



**CITY OF KINGSTON**

Ontario

**By-Law Number 2018-173**

**A By-Law To Regulate Smoking and Vaporizing in Public Places and  
Enclosed Workplaces in the City of Kingston**

**Passed: November 20, 2018**

Information packages for any City of Kingston Business  
are available at

**KFL&A Public Health**  
221 Portsmouth Avenue,  
Kingston, ON K7M 1V5

Tobacco Information Line: (613) 549-1232 Extension: 1333

More information about the Smoke-and Vape-Free By-law  
is available on the Kingston Lennox Frontenac & Addington  
Public Health website: [www.kflaph.ca](http://www.kflaph.ca)

Smoke-Free Ontario Act:  
<http://www.ontario.ca/laws/statute/17s26?search=smoke+free+ontario>

Copies of By-Law may be obtained at the  
Following Link: <https://www.cityofkingston.ca/city-hall/bylaws>

or call 613-546-4291 Extension: 1375

## **By-Law Number 2018-173**

### **A By-Law to Regulate Smoking and Vaporizing in Public Places and Enclosed Workplaces in the City of Kingston, and repeal By-Law Number 2002-231, as amended**

**Passed:** November 20, 2018

**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** Section 10 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality may pass by-laws respecting the economic, social and environmental well-being of the municipality, the health, safety and well-being of persons, and the protection of persons and property; and

**Whereas** it has been determined that second-hand smoke and vapour are a health hazard or discomfort for many inhabitants of and visitors to the City of Kingston; and

**Whereas** the establishment of a community standard of smoke-free public places assists in de-normalizing tobacco, Electronic Cigarette and Cannabis use and promotes a smoke-free and vapour-free culture; and

**Whereas** Section 18 of the *Smoke-Free Ontario Act, 2017*, S.O. 2017, c. 26, as amended, provides that if there is a conflict between a provision of that Act and a provision of another Act, a regulation or a municipal By-Law that deals with a matter to which that Act applies, the provision that is more restrictive of the matter to which the Act applies prevails; and

**Whereas** Section 425 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality may pass By-Laws providing that a person who contravenes a By-Law of the municipality passed under that Act is guilty of an offence; and

**Whereas** Section 429 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality may establish a system of fines for offences under a By-Law of the municipality passed under that Act;

**Therefore be it resolved that** the Council of The Corporation of the City of Kingston 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);

**“City”** means The Corporation of the City of Kingston;

**“Council”** means the Council of the City;

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

**“Director”** means the Director of Planning, Building and Licensing Services for the City, his or her designate or, in the event of organizational changes, another employee designated by Council.

**“Electronic Cigarette” or “E-Cigarette”** means a Vaporizer or inhalant-type device, whether called an Electronic Cigarette or any other name, that contains a power source and heating element designed to heat a nicotine-based liquid substance or e-substance to produce a vapour intended to be inhaled by the user of the device directly through the mouth;

**“Employee”** includes a Person who:

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

**“Employer”** includes any Person who is the owner, proprietor, manager, superintendent, or overseer of any activity, business, work, trade, occupation or profession, has control over the direction of, or is directly or indirectly responsible for the employment of a Person therein;

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

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

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

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

**"Inspector"** means a person appointed by Council as a municipal law enforcement officer to enforce this By-Law;

**"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 City;

**"Outdoor Community Meeting Area"** means the whole or part of any outdoor area owned, leased or controlled by the City 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 City, designed or used for public recreation, including but not limited to: trails, gardens, playgrounds, Sports Fields, playing fields, Swimming Pools and beach areas;

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

**"Proprietor or Other Person in Charge"** means the Person who owns, occupies or operates a Designated Public Place or an Enclosed Workplace to which this By-Law applies, or the person who controls, governs, or directs the activities that are carried on in the place, and includes the person who is actually in charge at any particular time;

**"Public Place"** means the whole or part of any building, place or area to which members of the general public are invited or permitted access but does not include any area located on a Highway;

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

**"Transfer Point"** means that part of the Kingston Transit passenger transportation system including shelters used by, or intended for the use of, passengers boarding or exiting from a transit vehicle and which is not located on a Highway;

**"Transit Shelter"** means a fully enclosed or partially enclosed waiting area which is intended for use by passengers waiting to use the passenger transportation system and which is located at a Kingston Transit Transfer Point;

**"Vaporizer"** means an inhalant-type device that contains a power source and heating element designed to heat a substance and produce a vapour intended to be inhaled by the user of the device directly through the mouth, whether or not the vapour contains Nicotine, Cannabis or any other substance;

**“Vaporizing,” “Vape” and “Vaping”** mean the act of heating and converting Cannabis, an E-substance or any other substance through a Vaporizer or an Electronic Cigarette, for the purpose of simulating the inhalation of smoke.

**2. Interpretation:**

2.1 This By-Law applies to the Smoking and Vaporizing of Tobacco, Cannabis, 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 City of Kingston.

**3. Administration:**

3.1 The City and Kingston, Frontenac and Lennox & Addington Public Health are responsible for the administration and enforcement of this By-Law.

**4. Regulations:**

**Public Places**

4.1 The following are Designated Public Places for the purposes of this By-Law:

4.1.1 every place as set out in Section 12 (2) of the *Smoke-Free Ontario Act, 2017*, S.O. 2017 c. 26, Schedule 3;

4.1.2 a Park;

4.1.3 an Outdoor Community Meeting Area;

4.1.4 within nine (9) metres of any entrance or exit of a Municipal Building;

4.1.5 within nine (9) metres of a Transit Shelter located at a Transfer Point including, but not limited to: Cataraqui Centre, Kingston Centre, St. Lawrence College; and

4.1.6 within three (3) metres of any entrance or exit of an Enclosed Workplace or Enclosed Public Place;

4.2 No Person shall Smoke or Vaporize in any Designated Public Place, whether or not a “No Smoking” sign or a “No Vaping” sign is posted.

**Enclosed Workplaces**

4.3 For greater clarity, no Person shall Smoke or Vaporize in any Enclosed Workplace, whether or not a “No Smoking” sign or a “No Vaping” sign is posted.

## **Duties**

4.4 Every Proprietor or Other Person in Charge of a Designated Public Place or an Enclosed Workplace in which Smoking or Vaporizing are prohibited shall ensure compliance with this By-Law.

## **5 Signs:**

5.1 Signs shall be posted and maintained in accordance with the *Smoke-Free Ontario Act, 2017*, S.O. 2017 c. 26, Schedule 3, and as prescribed by the Director.

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 Vaporizing are prohibited within three (3) metres of any entrance or exit, within nine (9) metres of any entrance or exit of a Municipal Building, and, where applicable, within nine (9) metres of a Transit Shelter.

5.3 Notwithstanding Section 5.1 of this By-Law, the requirement for signs does not apply to the following Designated Public Places:

- (i) a Park; and
- (ii) an Outdoor Community Meeting Area.

5.4 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 Vaporizing are prohibited is deemed to be a reference to this by-law.

## **6 Enforcement:**

6.1 The provisions of this By-Law respecting the prohibition of Smoking and Vaporizing in Designated Public Places and in Enclosed Workplaces, the posting of signs, and the duties imposed on Proprietors or Other Persons in Charge of Designated Public Places and of Enclosed Workplaces will be enforced by Inspectors.

6.2 An Inspector may, at any time, enter any Designated Public Place or any Enclosed Workplace in which Smoking and Vaporizing are prohibited to determine whether this By-Law is being complied with and, for this purpose, may make such examinations, investigations and inquiries as are necessary.

6.3 No Person shall obstruct or hinder or attempt to obstruct or hinder an Inspector or other authorized employee or agent of the City in the exercise of a power or the performance of a duty under this By-Law.

- 6.4 Where an Inspector has reasonable grounds to believe that an offence under this By-Law has been committed by a Person, the Inspector may require the name, address and proof of identity of that Person.
- 6.5 Failure to provide proof of identification satisfactory to an Inspector when requested to do so pursuant to Section 6.4 of this By-Law shall constitute obstruction of an Inspector under Section 6.3 of this By-Law.

## **7 Offence and Penalty Provisions:**

- 7.1 Every Person, other than a corporation, who contravenes any provision of this By-Law is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 for a first offence and \$25,000 for any subsequent offence.
- 7.2 Every corporation that contravenes any provision of this By-Law and every officer or director of a corporation who knowingly concurs in such contravention is guilty of an offence and on conviction is liable to a fine of not more than \$50,000 for a first offence and \$100,000 for any subsequent offence.
- 7.3 If this By-Law is contravened and a conviction entered, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty that is imposed, make an order prohibiting the continuation or repetition of the offence by the person convicted.

## **8 Validity:**

- 8.1 If there is a conflict between a provision of any Act, regulation or By-Law and a provision of this By-Law, the provision that is the most restrictive of the Smoking or Vaporizing of tobacco, Cannabis and Electronic Cigarettes prevails.
- 8.2 If a court of competent jurisdiction declares any provision, or any part of a provision, of this By-Law to be invalid, or to be of no force and effect, it is the intention of Council in enacting this By-Law that each and every provision of this By-Law authorized by law be applied and enforced in accordance with the terms to the extent possible according to law.

## **9 Repeal:**

By-Law Number 2002-231, as amended, of The Corporation of the City of Kingston entitled "A By-Law to Regulate Smoking in Public Places and Workplaces in the City of Kingston" is repealed.

## **10 Commencement:**

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