

THE REGIONAL MUNICIPALITY OF NIAGARA

BY-LAW NO. < >

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 AND VAPOUR

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 prior to being amended in January 2019 only prohibited 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 second-hand tobacco, 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 additional outdoor public places for the health of the public generally, and particularly for the benefit of young persons, and vulnerable populations, 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;

WHEREAS on January 17, 2019, Regional Council passed By-law 2019-07, to amend By-law 112-2013, to temporarily include provisions respecting cannabis and vaping subject to consultation with the local area municipalities.

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”

“public place” means

- a. Any property owned, leased, or controlled by Niagara Region or any area municipality, including without limitation parks, playgrounds, sports or playing fields, recreational trails, beaches, arenas, recreational centers, community meeting areas, special events, farmers markets, bus shelters, splash pads, and pools;
- b. Any outdoor area within a nine-metre radius of an entrance to or exit from a building located on any property owned, leased or controlled by Niagara Region or any area municipality; and

- c. any outdoor area that is within a nine-metre radius of an entrance to or exit from a public building or building generally accessible to the public, whether or not the building is leased, or controlled by Niagara Region or any area municipality, including places of employment, condominium buildings, apartment buildings and other similar residential buildings;

Provided “public place” does not include:

- (1) Highways;
- (2) Road allowances abutting a regional or municipal property;
- (3) Municipal sidewalks, save, and except for that portion of any municipal sidewalk that is within a nine-metre radius of an entrance to or exit from a building located on any property owned, leased, or controlled by the Niagara Region or any area municipality;
- (4) Rights-of-way; and
- (5) Residential dwellings owned, operated, or subsidized by Niagara Regional Housing or an area municipality.

“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. Holding an activated electronic cigarette;

“vape” means to use an electronic cigarette;

- 2. That the definition of “outdoor public place” contained in subsection 1(1) of By-law 112-2013 be removed.
- 3. That the word “outdoor” in section 2(1) of By-law 112-2013 be deleted.
- 4. That 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”.

5. That 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”
6. That 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.
7. That this bylaw shall come into force and effect on August 1, 2019, provided that:
 - a. A majority of the councils of the lower-tier municipalities forming part of the region of Niagara have passed resolutions consenting to the bylaw; and,
 - b. The total number of electors in the lower-tier municipalities that have passed resolutions form a majority of all electors in The Regional Municipality of Niagara.
8. That By-law 2019-07 be repealed effective August 1, 2019.

THE REGIONAL MUNICIPALITY OF NIAGARA

James Bradley, Regional Chair

Ann-Marie Norio, Regional Clerk

Passed: < >