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PUBLIC HEALTH GUIDANCE FOR MUNICIPALITIES ON THE IMPLEMENTATION OF LEGALIZATION OF CANNABIS

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NEW

INTRODUCTION

Simcoe Muskoka District Health Unit (SMDHU) offers this guidance document to assist municipalities to consider a public health perspective in the implementation of legalization of cannabis. This evergreen document will be updated or revised by SMDHU based on new provincial legislation or municipal request. **The Public Health Guidance for Municipalities on the Implementation of Legalization of Cannabis**, which will be hereafter be referred to as the Guidance Document, highlights considerations for opting in or opting out of cannabis retail stores, and three areas of potential public interest feedback within municipal responsibility as identified by the Alcohol and Gaming Commission of Ontario (AGCO): a) public health and safety, b) protecting youth and restricting their access to cannabis, and c) preventing illegal activities in relation to cannabis, from the perspective of protecting public health and by-law options.

This guidance document will focus on the public health considerations of municipal interest when addressing legalization of cannabis based on current knowledge and understanding of cannabis legalization and impacts.

To be able to provide the most accurate and reliable information, SMDHU has consulted with a law firm to provide a legal opinion on the above decisions and considerations required of the municipalities. Their legal opinion has been embedded and referenced throughout the document.

Along with this document, SMDHU will provide support to municipalities upon request through discussion, presentations and updates to municipal staff and councillors.

This document will support municipalities when considering the following three areas, from a public health perspective:

- A. Opt in or out option for retail cannabis stores,
- B. Feedback on proposed locations of retail sites to the AGCO on three focused areas of public interest, and
- C. Consideration of current and potential revisions to current smoking by-laws.

Future potential additions to the guidance document could include: funding sources and expenses, tracking health impacts of legalization and subsequent local decisions, and cannabis marketing.

THE SMDHU PUBLIC HEALTH APPROACH TO CANNABIS

During the nearly 100 years of the criminalization of cannabis in Canada, research on cannabis risks and benefits has been restricted and limited. Currently, there is limited conclusive evidence about the potential positive and negative health outcomes related to cannabis use. Acknowledging the current research limitations, and to protect the public's health until further evidence is available, SMDHU encourages a cautionary and harm reduction approach to recreational adult cannabis use, with a focus on preventing youth access to cannabis and encourage a harm reduction approach for youth who use cannabis. SMDHU harm reduction recommendations related to cannabis use echo [Canada's Lower Risk Cannabis Use Guidelines](#) and include recommendations such as "delay use past adolescence, start low and go slow, don't mix drugs, and plan for a safe ride" found on the SMDHU webpage [cannabis key messages](#).

Over time, knowledge and evidence will grow regarding general cannabis use and its specific health issues and benefits which will enable public health to provide more specific recommendations about the safe use of cannabis.

The early years of cannabis legalization will be a period of evolution. To support municipalities as they navigate this period, SMDHU will update this document with new information about cannabis legalization, local data and other health information related to cannabis regulation for municipal consideration as it becomes available.

This guidance document is a tool to assist municipalities to consider a public health approach within their decision making process. It can help councils meet requirements of legalization of cannabis in a manner that is respectful of individual choices about use, and insures that the health risks of cannabis use are minimized, especially to youth and others at higher risk. A public health approach for cannabis use within a municipality would include identifying groups vulnerable to health harms and/or social harms within a community (i.e. youth) and to engage in municipal policy creation that decreases exposure and risk of harm (i.e. restricting tobacco and cannabis smoke and vapour on all municipal park land). Taking a public health approach from the inception of the legalization of cannabis is not an experience Canada, and therefore the County and District, has had with other legally used substances (i.e. alcohol and tobacco) and presents a unique opportunity for municipalities to have direct and specific influence on the health and wellness of individuals and the general community.

BACKGROUND INFORMATION

Cannabis Legalization and Municipalities

On October 17, 2018, the federal Cannabis Act was enacted. This Act puts in place a strict framework for controlling the production, distribution, sale and possession of cannabis in Canada. In response to federal cannabis legalization, the Ontario government passed Bill 36, the Cannabis Statute Law Amendment Act (Cannabis Control Act), 2018,¹ which received Royal Assent on October 17, 2018. This provincial Bill amends a number of statutes, including the Smoke-Free Ontario Act (SFOA), 2017,² and Ontario *Cannabis Retail Corporation Act, 2017, (OCRC Act)*³ in relation to the use and sale of cannabis and vapour products in Ontario.

The provincial government has established a regulatory framework (O. Reg. 468.18) under the recently passed Cannabis Licensing Act, 2018, that provides further clarity on how these private businesses will be licensed and regulated by the Alcohol and Gaming Commission of Ontario (AGCO). These regulations deal with various elements of the retail regime including matters in which municipal governments may have an interest.

Under Bill 36, municipalities have limited but specific opportunities to influence the impact of the Ontario cannabis retail model within their boundaries, including whether the community will opt out of cannabis retail outlets and enhancing or passing by-laws about places of use. The Association of Municipalities Ontario (AMO) identifies the implications of legalization into four primary municipal areas of interest: emergency services, economic development, public safety, and public health, as priority considerations in municipal decision making about cannabis.⁴

The most recent release from Health Canada on the Federal Data on Tobacco, Alcohol and Drug use further supports the need to address health aspects of cannabis use within our communities.⁵ The report identifies tobacco as the leading preventable cause of premature death and disease and increasing use of cannabis use among adults aged 25 or older in Canada.⁵ Implementing the following public health goals of avoiding normalization, protecting vulnerable populations and ensuring safe legal access for those who choose to use, can appear to be incongruent with legalization. The Simcoe Muskoka District Health Unit will continue to keep abreast of the legalization of cannabis as it pertains to health and SFOA enforcement best practices, research and evaluation at local and provincial levels recognizing the complex mosaic of needs, expectations, and readiness for change that municipalities face as they make decisions related to cannabis.

Cannabis Control Act, 2018 Summary

The following is a brief summary of the Cannabis Control Act, 2018¹ also known as [Bill 36, Cannabis Statute Law Amendment Act](#), which is the law governing the use and sale in Ontario of cannabis and vapour products.

Please see link for the document; [Bill 36, Cannabis Statute Law Amendment Act](#)

The Acts amended by Bill 36:

- a) Cannabis Act, 2017 (renamed the Cannabis Control Act, 2018)
- b) [Cannabis Licence Act, 2018](#) (enacted)
Newly released [Ontario Regulation 468/18](#)
- c) Ontario Cannabis Retail Corporation Act, 2017⁻³
- d) Liquor Control Act ([2018, c. 12, Sched. 3, s. 18.](#))
- e) Smoke-Free Ontario Act, 2017²
- f) Highway Traffic Act

Highlights from the Cannabis Control Act, 2018 (1)

- Adults age 19 and older can possess up to 30 grams of dried cannabis (or the equivalent in non-dried form) in a public place.
- Medical users can be age 18 and they can possess more (150 grams).
- Packaging and labelling of cannabis will include:
 - the ratio of tetrahydrocannabinol (THC) to cannabidiol (CBC)
 - will not have graphics that appeal to youth and
 - will not have lifestyle representations.
- Adults age 19 and older can share up to 30 grams of cannabis with other adults. There are severe penalties if shared with youth under age 18, plus additional penalties under provincial law if shared with youth under age 19.
- Purchase of legal recreational cannabis, as of October 17, 2018, is only available online through the Ontario Cannabis Retail Corporation (OCRC) with delivery by courier. Recipient must prove age of 19 or over.
- Retail storefronts can open on April 1, 2019. Cannabis sold in retail outlets is legal only if purchased through provincially approved sources.
- Growing up to four cannabis plants per residence is permitted for personal use (not for distribution). Seeds must be purchased from the OCRC.
- Adults can make cannabis products such as food/edibles or drinks, however the retail sale of edibles and cannabis concentrates, such as hashish, will be delayed for approximately one year.
- Use of smoked or vaped cannabis will be allowed wherever tobacco use is permitted under the [Smoke-Free Ontario Act, 2017.](#)⁻² Municipalities will be able to expand restrictions through by-law creation.
- Medical cannabis has additional allowances under the federal Cannabis Act.
- Retailers require a retail operator's license to sell cannabis.

Retail Sale of Cannabis in Ontario

As of October 17, 2018, Ontario residents who are 19 years or older are able to order cannabis legally from the Ontario Cannabis Retail Corporation (OCRC). The OCRC is the only legal distributor for wholesale cannabis to retailers and the online retailer of recreational cannabis products to the public until April 2019, when private cannabis retail outlets will open in some communities.

The newly enacted [Cannabis Licence Act, 2018](#),⁶ authorizes the Alcohol and Gaming Commission of Ontario (AGCO) to [license and regulate private cannabis retail](#)⁷ in the province. Responsibility for inspections and enforcement of the Act are the AGCO and local police forces. The AGCO will license retail store operators, managers and those in senior positions according to set protocols, as well as authorize the proposed cannabis retail site. Under the Act, store locations must be a minimum distance of 150 metres from a school property line. There is no cap on the number of storefronts. Retail stores cannot operate outside of the hours 0900-2300 daily. Should retail stores proceed with the sale of vapour products for vaping of cannabis, health unit tobacco enforcement staff will likely be required to inspect for compliance with the vapour products regulations contained in the Smoke-Free Ontario Act, 2017.

On December 14, 2018 the AGCO announced they will be taking steps to open retail stores in phases. Initially 25 retail stores will receive licences to begin operation on April 1, 2019. The County of Simcoe and District of Muskoka are within the east region of Ontario. Five licences will be approved for the east region, based on a lottery system to determine who is eligible for the initial licences to legally operate retail store. Expression of interest by potential retailers must be submitted from January 7–9, 2019. During this initial phase, store locations must be in a municipality with a population of more than 50,000.²⁰

Municipalities may opt out of having private cannabis retail outlets in their communities. For those who wish to do so, the deadline is January 22, 2019. This opt out resolution is sent to the AGCO, which will cancel any applications for storefronts in said municipality. A municipality that has opted out can opt back in at a later date. Any decision to opt in, either by default or subsequent to opting out, is final.

For municipalities that have not opted out of having private cannabis retail outlets in their communities, the location of outlets will be approved by the AGCO. The AGCO will provide municipal governments and the public with a 15 day notice period where they can provide comment on the proposed store site. Feedback will be considered only if it is related to public health and safety, protecting youth and restricting their access to cannabis, and preventing illegal activities in relation to cannabis. More information on this process is pending.

The legislation does not permit municipalities to utilize licensing or land-use by-laws to control the placement or number of cannabis retail outlets. Organizations such as the Association of Municipalities Ontario continue to advocate that municipalities are given greater opportunity to influence cannabis retail outlet locations and density.⁸

The Ontario provincial government has outlined financial support to municipalities that chose to opt in or opt out of retail stores to assist in the implementation of legalization of cannabis. Municipalities must use and report on the provincial funding received to address the implementation costs that directly relate to the legalization of recreational cannabis. Examples of permitted costs include:

- Increased enforcement (e.g. police, public health and by-law, court administration, litigation)
- Increased response to public inquiries (e.g. emergency calls, correspondence)
- Increased paramedic services, increased fire services
- By-law/policy development (e.g. police, public health, workplace safety policy).

Minister of Finance Honorable Vic Fedeli is requesting that the Association of Municipalities of Ontario and the City of Toronto work to establish a process by which a sample group of municipalities can assess the use and impact of these funds.¹⁷

Smoke-Free Ontario Act, 2017 Protections

The Smoke-Free Ontario Act, 2017,² prohibits the smoking of tobacco, the use of electronic cigarettes (e-cigs, vapes) to vape any substance and the smoking of cannabis (medical or recreational) in enclosed workplaces and enclosed public places, as well as other designated indoor and outdoor places in Ontario. This regulation is to protect workers and the public from second-hand smoke and vapour.

Smoking refers to the smoking or holding of lighted tobacco or cannabis (medical or recreational).

Vaping refers to inhaling or exhaling vapour from an electronic cigarette or holding an activated electronic cigarette, whether or not the vapour contains nicotine. The Act also bans the use of all lighted tobacco, including tobacco in hookah/shisha pipes.

The Smoke-Free Ontario Act, 2017,² makes it illegal to smoke tobacco, use electronic cigarettes (e- cigs, vapes) to vape any substance, and the smoking and vaping of cannabis (medical or recreational) in the following locations:

- Inside any enclosed workplace or enclosed public place including work vehicles
- Within the indoor common areas of college and university residences, condominiums, and apartment buildings
- Inside a bar and restaurant as well as on all restaurant and bar patios, and public places within a nine-meter radius of the perimeter of patio
- At public or private schools, including the grounds associated with the school, and public areas within 20 metres of any point on the perimeter of the grounds of the school
- At community recreational facilities, including the grounds associated with the recreational facility, and public areas within 20 metres of any point on the perimeter of the grounds of its grounds (a community recreational facility is an enclosed public place or enclosed workplace that offers athletic and recreational programs to the local community and is owned or operated by a municipality, the province, a not-for-profit corporation, or an organization registered as a charity)
- On a children's playground or in public spaces within 20 metres of the perimeter of a playground
- On a publically-owned outdoor sporting area, spectator area next to sporting areas and public spaces within 20 metres of any point of the edge of the sporting or spectator areas
- In a car or other motor vehicle with anyone under 16 years old in the vehicle. No one in a motor vehicle (including motorized snow vehicles such as snowmobiles) or boat that is being driven, or is at risk of being put into motion, can consume cannabis in any manner (smoking, vaping, eating), these provisions enforced by police only
- At child care centres, a place where licensed home child care is provided, or a place where an early years program or service is provided
- Within guest rooms in hotels, motels and inns that are designated smoke-free/vape-free
- On the grounds of all hospitals and within nine metres of any entrance or exit of a public or private hospital, psychiatric facility, long-term care home or independent health facility and within those buildings
- In the reserved seating area of outdoor sports arenas or entertainment venues
- Sheltered areas that have more than two walls and a roof and to which the public and employees are invited (including a bus shelter)
- On the grounds of certain government buildings as set out in the Act's regulation

It is illegal to sell tobacco or vapour products of any kind in the following locations:

- College, university or private school campuses
- Child care centres and a place where home child care is provided
- Public and private hospitals and psychiatric facilities
- Pharmacies
- By vending machine

The Act provides protection for home health-care workers. They have the right to ask a person not to smoke or vape in their presence while they are providing health care services.

Traditional Use of Tobacco

Traditional use of tobacco by Indigenous persons is permitted for traditional Indigenous cultural or spiritual purposes and for non-Indigenous people who are participating in an activity being carried out by an Indigenous person.

PART A - ALLOWING RETAIL STORES OR OPT OUT OF ALLOWING RETAIL STORES

Municipalities need to decide whether to allow retail stores or to opt out of allowing retail stores selling cannabis in their jurisdiction. If a municipality chooses to opt out, a resolution must be passed and notification sent to the Registrar of the AGCO by January 22, 2019.

Unless a municipal government opts out as per Ontario Regulation 468/18 s. 22, they will be considered to have opted in to recreational cannabis retail sale by default.

The Alcohol and Gaming Commission of Ontario has released the criteria for retail sites on December 4, 2018, in the follow document, Registrar's Standards for the Private Retail Sale of Cannabis.⁹

To protect youth, the provincial cannabis retailing regulations include a 150-metre buffer area for cannabis stores to keep them separated from schools. No buffers from any other use has been specified by the regulations.

The following tables outline potential positive and negative outcomes from a public health perspective and a column for municipalities to identify their local perspectives for the opt-in or out option.

Public Health Considerations

Not Allowing Retail Stores - The Opt Out Option		
Potential Positive Outcome	Potential Negative Outcome	Local Perspectives
Will prevent any concerns of having retail outlets in proximity to sensitive use spaces increases normalization among sensitive populations, such as young persons.		
	Opting out may not decrease cannabis use and its impact on the community since it can be purchased on line or in other municipalities.	
Will avoid higher retail outlet density and retail hours that may contribute to increased consumption and related harms.		
Retail sales will not occur at licensed producers in the opted-out municipality ^{8,18}		
The municipality would keep its options open, as an initial decision to “opt out” can be reversed later. ¹⁶		
	Opting out could continue the demand on the illegal market and/ or limit ability to control youth access. May not decrease cannabis use and its impact on the community but could result in demand for the substance shifting to the illegal market.	

Not Allowing Retail Stores - The Opt Out Option

	<p>For consumers who already use, in the absence of physical retail outlets the demand for the illegal cannabis market will likely remain.</p>	
	<p>Opting out can be reversed after January 22, 2019; however, the municipal government will not gain any additional funding from the Ontario Cannabis Legalization Implementation Fund (OCLIF) than it had as of January 22, 2019, when it opted out. Municipalities that have opted-out would receive only a second \$5,000 each for a minimum total of \$10,000, with no share of tax revenue thereafter, even if the municipality decides to opt in at a later date. ¹⁶</p>	
	<p>Opting out will restrict provincial funding to respond to costs municipalities may incur related to legalization of cannabis since residents can grow plants in their residence and purchase on line.</p>	
	<p>Individuals without a physical address, access to transportation or a credit card, will likely not be able to access regulated products, and only have access to the illegal cannabis market, creating demand for the illegal market, inviting illicit criminal activities to enter the municipality, and putting themselves at risk by consuming unregulated products and the risks associated with those products such as unknown potency, therefore decreasing their ability to use safely and manage usage.¹⁶</p>	

Not Allowing Retail Stores by January 22, 2019 - The Opt out Option with potential to Opt in at a later date

Potential Positive Outcome	Potential Negative Outcome	Local Perspectives
<p>Taking more time would allow determinations:</p> <ul style="list-style-type: none"> a) of how and to what extent the Registrar of the AGCO may require compliance with local rules (zoning restrictions and general business licensing requirements) ¹⁶ b) further information and clarifications from the Provincial Government, in the form of regulations with respects to AGCO duties respecting retail licenses and site authorization. ¹⁶ 		
	<p>Opting out will limit funding from the province to \$10,000 with no share of tax revenue thereafter, even if the municipality decides to opt in at a later date. ¹⁷</p>	

Allow Retail Stores – The Opt In Option

Potential Positive Outcome	Potential Negative Outcome	Local Perspectives
Access to retail stores may assist in diverting people from purchasing from illicit market. ¹⁰		
	The decision is final and irreversible such that a municipality would no longer have the ability to “opt out” again	
	The Cannabis Licence Act 2018 does not allow municipalities to utilize licensing or land-use by-laws to control placement or number of retail outlets.	
	Concerns from residents, sent in during the 15 day consultation period, do not need to be acted upon by the AGCO.	
	By opting out, the municipality determines its own future by opting to impose a general ban of retail cannabis locations anywhere within its boundaries. ¹⁶	
	No further buffer zones beyond the 150 m to schools have been specified by the regulations. ¹¹	
<p>Access to additional provincial funds.</p> <p>Funding from the province is used to address implementation costs associated with cannabis legalization in four areas: increase enforcement,</p>		

Allow Retail Stores – The Opt In Option

paramedic and fire services, increase response to public inquiries and by-law/policy development.		
Residents and municipality have opportunity to share their views with the AGCO before a retail store is authorized to influence the authorization of a retail licence.		
Municipalities will be able to identify local sensitive areas by completing the Municipal Cannabis Retail Policy Statement regarding identification and mapping of local sensitive areas as recommended by the AMO. ¹¹		
Able to access additional funding at a later date out of a portion of any surplus excise taxes collected during the first two years of legalization. ¹⁶		
Municipalities that opt-in by January 22, 2019, are eligible for the maximum funding proposed through the Ontario Cannabis Legalization Implementation Fund (OCLIF). ¹⁶		
The provincial government is considering setting aside a certain portion of the municipal funding in each of 2018-19 and 2019-20 for unforeseen circumstances, and priority would be given to municipalities that have not opted-out. ¹⁶		
The Association of Municipalities of Ontario (AMO) has stated it will continue to seek opportunities of municipal influence over store locations and density. ¹⁶		
Economic growth may occur with the potential creation of jobs and economic benefits that could augment the income of some families.		

PART B - PROVIDING FEEDBACK TO AGCO RE: LOCATION OF RETAIL STORES

Regulating the availability of cannabis is important to reduce the negative impacts of cannabis use in Simcoe Muskoka communities.¹² Lessons from alcohol and tobacco have shown that increased availability to a substance results in increased consumption, which can lead to significant health and social harms and costs.^{13, 14}

For those municipalities that have made the decision to allow retail cannabis stores, they will be given the opportunity to provide feedback to the AGCO on proposed applications to open retail site(s) during the 15-day comment period for the public and municipal governments to provide input on proposed locations before granting a licence.

AMO suggests that a 'Municipal Cannabis Retail Policy Statement' be adopted by council. Such a policy statement could address what it sees as significant local sensitive uses. A policy statement may identify specific sensitive uses and express some parameters to consider proximity to these sensitive areas, or may set out concerns regarding store concentration in certain areas of their communities, see Appendix A. This statement would provide direction to municipal staff input to the AGCO within its 15-day review period for each store site being proposed by an approved operator.

At this time, the municipal government will not be provided pre-notification of the application, but can make comments about whether the proposal is in the public interest as described by regulation.

AGCO has recommended that municipalities identify a key senior staff lead for proposed cannabis store notices from AGCO. This key contact should be able to gather information from various municipal departments as necessary, provide maps and be able to convey council policy.

Steps to be taken by municipalities:

- Pass a Municipal Cannabis Retail Policy Statement
- Identify key senior staff lead
- Request health unit support if desired
- Provide feedback during the 15-day period related to the three areas outlined by AGCO: ¹⁹
 1. public health and safety
 2. protecting youth and restricting their access to cannabis, and
 3. preventing illegal activities in relation to cannabis.

Area of Feedback Focus	Considerations for Feedback	Local Perspectives and Unique Factors
1. Public health and safety	<ul style="list-style-type: none"> • # of stores, density ratio between # of stores and population and distance between potential cannabis stores (rationale: high retail outlet density can contribute to increased consumption and harms). 13,15 • Prevention of clustering of potential cannabis store and retail outlets selling tobacco and alcohol, as increased availability and exposure of substances result in increased consumption which can lead to significant health and social harms and costs. 13,15 • By identifying sensitive areas (groups vulnerable to health and social harms), municipalities can comment on the location of potential cannabis stores in relation to vulnerable populations (rationale: retail outlet proximity to sensitive areas may negatively influence vulnerable residents). Some examples: addictions facilities, mental health facilities, correctional facilities as well as Georgian College locations (which prohibits the use, consumption, growing and cultivation of recreational cannabis). • If the issuance of a retail store authorization in respect of a proposed store is not in the public interest, having regard to the needs and wishes of the residents of the municipality in which the proposed cannabis retail store would be located 	
2. Protecting youth and restricting their access to cannabis	<ul style="list-style-type: none"> • Distance beyond 150m between potential cannabis store and schools, recreational centers or any place children and youth congregate or attend (rationale: retail outlet proximity to youth- serving facilities can normalize and increase substance use) 15 • Local sensitive areas of concerns • Concerns related to cannabis promotion or advertising 	
3. Preventing illegal activities in relation to cannabis	<ul style="list-style-type: none"> • Local sensitive areas of concerns • Reporting of illegal dispensaries • Current location and amount of illegal activities 	

PART C – MUNICIPAL CONSIDERATIONS UNDER THE SMOKE-FREE ONTARIO ACT, 2017 AND MUNICIPAL ACT, 2001

A. Requests for Service (including referrals from municipal partners)

The health unit's tobacco enforcement team responds to all complaints (including anonymous complaints) and requests for service within seven business days. These include requests for signage, complaints related to smoking or vaping in a prohibited place or area, youth accessing tobacco and vapes in the community, etc. All reports and/or violations are kept confidential.

Contact Health Connection for all inquiries and complaints related to the Smoke-Free Ontario Act, 2017:

- Call Monday through Friday, between 8:30 a.m. and 4:30 p.m. at 705-721-7520 or 1- 877-721-7520
- Send an email to Health Connection using the [online form](#)
- Connect by [Facebook](#)
- Connect by [Twitter](#).

B. Employer and Proprietor Responsibilities (Notice and Signs)

Employers and proprietors must provide notice to all persons of the smoke-free/vape-free areas over which they have control and ensure that a person smoking or vaping in a prohibited area does not remain on the premises. By posting smoke-free/vape-free signs throughout the workplace or public place (including outdoor areas over which they have control) employers and proprietors meet their legal requirements.

The expectation for posting of signs is that enough tobacco/e-cigarette signs are posted at areas where smoking and vaping is prohibited (including playgrounds, outdoor sporting areas, entrances and exits to buildings and washrooms, vehicle entrances to smoke-free properties, etc.) to ensure that employees and the public know that they cannot smoke tobacco or cannabis or vape anything there.

Smoke-free/vape-free signs are available from the health unit and [templates are available online from the Ministry of Health and Long-Term Care](#). Municipalities can incorporate the provincial template into their signs as long as all aspects are preserved (including size, content and graphics). Metal signs are available for outdoor smoke-free areas including sporting areas and playgrounds.

C. Enforcement and Fines

SMDHU tobacco enforcement officers are responsible for education and enforcement of the Act within all communities in Simcoe Muskoka. These settings include:

- enclosed workplaces and public places
- restaurants and bars (including premises with patios)
- schools and school property
- tobacco and e-cigarette vendors (such as variety stores and gas stations)
- multi-unit dwellings including apartment buildings and condominiums
- hospitals, long-term care facilities and nursing homes
- outdoor public playgrounds and publicly-owned sporting areas.

The fine for smoking or vaping in a prohibited place commences at \$305 by ticket and can range up to \$1,000 for a first offence or \$5,000 for any further offence.

D. Municipal by-law considerations for prohibiting smoking and vaping of tobacco and cannabis and vaping of any substance in public places and workplaces not regulated by the Smoke-Free Ontario Act, 2017

The Province of Ontario has moved quickly post-legalization to provide municipalities additional authority to regulate where cannabis can be smoked and vaped. Two provincial Acts provide municipalities the authority to enact smoke-free / vape-free municipal by-laws:

- a) Smoke-Free Ontario Act, 2017, (SFOA, 2017) enacted on October 17, 2018, specifically allows municipalities to enact more restrictive smoking and vaping by-laws than the provisions contained in the SFOA, 2017, (via section 18). As referenced in the SFOA, 2017 chapter of this guidance document, the new act now includes prohibitions and regulations respecting cannabis and vaping in addition to tobacco regulations.
- b) Municipal Act, 2001, both generally and specifically provides municipalities the power to enact by-laws prohibiting smoking and vaping in publicly-owned municipal areas. Effective December 6, 2018, an amendment to the Municipal Act, 2001, received royal assent which expanded section 115 of the Act to include the smoking of cannabis and so specifically provides a municipality the authority to control where cannabis is smoked.

Smoke-free by-laws remain a vital legislative tool which many municipalities within Simcoe County and the District of Muskoka have kept in place and reinforced in the years since the original Smoke-Free Ontario Act came into effect in 2006. These by-laws have allowed municipal partners to keep beaches, parks and outdoor municipal property smoke free

(where the provincial legislation has little or no influence). Some municipalities have also enacted vape-free by-laws which have further protected public areas within their communities.

NEW

The Central East Tobacco Control Area Network has developed a resource to support local governments in creating healthy communities by strengthening and enhancing the current Smoke Free Ontario Act – 2017. Make Our Community Smoke & Vapour Free has been designed to help start conversations with municipalities about developing policies and by-laws that extend restrictions to outdoor areas such as beaches, walking trails, outdoor festivals and municipal property. This tool can be found in Appendix C, page 36.

Institutional settings in Ontario are also making bold smoke-free / vape-free decisions including a growing number of university and college campuses (in our region Georgian College most recently has made this policy decision). SMDHU has consistently identified and supported smoke-free / vape-free efforts by multi-unit dwellings including apartments, condominiums and social housing in moving towards smoke-free / vape-free policies to protect residents, visitors and employees. With the legalization of cannabis, the health unit has observed an increased willingness and interest by municipalities, institutions and multi-unit housing in adopting smoke-free / vape-free rules and regulations. The legalization of cannabis is an opportune moment to consider creating or amending a smoke-free / vape-free by-law.

Adopting or expanding a smoke-free / vape-free by-law is an important consideration for a municipality to positively impact the health of the communities it governs. Based on the evidence, SMDHU encourages municipalities within the health unit to enact smoke-free / vape-free legislation for the following reasons:

- Directly contributes to creating a smoke-free / vape-free culture
- Reduces the initiation of smoking and vaping among our youth
- Reduces the prevalence of tobacco use
- Protects the environment
- Protects against secondhand smoke and vape
- Increases the number of people who quit smoking
- Reduces tobacco-related morbidity and mortality, including acute cardiovascular events.

In consultation with legal counsel, SMDHU has determined that a smoke-free / vape-free by-law which includes cannabis controls is likely to be upheld by the court on the basis that it is consistent with the underlying purpose and intent of the SFOA, 2017, to restrict the smoking and vaping of cannabis and tobacco, to minimize the harmful effects on the well-being of citizens. Further, a municipality may regulate or prohibit the public smoking and vaping of cannabis (and tobacco) beyond the places identified in the SFOA, 2017, and that such a by-law, rather than

frustrate the objective of the SFOA, 2017, promotes its intent. To this end, SMDHU requested that a sample smoke-free / vape-free by-law be developed by its law firm as a reference for our municipal partners. This sample by-law document titled SMDHU draft smoking and vaping by-law can be located in Appendix B. In developing the sample by-law, SMDHU's legal counsel considered the enabling legislation (SFOA, 2017, and the recently amended Municipal Act, 2001) as well as efforts by other municipalities in the province. The list of prohibited places set out in the SFOA, 2017, is not exhaustive of all conceivable public places where a municipality may choose to restrict, regulate or prohibit smoking or vaping of tobacco and cannabis and the vaping of any substance. The appended by-law provides sample areas a municipality can control, and therefore, brings under the jurisdiction of municipal enforcement staff. The areas where smoking and vaping is prohibited under the by-law can overlap with SFOA, 2017, prohibited areas further increasing jurisdiction of municipal enforcement staff. A municipality has a range of options when assessing places of use which can be finalized with input from council, staff and residents.

NEW

Since the draft bylaw was received in December 2018, revisions have been recommended. Appendix D draft by law has the revisions that reflect inclusion of both medical and recreational cannabis and the sacred tobacco exemption.

When considering implementation of a by-law SMDHU suggests that in addition to regulating smoking of tobacco the municipality also include smoking of cannabis and vaping of any substance. These protections are provided for in the enabling legislation and align the municipality with the three products regulated by the SFOA, 2017, (tobacco, cannabis and vapour products). This recommendation ensures consistency of law enforcement practice, enhances the efforts of SMDHU in enforcing the SFOA, 2017, and diminishes confusion and conflicting direction and understanding by the public. With the recent amendment to the Municipal Act, 2001, a municipality cannot regulate smoking of tobacco or cannabis on a "highway" which has been judicially interpreted to include the entirety of the municipal road allowance including roads, sidewalks and boulevards. The appended by-law does; however, successfully regulate "sidewalks and municipal boulevards, except to the extent the sidewalk or boulevard is located within a road allowance" which includes sidewalks or boulevards outside a municipal allowance, such as adjacent or running through a park, etc. Public transportation vehicles and taxi cabs are subject to the by-law even when on a highway.

As part of the legal review, SMDHU requested clarification on the evidentiary ability of a municipality to prove that a product being smoked or vaped is cannabis, and therefore, in contravention of the by-law. SMDHU's legal counsel did not locate a municipal tobacco or cannabis by-law enacted by an Ontario municipality that included an evidentiary provision which gave a witness for the prosecution the same ease of proof as afforded by the SFOA, 2017, (which states under section 34 of its regulation the following: "A court may, in the absence of evidence to the contrary, infer that any substance in question is cannabis from the fact that a

witness describes it as cannabis or by a name that is commonly applied to cannabis.”) The Municipal Act, 2001 does provide evidential presumptions in the case of certain prosecutions under a by-law, such as with respect to adult entertainment establishments at section 154(4); however, it provides no such presumptions with respect to prosecution under a cannabis or tobacco by-law passed under section 115 of the Municipal Act, 2001. Therefore, a witness for the prosecution testifying in support of a charge laid under a by-law similar to the appended sample by-law would identify how they knew that it was cannabis (from training, prior awareness, an item taken into evidence such as a cannabis joint, etc.) Although the evidentiary provision contained in the SFOA, 2017, cannot be used in a by-law, SMDHU’s experience in enforcing smoke-free by-laws points to extremely rare instances of the point being raised, i.e. the provincial offences court takes both smoke-free by-laws seriously and officers testifying in support of same at their word.

SMDHU intends to provide ongoing consultation and support to municipalities in Simcoe County and the District of Muskoka as council, staff and residents consider smoke-free and vape-free options for their communities. Health unit staff are available for meetings and public consultations as requested. By making the effort to enact these protections at the outset of the legalization of cannabis, each municipality will have more control and ability to influence the societal impacts of cannabis, vaping and tobacco moving forward.

SUMMARY

The Simcoe Muskoka District Health Unit’s evergreen document, **The Public Health Guidance for Municipalities on the Implementation of Legalization of Cannabis** has been created to support municipalities to take a public health focus during the implementation of cannabis legalization. This focus will assist to insure public safety, engagement in harm reduction activities and advocacy for health promotion for vulnerable community members are considered.

The early years of cannabis legalization will be a period of evolution. Over time, cannabis knowledge and evidence will grow, regarding general cannabis use and specific health issues and benefits, enabling public health to provide additional and more specific recommendations. SMDHU will continue during this period of implementation and change to offer local data, research updates and other accurate health information related to cannabis regulation for municipal consideration. Together, Simcoe and Muskoka municipalities and SMDHU can engage in continued efforts to modify individual and community risks for cannabis-related health harms through education, policy and programming.

APPENDIX A – AMO DRAFT TEMPLATE MUNICIPAL CANNABIS POLICY STATEMENT – see Appendix D for updated bylaw



Draft Municipal Policy Statement Template:

The template can be used by a municipality that has chosen to allow retail sales of recreational cannabis.

Purpose & Vision

The purpose of this policy statement is to provide a format for municipal government input to the Alcohol and Gaming Commission of Ontario (AGCO) as well as help prospective recreational cannabis retailers in their consideration of location of cannabis retail stores in (name of municipality).

The AGCO is the provincial authority that licences cannabis retail operators, authorizes cannabis retail locations and licenses senior store staff. Municipal governments have no licensing authority.

The AGCO regulates and reviews all aspects of the retail operation including municipal and public input, that the proposed store location is consistent with the public interest as defined in the regulations.

The Municipality ofhas chosen to allow retail sales of recreational cannabis. The following provides municipal staff with guidance on commenting to AGCO when notice on a specific proposed cannabis retail store site is provided on the site location.

Principles for Cannabis Retail Store Locations:

Relationship to Other Applicable Law:

- **Land Use Planning:** The provincial licensing process does not remove the requirement to comply with the zoning by-law and other municipal planning documents. The definitions within the municipality's Official Plan and Zoning By-law are applicable to all retail, including cannabis retail stores. Retail sale of cannabis from a provincially licensed store is legal and is a permitted use in the retail zones.
- **Municipal Building Inspections:** while the licencing of the store operation is the responsibility of the AGCO, the Building Code applies to cannabis retail store locations. Therefore, where a building permit is required, the building inspector will undertake duties as usual. Fire Code compliance is also mandatory.

For the purposes of this policy statement, a cannabis retail store shall mean a store licenced by the AGCO.

1. Cannabis Retail Stores and Sensitive activities:

In order to help ensure public health and safety, protect youth and reduce illegal sales, retail cannabis stores are discouraged where nearby properties are designed to serve youth including

The policy can address types of activities where youth or the potential for illegal sales or health risk exist. Please note that Ontario Regulation restricts a cannabis retail store from being located within a distance of 150 meters of a public school or most private schools. The municipality cannot adopt a greater distance. The distance buffer would be measured from the property line, if the school is the primary or only occupant of a building; or the boundary of any space occupied by the school within the building, if the school shares space, like in a mall. This distance buffer would not apply to private schools that hold classes online only, or to First Nation schools located on reserve.

The municipal government may want to suggest other youth facilities such as libraries and community centres if appropriate, or other sensitive facilities that serve persons with mental health or addiction challenges.

The policies cannot be so restrictive that it is impossible to locate a store. Nor can the policy state a specific number of stores permitted.

It is recommended that should the municipal government choose a separation distance from a sensitive use that it be a number, not a range and that a rationale for this distance be provided.

Municipal governments should note that municipal density restrictions on cannabis retail stores are not permitted under the legislation or regulations. However, it is possible that the number of cannabis retail stores in one area could in the future be considered under the public interest criteria in the regulations and merit comment from the municipal government and community.

2. Cannabis retail stores should not be permitted in:

Any prohibitive statements must be considered through the lens of eliminating illegal activity, public health and safety or protecting youth and the regulatory definition of the public interest.

Retail locations, if retail is allowed in a zone other than a commercial zone, such concerns may be noted.

How does this prohibition help youth, create a safer environment or limit illegal activity? A municipal government may choose not to have any prohibitions.

3. Attached is a map showing the retail/commercial zones of the municipality and the activities identified in Section 1 above.

A map showing where retail is permitted and the locations of the activities identified in the first section will be very helpful to the AGCO. Municipal governments may choose to provide some sample separation distances as concentric rings around the activities such as addiction treatment facilities etc. to provide sample set backs. The Ministry of Education is working to identify all schools however; municipalities could also provide this information.

APPENDIX B – SMDHU DRAFT MODEL SMOKING AND VAPING BY-LAW (FOR MOST CURRENT VERSION, SEE APPENDIX D)

DRAFT MODEL

By-law 2018 –

A By-law to prohibit the smoking or vaporizing of tobacco or recreational cannabis and vaporizing of any substance in public places and workplaces in the [name of municipality]

WHEREAS Section 8 of the *Municipal Act, 2001*, c. 25, as amended (“*Municipal Act, 2001*”) 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, 2001* provides that a municipality may pass by-laws in the interest of the health, safety and well-being of its residents; and

WHEREAS the Council of the Corporation of [name of municipality] has the authority to pass a by-law to prohibit or regulate the smoking of tobacco and cannabis in public spaces and workplaces pursuant to Section 115(1) of the *Municipal Act, 2001*, and to define “public place” for purposes of such by-law; and

WHEREAS Section 128 of the *Municipal Act, 2001* provides that a municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of council are or could become or cause public nuisances; and

WHEREAS Section 129 of the *Municipal Act, 2001*, provides that a local municipality may prohibit and regulate with respect to odours; and

WHEREAS subsection 115(3) of the *Municipal Act, 2001* provides that section 115 of the Act shall not apply to a highway; and

WHEREAS the Council of the Corporation of the [name of municipality] (the “Council”) has deemed it desirable for the health, safety and well-being of the residents of the [name of municipality] to prohibit or regulate smoking or vaporizing of tobacco and cannabis and vaporizing of any substance in public places within the [name of municipality] in accordance with the provisions of this By-law; and

WHEREAS Section 18 of the *Smoke-Free Ontario Act, 2017*, S.O. 2017, c. 26, Schedule 3, contemplates that where there is a conflict between a provision of this Act and a provision of another Act, a regulation or a municipal by-law that deals with a matter to which this Act applies,

1

the provision that is more restrictive of the matter to which this Act applies prevails, subject to section 19 in the said Act.

NOW THEREFORE THE COUNCIL ENACTS AS FOLLOWS:

1.0 BY-LAW TITLE

1.1 This By-law may be cited as the "Tobacco, Cannabis and Vaporizing By-law".

2.0 DEFINITIONS

2.1 For the purpose of this By-law:

- (a) "Cannabis" means cannabis as defined in the *Cannabis Act* (Canada);
- (b) "Community Centre" means a building or enclosed area owned and operated by the Municipality that is used for public recreation, entertainment or cultural purposes;
- (c) "Council" means the Council of the Corporation of the [name of municipality];
- (d) "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.
- (e) "Health Care Facility" means any building wherein medical, dental, psychological or chiropractic services or advice regarding any illness, disease or injury, physical or mental, is or may be provided and without limiting the generality of the foregoing, includes a pharmacy, a community health centre, the offices of doctor, dentist, chiropractor, optometrist, psychologist or any other health care practitioner. The area so defined includes the administrative offices, food service and eating areas thereof;
- (f) "Municipal Building" means any building, facility or structure owned, leased, controlled or used by the Municipality for municipal purposes, including without limitation municipal offices, transit facilities, bus shelters, community centres, libraries, indoor swimming pools, arenas, museums, art galleries, public washrooms, concession stands, recreational centres, fire halls, ambulance stations and police stations;
- (g) "Municipality" means The Corporation of the [name of municipality];

- (h) "Officer" means:
- (i) A Provincial Offences Officer of the Municipality or other person appointed by or under the authority of a Municipal by-law to enforce Municipal by-laws; or
 - (ii) A Police Officer employed by the police service of the [name of municipality], Ontario Provincial Police or the Royal Canadian Mounted Police.
- (i) "Outdoor Recreational Facility" means any area located on municipal property that is designed, designated or delineated for the playing of sports or for activities, together with any lane, walkway or public parking area leading thereto including but not limited to: swimming pools, splash pads, soccer fields, baseball diamonds, tennis courts, football fields, player benches, side lines, player warm up areas and spectator areas;
- (j) "Park" means lands owned by the Municipality that is designed or used for public recreation including, but not limited to, parklands, parkettes, trails, community gardens, sports fields, playing fields, beaches including any adjacent bodies of water, and includes any lane, walkway or public parking area leading thereto and any spectator or player seating areas;
- (k) "Playground Area" means any part of an outdoor area fitted with play equipment, including but not limited to slides, swings, and climbing equipment, and includes any surrounding natural or man made safety surface of sand, rocks, wood chips, rubber or any similar material that may typically define its border and any trail or pathway within a nine metre radius of a Playground Area;
- (l) "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 whether or not such vehicle is in motion;
- (m) "Smoking" means smoking (exhaling and inhaling) or holding lighted tobacco or lighted cannabis.
- (n) "Tobacco" means tobacco, in whatever manner it may be used or consumed, and in any processed or unprocessed form, and includes any product made in whole or in part of tobacco and/or tobacco leaves, including without limitation, pipe tobacco, waterpipe tobacco, cigarettes, cigars, and cigarillos.
- (o) "Use" with respect to Electronic Cigarettes, includes any of the following:

- 1) Inhaling vapour from an Electronic Cigarette.
- 2) Exhaling vapour from an Electronic Cigarette.
- 3) Holding an activated Electronic Cigarette.

(p) "Vaporizing" means:

- (i) to inhale and exhale the vapour produced by an Electronic Cigarette or similar device containing Cannabis or tobacco or any substance, or
- (ii) holding or otherwise having control of an Electronic Cigarette that is producing vapour, emissions or aerosol from Cannabis or tobacco or any substance.

3.0 GENERAL PROHIBITIONS

3.1 In addition to the prohibitions set out in the Smoke-Free Ontario Act, S.O. 2017, c.26, as amended from time to time, no person shall smoke or vaporize Cannabis or tobacco, or hold or otherwise use lighted Cannabis or tobacco, or use an Electronic Cigarette, or vaporize any substance, in or on any Public Place, including, but not limited to, the following:

- (a) Municipal Buildings identified in Schedule "A" or within a 9 metre radius of any public entrance of a Municipal Building;
- (b) the outdoor grounds of any Municipal Building identified in Schedule "A";
- (c) all Health Care Facilities and the outdoor grounds thereof;
- (d) Parks and natural areas located within the Municipality or within a 20 metre radius of the perimeter of such areas;
- (e) public and private parking lots;
- (f) all Outdoor Recreational Facilities or within a 20 metre radius of the perimeter of an Outdoor Recreational Facility;
- (g) all Playground Areas, or within a 20 metre radius of the perimeter of Playground areas;
- (h) sidewalks and municipal boulevards, except to the extent the sidewalk or boulevard is located within a road allowance;
- (i) all schools, daycare facilities, and other child care facilities, or within 20 metres of the boundaries of the properties on which these facilities are situated;
- (j) all retail, commercial and business establishments, including but not limited to shopping malls.

4.0 APPLICABILITY

4.1 This By-law does not apply to privately-owned property that is primarily a private dwelling.

4.2 This By-law does not apply to any highway or any portion of a public road allowance highway.

4.3 This By-law does not apply to a person who is entitled to possess Cannabis pursuant to a medical document, registration certificate or other document related to medical possession issued pursuant to the Cannabis Regulations (SOR/2018-144) or successor legislation or regulations made thereunder.

5.0 ENFORCEMENT

5.1 The provisions of this By-law may be enforced by an Officer.

5.2 Where any person contravenes any provision of this By-law, an Officer may direct such person to comply with this By-law. Every person so directed shall comply with such direction without undue delay.

5.3 Where an Officer has reasonable grounds to believe that a person has contravened any provision of this By-law, the Officer may require the name, address and proof of identity of that person, and the person shall supply that information. Failure to provide sufficient or any identification shall constitute obstruction of the Officer as set out in section 6.2 of this By-law.

6.0 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 in the *Provincial Offences Act*, R.S.O. 1990, c. 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.

7.0 CONTINUATION, REPETITION PROHIBITED BY ORDER

7.1 Where a person has been convicted of an offence under this By-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may, in addition to any penalty imposed on the person convicted, issued an order:

- (i) prohibiting the continuation or repetition of the offence by the person convicted; and
- (ii) requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

8.0 ADMINISTRATIVE PENALTIES

- 8.1 Instead of laying a charge under the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, as amended, for a breach of any provision of this By-law, an Officer may issue an administrative penalty to the person who has contravened this By-law.
- 8.2 The Officer has the discretion to either proceed by way of an administrative penalty or a charge laid under the *Provincial Offences Act*, R.S.O. 1990, c. P. 33. If an administrative penalty is issued to a person for the breach, no charge shall be laid against that same person for the same breach.
- 8.3 The amount of the administrative penalty for a breach of a provision of this By-law, issued under this By-law, is fixed as set out in By-law No. [insert number and title of by-law], as amended or any successor by-law.
- 8.4 A person, who is issued an administrative penalty shall be subject to the procedures as provided for in By-law [insert number and title of by-law], as amended or any successor by-law.
- 8.5 An administrative penalty imposed on a person pursuant to this By-law that is not paid within 15 days after the day it becomes due and payable, constitutes a debt of the person to the Municipality and may be added to a municipal tax roll and collected in the same manner as municipal taxes.

9.0 PENALTIES

- 9.1 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 and not more than \$500;
 - (b) Upon a second or subsequent conviction for the same offence, to a fine of not less than \$500 and not more than \$1,000;
 - (c) Upon conviction for a multiple offence, for each offence included in the multiple offence, to a fine of not less than \$100 and not more than \$1,000.

10.0 COLLECTION OF UNPAID FINES

- 10.1 Where a fine is in default, the Municipality 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, c.P.33.

10.2 The Municipality 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 that local municipality for which all of the registered owners are responsible for paying the fine, and to collect it in the same manner as municipal taxes.

11.0 SEVERABILITY

11.1 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 validity of this By-law as a whole or any part thereof, other than that part which is declared invalid, shall not be affected and it shall continue to apply in full force and effect to all other circumstances.

12.0 CONFLICTS

12.1 If any provision of this By-law conflicts with an Act or a regulation or another by-law, the provision that is the most restrictive of the smoking of tobacco or of the smoking of Cannabis, as the case may be, shall prevail.

13.0 INTERPRETATION

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

14.0 FORCE AND EFFECT

14.1 This By-law comes into force and effect on the ____ day of _____, 2019.

Read a first, second and third time and passed in Open Council on this [insert number] day of [insert month], 2019.

[insert name]
Clerk of the Municipality

[insert name]
Mayor

SCHEDULE "A"

LIST OF MUNICIPAL BUILDINGS

APPENDIX C – MAKE OUR COMMUNITY SMOKE & VAPOUR FREE RESOURCE



This resource has been developed to support Ontario's local governments in your efforts to build healthier communities by encouraging the implementation of policies and bylaws that strengthen the current provincial smoke and vapour-free legislation. This resource provides examples of how local governments can provide residents with greater protection from secondhand smoke and vapour than the minimum standards set by the Smoke-Free Ontario Act (SFOA), 2017. It also outlines the many benefits to the whole community.

Smoke-Free Ontario Act, 2017

The primary goal of the SFOA 2017 is to protect Ontarians from physical and social exposure to secondhand smoke and vapour. It bans smoking and vaping indoors and in many outdoor public spaces such as sporting areas, children's playgrounds, school property and restaurant and bar patios. A number of outdoor settings are not currently covered by provincial regulation such as:

- ✘ Beaches
- ✘ Walking Trails
- ✘ Outdoor Festivals
- ✘ Municipal Property

The legalization and subsequent inclusion of cannabis and e-cigarettes/vaping under the SFOA 2017 presents an opportunity for municipalities to open and expand your No Smoking bylaws to also include cannabis and vaping. It is also an ideal time to include more of the outdoor spaces where your residents and visitors gather, play and work under the bylaw.

Commercial and Sacred Tobacco: What is the Difference?

Commercial tobacco refers to tobacco that is commercially produced for use in cigarettes, smokeless tobacco, pipe tobacco, cigars, hookah, and other products.¹ Commercial tobacco is different from traditional/sacred tobacco that is used and kept sacred by indigenous communities.² For the purpose of this resource, all references to tobacco, apply to commercial tobacco only, as traditional or sacred tobacco is typically exempted from smoke/tobacco-free policies.



Why Implement Enhanced Smoke and Vapour Legislation?

Municipalities can positively impact the health of your communities by adopting or expanding a smoke and vapour-free bylaw. Reasons to do so include the following:

Role Modeling

When people are exposed to others using tobacco or vape products, it creates the impression that the use of these products is common and socially acceptable.² Evidence shows that enhanced smoke and vapour-free policies:

- Support quit attempts by reducing visual cues for smoking and vaping;
- Change perceived norms on smoking and vaping behaviour;
- Reduce demand for smoke and vape products;² and
- Decrease youth and young adult initiation.

Environmental Threats

Smoking in outdoor areas can contribute to increased litter, pollution, and risk of fire caused by improperly discarded or extinguished cigarette butts, especially in parks and beaches. Cigarette butts are the most littered item and are not biodegradable.³ They remain an ongoing threat to children, wildlife and the environment. Prohibiting smoking and vaping in more outdoor locations will reduce litter; reduce municipal cleanup costs; and free-up taxpayers' money for more worthwhile initiatives.⁴

Health Impacts

Smoke and vapour-free outdoor spaces legislation decreases exposure to secondhand smoke. Despite common perceptions that tobacco smoke dissipates outdoors, research has demonstrated that levels of secondhand smoke in outdoor settings can be comparable to indoor levels.⁵ Evidence concludes that even brief exposure to tobacco smoke may cause significant adverse health effects to non-smokers.⁵

Evidence shows that enhanced smoke and vapour-free legislation:

- Directly contributes to creating a smoke /vapour-free culture
- Reduces the initiation of smoking and vaping among youth
- Reduces the prevalence of tobacco use
- Protects the environment
- Protects against exposure to secondhand smoke and vapour
- Increases the number of people who quit smoking
- Reduces tobacco related morbidity and mortality

Ontario's Tobacco, Vaping and Cannabis Landscape

Commercial Tobacco

The government of Ontario is committed to ensuring that Ontario has the lowest smoking rate in Canada. According to the Canadian Community Health Survey, between 2005 and 2014, there was a significant decrease in smoking prevalence among Ontarians aged 12 years and older, from 19.6% to 16.1%. Even with this progress, tobacco use continues to be a notable cause of preventable disease and death, and is responsible for an estimated 13,000 deaths in Ontario per year. It kills more Ontarians than alcohol, illicit substances, accidents, suicide and homicides combined.

E-Cigarettes/Vaping

An electronic cigarette or e-cigarette is a battery powered device that heats a liquid chemical (e-juice) into a vapour that can be inhaled. This is commonly called vaping. E-juice does not contain tobacco, however most of these products contain nicotine which is the addictive substance found in cigarettes. More research is needed to determine both the short and long-term health risks of vaping. Although e-cigarettes may have fewer chemicals than traditional cigarettes, vaping is not harmless.

According to the 2017 Ontario Student Drug Use and Health Survey, vaping among students is outpacing cigarette smoking. Past year e-cigarette use among Ontario's Grade 7-12 students was 10.7% compared to 7% who smoked cigarettes. The use of e-cigarettes increases by grade, with 9.2% of Grade 9 students and 18.9% of Grade 12 students reporting having used e-cigarettes in the past year.

VAPING IS NOT HARMLESS

- ❗ Most e-juices contain nicotine which can be highly addictive
- ❗ Nicotine can alter brain development and affect memory and concentration
- ❗ Chemicals such as formaldehyde, **acrolein**, propylene glycol and artificial flavourings are present
- ❗ It is unknown what health risks can come from **secondhand** vapour
- ❗ There is growing evidence that youth who vape go on to smoke cigarettes⁵

Cannabis

The Smoke-Free Ontario Act, 2017 passed in the legislature prohibits smoking or vaping cannabis wherever it is illegal to smoke tobacco products. In addition, cannabis cannot be smoked, vaped or eaten in a vehicle or boat that is being driven or is at risk of being put into motion.

You cannot smoke or vape tobacco or cannabis in the following Outdoor Areas under SFOA, 2017:

- ❗ on restaurant or bar patios and public areas within 9m of a patio
- ❗ on outdoor grounds of specified Ontario government office buildings
- ❗ in reserved seating areas at outdoor sports and entertainment locations
- ❗ on grounds of community recreational facilities, and public areas within 20m of those grounds
- ❗ in sheltered outdoor areas with a roof and more than two walls for use by the public or employees (e.g. a bus shelter)
- ❗ on school grounds and all public areas within 20m of these grounds
- ❗ on children's playgrounds and public areas within 20m of playgrounds

Municipal Cost & Enforcement

Implementing and enforcing smoke-free outdoor space bylaws has not been shown to require additional financial and human resources.⁷ In a survey of 37 Ontario municipalities that had smoke-free outdoor space bylaws in place for at least two years (enacted no later than June 1, 2010), the enforcement work activities were addressed within current budgets and workforce.⁷

Activities undertaken to increase community awareness of the bylaws included: hanging signage; delivering community presentations; and circulating promotional materials (e.g., posters, information in recreation/tourism brochures and on social media etc.).⁷

Enforcement activities were also undertaken by current municipal staff (most often by municipal bylaw officers), and generally included responding to complaints and routine inspections, often in the course of officers' daily travels.⁷ The majority of surveyed municipalities had issued warnings as a result of noncompliance; however, only six had issued ticket(s).

Similar results were found in a review of the Town of Collingwood Playground bylaw enacted in July 2000 and expanded to include public playing fields by 2005. A review of the public's response to the bylaw found between 2000-2007 there were no complaints, no tickets issued and minimal damage to signage.⁸

To help build voluntary compliance and support for a bylaw community education is important. While voluntary compliance is cost-effective, it is still important for local governments to take enforcement action when necessary.⁹ Making information available and accessible to the public helps to proactively manage public expectations about enforcement.⁹

Next Steps:

By making the effort to enact these protections, each municipality will have more control and ability to influence the societal impacts of smoking, vaping and cannabis. Check out the following resources to get started:

1. Review your municipality's current No Smoking bylaw to determine how it can be enhanced to give greater protection from secondhand smoke and vapour.
2. Consult Smoke Free Ontario Act, 2017 for further support in guiding bylaw enhancement: <http://www.simcoemuskokahealth.org/Topics/Tobacco/Protect-Yourself-From-Secondhand-Smoke/Smoke-Free-Ontario-Act>
3. Review a draft model of a Smoke and Vapour-Free Bylaw: http://www.simcoemuskokahealth.org/docs/default-source/ify-communities/Public-Health-Guidance-for-Municipalities_Cannabis.pdf?sfvrsn=12
4. Determine your Bylaw Education, Communication and Enforcement Plans. The following link provides information for health care practitioners supporting municipal bylaw development. https://www.publichealthontario.ca/en/eRepository/Bylaw_Primer_2014.pdf
5. Connect with your Public Health Unit for consultation and support



DRAFT MODEL

By-law 2018 –

A By-law to prohibit the smoking or vaporizing of tobacco or cannabis and vaporizing of any substance in public places and workplaces in the [name of municipality]

WHEREAS Section 8 of the *Municipal Act, 2001*, c. 25, as amended (“*Municipal Act, 2001*”) 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, 2001* provides that a municipality may pass by-laws in the interest of the health, safety and well-being of its residents; and

WHEREAS the Council of the Corporation of [name of municipality] has the authority to pass a by-law to prohibit or regulate the smoking of tobacco and cannabis in public spaces and workplaces pursuant to Section 115(1) of the *Municipal Act, 2001*, and to define “public place” for purposes of such by-law; and

WHEREAS Section 128 of the *Municipal Act, 2001* provides that a municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of council are or could become or cause public nuisances; and

WHEREAS Section 129 of the *Municipal Act, 2001*, provides that a local municipality may prohibit and regulate with respect to odours; and

WHEREAS subsection 115(3) of the *Municipal Act, 2001* provides that section 115 of the Act shall not apply to a highway; and

WHEREAS the Council of the Corporation of the [name of municipality] (the “Council”) has deemed it desirable for the health, safety and well-being of the residents of the [name of municipality] to prohibit or regulate smoking or vaporizing of tobacco and cannabis and vaporizing of any substance in public places within the [name of municipality] in accordance with the provisions of this By-law; and

WHEREAS Section 18 of the *Smoke-Free Ontario Act, 2017*, S.O. 2017, c. 26, Schedule 3, contemplates that where there is a conflict between a provision of this Act and a provision of another Act, a regulation or a municipal by-law that deals with a matter to which this Act applies,

the provision that is more restrictive of the matter to which this Act applies prevails, subject to section 19 in the said Act.

NOW THEREFORE THE COUNCIL ENACTS AS FOLLOWS:

1.0 BY-LAW TITLE

1.1 This By-law may be cited as the “Tobacco, Cannabis and Vaporizing By-law”.

2.0 DEFINITIONS

2.1 For the purpose of this By-law:

- (a) “Cannabis” means cannabis as defined in the *Cannabis Act* (Canada);
- (b) “Community Centre” means a building or enclosed area owned and operated by the Municipality that is used for public recreation, entertainment or cultural purposes;
- (c) “Council” means the Council of the Corporation of the [name of municipality];
- (d) “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.
- (e) “Health Care Facility” means any building wherein medical, dental, psychological or chiropractic services or advice regarding any illness, disease or injury, physical or mental, is or may be provided and without limiting the generality of the foregoing, includes a pharmacy, a community health centre, the offices of doctor, dentist, chiropractor, optometrist, psychologist or any other health care practitioner. The area so defined includes the administrative offices, food service and eating areas thereof;
- (f) “Municipal Building” means any building, facility or structure owned, leased, controlled or used by the Municipality for municipal purposes, including without limitation municipal offices, transit facilities, bus shelters, community centres, libraries, indoor swimming pools, arenas, museums, art galleries, public washrooms, concession stands, recreational centres, fire halls, ambulance stations and police stations;
- (g) “Municipality” means The Corporation of the [name of municipality];

- (h) "Officer" means:
- (i) A Provincial Offences Officer of the Municipality or other person appointed by or under the authority of a Municipal by-law to enforce Municipal by-laws; or
 - (ii) A Police Officer employed by the police service of the [name of municipality], Ontario Provincial Police or the Royal Canadian Mounted Police.
- (i) "Outdoor Recreational Facility" means any area located on municipal property that is designed, designated or delineated for the playing of sports or for activities, together with any lane, walkway or public parking area leading thereto including but not limited to: swimming pools, splash pads, soccer fields, baseball diamonds, tennis courts, football fields, player benches, side lines, player warm up areas and spectator areas;
- (j) "Park" means lands owned by the Municipality that is designed or used for public recreation including, but not limited to, parklands, parkettes, trails, community gardens, sports fields, playing fields, beaches including any adjacent bodies of water, and includes any lane, walkway or public parking area leading thereto and any spectator or player seating areas;
- (k) "Playground Area" means any part of an outdoor area fitted with play equipment, including but not limited to slides, swings, and climbing equipment, and includes any surrounding natural or man made safety surface of sand, rocks, wood chips, rubber or any similar material that may typically define its border and any trail or pathway within a nine metre radius of a Playground Area;
- (l) "Public Place" includes any place to which the public has access as of right or invitation, express or implied, regarding 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 whether or not such vehicle is in motion;
- (m) "Smoking" means smoking (exhaling and inhaling) or holding lighted tobacco or lighted cannabis.
- (n) "Tobacco" means tobacco, in whatever manner it may be used or consumed, and in any processed or unprocessed form, and includes any product made in whole or in part of tobacco and/or tobacco leaves, including without limitation, pipe tobacco, waterpipe tobacco, cigarettes, cigars, and cigarillos.
- (o) "Use" with respect to Electronic Cigarettes, includes any of the following:

- 1) Inhaling vapour from an Electronic Cigarette.
- 2) Exhaling vapour from an Electronic Cigarette.
- 3) Holding an activated Electronic Cigarette.

(p) “Vaporizing” means:

- (i) to inhale and exhale the vapour produced by an Electronic Cigarette or similar device containing Cannabis or tobacco or any substance, or
- (ii) holding or otherwise having control of an Electronic Cigarette that is producing vapour, emissions or aerosol from Cannabis or tobacco or any substance.

3.0 GENERAL PROHIBITIONS

3.1 In addition to the prohibitions set out in the Smoke-Free Ontario Act, S.O. 2017, c.26, as amended from time to time, no person shall smoke or vaporize Cannabis or tobacco, or hold or otherwise use lighted Cannabis or tobacco, or use an Electronic Cigarette, or vaporize any substance, in or on any Public Place, including, but not limited to, the following:

- (a) Municipal Buildings identified in Schedule “A” or within a 9 metre radius of any public entrance of a Municipal Building;
- (b) the outdoor grounds of any Municipal Building identified in Schedule “A”;
- (c) all Health Care Facilities and the outdoor grounds thereof;
- (d) Parks and natural areas located within the Municipality or within a 20 metre radius of the perimeter of such areas;
- (e) public and private parking lots;
- (f) all Outdoor Recreational Facilities or within a 20 metre radius of the perimeter of an Outdoor Recreational Facility;
- (g) all Playground Areas, or within a 20 metre radius of the perimeter of Playground areas;
- (h) sidewalks and municipal boulevards, except to the extent the sidewalk or boulevard is located within a road allowance;
- (i) all schools, daycare facilities, and other child care facilities, or within 20 metres of the boundaries of the properties on which these facilities are situated;
- (j) all retail, commercial and business establishments, including but not limited to shopping malls.

4.0 APPLICABILITY

4.1 This By-law does not apply to privately-owned property that is primarily a private dwelling.

4.2 This By-law does not apply to any highway or any portion of a public road allowance highway.

4.3 This By-law does not apply to the mere possession of Cannabis by a person who is entitled to possess Cannabis, in a public place, for their own medical purposes (“Medical Cannabis User”) pursuant to a medical document, registration certificate, licence or other document related to medical possession issued pursuant to the Cannabis Regulations (SOR/2018-144) (“Regulations”) or successor legislation or regulations made thereunder, subject to the applicable maximum amounts and purposes set out in section 266(2) of the Regulations. For greater certainty, this By-law is intended to apply to the smoking and vaporizing of Cannabis in a public place by a Medical Cannabis User as well as to the possession of Cannabis in a public place by a Medical Cannabis User for any purpose other than their own medical purposes or in an amount that exceeds the maximum amount of cannabis such person is authorized to possess in a public place, for their own medical purposes, under the Regulations.

4.4 This By-law does not apply to traditional and or sacred tobacco that is used and kept sacred by indigenous communities.

5.0 ENFORCEMENT

5.1 The provisions of this By-law may be enforced by an Officer.

5.2 Where any person contravenes any provision of this By-law, an Officer may direct such person to comply with this By-law. Every person so directed shall comply with such direction without undue delay.

5.3 Where an Officer has reasonable grounds to believe that a person has contravened any provision of this By-law, the Officer may require the name, address and proof of identity of that person, and the person shall supply that information. Failure to provide sufficient or any identification shall constitute obstruction of the Officer as set out in section 6.2 of this By-law.

6.0 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 in the *Provincial Offences Act*, R.S.O. 1990, c. 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.

7.0 CONTINUATION, REPETITION PROHIBITED BY ORDER

- 7.1 Where a person has been convicted of an offence under this By-law, the court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may, in addition to any penalty imposed on the person convicted, issued an order:
- (i) prohibiting the continuation or repetition of the offence by the person convicted; and
 - (ii) requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

8.0 ADMINISTRATIVE PENALTIES

- 8.1 Instead of laying a charge under the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, as amended, for a breach of any provision of this By-law, an Officer may issue an administrative penalty to the person who has contravened this By-law.
- 8.2 The Officer has the discretion to either proceed by way of an administrative penalty or a charge laid under the *Provincial Offences Act*, R.S.O. 1990, c. P. 33. If an administrative penalty is issued to a person for the breach, no charge shall be laid against that same person for the same breach.
- 8.3 The amount of the administrative penalty for a breach of a provision of this By-law, issued under this By-law, is fixed as set out in By-law No, [insert number and title of by-law], as amended or any successor by-law.
- 8.4 A person, who is issued an administrative penalty shall be subject to the procedures as provided for in By-law [insert number and title of by-law], as amended or any successor by-law.
- 8.5 An administrative penalty imposed on a person pursuant to this By-law that is not paid within 15 days after the day it becomes due and payable, constitutes a debt of the person to the Municipality and may be added to a municipal tax roll and collected in the same manner as municipal taxes.

9.0 PENALTIES

- 9.1 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 and not more than \$500;
 - (b) Upon a second or subsequent conviction for the same offence, to a fine of not less than \$500 and not more than \$1,000;

- (c) Upon conviction for a multiple offence, for each offence included in the multiple offence, to a fine of not less than \$100 and not more than \$1,000.

10.0 COLLECTION OF UNPAID FINES

- 10.1 Where a fine is in default, the Municipality 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, c.P.33.
- 10.2 The Municipality 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 that local municipality for which all of the registered owners are responsible for paying the fine, and to collect it in the same manner as municipal taxes.

11.0 SEVERABILITY

- 11.1 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 validity of this By-law as a whole or any part thereof, other than that part which is declared invalid, shall not be affected and it shall continue to apply in full force and effect to all other circumstances.

12.0 CONFLICTS

- 12.1 If any provision of this By-law conflicts with an Act or a regulation or another by-law, the provision that is the most restrictive of the smoking or vaporizing of tobacco or cannabis or vaporizing of any substance, as the case may be, shall prevail.

13.0 INTERPRETATION

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

14.0 FORCE AND EFFECT

- 14.1 This By-law comes into force and effect on the ____ day of _____, 2019.

Read a first, second and third time and passed in Open Council on this [insert number] day of [insert month], 2019.

[insert name]

[insert name]

Clerk of the Municipality

Mayor

SCHEDULE "A"
LIST OF MUNICIPAL BUILDINGS

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