



THE CORPORATION OF THE TOWNSHIP OF AUGUSTA BY-LAW NUMBER 3439-2019

A BY-LAW TO REGULATE SMOKING AND VAPORIZING IN PUBLIC PLACES AND ENCLOSED WORKPLACES IN THE TOWNSHIP OF AUGUSTA

Whereas Section 115 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, provides that a municipality may pass By-Laws regulating the smoking of tobacco or cannabis in public places and enclosed 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 Township of Augusta; and

Whereas the establishment of a community standard of smoke-free public places assists in de-normalizing tobacco, Electronic Cigarette and Cannabis use and promotes a smoke-free and vapour-free culture; 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 Township of Augusta hereby enacts as follows that:

1. Definitions:

For the purposes of this By-Law:

"Cannabis" has the same meaning as in Subsection 2 (1) of the Cannabis Act (Canada);

"Council" means the Council of the Corporation of the Township of Augusta;

"Designated Public Place" means a Public Place designated pursuant to Section 4.1 of this By-Law;

"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;

"Employee" includes a Person who:

- (i) performs any work for or supplies any service to an employer;
- (ii) receives any instructions or training in the activity, business, work, trade, occupation or profession of the employer;
- (iii) receives remuneration for services provided; or
- (iv) is self-employed.

"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;

"Enclosed Public Place" means an enclosed public place as defined in the Smoke-Free Ontario Act, 2017, S.O. 2017 c. 26, Schedule 3;

"Enclosed Workplace" means an enclosed workplace as defined in the Smoke Free Ontario Act, 2017, S.O. 2017 c. 26, Schedule 3;

"E-substance" means a substance that is manufactured or sold to be used in an Electronic cigarette, whether or not the substance contains nicotine;

"Inspector (Enforcement Officer)" local police and/or a designated inspector under the Smoke Free Ontario Act, 2017.

"Municipal Facility" means any building structure, park, sports area, green space, or vehicle/truck owned, leased, licensed or rented by the Township or from the Township and includes where Township employees conduct their work;

"Outdoor Community Meeting Area" means the whole or part of any outdoor area owned, leased or controlled by the Township of Augusta to which the public has access by right or invitation, expressed or implied, whether by payment of money or not;

"Park" means any land, owned or leased or controlled by the Township of Augusta, designed or used for public recreation, including but not limited to: trails, gardens, playgrounds, Sports Fields, playing fields and beach areas;

"Person" means a corporation as well as an individual;

"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;

"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;

"Smoke" and "Smoking" include the carrying, holding or inhaling of lighted cannabis, a lighted cigar, cigarette, water-pipe, pipe, or any other lighted smoking equipment;

"Township" means The Corporation of the Township of Augusta;

"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;

"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, ESubstance, shisha, whether or not 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 Augusta Township.

3. Administration:

- 3.1 The Leeds, Grenville & 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:

- 4.1.1 every place as set out in Section 12 (2) of the Smoke-Free Ontario Act, 2017, S.O. 2017 c. 26, Schedule 3;
 - 4.1.2 a Park/beach;
 - 4.1.3 an Outdoor Community Meeting Area;
 - 4.1.4 within nine (9) metres of any entrance or exit of a Municipal Building;
 - 4.1.5 within three (3) metres of any entrance or exit of an Enclosed Workplace or Enclosed Public Place;
- 4.2 No Person shall Smoke or Vaporize 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 Vaporize 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, S.O. 2017, and as prescribed by the Township.
- 5.2 Notwithstanding Section 5.1 of this By-Law, the requirement for signs does not apply to the following Designated Public Places:
- (i) a Park; and
 - (ii) 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 designated Inspectors under the Smoke Free Ontario Act, 2017.
- 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 agent of the Township of Augusta 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 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 the Smoking or Vaporizing of tobacco, Cannabis and Electronic Cigarettes prevails.
- 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 Repeal:

THAT Bylaw 3042 of The Corporation of the Township of Augusta is hereby repealed.

THAT all other by-laws inconsistent herewith are hereby repealed.

10 This By-Law shall come into effect upon the date of its passing.

Read a first, second, and third time and finally passed this 23 day of September, 2019.



MAYOR



CLERK