

THE CORPORATION OF THE VILLAGE OF BURK'S FALLS

BY-LAW 23-2018

BEING A BY-LAW TO REGULATE THE USE OF DRY SMOKE PRODUCING PRODUCTS ON MUNICIPAL PROPERTY

WHEREAS Section 115 of the *Municipal Act, 2001*, S.O. 2001, c. 25 (as amended), authorizes the Council of a local municipality to pass a by-law to prohibit or regulate the use of tobacco industry product in public places and workplaces within the municipality;

AND WHEREAS Section 12 of the *Smoke-Free Ontario Act*, S.O. 1994, c. 10 permits municipalities to enact smoking by-laws that are more restrictive than sections 9 and 10 of the *Municipal Act, 2001*, S.O. 2001 subject to subsection 13 (3);

AND WHEREAS according to Health Canada, there is no known safe level of exposure to second-hand or third-hand smoke;

AND WHEREAS it is desirable for the purpose of promoting and protecting the health, safety and welfare of the inhabitants and workers of The Corporation of the Village of Burk's Falls to ensure that all Village of Burk's Falls municipal properties are Smoke-free;

AND WHEREAS the Council of the Corporation of the Village of Burk's Falls deems it expedient to prohibit the use of smoke producing products on The Village of Burk's Falls municipal properties.

NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE VILLAGE OF BURK'S FALLS ENACTS AS FOLLOWS;

PART I – DEFINITIONS

- 1.0.0 For the purpose of this by-law, the following definitions will apply:
- 1.1.0 "ashtray" means a receptacle of any type used for tobacco ashes and for cigarette and cigar butts;
- 1.1.1 "Council" means the Municipal Council of the Village of Burk's Falls;
- 1.1.2 "employer" means any person who, as the owner, proprietor, manager, contractor, superintendent, overseer, receiver, or trustee of any activity, business, work, trade, occupation, profession, project or undertaking who has control over or direction of, or is directly or indirectly responsible for the employment of a person therein;
- 1.1.3 "exposure to tobacco use" includes physical exposure to second-hand smoke or third-hand smoke which occurs when a person who is not actively engaged in using a tobacco industry or related product is involuntarily exposed to pollutants from tobacco industry related product or is exposed through sensory cues associated with the use of tobacco industry or related product
- 1.1.4 "Inspector" means any employee or class of employee of the North Bay Parry Sound District Health Unit authorized by the Medical Officer of Health to carry out an inspection under and to enforce the provisions of this by-law, or a person or class appointed by Council as a By-law Enforcement Officer to enforce this by-law;
- 1.1.5 "area" means any area of a municipal facility that can be a building, structure, or premise including any temporary building, structure or part thereof, whether covered by a roof or not, but does not include a highway as defined by the *Municipal Act, 2001*;
- 1.1.6 "Public Park" means any park or common area owned, leased and maintained by the Village of Burk's Falls for the purpose of recreation use and shall include any playground, sport field, skate park
- 1.1.7 "person" includes an individual, firm, business, corporation or partnership and shall include the plural where the context requires;
- 1.1.8 "proprietor" 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 actually in charge of the premises at any particular time;
- 1.1.9 "smoke producing product" shall include all tobacco industry apparatus.
- 1.1.10 "tobacco industry apparatus" includes pipe, waterpipe, electronic cigarette or any other similar or related apparatus used for the consumption of tobacco industry or related products.

1:1.11 “**tobacco industry product**” includes chew, snus, snuff, dissolvable tobacco, shisha, e-juice, a cigarette, cigar, or any other similar or related product;

1.1.12 “**use of tobacco industry product**” includes inhaling, exhaling, burning, vaping, chewing, carrying, dissolving or spitting any form of tobacco or other related or similar product.

PART II – AREA – DESIGNATED

2.1.0 The following areas are designated as smoke-free for the purposes of this by-law:

- (a) Any portion of a municipal property.
- (b) 9 meters set back from any entrance or air-intake of a municipal property.
- (c) 9 meters set back from any municipal playground skate-board park, green space or recreation field.

PART III – GENERAL PROHIBITION

3.1.0 Tobacco Use – Prohibited

No person shall use any tobacco product or apparatus in any area designated as smoke-free under section 2.1.0 of this by-law, whether or not a No Smoking sign is posted. This does not include a highway as defined by the Municipal Act, 2001 nor does it include product used for nicotine replacement therapy.

3.2.0 Every employer and proprietor in charge of any area designated as smoke-free under section 2.1.0 this by-law shall:

- (a) ensure compliance with this by-law;
- (b) prohibit tobacco-use in the area designated as tobacco-free;
- (c) Post No Smoking signs in accordance with Part IV of this by-law; and
- (d) ensure that no ashtrays or like paraphernalia are placed or permitted to remain in the designated smoke-free area.

PART IV – SIGNAGE REQUIRED

4.1.0 Every proprietor and every employer in charge of any area designated as smoke-free under Part II of this by-law shall ensure that a sufficient number of signs as prescribed by section 4.2.0 are conspicuously posted so as to clearly identify that smoke is prohibited.

4.2.0 The signs referred to in section 4.1.0 of this by-law shall include:

- a) a depiction of the international No Smoking symbol, as set out in Schedule ‘A’, with a diameter at least 50% of the sign’s height; and
- b) lettering sized proportionately, which reads “Village of Burk’s Falls By-Law No. 23-2018”.

4.3.0 The signs referred to in section 4.1.0 of this by-law shall be sized as follows:

- a) a minimum size of 14 centimeters (5.5 inches) by 14 centimeters (5.5 inches); and

4.4.0 The signs referred to in section 4.1.0 of this by-law shall read:
“NO SMOKING ON THIS PROPERTY AT ANY TIME”.

4.5.0 Where a No Smoking sign is required to be placed or posted under this by-law, the sign shall have the proportions, characteristics and minimum measurements as set out in Part IV of this by-law and shall consist of two (2) contrasting colours, or, if the lettering and graphic symbol is to be applied directly to a surface or to be mounted on a clear panel, the lettering and graphic symbol shall contrast with the background.

4.6.0 Despite the fact that the symbol referred to in section 4.2.0 is a cigarette, it shall include a lighted cigar, cigarette, pipe or any other tobacco industry product as defined within this bylaw.

4.7.0 Deviations from the color or content of the signs prescribed by this section that do not affect the substance do no vitiate the signs.

PART V – INSPECTIONS

5.1.0 An Inspector may, at any reasonable time, enter any area as defined in Part II of this by-law for the purposes of determining compliance with this by-law.

PART VI – IDENTIFICATION

6.1.0 An inspector conducting an inspection shall produce proper identification, on request.

PART VII – OBSTRUCTION

7.1.0 No person shall hinder, obstruct or interfere with an inspector conducting an inspection, refuse to answer questions on matters relevant to the inspection, or provide the inspector with information on matters relevant to the inspection that the person knows to be false or misleading.

PART VIII – OFFENCES

8.1.0 Every person who uses a tobacco product or tobacco apparatus in an area designated as smoke-free under Parts II and III of this by-law in contravention of this by-law is guilty of an offence.

8.2.0 Every person who contravenes any of the provisions of this by-law is guilty of an offence.

8.3.0 Every person who hinders or obstructs a person lawfully carrying out the enforcement of this by-law is guilty of an offence.

PART IX – PENALTY

9.1.0 Every person who is convicted of an offence under any provisions of this by-law shall be liable to:
(a) a fine set in Schedule "B" attached hereto; or
(b) a fine as set out in section 61 of the Provincial Offences Act, R.S.O., 1990, c P.33, or any successor thereof.

9.2.0 If this by-law is contravened and a conviction entered, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty that is imposed, make an order prohibiting the continuation or repetition of the offence by the person convicted.

PART XI – CONFLICTS

10.1.0 If a provision of this by-law conflicts with an Act or Regulation or another Municipal By-law, the provision that is most restrictive of tobacco use shall prevail.

PART XII – SEVERABILITY

11.1.0 If any section or sections of this by-law or parts thereof are found in any court of law to be illegal or beyond the power of the Municipality to enact, such section or sections or parts thereof shall be deemed to be severable and all other sections or parts of the by-law shall be deemed to be separate and independent there from and have been enacted as such.

PART XIII – COMMENCEMENT

12.1.0 This by-law shall come in effect on passing.


Reeve


Clerk

SEAL

SCHEDULES

Schedule 'A' to By-Law No. 00-2018 of the Corporation of the Village of Burk's Falls:

International No Smoking Symbol



**Schedule 'B' to By-Law No. 00-2018 of the Corporation of the Village of Burk's
Falls Set Fines;**
