

THE CORPORATION OF THE TOWNSHIP OF ADELAIDE METCALFE

BY-LAW #20-2019

Being a By-Law to Regulate and Prohibit Smoking and Vapourizing in Public Places and Enclosed Workplaces in the Township of Adelaide Metcalfe.

Whereas Section 8 of the Municipal Act, 2001, S. O. 2001, c. 25, as amended, confers broad authority on the municipality to enable 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 11 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, provides a municipality with authority to pass by-laws respecting public assets of the municipality acquired for the purpose of exercising its authority and the economic, social and environmental well-being of the municipality, as well as the health, safety and well-being of persons, services and things the municipality is authorized to provide including the protection of persons and property;

And 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 in public places and enclosed workplaces within the municipality;

And Whereas the *Smoke-Free Ontario Act, 2017* received Royal Assent on December 12, 2017 and contains rules respecting the smoking of medical cannabis, as well as smoking in public and the workplace;

And Whereas the *Smoke Free Ontario Act 2017* prohibits smoking or vaping in any enclosed workplace, any enclosed public place and any other place designated as smoke-free and vape-free;

And Whereas; it has been determined that smoking tobacco or tobacco-like products is a health hazard because of, among other things, the creation of second hand smoke, which has adverse effects on the health of the inhabitants residing in or visiting the Township of Adelaide Metcalfe;

And Whereas it is desirable for the health, safety and well-being of the inhabitants of the Township of Adelaide Metcalfe to prohibit smoking to protect persons from conditions hazardous to their health pursuant to the provisions of this by-law;

And Whereas the Township of Adelaide Metcalfe maintains policies and practices governing substance use in the workplace and impairment while at work.

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 Adelaide Metcalfe enacts as follows:

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 Township of Adelaide Metcalfe;

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

"Electronic Cigarette" or "E-Cigarette" means a Vapourizer 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" means a person who performs any work for or supplies any service to an Employer, proprietor, or other person in charge and includes a volunteer and a person who is self-employed and employment has a corresponding meaning;

"Employer" means any person who, as the owner, proprietor, manager, contractor, superintendent or overseer of any activity, business, work, trade, occupation, or profession, has control over or direction of, or is directly or indirectly responsible for the employment of an employee;

“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;

“Enforcement Officer” means a municipal by-law enforcement officer, a Tobacco Enforcement Officer as appointed by the Middlesex-London Board of Health, a member of any police service including the Ontario Provincial Police, or any person appointed by Municipal Council to enforce this by-law.

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

“Highway” means any provincial or municipal highway within the geographic limits of the Township of Adelaide Metcalfe, and includes the sidewalks and all other lands within the lateral boundaries of the highway;

“Local board” includes a health unit, a police services commission, a conservation authority, and a district school board;

“Municipal Building” means any building owned, leased or controlled by the Township of Adelaide Metcalfe;

“Outdoor Community Meeting Area” means the whole or part of any outdoor area owned, leased or controlled by the Township of Adelaide Metcalfe 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 Adelaide Metcalfe, designed or used for public recreation;

“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 Township of Adelaide Metcalfe.

“Vapourizer” 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;

“Vapourizing,” “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 Vapourizing of Tobacco, Cannabis, E-Substance, 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 Township.
- 2.2 Smoking restrictions in outdoor public places other than those mentioned in this by-law shall be governed by the Smoke-Free Ontario Act and any other applicable legislation and by-laws.

3. Administration:

- 3.1 The Township and Middlesex-London Health Unit are responsible for the administration and enforcement of this by-law.
- 3.2 The Clerk of the Township is hereby authorized to make any minor modifications or corrections of an administrative, numeric, grammatic, or descriptive nature or kind to the by-law and schedule(s) as may be deemed necessary after the passage of this by-law, where such modifications or corrections do not alter the intent of the 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 twenty (20) metres of any entrance or exit of a Municipal Building;
 - e. within nine (9) metres of any entrance or exit of an Enclosed Workplace or Enclosed Public Place;
- 4.2 No Person shall Smoke or Vapourize 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 c. 26, Schedule 3, and as prescribed by the Enforcement Officer.
- 5.2 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 Vapourizing are prohibited within nine (9) metres of any entrance or exit, within twenty (20) metres of any entrance or exit of a Municipal Building.
- 5.3 A reference to a by-law of a former municipality, or to a predecessor to this by-law on any sign that identifies a Designated Public Place or an Enclosed Workplace in which Smoking or Vapourizing are prohibited is deemed to be a reference to this by-law.
- 5.4 No person shall remove, cover up, mutilate, deface or alter any sign required to be posted pursuant to Section 5.

6 Enforcement:

- 6.1 The provisions of this by-law respecting the prohibition of Smoking and Vapourizing 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 Enforcement Officers.
- 6.2 An Enforcement Officer may, at any time, enter any Designated Public Place or any Enclosed Workplace in which Smoking and Vapourizing 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 smoke or vape within nine (9) metres of any entrance or exit to a building or within twenty (20) metres of any entrance or exit of a Municipal Building.
- 6.4 No Person shall obstruct or hinder or attempt to obstruct or hinder an Enforcement Officer or other authorized employee or agent of the Township in the exercise of a power or the performance of a duty under this by-law.
- 6.5 Where an Enforcement Officer has reasonable grounds to believe that an offence under this by-law has been committed by a Person, the Enforcement Officer may require the name, address and proof of identity of that Person.
- 6.6 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.
- 6.7 No person shall knowingly produce a false document or make a false or misleading statement to an Officer who is acting pursuant to the authority of this by-law.
- 6.8 No person shall smoke tobacco/cannabis or vape within the confines of a vehicle owned, leased or otherwise under the control of the Township.

7 Offence and Penalty Provisions:

- 7.1 Every Person who contravenes any of the provisions of this by-law is guilty of an offence pursuant to the provisions of the *Provincial Offences Act*, R.S.O. 1990, as amended (See Schedule "A", attached).

- 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 Vapourizing 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 Schedule(s):

- 9.1 Schedule "A" attached, constitutes part of this by-law.

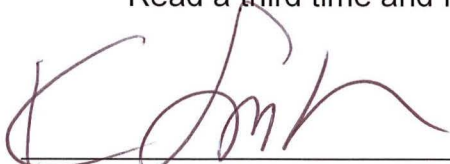
10 Commencement:

- 10.1 Read a first and second time, this 18th day of March, 2019.


Kurtis Smith, Mayor


Jennifer Turk, Clerk

Read a third time and finally passed, this 18th day of March, 2019.


Kurtis Smith, Mayor


Jennifer Turk, Clerk

The Township of Adelaide Metcalfe

Schedule "A"

**By-Law No. 20 of 2019: *Smoking and Vapourizing*
*Part I Provincial Offences Act***

Set Fines

Item	Column 1 Short Form Wording	Column 2 Provision creating or defining offence	Column 3 Set Fine
1.	Smoke or Vapourize in any Designated Public Place, whether or not a "No Smoking" sign or a "No Vaping" sign is posted.	4.2	\$250.00
2.	Employer/proprietor fail to post "No Smoking" or "No Vaping" signs.	5.2	\$250.00
3.	Remove, cover up, mutilate, deface or alter any "No Smoking" sign.	5.4	\$150.00
4.	Smoke or vape within nine (9) metres of any entrance or exit to a building or within twenty (20) metres of any entrance or exit of a Municipal Building.	6.3	\$250.00
5.	Obstruct/hinder or attempt to obstruct/hinder an enforcement officer, authorized employee or agent.	6.4	\$500.00
6.	Produce a false document or make a false or misleading statement to an officer.	6.7	\$500.00
7.	Smoke tobacco/cannabis or vape within the confines of a vehicle owned, leased or otherwise under the control of the Township.	6.8	\$250.00

Note: the general penalty provision of the offences listed above is Section 7.1 of by-law 20 of 2019, a certified copy of which has been filed.