

The Corporation of the City Of Guelph By-law Number (2019) - 20379

A By-law regarding the smoking of tobacco or cannabis in public places and workplaces and to repeal by-laws (1995)-14892, (2000)-16387, (2003)-17197 and (2006)-17954. [Amended by By-law (2019) – 20390].

Whereas the City of Guelph adopted By-law Number (1995)-14892, being a By-law to regulate smoking of tobacco in public places and workplaces;

And whereas the City of Guelph adopted By-law Number (2000)-16387 and By-law Number (2003)-17197 to amend By-law Number (1995)-14892;

And whereas the City of Guelph adopted By-law Number (2006)-17954 to appoint persons to enforce the provisions of By-law Number (1995)-14892;

And whereas section 115 of the Municipal Act, 2001 permits a municipality to prohibit or regulate the smoking of tobacco or cannabis in public places and workplaces;

And whereas the City of Guelph wishes to repeal By-law Number (1995)- 14892, as amended and by-laws (2000)-16387, (2003)-17197 and (2006)-17954, with a By-law regarding the smoking of both tobacco and cannabis;

Now therefore the Council of the Corporation of the City of Guelph enacts as follows:

Interpretation

1. Definitions in this By-law,

"board of health" means the Wellington-Dufferin-Guelph board of health within the meaning of the Health Protection and Promotion Act;

"cannabis" has the same meaning as in subsection 2.1 of the Cannabis Act (Canada);

"electronic 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 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;

"employee" means a person who performs any work for or supplies any services to an employer, or a person who receives any instruction or training in the activity, business, work, trade, occupation or profession of an employer;

"employer" includes an owner, operator, proprietor, manager, superintendent, overseer, receiver or trustee of an activity, business, work, trade, occupation, profession, project or undertaking who has control or direction of, or is directly or indirectly responsible for, the employment of a person in it;

"enclosed public place" means,

- a) the inside of any place, building or structure or vehicle or conveyance, or a part of any of them,
 - i. that is covered by a roof, and
 - ii. to which the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry, or
- b) a specified place; "enclosed workplace" means,
- c) the inside of any place, building or structure or vehicle or conveyance, or a part of any of them,
 - i. that is covered by a roof,
 - ii. that employees work in or frequent during the course of their employment whether or not they are acting in the course of their employment at the time, and
 - iii. that is not primarily a private dwelling, or
- d) a specified place;

"e-substance" means a substance that is manufactured or sold to be used in an electronic cigarette;

"Manager" means the City's Manager, By-law Compliance, Security and Licensing or his or her designate;

"medical cannabis" means cannabis that is obtained for medical purposes in accordance with Part 14 of the Cannabis Regulations (Canada) or in accordance with a court order;

"medical cannabis user" means an individual who is authorized to possess cannabis for the individual's own medical purposes in accordance with Part 14 of the Cannabis Regulations (Canada) or in accordance with a court order;

"personal health information" has the same meaning as in the Personal Health Information Protection Act, 2004;

"post-secondary institution" means,

- a) a college of applied arts and technology,
- b) a university or other institution that receives regular and ongoing operating funds from the Province for the purpose of providing post-secondary education, or
- c) an institution offering post-secondary education programs that has an agreement to federate or affiliate with a university;

"proprietor" means the owner, operator or person in charge;

"record" means any collection of information however recorded, whether in printed form, on film, by electronic means or otherwise and includes any data that is re- corded or stored on any medium in or by a computer system or similar device, as well as drawings, specifications or floor plans for an enclosed workplace;

"roof" means a physical barrier of any size, whether temporary or permanent, that covers an area or place or any part of an area or place, and that is capable of excluding rain or impeding airflow, or both;

"specialty tobacco products" includes tobacco products and tobacco product accessories, but does not include cigarettes within the meaning of the Tobacco Tax Act and the regulations under that Act;

"specialty vape store" means a retail establishment that is registered as a specialty vape store with the board of health and where,

- a) at least 85 per cent of the establishment's total sales for the previous 12 months is from vapour products or, if the retail establishment has been in operation for less than 12 months, at least 85 per cent of the establishment's total inventory purchases for the time it has been in existence consists of vapour products or at least 85 per cent of the total sales for the time it has been in existence consists of vapour products, and
- b) the remainder of the establishment's total sales or inventory purchases during the applicable period in clause (a) are from or consist of other items reasonably associated with a vapour product or branded with the name of the specialty vape store or a brand of vapour product;

"support person" means a support person as defined in Part IV.2 of Ontario Regulation 191/11 (Integrated Accessibility Standards) made under the Accessibility for Ontarians with Disabilities Act, 2005;

"tobacco product" means any product that contains tobacco, and includes the package in which tobacco is sold;

"tobacconist" means a retail establishment that is registered as a tobacconist with the board of health and where,

- a) at least 85 per cent of the establishment's total sales for the previous 12 months is from specialty tobacco products or, if the retail establishment has been in operation for less than 12 months, at least 85 per cent of the establishment's total inventory purchases for the time it has been in existence consists of specialty tobacco products or at least 85 per cent of the total sales for the time it has been in existence consists of specialty tobacco products, and

- b) the remainder of the establishment's total sales or inventory purchases during the applicable period in clause (a) is from or consists of cigarettes within the meaning of the Tobacco Tax Act or other items reasonably associated with a tobacco product or branded with the name of the tobacconist or a brand of tobacco product;

"vapour product" means an electronic cigarette, an e-substance, or any component of an electronic cigarette and includes the package in which the electronic cigarette, e-substance or component is sold.

"wall" means a physical barrier of any size, capable of excluding rain or capable of impeding airflow, or both, including a moveable or temporary barrier.

Private dwelling

2. For greater certainty, and without restricting the generality of the expression, the following are primarily private dwellings for the purposes of the definition of "enclosed workplace" in subsection 1:

1. Private self-contained living quarters in any multi-unit building or facility.
2. Any other specified place.

"Use", electronic cigarettes in this By-law,

3. "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.

2. Application

This By-law applies to,

- a) tobacco in any processed or unprocessed form that may be smoked, inhaled or chewed, including snuff, but not to products intended for use in nicotine replacement therapy;
- b) cannabis;
- c) vapour products; and
- d) specified products and substances.

3. General prohibitions re smoking, use, etc.

General Prohibitions

1. Subject to any exceptions provided for in this By-law, no person shall do any of the following in a place mentioned in subsection 2:

1. Smoke or hold lighted tobacco.
2. Smoke or hold lighted cannabis.

3. Use an electronic cigarette.
4. Consume a specified product or substance, in a specified manner.

Prohibited places

2. The following are the places for the purposes of subsection 1:
 1. An enclosed public place.
 2. An enclosed workplace.
 3. A school within the meaning of the Education Act.
 4. A building or the grounds surrounding the building of a private school within the meaning of the Education Act, where the private school is the only occupant of the premises, or the grounds annexed to a private school, where the private school is not the only occupant of the premises.
 5. Any indoor common area in a condominium, apartment building or university or college residence, including, without being limited to, elevators, hallways, parking garages, party or entertainment rooms, laundry facilities, lobbies and exercise areas.
 6. A child care centre within the meaning of the Child Care and Early Years Act, 2014.
 7. A place where home child care is provided within the meaning of the Child Care and Early Years Act, 2014, whether or not children are present.
 8. A place where an early years program or service is provided within the meaning of the Child Care and Early Years Act, 2014.
 9. The reserved seating area of a sports arena or entertainment venue.
 10. A specified place or area, or a place or area that belongs to a specified class.

Specified places or areas of prohibition

Health-related areas

4. The following are specified places for the purposes of paragraph 10 of subsection 3.2 of this By-law:
 1. The outdoor grounds of a hospital within the meaning of the Public Hospitals Act and the area within a nine metre radius surrounding any entrance or exit of such a hospital.
 2. The outdoor grounds of a private hospital within the meaning of the Private Hospitals Act, and the area within a nine metre radius surrounding any entrance or exit of such a hospital.

3. The outdoor grounds of a psychiatric facility within the meaning of the Mental Health Act, and the area within a nine metre radius surrounding any entrance or exit of such a facility.
4. The area within a nine metre radius surrounding any entrance or exit of an independent health facility under the Independent Health Facilities Act.
5. The area within a nine metre radius surrounding any entrance or exit of a long-term care home within the meaning of the Long- Term Care Homes Act, 2007.

Restaurant and bar patios

5.1 Restaurant and bar patios, and public areas within a nine metre radius surrounding any point on the perimeter of such patios, are specified areas for the purposes of paragraph 10 of subsection 3.2 of this By-law.

5.2 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 paragraphs:

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.

5.3 An area that would otherwise be a restaurant or bar patio as described in subsection 2 is not a restaurant or bar patio for the purposes of paragraph 10 of subsection 3.2 of this By-law if,

- a) the use of electronic cigarettes that contain a controlled substance within the meaning of the Controlled Drugs and Substances Act (Canada) is not permitted in the area;
- b) the use of electronic cigarettes that contain cannabis is not permitted in the area;
- c) the smoking of cannabis is not permitted in the area;
- d) the area was operated by a branch of the Royal Canadian Legion or another veterans' organization immediately before November 18, 2013 and has been continually operated by a branch of the Royal Canadian Legion or another veterans' organization since that date; and

e) the area was not, immediately before November 18, 2013, and is not at any time after that date a "covered or partially covered restaurant or bar patio" within the meaning of Ontario Regulation 48/06 (General) made under the Smoke-Free Ontario Act as it read on November 18, 2013.

f) In clause 3 (d),

5.4 "veterans' organization" means an organization,

- a) that may include members who are veterans of armed forces,
- b) the primary purpose of which is to provide programs or services to veterans of armed forces or to such veterans and their families, and
- c) that is a registered charity under the Income Tax Act (Canada).

Children's playgrounds and play areas

6.1 Children's playgrounds and all public areas within 20 metres of any point on the perimeter of a children's playground are specified areas for the purposes of paragraph 10 of subsection 3.2 of this By-law.

6.2 For the purposes of this section, a children's playground 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 paragraphs:

1. The area is primarily used for the purposes of children's recreation and is equipped with children's play equipment, such as, but without being limited to:
 - i. Slides,
 - ii. Swings,
 - iii. climbing apparatuses,
 - iv. splash pads,
 - v. wading pools or
 - vi. sand boxes.

2. 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.

3. The area is not part of the amenities provided by a residential location, such as, but without being limited to/ an apartment or condominium complex or a campground.

6.3 For greater certainty/ a hotel, motel/ inn or similar place is not a residential location for the purposes of paragraph 3 of subsection 2.

Sporting areas, etc.

7.1 The following are specified areas for the purposes of paragraph 10 of subsection 3.2 of this By-law:

1. Sporting areas.
2. Spectator areas adjacent to sporting areas.
3. Public areas within 20 metres of any point on the perimeter of a sporting area or a spectator area adjacent to a sporting area.

7.2 For the purposes of this section, a sporting area 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 paragraphs:

1. The area is owned by the Province or a municipality, by an agent of the Province or a municipality, or by a post-secondary institution.
2. 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.
3. The area is used primarily for the purposes of sports such as, but without being limited to the following, but not including golf, whether or not a fee is paid for the use:
 - i. Soccer,
 - ii. football,
 - iii. basketball,
 - iv. tennis
 - v. baseball, softball or cricket,
 - vi. skating,
 - vii. beach volleyball,
 - viii. running,
 - ix. swimming, or
 - x. skateboarding

Shelters

8. A place or area is specified for the purposes of paragraph 10 of subsection 3.2 of this By-law, if it meets all of the following conditions:

1. The public is ordinarily invited or permitted access to the place or area, either expressly or by implication, whether or not a fee is charged for entry, or the place or 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. The place or area has a roof and more than two walls.
3. The place or area is not primarily a private dwelling.

Community recreational facilities and perimeter of schools

9.1 The following are specified areas for the purposes of paragraph 10 of subsection 3.2 of this By-law:

1. Public areas within 20 metres of any point on the perimeter of a school described in paragraph 3 of that subsection.
2. Public areas within 20 metres of any point on the perimeter of the grounds of a private school described in paragraph 4 of that subsection.
3. The outdoor grounds of a community recreational facility and public areas within 20 metres of any point on the perimeter of the grounds.

9.2 For the purposes of this section, a community recreational facility is an enclosed public place or an enclosed workplace that meets all the criteria set out in the following paragraphs:

1. The place is owned or operated by,
 - i. a corporation incorporated under Part III of the Corporations Act or under the Canada Not-for-profit Corporations Act or a predecessor of that Act,
 - ii. an organization that is a registered charity under the Income Tax Act (Canada), or
 - iii. the Province or a municipality, or by an agent of the Province or a municipality.
2. The place is primarily used for the purposes of providing athletic or recreational programs or services to the local community, including children and youth, such as, but without being limited to the following programs or services, whether or not a fee is paid for the use:
 - i. Sports programs.
 - ii. Children's play programs.
 - iii. Fitness programs.
3. The public is ordinarily invited or permitted access to the place, either expressly or by implication, whether or not a fee is charged for entry.
4. The place is not primarily a private dwelling.

9.3 An area that would otherwise be specified under this section is not specified if it meets the requirements set out in subsection 5.3.

Exemptions from the prohibitions

Stage production exemptions

10.1 Subsection 3.1 of this By-law does not apply to an actor who uses an electronic cigarette in a stage production if the following conditions are met:

1. No consideration is given, directly or indirectly, for the use or depiction of the electronic cigarette in the stage production.
2. The electronic cigarette does not contain nicotine.
3. The electronic cigarette does not contain a controlled substance within the meaning of the Controlled Drugs and Substances Act (Canada).
4. The electronic cigarette does not contain cannabis.
5. The vapour produced by the electronic cigarette is unscented.

10.2 In this section,

"stage production" means a dramatic, musical, educational or artistic work that is performed live on a stage, and includes any rehearsal of such a work.

Testing, Sampling, etc.

11.1 Subsection 3.1 of this By-law does not apply to the holding of an activated electronic cigarette if the following conditions are met:

1. The activated electronic cigarette is held for the purpose of testing the electronic cigarette or demonstrating to customers how the electronic cigarette can be activated.
2. No vapour is inhaled or exhaled from the activated electronic cigarette.
3. The activated electronic cigarette is held in a tobacconist or specialty vape store that meets the following conditions:
 - i. The retailer of the tobacconist or specialty vape store shall not permit a person who is less than 19 years old to enter the place of business of the tobacconist or specialty vape store other than the owner or occupier of the place, one of their employees or a support person accompanying a person with a disability who is at least 19 years old. For the purposes of this subparagraph, a person who appears to be less than 25 years old is deemed to be less than 19 years old unless the retailer has required that person to provide identification and is satisfied that the person is at least 19 years old.
 - ii. The place of business of the tobacconist or specialty vape store must be a building or must be located within a building.

- iii. Customers must be able to enter the place of business of the tobacconist or specialty vape store only from the outdoors or from the areas of an enclosed shopping mall that are,
 - a) open to the public,
 - b) common to most of the retail establishments or other businesses within the mall, and
 - c) not part of a retail establishment or other business within the mall.
- iv. The place of business of the tobacconist or specialty vape store must not be a thoroughfare.

11.2 Subsection 3.1 of this By-law does not apply to the use of an electronic cigarette if the following conditions are met:

1. The electronic cigarette is used for the purpose of sampling a vapour product.
2. The electronic cigarette is used in a specialty vape store that meets the following conditions:
 - i. The retailer of the specialty vape store shall not permit a person who is less than 19 years old to enter the place of business of the specialty vape store, other than the owner or occupier of the specialty vape store, one of their employees or a support person accompanying a person with a disability who is at least 19 years old. For the purposes of this subparagraph, a person who appears to be less than 25 years old is deemed to be less than 19 years old unless the retailer has required that person to provide identification and is satisfied that the person is at least 19 years old.
 - ii. The place of business of the specialty vape store must be a building or must be located within a building.
 - iii. Customers must be able to enter the place of business of the specialty vape store only from the outdoors or from the areas of an enclosed shopping mall that are,
 - a) open to the public,
 - b) common to most of the retail establishments or other businesses within the mall, and
 - c) not part of a retail establishment or other business within the mall.
 - iv. The place of business of the specialty vape store must not be a thoroughfare.

11.3 No more than two persons may sample a vapour product by using an electronic cigarette in the specialty vape store at the same time.

11.4 The electronic cigarette must be the personal possession of the person holding it, or, if it is supplied by the specialty vape store, a fresh one-time disposable mouthpiece must be used for the sampling.

11.5 The electronic cigarette must not contain cannabis, tobacco or a controlled substance as defined in the Controlled Drugs and Substances Act (Canada).

Residence rooms

12.1 Subsection 3.1 does not apply to a person who smokes or holds lighted tobacco or cannabis or who uses an electronic cigarette in an indoor room in a residence that also serves as an enclosed workplace if the following conditions are met, and the obligations under sections 16 and 20 do not apply to a proprietor or employer with respect to such a room if the proprietor or employer complies with any specified requirements respecting the room:

1. The residence is,
 - i. a long-term care home within the meaning of the Long- Term Care Homes Act, 2007,
 - ii. a residential facility that is operated as a retirement home and that provides care, in addition to accommodation, to the residents of the home,
 - iii. a supportive housing residence funded or administered through the Ministry of Health and Long-Term Care or the Ministry of Children, Community and Social Services, where "supportive housing residence" includes homes for special care licensed under the Homes for Special Care Act and homes that are part of the program of the Ministry known as the "Community Homes for Opportunity" program.
 - iv. a psychiatric facility under the Mental Health Act that was formerly designated under the Mental Hospitals Act as a facility to which the Mental Hospitals Act applies and that became a division or other part of another facility as a result of the implementation of a plan for the restructuring of hospital services.
2. The room has been designated as a controlled area for smoking tobacco or cannabis or for the use of electronic cigarettes, or for any or all of them, as the case may be.
3. A resident who desires to use the room must be able, in the opinion of the proprietor or employer, to do so safely without assistance from an employee. An employee who does not desire to enter the room shall not be required to do so.

4. Use of the room is limited to residents of the residence.
5. The room is an enclosed space that,
 - i. is fitted with proper ventilation in compliance with the regulations,
 - ii. is identified as a controlled area by means of specified signs, displayed in the specified manner, and
 - iii. meets any other specified requirements.

Hotels, motels, inns

12.2 Subsection 3.1 does not apply to a person who smokes or holds lighted tobacco or cannabis or who uses an electronic cigarette in a guest room in a hotel, motel or inn if the following conditions are met, and the obligations under sections 16 and 20 do not apply to a proprietor or employer with respect to a guest room described in paragraphs 2 to 5 below if the proprietor or employer complies with any specified requirements respecting the guest room:

1. The person is a registered guest of the hotel, motel or inn, or the invited guest of a registered guest.
2. The guest room is designed primarily as sleeping accommodation.
3. The guest room has been designated as a guest room that accommodates smoking tobacco or cannabis or the use of electronic cigarettes, or any or all of them, as the case may be, by the management of the hotel, motel or inn.
4. The guest room is fully enclosed by floor-to-ceiling walls, a ceiling and doors that separate it physically from any adjacent area in which smoking or the use of electronic cigarettes is prohibited by this By-law.
5. The guest room conforms to any other specified requirements.

Scientific research and testing facilities

12.3 Subsection 3.1 does not apply to a person who smokes or holds lighted tobacco or cannabis or who uses an electronic cigarette in a scientific research and testing facility for the purpose of conducting research or testing concerning tobacco products, cannabis or vapour products, as the case may be, and the obligations under sections 16 and 20 do not apply to a proprietor or employer with respect to the research and testing carried on in such a facility.

Hospices, other facilities

12.4 Subsection 3.1 does not apply to a person who smokes or holds lighted cannabis or who uses an electronic cigarette in a hospice that complies with

the specified requirements or in another specified facility, as long as any requirements provided for in this By-law are complied with.

Hospices

13.1 For the purposes of subsection 12.4, the hospice must comply with the following requirements:

1. The hospice must be a residential hospice that provides nursing care that is funded, directly or indirectly, through the Ministry of Health and Long-Term Care.
2. The area in the hospice where the smoking of cannabis or the use of electronic cigarettes is taking place meets the requirements of paragraphs 2, 3, 4 and 5 of subsection 12.1 of this By-law and the requirements of section 26 of this By-law.

Controlled areas

14.1 For the purposes of subsection 12.1 of this By-law, the following are the requirements for a controlled area if a proprietor or employer chooses to operate a controlled area:

1. The controlled area must be enclosed and separated from the rest of the building and must not be a thoroughfare.
2. The controlled area must be registered with the Ministry by the proprietor of the controlled area and by the employer of the workers who maintain the controlled area.
3. The proprietor of the controlled area and the employer of the workers who maintain the controlled area shall ensure that maintenance checks of the controlled area are conducted in accordance with Schedule 1 to this By-law.
4. The controlled area must comply with all the applicable codes and standards, and, where the requirements of the applicable codes and standards conflict with the requirements in this By-law, the requirements of the applicable codes and standards shall prevail. The existing fire separations and other life safety systems shall be maintained or upgraded as required based on the new usage of the space.
5. The controlled area must be cleaned daily, and
 - i. there shall be no smoking or use of electronic cigarettes in the controlled area for two hours before custodial staff enter the controlled area and while custodial staff are cleaning the controlled area, and
 - ii. a sign must be posted outside the controlled area indicating the hours during which smoking and the use of electronic cigarettes is not permitted in the controlled area.

6. The controlled area must be equipped with a separate ventilation system that supplies a minimum ventilation rate of 30 litres per second per person for the maximum permitted occupancy of the controlled area and that exhausts to the exterior of the building.
7. The controlled area must meet the requirements set out in Schedule 2 to this By-law.

14.2 If a controlled area in the facility is set aside for the purpose of smoking or the use of electronic cigarettes and for the purpose of carrying on another activity, there must be another area in the facility that is of a size equal to or greater than the area of the controlled area and in which smoking or the use of electronic cigarettes is not permitted and in which the other activity may be carried on.

14.3 If a controlled area in the facility is set aside for the purpose of smoking or the use of electronic cigarettes, the proprietor of the facility and the employer of the workers in the facility shall post the sign described in subsection 4 and the sign described in subsection 5 outside any entrance to the controlled area.

14.4 The first sign referred to in subsection 3 shall meet the following requirements:

1. The sign must be 10 centimetres in height and 10 centimetres in width.
2. The sign must be a copy of the sign entitled "Controlled Areas in Certain Residential Facilities", dated January 1, 2018 and accessible through a website of the Government of Ontario.

14.5 The second sign referred to in subsection 3 shall indicate the maximum permitted occupancy of the controlled area.

Signs

15 All signs required to be posted under this By-law shall be posted in a conspicuous manner and shall not be obstructed from view.

Employer and proprietor obligations

General employer obligations

16.1 Every employer shall, with respect to an enclosed workplace or other place or area mentioned in subsection 3.2 over which the employer exercises control,

- a) ensure compliance with subsection 3.1;
- b) give notice to each employee in the enclosed workplace or other place or area of the prohibitions under subsection 3.1 in accordance with this By-law;

- c) post any required signs respecting the prohibitions under subsection 3.1 throughout the enclosed workplace, place or area, including washrooms, in the required manner;
- d) ensure that no ashtrays or similar equipment remain in the enclosed workplace or place or area, other than a vehicle in which the manufacturer has installed an ashtray;
- e) ensure that a person who refuses to comply with subsection 3.1 does not remain in the enclosed workplace or place or area; and
- f) ensure compliance with any other specified obligations.

Prohibition

16.2 No employer or person acting on behalf of an employer shall take any of the following actions against an employee because the employee has acted in accordance with, or has sought the enforcement of, this By-law:

- 1. Dismissing or threatening to dismiss the employee.
- 2. Disciplining or suspending the employee, or threatening to do so.
- 3. Imposing a penalty upon the employee.
- 4. Intimidating or coercing the employee.

Employer obligations regarding signs

17 For the purposes of clause 16.1 (c) of this By-law, an employer shall post both of the signs described in paragraphs 1 and 2 of this section, or the sign described in paragraph 3 of this section, at each entrance and exit of the enclosed workplace, place or area in appropriate locations and in sufficient numbers to ensure that employees and the public are aware that smoking and the use of electronic cigarettes is prohibited in the enclosed workplace, place or area:

- 1. A sign that is,
 - i. at least 10 centimetres in height and at least 10 centimetres in width, and
 - ii. a copy of the sign entitled "Tobacco Sign for Employers", dated January 1, 2018 and accessible through a website of the Government of Ontario.
- 2. A sign that is,
 - i. at least 10 centimetres in height and at least 10 centimetres in width, and
 - ii. a copy of the sign entitled "Electronic Cigarette Sign for Employers", dated January 1, 2018 and accessible through a website of the Government of Ontario.

3. A sign that is,
 - i. at least 15 centimetres in height and at least 20 centimetres in width, and
 - ii. a copy of the sign entitled "Tobacco and Electronic Cigarette Sign for Employers", dated January 1, 2018 and accessible through a website of the Government of Ontario.

Proprietor obligations

18. Every proprietor of an enclosed public place or other place or area mentioned in subsection 3.2 shall,

- a) ensure compliance with subsection 3.1 with respect to the enclosed public place, place or area;
- b) give notice to each person in the enclosed public place, place or area of the prohibitions under subsection 3.1 in accordance with this By-law;
- c) post any specified signs respecting the prohibitions under subsection 3.1 throughout the enclosed public place, place or area, including washrooms, in the specified manner;
- d) ensure that no ashtrays or similar equipment remain in the enclosed public place, place or area, other than a vehicle in which the manufacturer has installed an ashtray;
- e) ensure that a person who refuses to comply with subsection 3.1 does not remain in the enclosed public place, place or area; and
- f) ensure compliance with any other specified obligations.

General proprietor obligations

19. For the purposes of clause 18 (c) of this By-law, a proprietor shall post both of the signs described in paragraphs 1 and 2 of this section, or the sign described in paragraph 3 of this section, at each entrance and exit of the enclosed public place, place or area in appropriate locations and in sufficient numbers to ensure that the public are aware that smoking and the use of electronic cigarettes is prohibited in the enclosed public place, place or area:

1. A sign that is,
 - i. at least 10 centimetres in height and at least 10 centimetres in width, and
 - ii. a copy of the sign entitled "Tobacco Sign for Proprietors", dated January 1, 2018 and accessible through a website of the Government of Ontario.
2. A sign that is,

- i. at least 10 centimetres in height and at least 10 centimetres in width, and
 - ii. a copy of the sign entitled "Electronic Cigarette Sign for Proprietors", dated January 1, 2018 and accessible through a website of the Government of Ontario.
- 3. A sign that is,
 - i. at least 15 centimetres in height and at least 20 centimetres in width, and
 - ii. a copy of the sign entitled "Tobacco and Electronic Cigarette Sign for Proprietors", dated January 1, 2018 and accessible through a website of the Government of Ontario.

Signs - hotels, motels, inns

20. For the purposes of clauses 16.1(c) and 18 (c) of this By-law, the employer and the proprietor shall post both of the signs described in paragraphs 1 and 2 of this section, or the sign described in paragraph 3 of this section, in every guest room that has not been designated under subsection 12.2 and in every washroom associated with the guest room:

- 1. A sign that is,
 - i. at least 10 centimetres in height and at least 10 centimetres in width, and
 - ii. a copy of the sign entitled "Tobacco Sign for Hotels, Motels and Inns" dated January 1, 2018 and accessible through a website of the Government of Ontario.
- 2. A sign that is,
 - i. at least 10 centimetres in height and at least 10 centimetres in width, and
 - ii. a copy of the sign entitled "Electronic Cigarette Sign for Hotels, Motels and Inns", dated January 1, 2018 and accessible through a website of the Government of Ontario.
- 3. A sign that is,
 - i. at least 15 centimetres in height and at least 20 centimetres in width, and
 - ii. a copy of the sign entitled "Tobacco and Electronic Cigarette Sign for Hotels, Motels and Inns", dated January 1, 2018 and accessible through a website of the Government of Ontario.

Protection for home health-care workers

21.1 Every home health-care worker has the right to request a person not to do any of the following in the home health-care worker's presence while they are providing health care services:

1. Smoke or hold lighted tobacco.
2. Smoke or hold lighted cannabis.
3. Use an electronic cigarette.
4. Consume a prohibited product or substance, in a prohibited manner.

Right to leave

21.2 Where a person refuses to comply with a request referred to in subsection 1, the home health-care worker has the right to leave without providing any further services, unless to do so would present an immediate serious danger to the health of any person.

Restriction

21.3 A home health-care worker who has exercised the right to leave shall comply with any procedures provided for in the regulations.

Definition

21.4 In this section,

"home health-care worker" means a person who provides health-care services in private homes, that is provided or arranged by,

- a) a local health integration network as defined in subsection 2.1 of the Local Health System Integration Act, 2006,
- b) an entity that receives funding from the Ministry of Health and Long-Term Care or a local health integration network as defined in subsection 2.1 of the Local Health System Integration Act, 2006, or
- c) a specified person or entity.

Obligations of home health-care worker

22.1 For the purposes of subsection 21.3 of this By-law, a home health-care worker who has exercised his or her right to leave must phone his or her employer within 30 minutes of leaving, or as soon as is reasonably possible after that, and inform the employer,

- a) that the worker has left;
- b) whether an appropriate person is present and available to care for the person to whom the health-care services were being provided or were to be provided;

- c) if the person to whom the health-care services were being provided or were to be provided would require care in the next 24 hours;
- d) in what situation the person to whom the health-care services were being provided or were to be provided was when the worker left; and
- e) whether there are any unusual circumstances and, if so what they are.

22.2 The home health-care worker shall also follow any guidelines provided by the employer that are reasonably aimed at ensuring that the person to whom the health-care services were being provided or were to be provided is kept safe and provided with a reasonable level of care.

Vehicles

Motor vehicles

23.1 Subject to the regulations, no person shall do any of the following in a motor vehicle:

1. Smoke tobacco or have lighted tobacco while another person who is less than 16 years old is present in the vehicle.
2. Use an electronic cigarette or have an activated electronic cigarette while another person who is less than 16 years old is present in the vehicle.
3. Consume a specified product or substance, in a specified manner, or have a specified product or substance.

Proof of age

23.2 In a prosecution under this section a court may find evidence that the person enforcing this section honestly and reasonably believed another person to be less than 16 years old to be sufficient proof of the other person's age.

Enforcement

23.3 Despite section 28.1 this section shall be enforced by police officers or by any other person or class of persons designated in writing by the Manager to enforce this section.

Definition

23.4 In this section

"motor vehicle" means, subject to this By-law, a motor vehicle as defined in subsection 1.1 of the Highway Traffic Act.

Cannabis, vehicles and boats

24.1 No person shall consume cannabis in any manner in a vehicle or boat while

- a) the person is driving or has care or control of the vehicle or boat¹ regardless of whether the vehicle or boat is in motion; or

- b) the person is a passenger in a vehicle or boat that is being driven by another person or that is under the care or control of another person regardless of whether the vehicle or boat is in motion.

Enforcement

24.2 Despite section 28.1 this section shall be enforced by police officers or by any other person or class of persons designated in writing by the Manager to enforce this section.

Definitions

24.3 In this section

"boat" includes any ship or boat or any other description of a vessel used or designed to be used in the navigation of water;

"vehicle" means, subject to the regulations,

- a) a motor vehicle within the meaning of the Highway Traffic Act,
- b) a motorized snow vehicle within the meaning of the Motorized Snow Vehicles Act.

Exemptions

25.1 Clause 24.1 (b) of this By-law does not apply to the consumption of medical cannabis in a manner other than by smoking or through the use of an electronic cigarette by a medical cannabis user.

25.2 Section 24 of this By-law does not apply to the following:

1. A motor vehicle as defined in the Highway Traffic Act that is equipped with permanent sleeping accommodations and permanent cooking facilities, while it is parked in a place that is not a highway or a King's Highway within the meaning of that Act and is being used as a residence.
2. A boat with permanent sleeping accommodations and permanent cooking and sanitary facilities, other than a boat used to carry passengers for hire, while the boat is at anchor or is secured to a dock or land and is being used as a residence.

25.3 Section 24 of this By-law does not apply to the following:

1. A drug containing cannabis to which the Cannabis Regulations (Canada) apply.
2. Cannabis that is a natural health product to which the Natural Health Product Regulations (Canada) apply.
3. Industrial hemp within the meaning of the Industrial Hemp Regulations (Canada).

4. A derivative or a product made from a derivative that is exempt from the application of the Cannabis Act (Canada) under the Industrial Hemp Regulations (Canada).

Traditional Use of Tobacco by Indigenous Persons

Purpose

26.1 The purpose of this section is to acknowledge the traditional use of tobacco that forms part of Indigenous culture and spirituality.

Non-application of smoking prohibitions

26.2 No provision of this By-law or any Act, regulation or other By-law that prohibits smoking in a place or area,

- a) prohibits an Indigenous person from smoking tobacco or holding lighted tobacco there, if the activity is carried out for traditional Indigenous cultural or spiritual purposes; or
- b) prohibits a non-Indigenous person from smoking tobacco or holding lighted tobacco there, if the activity is carried out with an Indigenous person and for traditional Indigenous cultural or spiritual purposes.

Place for traditional use of tobacco

26.3 At the request of an Indigenous resident, the operator of any of the following shall set aside an indoor area, separate from any area where smoking is otherwise permitted, for the use of tobacco for traditional Indigenous cultural or spiritual purposes:

1. A hospital as defined in the Public Hospitals Act.
2. A psychiatric facility designated under this By-law.
3. A long-term care home within the meaning of the Long- Term Care Homes Act, 2007.
4. A home for special care under the Homes for Special Care Act.
5. A place that belongs to a specified class.

Specified places

27.1 Psychiatric facilities within the meaning of the Mental Health Act are designated for the purposes of paragraph 2 of subsection 19.3 of this By-law.

27.2 For the purposes of paragraph 5 of subsection 19.3 of this By-law, the following classes of places are specified:

1. Independent health facilities under the Independent Health Facilities Act.
2. Private hospitals within the meaning of the Private Hospitals Act.

3. Homes that are part of the program of the Government of Ontario known as the "Community Homes for Opportunity" program.

Enforcement

Inspectors

28.1 The Manager may appoint inspectors for the purposes of this By-law.

Inspection

28.2 Subject to subsection 4, for the purpose of determining whether this By-law is being complied with, an inspector may, without a warrant or notice, and at any time, enter and inspect,

- a) any place where a prohibition under section 3 applies; and
- b) any place where the inspector has reasonable grounds to believe that an activity regulated or prohibited under this By-law is taking place.

Restricted appointments

28.3 The Manager may, in an appointment, restrict the inspector's powers of entry and inspection to specified places or kinds of places.

Dwellings

28.4 An inspector shall not enter into a place or part of a place that is a dwelling, without the consent of the occupant.

Use of force

28.5 An inspector is not entitled to use force to enter and inspect a place.

Identification

28.6 An inspector conducting an inspection shall produce, on request, evidence of his or her appointment.

Powers of inspector

28.7 An inspector conducting an inspection may,

- a) examine a record or other thing that is or may be relevant to the inspection;
- b) demand the production for inspection of a record or other thing that is or may be relevant to the inspection;
- c) remove for review and copying a record or other thing that is or may be relevant to the inspection;
- d) in order to produce a record in readable form, use data storage, information processing or retrieval devices or systems that are normally used in carrying on business in the place;

- e) remove a sample of a substance or any other thing that is or may be relevant to the inspection or take a specimen that is or may be relevant to the inspection;
- f) question a person on any matter that is or may be relevant to the inspection, including questioning a person separate and apart from others;
- g) if he or she finds that an employer is not complying with subsection 16.1, direct the employer or a person whom the inspector believes to be in charge of the enclosed workplace, place or area to comply with the provision and may require the direction to be carried out forthwith or within such period of time as the inspector specifies; and
- h) if he or she finds that a proprietor is not complying with section 15, direct the proprietor or a person whom the inspector believes to be in charge of the enclosed public place, place or area to comply with the provision and may require the direction to be carried out forthwith or within such period of time as the inspector specifies.

Written demand

28.8 A demand that a record or other thing be produced for inspection must be in writing and include a statement of the nature of the record or thing required, and may include a date and time for the record or other thing to be produced.

Obligation to produce and assist

28.9 If an inspector demands that a record or other thing be produced for inspection, the person who has custody of the record or thing shall produce it and, in the case of a record, shall on request provide any assistance that is reasonably necessary to interpret the record or to produce it in a readable form.

Records and things removed from place

28.10 A record or other thing that has been removed for review and copying shall be,

- a) made available to the person from whom it was removed, for review and copying, on request and at a time and place that are convenient for the person and for the inspector; and
- b) returned to the person within a reasonable time.

Copy admissible in evidence

28.11 A copy of a record that purports to be certified by an inspector as being a true copy of the original is admissible in evidence to the same extent as the original, and has the same evidentiary value, without proof of the signature or official character of the person appearing to have certified the copy.

Obstruction

28.12 No person shall,

- a) hinder, obstruct or interfere with an inspector, or attempt to hinder, obstruct, or interfere with an inspector who is conducting an inspection;
- b) refuse to answer questions on any matter that is or may be relevant to the inspection;
- c) provide the inspector with false or misleading information; or
- d) fail to comply with a direction under clause 7g or h.

Confidentiality

28.13 An inspector shall keep confidential all personal health information that comes to the inspector's knowledge in the course of an inspection and shall not communicate any personal health information to any other person except as required for the administration of this By-law or as otherwise required or permitted by law.

Restrictions, personal health information

28.14 An inspector shall not collect, use or disclose more personal health information than is reasonably necessary to meet the purpose of the collection, use or disclosure, as the case may be.

Offences

29.1 A person who contravenes a provision of this By-law is guilty of an offence and on conviction is liable to a fine.

28.2 Every person who is convicted of an offence under any provision of this By-law is liable to a penalty as set out in section 61 of the Provincial Offences act, R.S.O. 1990, Chapter P.33, as amended, or any successor thereto.

Evidence and cannabis

30 A court 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.

Conflict with other legislation

31 Where there is a conflict between a provision of this By-law and a provision of an Act, a regulation or another municipal by-law that deals with a matter to which this By-law applies, the provision that is more restrictive of the matter to which this By-law applies prevails, subject to section 26.

General

32. By-law Number (1995)-14892 as amended, and by-laws (2000)-16387, (2003)-17197, and (2006)-17954 are hereby repealed.

33. This By-law shall come into force and take effect upon passage.

Passed this twenty-fifth day of February, 2019.

Original signed by:

Cam Guthrie – Mayor

Stephen O’Brien – City Clerk

Schedule 1

Maintenance Requirements for Controlled Areas

For the purposes of paragraph 3 of subsection 14.1 of this By-law, a qualified person shall perform the following maintenance checks on the controlled area and systems in the controlled area, and correct any thing that is not in compliance with the requirements for the controlled area:

1. A monthly visual inspection of the controlled area to ensure that it is operating in compliance with the regulation, and in particular that,
 - i. the systems in the controlled area are operating,
 - ii. the temperature conditions set out in paragraph 8 of Schedule 2 in the controlled area are maintained,
 - iii. the doors are closing properly,
 - iv. there is no unusual accumulation of smoke or vapour in the controlled area, and
 - v. there is no accumulation of smoke or vapour outside the controlled area.
2. A quarterly routine maintenance, or maintenance as recommended by the equipment manufacturer, whichever is more frequent, and further maintenance as appropriate, given the use of the system, including but not limited to changing the filter, checking and maintaining the motors, refrigeration system, heating system, and control system, and cleaning the coils and heat recovery system.
3. An annual engineering inspection including air flow testing.

Schedule 2

Additional Requirements for Controlled Areas

The following are additional requirements for controlled areas under paragraph 7 of subsection 14.1 of this By-law:

Structure and furnishings

1. The controlled area shall be constructed with smoke sealed floor to slab partitions or sealed partitions with gypsum board ceilings. Floor to ceiling partitions with any permeable material, including but not limited to acoustic tiles, shall not be used.
2. The controlled area shall be provided with a pressurized vestibule, having minimum dimensions of 1.8 metres in width and 2.4 metres in length, with two sets of doors with electric operators and door sweeps.
3. The controlled area shall not contain soft fabric window coverings, carpets, ceiling tiles or soft fabric cover furniture.
4. The furniture in the controlled area shall be of non-combustible, non-permeable, durable and easily cleanable surface material.

Ventilation

5. The controlled area shall be isolated from the other areas of the building and shall have a separate ventilation system that operates at all times. No air from the controlled area shall be circulated to the rest of the building.
6. The ventilation system shall provide separate and filtered supply air to the controlled area at a minimum ventilation rate of 30 litres per second per person for the maximum permitted occupancy of the controlled area. The ventilation system shall heat or cool the supply air to maintain the temperature conditions set out in paragraph 8.
7. The controlled area shall be maintained at a pressure that is at least five to seven Pascals less than the pressure in any adjoining area where smoking or the use of electronic cigarettes is prohibited. The rate of air exhausted from the controlled shall be at least 10 per cent greater than the rate at which air is supplied to the controlled area.
8. The controlled area shall be maintained at a temperature of at least 22°C and shall be increased, where appropriate, to a maximum of 25.5°C.
9. Thermal displacement ventilation shall supply the air at a low level close to the entrance of the controlled area at a maximum velocity of 0.20 metres per second.
10. The air from the controlled area shall be collected at ceiling level at the end of the area opposite the entrance and exhausted to the outside with

a minimum velocity of 0.36 metres per second through each exhaust air discharge opening.

11. The exhaust air discharge openings for the air that is removed from the controlled area shall be located at least 3.6 metres above ground and six metres from any opening windows, balconies and air intakes.
12. Supply air intakes and exhaust air discharge openings shall be separated horizontally by a minimum of six metres.
13. All the equipment for the controlled area must be located in accessible locations. Switches and thermostats for the controlled area that are in public areas shall be provided with lockable cages that shall be kept locked, and to which only authorized persons have access.
14. All duct work shall be of rigid material. Balancing dampers shall be provided on all branch ducts.
15. The ventilation system shall be provided with an interlock between air supply and exhaust to ensure continuous operation of both systems.
16. The ventilation system shall incorporate a heat recovery system to capture the heat from the exhaust air flows.
17. The proper installation of the systems in the controlled area must be verified before the controlled area is used. All systems shall be balanced by a balancing contractor who is affiliated with the Associated Air Balance Council or National Environmental Balancing Bureau and who is not associated with the contractor who built the controlled area, the employer of the employees who maintain or clean the controlled area, or the proprietor of the controlled area.