

BY-LAW 2019-145

A by-law of the Township of Russell to restrict smoking or vaping on municipal properties

OFFICE CONSOLIDATION

THIS CONSOLIDATED BYLAW WAS LAST UPDATED: APRIL 20, 2020.

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Office Consolidation of By-law 2019-145 as amended by the following approved by-laws: 2020-049

# THE CORPORATION OF THE TOWNSHIP OF RUSSELL

## BY-LAW # 2019-145

Being a by-law to restrict smoking or vaping on municipal properties

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**WHEREAS** Section 11 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** the *Municipal Act, 2001, S.O. 2001, c. 25, s. 115* provides that without limiting section 11, a municipality may prohibit or regulate smoking in public places and a municipality may define a “public place” for the purpose of this by-law;

**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** it has been determined that exposure to smoking or vaping continues to be a serious health hazard because of its adverse effects and risk to the health of inhabitants and workers in the Corporation of the Township of Russell;

**AND WHEREAS** it is desirable for the purpose of promoting and protecting the health, safety and welfare of inhabitants and workers in the Corporation of the Township of Russell to ensure that all township properties will be free from smoking or vaping;

**AND WHEREAS** Section 425 of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended, provides that a municipality may pass by-laws providing that a person who contravenes a by-law of the municipality passed under that *Act* is guilty of an offence;

**AND WHEREAS** Section 429 of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended, provides that a municipality may establish a system of fines for offences under a by-law of the municipality passed under that *Act*, now therefore be it

**RESOLVED THAT THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF RUSSELL ENACTS AS FOLLOWS:**

### 1. DEFINITIONS

In this by-law:

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

“Children’s playground” means an area as defined in the *Ontario Regulation 268/18* promulgated under the *Smoke-Free Ontario Act, 2017, S.O. 2017, c. 26* or successor legislation or regulations made thereunder;

“Community recreational facility” means an area as defined in the *Ontario Regulation 268/18* promulgated under the *Smoke-Free Ontario Act, 2017, S.O. 2017, c. 26* or successor legislation or regulations made thereunder;

“Council” means the Council of the Township of Russell;

“Director” means the Director of Public Safety and Enforcement for the Township of Russell, his or her designate;

“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 designated to heat a product or substance that produces or is capable of producing an aerosol or vapour intended to be inhaled;

“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 a public thoroughfare intended for vehicular use by the general public;

“Municipal building” means any building, or structure owned, leased or controlled by the Township;

“Municipal property” means any land including but not limited to parking lots, trails, parkland, bus shelters and any indoor or outdoor facilities or installations located on this land which is owned, leased or operated by the Corporation of the Township of Russell;

“Municipal Law Enforcement Officer” means a person appointed by Council as a municipal law enforcement officer to enforce the provisions of this by-law;

“Outdoors” means the whole or part of any outdoor area, owned, leased or controlled by the Township to which the public has access by right or invitation, expressed or implied, whether by payment of money or not. This includes any open space which is outside of a facility, building, structure, premise, including any temporary building, structure or part thereof, whether covered by a roof or not;

“Park” means any land, owned or leased or controlled by the Township, designed or used for public recreation, including but not limited to recreational areas, trails, gardens, playground, playfield, sports fields, swimming pools, splash pads or similar use and may also include spectator areas, accessory buildings or structures such as a maintenance building, washroom or canteen;

“Person” means an individual, firm, corporation, association, partnership or an individual in his or her capacity, as a trustee, executor, administrator or other legal representative;

“Recreational Facility” means any building, structure or premise, or part thereof, which is designed or designated for the playing of sports, fitness activities, conducting scheduled programming or other approved activity;

“Smoke or Smoking” includes carrying, holding, inhaling or exhaling of a lighted tobacco or cannabis product or any other lighted paraphernalia or product commonly used for or having the intended purpose of the act of smoking;

“Township” means the Corporation of the Township of Russell;

“Transit shelter” means a fully enclosed or partially enclosed waiting area, which is intended for use by passengers waiting to use the Township of Russell passenger transportation system;

“Vape or Vaping” means 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;

“Vehicle” means an automobile, boat, commercial motor vehicle, farm implement, motorcycle, recreational vehicle, snowmobile, trailer, personal mobility device and any vehicle drawn, propelled or driven by any kind of power including muscular power;

“Walkway” means an area of land designated, designed, or intended for the passage of pedestrians or cyclists and shall include but not limited to a

pathway, trail, bicycle path or boardwalk, but does not include a municipal sidewalk within a highway;

“Waterpipe” means a device, whether called a waterpipe, hookah, bong or any other name, used for burning tobacco, cannabis, herbal products, called shisha in which the smoke passes through water before it is inhaled.

## **2. INTERPRETATION**

- 2.1 This By-law applies to the smoking and vaping of tobacco, cannabis, E-substances, shisha, whether or not it contains tobacco, and other plant material or oils intended for inhalation on all municipal properties within the geographic limits of the Township of Russell.
- 2.2 Where a situation arises that is not covered by a specific regulation or where two or more regulations are equally applicable, all provisions shall be complied with or, where it is not possible to comply with all the provisions applicable, the most restrictive shall prevail.

## **3. GENERAL**

- 3.1 No person shall smoke/vape on or within any municipal property owned or leased by the Township, including but not limited to the following:
  - a) Any property upon which is located a municipal building, park, green space, recreational facility, playground, splash pad or pool;
  - b) Any parking lot, trail, walkway, or lane;
  - c) Any road allowance abutting a Township property;
  - d) Any public dock or launch;
  - e) Any transit shelter.
- 3.2 No person shall smoke/vape while on or within a vehicle that is located on any municipal property owned or leased by the Township.
- 3.3 The prohibitions in sections 3.1 and 3.2 of this by-law shall apply whether or not a no smoking/vaping sign of any format or content is posted.
- 3.4 The proprietor or other person in charge of a municipal property shall ensure that no ashtrays are placed or allowed to remain in any place where smoking/vaping is prohibited.

## **4. EXEMPTIONS**

- 4.1 Sections 3.1 and 3.2 of this by-law shall not apply to a person:
  - a) Smoking/vaping on any portion of a highway;
  - b) Smoking/vaping on any part of a sidewalk abutting a Township property, providing that the action is transitory;
  - c) Smoking/vaping may be permitted at the following locations at a distance of ten (10) meters from the building:
    - i) Public Works garage and Salt Shed (857 Route 400)
    - ii) Utilities offices and garage (851 Route 400)
    - iii) Multi storage (855 Route 400)
    - iv) City Hall (717 Notre Dame Street)
    - v) Reservoir (554 Notre Dame Street)
    - vi) Booster Station (1408 MacDonald Rd)

*(as amended by By-law 2020-049 on April 20, 2020)*

## **5. ENFORCEMENT**

- 5.1 This by-law shall be enforced by the Municipal Law Enforcement Officer of the Township of Russell or by the police service having jurisdiction within the boundaries of the Township of Russell.

## **6. OBSTRUCTION**

- 6.1 No person shall obstruct, hinder or otherwise interfere with a Municipal Law Enforcement Officer or Police Officer in the lawful performance of his duties and responsibilities under the provisions of this by-law.

## **7. OFFENCES AND PENALTIES**

- 7.1 Any person who contravenes, causes, or permits any contraventions of any of the provisions of this by-law is guilty of an offence and upon conviction, is liable to a fine as provided for in the *Provincial Offences Act* or any successor.
- 7.2 In addition to any penalty imposed and any other remedy, the court in which the conviction had been entered and any court of competent jurisdiction thereafter, may make an order
- a) prohibiting the continuation or repetition of the violation by the person convicted; and,
  - b) requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

## **8. RIGHT OF ENTRY**

- 8.1. Every person enforcing this By-law shall have the right of entry on any property or into any building not actually being used as a dwelling for the purpose of carrying out an inspection to determine whether this by-law is being complied with and for the enforcement of this by-law pursuant to section 436 of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended from time to time.

## **9. VALIDITY AND SEVERABILITY**

- 9.1 a) Every provision of this by-law is severable and if any provisions of this by-law should for any reason be declared invalid by any court, it is the intention and desire of this Council that the remaining provisions shall remain in full force and effect.
- b) Nothing in this by-law relieves any person from complying with any provision of any Federal or Provincial legislation or any other by-law of the Township of Russell.

## **10. REPEAL**

- 10.1 That By-laws 2016-036 and 09-2003 of the Township of Russell, as amended, are hereby repealed.

## **11. SHORT TITLE**

This by-law may be referred to as the "Smoking or Vaping By-Law".

## 12. EFFECTIVE DATE

This By-law shall come into force and take effect upon the date of its passing.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 7<sup>TH</sup> DAY OF OCTOBER 2019.

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Pierre Leroux  
Mayor

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Maryse Roy  
Deputy Clerk