

# *THE CITY OF VAUGHAN*

# *BY-LAW*

## BY-LAW NUMBER 074-2019

**A By-law to regulate the smoking of tobacco, cannabis, electronic cigarettes and other like substances within the boundaries of the City of Vaughan, and to repeal Smoking By-law 84-2012, as amended.**

**WHEREAS** section 8(1) of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended (the "*Municipal Act*"), provides that the powers of a municipality shall be interpreted broadly as to confer broad authority on a municipality to (a) enable it to govern its affairs as it considers appropriate, and (b) enhance its ability to respond to municipal issues;

**AND WHEREAS** paragraph 5 of section 11(2) of the *Municipal Act* provides that an upper-tier municipality may pass By-laws for the economic, social and environmental well-being of the City;

**AND WHEREAS** paragraph 6 of section 11(2) of the *Municipal Act* provides that a lower-tier municipality may pass By-laws for the health, safety and well-being of persons;

**AND WHEREAS** section 115 of the *Municipal Act* provides that a municipality may prohibit or regulate the smoking of tobacco or cannabis in public places and workplaces;

**AND WHEREAS** section 128 of the *Municipal Act* provides that a municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of the council are or could become or cause public nuisances;

**AND WHEREAS** section 425 of the *Municipal Act* provides that a municipality may pass By-laws providing that a person who contravenes any By-law of the municipality is guilty of an offence;

**AND WHEREAS** subsection 429(1) of the *Municipal Act* provides that a municipality may establish a system of fines for offences under a By-law of the municipality passed under the *Municipal Act*;

**AND WHEREAS** section 434.1 of the *Municipal Act* provides that a municipality may require a person to pay an administrative penalty if the municipality is satisfied that a person has failed to comply with a by-law of the municipality passed under the *Municipal Act*;

**AND WHEREAS** section 434.2(1) of the *Municipal Act* provides that an administrative penalty imposed by a municipality on a person constitutes a debt of the person to the municipality;

**AND WHEREAS** section 435 of the *Municipal Act* provides for conditions governing the powers of entry of a municipality;

**AND WHEREAS** section 436 of the *Municipal Act* provides that a municipality has the power to pass By-laws providing that the municipality may enter on land at any reasonable time for the purpose of carrying out an inspection to determine compliance with a By-law;

**AND WHEREAS** Section 18 of the *Smoke-Free Ontario Act, 2017*, S.O. 2017, c. 26, Schedule 3, contemplates that a municipal By-law may deal with a matter to which that Act applies but in a more restrictive manner, and directs that the By-law prevails to the extent it is more restrictive than that Act;

**AND WHEREAS** Council deems the regulation of smoking tobacco and cannabis necessary to ensure the health, safety and well-being of residents and visitors;

**NOW THEREFORE** the Council of the Corporation of the City of Vaughan enacts this By-law to regulate smoking of tobacco and cannabis within the boundaries of the City of Vaughan.

#### 1.0 **Authority and Short Title**

- (1) This By-law was approved by Item No. 11 of Report No. 11 of the Committee of the Whole and passed by City Council on March 19, 2019.
- (2) The By-law shall be known and referenced as the “Smoking By-law.”

#### 2.0 **Applicability and Scope**

- (1) This By-law applies to all *Property* within the jurisdiction of the City of Vaughan with the exception of:
  - (a) any *Dwelling Unit*, or
  - (b) any property solely containing one *Dwelling Unit*.
- (2) A person may *Smoke Cannabis* in a *Public Place* where the person is authorized to possess *Cannabis* for the individual’s own medical purposes in accordance:
  - (a) with Part 14 of the *Access to Cannabis for Medical Purposes Regulation*, SOR/2016-230 or its successor legislation;
  - (b) or regulation, or in accordance with a court order.

- (3) A person claiming exemption in accordance with section 2.0(2) shall have a medical document in possession at all times when *Smoking Cannabis* and shall surrender the medical document for inspection upon demand of an *Officer*.
- (4) A person may Smoke in a *Public Place*, other than an *Enclosed Public Place*:
- (a) a cigar, cigarette or pipe that contains *Tobacco*; or
  - (b) an *e-Cigarette* or electronic vaporizer.

### 3.0 **Definitions and Interpretation**

- (1) In this By-law:
- (a) “Cannabis” has the same meaning as in subsection 2(1) of the *Cannabis Act*, S.C. 2018, c. 16;
  - (b) “City” means The Corporation of the City of Vaughan;
  - (c) “City Facility” refers to any building or structure, including its grounds, owned or operated by the *City*;
  - (d) “Designated Smoking Area” means an open-air unenclosed outdoor area marked by signage and delineated by the *Owner* of a *Property* where an individual may *Smoke*, provided that this area does not conflict with the *Smoke-Free Ontario Act, 2017*, S.O. 2017, c. 26;
  - (e) “Community Recreational Facility” has the same meaning as in subsection 11(2) of *O.Reg. 268/18*.
  - (f) “Dwelling Unit” means a room or series of rooms of complementary use, used by a person or persons living together under a single tenancy, in which cooking, eating, living, sleeping and sanitary facilities are provided;
  - (g) “Electronic Cigarette” has the same meaning as subsection 1(1) of the *Smoke-Free Ontario Act, 2017*;
  - (h) “Enclosed Public Place” means a *Public Place* that has a roof and its perimeter enclosed at least 75% by walls.
  - (i) “Hearings Officer” means a person from appointed by the Director pursuant to *Administrative Monetary Penalties By-law*, or its successor by-law;

- (j) “Officer” means:
  - (i) a Provincial Offences Officer of the *City* or any other person appointed by or under the authority of a *City* By-law to enforce this By-law; or
  - (ii) a Police Officer employed by York Regional Police, the Ontario Provincial Police or the Royal Canadian Mounted Police.
- (k) “Owner” includes,
  - (i) the person for the time being managing or receiving the rent of the land or premises in connection with which the word is used, whether on the person’s own account or as agent or trustee of any other person, or who would receive the rent if the land and premises were let, and
  - (ii) a lessee or occupant of the *Property* who, under the terms of a lease, is required to repair and maintain the property in accordance with the standards for the maintenance and occupancy of *Property*;
- (l) “Park” means land and land covered by water and all portions thereof owned by or made available by lease, agreement, or otherwise to the municipality, that is or hereafter may be established, dedicated, set apart or made available for use as public open space or golf course, and that has been or hereafter may be placed under the jurisdiction of the City including any and all buildings, structures, facilities, erections, and improvements located in or on such land, save and except where such land is governed by other by-laws of the municipality;
- (m) “Property” means a building, and includes the lands and premises appurtenant thereto, and includes vacant property;
- (n) “Public Entrance” means an entrance to which the public is ordinarily invited or permitted access, either expressly or by implication;
- (o) “Public Place” includes *Property* to which the public has access as of right or invitation, express or implied, regardless of whether it is owned by a public or private entity, and also includes any motor vehicle located on such *Property* or in any place open to public view, but excludes public highways.

- (p) "Smoke or Smoking" includes the holding or carrying of a lighted cigar, cigarette, pipe, *Electronic Cigarette*, electronic vaporizer or any other lighted, heated or otherwise activated smoking or vaporizing equipment, that contains any *Tobacco*, *Cannabis* or other substance or product;
- (q) "Tobacco" includes any product that contains tobacco.
- (2) The provisions of Part VI of the *Legislation Act*, 2006, S.O. 2006, c. 21, Schedule F shall apply to this By-law.
- (3) Where a term used in this By-law is not defined herein, but is defined in the *Smoke Free Ontario Act*, 2017, S.O. 2017, c. 26, Schedule 3, as amended, that definition shall apply to the term used in this By-law.
- (4) The onus of proving an exception under Part 2.0 of this By-law is on the person claiming the exception, in accordance with section 47(3) of the *Provincial Offences Act*, R.S.O. 1990, c.P.33, as amended.

#### 4.0 **General Prohibitions**

- (1) No person shall *Smoke* in an *Enclosed Public Place*.
- (2) No person shall *Smoke* within 20 metres of the perimeter of any *City-owned Community Recreational Facility*.
- (3) No person shall *Smoke* in a *Park*.
- (4) No person shall *Smoke* in or at a *City Facility*.
- (5) The prohibition of *Smoking* does not apply to *Property* that belongs to or comprises part of a *Dwelling Unit*, any property solely containing one *Dwelling Unit*, unless such *Dwelling Unit* or *Property* is being used as a school or private school, as defined in the *Education Act*, R.S.O. 1990, c. E.2, or a child care center, as defined in the *Child Care and Early Years Act, 2014*, S.O. 2014, c. 11, Sched. 1.
- (6) Despite sections 4.0(3) and 4.0(4), *Smoking*, except the *Smoking* of *Cannabis*, is permitted in *Designated Areas of City-owned Facilities and Parks*, which shall not be within 9 metres of any *Public Entrance* or openable window.
- (7) No person shall *Smoke* within 20 metres of any wading pool, splash pad, skating rink, skate park,

sports field, playground, tennis court or basketball court, including any spectator areas of such places, and where such areas are also a *Public Place*.

(8) No person shall *Smoke* within 20 metres of any school site or private school, as defined in the *Education Act*, R.S.O. 1990, c. E.2.

(9) No person shall *Smoke* within 9 metres of the *Public Entrance* or any openable window of any child care centre, as defined in the *Child Care and Early Years Act, 2014*, S.O. 2014, c. 11, Sched. 1 or within 20 metres of any playground under the care and control of any child care centre.

#### 5.0 **Powers of Entry and Inspection**

(1) *Officers*, and any person acting under their direction, may, at any reasonable time or at any time when there are reasonable grounds to believe that a contravention of this By-law is occurring or alleged to be occurring, enter onto any *Property* to determine if the provisions of this By-law are being complied with.

(2) *Officers* are authorized, for the purposes of an inspection to determine and enforce compliance with the By-law, to:

- (a) enter, at any reasonable time, onto any *Property*, other than a dwelling unit unless authorized by the occupier of such dwelling unit or under the authority of a warrant issued by a court of competent jurisdiction;
- (b) require any person to produce for inspection any substance, equipment, documents, or other things relevant to the alleged offence or inspection;
- (c) alone or in conjunction with persons possessing special or expert knowledge, make examinations, take tests, obtain samples, and/or make audio, video and/or photographic records relevant to the alleged offence or inspection;
- (d) require information from any person concerning the alleged offence or inspection.

#### 6.0 **Enforcement**

(1) The provisions of this By-law may be enforced by an *Officer*.

(2) An *Officer* who has reasonable grounds to believe that a person has contravened any provision of this By-law may require that person to provide identification to the *Officer*.

- (3) An *Officer* may require a person to produce for inspection a medical document issued pursuant to the *Access to Cannabis for Medical Purposes Regulation*, SOR/2016-230 or its successor legislation or regulation.
- (4) Any information provided to the *Officer* under sections 6.0(2) or 6.0(3) is presumed to be correct and accurate and is admissible in any proceeding.
- (5) All persons who are required by an *Officer* to provide identification under Section 6.0(2) or a medical document under 6.0(3) shall provide such identification or document to the *Officer*. Failure to provide sufficient or correct and accurate identification or failure to produce a proper document shall constitute an offence as set out under section 7.0(2) of this By-law.

#### 7.0 **Offences**

- (1) Any person who contravenes or fails to comply with any provision of this By-law is guilty of an offence.
- (2) 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.
- (3) A court or *Hearings Officer* may, in the absence of evidence to the contrary, infer that any substance in question is cannabis from the fact that a witness describes it as cannabis or by a name that is commonly applied to cannabis. For greater certainty, a witness need not possess special or expert knowledge for the court to make any such inference.

#### 8.0 **Continuation, Repetition Prohibited by Order**

- (1) 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, and such order shall be in addition to any other penalty imposed on the person convicted.

#### 9.0 **Administrative Monetary Penalties**

- (1) Instead of laying a charge under the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33, as amended, for a breach of any provisions of this By-law, an *Officer* may issue an administrative monetary penalty to the person who has contravened this By-law.
- (2) If an administrative monetary penalty is issued to a person under section 8.0(1), no charge shall

be laid against that same person for the same breach.

- (3) The amount of the administrative monetary penalty for a breach under this By-law is \$100.00.
- (4) A person who is issued an administrative monetary penalty shall be subject to the procedures provided for in the Administrative Monetary Penalties By-law.
- (5) An administrative monetary penalty imposed on a person that becomes a debt to the *City* under the Administrative Monetary Penalties By-law may be added to the municipal tax roll and collected in the same manner as municipal taxes.

#### 10.0 **Penalties**

- (1) Every person who is guilty of an offence under this By-law shall be subject to the following penalties:
  - (a) Upon a first conviction, a fine of not less than \$100.00 and not more than \$5,000.00;
  - (b) Upon a second or subsequent conviction, a fine of not less than \$250.00 and not more than \$10,000.00;
  - (c) Upon conviction for a multiple offence, for each offence included in the multiple offence, a fine of not less than \$100.00 and not more than \$10,000.00.

#### 11.0 **Collection of Unpaid Penalties and Fines**

- (1) Where a fine is in default, the City may proceed with civil enforcement against the person upon whom the fine has been imposed, pursuant to the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33.
- (2) The City may make a request to the treasurer of a local municipality to add any part of a fine that is in default to the tax roll for any property in the local municipality for which all of the owners are responsible for paying the fine, and to collect it in the same manner as municipal taxes.

#### 12.0 **Severability**

- (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 balance of the By-law, or its application in other circumstances, shall not be affected and shall continue to be in full force and effect.



13.0 **Force and Effect**

- (1) That the following By-laws of the *City* are hereby repealed: By-laws 84-2012 and 127-2013.
- (2) This By-law shall come into force and effect on the date enacted by Council.

Enacted by City of Vaughan Council this 14<sup>th</sup> day of May, 2019.

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Hon. Maurizio Bevilacqua, Mayor

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Todd Coles, City Clerk