

By-law Number 28-2019

of The Regional Municipality of Durham

Being a by-law to regulate smoking and vaping in public places and in the workplace.

Whereas the *Municipal Act*, 2001, S.O. 2001 c.25 as amended (the "*Municipal Act*") authorizes municipalities to pass by-laws respecting health, safety and well-being of persons within their jurisdiction;

And whereas subsection 115(5) of the *Municipal Act* provides that a regional municipality may pass a by-law regarding the smoking of tobacco or cannabis if a majority of the councils of the lower-tier municipalities within the regional municipality representing a majority of the population of the regional municipality approve the exercise of such powers;

Now therefore, the Council of The Regional Municipality of Durham hereby enacts as follows:

1. Definitions

1.1 In this by-law,

- (a) "ashtray" means a receptacle of any type being used for ashes and butts of smoking products;
- (b) "bar" means an establishment licensed by the Alcohol and Gaming Commission of Ontario where persons under 19 years of age are not permitted to enter, either as a patron or as an employee;
- (c) "cannabis" has the same definition as in section 2(1) of the *Cannabis Act* (Canada);
- (d) "casino" means a place which is kept for the purpose of playing a lottery scheme conducted and managed by the Ontario Lottery and Gaming Corporation under the authority of paragraph 207(1)(a) of the Criminal Code;
- (e) "common area" means any indoor area of a building or structure that is open to the public for the purpose of access and includes elevators, escalators, corridors, stairways, passageways, hallways, foyers, parking garages, and space for the receiving or greeting of customers, clients or other persons;
- (f) "designated smoking area" is an outdoor area that may be sheltered with not more than two walls and a roof and must comply with all other applicable rules in the *Smoke-Free Ontario Act, 2017* or this by-law;
- (g) "employee" means a person who performs any work for or supplies any service to an employer with or without compensation and includes owners and volunteers;
- (h) "employer" means a person who, as an owner, manager, contractor, superintendent, or overseer of any activity, business, work, trade, occupation or profession, has control over or direction of, or is indirectly or directly responsible for, the employment or services of an employee;
- (i) "enclosed" means closed in by a roof or ceiling and walls with an appropriate opening or openings for ingress or egress, provided that such openings are kept closed when not in use for such ingress or egress;

- (j) “inspector” means a person appointed by the Region to enforce this by-law;
- (k) “long-term care home” has the same definition as contained in the *Long-Term Care Homes Act, 2007*, S.O. 2007, c.8 or any subsequent legislation;
- (l) “Medical Officer of Health” has the same definition as in section 1(1) of the *Health Protection and Promotion Act*;
- (m) “medicinal cannabis” means cannabis prescribed by a health care professional for use in treating and managing illness, the access to which is regulated exclusively by the federal government;
- (n) “municipal building” means any building or structure owned, leased, controlled or used by the Region or any area municipality in the Region including but not limited to libraries, museums, community centres and recreational facilities;
- (o) “no-smoking sign” means a sign at least 10 centimetres in diameter showing an illustration of a black, lit cigarette on a white circle surrounded by a red border with a width equal to one tenth of the diameter, with a red diagonal stroke of the same width crossing over the cigarette from the upper left to the lower portion of the circle;
- (p) “no-vaping sign” means a sign at least 10 centimetres in diameter showing an illustration of a black vape apparatus on a white circle surrounded by a red border with a width equal to one tenth of the diameter, with a red diagonal stroke of the same width crossing over the cigarette from the upper left to the lower portion of the circle;
- (q) “patio” means a restaurant or bar patio is an area that is not an enclosed public place or an enclosed workplace and that meets all the criteria set out in the following subparagraphs:
 1. The public is ordinarily invited or permitted access to the area, either expressly or by implication, whether or not a fee is charged for entry, or the area is worked in or frequented by employees during the course of their employment, whether or not they are acting in the course of their employment at the time.
 2. Food or drink is served or sold or offered for consumption in the area, or the area is part of or operated in conjunction with an area where food or drink is served or sold or offered.
 3. The area is not primarily a private dwelling;
- (r) “post-secondary institution” has the same meaning as educational institution in the *Post-secondary Education Choice and Excellence Act, 2000* S.O. 2000, c.36;
- (s) “proprietor” includes the person or persons who own, occupy, operate, maintain, manage, control or direct the activities carried on within any premises referred to in this by-law;
- (t) “public park” means a municipally owned property containing playgrounds, sports fields, gazebos, covered picnic areas, fountains, splash pads or water parks and the Waterfront Trail or a publicly owned property being used for an outdoor special event with a permit issued by a municipality;
- (u) “public place” means the whole or part of an indoor area of any place that is open to the public or to which the public has access by right, permission or invitation, express or implied, whether by payment of

money or not, and whether publicly or privately owned and includes, without limiting the generality of the foregoing, the indoor area of those places designated as public places in section 2 of this by-law;

- (v) “public transport vehicle” means any vehicle used for transporting the public and includes a bus and a passenger vehicle used for hire such as a taxi or limousine;
- (w) “recreational facility” includes, but is not limited to, an arena, swimming pool, concert hall, theatre, auditorium, gymnasium, museum and art gallery;
- (x) “Region” means the geographic area of the Regional Municipality of Durham or the Regional Municipality of Durham acting as a body corporate, as the context requires;
- (y) “restaurant” means an establishment engaged in the sale and service of food or drink or both food and drink to the public for consumption on the premises but does not include a bar;
- (z) “service line” means a line of two or more persons providing, receiving, or awaiting service of any kind, regardless of whether or not such service involves the exchange of money, including but not limited to sales services, provision of information, transactions or advice and transfers of money or goods;
- (aa) “smoke or smoking” includes but is not limited to the carrying or holding of a lighted cigar, cigarette, pipe, water pipes, hookahs, medicinal cannabis, cannabis, or any other lighted or heated smoking product;
- (bb) “vape or vaping” means the use and/or activation of a vaporizer or inhalant-type device, whether called an electronic cigarette or any other name, that contains a power source and/or heating element designed to heat a substance and produce vapour intended to be inhaled by the user of the device, whether or not the vapour contains nicotine, medicinal cannabis or cannabis; and
- (cc) “workplace” means a building or structure or part thereof in which one or more employees work, including but not limited to amenity areas, corridors, eating areas, elevators, entrances, escalators, exits, foyers, hallways, laundry rooms, lobbies, lounges, meeting rooms, parking garages, reception areas, stairways and washrooms, and includes a public transport vehicle and any other vehicle in which an employee works but does not include a private dwelling.

2. No Smoking and/or Vaping in Public Places

2.1 There shall be no smoking or vaping in, or within a 9m radius of any entrance, exit or air intake of, a public place, including but not limited to:

- a) the prohibited places contained within section 12(1) of the *Smoke Free Ontario Act, 2017* S.O. 2017 c.26 or as set out in any subsequent legislation;
- b) common area;
- c) public washrooms;
- d) funeral home;
- e) racetrack;
- f) casino;
- g) bingo hall;
- h) billiard hall;

- i) bowling alley;
- j) hookah and vape lounges;
- k) restaurant;
- l) bar;
- m) patio;
- n) recreational facility;
- o) service line whether indoors or outdoors;
- p) shopping centres, plazas, and/or malls, and;
- q) public transport vehicle.

2.2 There shall be no smoking or vaping on any portion of the property or grounds of a municipal building.

2.3 There shall be no smoking or vaping on any external portion of the property or grounds of a post-secondary institution, except in a designated smoking/vaping area at least 9m from any entrance, exit or air intake. The inclusion of any designated smoking/vaping area shall be at the individual institution's sole and absolute discretion.

2.4 There shall be no smoking or vaping on any external portion of the property or grounds of a long-term care home except in a designated smoking/vaping area at least 9m from any entrance, exit or air intake. The inclusion of any designated smoking/vaping area shall be at the individual institution's sole and absolute discretion.

2.5 There shall be no smoking or vaping in or within a 20m radius of any public park.

3. Smoking and/or Vaping in Workplaces

3.1 No person shall smoke and/or vape in an enclosed workplace.

3.2 No person shall place an ashtray for the use of smokers in an enclosed workplace.

3.3 No employer shall permit a person to smoke and/or vape in an enclosed workplace.

3.4 No employer shall permit a person to place an ashtray for the use of smokers in an enclosed workplace.

4. Signs

4.1 The proprietor of a public place shall ensure that such public place is posted with no-smoking and no-vaping signs in a conspicuous manner at each entrance to the public place to indicate that smoking and vaping are prohibited.

4.2 Every employer shall ensure that the enclosed workplace is posted with no-smoking and no-vaping signs in a conspicuous manner at each entrance to the workplace to indicate that smoking and vaping prohibited.

5. Enforcement

5.1 The Medical Officer of Health of the Region may, from time to time, appoint inspectors for the purpose of enforcing this by-law.

5.2 An inspector may, at any reasonable time, enter any public place or workplace (other than a private dwelling) without warrant or notice for the purpose of determining whether there is compliance with this by-law.

- 5.3 An inspector may make such examinations, investigations and inquiries as are necessary to determine whether there is compliance with this by-law.
- 5.4 A person has a duty to identify themselves when requested by an inspector.
- 5.5 No person shall hinder, obstruct or interfere with an inspector carrying out an inspection under this by-law.

6. Offence

- 6.1 Any person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to a fine of not more than \$5,000.00 exclusive of costs, as provided in the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended.

7. Conflict

- 7.1 If any provision of this by-law conflicts with any Act, regulation or other municipal by-law, the provision that is the most restrictive shall prevail.

8. Severability

- 8.1 If any section of this by-law or parts thereof are found by any Court to be illegal or beyond the power of the Region to enact, such section or parts thereof shall be deemed to be severable and all other sections or parts of this by-law shall be deemed to be separate and independent therefrom and to be enacted as such.

9. Legislation

- 9.1 Any reference in this By-law to all or any part of any statute, regulation, by-law or rule shall, unless otherwise stated, be taken as a reference to that statute, regulation, by-law or rule or the relevant part thereof, amended, replaced or re-enacted from time to time.

10. Set Fines

- 10.1 Set fines for contraventions of this by-law shall be in accordance with Schedule A to this by-law, attached hereto and forming part of this by-law.

11. Effective Date

- 11.1 This by-law shall come into force and effect once a triple majority has been obtained in accordance with section 115(5) of the Municipal Act, 2001.
- 11.2 That by-law 66-2002 shall be repealed on the date this by-law comes into force and effect.

This By-law Read and Passed on the 24th day of April, 2019.

J. Henry, Regional Chair and CEO

R. Walton, Regional Clerk

Schedule A

SET FINE SCHEDULE
The Regional Municipality of Durham
PART I Provincial Offences Act
By-law 28-2019: Smoking and Vaping

ITEM	COLUMN 1 Short Form Wording	COLUMN 2 Provision Creating or Defining Offence	COLUMN 3 Set Fine
1	Smoke tobacco/Vape in a prohibited place	Section 2.1	\$400.00
2	Smoke tobacco/Vape on the property of Municipal Building	Section 2.2	\$400.00
3	Smoke tobacco/Vape on the property of a Post Secondary Institution	Section 2.3	\$400.00
4	Smoke tobacco/Vape on the property of a Long-Term Care home	Section 2.4	\$400.00
5	Smoke tobacco/Vape within 20 meters of a public park	Section 2.5	\$400.00
6	Smoke tobacco/Vape in an enclosed workplace	Section 3.1	\$400.00
7	Place ashtray in an enclosed workplace	Section 3.2	\$300.00
8	Failure to prohibit persons from smoking tobacco/Vaping in an enclosed workplace	Section 3.3	\$400.00
9	Failure to prohibit persons from placing ashtrays in an enclosed workplace	Section 3.4	\$300.00
10	Failure to post No Smoking/No Vaping signs in a public place	Section 4.1	\$300.00
11	Failure to post No Smoking/No Vaping signs in a workplace	Section 4.2	\$300.00
12	Obstruct Inspector	Section 5.5	\$500.00

Note: The penalty provision for the offences indicated above is Section 6.1 of the By-Law.