

Corporation of the Town of Newmarket

By-law 2019-31

A By-law to prohibit the smoking of tobacco, cannabis, and non-tobacco substances in prescribed locations in the Town of Newmarket.

Whereas Section 8 the Municipal Act, 2001, c. 25, as amended (the “Municipal Act”) 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 115 of the Municipal Act provides that a municipality may prohibit and regulate the Smoking of tobacco and cannabis in Public Places and workplaces; and,

Whereas clause 6 of subsection 11(2) of the Municipal Act provides that a municipality may pass By-laws in the interest of the health, safety and well-being of its residents; 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 of the Town of Newmarket (the “Council”) are or could become or cause public nuisances; and,

Whereas Section 129 of the Municipal Act provides that a local municipality may prohibit and regulate with respect to odours; 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 the Council wishes to prohibit the Smoking of tobacco, cannabis, and any other non-tobacco products in prescribed places within the Town of Newmarket; and,

Whereas Section 18 of the Smoke-Free Ontario Act, 2017, S.O. 2017, c. 26, Schedule 3, as amended (the “Smoke Free Ontario Act”) 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,

Therefore be it enacted by the Council of the Corporation of the Town of Newmarket as follows:

1.0 By-law Title

1.1 This By-law may be cited as the “Smoking By-law”.

2.0 Definitions

2.1 For the purpose of this By-law:

- (a) “Council” means the Council of The Corporation of the Town of Newmarket.
- (b) “Designated Smoking Area” means an open-air unenclosed outdoor area in a Public Place or Town Property leased by a Tenant marked by signage approved by the Municipality and where an individual may Smoke, provided that this area does not conflict with the Smoke-Free Ontario Act.
- (c) “Highway” means:
 - I. A common and public highway and includes any bridge, trestle, viaduct or other structure forming part of the highway and, except as otherwise provided includes a portion of the highway.
- (d) “Municipality” means The Corporation of the Town of Newmarket.
- (e) “Officer” means:
 - I. a Provincial Offences Officer of the Municipality or other person appointed by or under the authority of a municipal By-law to enforce municipal By-laws; or
 - II. a Police Officer employed by York Regional Police, Ontario Provincial Police or the Royal Canadian Mounted Police.
- (f) “Private Dwelling” means private self-contained living quarters in any detached or multi-unit building or facility
- (g) “Public Place” includes Town Property to which the public has access as of right or invitation, express or implied, and also includes any motor vehicle located in a Public Place.
- (h) “Smoke or Smoking” includes the holding or carrying of a lighted cigar, cigarette, pipe, e-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.
- (i) “Tenant” means any person(s) or corporation(s) leasing or licensing Town Property and includes any director(s) and

officer(s) of a corporation that is leasing or licensing a Town Property.

- (j) “Town Property” means all lands and premises, whether or not a building is constructed thereon, which is owned, leased, licensed, managed or maintained by the Municipality but excludes Highways.

3.0 General Prohibitions:

- 3.1 In addition to the prohibitions set out in the Smoke-Free Ontario Act as amended from time to time, no person shall Smoke in a Public Place.
- 3.2 A Tenant shall not permit Smoking on Town Property leased or licensed by the Tenant.

4.0 Applicability and Exceptions

- 4.1 This By-law does not apply to a Private Dwelling.
- 4.2 Despite subsections 3.1 and 3.2 of this By-law, a person may Smoke in a Designated Smoking Area.
- 4.3 Despite subsections 3.1 and 3.2 of this By-law, if permitted under the Smoke Free Ontario Act, as amended from time to time, a person may Smoke cannabis in a Public Place other than a Designate Smoking Area where the person 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.
- 4.4 A person claiming exemption in accordance with subsection 4.4 shall have their medical document on their possession at all times of Smoking cannabis, and shall surrender the medical document for inspection upon demand of an Officer.

5.0 Powers of Entry and Inspection

- 5.1 Officers and persons 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 Town Property to determine if the provisions of this By-law are being complied with.
- 5.2 Officers are authorized, for the purposes of inspection to determine and enforce compliance with the By-law, to:
 - (a) require any person to produce for inspection all documents or things relevant to the inspection. Officers may inspect and remove documents and things for the purposes of making copies or extracts;
 - (b) alone or in conjunction with a person possessing special or expert knowledge, make examinations, take tests, samples, audio recordings, video recordings, or photographs necessary for the purposes of inspection; and,
 - (c) require information from any person concerning a matter related to the inspection including their name, date of birth and address.

6.0 Enforcement

- 6.1 The provisions of this By-law may be enforced by an Officer.
- 6.2 An Officer who has reasonable grounds to believe that a person or Tenant has contravened any provision of this By-law may require that person or Tenant to provide their identification to the Officer.
- 6.3 Every person or Tenant who is required by an Officer to provide identification under Section 6.2 shall identify themselves to the Officer. Giving their name, date of birth, and address shall constitute sufficient identification. Failure to provide sufficient identification shall constitute an offence as set out in Section 7.2 of this By-law.

7.0 Offences

- 7.1 Any person or Tenant who contravenes or fails to comply with any provision of this By-law is guilty of an offence.
- 7.2 No person or Tenant 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.
- 7.3 A court or hearing 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

- 8.1 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 or Tenant convicted, and such order shall be in addition to any other penalty imposed on the person or Tenant convicted.

9.0 Administrative Penalties

- 9.1 Instead of laying a charge under the Provincial Offences Act, R.S.O. 1990, c. P. 33, as amended (the "Provincial Offences Act"), for a breach of any provision of this By-law, an Officer may issue an administrative penalty to the person or Tenant who has contravened this By-law.
- 9.2 The Officer has the discretion to either proceed by way of an administrative penalty or a charge laid under the Provincial Offences Act. If an administrative penalty is issued to a person or Tenant for the breach, no charge shall be laid against that same person or Tenant for the same breach.
- 9.3 The amount of the administrative penalty for a breach of a provision of this By-law, issued under this By-law, is fixed as set out in an administrative penalty By-law as amended, or any successor By-law.
- 9.4 A person or Tenant who is issued an administrative penalty shall be subject to the procedures as provided for in an administrative penalty By-law, as amended, or any successor By-law.

- 9.5 An administrative penalty imposed on a person or Tenant pursuant to this By-law that is not paid within 15 days after the day it becomes due and payable, constitutes a debt of the person or Tenant to the Municipality and may be added to a municipal tax roll and collected in the same manner as municipal taxes.

10.0 Penalties

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

11.0 Collection of Unpaid Fines

- 11.1 Where a fine is in default, the Municipality may proceed with civil enforcement against the person or Tenant upon whom the fine has been imposed, pursuant to the Provincial Offences Act.
- 11.2 The Municipality may make a request to the treasurer of a local municipality to add any part of a fine for which a person or Tenant is responsible that is in default to the tax roll for any lands owned by the person or Tenant in the local municipality, and collect it in the same manner as municipal taxes.

12.0 Severability

- 12.1 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 Interpretation

- 13.1 The provisions of Part VI of the Legislation Act, 2006, S.O. 2006, c. 21, Schedule F shall apply to this By-law.
- 13.2 Where a term used in this By-law is not defined in this By-law, but is defined in the Smoke-Free Ontario Act that definition shall apply to the term used in this By-law.
- 13.3 The onus of proving an exception under Part 4 of this By-law is on the person claiming the exception, in accordance with s. 47(3) of the Provincial Offences Act as amended.

14.0 Force and Effect

- 14.1 This By-law comes into force and effect on the day it is passed.
- 14.2 That By-laws 1987-85, 1994-22, 1994-79, 2009-24, and 2011-73 be repealed.

Enacted this 27th day of May, 2019.

John Taylor, Mayor

Lisa Lyons, Town Clerk