

Disclaimer for By-law No. 112-2013

By-law No. 112-2013, October 10, 2013, was amended by By-law No. 2019-07, January 17, 2019 (which was repealed by By-law No. 2019-52, June 20, 2019) and By-law No. 2019-52, June 20, 2019.

Provisions of By-law No. 2019-52 provide:

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.

and:

That this by-law 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 by-law; 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.

By-law No. 2019-52 achieved triple majority as of July 11, 2019 (majority of all votes on upper-tier council achieved June 20, 2019, majority of eligible electors achieved July 4, 2019, majority of area municipalities achieved July 11, 2019).

THE REGIONAL MUNICIPALITY OF NIAGARA

BY-LAW NO. 112-2013

A REGIONAL 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 provides that a municipality may prohibit or regulate the smoking of tobacco in public places;

AND WHEREAS it has been determined that smoking and second-hand tobacco smoke is a health hazard or discomfort for individuals residing in or visiting The Regional Municipality of Niagara (hereinafter, "Niagara Region");

AND 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 tobacco use;

AND WHEREAS Niagara Region therefore wishes to prohibit tobacco smoking 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 BE IT RESOLVED THAT the Council of The Regional Municipality of Niagara enacts as follows:

DEFINITIONS AND INTERPRETATION

1. (1) The following definitions shall be used in interpreting and applying this by-law:

“authorized person” means an individual designated or authorized by Niagara Region or an area municipality whose duties include, without limitation, tobacco control or the monitoring of regional or municipal property for the purpose of addressing unauthorized activities;

“area municipality” means any one of the municipalities of the Town of Fort Erie, Town of Grimsby, Town of Lincoln, City of Niagara Falls, Town of Niagara-on-the-Lake, Town of Pelham, City of Port Colborne, City of St. Catharines, City of Thorold, Township of Wainfleet, City of Welland and the Township of West Lincoln.

“cannabis” has the same meaning as in subsection 1 (1) of the *Smoke-Free Ontario Act, 2017*¹

“electronic cigarette” has the same meaning as in subsection 1 (1) of the *Smoke-Free Ontario Act, 2017*²

¹ *Smoke-Free Ontario Act, 2017*, S.O. 2017, c. 26, Sched. 3, s. 1 (1) states that: “cannabis” has the same meaning as in subsection 2 (1) of the *Cannabis Act* (Canada);

Cannabis Act, S.C. 2018, c. 16, s. 2 (1) states that: “cannabis” means a cannabis plant and includes:

1. Any part of a cannabis plant, including the phytocannabinoids produced by, or found in, such a plant, regardless of whether that part has been processed or not, other than a part of the plant referred to in Schedule 2
2. Any substance or mixture of substances that contains or has on it any part of such a plant
3. Any substance that is identical to any phytocannabinoid produced by, or found in, such a plant, regardless of how the substance was obtained

The meaning of “cannabis” does not include:

1. A non-viable seed of a cannabis plant
2. A mature stalk, without any leaf, flower, seed or branch, of such a plant
3. Fibre derived from a stalk referred to in item
4. The root or any part of the root of such a plant

² *Smoke-Free Ontario Act, 2017*, S.O. 2017, c. 26, Sched. 3, s. 1 (1) states that: “electronic cigarette” means a vaporizer 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 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;

“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 at 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 the 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.

“smoke” or **“smoking”** includes the holding of tobacco *or cannabis* or other lighted smoking material or equipment while the product is alight or emitting smoke;

“tobacco” includes pipe tobacco, water-pipe tobacco, cigarettes, cigars, cigarillos or any similar product made with or containing tobacco;

“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.

PROHIBITION

- 2.(1) No person shall smoke tobacco **or cannabis or vape** upon or within a public place.
- 2.(2) The prohibition in section 2.(1) above applies whether or not a “No Smoking” sign of any format or content is posted.
- 2.(3) No person shall remove a sign posted under this section while the prohibition remains in force.
- 2.(4) No person shall hinder or obstruct an authorized person lawfully carrying out the enforcement of this by-law.

OFFENCE and SET FINE

- 3.(1) Any person who contravenes a provision of this by-law is guilty of an offence and, upon conviction, is liable to a set fine of \$250.00.

ENFORCEMENT

- 4.(1) The provisions of this by-law respecting smoking in an outdoor public place shall be enforced by any authorized person as designated by the Niagara Region or an area municipality.

CONFLICTS

- 5.(1) If a provision of this by-law conflicts with an Act or a regulation or another by-law, the provision that is the most restrictive of smoking shall prevail.

SEVERABILITY

- 6.(1) If any section or part of this by-law are found by any Court of competent jurisdiction to be invalid, such section or part shall be deemed to be severable and all other sections of this by-law shall remain valid and enforceable.

ENACTMENT

- 7.(1) This by-law shall come into force on the day that it is approved in accordance with section 115(5) of the *Municipal Act, 2001*, S.O. 2001, C.25.

EFFECTIVE BY-LAW DATE

- 8. 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.

PASSED, a majority of the members of the Regional Council assenting hereto, this 10th day of October, 2013.

THE REGIONAL MUNICIPALITY OF NIAGARA

Original signed by:

(Gary Burroughs, Regional Chair)

Original signed by:

(Janet Pilon, Regional Clerk)