

**BY-LAW 08-2020**

**THE CORPORATION OF THE TOWN OF ST. MARYS**

Being a By-law to regulate smoking and vaping in public places within the Town of St. Marys.

- WHEREAS:** The *Municipal Act, 2001, S.O. 2001, c. 25*, as amended, Section 8, provides that the powers of a municipality shall be interpreted broadly so as to confer board authority on the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to response to municipal issues;
- AND WHEREAS:** Section 10 of the *Municipal Act, 2001*, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority;
- AND WHEREAS:** Clause 6 of subsection 10(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:** Section 115 of the *Municipal Act, 2001*, as amended, authorizes the council of a local municipality to pass a by-law regulating the smoking or vapourizing of tobacco and cannabis in public places and workplaces within the municipality and designating public places or workplaces or classes or parts of such places as places in which smoking tobacco or holding lighted tobacco, cannabis or an electronic cigarette is prohibited;
- AND WHEREAS:** Section 115 of the *Municipal Act, 2001*, as amended, provides that Section 115 of the Act shall not apply to a highway;
- 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*, 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*, 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;

**AND WHEREAS:** It has been determined that second-hand smoke and vapour are a serious health hazard or discomfort for many inhabitants of and visitors to the Town of St. Marys;

**NOW THEREFORE:** The Council of the Corporation of the Town of St. Marys hereby enacts as follows;

## **1.0. DEFINITIONS**

1) For the purpose of this By-law:

“Cannabis” means cannabis as defined in section 2(1) of the *Cannabis Act* (Canada) and includes any products containing cannabis;

“Council” means the Council for the Corporation of the Town of St. Marys;

“Electronic Cigarette” or “E-Cigarette” or “Electronic Smoking Device” includes inhalant-type devices, whether called an electronic cigarette or any other name, that contains a power sources 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 or Cannabis;

“Entrance” or “Exit” means any entrance or exit used by the public and / or staff to enter or exit a municipal building;

"Inspector" means any employee or class of employee of the local health unit, or their successor, authorized by the Medical Officer of Health to carry out an inspection under and to enforce the provisions of this By-law, or a person or class of person appointed by Council of the Town as a by-law enforcement officer to enforce this by-law, or any police officer;

“Highway” includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of Vehicles and includes the area between the lateral property lines thereof;

“Park” means any land, owned or leased or controlled by the Town, designed or used for public recreation or that is or hereafter may be established, dedicated, set apart or made available by the municipality for recreational purposes, including but not limited to: parklands, playgrounds, trails, gardens, natural areas, dog parks, skate parks, sports fields, playing fields, swimming pools and splash pads, including any buildings, structures, or facilities erections and improvements location in or on such land;

“Person” includes a corporation;

“Proprietor” means the person who ultimately controls, governs or directs the activity carried on within a Public Place and includes the person actually in charge or the premises at any particular time;

"Smoke" or "Smoking" means the smoking or holding of lighted tobacco, Cannabis or Electronic Cigarette in any form and includes the holding or carrying of a lighted cigar, cigarette, E-Cigarette, pipe, water pipe, hookah, or any other lighted smoking equipment;

"Town" means the Corporation of the Town of St. Marys;

"Vapourizing" or "Vaping" or "Vape" means inhaling or exhaling the vapour, emissions or aerosol produced by an electronic smoking device or similar device containing tobacco, Cannabis or any other substance, and includes holding or otherwise having control of an electronic smoking device that is producing vapour, emissions or aerosol from tobacco, Cannabis or any other substance.

## **2.0. DESIGNATED PUBLIC PLACES**

- 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 or trail;
  - c) Any portion of a municipal property; and
  - d) Within nine (9) metres of any Entrance or Exit of a municipal owned building.
- 2) Every Proprietor, or their designate, in charge of a designated public place in which Smoking or Vapourizing are prohibited, shall ensure compliance with this By-law.
- 3) Every Proprietor, or their designate, in charge of a designated public place shall post No Smoking No Vaping signs in accordance with the *Smoke Free Ontario Act, S.O. 2017, c. 26* as amended.
- 4) No person shall Smoke or Vape in any designated public place within the Town whether or not signage is posted.
- 5) Notwithstanding section 2.4 such prohibition shall not apply to a municipal sidewalk within a road allowance or any part of a Highway.
- 6) No person shall remove a sign posted under this section while the prohibition remains in force.
- 7) No person shall obstruct or hinder or attempt to obstruct or hinder an authorized person carrying out the enforcement of this By-law.

## **3.0. ENFORCEMENT AND PENALTIES**

- 1) Enforcement

- a) This by-law may be enforced by an Inspector, or their successor, a Police Officer or a Municipal Law Enforcement Officer appointed by Council.
  - b) An Inspector may, at any reasonable time, enter any public place for the purpose of determining compliance with this By-law.
- 2) Penalty
- a) Every person who contravenes any provision of this By-Law is guilty of an offence and;
    - i. Upon a first conviction is subject to a maximum fine of five thousand dollars (\$5,000);
    - ii. Upon a subsequent conviction is subject to a maximum fine of ten thousand dollars (\$10,000).
  - b) Despite subsection (1), of section 5.2, where the person convicted is a corporation, the corporation is liable;
    - i. Upon a first conviction is subject to a maximum fine of ten thousand dollars (\$10,000);
      - a. Upon a subsequent conviction is subject to a maximum fine of twenty-five thousand dollars (\$25,000).
  - c) 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.

#### **4.0. VALIDITY**

- 1) If a court of competent jurisdiction declares any subsection, section or part of this By-law invalid, it is the intention of Council that the remainder of the By-law shall continue to be in force.

#### **5.0. SHORT TITLE**

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

#### **6.0. REPEALED**

- 1) That By-law 63-93, Prohibiting of Smoke at Community Centre, is hereby repealed.
- 2) That By-law 23-2003, Regulating Smoking in public places and Workplaces, is hereby repealed.
- 3) That By-law 16-2004, Amendment to By-law 63-93, is hereby repealed.
- 4) That By-law 47-2004, Set Fines, is hereby repealed.

5) That By-law 20 of 2012, Amendment to By-law 23-2003, is hereby repealed.

**7.0. ENACTMENT**

This By-Law comes into force on the final passing thereof.

**Read a first, second and third time and finally passed this 28<sup>th</sup> day of January, 2020.**

**\_\_Signed by the Mayor\_\_**  
Mayor Al Stratheedee

**\_\_Signed by the CAO / Clerk\_\_**  
Brent Kittmer, CAO / Clerk