

# THE CORPORATION OF THE TOWN OF THE TOWN OF SHELBURNE

## BY-LAW NO. 35-2022

A By-law to regulate the smoking or vapourizing of tobacco on municipally owned or leased properties in the Town of Shelburne

**WHEREAS** Section 8 of the *Municipal Act, 2001*, S.O. 2001, c.25 as amended 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** Section 9 of the *Municipal Act*, 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** clause 6 of subsection 11(2) of the *Municipal Act*, 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* authorizes the Council of a municipality to pass a by-law to prohibit or regulate the smoking or vapourizing of tobacco in defined public places within the municipality;

**AND WHEREAS** Section 115(3) of the *Municipal Act*, 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, Schedule 3 contemplates that where there is a conflict between a provision of the Act and a provision of another Act, regulation or a Municipal By-law that deals with a matter to which the Act applies, the provision that is more restrictive shall prevail;

**AND WHEREAS** the Council of the Corporation of the Town of Shelburne (the "Council") has deemed it desirable for the health, safety and well-being of the residents of the Town of Shelburne to prohibit or regulate smoking or vapourizing of tobacco on municipally owned or leased properties within the Town of Shelburne in accordance with the provisions of this By- law;

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF SHELBURNE HEREBY ENACTS AS FOLLOWS:**

### **1.0 BY-LAW TITLE**

**1.1** This By-law shall be known as the "Smoking/Vaping By- law".

### **2.0 DEFINITIONS**

**2.1** For the purpose of this By-law:

- (a) "**Council**" means the Council of the Corporation of the Town of Shelburne;
- (b) "**Electronic Cigarette**" means a vapourizer or inhalant-type device, whether called an Electronic Cigarette or any other name, which 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;

- (c) **“Highway”** means a common and public highway, street, boulevard, court, centre, crescent, avenue, parkway, driveway, square, place, lane, 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 sidewalks and all other lands within the lateral boundaries of the highway;
- (d) **“Municipal Building”** means any building, facility or structure owned, leased, controlled or used by the Municipality for municipal purposes, including without limitation municipal offices, bus shelters, libraries, arenas, public washrooms, recreational centres and fire halls;
- (e) **“Municipality”** means The Corporation of the Town of Shelburne;
- (f) **“Officer”** means a Municipal Law Enforcement Officer or Police Officer;
- (g) **“Outdoor Recreational Facility”** means any area located on municipal property that is designed, designated or delineated for the playing of sports or for activities, together with any lane, walkway or public parking area leading thereto including but not limited to: swimming pools, splash pads, soccer fields, baseball diamonds, skateboard parks, tennis courts, cricket pitches, pickleball courts, player benches, side lines, player warm up areas and spectator areas;
- (h) **“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 and includes any lane, walkway or public parking area leading thereto and any spectator or player seating areas;
- (i) **“Playground Area”** 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 or any similar material that may typically define its border and any trail or pathway within a twenty-metre radius of a Playground Area;
- (j) **“Smoking”** means smoking (exhaling and inhaling) or holding lighted tobacco;
- (k) **“Special Event”** means an exhibition, event or function held within the Town of Shelburne where a person has applied to the Town of Shelburne to conduct a Special Event and Council has approved the event, with or without conditions;
- (l) **“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, water pipe tobacco, cigarettes, cigars, and cigarillos.
- (m) **“Use”** with respect to Electronic Cigarettes, includes any of the following:
  - 1) Inhaling vapour from an Electronic Cigarette.
  - 2) Exhaling vapour from an Electronic Cigarette.
  - 3) Holding an activated Electronic Cigarette.
- (n) **“Vape or Vaping or Vapourizing”** means inhaling or exhaling the vapour produced by a lighted Electronic Cigarette or similar device and shall include the holding of an Electronic Cigarette or similar device whether or not such device is lighted.
- (o) **“Walkway”** means an area of land designated, designed, or intended for the passage of pedestrians and shall include a pathway or boardwalk, but does

not include a walkway located within the boundary of a Highway.

### **3.0 GENERAL PROHIBITIONS**

**3.1** No person shall smoke or vapourize on or within any property owned or leased by the Municipality, including the following:

- (a) any property upon which is located a Municipal Building;
- (b) any municipal trail or walkway;
- (c) any park located within the Municipality or within a 20-metre radius of the perimeter of such areas;
- (d) all playground areas, or within a 20-metre radius of the perimeter of playground areas;
- (e) all Outdoor Recreational Facilities or within a 20-metre radius of the perimeter of an Outdoor Recreational Facility;
- (f) within a Special Event.

**3.2** The prohibitions in Section 3.1 apply whether or not a no smoking/vaping sign of any format or content is posted.

### **4.0 EXEMPTIONS**

**4.1** Sections 3.1 do not apply to a person:

- (a) smoking/vapourizing in a privately-owned property that is primarily a private dwelling;
- (b) smoking/vapourizing on any portion of a Highway.

**4.2** This By-law does not apply to traditional and or sacred tobacco that is used and kept sacred by indigenous communities.

**4.3** Notwithstanding anything contained in this By-law, any person may make application a minimum of 45 days prior to the date(s) requiring an exemption, to Council through the appropriate committee of Council as specified by the Clerk or their designate, to be granted an exemption from any of the provisions of this By-law with respect to smoking/vapourizing on prohibited properties. Council, by resolution, may refuse to grant any exemption or may grant the exemption applied for or any exemption of lesser effect and any exemption granted shall specify the time period of a duration during which it is effective, and may contain such items and conditions as Council sees fit.

### **5.0 ENFORCEMENT**

**5.1** The provisions of this By-law may be enforced by an Officer.

**5.2** 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.

**5.3** 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 6.5 of this By-law.

## **6.0 PENALTY**

- 6.1** 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.
- 6.2** Upon conviction any penalty imposed under this By-law may be collected under the authority of the *Provincial Offences Act*, R.S.O 1990, c. P.33, as amended.
- 6.3** Every person who is convicted of an offence, is liable to a maximum fine of \$10,000 for a first offence and a maximum fine of \$25,000 for a subsequent offence.
- 6.4** Upon conviction, in addition to any other remedy and to any penalty imposed by this Chapter, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order prohibiting the continuation or repetition of the offence by the person convicted.
- 6.5** No person shall hinder or obstruct, or attempt to hinder or obstruct, an Officer who is exercising a power or performing a duty under this By-law.

## **7.0 SEVERABILITY**

- 7.1** 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.

## **8.0 CONFLICTS**

- 8.1** 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 or vapourizing of tobacco or Cannabis or vapourizing of any substance, as the case may be, shall prevail.

## **9.0 INTERPRETATION**

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

## **10.0 REPEAL**

- 10.1 THAT By-Law #9-1993, #6-1994, #13-1995 and #7-1997, as amended, are hereby repealed.
- 10.2 Should any section of this By-law be declared invalid by a court of competent jurisdiction, such section shall be construed as being severed here from and the remainder of this By-law shall continue in full force and effect.

## **11.0 EFFECTIVE DATE**

- 11.1** This By-law shall come into force and effect on the final passage thereof.

**BY-LAW READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 25th DAY OF JULY 2022.**

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Wade Mills  
Mayor

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Jennifer Willoughby  
Clerk