

# THE CORPORATION OF THE TOWN OF SMITHS FALLS

## BY-LAW NO. 10050-2019

A By-Law to Regulate Smoking and Vaporizing in Public Places and Enclosed Workplaces in the Town of Smiths Falls

*(repeals 8495-2012, 8221-2009, 8482-2012, 7694-2002)*

Whereas Section 115 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, provides that a municipality may pass By-Laws regulating the smoking of tobacco or cannabis in public places and enclosed workplaces within the municipality; and

Whereas Section 10 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, provides that a municipality may pass by-laws respecting the economic, social and environmental well-being of the municipality, the health, safety and well-being of persons, and the protection of persons and property; and

Whereas it has been determined that second-hand smoke and vapour are a health hazard or discomfort for many inhabitants of and visitors to the Town of Smiths Falls; and

Whereas the establishment of a community standard of smoke-free public places assists in de-normalizing tobacco, Electronic Cigarette and Cannabis use and promotes a smoke-free and vapour-free culture; 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 that Act and a provision of another Act, a regulation or 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; and

Whereas Section 425 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, provides that a municipality may pass By-Laws providing that a person who contravenes a By-Law of the municipality passed under that Act is guilty of an offence; and

Whereas Section 429 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, provides that a municipality may establish a system of fines for offences under a By-Law of the municipality passed under that Act;

Therefore be it resolved that the Council of The Corporation of the Town of Smiths Falls enacts as follows:

### **1. Definitions:**

For the purposes of this By-Law:

“Cannabis” has the same meaning as in Subsection 2 (1) of the Cannabis Act (Canada);

"Council" means the Council of the Town;

"Designated Public Place" means a Public Place designated pursuant to Section 4.1 of this By-Law;

"Director" means the Director of Corporate Services for the Town, his or her designate or, in the event of organizational changes, another employee designated by Council.

"Electronic Cigarette" or "E-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 nicotine-based liquid substance or e-substance to produce a vapour intended to be inhaled by the user of the device directly through the mouth;

"Employee" includes a Person who:

- (i) performs any work for or supplies any service to an employer;
- (ii) receives any instructions or training in the activity, business, work, trade, occupation or profession of the employer;
- (iii) receives remuneration for services provided; or
- (iv) is self-employed.

"Employer" includes any Person who is the owner, proprietor, manager, superintendent, or overseer of any activity, business, work, trade, occupation or profession, has control over the direction of, or is directly or indirectly responsible for the employment of a Person therein;

"Enclosed Public Place" means an enclosed public place as defined in the Smoke-Free Ontario Act, 2017, S.O. 2017 c. 26, Schedule 3;

"Enclosed Workplace" means an enclosed workplace as defined in the Smoke Free Ontario Act, 2017, S.O. 2017 c. 26, Schedule 3;

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

"Inspector" means a person appointed by Council as a municipal law enforcement officer to enforce this By-Law; local police and/or an employee designated as an inspector under the Smoke Free Ontario Act 2017.

"Local board" includes a health unit, a police services commission, a conservation authority, and a district school board;

"Municipal Building" means any building owned, leased or controlled by the Town;

"Outdoor Community Meeting Area" means the whole or part of any outdoor area owned, leased or controlled by the Town to which the public has access by right or invitation, expressed or implied, whether by payment of money or not;

"Park" means any land, owned or leased or controlled by the Town, designed or used for public recreation, including but not limited to: trails, gardens, playgrounds, Sports Fields, playing fields, Swimming Pools and beach areas;

"Person" means a corporation as well as an individual;

"Proprietor or Other Person in Charge" means the Person who owns, occupies or operates a Designated Public Place or an Enclosed Workplace to which this By-Law applies, or the person who controls, governs, or directs the activities that are carried on in the place, and includes the person who is actually in charge at any particular time;

"Public Place" means the whole or part of any building, place or area to which members of the general public are invited or permitted access but does not include any area located on a Highway;

"Smoke" and "Smoking" include the carrying, holding or inhaling of lighted cannabis, a lighted cigar, cigarette, water-pipe, pipe, or any other lighted smoking equipment;

"Town" means The Corporation of the Town of Smiths Falls;

"Vaporizer" means an inhalant-type device 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, Cannabis or any other substance;

"Vaporizing," "Vape" and "Vaping" mean the act of heating and converting Cannabis, an E-substance or any other substance through a Vaporizer or an Electronic Cigarette, for the purpose of simulating the inhalation of smoke.

## **2. Interpretation:**

- 2.1 This By-Law applies to the Smoking and Vaporizing of Tobacco, Cannabis, ESubstance, shisha, whether or not it contains Tobacco, and other plant material or oils intended for inhalation in every designated Public Place and in every Enclosed Workplace or Public Place (as defined in Section 4) within the geographic limits of the Town of Smiths Falls.

## **3. Administration:**

- 3.1 The Town and Leeds, Grenville & Lanark District Health Unit are responsible for the administration and enforcement of this By-Law.

## **4. Regulations:**

No person shall smoke or vape tobacco, cannabis, ESubstance, shisha, whether or not it contains tobacco, and other plant material or oils intended for inhalation

in any designated Public Place or in any Enclosed Workplace within the geographic limits of the Town of Smiths Falls.

4.1 The following are Designated Public Places for the purposes of this By-Law:

4.1.1 every place as set out in Section 12 (2) of the Smoke-Free Ontario Act, 2017, S.O. 2017 c. 26, Schedule 3;

4.1.2 a Park;

4.1.3 an Outdoor Community Meeting Area;

4.1.4 within nine (9) metres of any entrance or exit of a Municipal Building;

4.1.5 within three (3) metres of any entrance or exit of an Enclosed Workplace or Enclosed Public Place;

4.2 No Person shall Smoke or Vaporize in any Designated Public Place, whether or not a "No Smoking" sign or a "No Vaping" sign is posted.

#### Enclosed Workplaces

4.3 For greater clarity, no Person shall Smoke or Vaporize in any Enclosed Workplace, whether or not a "No Smoking" sign or a "No Vaping" sign is posted.

#### Duties

4.4 Every Proprietor or Other Person in Charge of a Designated Public Place or an Enclosed Workplace in which Smoking or Vaporizing are prohibited shall ensure compliance with this By-Law.

### **5. Signs:**

5.1 Signs shall be posted and maintained in accordance with the Smoke-Free Ontario Act, 2017, S.O. 2017 c. 26, Schedule 3, and as prescribed by the Director.

5.2 Every Proprietor or Other Person in Charge of an Enclosed Workplace or any Enclosed Public Place must ensure that signs, as prescribed by Section 5.1 of this By-Law, are posted and maintained in a sufficient number of conspicuous places so as to identify clearly that Smoking and Vaporizing are prohibited within three (3) metres of any entrance or exit, and within nine (9) metres of any entrance or exit of a Municipal Building.

5.3 Notwithstanding Section 5.1 of this By-Law, the requirement for signs does not apply to the following Designated Public Places:

(i) a Park; and

(ii) an Outdoor Community Meeting Area.

**6. Enforcement:**

- 6.1 The provisions of this By-Law respecting the prohibition of Smoking and Vaporizing in Designated Public Places and in Enclosed Workplaces, the posting of signs, and the duties imposed on Proprietors or Other Persons in Charge of Designated Public Places and of Enclosed Workplaces will be enforced by Inspectors.
- 6.2 An Inspector may, at any time, enter any Designated Public Place or any Enclosed Workplace in which Smoking and Vaporizing are prohibited to determine whether this By-Law is being complied with and, for this purpose, may make such examinations, investigations and inquiries as are necessary.
- 6.3 No Person shall obstruct or hinder or attempt to obstruct or hinder an Inspector or other authorized employee or agent of the Town in the exercise of a power or the performance of a duty under this By-Law.
- 6.4 Where an Inspector has reasonable grounds to believe that an offence under this By-Law has been committed by a Person, the Inspector may require the name, address and proof of identity of that Person.
- 6.5 Failure to provide proof of identification satisfactory to an Inspector when requested to do so pursuant to Section 6.4 of this By-Law shall constitute obstruction of an Inspector under Section 6.3 of this By-Law.
- 6.6 Any person found violating any of the provisions of this By-law is guilty of an offence and on conviction shall be liable to a fine pursuant to the Provincial Offences Act.

**7. Validity:**

- 7.1 If there is a conflict between a provision of any Act, regulation or By-Law and a provision of this By-Law, the provision that is the most restrictive of the Smoking or Vaporizing of tobacco, Cannabis and Electronic Cigarettes prevails.
- 7.2 If a court of competent jurisdiction declares any provision, or any part of a provision, of this By-Law to be invalid, or to be of no force and effect, it is the intention of Council in enacting this By-Law that each and every provision of this By-Law authorized by law be applied and enforced in accordance with the terms to the extent possible according to law.
- 7.3 Should any part, section, subsection or portion of this by-law be repealed or declared by a court of competent jurisdiction to be illegal the same not affect the validity of the by-law as a whole or in part thereof, except for that which was declared to be invalid.

**8. Repeal:**

8.1 THAT Bylaws 8495-2012, 8221-2009, 8482-2012, 7694-2002 By-Law Number 2002-231, as amended, of The Corporation of the Town of Smiths Falls are hereby repealed.

**9. Commencement:**

9.1 That the provisions of this by-law shall come into force and take effect on which day it receives third reading and is passed.

9.2 The set fines to this by-law shall come into force and take effect on the date of the approval by the Senior Justice, Ontario Court of Justice, Province of Ontario.

Read a first and second time this 17<sup>th</sup> day of June, 2019

Read a third time and passed this 17<sup>th</sup> day of June, 2019

  
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Mayor  
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Clerk

**SCHEDULE A TO BY-LAW NO.10050-2019**

**THE TOWN OF SMITHS FALLS  
PART I, PROVINCIAL OFFENCES ACT  
BY-LAW no. 10050-2019; SMOKING AND VAPORIZING**

**SET FINES**

<b>Item</b>	<b>Column 1 Short Form Wording</b>	<b>Column 2 Provision creating or defining offence</b>	<b>Column 3 Set Fine</b>
1.	Smoke or vape prohibited substances in any designated Public Place	Sec 4	\$300.00
2.	Smoke or vape prohibited substances in any designated Enclosed Workplace within the Town of Smith Falls	Sec 4	\$300.00

**Note: The general penalty provision for the offences listed above is  
Section 6.6 of By-law 10050-2019, a certified copy of which has been filed.**