

THE REGIONAL MUNICIPALITY OF NIAGARA

BY-LAW NO. 2019-07

A BY-LAW TO AMEND BY-LAW 112-2013 BEING A BY-LAW TO PROTECT CHILDREN AND VULNERABLE PERSONS FROM EXPOSURE TO OUTDOOR SECOND-HAND SMOKE

WHEREAS subsection 115(1) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended (hereinafter the “Act”) provides that a municipality may prohibit or regulate the smoking of tobacco or cannabis in public places;

WHEREAS subsection 11(2) of the Act provides The Regional Municipality of Niagara (hereinafter, "Niagara Region") broad authority to govern the health, safety and well-being of persons;

WHEREAS the *Smoke-Free Ontario Act, 2017*, S.O. 2017, c. 26 (hereinafter the “*Smoke-Free Ontario Act*”) as amended prohibits smoking tobacco or cannabis, and vaping (the use of electronic cigarettes), but Regional By-Law No. 112-2013 only prohibits smoking tobacco;

WHEREAS pursuant to subsection 115(10) of the Act if there is a conflict between a by-law passed by a municipality and the provisions of any other statute or regulation of Ontario, the provision that is most restrictive of smoking of tobacco or cannabis prevails;

WHEREAS it has been determined that smoking, second-hand tobacco and cannabis smoke and vaping are health hazards and a discomfort for individuals residing in or visiting Niagara Region;

WHEREAS smoke-free policy interventions are effective mechanisms to reduce exposure to tobacco smoke, prevent initiation of smoking, encourage cessation of smoking, support recent quitters, and contribute to the denormalization of smoking;

WHEREAS Niagara Region therefore wishes to prohibit tobacco and cannabis smoking and vaping (use of electronic cigarettes) in outdoor public places for the health of the public generally, and particularly for the benefit of young persons, and to improve the environmental and social conditions in public places; and,

WHEREAS Section 115(5) of the said Act provides that a by-law passed under subsection 115(1) shall not come into force unless,

- (a) a majority of all votes on the Council of the upper-tier municipality are cast in its favour;

- (b) a majority of the Councils of all the lower-tier municipalities forming part of the upper-tier municipality for municipal purposes have passed resolutions giving their consent to the by-law; and
- (c) the total number of electors in the lower-tier municipalities that have passed resolutions under clause (b) form a majority of all the electors in the upper-tier municipality.

NOW THEREFORE the Council of The Regional Municipality of Niagara enacts as follows:

1. That the following definitions are added to subsection 1(1) of By-law 112-2013 in alphabetical order within the context of all definitions currently contained in said by-law:
 - “cannabis” has the same meaning as in subsection 1 (1) of the Smoke-Free Ontario Act, 2017”
 - “electronic cigarette” has the same meaning as in subsection 1 (1) of the Smoke-Free Ontario Act, 2017”
 - “use” with respect to electronic cigarettes includes any of the following:
 - (a) Inhaling vapour from an electronic cigarette;
 - (b) Exhaling vapour from an electronic cigarette;
 - (c) Hold an activated electronic cigarette;
 - “vape” means to use an electronic cigarette;
2. The definition of “smoke or smoking” contained in subsection 1(1) of By-law 112-2013 shall have the words “or cannabis” added following the word “tobacco” and prior to the word “or”.
3. Section 2(1) of By-law 112-2013 shall be amended by adding after the word “tobacco” and prior to the word “upon” the following words:
 - “or cannabis or vape”
4. The invalidity or unenforceability of a provision of this by-law or part of a provision of this by-law shall not negate the effectiveness or validity of the remaining provisions or parts thereof of this by-law.
5. This by-law shall come into force on the date specified by the Regional Clerk as the date when the following have been achieved:

- a) A majority of the Councils of all of the lower-tier municipalities forming part of The Regional Municipality of Niagara have passed resolutions giving consent to this by-law: and
 - b) The total number of electors in the lower-tier municipalities that have passed resolutions under clause (a) above form a majority of all the electors in The Regional Municipality of Niagara.
6. The amendments to By-law 112-2013 effected by sections one to three of this by-law shall cease to be effective one year from the date this by-law comes into force pursuant to section 5 thereof provided:
- a. On and after the date upon which sections one to three of this by-law cease to be effective, the provisions of By-law 112-2013 excepting the specific amendments described by this by-law shall remain in force as if this By-law had not been enacted;
 - b. And section 6 of this by-law shall not invalidate any proceedings regarding contraventions of section 2(1) of By-law 112-2013, as amended by this by-law, occurring during the period when the amendments remained in effect notwithstanding that the prosecution and conviction may occur after the date upon which sections one to three of this by-law cease to be effective .
7. That this by-law was passed by the Council for Niagara Region as of the 17th day of January 2019.

THE REGIONAL MUNICIPALITY OF NIAGARA

James Bradley, Regional Chair

Ann-Marie Norio, Regional Clerk

Passed: <date>