

**THE CORPORATION OF THE
TOWN OF PRESCOTT**

BY-LAW NO. 37-2019

**A BY-LAW TO REGULATE SMOKING AND VAPORIZING IN PUBLIC PLACES AND
ENCLOSED WORKPLACES IN THE TOWN OF PRESCOTT**

**BEING A BY-LAW TO REGULATE SMOKING AND VAPORIZING IN PUBLIC PLACES
AND ENCLOSED WORKPLACES IN THE TOWN OF PRESCOTT**

WHEREAS Section 115 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality may pass By-Laws to prohibit or regulate the smoking of tobacco or cannabis in public places and 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 Prescott; 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;

NOW THEREFORE the Council of the Corporation of the Town of Prescott enacts as follows:

1. Definitions

- 1.1 "Cannabis" has the same meaning as in Subsection 2 (1) of the *Cannabis Act* (Canada);
- 1.2 "Council" means the Council of the Town of Prescott;
- 1.3 "Designated Public Place" means a Public Place designated pursuant to Section 4.1 of this By-Law;
- 1.4 "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;
- 1.5 "Employee" includes a Person who:
 - a. performs any work for or supplies any service to an employer;
 - b. receives any instructions or training in the activity, business, work, trade, occupation or profession of the employer;
 - c. receives remuneration for services provided; or
 - d. is self-employed.
- 1.6 "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;
- 1.7 "Enclosed Public and/or Workplace" means an enclosed workplace as defined in the *Smoke-Free Ontario Act, 2017*, S.O. 2017 c. 26, Schedule 3;
- 1.8 "E-substance" means a substance that is manufactured or sold to be used in an Electronic Cigarette, whether or not the substance contains nicotine;
- 1.9 "Highway" means any provincial or municipal highway within the geographic limits of the Town of Prescott, and includes the sidewalks and all other lands within the lateral boundaries of the highway;
- 1.10 "Inspector" means a person appointed by Council whether it be a police officer, a designated inspector under the *Smoke-Free Ontario Act 2017*, or a municipal law enforcement officer to enforce this By-Law;

- 1.11 “Local board” includes a health unit, a police services commission, a conservation authority, and a district school board;
- 1.12 “Municipal Building” means any building owned, leased, or controlled by the Town of Prescott;
- 1.13 “Nicotine” means a toxic colourless substance found in tobacco that people can become addicted to;
- 1.14 “Outdoor Community Meeting Area” means the whole or part of any outdoor area owned, leased, or controlled by the Town of Prescott to which the public has access by right or invitation, expressed or implied, whether by payment of money or not. This includes, but is not limited to, special events, festivals, and farmers’ markets;
- 1.15 “Park” means any land, owned or leased or controlled by the Town of Prescott, designed or used for public recreation, including but not limited to: trails, gardens, playgrounds, sports fields, playing fields, and beach areas;
- 1.16 “Parking Lot” means an area of land controlled by the Town of Prescott which has been arranged, laid out, or improved to provide for the parking of motor vehicles;
- 1.17 “Person” means a corporation as well as an individual;
- 1.18 “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;
- 1.19 “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;
- 1.20 “Smoke” and “Smoking” includes the carrying, holding or inhaling of lighted cannabis, a lighted cigar, cigarette, water-pipe, pipe, or any other lighted smoking equipment;
- 1.21 “Town” means the Corporation of the Town of Prescott;

- 1.22 “Transfer Point” means that part of a local Transit passenger transportation system including shelters used by, or intended for the use of, passengers boarding or exiting from a transit vehicle and which is not located on a Highway;
- 1.23 “Transit Shelter” means a fully enclosed or partially enclosed waiting area which is intended for use by passengers waiting to use the passenger transportation system and which is located at a local designated Transit Transfer Point;
- 1.24 “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;
- 1.25 “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, E-Substance, shisha, if it contains Tobacco, and other plant material or oils intended for inhalation in every designated Public Place and in every Enclosed Workplace within the geographic limits of the Town of Prescott.

3. Administration

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

4. Regulations

Public Places

- 4.1 The following are Designated Public Places for the purposes of this By-Law:
- a. every place as set out in Section 12 (2) of the *Smoke-Free Ontario Act, 2017*, S.O. 2017 c. 26, Schedule 3;
 - b. a Park;
 - c. an Outdoor Community Meeting Area;

- d. within nine (9) metres of any entrance or exit of a Municipal Building;
 - e. within nine (9) metres of a Transit Shelter/Transfer Point
 - f. within three (3) metres of any entrance or exit of an Enclosed Workplace or Enclosed Public Place;
- 4.2 No Person shall Smoke or Vape 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 Vape 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*.
- 5.2 A “No Smoking” sign shall also mean the prohibition of cannabis and electronic cigarettes.
- 5.3 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, within nine (9) metres of any entrance or exit of a Municipal Building, and, where applicable, within nine (9) metres of a Transit Shelter/Transfer Point.
- 5.4 Notwithstanding Section 5.1 of this By-Law, the requirement for signs does not apply to the following Designated Public Places:
- a. a Park; and
 - b. 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 police and by designated inspectors under the *Smoke-Free Ontario Act, 2017* as well as appointed municipal by-law enforcement officers.
- 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.

7. Offence and Penalty Provisions

- 7.1 Every Person, other than a corporation, who contravenes any provision of this By-Law is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 for a first offence and \$25,000 for any subsequent offence.
- 7.2 Every corporation that contravenes any provision of this By-Law and every officer or director of a corporation who knowingly concurs in such contravention is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 for a first offence and \$100,000 for any subsequent offence.
- 7.3 If this By-Law is contravened and a conviction entered, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty that is imposed, make an order prohibiting the continuation or repetition of the offence by the person convicted.

8. Validity

8.1 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 Smoking or Vaporizing of tobacco and/or Cannabis and the use of Electronic Cigarettes shall prevail.

8.2 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.

9. Short Title

9.1 This By-law may be referred to as the "Smoking By-law".

10. Repeal

10.1 By-law number 35-2007, as amended, of the Corporation of the Town of Prescott entitled "A By-Law to Regulate Smoking in Public Places" is hereby repealed.

11. This by-law shall come into force and take effect upon final passage.

12. That any other By-Laws, resolutions or actions of the Council of the Corporation of the Town of Prescott that are inconsistent with the provisions of this By-Law are hereby rescinded.

READ A FIRST AND SECOND TIME THIS 23rd DAY OF SEPTEMBER, 2019.



Mayor

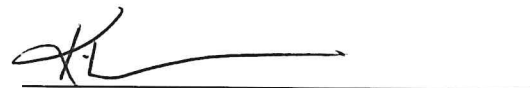


Clerk

READ A THIRD AND FINAL TIME AND PASSED THIS 23rd DAY OF SEPTEMBER, 2019.



Mayor



Clerk