

The Corporation of the Municipality of Brockton



By-Law 2020-XXX

Being a By-Law to Regulate Smoking and Vaping in Areas in the Municipality of Brockton.

Whereas the *Municipal Act, 2001, S.O. 2001, c. 25*, Section 5(1), as amended, provides that the powers of a municipal corporation are to be exercised by its council;

And Whereas the *Municipal Act, 2001, S.O. 2001, c. 25*, Section 5(3), as amended, provides that a municipal power, including a municipality's capacity rights, powers and privileges under section 9; shall be exercised by By-Law;

And Whereas the *Municipal Act, 2001, S.O. 2001, c. 25*, Section 10, 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*, Section 115, as amended, provides that a municipality may pass by-laws regulating the smoking of tobacco in public places within the municipality;

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

And Whereas the *Municipal Act, 2001, S.O. 2001, c. 25*, Section 429, as amended, provides that a municipality may establish a system of fines for offences under a by-law of the municipality;

And Whereas the *Smoke-Free-Ontario Act, 2017, S.O. 2017, c. 26*, Section 18, 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 second-hand smoke and vapour are a health hazard or discomfort for many residents;

Now Therefore the Council of the Corporation of the Municipality of Brockton **Enacts as Follows:**

1. Definitions

For the purposes of this by-law:

"**Cannabis**" has the same meaning as in Subsection 2 (1) of the *Cannabis Act, 2017, S.O. 2017, c. 26, Sched. 1*.

"**Council**" means those persons elected to represent the people of the Municipality of Brockton.

"**Designated Public Place**" means a public place designated pursuant to Section 4.1 of this by-law;

"Director" means the Director of Community Services for the Municipality, his or her designate or, in the event of organizational changes, another employee designated by Council.

"Electronic Cigarette" or "E-Cigarette" means a vapourizer or inhalant-type device, whether called an Electronic Cigarette or any other name, that contains a power source and heating element designed to heat a nicotine-based liquid substance or e-substance to produce a vapour intended to be inhaled by the user of the device directly through the mouth.

"E-Substance" means a material that is manufactured or sold to be used in an Electronic Cigarette, whether or not the material contains nicotine.

"Highway" means any provincial or municipal roadway, lane, street, circle, avenue, etc. within the geographic limits of the Municipality of Brockton and includes sidewalks, boulevards and all other lands within the lateral boundaries of the highway.

"Lighted" means the burning of material.

"Officer" means a person appointed by Council as a municipal law enforcement officer to enforce this by-law or a tobacco enforcement officer or successor position, as employed by the Grey Bruce Health Unit, or any successor agency;

"Park" means any land, owned, leased or controlled by the Municipality, designed or used for public recreation, including but not limited to: trails, gardens, green space, playgrounds, sports fields, playing fields, picnic areas, pavilions, swimming pools and beach areas.

"Person" means a corporation, business and/or organization as well as an individual.

"Shisha" means a is a single- or multi-stemmed instrument for vapourizing and smoking flavoured tobacco, or sometimes cannabis, whose vapor or smoke is passed through a water basin-often glass-based-before inhalation. Also known as an argilee, water pipe, hookah, nargile, qalyan, chillim, jajeer, hitboo matrra pipe, huqqo, jajeer, guduguda, or lulava, cachimba.

"Smoke" and "Smoking" include the carrying, holding, having and/or inhaling of any lighted cannabis, cigar, cigarette, e-cigarette, shisha, vapourizer or any other lighted smoking equipment or apparatus.

"Special Event" means an occasion approved by the Municipality in accordance with policies, laws and regulations adopted by Council.

"Municipality" means The Corporation of the Municipality of Brockton.

"Tobacco" means a product produced by curing or drying a plant for smoking or vaping.

"Vapourizer" means an inhalant-type device that contains a power source and heating element designed to heat a substance and produce a vapour intended to be inhaled by the user of the device directly through the mouth, whether or not the vapour contains nicotine, cannabis or any other substance.

"Vaping", "Vape" and "Vapourizing" mean the act of heating and converting cannabis, an E-substance or any other substance through a Vapourizer or an Electronic Cigarette, for the purpose of simulating the inhalation of smoke.

2. Interpretation

- 2.1 This by-law applies to the Smoking and Vaping of Tobacco, Cannabis, E- Substance, shisha, whether or not it contains Tobacco, and other plant material or oils intended for inhalation in every Designated Public Place within the geographic limits of the Municipality of Brockton.

3. Administration

- 3.1 The Municipality is responsible for the enforcement of this by-law.

4. Regulations

- 4.1 The following are Designated Public Places for the purpose of this by-law:
- 4.1.1 Every place as set out in Section 12(2) of the *Smoke-Free Ontario Act, 2017, S.O. 2017, c. 26, Schedule 3*;
 - 4.1.2 Any Highway, road allowance, Park or Cemetery identified on Schedule “B” to this By-law;
- 4.2 No Person shall Smoke or Vape in any Designated Public Place, whether or not a "No Smoking" sign or a "No Vaping" sign is posted.

5. Signs

- 5.1 Signs shall be posted and maintained in accordance with the *Smoke-Free Ontario Act, 2017, S.O. 2017 c. 26, Schedule 3*, and as prescribed by the Director.
- 5.2 Notwithstanding Section 5.1 of this by-law, the requirement for signs does not apply to any of the Designated Public Places specified in section 4.1.2 above.
- 5.3 A reference to a by-law of a former municipality, or to a predecessor to this by-law on any sign that identifies a Designated Public Place or in which Smoking or Vaping are prohibited is deemed to be a reference to this by-law.

6. Enforcement

- 6.1 The provisions of this by-law respecting the prohibition of Smoking and Vaping in Designated Public Places, will be enforced by Officers.
- 6.2 An Officer may, at any time, enter any Designated Public Place in which Smoking and Vaping are prohibited to determine whether this by-law is being complied with and, for this purpose, may make such examinations, investigations and inquiries as are necessary.
- 6.3 No person shall obstruct or interfere with an Officer in the lawful execution of their duty enforcing the provisions of this by-law.

7. Offence and Penalty Provisions

- 7.1 Every person(s) who violates a provision of this by-law is guilty of an offence and on conviction is liable to the penalty provided in Section 61 of the *Provincial Offences Act R.S.O. 1990 Chapter P.33* as amended from time to time.

8. Validity

- 8.1 If there is a conflict between a provision of any Act, regulation or by-law and a provision of this by-law, the provision that is the most restrictive prevails.
- 8.2 If for any reason any section, clause or provisions of this by-law is deemed by a court of competent jurisdiction to be invalid the same shall not affect the validity of the by-law as a whole or any part thereof other than the part which was declared to be invalid.
- 8.3 Any by-law which is inconsistent with the provisions contained in this by-law is hereby rescinded and repealed.

9. Commencement

9.1 This by-law shall come into full force and effect upon the date of its final passing.

10. Title

10.1 This By-Law may be cited as the “Smoking Enforcement By-Law”.

Read, Enacted, Signed and Sealed this 8th day of September, 2020.

Mayor – Chris Peabody

Clerk – Fiona Hamilton

Set Fine Schedule
Part I of the *Provincial Offences Act*
The Corporation of the Municipality of Brockton
By-Law 2020-XXX

Item	Column 1 Short Form Wording	Column 2 Offence Creating Provisions	Column 3 Set Fine
1	Smoke or Vapourize in any Designated Public Place	Section 4.3	200.00
2	Obstruct or interfere with an Officer in the lawful execution of their duty enforcing the provisions of this by-law	Section 6.3	300.00

Note: The penalty provisions for the offence(s) indicated above is/are Section 7 of By-Law Number 2020-XXX a certified copy of which has been filed.

Schedule “B”

Schedule "B" - Smoking Prohibited Zone Walkerton



Prohibited Zone

0 50 100 200 Metres

This map has been prepared by the Municipality of Brockton GIS Department for information, consultation, and discussion purposes only. The Municipality does not guarantee the accuracy or completeness of the contents and assumes no liability for any consequences arising out of anyone's use of, reliance on, the information depicted.

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