



TO: GENERAL COMMITTEE

SUBJECT: NEW MUNICIPAL SMOKING REGULATIONS AND TO REPEAL SMOKING IN PUBLIC PLACES AND WORKPLACES BY-LAW 2010-034 AND SMOKING OUTDOORS ON CITY OWNED PROPERTY BY-LAW 2009-086

WARD: ALL

**PREPARED BY AND KEY CONTACT: J. FORGRAVE, SUPERVISOR OF ENFORCEMENT SERVICES #4330
T. BANTING, MANAGER OF ENFORCEMENT SERVICES #4336**

SUBMITTED BY: W. COOKE, CITY CLERK/DIRECTOR OF LEGISLATIVE AND COURT SERVICES

GENERAL MANAGER APPROVAL: D. MCALPINE, GENERAL MANAGER OF COMMUNITY AND CORPORATE SERVICES

CHIEF ADMINISTRATIVE OFFICER APPROVAL: M. PROWSE, CHIEF ADMINISTRATIVE OFFICER

RECOMMENDED MOTION

1. That By-law 2010-034 to regulate smoking in public places and work places and By-law 2009-086 prohibiting smoking outdoors on City owned property be repealed and replaced with a comprehensive by-law generally in accordance with the attached draft included as Appendix 'A' to Staff Report LCS009-19.
2. That staff be authorized to make application to the Ministry of the Attorney General for set fines ranging from \$100.00 to \$1,000.00 based on the nature of the offence.
3. That staff in the Legislative and Court Services Department (Enforcement Services Branch) work with Access Barrie to develop a comprehensive communications plan to be implemented no later than June 2019.
4. That staff in the Roads, Parks and Fleet Department in consultation with the Legislative and Court Services Department (Enforcement Services Branch) prepare and install new signage or replace existing signage where required that depicts the new municipal smoking regulations in all City-owned parks and facilities, with the cost associated with the signage (\$45,000) to be funded from the Tax Capital Reserve.
5. That the installation of such signage be completed as operational time permits with a focus on high utilization locations as a priority.
6. That staff in Enforcement Services be authorized to hire two (2) new Summer Student Enforcement Positions for 2019 for deployment from June to September, to ensure the members of the public in parks, sports fields and City facilities are made aware of the new regulations, with the positions funded from the first instalment from the Ontario Cannabis Legalization Implementation Fund.

PURPOSE & BACKGROUND

Report Overview

7. This report will outline the changes brought forward under the new *Smoke Free Ontario Act 2017* and various changes to both the Federal and Provincial Cannabis Acts. Currently the City has two separate by-laws which regulate the “act of smoking” within work places, public places, all City-owned parks and facilities, with some repetition. In light of all the changes to various legislation, to ensure consistency in regulation and to provide a clear understanding of the provisions for members of the community, this report includes a recommendation to repeal By-law 2009-086 and 2010-034 and replace them with a new comprehensive smoking by-law.
8. Recent amendments to the *Smoke Free Ontario Act 2017* were implemented as of October 17, 2018. The changes now address the use of Cannabis, Vape and E-Cigarettes products along with expanding the smoking prohibitions related to outdoor patios, community recreation facilities and parks. Any municipal regulations put forward are, at minimum, required to replicate these amendments.
9. In addition, the recent passing of the Provincial and Federal Cannabis Acts, effective October 17, 2018 regulate the public consumption of cannabis, which was not previously captured in the City’s by-laws.

Background

By-law 2010-034 to Regulate Smoking in Public Places and Work Places

10. The current By-law came into effect February 22, 2010 which replaced previous regulations set out in the Municipal Code By-law 88-260. This by-law regulates the smoking of tobacco in all places designated as workplaces whether in a building or vehicle and in public places in relation to business locations only, not municipal property. The by-law was created and passed prior to the passage of the original *Smoke Free Ontario Act*.
11. The by-law sets out the criteria which required workplaces to have a smoking policy created and implemented along with the requirements for signage in all areas designated as workplaces or public places. All of those requirements are now also regulated within the current *Smoke Free Ontario Act 2017*.

By-law 2009-086 Prohibiting Smoking Outdoors on City-Owned Property

12. The current By-law came into effect May 11, 2009 to regulate the act of smoking on City-owned property including parks, open spaces, green spaces and outside of facilities. This includes all playgrounds, sports fields, interior walkways, pathways and trails within these properties.
13. Within this by-law some parking lots were designated as permitted smoking areas. At the time, these smoking areas were determined based on their distance from playgrounds, sports fields or other recreational sites held within the park or facility. This by-law is was more restrictive than most legislative requirements were at the time.

Smoke Free Ontario Act 2017 (excerpt)

14. Amendments to the *Smoke Free Ontario Act* set out, in part, provisions which are relevant to local municipalities. These new regulations must be implemented in municipal regulations should a municipality chose to enact smoking regulations.

15. Below, staff have highlighted some specific provisions which are of importance to municipalities.

Prohibited Places for Smoking and Vapour Product Use (Vaping).

- a) This now includes tobacco products, e-cigarettes, vapour products and cannabis either vaped or smoked;
- b) It continues to prohibit smoking or vaping in all enclosed public places, enclosed workplaces and work vehicles;
- c) On playgrounds and all public areas within 20 metres of any point on the perimeter of the playground;
- d) Outdoor sporting areas, spectator areas adjacent to sporting areas, and public areas within 20 metres of any point on the perimeter of a sporting area or spectator area adjacent to a sporting area;
- e) All outdoor grounds of a community recreational facility and public areas within 20 metres of any point on the perimeter of the grounds; and
- f) Expanded regulations related to food premises or outdoor patios – these provisions now prohibit smoking or vaping on other properties that may interact with municipal property. Persons are now prohibited from smoking or vaping any product in public areas within 9 metres of any point on the perimeter of the food premises or bar patio. Meaning, persons would not be permitted any longer to stand just outside the fencing of an outdoor patio to smoke, they must be 9 metres away from the perimeter of the patio. It should be noted that in our discussions with Health Unit staff, they have indicated that they will be focusing on educating and monitoring the business community to ensure the new provisions are being met.

No Smoking and Vaping Signage Requirements:

- g) Standardized “no smoking and no vaping” signage or a combination of the two, is required at public places and enclosed workplaces, including work vehicles;
- h) At minimum, signs must also be posted at each entrance and exit of the enclosed public place, workplace 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;
- i) Signage is also required, at minimum, at all entrances to parks indicating no smoking and no vaping within any
 - park,
 - outdoor sporting areas or spectator areas adjacent to sporting areas; and
 - public areas within 20 metres of any point on the perimeter of a sporting area or spectator area adjacent to a sporting area; and
- j) New signage is required on the outdoor grounds of community recreational facilities indicating no smoking or vaping on the grounds of the facility and public areas within 20 metres of any point on the perimeter of the grounds.

Cannabis Legislation Overview:

16. On September 25, 2018, the Province introduced Bill 36, the *Cannabis Statute Law Amendment Act, 2018*. This legislation introduces controls to safeguard young people and combat the criminal market, as well as amendments to a number of pieces of legislation. The following paragraphs describe major changes that could impact the City of Barrie.
17. The *Smoke-Free Ontario Act, 2017* and the *Cannabis Act, 2017* were also amended to clarify where the smoking and vaping medical and recreational cannabis is permitted as well as where it is prohibited, such as in enclosed public places and enclosed workplaces, vehicles and boats. The maximum fine, provincially, for using cannabis in a prohibited place would be \$1,000 for a first offence, and \$5,000 for a subsequent offence, the same fines that apply to smoking tobacco or using an electronic cigarette in a prohibited place.
18. Generally, public consumption of cannabis is permitted under Provincial legislation. However, it is regulated the same as smoking traditional tobacco products through the *Cannabis Act* and the *Smoke Free Ontario Act*.
19. One exception to the prohibitions relates to Medicinal Cannabis, the legislation does not permit municipalities to completely prohibit the use of Medicinal Cannabis. However it is staff's view that the City may regulate where any cannabis product can be used.

Municipal Act Overview - powers provided to municipalities related to passing by-laws:

20. The *Municipal Act, 2001 S.O 2001, c. 25, s. 8*, sets out that the powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues.
21. The *Municipal Act, 2001 S.O. 2001, c.25, s. 9*, sets out that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Municipal Act or other Act.
22. The *Municipal Act, 2001, S.O. 2001, c. 25, s. 10*, sets out that a single-tier municipality may provide any service or thing that the municipality considers necessary or desirable for the public. A single tier municipality may pass by-laws respecting, in part, the health, safety and well-being of persons.
23. The *Municipal Act, 2001, S.O. 2001, c.25, s. 115* sets out that a municipality may regulate or prohibit smoking as set out below:

"Restriction:

(3) A by-law under this section shall not apply to a highway but may apply to public transportation vehicles and taxicabs on a highway. 2001, c. 25, s. 115 (3).

(4) Without limiting sections 9 and 10, a municipality, in a by-law passed under this section, may,

- a) define "public place" for the purpose of the by-law;
- b) require a person who owns, occupies or operates a place to which the by-law applies to post signs setting out such information relating to the smoking of tobacco or cannabis as is required by the by-law;

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- c) establish the form and content of signs referred to in clause (b) and the place and manner in which the signs shall be posted;
 - d) permit persons who own, occupy or operate a place to which the by-law applies to set aside an area that meets criteria set out in the by-law for the smoking of tobacco or cannabis within the place;
 - e) establish criteria applicable to smoking areas in clause (d), including the standards for the ventilation of such areas;
 - f) require areas set aside for the smoking of tobacco or cannabis in places to which the by-law applies to be identified as an area where the smoking of tobacco or cannabis is permitted; and
 - g) require the owner or occupier of a public place, the employer of a workplace, other than a public transportation vehicle and a taxicab, or the owner or operator of a public transportation vehicle or a taxicab to ensure compliance with the by-law. 2001, c. 25, s. 115 (4); 2006, c. 32, Sched. A, s. 56 (2); 2018, c. 17, Sched. 27, s. 1 (1).

(12) For greater certainty, a reference in this section to the smoking of tobacco or cannabis includes,

- (a) the holding of lighted tobacco or cannabis; and
- (b) the consumption of tobacco or cannabis through the use of an electronic cigarette.”

ANALYSIS

Overview

- 24. Staff are recommending within this report to maintain the overall approach and restrictions related to the “act of smoking” while updating all necessary regulations to meet the new provincial and federal standards. Staff are also recommending based on analysis and research, the creation of one new comprehensive municipal smoking regulation and the repeal of the two existing smoking by-laws. This will provide for further clarity for the community and from an enforcement perspective.
- 25. Both at a municipal and provincial level, smoking regulations, regardless of the product type, are designed to assist in the protection of citizens from any potential known health hazards and protection of children and youth who may be potentially exposed to a smoked product, while considering those who have chosen to continue to utilize various product types within the community.
- 26. While the goal of all parties is to encourage the reduction or elimination of any use of smoking products, it is understood that use will continue. Regulations such as the *Smoke Free Ontario Act* or municipal by-laws are designed and implemented to prevent/reduce the exposure to smoked products and control the overall use of such products in various public locations or workplaces.

Staff findings

27. Staff reflected on the overall changes in both the *Smoke Free Ontario Act* and the Cannabis Acts and noted one significant item, that the current regulations enacted by Barrie City Council many years ago were generally more restrictive than most municipalities in the past. In fact, until recently, most municipalities had chosen to not enact separate smoking regulations but relied on the original *Smoke Free Ontario Act* to control the act of smoking.
28. The City, very early on took a progressive approach to the “act of smoking” and had previously banned the use of tobacco products on City-owned properties with some minor exceptions, before many had even considered it, including the original *Smoke Free Ontario Act*. For example, the current *Smoke Free Ontario Act 2017* prohibits smoking or vaping within 20 metres of the actual playground or sports field. Barrie’s current by-laws and the proposed by-law actually prohibits smoking in the park in its entirety, unless a specific parking lot has been designated where smoking is permitted.
29. In reviewing the changes to the new *Smoke Free Ontario Act 2017*, staff found that that current by-laws generally comply with the overall regulations, however some changes are required related to separation distances from recreational facilities, some sports fields and playgrounds. The *Smoke Free Ontario Act 2017*, has increased the required setbacks from these types of locations which will need to be incorporated in Barrie’s new regulations.
30. These changes will be minimal and will only impact some parking lots where current Barrie by-laws previously permitted smoking. Based on the new 20 metre minimum setback required in the *Smoke Free Ontario Act 2017*, the number of permitted smoking areas (parking lots) adjacent to sports fields and playgrounds will be reduced.
31. The locations noted below that are marked as “to be removed” from the permitted smoking areas, due to their proximity to a sports field or playground, which now does not comply with the 20 metre minimum setback required in the *Smoke Free Ontario Act 2017*.

Permitted smoking areas to be removed from proposed By-law	Permitted smoking areas to remain in proposed By-law
East Bayfield Park	Centennial Park – North (Victoria St. Parking Lots / Transient Trailer Parking Lot)
Eastview Park	Centennial Park – South
Ferndale Woods Park	Johnson’s Beach Parking Lot
Golden Meadow Park	Heritage Park – West Parking lot only
Harvie Park	North Marina Parking Lot
Holly Community Park	Spirit Catcher Parking Lot
Huronian Park – North	Tiffin Launch – Upper Parking lot only
Lennox Park	
Marsellus Park	
Osprey Ridge Park	

Painswick Park	
Sandringham Park	
Southshore Park / Allandale Station Park	
Stollar Park	
Sunnidale Park	
Tyndale Park	

32. Other notable changes in the draft by-law reflected in Appendix “A” to Staff Report LCS009-19 are as follows:
- a) Includes reference to both Medical and Recreational Cannabis use;
 - b) Incorporates the use of vapour products, e-cigarettes or other products by way of inhaling, exhaling or holding such product types;
 - c) Includes an exemption for Traditional Use of Tobacco by Indigenous Person or Non-Indigenous Person for an activity carried out for traditional indigenous cultural or spiritual purposes;
 - d) Provision for the Provincial setbacks from outdoor patios for restaurant or bar locations, facilities, sports fields or playgrounds have been incorporated in the new draft regulations, such as a 9 metres radius from an outdoor patio, 20 metres of any point on the perimeter of a community recreational facility etc.
 - e) Includes a definition of a “Highway” for clarity. The Municipal Act does not permit any municipality to prohibit “smoking” on the municipal right of way or highway. There is a definition included referencing a highway being comprised of all portions of the road allowance including a municipal sidewalk. This will allow individuals to be clear where smoking shall be permitted in all cases.
33. While some municipalities have by-laws that prohibit smoking on sidewalks, upon review of their definition of a sidewalk, it appears that they are actually referencing internal walkways within a park or the by-laws were enacted prior to the Province’s amendments to the *Municipal Act, 2001*. Section 115(3) of the *Municipal Act* does not allow a municipality to enact a by-law that would prohibit smoking on a highway. Both the Health Unit’s legal counsel and the City’s Legal Services Department are of the view that a municipality is not authorized to prohibit smoking on a sidewalk as it is within the municipal right of way (highway).
34. In addition to the slight changes noted above, the new signage requirements under the *Smoke Free Ontario Act 2017* will require a change to signage throughout the municipality. Staff have consulted with the Simcoe Muskoka District Health Unit and have discussed, where applicable, creating new signage that will incorporate the provincial requirements as well as maintain Barrie’s corporate branding. Failure to erect the necessary signage as required by the *Smoke Free Ontario Act 2017* may be constituted as an offence under the Act.

35. This new signage will be incorporated in most locations however, once again Barrie's regulations are more restrictive than the *Smoke Free Ontario Act 2017* and in those locations the incorporation of the provincial signage is not required. Staff will work with Access Barrie and the Simcoe Muskoka District Health Unit to finalize the look of the signage.
36. Roads, Parks and Fleet staff in consultation with Enforcement Services will develop an installation plan for the signs in all parks and City-owned facilities. Due to the number of signs throughout the municipality, it should be noted that installation of the new signs will take time and will be undertaken as operational time permits. It is anticipated that the installation plan from Roads, Parks and Fleet will be a phased approach with the initial focus being high utilization locations, such as Meridian Place and Memorial Square, Parks and the Waterfront, followed by secondary locations.
37. Staff within Enforcement Services will also develop an enforcement plan to be in place upon implementation of the new regulations. This plan will be designed as a focused approach to educating the public on the new regulations, in addition to the overall communications plan. Staff are proposing the hiring of two (2) new Summer Student Positions for 2019 who will be deployed from June to September to the parks, sports fields and facilities to ensure the public is made aware of the new regulations and the expectations of the public are clear. The hiring of two additional summer students will allow Enforcement Services to maintain its current service levels while still providing dedicated patrols and enforcement of our parks, sports fields and City facilities. Staff will report back at the conclusion of the season related to the findings and resource implications, if any. Funding for the Summer Student positions would be provided through the first payment from the Cannabis funding as outlined in staff report CCS001-19.
38. During staff's research and while consulting with various other agencies and municipalities it was found that no two municipalities were approaching the provincial and federal changes in the same manner related to smoking and the use of Cannabis.
39. Below you will find a brief summary of various municipal approaches, as of the writing of this report:

Municipality	Brief outline of Regulations
<p>Orillia (Opted-In) Note – before Orillia City Council as of the writing of this report – Final decision expected April 1, 2019</p>	<ul style="list-style-type: none"> • Prohibited in all areas owned or operated by City • Exemptions in place for Special Events, Municipal Docks for special events, within boats while docked if equipped with sleeping / food prep areas, municipal camping in parks etc. • All exemptions related to Special Events will be by way of Special Event Permit Application • Exemption for Medical Cannabis however users must follow general smoking regulations
<p>Richmond Hill (Opted-Out)</p>	<ul style="list-style-type: none"> • Enacted separate Cannabis by-laws • Prohibit Cannabis use in all public places owned operated by Town • Medical Cannabis is exempt • Defaults to SFOA for most regulations • General Smoking By-laws remain in effect
<p>Vaughan (Opted-Out)</p>	<ul style="list-style-type: none"> • NO REGULATIONS • Rely on Smoke Free Ontario Act for regulations • Health Unit Enforcement Officer to enforce regulations when required

Markham (Opted-Out)	<ul style="list-style-type: none"> • Enacted separate Cannabis by-laws • Prohibit Cannabis use in all public places owned and operated by Town • Medical Cannabis is exempt
Essa Township (Opted-In)	<ul style="list-style-type: none"> • Enacted separate Cannabis By-laws • Prohibited Cannabis use in all public places owned and operated by Township • Similar to current Smoking by-laws already in place
Springwater Township (Opted-In)	<ul style="list-style-type: none"> • NO REGULATIONS • Rely on Smoke Free Ontario Act for regulations • Health Unit Enforcement Officer to enforce regulations when required

40. Staff believe that the proposed new draft by-law will clearly articulate all smoking regulations within the City while incorporating any changes brought forward from both the provincial and federal levels.
41. By continuing to regulate the “act of smoking” and not solely regulate based on the type of product consumed, it allows for full and consistent understanding for the community while keeping in line with the fundamentals previously applied in Barrie regulations which is the protection of community members.

Enforcement Practice

42. Should General Committee recommend adoption the draft by-law attached as Appendix “A” to this Staff Report and maintain current enforcement practices as the overall expectation, the enforcement of the proposed regulations will require the hiring of two (2) Summer Students for the 2019 season to maintain current service levels. Enforcement of the current smoking regulations already takes place however, implementing new regulations or changes requires more communication and enforcement which cannot be accommodated within the current resources. Enforcement Services staff will monitor the 2019 season and if required will recommend additional resources accordingly. Should General Committee wish to further enhance enforcement practices conducted by Enforcement Services, a comprehensive review and staffing analysis would need to be undertaken to understand the desire of Committee and the potential need for increased permanent resources at that time.
43. Current enforcement practices applicable to all municipal smoking regulations:
- a) General patrols of all parks and facilities including sports fields and playground areas are conducted regularly by all enforcement staff as time and other calls for service permit.
 - b) Respond to complaints or concerns related to any violations of the smoking provisions between 7:30 am and 11:00 pm, 7 days a week.
 - c) From early June to late August, two enforcement summer staff are hired to patrol our Waterfront parks by bicycle for all violations including those related to smoking. Those patrols are conducted between 8 am and 8 pm, 7 days a week. The patrol area focuses on the Waterfront area and encompasses all parkland from Johnson’s Beach through to Minet’s Point Park.

- d) Within corporate facilities such as recreational centres, facility staff assist in monitoring each location for individuals found to be smoking in prohibited areas. They will direct those individuals to the permitted locations. If continued non-compliance is noted, they will contact Enforcement Services for assistance.

ENVIRONMENTAL MATTERS

44. There are no environmental matters related to the recommendation to repeal the two by-laws and replace them with a single comprehensive by-law and install the necessary signage.

ALTERNATIVES

45. The following alternatives are available for consideration by General Committee:

Alternative #1

General Committee could receive this report for information purposes only and take no further action.

Although this alternative is available, it is not recommended. Choosing to take no further action would not address the necessary changes required to ensure consistency with the *Smoke Free Ontario Act 2017*.

Alternative #2

General Committee could alter the proposed recommendations by directing staff to amend the draft by-law to prohibit smoking in all parking lots associated with parks.

Although this alternative is available, it is not recommended. Based on feedback from the Health Unit, moving to a complete ban on smoking within the remaining municipal parking lots associated with parks will not prevent those parties from smoking on the road allowance (including sidewalk) thereby potentially creating further complaints of persons obstructing other users. It is anticipated that prohibiting smoking in all parking lots would require an increase in staffing levels to address which is unknown at this time and would have to be evaluated.

Alternative #3

General Committee could alter the proposed regulations by requiring an increased enforcement presence for all municipally owned property including facilities, parks and open space locations, beyond the recommended two additional summer students.

Although this alternative is available, it should be noted that a change in enforcement measures from the proposed additional resources for the parks would require a staffing analysis be undertaken and a report provided back to General Committee. It is anticipated that an increase in staffing would be required should Committee wish enhanced enforcement. It is unknown at this time the cost that would be associated with the increased staffing levels.

FINANCIAL

46. Two additional Summer Student positions are proposed for the 2019 summer season to assist with communications, education and enforcement as required. Funding for the positions is proposed from the first installment of the Provincial Cannabis funding provided to the City. The allocation of such funds was noted in staff report CCS001-19 which included some funding for enforcement purposes. With the addition of two Summer Student positions, Enforcement Services will be able to ensure that parks, sports fields and City facilities are patrolled regularly and responses to complaints are timely. The costs associated with the addition of the two Summer Student positions are estimated at approximately \$25,000 including salaries, uniforms, supplies, access to vehicles and equipment.
47. Staff will report back on the enforcement measures and if required, may be bringing forward additional staffing resource requests for Enforcement Services through future budget processes.
48. Staff anticipate increased costs related to the creation and installation of the new signage required under the Smoke Free Ontario Act 2017 while incorporating our corporate branding. Those costs will vary based on the location of the signs, existing signage that can be retrofitted to incorporate the new signage while ensuring that the public is well informed of the regulations.
49. Staff anticipate an approximate cost of \$45,000 to create the templates, produce the number of signs necessary and replace or install new signage where required. It should be noted that the Simcoe Muskoka District Health Unit will be supplying the provincial portion of the electronic templates for staff to incorporate into the signage where required. It is proposed that the cost of the signage be funded from the Tax Rate Stabilization Reserve.

LINKAGE TO 2014-2018 STRATEGIC PLAN

50. The 2018-2022 Council Strategic Plan has not been finalized as of the writing of this Report.

APPENDIX "A"

Draft New Smoking Regulations

BY-LAW NUMBER 2019-###

A By-law of The Corporation of the City of Barrie to regulate smoking outdoors on City owned property, at work places and public places and to repeal and replace By-laws 2009-086 and 2010-034 regarding Smoking.

WHEREAS Section 8 of the *Municipal Act, S.O. 2001* provides that the Act shall be interpreted broadly so as to confer broad authority on municipalities to (a) enable municipalities to govern their affairs as they consider appropriate and, (b) enhance their ability to respond to municipal issues;

AND WHEREAS Section 9 of the *Municipal Act, 2001, S.O. 2001, c. 25* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising the authority under the Act;

AND WHEREAS Section 10 of the *Municipal Act, S.O. 2001, c. 25* provides that single tier municipalities have the authority to pass by-laws respecting the health, safety and well-being of persons;

AND WHEREAS Section 115 of the *Municipal Act, S.O. 2001, c. 25* provides that without limiting section 10, a municipality may prohibit or regulate the smoking of tobacco in public places and provide for the definition of a "public place" for the purpose of the by-law;

AND WHEREAS Section 115 (3) of the *Municipal Act, S.O. 2001, c. 25* provides that Section 115 of the Act shall not apply to a highway;

AND WHEREAS Section 18 of the *Smoke Free Ontario Act 2017, S.O. 2017, c. 26, Schedule 3* contemplates that where there is a conflict between a provision of the Act and a provision of another Act, regulation or a Municipal By-law that deals with a matter to which the Act applies, the provision that is more restrictive shall prevail;

AND WHEREAS by resolution 19-G-###, the Council of The Corporation of the City of Barrie deems it expedient to enact a by-law to regulate smoking outdoors on City owned property, work places and public places and repeal and replace By-laws 2009-086 and 2010-034 regarding Smoking.

NOW THEREFORE the Council of the Corporation of the City of Barrie enacts as follows:

1.0.0.0 DEFINITIONS

For the purposes of this by-law:

1.1.0.0 **CANNABIS** – means cannabis as defined by the Cannabis Act (Canada) and shall include medical cannabis obtained for medical purposes in accordance with applicable Federal law.

1.2.0.0 **CITY** – means the Corporation of the City of Barrie.

1.3.0.0 **CITY CLERK** – means the Clerk of the Corporation of the City of Barrie.

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- 1.4.0.0.0 **CITY EMPLOYEE** – means an Officer, servant or other staff member of the City authorized or employed whose duties include monitoring city owned property for unauthorized activities which are not permitted but shall not include:
- a) a member of Council;
 - b) a Council appointee to a local board and whose remuneration from the City results from his/her membership on such local board or other body;
 - c) an employee of a local board or other body; or;
 - d) a municipal auditor.
- 1.5.0.0.0 **CITY PROPERTY** – means property which belongs exclusively to the City of Barrie and to which legal rights apply and shall include but not be limited to a park, municipal reservoir, playground, sports field, spectator seating area, a building, structure, vessel, vehicle or conveyance, or part thereof as may be defined in this by-law but shall not include a highway as defined by this by-law
- 1.6.0.0.0 **DESIGNATED SMOKING AREA** – means an area approved for the act of smoking located in a parking lot or parking area which has been established or set out for the legal parking of vehicles, but does not include that area of the parking lot designed only for the passage of vehicles.
- 1.7.0.0.0 **DWELLING UNIT** – means any building or part thereof used as a home, residence, or sleeping place of a family or individual either continuously, permanently, temporarily or transiently.
- 1.8.0.0.0 **ELECTRONIC CIGARETTE** – means a vapourizer or inhalant type device whether called an Electronic Cigarette, E-Cigarette, Vape or any other name, that contains a power source and heating element designed to heat a product or substance and produce a vapour intended to be inhaled .
- 1.9.0.0.0 **EMPLOYEE** – includes a person who, being paid or unpaid, performs any work for or supplies any services to an employer or receives any instructions or training in the activity, business, work, trade, occupation, or profession of the employer or his agent and includes a volunteer and a person who is self-employed and “employment” has a corresponding meaning.
- 1.10.0.0.0 **EMPLOYER** – includes any person who as the owner, proprietor, manager, superintendent or overseer of any activity, business, premises, work, trade, occupation or profession, has control over or direction of, or is directly or indirectly responsible for the employment of a person.
- 1.11.0.0.0 **HIGHWAY** – means a common and public highway, street, road, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, and any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof.
- 1.12.0.0.0 **NON-SMOKING POLICY** - means a written policy that prohibits smoking in the workplace in accordance with this by-law.
- 1.13.0.0.0 **MUNICIPAL RESERVOIRS** - means a reservoir, lake, pond or other receptacle or water storage area connected with any park, open space or environmentally protected land.

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- 1.14.0.0.0 **OFFICER** – means a person appointed as a Municipal Law Enforcement Officer, a Police Officer, or other individual duly appointed to enforce this by-law.
- 1.15.0.0.0 **OUTDOORS** – means 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 in relation to City owned property.
- 1.16.0.0.0 **OUTDOOR PATIO** – means an area of a restaurant or bar that:
- a) 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;
 - b) is not covered by a temporary or permanent roof; or if covered by a temporary or permanent roof, has one or more unobstructed exterior openings in the walls surrounding the roofed area to provide at least 40% of the perimeter enclosed walls to be open to the movement of outdoor air at all times;
 - c) does not share open windows with an enclosed public place;
 - d) does not share open doors with an enclosed public place, except when doors are being opened by individuals to enter or exit the outdoor patio;
 - e) does not share thermostat controlled heating or air conditioning systems with an enclosed public place; and
 - f) has a circulation of outdoor air throughout its designated space.
- 1.17.0.0.0 **PARK** – means all lands owned or operated by or belonging to the City of Barrie or other public body such as school boards or conservation authorities which may be designed or designated as Open Space or Environmental Protection Area and used by the public for active or passive recreational use including but not limited to sporting fields, splash pads, fitness equipment and any spectator area associated with such, or as gathering places such as urban squares, or which may be left in their natural state for environmental reasons.
- 1.18.0.0.0 **PERSON** - means and includes any individual, corporation, partnership, company, association or party and the heirs, executors, administrators, or other legal representative of such person, to whom the context can apply according to law; shall include any group of persons comprising a society or other organizations and shall include the plural wherein the context requires. Wherever the word he or him is used, it shall mean and include the feminine or neuter gender wherever the context so requires.
- 1.19.0.0.0 **PROPRIETOR or OTHER PERSON IN CHARGE** – means the person who controls, governs or directs the activity carried on within the premises designated as prohibited areas under this by-law and includes the person who is actually in charge of the premises at any particular time.
- 1.20.0.0.0 **PUBLIC PLACE**- means any building, structure, vessel, vehicle or conveyance, or part thereof, whether covered by a roof or not, to which the public has access as of right or by invitation, expressed or implied, whether or not a fee is charged for entry being owned by a private entity and shall include an outdoor patio as defined in this by-law but does not include a highway.
- 1.21.0.0.0 **RECREATION 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.

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- 1.22.0.0.0 **SMOKE or SMOKING** – means inhaling or exhaling or holding of a lighted tobacco or lighted cannabis product or any other lighted paraphernalia or product commonly used for the act of smoking.
- 1.23.0.0.0 **TOBACCO** – means tobacco in any processed or unprocessed form that may be lighted and smoked or inhaled.
- 1.24.0.0.0 **VAPE or VAPING or VAPOURIZING** – means inhaling or exhaling the vapour produced by a lighted Electronic Cigarette or similar device regardless of the product or substance being vaped or vaporized and shall include the holding of a lighted Electronic Cigarette or similar device whether or not such device is lighted.
- 1.25.0.0.0 **WALKWAY** – means an area of a park designated or designed specifically for the passage of pedestrians or cyclists and shall include but not be limited to a pathway, trail, bicycle path, promenade or boardwalk but shall not include a municipal sidewalk within a highway.
- 1.26.0.0.0 **WORKPLACE** – means a building, structure, vessel, vehicle or conveyance or part thereof, to which the public may or may not have access either expressed or implied, in which one or more employees work, including any other area in the building, structure, vessel, vehicle or conveyance utilized by employees, but does not include an outdoor patio.
- 2.0.0.0.0 GENERAL PROHIBITIONS**
- 2.1.0.0.0 No person shall smoke or vape outdoors on any city property owned and occupied by the City of Barrie whether or not a No Smoking No Vaping sign is posted.
- 2.2.0.0.0 No person shall smoke or vape outdoors on any walkway set out on or through City owned and occupied property whether or not a No Smoking No Vaping sign is posted.
- 2.2.1.0.0 Notwithstanding sections 2.1.0.0.0 and 2.2.0.0.0 such prohibition shall not apply to a municipal sidewalk within a road allowance or any part of a highway as defined by this by-law and shall further not apply to a Designated Smoking Area as set out in Schedule “A” to this by-law.
- 2.3.0.0.0 No person shall smoke or vape outdoors on any property owned and occupied by the City of Barrie upon which is located a Recreation Facility whether or not a No Smoking No Vaping sign is posted.
- 2.4.0.0.0 No person shall smoke or vape outdoors within 20 metres of any point on the perimeter property boundary of a Recreation Facility.
- 3.0.0.0.0 WORKPLACE**
- 3.1.0.0.0 Every employer or other person in charge of a workplace shall prohibit smoking or vaping in such workplace as regulated by the *Smoke Free Ontario Act, S.O. 2017, c. 26* as may be amended from time to time.
- 3.2.0.0.0 No employer or other person in charge of a workplace shall permit smoking where smoking is prohibited under this by-law.
- 3.3.0.0.0 No person shall smoke or vape in any workplace within the City of Barrie whether or not a No Smoking No Vaping sign is posted.

3.4.0.0.0 Every employer or other person in charge of a workplace shall post No Smoking No Vaping signs in accordance with the Smoke Free Ontario Act, S.O. 2017, c. 26 as may be amended from time to time.

4.0.0.0 PUBLIC PLACE

4.1.0.0.0 Every proprietor or other person in charge of a public place shall prohibit smoking or vaping in such public place as regulated by the *Smoke Free Ontario Act, S.O. 2017, c. 26* as may be amended from time to time.

4.2.0.0.0 No proprietor or other person in charge of a public place shall permit smoking or vaping where smoking or vaping is prohibited under this by-law.

4.3.0.0.0 No person shall smoke or vape in any public place within the City of Barrie whether or not a No Smoking No Vaping sign is posted.

4.4.0.0.0 Every proprietor or other person in charge of a public place shall post No Smoking No Vaping signs in accordance with the *Smoke Free Ontario Act, S.O. 2017, c. 26* as may be amended from time to time.

4.5.0.0.0 No person shall smoke or vape outdoors on the public area within a 9 metre radius surrounding any point on the perimeter boundary of an outdoor patio.

5.0.0.0 EXEMPTIONS

5.1.0.0.0 No provision of this by-law that prohibits smoking or vaping in a place or area shall apply to;

5.1.1.0.0 an Indigenous Person smoking as part of an activity or event if such activity or event is carried out for traditional Indigenous cultural or spiritual purposes, or

5.1.2.0.0 a Non-Indigenous Person smoking as part of an activity or event if such activity or event is carried out with an Indigenous Person and for traditional Indigenous cultural or spiritual purposes.

5.1.3.0.0 a person smoking where that act of smoking is used in a stage production of a theatrical performance.

6.0.0.0 ENFORCEMENT

6.1.0.0.0 A Municipal Law Enforcement Officer, Provincial Offences Officer, Police Officer, or other duly appointed individual shall enforce the provisions of this by-law.

6.2.0.0.0 An Officer may, at any reasonable time, enter any public place for the purposes of determining compliance with this by-law.

6.3.0.0.0 An Officer may, upon producing proper identification, at any reasonable time, enter any workplace or any building or structure in which a workplace is situated for the purposes of determining compliance with this by-law.

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- 6.4.0.0.0 No Officer may enter a workplace that is also a dwelling without the consent of the occupant or without first obtaining and producing a warrant.
- 6.5.0.0.0 No person shall obstruct, hinder, or otherwise interfere with an Officer or other duly appointed individual in the lawful carrying out of their duties and responsibilities under the provisions of this by-law.
- 7.0.0.0.0 CONFLICTS**
- 7.1.0.0.0 If any provision of this by-law conflicts with an Act or a regulation or another by-law, the provision that is the most restrictive of smoking shall prevail.
- 8.0.0.0.0 SEVERABILITY**
- 8.1.0.0.0 Should any section of this by-law be declared by a Court of competent jurisdiction to be ultra vires or illegal for any reason, the remaining parts shall nevertheless remain valid and binding, and shall be read as if the offending section or part had been struck out.
- 9.0.0.0.0 PENALTY**
- 9.1.0.0.0 Every person who contravenes any provision of this By-law is guilty of an offence under the provisions of the *Provincial Offences Act, R.S.O 1990, c P.33*, as amended, and is liable on conviction to a penalty not exceeding \$5,000, exclusive of costs, subject to the provisions of the Act.
- 9.2.0.0.0 Every person who contravenes any provision of this By-law, and every director or officer of a corporation who knowingly concurs in the contravention of this By-law by the corporation, is guilty of an offence under the provisions of the *Municipal Act, 2001, S.O. 2001, c. 25* as amended.
- 9.3.0.0.0 Every person who contravenes the provisions of any section of this By-law, and every director or officer of a corporation who knowingly concurs in the contravention of this By-law by the corporation, is guilty of an offence under the provisions of the *Municipal Act, 2001, S.O. 2001, c. 25* as amended and is liable on conviction to a penalty where the minimum fine shall not exceed \$500 and a maximum fine shall not exceed \$100,000 exclusive of costs under the provisions of the *Municipal Act, 2001, S.O. 2001, c. 25* as amended.
- 9.4.0.0.0 For the purpose of continuous offences, every person who contravenes any provision of this By-law, and every director or officer of a corporation who knowingly concurs in the contravention of this By-law by the corporation, is guilty of an offence and is liable on conviction to a penalty not exceeding \$10,000 per day or part thereof, exclusive of costs, under the provisions of the *Municipal Act, 2001, S.O. 2001, c. 25* as amended.
- 9.5.0.0.0 For the purpose of multiple offences, every person who contravenes any provision of this By-law, and every director or officer of a corporation who knowingly concurs in the contravention of this By-law by the corporation, is guilty of an offence and is liable on conviction to a penalty not exceeding \$10,000 per offence, exclusive of costs under the provisions of the *Municipal Act, 2001, S.O. 2001, c. 25* as amended.

9.5.1.0.0 Notwithstanding Section 9.4.0.0.0, and in accordance with the provisions of the Municipal Act, 2001, S.O. 2001, c. 25 as amended, the total of all fines for the continuous offences or multiple offences is not limited to \$100,000.

10.0.0.0.0 CONTINUATION PROHIBITED BY ORDER

10.1.0.0.0 The Court in which a 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 convicted and such order shall be in addition to any other penalty imposed on the person convicted

11.0.0.0.0 REPEAL

11.0.0.0.0 That By-law 2009-086 as amended regarding smoking outdoors on City owned property be repealed.

11.1.0.0.0 That By-law 2010-034 as amended regarding smoking in public places and workplaces be repealed.

12.0.0.0.0 FORCE AND EFFECT

12.1.0.0.0 **THAT** this By-law shall come into force and effect immediately upon passing.

READ a first and second time this XX day of XXXX, 2019.

READ a third time and finally passed this XX day of XXXX, 2019.

THE CORPORATION OF THE CITY OF BARRIE

MAYOR – J.R. LEHMAN

CITY CLERK – WENDY COOKE

Schedule "A"

DESIGNATED SMOKING AREAS	
FACILITIES (PERMITTED PARKING LOTS)	
Name of Facility	Municipal Address
2NTower - Bayfield 2N Tower	444 Bayfield Street
2S Reservoir - Harvey Road Reservoir	90 Harvey Road
3NTower - Ferndale Tower	434 Ferndale Drive South
3STower - Mapleview 3S Tower	65 Mapleview Drive
Barrie Police Service Headquarters	29 Sperling Drive
BPS1 – Codrington Booster Station	64 Codrington Street
BPS2 - Anne Street Booster Station	164 Anne Street North
BPS3 - Innisfil Booster Station	380 Innisfil Street
BPS3N - Leacock Booster Station	319 Leacock Street
BPS3S - Big Bay Booster Station	20 Big Bay Point Road
Emergency Services Campus	110 Fairview Drive
Environmental Centre (except designated parking areas that are within 9 metres of a building)	272 Ferndale Drive N.
Fire Station #1	155 Dunlop Street West
Fire Station #2	15 Bell Farm Road
Fire Station #3	340 Big Bay Point Road
Fire Station #4	250 Ardagh Road
Grove Street Sewage Pumping Station	238 Penetanguishene Road
Holly Sewage Pumping Station	65 Logan Crescent
Huronion Road Sewage Pumping Station	644 Huronia Road
Lakeshore Mews	West of Mulcaster Street between Simcoe Street and Dunlop Street East
Little Lake Sewage Pumping Station	510 Duckworth Street
Lockhart Road Sewage Pumping Station	799 Bayview Drive
Operations Centre (except designated parking areas that are within 9 metres of a building)	165 Ferndale Drive
South Shore Community Centre	205 Lakeshore Drive
Surface Water Treatment Plant	20 Royal Parkside Drive
Water Pollution Control Centre (Secondary Pumping Station Designated Parking Area) and (Southeast Designated Parking Area except southeast designated parking areas that are within 9 metres of a building)	249 Bradford Street
WPS10 – Huronia Road Well and Pumping Station	294 Huronia Road



DESIGNATED SMOKING AREAS	
FACILITIES (PERMITTED PARKING LOTS)	
WPS16 – Brownwood Drive Well and Pumping Station	101 Brownwood Drive
WPS17 & 18 – Cross Street Well	34 Cross Street
WPS3A – Anne Street Well and Pumping Station	54 Anne Street South
WPS4 – Perry Street Well and Pumping Station	83 Perry Street
WPS5 – John Street Well and Pumping Station	217 John Street
WPS6 – Wood Street Well	12 Wood Street
WPS7 – Tiffin Street Well and Pumping Station	44 Sarjeant Drive
WPS9 & WPS13 – Johnson Street Wells and Pumping Station	168 Johnson Street
PARKS (PERMITTED PARKING LOTS)	
Name of Park	Municipal Address
Centennial Park North	75 Lakeshore Drive (includes Victoria North and Victoria South and transient vehicle with trailer lots)
Centennial Park South	95 Lakeshore Drive
Heritage Park (west section only)	5 Simcoe Street
Johnson Beach	81 Shanty Bay Road
Marina	55 Lakeshore Drive
North Marina	15 Simcoe Street
Spirit Catcher	15 Simcoe Street
Tiffin Launch (upper section only)	105 Lakeshore Drive