

**TOWN OF BATTLEFORD**

**BYLAW NO. 9-2018**

**THE SMOKING CONTROL BYLAW**

Whereas, under the provisions of Section 8(1)(b) of The Municipalities Act, bylaws may be passed by a municipality in relation to the safety, health and welfare of people and the protection of people and property;

And whereas, under the provisions of Section 8(1)(c) of The Municipalities Act, bylaws may be passed by a municipality in relation to people, activities and things in, on or near a public place or place that is open to the public;

And whereas, under the provisions of Section 8(1)(d) of The Municipalities Act, bylaws may be passed by a municipality in relation to nuisances, including property, activities or things that affect the amenity of a neighbourhood.

And whereas, under the provisions of Section 11 of The Tobacco Control Act, the Province of Saskatchewan has prohibited smoking in certain public places;

And whereas, Section 2-14 of The Cannabis Control (Saskatchewan) Act prohibits the consumption of cannabis in a public place or any place other than a private place;

And whereas The Town of Battleford wishes to enact a bylaw with more restrictive provisions than The Tobacco Control Act in respect of smoking in indoor and outdoor public places operated by the Town, outdoor seating areas, private clubs, restaurants and sidewalk cafes.

And whereas The Town of Battleford wishes to enact a bylaw to restrict the use of electronic cigarettes in the same manner as smoking is currently restricted under The Tobacco Control Act and existing bylaw provisions.

And whereas the Town of Battleford wishes to enact a bylaw to restrict the use of recreational cannabis in public places to prevent behaviours and conduct that may have a negative impact on the enjoyment of public places

Now therefore, the Council of The Town of Battleford enacts as follows:

## 1. Short Title

1. This Bylaw may be cited as The Smoking Control Bylaw.

## 2. Definitions

2. In this Bylaw,

- 2.1 “cannabis” means a cannabis plant as defined in The Cannabis Control (Saskatchewan) Act;
- 2.2 “Cannabis Act” means Bill C-45, An Act respecting cannabis and to amend the Controlled Drugs and Substances Act, the Criminal Code and other Acts, 1st Sess, 42nd Parl, 2018 (assented to 21 June 2018), SC 2018, c 16;
- 2.3 “cannabis plant” means a plant that belongs to the genus Cannabis;
- 2.4 “casino” means:
  - 2.4.1 a casino as defined in The Saskatchewan Gaming Corporation Act; or
  - 2.4.2 an enclosed place or premises for which a casino licence has been issued by the Liquor and Gaming Authority;
- 2.5 “electronic cigarette” means a handheld device containing a liquid that is vapourized and inhaled, and includes but is not limited to electronic cigarettes, e-cigarettes, vapourizer cigarettes, personal vapourizers and electronic nicotine delivery systems;
- 2.6 “electronic cigarettes retailer” means a fully enclosed premises where the sole function of the premises is the sale of electronic cigarettes and electronic cigarette products, and for which a valid Town business licence has been issued pursuant to Bylaw No. 6/1996 amended by 34/2009,
- 2.7 “enclosed public place” means all or any part of a building or other enclosed place that is open to the public or to which the public is customarily admitted or invited and includes:
  - 2.7.1 an outdoor bus shelter;
  - 2.7.2 a public building or facility, or any part of a public building or facility, that is rented out for private events;
  - 2.7.3 a vehicle that:
    - 2.7.3.1 is used or made available for public transit or as a commercial vehicle; and is used to transport members of the public; but only during any period that the vehicle is made available for hire, including any break period;
  - 2.7.4 a building, enclosed place or facility owned or leased by a private club that restricts admission to members and guests;
  - 2.7.5 any prescribed building, place, facility or vehicle or class of prescribed buildings, places, facilities or vehicles;
  - 2.7.6 the common areas of a multi-unit residential building.

- 2.8 “licensed premises” means any of the following places or premises:
- 2.8.1 the portion of an enclosed public place or premises for which a restaurant permit, tavern permit or special use permit has been issued pursuant to The Alcohol and Gaming Regulation Act, 1997; or
  - 2.8.2 the portion of a tent or other portable shelter used in connection with a community event that is open to the public or to which the public is customarily admitted or invited and for which a permit or an endorsement or extension to an existing permit has been issued pursuant to The Alcohol and Gaming Regulation Act, 1997;
- 2.9 “outdoor public event” means any outdoor area of Town owned, controlled or operated property including any sidewalk or street, being used for any public event where the public is invited to gather, including but not limited to:
- 2.9.1 a market, contest, festival, celebration, fair, exhibition or concert; or
  - 2.9.2 an outdoor public event held on any Town property which is leased to a third party; or
  - 2.9.3 any event for which a Town rental or use permit is required;
- 2.10 “outdoor public place” means any outdoor space owned or operated by the Town of Battleford that is open to the public or to which the public is customarily admitted or invited, and includes parks, swimming pools, playgrounds, outdoor sports-fields, public squares or recreation areas, but does not include streets or sidewalks;
- 2.11 “outdoor seating area” means an outdoor area or structure commonly referred to as a patio, deck, terrace or rooftop, whether enclosed or not, that is open to the public or to which the public is customarily admitted or invited that is operated as part of a restaurant or licensed premises, but does not include an outdoor area or structure made available by a restaurant or licensed premises if:
- 2.11.1 there is no seating of any kind provided in the area or on the structure;
  - 2.11.2 there is no service of any kind provided in the area or on the structure; and
  - 2.11.3 there is no food or drink permitted in the area or on the structure at any time;
- 2.12 “private club” means an enclosed place or premises that operates solely for the benefit and pleasure of the members of a non-profit corporation or service club and to which a special use permit has been issued pursuant to The Alcohol and Gaming Regulation Act, 1997.

For greater certainty and for the purpose of enforcing the bylaw, a place or premise is considered to be a private club if the following criteria are met:

- 2.12.1 the club must have a fixed membership;
- 2.12.2 each member must pay an annual or periodic membership fee;

- 2.12.3 the club must have a board of directors or officers that are elected by all the members on an annual or periodic basis;
  - 2.12.4 the club must have a constitution or bylaws that provide the governing rules for the membership, officers, fees and the day-to-day operation of the club;
  - 2.12.5 the club must be a non-profit corporation or service club; and
  - 2.12.6 non-members cannot enter the premises unless accompanied by a member;
- 2.13 “proprietor” means a person who controls, governs or directs the activities carried on within the place or premises, and includes a person who is actually in charge of the place or premises at any particular time;
- 2.14 “public place” means:
- 2.14.1 a place or building to which the public has or is permitted to have access;
  - 2.14.2 a park, playground, cinema, outdoor theatre or other place of public resort or amusement;
  - 2.14.3 a highway, road, street, lane or thoroughfare;
  - 2.14.4 a sidewalk, walking trail, walking path or any other path or trail that the public may access to walk, run, or cycle
  - 2.14.5 any unoccupied land or building;
  - 2.14.6 in relation to a person who enters occupied land or an occupied building without the consent of the occupant, the land or building so entered;
  - 2.14.7 a conveyance while it is at, in or on any place, building, thoroughfare or land that by virtue of this definition is a public place;
  - 2.14.8 any other prescribed place; or
  - 2.14.9 any school and vehicle;
- 2.15 “Public Safety Officer” means the person appointed to the position of Public Safety Officer per Bylaw No. 2-2018
- 2.16 “restaurant” means any of the following places or premises:
- 2.16.1 an enclosed public place or premises for which a public eating establishment license has been issued pursuant to The Public Health Act, 1984; or
  - 2.16.2 the portion of a tent or other portable shelter used in connection with a community event that is open to the public or to which the public is customarily admitted or invited and for which a temporary food service license has been issued pursuant to The Public Health Act, 1984;

- 2.17 “school or independent school” means a school or an independent school as defined in The Education Act, 1995;
- 2.18 “sidewalk” means the part of the street adapted to the use of or ordinarily used by pedestrians;
- 2.19 “sidewalk cafe” means an outdoor area, located on a public sidewalk, to which members of the general public are invited or permitted access and which abuts and is operated as part of a restaurant;
- 2.20 “smoke” or “smoking” means:
- 2.20.1 inhaling or exhaling the smoke produced by burning or heating any tobacco or non-tobacco substance including cannabis whether or not it contains nicotine.
  - 2.20.2 holding or otherwise having control of any device or thing containing lit or heated cannabis;
- 2.21 “street” means a street as defined in The Municipalities Act;
- 2.22 “tobacco” means tobacco in any form in which it is used or consumed, and includes snuff and raw leaf tobacco, but does not include any food, drug or device that contains nicotine to which the Food and Drugs Act (Canada) applies;
- 2.23 “Town” means The Town of Battleford;
- 2.24 “vape or vaping” means the utilization of an electronic cigarette or any other heated smoking equipment used to vaporize any tobacco or non-tobacco substance including cannabis whether or not it contains nicotine.
- 2.25 “vehicle” means vehicle as defined in The Traffic Safety Act.

### **3. Interpretation**

- 3.1 This Bylaw is intended to supplement the legislative scheme established under Part III of The Tobacco Control Act and Part 2 of the Cannabis Control (Saskatchewan) Act.
- 3.2 The provisions of The Tobacco Control Act shall apply in The Town of Battleford, except as provided in Subsection (3.3).
- 3.3 In the event of a conflict between the provisions of this Bylaw and The Tobacco Control Act, the provisions of this Bylaw shall prevail provided the provisions of this Bylaw are more restrictive.
- 3.4 Whenever possible, the terms in this Bylaw shall have the same meaning as those terms are defined in The Tobacco Control Act.

#### **4. Scope**

- 4.1 This Bylaw applies with respect to places or premises operated as:
  - 4.1.1 entertainment, and hospitality establishments including but not restricted to casinos, restaurants, private clubs, and other such licensed and non-licensed premises whether they are indoors or outdoors;
  - 4.1.2 outdoor and indoor public places operated by the Town;
  - 4.1.3 outdoor public events;

#### **5. Smoking Prohibited**

- 5.1.1 No person shall smoke tobacco, hold lighted tobacco, or consume tobacco in any place or premises mentioned in Subsection 4.1.
- 5.1.2 No proprietor of a place or premises mentioned in Subsection 4.1 shall permit persons to smoke, hold lighted tobacco or consume tobacco within that place or premises.
- 5.1.3 In addition to those places or premises mentioned in Subsection 4.1, no person shall smoke and no proprietor shall permit persons to smoke in the following places or premises:
  - 5.1.3.1 an enclosed public place that is a school or an independent school or on the grounds surrounding a school or an independent school;
  - 5.1.3.2 in an enclosed public place other than a school or an independent school;
  - 5.1.3.3 within six metres from a doorway, window or air intake of an enclosed public place mentioned in clause 2.14; or
  - 5.1.3.4 any vehicle while another person who is under the age of 16 years is present in the vehicle.
- 5.1.4 Subsection 5.1.3 does not apply to
  - 5.1.4.1 a separate enclosed ventilated place that is within:
    - 5.1.4.1.1 a facility designated as a special-care home pursuant to The Regional Health Services Act; or
    - 5.1.4.1.2 a personal care home as defined in The Personal Care Homes Act that offers care and accommodation to more than 10 persons; and
    - 5.1.4.1.3 a child care facility that is a group family child care home or a licensed family child care home during the times that no child care services are being provided in the facility.

- 5.1.5 Nothing in this Bylaw prohibits a person from smoking or holding lighted tobacco or tobacco-related products in a Town-owned public place for traditional Aboriginal spiritual or cultural practices or ceremonies, if the use of tobacco or tobacco-related products is an integral part of the traditional Aboriginal spiritual or cultural practices or ceremonies being carried out in the Town-owned public place.

### **Vaping Prohibited**

- 5.2.1 No person shall vape in any place or premises mentioned in Subsection 4.1.
- 5.2.2 No proprietor of a place or premises mentioned in Subsection 4.1 shall permit persons to vape within that place or premises.
- 5.2.3 In addition to those places or premises mentioned in Subsection 4.1, no person shall vape and no proprietor shall permit persons to vape in the following places or premises:
- 5.2.3.1 an enclosed public place that is a school or an independent school or on the grounds surrounding a school or an independent school;
  - 5.2.3.2 in an enclosed public place other than a school or an independent school;
  - 5.2.3.3 within six metres from a doorway, window or air intake of an enclosed public place mentioned in clause 2.14; or
  - 5.2.3.4 any vehicle while another person who is under the age of 16 years is present in the vehicle.
- 5.2.4 Subsection 5.2.3 does not apply to:
- 5.2.4.1 a separate enclosed ventilated place that is within:
    - 5.2.4.1.1 a facility designated as a special-care home pursuant to The Regional Health Services Act; or
    - 5.2.4.1.2 a personal care home as defined in The Personal Care Homes Act that offers care and accommodation to more than 10 persons; and
    - 5.2.4.1.3 a child care facility that is a group family child care home or a licensed family child care home during the times that no child care services are being provided in the facility.

### **Vaping Exemption**

- 5.3.1 Nothing in this Bylaw prohibits a person from using an electronic cigarette for the sole purpose of testing the device, or sampling products used with the device, prior to purchase within an electronic cigarettes retailer.

5.3.2 The burden of proving that an exemption under subsection (5.3.1) applies in a particular case is on the person alleging such exemption on a balance of probabilities.

### **Cannabis Prohibited**

5.4.1 No person shall smoke cannabis, hold lighted cannabis product, or consume any cannabis product in any public place or any other place other than a private place except as allowed per The Cannabis Control (Saskatchewan) Act, regulations prescribed pursuant to that Act, or an Act of the Parliament of Canada.

5.4.2 No proprietor of a place or premises mentioned in Subsection 4(1) shall permit persons to smoke cannabis, hold lighted cannabis product, or consume any cannabis product within that place or premises.

5.4.3 In addition to those places or premises mentioned in Subsection 4(1), no person shall consume cannabis products and no proprietor shall permit persons to consume cannabis products in the following places or premises:

5.4.3.1 an enclosed public place that is a school or an independent school or on the grounds surrounding a school or an independent school;

5.4.3.2 in an enclosed public place other than a school or an independent school;

5.4.3.3 in any vehicle;

5.4.3.4 Any other public place.

5.4.4 The consumption of any cannabis product in a manner that adversely affects the safety, health, or welfare of people or of people's reasonable use and enjoyment of their property is prohibited.

### **Medical Cannabis**

5.5.1 A person who is entitled to possess cannabis pursuant to a medical document issued according to the Access to Cannabis for Medical Purposes Regulations, is not subject to this Bylaw.

5.5.2 A person referred to in Subsection (5.5.1) must, on demand of an officer, produce a copy of the person's medical document.

### **6. Signs Required**

6.1 Every proprietor of a place or premises mentioned in Subsection 4(1) shall ensure that signs containing a statement respecting the prohibition against smoking or holding lighted tobacco are posted in the place or premises.

6.2 For the purposes of Subsection (6.1), "statement respecting the prohibition against smoking or holding lighted tobacco" includes a depiction of the international no smoking symbol as set out in the Appendix to The Tobacco Control Regulations, RRS c T-14.1 Reg 1.

- 6.3 A sign that is required to be posted pursuant to Subsection (6.1) shall comply with Subsection 6(2) of The Tobacco Control Regulations, RRS c T-14.1 Reg 1.

## **7. Ashtrays Prohibited**

7. Every proprietor of a place or premises mentioned in Subsection 4(1) shall ensure that ashtrays and similar products associated with the use of tobacco, vaping, and cannabis are not available for use in the place or premises.

## **8. Inspections**

8. For the purpose of determining if the provisions of this Bylaw are being complied with, inspections of places or premises mentioned in Subsection 4(1) are hereby authorized.

## **9. Appointment of Bylaw Enforcement Officers**

9. The following persons are appointed as bylaw enforcement officers and are designated to carry out inspections for the purpose of administering and enforcing this Bylaw:

- 9.1 a member of the RCMP;
- 9.2 a person designated as a tobacco enforcement officer pursuant to Section 16 of The Tobacco Control Act;
- 9.3 a person designated as a cannabis enforcement officer pursuant to Section 4-2 of The Cannabis Control Act
- 9.4 a person designated as a public health officer pursuant to Section 11 of The Public Health Act, 1994; and
- 9.5 The Public Safety Officer appointed by the Town for the purpose of administering and enforcing the bylaws of the Town of Battleford.

## **10. Powers of Bylaw Enforcement Officers**

10. For the purpose of administering and enforcing this Bylaw, a bylaw enforcement officer, the Public Safety Officer, may do any or all of the things authorized by Section 362 of The Municipalities Act.

## **11. Obstruction, False Statement, etc. Prohibited**

- 11.1 No person shall obstruct a bylaw enforcement officer who is acting pursuant to the authority of this Bylaw.

- 11.2 No person shall knowingly make a false or misleading statement to a bylaw enforcement officer or produce a false document or thing to a bylaw enforcement officer.

## **12. Sign Removal, Alteration, etc. Prohibited**

12. No person shall remove, cover up, mutilate, deface or alter any sign required pursuant to this Bylaw to be posted or displayed.

## **13. Evidence**

13. In a prosecution for an offence pursuant to this Bylaw, the trial judge may infer that any substance or object in question is tobacco or cannabis within the meaning of this Bylaw from the fact that a witness describes it as tobacco or cannabis by a name that is commonly applied to tobacco or cannabis.

## **14. Disposition of Property Seized**

14. Where a person is convicted of an offence pursuant to this Bylaw, the convicting judge may make an order for the disposition of any substance or thing seized in relation to the contravention that the judge considers appropriate.

## **15. Offences and Penalties**

- 15.1 Every person who contravenes Subsection 5.1.1, 5.2.1, 5.4.1, or 5.4.4 of this Bylaw is guilty of an offence and liable on summary conviction to a fine of not more than \$1,000.
- 15.2 Every person who contravenes Subsection 5.1.2, 5.2.2, 5.4.2 or Section 6 or 7 of this Bylaw is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000.
- 15.3 Every person who contravenes Section 11 of this Bylaw is guilty of an offence and liable on summary conviction to a fine of not more than:
- 15.3.1 in the case of a first offence, \$3,000; and
  - 15.3.2 in the case of a second or subsequent offence, \$5,000.
- 15.4 Every person who contravenes Section 12 of this Bylaw is guilty of an offence and liable on summary conviction to a fine of not more than \$3,000.
- 15.5 In default of payment of a fine imposed pursuant to Subsection (15.1), (15.2), (15.3) or (15.4), the individual convicted may be imprisoned for a term of not more than 90 days.

- 15.6 Notwithstanding Subsection (15.1), in the case of a contravention of Subsection 5.1.1, 5.2.1, 5.4.1, or 5.4.4, a bylaw enforcement officer shall issue a notice of violation to the person contravening the Bylaw, which notice shall provide that, if the person pays the Town the sum of \$200 within 14 calendar days of the date of the notice of violation, the person shall not be prosecuted for the contravention.
- 15.7 Notwithstanding Subsection (15.2), in the case of a contravention of Subsection 5.1.2, 5.2.2, 5.4.2 or Section 6 or 7, a bylaw enforcement officer shall issue a notice of violation to the person contravening the Bylaw, which notice shall provide that, if the person pays the Town the sum of \$500 within 14 calendar days of the date of the notice of violation, the person shall not be prosecuted for the contravention.
- 15.8 Notwithstanding Subsection (15.4), in the case of a contravention of Section 12, a bylaw enforcement officer shall issue a notice of violation to the person contravening the Bylaw, which notice shall provide that, if the person pays the Town the sum of \$200 within 14 calendar days of the date of the notice of violation, the person shall not be prosecuted for the contravention.
- 15.9 The amounts referred to in Subsections (15.6), (15.7) and (15.8) may be paid:
- 15.9.1 in person, during regular office hours, to the cashier located at Town Hall, 91-24th St. West Battleford, Saskatchewan, S0M 0E0;
  - 15.9.2 by deposit, at the depository located at the main entrance to Town Hall, 91-24th St. West Battleford, Saskatchewan, S0M 0E0; or
  - 15.9.3 by mail addressed to the, Town of Battleford, Box 40, Battleford, Saskatchewan, S0M 0E0.
- 15.10 The date of payment shall be determined as follows:
- 15.10.1 for payment in person, the date of payment shall be the date the payment is received by the Town;
  - 15.10.2 for payment by deposit, the date of payment shall be the date payment is deposited in the depository at Town Hall; and
  - 15.10.3 for payment by mail, the date of payment shall be the date of the federal post mark on the remittance.

## **16. Severability**

16. A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any provision of this Bylaw shall not affect the validity of the remaining parts of this Bylaw.

This Bylaw shall come into force on the day the Cannabis Act comes into force.

Read a first time this \_\_\_\_\_ day of \_\_\_\_\_.

Read a second time this \_\_\_\_\_ day of \_\_\_\_\_.

Read a third time and passed this \_\_\_\_\_ day of \_\_\_\_\_.

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MAYOR

(SEAL)

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CHIEF ADMINISTRATIVE OFFICER