

The Corporation of the Town of Arnprior

By-law Number 7045-20

A by-law to prohibit the smoking, vaporizing or consuming of tobacco, cannabis and any other substance on or within any public place in the Town of Arnprior and to repeal By-law No. 6076-12, as amended.

Whereas Section 8 of the Municipal Act, 2001, as amended, provides that the powers of a municipality shall be interpreted broadly so as to confer broad authority on 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 (2) 6 of the Municipal Act, 2001, as amended, provides that a municipality may pass by-laws in the interest of the health, safety and well-being of persons; and

Whereas Section 115 of the Municipal Act, 2001 specifically authorizes the council of a municipality to pass by-laws prohibiting and regulating the smoking and vaping of tobacco and cannabis in defined public places and workplaces within the municipality; and

Whereas Section 128 of the Municipal Act, 2001 provides that a municipality may prohibit and regulate with respect to public nuisances, including matters in the opinion of the Town of Arnprior that are or could become or cause public nuisances; and

Whereas Section 129 of the Municipal Act, 2001 provides that a local municipality may prohibit and regulate with respect to odours; and

Whereas Section 425 of the Municipal Act, 2001 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 provides that a municipality may establish a system of fines for offences under a By-Law of the municipality passed under that Act;

Whereas Section 12 of the Smoke-Free Ontario Act, 2017, as amended, regulates smoking and vaping in Ontario and Section 18 of that Act specifically provides that if there is a conflict between a provision of that Act and a provision of a municipal By-law that deals with a matter to which the Act applies, the provision that is more restrictive of the matter to which the Act applies prevails; and

Whereas Council of the Corporation deems it expedient to repeal By-law No. 6076-12, as amended by By-law No. 6418-15, being a by-law to regulate smoking on municipally-owned property and public places in the Town of Arnprior; and

Whereas the Council of the Corporation of the Town of Arnprior wishes to prohibit the smoking/vaporizing of cannabis in municipally-owned places and public places within the Town of Arnprior; and

Therefore, the Council of the Town of Arnprior enacts as follows:

Section 1 – By-law Title

1.1 This By-law may be cited as the Smoking/Vaping By-law

Section 2 – Definitions

2.1 For the purpose of this by-law:

“Officer” means a Municipal By-law Enforcement Officer

“Cannabis” has the same meaning as in subsection 2 (1) of the Cannabis Act, S.C. 2018, c.16, as amended;

“Council” means the Council of the Corporation of the Town of Arnprior

“Community recreational facility” means an area as defined in O. Reg. 268/18 under Smoke-Free Ontario Act, 2017, S.O. 2017 c. 26, Schedule 3

“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 tobacco, nicotine, cannabis or any other substance, and produces a vapour intended to be inhaled by the user of the device;

“Municipal Act” means the Municipal Act, 2001, S.O. 2001, c. 25, as amended, and any regulation passed under it;

“Municipality” means the Town of Arnprior.

“Park” means any land, land covered by water, and any portion thereof, owned or leased by the Town, that is or may in the future be established, dedicated, set apart or made available for active and/or passive recreation.

“Playground” means an area open to the public at no cost or for a fee, primarily used for children’s recreation and equipped with children’s play equipment, such as:

- Slides
- Swings
- Climbing apparatuses
- Splash pads
- Wading pools
- Sandboxes

“Public place” means

- a. all property owned or leased by the municipality including but not limited to: buildings, lands, parks, playgrounds, sports or playing fields, recreational trails, beaches, docks and piers, parking lots, community recreation facilities, splash pads, landfill facility, and cemeteries which are accessible by the public but excludes Highways and municipal sidewalks, save and except for the portion of any municipal sidewalk that is within a nine-metre radius of an entrance to or exit from a municipally owned or leased building;

“Smoke” or “smoking” means to hold, or otherwise have control over any lighted tobacco, lighted cannabis, or any other lighted substance that produces vapour, smoke, or gases that may be inhaled or exhaled, and includes use of a cigarette, pipe, water pipe, or any other smoking equipment;

“Smoke-Free Ontario Act, 2017” means the Smoke-Free Ontario Act, 2017, S.O. 2017, c. 26, Sch. 3, as amended, and any regulation passed under it;

“Smoking product” means any substance whose primary purpose is to be burned or heated to produce vapours, gases, or smoke, which may be inhaled, and shall include but is not limited to tobacco, non-tobacco herbal shisha, cannabis or any other substance;

“Sporting area” means an area as defined in O. Reg. 268/18 under Smoke-Free Ontario Act, 2017, S.O. 2017 c. 26, Schedule 3;

“Sunday Market” means the area designated for the sale or display of goods in the public market established by the Town of Arnprior;

“Vape” or “vaping” means any of the following:

1. inhaling vapour from an electronic cigarette;
2. exhaling vapour from an electronic cigarette; or
3. holding or otherwise having control of an activated electronic cigarette;

“Water pipe” means a device, whether called a water pipe, hookah, or any other name, that burns or heats a smoking product, with which the vapour, smoke or gases may pass through liquid prior to being inhaled, and excludes an electronic cigarette as defined under the Smoke-Free Ontario Act, 2017.

Section 3 – General Prohibitions

3.1 Smoking/vaping prohibited

- i. No person shall smoke/vape on or within:
 - a. a public place;
 - b. a nine-metre radius of an entrance to or exit from a municipally owned or leased building
 - c. on or within any outdoor grounds of Robert Simpson Park or the Nick Smith Centre and any public areas within 20 metres of its grounds;
 - d. on children’s playgrounds or public places within 20 metres of children’s playgrounds;
 - e. on sporting areas, their fan/viewing areas, and public areas within 20 metres of these places.
- ii. The prohibitions in Section 3.1, apply whether or not a no smoking/vaping sign of any format or content is posted.
- iii. No person shall remove a sign posted under this section while the prohibition remains in force.
- iv. No person shall hinder or obstruct an authorized person lawfully carrying out the enforcement of this by-law.

Section 4 – Exemptions

4.1 Traditional Use of Tobacco by Indigenous People

No prohibition contained within Section 3 shall apply to:

- i. An Indigenous person who smokes tobacco or holds lit tobacco for traditional Indigenous cultural or spiritual purposes.
- ii. A non-Indigenous person who smokes tobacco or holds lit tobacco, if the activity is carried out with an Indigenous person for traditional Indigenous cultural or spiritual purposes.

Section 5 – Enforcement

5.1 Right of entry – Municipally-owned or leased property

Except as provided in section 5.2, an officer may at any time of the day or night, enter any property owned or leased by the municipality for the purpose of determining compliance with this By-law and may make examinations, investigation and inquiries.

5.2 Right of entry – property leased to third party

An officer may at all reasonable hours, enter any town-owned property leased to a third party for the purpose of determining compliance with this By-law and may make examinations, investigations and inquiries.

5.3 Enforcement

A municipal by-law enforcement officer is hereby vested with the authority of enforcing the provision of this by-law.

Section 6 – Offences – Fail to Comply

6.1 Any person who contravenes or fails to comply with any provision of this By-law is guilty of an offence and upon conviction is liable to a fine as provided for by the Provincial Offences Act, R.S.O. 1990, Chapter P.33, as amended.

Section 7 – Conflicts

7.1 If a provision of this bylaw conflicts with an Act or a regulation or another by-law, the provision that is most restrictive of smoking/vaping shall prevail.

Section 8 - Severability

8.1 If any section or part of this by-law are found by any Court of competent jurisdiction to be invalid, such section or part shall be deemed to be severable and all other sections of this by-law shall remain valid and enforceable.

Section 9 – Effective Date

9.1 **That** this By-law shall come into full force and effect on the day of its passing.

9.2 **That** By-law 6076-12, as amended by By-law 6418-15 and any By-laws and/or resolutions or parts of by-laws and/or resolutions that is inconsistent with the provisions of this By-law are hereby repealed or rescinded insofar as it is necessary to give effect to the provisions of this By-law.

Enacted and passed this 24th day of February, 2020.

Signatures:

Walter Stack, Mayor

Maureen Spratt, Town Clerk

(Signatures included in original copy).