

THE CORPORATION OF THE TOWNSHIP OF NORTH DUNDAS

BY-LAW No. 2020-31

Being a By-law to prohibit the smoking or vaping of tobacco, e-substances, cannabis, or any other substance in public places and workplaces within the Township of North Dundas.

WHEREAS it has been determined that smoking or vaping can negatively affect indoor and outdoor air quality for indicators including carbon monoxide and particulate matter, which poses health risks to smokers and those exposed to the second-hand smoke, vapour, or gas that are associated with or result from smoking or vaping;

AND WHEREAS second-hand smoke can trigger cardiovascular events and can aggravate existing respiratory conditions;

AND WHEREAS second-hand smoke and vapour are deemed to be public nuisances because of its irritating properties;

AND WHEREAS pursuant to subsection 8(3) of the *Municipal Act, 2001*, S.O. 2001, c.25 (the "*Municipal Act*"), municipalities may regulate or prohibit, or require persons to do things, respecting a matter;

AND WHEREAS pursuant to paragraphs 6 and 8 of subsection 10(2) of the *Municipal Act*, a municipality may pass by-laws respecting the health, safety, and well-being of persons, and the protection of persons and property, including consumer protection;

AND WHEREAS Section 115 of the *Municipal Act* authorizes the council of a municipality to pass by-laws prohibiting and regulating the smoking and vaping of tobacco and cannabis in defined public places and workplaces within the municipality;

AND WHEREAS subsection 128(1) of the *Municipal Act* provides that a municipality may prohibit and regulate with respect to public nuisances, including matters that are, could become or cause public nuisances in the opinion of Council;

AND WHEREAS section 18 of the *Smoke-Free Ontario Act, 2017*, S.O. 2017, c. 26, as amended, provides that if there is a conflict between a provision of the Act and that of a municipal by-law that deals with a matter to which the Act applies, the provision that is more restrictive of the matter shall prevail;

NOW THEREFORE the Council of The Corporation of the Township of North Dundas hereby enacts as follows:

1.0 SHORT TITLE

1.1 This By-law may be referred to as the "Smoking & Vaping By-law."

2.0 DEFINITIONS

2.1 For the purposes of this By-law, the following definitions shall apply:

"Ashtray" means a receptacle for ashes and for cigar and cigarette butts, whether tobacco, cannabis, or any other substance;

"Cannabis" has the same meaning as in subsection 2(1) of the *Cannabis Act*, S.C. 2018, c.16, as amended;

"Charcoal" means a combustible substance whose primary purpose is to burn or heat a smoking product;

“Council” means the Council of The Corporation of the Township of North Dundas;

“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 e-substances, tobacco, nicotine, cannabis or any other substance, and produces a vapour intended to be inhaled by the user of the device;

“Employer” includes an owner, operator, proprietor, manager, superintendent, overseer, receiver or trustee of an activity, business, work, trade, occupation, profession, project or undertaking who has control or direction of, or is directly or indirectly responsible for, the employment of a person in it;

“Enclosed public place” means the inside of any place, building, structure, or vehicle or conveyance, or any part thereof, that is covered by a roof and to which the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry;

“Enclosed workplace” means the inside of any place, building, structure, or vehicle or conveyance, or any part thereof, that is covered by a roof, in which employees work or frequent during the course of their employment whether or not they are acting in the course of their employment at the time, but does not include a place or room used primarily as a private self-contained dwelling;

“E-substance” means a substance that is manufactured or sold to be used in an electronic cigarette, whether or not the substance contains nicotine;

“Municipal Law Enforcement Officer” means a person appointed by the Township under Section 15 of the *Police Services Act, R.S.O. 1990, cP.15*;

“Officer” means a Municipal Law Enforcement Officer or a Tobacco Enforcement Officer;

“Outdoor Municipal Property” means the outdoor area of all property owned or leased by the Township including parks;

“Outdoor restaurant or bar patio” means an area that is not an enclosed public place or an enclosed workplace that meets all the criteria set out in the following paragraphs and includes picnic tables in conjunction with a refreshment vehicle or restaurant:

- a) the public is ordinarily invited or permitted access to the area, either expressly or by implication, whether or not a fee is charged for entry, or the area is worked in or frequented by employees during the course of their employment, whether or not they are acting in the course of their employment at the time; and
- b) food or drink is served or sold or offered for consumption in the area, or the area that is part of or operated in conjunction with an area where food or drink is served or sold or offered;

“Park” means a playground, playing field, ball diamond, splash pad, beach, sports field, including but not limited to recreation centres, community buildings, facilities, squares, gardens, greenspaces, water, pedestrian walkways or any other area owned, leased or used by the Township and devoted to active or passive recreation and includes any lane or walkway or public parking area leading thereto;

“Proprietor or other person in charge” means the person who controls, governs or directs the activity carried on within an enclosed public place,

enclosed workplace, outdoor restaurant or bar patio, and includes the person who is actually in charge thereof at any particular time;

“Refreshment Vehicle” means any vehicle from which refreshments are sold for consumption by the public and includes, without limiting the generality of the foregoing, french fried potato vendors, mobile canteens, hot dog vendors, ice cream vendors, popcorn vendors, carts, wagons, trailers and trucks, irrespective of the type of motive power employed to move the refreshment vehicle from one point to another

“Restaurant” means all food and/or beverage service providers;

“Roof” means a physical barrier of any size, whether temporary or permanent, that covers an area or place or any part of an area or place, and that is capable of excluding rain and/or impeding airflow;

“Smoke” or **“Smoking”** means to hold, or otherwise have control over any lighted tobacco, lighted cannabis, or any other lighted substance that produces vapour, smoke, or gases that may be inhaled or exhaled, and includes use of a cigarette, pipe, water pipe, or any other smoking equipment;

“Smoke-Free Ontario Act, 2017” means the *Smoke-Free Ontario Act, 2017*, S.O. 2017, c. 26, Sched. 3, as amended, and any regulation passed under it;

“Smoking Product” means any substance whose primary purpose is to be burned or heated to produce vapours, gases, or smoke, which may be inhaled, and shall include but is not limited to tobacco, non-tobacco herbal shisha, cannabis or any other substance;

“Vape” or **“Vaping”** means any of the following:

- a) inhaling vapour from an electronic cigarette;
- b) exhaling vapour from an electronic cigarette; or
- c) holding or otherwise having control of an activated electronic cigarette;

“Water pipe” means a device, whether called a water pipe, hookah or any other name, that burns or heats a smoking product, with which the vapour, smoke or gases may pass through liquid prior to being inhaled, and excludes an electronic cigarette as defined under the *Smoke-Free Ontario Act, 2017*; and

“Township” means The Corporation of the Township of North Dundas.

3.0 GENERAL PROHIBITIONS

- 3.1 No person shall smoke or vape in the following places whether or not a “No Smoking/No Vaping” sign is posted:
 - 3.1.1 On outdoor municipal property;
 - 3.1.2 On any outdoor restaurant or bar patio;
 - 3.1.3 In any enclosed public place; and
 - 3.1.4 In any enclosed workplace.
- 3.2 No person shall smoke or vape while on or within a vehicle that is located on any municipal property.
- 3.3 No person shall remove, cover up, mutilate, deface or alter any “No Smoking/No Vaping” sign.

4.0 EXEMPTIONS

- 4.1 Subsection 3.1 and 3.2 of the By-law shall not apply to a person:
- 4.1.1 Smoking or vaping on any portion of a highway;
 - 4.1.2 Smoking or vaping on any part of a sidewalk abutting a Township property, providing that the action is transitory;

5.0 DUTIES

- 5.1 No employer, proprietor, or other person in charge of an enclosed public place, enclosed workplace, or outdoor restaurant or bar patio, shall permit smoking or vaping in the enclosed public place, enclosed workplace, outdoor restaurant or bar patio.
- 5.2 No employer, proprietor, or other person in charge of an enclosed public place, enclosed workplace, or outdoor restaurant or bar patio, shall place an ashtray, or allow an ashtray to remain, in any place where smoking and vaping are prohibited pursuant to this By-law.

6.0 SIGNS

- 6.1 Every employer, proprietor, or other person in charge of an enclosed public place, enclosed workplace, or outdoor restaurant or bar patio shall post signs as required by the Smoke-Free Ontario Act, 2017, indicating that smoking or vaping is not permitted in enclosed workplaces and enclosed public places.

7.0 ENFORCEMENT

- 7.1 The Township By-law Division is responsible for the administration and enforcement of this By-law.
- 7.2 No person shall obstruct, hinder or otherwise interfere an Officer in the lawful performance of their duties and responsibilities under the provisions of this By-law.
- 7.3 No person shall knowingly produce a false document or make a false or misleading statement to an Officer who is acting pursuant to the authority of this By-law.

8.0 ENTRY

- 8.1 An Officer may, at any reasonable time without prior notice, enter any enclosed public place, enclosed workplace, or outdoor restaurant or bar patio for the purposes of determining compliance with this By-law.
- 8.2 For the purposes of an inspection under subsection 7.1 an Officer may:
- 8.2.1 require the production for inspection of documents or things relevant to the inspection;
 - 8.2.2 inspect and remove documents or things relevant to the inspection for the purposes of making copies or extracts;
 - 8.2.3 require information from any person concerning a matter related to the inspection; and
 - 8.2.4 alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.

9.0 OFFENCE

- 9.1 Any person who contravenes any provisions of this By-law is guilty of an offence and, upon conviction, is liable to a fine as provided for by the *Provincial Offences Act, R.S.O. 1990, c. P.33*, as amended.
- 9.2 Where a person is convicted of an offence under this By-law, the Ontario Court of Justice or any court of competent jurisdiction thereafter may, in addition to any other penalty imposed on the person convicted, make an order prohibiting the continuation or repetition of the offence by the person convicted.
- 9.3 If a court of competent jurisdiction should declare any section or part of a section of this By-law to be invalid, such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of the By-law, and it is hereby declared that the remainder of the By-law shall be valid and shall remain in force.

10.0 REPEAL

- 10.1 Township of North Dundas By-law No. 29-99 is hereby repealed in its entirety.

11.0 EFFECTIVE

- 11.1 This By-law shall come into full force and effect upon the date of its passing by Council.

READ and passed in Open Council, signed and sealed this 11th day of August, 2020.



MAYOR

CLERK