

**THE CORPORATION OF THE TOWNSHIP OF LAKE OF BAYS
BY-LAW NUMBER 2019-034**

**BEING A BY-LAW TO PROHIBIT SMOKING AND VAPING IN MUNICIPAL PARKS
AND WATER ACCESS POINTS IN THE CORPORATION OF THE TOWNSHIP OF
LAKE OF BAYS**

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 the Township of Lake of Bays has the authority to pass a by-law to prohibit or regulate the smoking of tobacco and cannabis in public spaces 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 Township of Lake of Bays (the "Council") has deemed it desirable for the health, safety and well-being of the residents of the Township of Lake of Bays to prohibit or regulate smoking or vaporizing of tobacco and cannabis and vaporizing of any substance in public places within the Township of Lake of Bays 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. BY-LAW TITLE

- 1.1. This By-law may be cited as the "No Smoking on Municipal Property and Water Access Points By-law".

2. DEFINITIONS

- 2.1. For the Purpose of this By-law:

- 2.1.1. “Cannabis” means cannabis as defined in the *Cannabis Act*, S.C. 2018, c.16 (Canada);
- 2.1.2. “Council” means the Council of the Corporation of the Township of Lake of Bays;
- 2.1.3. “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.
- 2.1.4. “Municipality” means the Corporation of The Township of the Lake of Bays.
- 2.1.5. “Municipal Property” means Municipal property, parks, water access, including, but not limited to locations listed in Schedule “A” to this by-law;
- 2.1.6. “Officer” means:
 - 2.1.6.1. 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
 - 2.1.6.2. A Police Officer employed by the police service of the Ontario Provincial Police or the Royal Canadian Mounted Police.
- 2.1.7. “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;
- 2.1.8. “Smoke/smoking” means smoking (exhaling and inhaling) or holding lighted tobacco or lighted cannabis.
- 2.1.9. “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.
- 2.1.10. “Use” with respect to Electronic Cigarettes, includes any of the following:
 - 2.1.10.1. Inhaling vapour from an Electronic Cigarette;
 - 2.1.10.2. Exhaling vapour from an Electronic Cigarette;

2.1.10.3. Holding an activated Electronic Cigarette.

2.1.11. "Vape/Vaporizing" means:

2.1.11.1. to inhale and exhale the vapour produced by an Electronic Cigarette or similar device containing Cannabis or tobacco or any substance, or

2.1.11.2. holding or otherwise having control of an Electronic Cigarette that is producing vapour, emissions or aerosol from Cannabis or tobacco or any substance.

3. GENERAL PROHIBITIONS

- 3.1. No person shall smoke or vape tobacco or cannabis on Municipal property as defined by this by-law.
- 3.2. No shall person shall be found littering on Municipal property as it relates to smoking or vaping within the Municipal property.
- 3.3. No person shall obstruct an officer lawfully carrying out the enforcement of this by-law.

4. APPLICABILITY

- 4.1. This by-law does not apply to privately-owned property.
- 4.2. This by-law does not apply to any highway or public roadway.

5. OFFENCES

- 5.1. 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, as found in Schedule "B".

6. CONTINUATION, REPETITION PROHIBITED BY ORDER

- 6.1. 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, issue an order:
 - 6.1.1. prohibiting the continuation or repetition of the offence by the person convicted; and
 - 6.1.2. requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

7. GENERAL PROVISIONS

- 7.1. All schedules referred to in this By-law are deemed to be part of this by-law.

8. SEVERABILITY

- 8.1. 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.

9. CONFLICTS

- 9.1. 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.

10. INTERPRETATION

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

11. ENFORCEMENT

- 11.1. The provisions of this by-law respecting smoking or vaping on Municipal Property shall be enforced by an Officer for the purpose for addressing unauthorized activity.
- 11.2. 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.
- 11.3. 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 3.3 of this By-law.

12. FORCE AND EFFECT

- 12.1. This By-law comes into force and effect upon final passing.

READ a FIRST, SECOND and THIRD time and finally passed this 19th day of March, 2019



Mayor, Terry Glover





Clerk, Carrie Sykes

SCHEDULE A**Municipal Parks and Lake Access Points****Franklin Ward**

Dwight Beach
Maplehurst Dock
Gouldie Park (Old Municipal Office)
South Portage

Echo Valley Nature and Bike Trails
Port Cunnington
Oxtongue Rapids Park
Wolf Bay

McLean Ward

Baysville Dam Park
Baysville Docks West
Baysville Riverfront Park
Fairy Falls
Heney Lake Road Park
Moot Lake

Baysville Docks East
Baysville North Road
Centennial Park
Grist Mill Park
Marion White Park

Ridout Ward

Chimney Park
Dickie Lake
Glenmount Dock
Margarete Lake
Paint Lake Ramp
Ril Lake

Cedar Narrows Heritage Park (Dorset)
Dorset School Park
Grindstone Lake
Norway Point
Rabbits Bay
Shoe Lake

Sinclair Ward

Bella Lake
Rebecca Lake

Grassmere Beach (Hillside)
Walkers Lake

SCHEDULE B

The Corporation of The Township of the Lake of Bays

PART I PROVINCIAL OFFENCES ACT

By-law 2019-034

Prohibit smoking and vaping in Municipal Parks and Water Access Points

ITEM	COLUMN 1 Short Form Wording	COLUMN 2 Provision Creating or Defining Offence	COLUMN 3 Set Fine
1	Smoke or Vape on Municipal Property	Subsection 3.1	\$300.00
2	Littering on Municipal Property	Subsection 3.2	\$100.00
3	Obstructs Officer	Subsection 3.3	\$500.00

Note: The general penalty provision for the offences listed above is s. 5.1 of By-law 2019-034, a certified copy of which has been filed.