

THE CORPORATION OF THE TOWNSHIP OF ESSA

BY-LAW NO. 2018 – 93

A By-law to prohibit the smoking or vaporizing of recreational cannabis in public places in the Township of Essa.

WHEREAS Section 8 of the *Municipal Act*, 2001, c. 25 as amended 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 clause 6 of subsection 11(2) of the *Municipal Act* provides that a municipality may pass By-laws in the interest of 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, 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 18 of the *Smoke Free Ontario Act*, 2017, S.O. 2017, c. 26, Schedule 3, provides 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

WHEREAS Council of the Township of Essa wishes to prohibit the smoking or vaporizing of cannabis in public places within the Township of Essa;

NOW THEREFORE the Council of the Corporation of the Township of Essa hereby enacts as follows:

1. BY-LAW TITLE

1.1 This By-law may be cited as the "Cannabis By-law".

2. DEFINITIONS

2.1 For the purpose of this By-law:

- (a) "*Cannabis*" means cannabis as defined in the Cannabis Act (Canada);
- (b) "*Council*" means the Council of the Township of Essa;
- (c) "*Officer*" means:
 - (i) a Municipal Law Enforcement Officer of the Township of Essa, or other person appointed by or under the authority of a Township By-law to enforce Township By-laws; or
 - (ii) a Police Officer employed by the Ontario Provincial Police (O.P.P) or the Royal Canadian Mounted Police (RCMP).

- (d) “*Public Place*” includes any place to which the public has access as of right or invitation, express or implied, regardless of whether it is owned by a public or private entity, and also includes any motor vehicle located in a public place or in any place open to public view.
- (e) “*Township*” means the Corporation of the Township of Essa.
- (f) “*Vaporizing*” means:
 - (i) to inhale and exhale the vapour produced by an electronic cigarette or similar device containing cannabis; or
 - (ii) holding or otherwise having control of an electronic smoking device that is producing vapour, emissions or aerosol from cannabis.

3. GENERAL PROHIBITIONS

3.1 In addition to the prohibitions set out in the *Smoke Free Ontario Act*, S.O. 1994, c. 10, as amended from time to time, no person shall smoke or vaporize cannabis, or hold or otherwise use lighted cannabis in any public place, including but not limited to the following:

- (a) parks, trails and natural areas in the Township of Essa;
- (b) public and private parking lots;
- (c) facilities owned or leased by the Township of Essa, including arenas, community centres, libraries, parks, municipal offices;
- (d) roads, sidewalks and municipal boulevards;
- (e) all schools, daycare facilities, and other child care facilities; and
- (g) all retail, commercial and business establishments, including but not limited to shopping malls.

4. APPLICABILITY

- 4.1 This by-law does not apply to privately owned property containing one or more dwellings.
- 4.2 This By-law does not apply to a person who is entitled to possess cannabis pursuant to a medical document issued in accordance with the *Access to Cannabis for Medical Purposes Regulations*, SOR/2016-230 or successor legislation or regulations.

5. ENFORCEMENT

- 5.1 The provisions of this By-law may be enforced by an Officer.
- 5.2 An Officer who has reasonable grounds to believe that a person has contravened any provision of this By-law may require that person to provide their identification to the Officer.
- 5.3 Every person who is required by an Officer to provide identification under section 5.2 shall identify themselves to the Officer. Giving their correct name, date of birth, and address shall constitute sufficient identification. Failure to provide

sufficient identification shall constitute obstruction of the Officer as set out in Section 6.2 of this By-law.

6. OFFENCES

- 6.1 Any person who contravenes or fails to comply with any provision of this By-law is guilty of an offence, and upon conviction, is liable to a fine as provided for by the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33, as amended.
- 6.2 No person 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.
- 6.3 Any person who hinders or obstructs a person lawfully carrying out the enforcement of this By-law is guilty of an offence.

7. CONTINUATION, REPETITION PROHIBITED BY ORDER

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

8. PENALTIES

- 8.1 Any person who contravenes any of the provisions of this By-law is guilty of an offence.
- 8.2 Any person who smokes or vaporizes cannabis in a public place in contravention of this By-law is guilty of an offence.
- 8.3 Every person 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 \$500.00.
 - (b) Upon a second or subsequent conviction for the same offence, to a fine of not less than \$500.00 and not more than \$1,000.00.
 - (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 \$1,000.00.

9. COLLECTION OF UNPAID FINES

- 9.1 Where a fine is in default, the Township may proceed with civil enforcement against the person upon whom the fine has been imposed, pursuant to the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33.
- 9.2 The Township may make a request to the Treasurer of a local municipality to add any part of a fine that is in default to the tax roll for any property in the local municipality for which all of the owners are responsible for paying the fine and collect it in the same manner as municipal taxes.

10. SEVERABILITY

10.1 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.

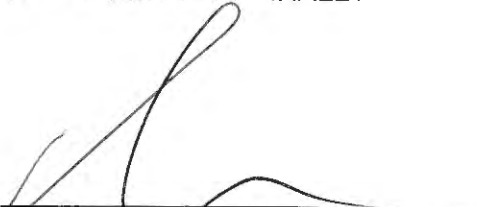
11. INTERPRETATION

11.1 The provisions in Part VI of the *Legislation Act*, 2006, S.O. 2006, c.21, Schedule F shall apply to this By-law.

12. FORCE AND EFFECT

12.1 This By-law shall come into force and take effect on the date of final passage hereof.

READ A FIRST, AND TAKEN AS READ A SECOND AND THIRD TIME AND FINALLY PASSED on this the 21st day of November, 2018.



Terry Dowdall, Mayor



Lisa Lehr, Clerk