



CORPORATION OF THE TOWN OF HUNTSVILLE

BY-LAW NUMBER 2019-107

Being a By-law to prohibit smoking or vaporizing of Tobacco or Cannabis and Vaporizing of any substance on Town of Huntsville owned property

WHEREAS Section 8 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that the Act shall be interpreted broadly so as to confer broad authority on municipalities to (a) enable municipalities to govern their affairs as they consider appropriate and, (b) enhance their ability to respond to municipal issues;

AND WHEREAS Section 9 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising the authority under the Act;

AND WHEREAS Section 10 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that single tier municipalities have the authority to pass by-laws respecting the health, safety and well-being of persons;

WHEREAS clause 6 of subsection 11(2) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, as amended, provides that a municipality may pass by-laws in the interest of the health, safety and well-being of its residents;

AND WHEREAS Section 115(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality has the authority to pass a by-law to prohibit or regulate the smoking of tobacco and cannabis in public spaces and workplaces and to define “public place” for purposes of such by-law;

AND WHEREAS Section 128 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, 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 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 OF THE CORPORATION OF THE TOWN OF HUNTSVILLE ENACTS AS FOLLOWS:

1.0 Definitions

In this by-law:

- 1.1 **"Agent"** means an individual employed by or otherwise authorized by the Town of Huntsville whose duties include the monitoring of Town owned property;
- 1.2 **"By-Law Enforcement Officer"** means a person who is appointed by Council to enforce bylaws enacted and passed by Council;
- 1.3 **"Cannabis"** means Cannabis as defined in the Cannabis Act (S.C. 2018, c. 16);
- 1.4 **"Council"** means the Council of the Corporation of the Town of Huntsville;
- 1.5 **"Designated Smoking Area"** means an area that is set aside and with signage indicating that smoking and or vaporizing is allowed in this area, provided that such area shall be a minimum of ten (20) meters from any entrance, exit, building opening of any Municipal Building and includes but not limited to any Outdoor Recreational Facility.
- 1.6 **"Electronic Cigarette"** means a vaporizer or inhalant-type device, whether called an Electronic Cigarette, E-Cigarette or any other name, that contains a power source and heating element designed to heat a substance and produce a vapor intended to be inhaled by the user of the device directly through the mouth, whether or not the vapor contains nicotine;
- 1.7 **"Highway"** as defined in the Highway Traffic Act, R.S.O. 1990, c. H.8;
- 1.8 **"Municipal Building"** means any building, facility or structure owned, leased, controlled or used by the Town for municipal purposes, including without limitation municipal offices, community centers, libraries, indoor swimming pools, arenas, public washrooms, concession stands, recreational centers and fire halls;
- 1.9 **"Sidewalk"** means a paved path for pedestrians at the side of a road;
- 1.10 **"Outdoors"** means any open space which is outside of a facility, building, structure or premise including any temporary building, structure or part thereof, whether covered by a roof or not;
- 1.11 **"Outdoor Recreational Facility"** means any area located on Town property that is designed, designated or delineated for the playing of sports, activities or as a playground;

- 1.12 **"Person"** means any human being, association, firm, partnership, incorporated company, corporation, Agent or trustee, and the heirs, executors or other legal representatives of a Person to whom the context can apply, according to law;
- 1.13 **"Playground"** 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 manmade safety surface of sand, rocks, wood chips, rubber, grass or any similar material that may typically define its border;
- 1.14 **"Public Place"** means any property, whether publicly or privately owned, to which members the public have access as of right or by express or implied invitation, whether on payment of any fee or not;
- 1.15 **"Smoke"** or **"Smoking"** means the inhaling and exhaling, carrying or holding of a lighted cigar, cigarillos, cigarette, Cannabis (recreational or medical), pipe or any other lighted smoking equipment or product;
- 1.16 **"Tobacco"** means the preparation of the nicotine-rich leaves of a plant, which are cured by a process of drying and fermentation for smoking or chewing;
- 1.17 **"Town"** means the Corporation of the Town of Huntsville;
- 1.18 **"Vaping"** and **"Vaporizing"** means to inhale or exhale the vapor produced by an electronic cigarette or similar device whether or not the vapor contains nicotine;

2.0 **General Prohibitions**

- 2.1 No person shall Smoke or Vaporize, Cannabis or Tobacco or hold lighted Cannabis or Tobacco inside any Municipal Building.
- 2.2 No person shall Vaporize or otherwise use an Electronic Cigarette inside any Municipal Building.
- 2.3 No Person shall Smoke or Vaporize, Cannabis or Tobacco, or hold or otherwise use lighted Cannabis or Tobacco outdoors of any Municipal Building within a 20 meter radius of the perimeter of the property lines.
- 2.4 No person shall Vaporize or otherwise use an Electronic Cigarette outdoors of any Municipal Building within a 20 meter radius of the perimeter of the property lines.
- 2.5 No Person shall Smoke or Vaporize, Cannabis or Tobacco, or hold or otherwise use lighted Cannabis or Tobacco outdoors on any Outdoor Recreational Facility.
- 2.6 No Person shall Vaporize or use an Electronic Cigarette while outdoors on any Outdoor Recreational Facility.

3.0 General Exemptions

- 3.1 This by-law does not apply to;
- a) a Town Sidewalk or Highway;
 - b) a Designated Smoking Area;
 - c) traditional and or sacred tobacco that is used and kept sacred by indigenous communities;
 - d) privately-owned property;
 - e) to any highway or any portion of a public road allowance.

4.0 Entry and Inspection

- 4.1 A By-law Enforcement Officer or their designate may at any time, enter onto a property to determine whether this By-law is being complied with.
- 4.2 Every Person shall permit a By-law Enforcement Officer to inspect any land for the purposes of determining compliance with this By-law.

5.0 Obstruction

- 5.1 No Person shall hinder or obstruct, or attempt to hinder or obstruct, any By-law Enforcement Officer exercising a power or performing a duty under this By-law.
- 5.2 Every Person who has been alleged to have contravened any of the provisions of this By-law, shall identify themselves to a By-law Enforcement Officer upon request, failure to do so shall be deemed to have hindered or obstructed a By-law Enforcement Officer under section 5.1 of this by-law.

6.0 Penalties

- 6.1 Every person who contravenes any provision 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*, Chapter P.33, as amended.
- 6.2 Every person who contravenes any provision of this By-law is guilty of an offence pursuant to the provisions of the *Provincial Offences Act R.S.O. 1990*, Chapter P.33, as amended, and upon conviction, a person is liable to a fine of not more than \$5,000, exclusive of costs.
- 6.3 Every Person guilty of an offence under this by-law may, if permitted under the Provincial Offences Act, pay a set fine and the Chief Judge of the Ontario Court Provincial division, shall be requested to establish set fines in accordance with Schedule A attached to this by-law.

7.0 Severability

- 7.1 If any provision or part of a provision 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 balance of the By-law, or its

application in other circumstances, shall not be affected and shall continue to be in full force and effect.

7.2 If a provision of this by-law conflicts with an Act or regulation or another by-law, the provision that is the most restrictive shall prevail.

7.3 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.

8.0 **Enforcement**

8.1 The provisions of this by-law with respect to smoking or vaporizing of tobacco or Cannabis and vaporizing of any substance in public places, workplaces and on any Town owned property shall be enforced by a By-Law Enforcement Officer or person deemed to be an Agent of the Town for the purpose of addressing unauthorized activity on Town property.

8.2 Nothing herein shall be deemed to limit the ability of the Ontario Provincial Police or the Simcoe District Muskoka Health Unit to enforce this by-law at any time.

9.0 **Schedules**

9.1 Schedule "A" as attached forms part of this by-law.

10.0 **Short Title**

10.1 This By-law may be cited as the Smoking By-law of the Corporation of the Town of Huntsville.

11.0 **Repeal of By-Laws**

11.1 That By-law No. 2010-45 and any amendments thereto are hereby repealed upon receiving approval from the Ministry of the Attorney General for the set fines as identified in Schedule "A" of this by-law.

READ a first, second and third time and finally passed this 28th day of October, 2019.

SIGNED

Mayor (Scott Aitchison)

SIGNED

Clerk (Tanya Calleja)

**THE CORPORATION OF THE TOWN OF HUNTSVILLE
PART I PROVINCIAL OFFENCES ACT
BY-LAW NO. 2019-107 – Smoking By-Law**

SCHEDULE “A”

Item	Short Form Wording	Provision Creating or Defining Offence	Set Fine
1.	Smoke cannabis inside any municipal building	2.1	\$ 300.00
2.	Smoke tobacco inside any municipal building	2.1	\$ 300.00
3.	Vaporize cannabis inside any municipal building	2.1	\$ 300.00
4.	Vaporize tobacco inside any municipal building	2.1	\$ 300.00
5.	Hold lighted cannabis inside any municipal building	2.1	\$ 300.00
6.	Hold lighted tobacco inside any municipal building	2.1	\$ 300.00
7.	Vaporize or use an electronic cigarette inside any municipal building	2.2	\$ 300.00
8.	Smoke cannabis outdoors of any municipal building	2.3	\$ 300.00
9.	Smoke tobacco outdoors of any municipal building	2.3	\$ 300.00
10.	Vaporize cannabis outdoors of any municipal building	2.3	\$ 300.00
11.	Vaporize tobacco outdoors of any municipal building	2.3	\$ 300.00
12.	Hold lighted cannabis outdoors of any municipal building	2.3	\$ 300.00
13.	Hold lighted tobacco outdoors of any municipal building	2.3	\$ 300.00

**THE CORPORATION OF THE TOWN OF HUNTSVILLE
PART I PROVINCIAL OFFENCES ACT
BY-LAW NO. 2019-107 – Smoking By-Law**

SCHEDULE “A”

Item	Short Form Wording	Provision Creating or Defining Offence	Set Fine
14.	Vaporize or use an electronic cigarette outdoors of any municipal building	2.4	\$ 300.00
15.	Smoke cannabis outdoors on any recreational facility	2.5	\$ 300.00
16.	Smoke tobacco outdoors on any recreational facility	2.5	\$ 300.00
17.	Vaporize cannabis outdoors on any recreational facility	2.5	\$ 300.00
18.	Vaporize tobacco outdoors on any recreational facility	2.5	\$ 300.00
19.	Hold lighted cannabis outdoors on any recreational facility	2.5	\$ 300.00
20.	Hold lighted tobacco outdoors on any recreational facility	2.5	\$ 300.00
21.	Vaporize or use an electronic cigarette outdoors on any recreational facility	2.6	\$ 300.00
22.	Fail to permit an inspection	4.2	\$ 300.00
23.	Hinder or obstruct an officer from performing their duty	5.1	\$ 300.00

NOTE: The general penalty provision for the offences listed above is Section 6.0 of By-law 2019-107, a certified copy of which has been filed.