

**BY-LAW NO.**

A by-law of the City of Ottawa prohibiting the smoking and vaping of tobacco, cannabis, and any other substance in public places and workplaces.

WHEREAS it has been determined that smoking 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;

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* specifically 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* also provides that a municipality may prohibit and regulate with respect to public nuisances, including matters that are or could become or cause public nuisances in the opinion of Council;

AND WHEREAS the *Smoke-Free Ontario Act, 2017*, S.O. 2017, c. 26, as amended, regulates smoking and vaping in Ontario and Section 18 specifically provides that if there is a conflict between a provision of that Act and a provision of a municipal By-law that deals with a matter to which that Act applies, the provision that is more restrictive of the matter to which the Act applies prevails;

THEREFORE, the Council of the City of Ottawa enacts as follows:

**DEFINITIONS**

1. In this by-law:

“ashtray” means a receptacle for ashes and for cigar and cigarette butts, whether tobacco, cannabis, or any other substance;

“By-law Officer” means a person appointed by Council of the City of Ottawa as a Municipal Law Enforcement Officer to enforce the provisions of the by-law;

“ByWard Market stand” means any area designated for the sale or display of goods in the public market established by Council as the ByWard Market and under the management of Marchés d'Ottawa Markets;

“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;

“Chief of Police” means the Chief of Police for the City of Ottawa or authorized assistants or persons acting under his or her authority;

“Council” means the elected municipal council of the City of Ottawa;

“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 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 a part of any of them, 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 a part of any of them, 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;

“Municipal Act” means the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, and any regulation passed under it;

“outdoor municipal property” means the outdoor area of all property owned or leased by the City of Ottawa including but not limited to a park, but does not include:

- (a) property leased to a third party;
- (b) property managed by a local board as defined in the Municipal Act save and except property managed by,
  - i. Ottawa Police Services Board,
  - ii. Ottawa Public Library Board; and,
- (c) long term care facilities;

“outdoor restaurant or bar patio” means an area that is not an enclosed public place or an enclosed workplace and that meets all the criteria set out in the following paragraphs:

- (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, sports field, beach including but not limited to the area of the water under the control or supervision of the City, recreation centre, community building, facility, square, garden, water, pedestrian walkway or any other area owned, leased or used by the City and devoted to active or passive recreation and includes any lane or walkway or public parking area leading thereto;

“Parkdale Market stand” means any area designated for the sale or display of goods in the public market established by Council as the Parkdale Market and under the management of Marchés d'Ottawa Markets;

“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, ByWard Market stand, and Parkdale Market stand, and includes the person who is actually in charge thereof at any particular time;

“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 or impeding airflow, or both;

“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, Sch. 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*.

## **INTERPRETATION**

2. (1) Headings are for reference purposes and shall not affect in any way the meaning or interpretation of the provisions of this by-law.
- (2) Unless otherwise defined, the words and phrases used in this by-law have their normal and ordinary meaning.
- (3) If any section, subsection, paragraph, or part thereof, is declared by any Court to be bad, illegal, or ultra vires, such section, subsection, paragraph, part or parts shall be deemed to be severable and all parts of this by-law are declared to be separate and independent and enacted as such.

## **GENERAL PROHIBITION**

3. (1) No person shall smoke or vape in a designated place set out in subsection (2).
- (2) The following are designated places for the purposes of subsection (1):
  - (a) on outdoor municipal property;
  - (b) on any outdoor restaurant or bar patio;
  - (c) in any enclosed public place;
  - (d) in any enclosed workplace;
  - (e) in any ByWard Market stand;
  - (f) in any Parkdale Market stand;

- (g) in the stadium known as the Raymond Chabot Grant Thornton Park, or any successor name to such stadium, located at 300 Coventry Road in Ottawa; and
- (h) in the stadium known as TD Place Stadium, or any successor name to such stadium, located at 1015-1025 Bank Street in Ottawa.

## **DUTIES**

4. No employer, proprietor, or other person in charge of an enclosed public place, enclosed workplace, outdoor restaurant or bar patio, a ByWard Market stand, or a Parkdale Market stand, shall permit smoking or vaping in the enclosed public place, enclosed workplace, outdoor restaurant or bar patio, or stand.

5. No employer, proprietor, or other person in charge of an enclosed public place, enclosed workplace, outdoor restaurant or bar patio, a ByWard Market stand, or a Parkdale Market stand shall display or permit the display of a water pipe or component of a water pipe that contains or has on it any of the following:

- (a) a smoking product;
- (b) residue of a smoking product;
- (c) charcoal; or
- (d) liquid that smoke or gases may pass through prior to being inhaled.

6. No employer, proprietor, or other person in charge of an enclosed public place, enclosed workplace, outdoor restaurant or bar patio, a ByWard Market stand, or a Parkdale Market stand shall place an ashtray, or allow an ashtray to remain, in any place where smoking and vaping are prohibited pursuant to this by-law.

## **SIGNS**

- 7. (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 and vaping are not permitted in enclosed workplaces and enclosed public places.
- (2) Any person authorized to operate a stand in the ByWard Market or Parkdale Market shall post a sign in a visible location indicating that smoking and vaping are not permitted in the stand.

## **OFFENCES AND PENALTIES**

8. Any person who contravenes any of the provisions of this by-law is guilty of an offence.

9. Any person who hinders or obstructs a person lawfully carrying out the enforcement of this by-law is guilty of an offence.

10. (1) Every person who is convicted of an offence under this by-law is liable to a minimum fine not exceeding \$500 and to a maximum fine not exceeding \$100,000 for each day that the offence occurs or continues pursuant to subsection 429(1) and (3) of the Municipal Act, 2001, and all such offences are designated as continuing offences as provided for in subsection 429(2), paragraph (a), of the Municipal Act, 2001.
- (2) In addition to subsection (1), the total of all daily fines for the offence is not limited to \$100,000 as provided for in subsection 429(3), paragraph 2, of the Municipal Act, 2001.
- (3) When a person has been convicted of an offence under this by-law, the Ontario Court of Justice, or any court of competent jurisdiction may, in addition to any penalty imposed on the person convicted, issue an order:
  - (a) prohibiting the continuation or repetition of the offence by the person convicted; and
  - (b) requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

## **ENFORCEMENT**

11. The by-law shall be enforced by a By-law Officer or by the Chief of Police.

## **BY-LAW OFFICERS**

12. (1) A By-law Officer may, at any reasonable time without prior notice, enter any enclosed public place, enclosed workplace, outdoor restaurant or bar patio, ByWard Market stand, or Parkdale Market Stand for the purposes of determining compliance with this by-law.
- (2) For the purposes of an inspection under subsection (1), a By-law Officer may,
  - (a) require the production for inspection of documents or things relevant to the inspection;
  - (b) inspect and remove documents or things relevant to the inspection for the purposes of making copies or extracts;
  - (c) require information from any person concerning a matter related to the inspection; and,
  - (d) 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.

## **REPEAL AND TRANSITIONAL PROVISIONS**

### **REPEAL**

13. (1) By-law No. 2001-148 entitled “A by-law of the City of Ottawa respecting smoking in public places” is repealed.
- (2) By-law No. 2001-149 entitled “A by-law of the City of Ottawa respecting smoking in the workplace” is repealed.
- (3) By-law No. 2016-303 entitled “A by-law of the City of Ottawa respecting the use of water pipes in public places and workplaces” is repealed.
- (4) The following definitions in Section 1 of By-law No. 2008-448 entitled “A by-law of the City of Ottawa respecting the licensing, regulating and governing of vending in the Parkdale Market”, as amended, are repealed: “charcoal”, “Electronic Cigarettes Act”, “smoke” and “smoking”, “smoking product”, “use”, and “water pipe”.
- (5) Clauses (i), (j), (k), and (l) of Section 62 of the said By-law No. 2008-448 are repealed.
- (6) The following definitions in Section 1 of By-law No. 2008-449 entitled “A by-law of the City of Ottawa respecting the licensing, regulating and governing of vending and performance activities, and the provision of tourist services, in the ByWard Market and the establishment of a designated space programme for the ByWard Market”, as amended, are repealed: “charcoal”, “Electronic Cigarettes Act”, “smoke” and “smoking”, “smoking product”, “use”, and “water pipe”.
- (7) Clauses (i), (j), (k), and (l) of Section 60 of the said By-law No. 2008-449 are repealed.
- (8) The following definitions in Section 1 of By-law No. 2004-276 entitled “A by-law of the City of Ottawa to regulate and to promote responsible enjoyment and use of parks and facilities”, as amended, are repealed: “outdoor municipal property”, and “smoke” or “smoking”.
- (9) Section 12A of the said By-law No. 2004-276, as amended, is repealed.

### **TRANSITION**

14. The repeal of by-laws or provisions of by-laws pursuant to Section 13 shall not affect any offence committed against the repealed by-laws or provisions, or any penalty incurred or investigative proceeding commenced thereunder.

**EFFECTIVE DATE**

15. This by-law shall come into effect on November 1, 2019.

**SHORT TITLE**

16. This by-law may be cited as the "Smoking and Vaping By-law".