

BYLAW NUMBER 23M2018

**BEING A BYLAW OF THE CITY OF CALGARY
TO REGULATE SMOKING AND VAPING**

WHEREAS the health risks associated with secondary tobacco smoke are well established;

AND WHEREAS the smoke or vapour produced by the smoking or vaping of tobacco, cannabis and other substances in public premises is a nuisance for persons in those premises;

AND WHEREAS Council considers it expedient and desirable for the health, safety, and welfare of the inhabitants to regulate smoking and vaping of tobacco, cannabis and other substances in the City of Calgary;

NOW, THEREFORE, THE COUNCIL OF THE CITY OF CALGARY ENACTS AS FOLLOWS:

SHORT TITLE

1. This Bylaw may be cited as the “Smoking and Vaping Bylaw”.

DEFINITIONS AND INTERPRETATION

2. (1) In this Bylaw:

- (a) “*business*” means carrying on a commercial or industrial undertaking of any kind or nature or the provision of a professional, personal or other service and includes any activity carried on by an educational institution, municipality, or charitable organization;
- (b) “*cannabis*” has the meaning given to that term in the federal *Cannabis Act* (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, 2017);
- (c) “*City*” means The City of Calgary, a municipal corporation in the province of Alberta, or the area contained within the boundaries of the City of Calgary, as the context may require;
- (d) “*electronic smoking device*” means an electronic device that can be used to deliver a vapour, emission or aerosol to the person inhaling from the device, including but not limited to an electronic cigarette, cigar, cigarillo or pipe;
- (e) “*employer*” includes any person who as the owner, *proprietor*, manager, superintendent or overseer of any activity, *business*, work, trade, occupation or profession, has control over or direction of, or is directly or indirectly responsible for the employment of a person therein;

- (f) “*officer*” means a Bylaw Enforcement Officer appointed pursuant to Bylaw 60M86, a peace officer appointed pursuant to the *Peace Officer Act*, S.A. 2006, c. P-3.5, or a member of the Calgary Police Service;
- (g) “*Olympic Plaza*” means the area bounded on the north by 7th Avenue S.E., on the east by Macleod Trail S.E., on the south by 8th Avenue S.E. and on the west by 1st Street S.E., but excluding lots 39 and 40 of Block 52 on Plan A;
- (h) “*operator*” includes the person responsible for the day to day operations of a public premises and a *proprietor* of a public premises;
- (i) “*outdoor pool*” means a structure that contains water which is designed and intended for recreational use, and includes a spray park or a wading pool;
- (j) “*outdoor skating rink*” means an outdoor ice surface that is designed for recreational skating or playing hockey;
- (k) “*playground*” means an outdoor area upon which apparatus such as swings and slides are placed;
- (l) “*proprietor*” means, where applicable:
 - (i) the person who ultimately controls, governs or directs the activity carried on within any premises referred to in this Bylaw and includes the person usually in charge thereof;
 - (ii) a hospital board appointed pursuant to the *Hospitals Act*, R.S.A. 2000, c. H-12;
 - (iii) a board of governors established pursuant to the *Post-Secondary Learning Act*, S.A. 2003, c. P-19.5; or
 - (iv) a board of trustees elected pursuant to the provisions of the *School Act*, R.S.A. 2000, c. S-3;
- (m) “*public premises*” means all or any part of a building, structure or other enclosed area to which members of the public have access as of right or by express or implied invitation;
- (n) “*public vehicle*” means a bus, taxi or other vehicle that is used to transport members of the public for a fee;
- (o) “*skate park*” means an outdoor area which is designed and intended specifically for the use of skateboards, in-line skates, or other similar devices;
- (p) “*smoke*” or “*smoking*” means:

- (i) inhaling or exhaling the smoke produced by burning *tobacco* or *cannabis*; or
 - (ii) holding or otherwise having control of any device or thing containing lit *tobacco* or *cannabis*;
- (q) “*sports field*” means an outdoor area which is set apart and used for the playing of sporting activities;
- (r) “*taxi*” means any taxi, limousine or private for hire vehicle licensed pursuant to the provisions of the Livery Transport Bylaw 6M2007;
- (s) “*tobacco*” means a product composed in whole or in part of tobacco, including tobacco leaves and any extract of tobacco leaves, but does not include any product for use in nicotine replacement therapy;
- (t) “*transit property*” means any premises owned, used or occupied by the City for the purpose of providing transit services;
- (u) “*transit vehicle*” means any vehicle which is operated by the City for the use of the passenger public including any bus or light rail transit vehicle operated by the City;
- (v) “*vape*” or “*vaping*”, means:
- (i) inhaling or exhaling the vapour, emissions or aerosol produced by an *electronic smoking device* or similar device containing *tobacco*, *cannabis* or any other substance, or
 - (ii) holding or otherwise having control of an *electronic smoking device* that is producing vapour, emissions or aerosol from *tobacco*, *cannabis* or any other substance’
- (w) “*workplace*” includes the whole or any part of a building, structure, vehicle or passenger conveyance in which a *business* is carried on but excludes:
- (i) any part which constitutes public premises, and
 - (ii) private residences.
- (2) All schedules attached to this Bylaw form part of this Bylaw.
- (3) Headings or sub-headings are inserted for ease of reference and guidance purposes only and do not form part of this Bylaw.
- (4) Where this Bylaw cites or refers to any act, regulation, code or other bylaw, the citation or reference is to the act, regulation, code or other bylaw as amended, whether amended before or after the commencement of this Bylaw, and includes reference to any act, regulation, code or other bylaw that may be substituted in its place.

- (5) Each provision of this Bylaw is independent of all other provisions and if any provision is declared invalid for any reason by a court of competent jurisdiction, all other provisions of this Bylaw remain valid and enforceable.
- (6) Nothing in this Bylaw relieves a person from complying with any provision of any federal, provincial or municipal law or regulation or any requirement of any lawful permit, order or licence.

PROHIBITION

- 3. A person must not *smoke* or *vape*:
 - (a) in a *public premises, a workplace or a public vehicle*;
 - (b) in, on or within 5 metres of a:
 - (i) *outdoor pool*;
 - (ii) *outdoor skating rink*;
 - (iii) *playground*;
 - (iv) *skate park*;
 - (v) *sports field*; or
 - (vi) *transit property*;to which the public has access as of right or by express or implied invitation;
 - (c) within 5 metres of an entrance or exit to a *public premises*; or
 - (d) in *Olympic Plaza*.
- 4. An *employer, operator or proprietor* must not permit a person to *smoke* or *vape* on premises controlled or owned by them where doing so is prohibited by this Bylaw.

EXCEPTIONS

- 5. (1) Despite any other provision of this Bylaw a person may, inside an enclosed premises where the primary function of the premises is the sale of *electronic smoking devices*, use an *electronic smoking device* to sample a product, other than *tobacco* or *cannabis*, prior to purchase.
- (2) Section 4 does not apply to an *employer, operator or proprietor* who allows a person to use an *electronic smoking device* to sample a product, other than *tobacco* or *cannabis*, prior to purchase inside an enclosed premises where the primary function of the premises is the sale of *electronic smoking devices*.
- (3) Despite any other provision of this Bylaw a person may *smoke* or *vape tobacco* in a location designated as a smoking room pursuant to section 5 of the *Tobacco and Smoking Reduction Act*, S.A. 2005, c. T-3.8.

OFFENCES

6. Any person who contravenes any provision of this Bylaw by doing any act or thing which the person is prohibited from doing, or by failing to do any act or thing the person is required to do, is guilty of an offence pursuant to this Bylaw.

ENFORCEMENT

7. (1) Where an *officer* believes that a person has contravened any provision of this Bylaw, the *officer* may commence proceedings against the person by issuing a violation ticket in accordance with the Provincial Offences Procedure Act, R.S.A. 2000, c. P-34.
- (2) This section shall not prevent an *officer* from issuing a violation ticket requiring a court appearance of the defendant pursuant to the Provincial Offences Procedures Act or from laying an information instead of issuing a violation ticket.

PENALTY

8. (1) Where there is a specified penalty listed for an offence in Schedule A to this Bylaw, that amount is the specified penalty for the offence.
- (2) Where there is a minimum penalty listed for an offence in Schedule A to this Bylaw, that amount is the minimum penalty for the offence.
- (3) In this section, “specified penalty” means an amount that can be paid by a person who is issued a violation ticket and is authorized to make a voluntary payment without a Court appearance.


REPEAL

9. Bylaw 57M92, The Smoking Bylaw, is hereby repealed.

COMING INTO FORCE

10. This Bylaw comes into force on the day it is passed.

READ A FIRST TIME ON APRIL 05 2018
READ A SECOND TIME ON APRIL 05 2018
READ A THIRD TIME ON APRIL 05 2018



MAYOR

SIGNED ON APRIL 05 2018


ACTING CITY CLERK

SIGNED ON APRIL 05 2018

SCHEDULE "A"

PENALTIES

Section	Description of Offence	Minimum Penalty	Specified Penalty
3	<i>Smoke or vape</i> where prohibited	\$50	\$100
4	Permit person to <i>smoke</i> or <i>vape</i> where prohibited	\$50	\$200