon a second or subsequent conviction for the same offence, to a fine of not less than \$500 and not more than \$1,000;
 - (c) Upon conviction for a multiple offence, for each offence included in the multiple offence, to a fine of not less than \$100 and not more than \$1,000.

10.0 COLLECTION OF UNPAID FINES

- 10.1 Where a fine is in default, the Municipality may proceed with civil enforcement against the person upon whom the fine has been imposed, pursuant to the *Provincial Offences Act*, R.S.O. 1990, c.P.33.

- 10.2 The Municipality may make a request to the treasurer of a local municipality to add any part of a fine that is in default to the tax roll for any property in that local municipality for which all of the registered owners are responsible for paying the fine, and to collect it in the same manner as municipal taxes.

11.0 SEVERABILITY

- 11.1 If any provision or part of this By-law is declared by any court or tribunal of competent jurisdiction to be illegal or inoperative, in whole or in part, or inoperative in particular circumstances, the validity of this By-law as a whole or any part thereof, other than that part which is declared invalid, shall not be affected and it shall continue to apply in full force and effect to all other circumstances.

12.0 CONFLICTS

- 12.1 If any provision of this By-law conflicts with an Act or a regulation or another by-law, the provision that is the most restrictive of the smoking of tobacco or of the smoking of Cannabis, as the case may be, shall prevail.

13.0 INTERPRETATION

- 13.1 The provisions of Part VI of the *Legislation Act, 2006*, S.O. 2006, c.21, Schedule F shall apply to this By-law.

14.0 FORCE AND EFFECT

- 14.1 This By-law comes into force and effect on the _____ day of _____, 2019.

Read a first, second and third time and passed in Open Council on this [insert number] day of [insert month], 2019.

[insert name]
Clerk of the Municipality

[insert name]
Mayor