

BYLAW NO. 18/022

A BYLAW OF THE REGIONAL MUNICIPALITY OF WOOD BUFFALO TO REGULATE SMOKING AND VAPING IN PUBLIC PLACES, WORK PLACES, AND PUBLIC TRANSPORTATION VEHICLES AND PROPERTY.

WHEREAS pursuant to Section 7(a) of the *Municipal Government Act*, R.S.A. 2000, c.M-26 (“the MGA”), a Council may pass bylaws for municipal purposes respecting the safety, health and welfare of people and the protection of people and property;

AND WHEREAS pursuant to Section 7(b) of the MGA, a Council may pass bylaws for municipal purposes respecting people, activities and things in, on or near a public place or place that is open to the public;

AND WHEREAS pursuant to Section 7(d) of the MGA, a Council may pass bylaws for municipal purposes respecting transport and transportation systems;

AND WHEREAS pursuant to Section 7(e) of the MGA, a Council may pass bylaws for municipal purposes respecting businesses, business activities and persons engaged in business;

AND WHEREAS pursuant to Section 7(i) of the MGA a Council may pass bylaws for municipal purposes respecting the enforcement of bylaws made under the *Municipal Government Act* or any other enactment including any or all of the matters listed therein;

AND WHEREAS health officials have determined that secondhand smoke is a health hazard and causes discomfort for many persons;

AND WHEREAS the smoke or vapour produced by the smoking or vaping of tobacco, cannabis and other substances is a nuisance for persons in public places, work places and public transportation vehicles and property;

AND WHEREAS the Regional Municipality of Wood Buffalo deems it expedient and appropriate to limit the effects of secondhand smoke in the Regional Municipality of Wood Buffalo by regulating smoking and vaping of tobacco, cannabis and other substances in public places, workplaces and public transportation vehicles and property within the Regional Municipality of Wood Buffalo;

AND WHEREAS the federal government is proposing to pass the *Cannabis Act* not later than the summer of 2018;

NOW THEREFORE, the Regional Municipality of Wood Buffalo, in Council duly assembled, enacts as follows:

PART 1 – PURPOSE, DEFINITIONS AND INTERPRETATION

PURPOSE

1. The purpose of this Bylaw is to regulate smoking and vaping of tobacco, cannabis and other substances in public places, work places, public transportation vehicles, and property, to reduce exposure to secondhand smoke in the Regional Municipality of Wood Buffalo for the health, safety and welfare of the inhabitants.

SHORT TITLE

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

DEFINITIONS AND INTERPRETATION

3. For the purpose of administering the provisions of this Bylaw, the following definitions shall apply:
 - (a) “ASHTRAY” means a receptacle for ashes, butts or residue of tobacco or cannabis products;
 - (b) “BUILDING” has a meaning prescribed in the Land Use Bylaw 99/059, as amended, or replaced from time to time;
 - (c) “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 a charitable organization;
 - (d) “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);
 - (e) “BYLAW OFFICER” means any duly appointed Bylaw Enforcement Officer of the Regional Municipality of Wood Buffalo or any member of the Royal Canadian Mounted Police;
 - (f) “CHIEF ADMINISTRATIVE OFFICER” has a meaning prescribed in the *Municipal Government Act*, as amended, or replaced from time to time;
 - (g) “CHILD CARE FACILITY” has a meaning prescribed in the Land Use Bylaw 99/059, as amended, or replaced from time to time;
 - (h) “COMMUNITY RECREATION FACILITY” has a meaning prescribed in the Land Use Bylaw 99/059, as amended, or replaced from time to time;
 - (i) “COUNCIL” has a meaning prescribed in the *Municipal Government Act*, as amended, or replaced from time to time;

- (j) “DESIGNATED PLACE” includes:
- (i) licensed gaming establishments;
 - (ii) drinking establishments;
 - (iii) restaurants;
 - (iv) outdoor patios;
 - (v) private clubs;
 - (vi) place of worship;
 - (vii) community recreation facility;
 - (viii) child care facility;
 - (ix) educational service facility;
 - (x) public transportation vehicles and public transportation property and all areas within 10 metres of public transportation property;
 - (xi) public buildings and all areas within 10 metres of an entrance or exit to a public building;
 - (xii) work places and all areas within 10 metres of an entrance or exit to a work place;
 - (xiii) outdoor recreation facility; and
 - (xiv) park.
- (k) “DRINKING ESTABLISHMENT” means a business where the primary purpose is the sale of alcoholic beverages for consumption on the premises and the secondary purposes of which may include entertainment, dancing, music, the preparation and sale of food for consumption on the premises, take-out food services and the sale of alcoholic beverages for consumption away from the premises;
- (l) “EDUCATIONAL SERVICE FACILITY” has a meaning prescribed in the Land Use Bylaw 99/059, as amended, or replaced from time to time;
- (m) “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;
- (n) “EMPLOYEE” means a person who:
- (i) Performs any work for, supplies any services or fulfills any contractual obligations to any employer; or
 - (ii) receives any instructions or training in the activity, business, work, trade, occupation or profession of the employer;
- (o) “EMPLOYER” means 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;
- (p) “LICENSED GAMING ESTABLISHMENT” means any premises for which the Province of Alberta has a bingo licence or casino licence issued under the *Gaming and Liquor Act*;

- (q) “MUNICIPALITY” means the Regional Municipality of Wood Buffalo;
- (r) “OUTDOOR PATIO” means an area outside of a building intended for the consumption of food or beverages by patrons of a business providing such food or beverages, and includes:
 - (i) a public premise where food or beverages are served that is not fully contained within an enclosed building; and
 - (ii) an outside extension of an eating or drinking establishment regardless of whether it is covered;
- (s) “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;
- (t) “OUTDOOR RECREATION FACILITY” has a meaning prescribed in the Land Use Bylaw 99/059, as amended, or replaced from time to time;
- (u) “OUTDOOR SKATING RINK” means an outdoor ice surface that is designed for recreational skating or playing hockey;
- (v) “PARK” has a meaning prescribed in the Land Use Bylaw 99/059, as amended, or replaced from time to time;
- (w) “PERSON” includes an individual, business, proprietorship, corporation, society, non-profit organization, or government agency;
- (x) “PLACE OF WORSHIP” means a development and any related meeting halls used for spiritual worship and related religious, charitable, educational or social activities;
- (y) “PLAYGROUND” means an outdoor area upon which apparatus such as swings, and slides are placed;
- (z) “PRIVATE CLUB” means an enclosed place or premise that operates primarily for the benefit and pleasure of the members of a non-profit corporation or service club;
- (aa) “PRIVATE RESIDENCE” means a self-contained living premises for the domestic use of one or more persons and is provided with a separate private entrance from the exterior of a building or from a common hall, lobby or stairway, but does not include any portion of such area used as a workplace with the exception of a hotel room or motel room;

- (bb) “PROPRIETOR” means, in addition to the meaning prescribed in the MGA, 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-195; or
 - (iv) a board of trustees elected pursuant to the provisions of the *School Act*, R.S.A. 2000, c. S-3;
- (cc) “PUBLIC” means any person other than the owner, lessee, proprietor or employer of a building or place;
- (dd) “PUBLIC BUILDING” means any enclosed building or structure as defined in this bylaw to which the public can and does have access by right or by invitation, whether or not:
- (i) all members of the public are invited;
 - (ii) the proprietor has the right to exclude any particular persons;
 - (iii) payment, membership or the performance of some formality is required prior to access;
 - (iv) the public has access to the building only at certain times, or from time to time;
 - (v) a member of the public has access only if they are a member or if they are accompanied by a member;
 - (vi) subject to subsections (vii) and (viii) below, if the public has access only to a portion of the building or structure, the entire building or structure shall be deemed to be a public building;

Where a building includes a private residence, the following shall apply:

- (i) that portion of the building containing the private residence shall be deemed not to be a public building;
 - (ii) if a building contains two or more private residences, those common areas of the building; including washrooms, corridors, reception areas, elevators, escalators, foyers, hallways, stairways, lobbies, laundry rooms and enclosed parking garages, shall be deemed to be a public building;
- (ee) “PUBLIC PLACE” means any place to which the public has access, regardless of whether or not access is granted by means of membership or admission fees and includes, but is not limited to:
- (i) licensed gaming establishments;
 - (ii) drinking establishments;
 - (iii) restaurants;

- (iv) outdoor patios;
 - (v) private clubs;
 - (vi) place of worship;
 - (vii) community recreation facility;
 - (viii) child care facility;
 - (ix) educational service facility;
 - (x) public transportation vehicles and public transportation property and all areas within 10 metres of public transportation property;
 - (xi) public buildings and all areas within 10 metres of an entrance or exit to a public building;
 - (xii) work places and all areas within 10 metres of an entrance or exit to a work place;
 - (xiii) outdoor recreation facility;
 - (xiv) park;
 - (xv) roads and sidewalks; and
 - (xvi) vehicles, except where located on private property.
- (ff) “PUBLIC TRANSPORTATION VEHICLE” means a school bus, bus, taxi, limousine, or private for hire vehicle, airplane or other similar vehicle which is being used, or is subject to use, by a passenger or passengers for a fee;
- (gg) “PUBLIC TRANSPORTATION PROPERTY” means any premises owned, used or occupied by the Municipality for the purposes of providing transit services, including public transportation vehicle shelters;
- (hh) “PUBLIC TRANSPORTATION VEHICLE SHELTER” means any structure with a roof designed to protect a passenger from the elements while waiting for a school bus, bus, taxi, limousine, airplane or other similar vehicles;
- (ii) “RESTAURANT” means an enclosed place or premises, the primary purpose of which is the preparation and sale of food for consumption on the premises, the secondary purpose of which may include the sale of alcoholic or non-alcoholic beverages, takeout food services and catering. A restaurant does not include a drinking establishment, but does include any premises for which a Class A liquor license has been issued for the sale and consumption of liquor in premises open to the public, and where minors are not prohibited by the terms of the license;
- (jj) “SKATE PARK” means an outdoor area which is designed and intended specifically for the use of skateboards, in-line skates, or other similar devices;
- (kk) “SMOKE” or “SMOKING” means:
- (i) inhaling or exhaling the smoke produced by burning tobacco or cannabis; or
 - (ii) the carrying, holding or otherwise controlling of any lit smoking equipment, such as cigar, cigarette or pipe containing tobacco, cannabis or any other such substances;

- (ll) “SPORTS FIELD” means an outdoor area which is set apart and used for the playing of sporting activities;
 - (mm) “TRADITIONAL PIPE CEREMONIES” means any cultural or religious ceremony involving pipes or the use or consumption of tobacco products;
 - (nn) “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;
 - (oo) “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;
 - (pp) “VIOLATION TICKET” means a ticket issued pursuant to Part II of the *Provincial Offences Procedure Act*, R.S.A. 2000 c. P-34, as amended or replaced from time to time, and regulations thereunder, and as referred to in Part 6 of this bylaw;
 - (qq) “WORKPLACE” means any enclosed area of a building or structure in which an employee works and includes washrooms, corridors, lounges, eating areas, outdoor patios, reception areas, elevators, escalators, foyers, hallways, stairways, enclosed walkways, amenity areas, lobbies, laundry rooms and enclosed parking garages utilized by an employee. For clarification purposes:
 - (i) a place is a workplace whether or not the employee is employed by the proprietor of the premises at which the employee works;
 - (ii) ii. subject to subsection iv below, if an employee works in any portion of a building, the entire building shall be deemed to be a workplace;
 - (iii) home offices that employ non-residents or that require public access shall be deemed to be a workplace; and
 - (iv) any portion of a building that is used exclusively as a private residence, including a hotel room or a motel room shall not be deemed to be a workplace.
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 requirements of any lawful permit, order or license.

PART 2 – PROHIBITION

7. A person must not smoke or vape in any designated place, a workplace, a public transportation vehicle or any public transportation property within the Municipality regardless of whether or not a 'No Smoking No Vaping' sign is posted.
8. A proprietor and/or employer shall not permit smoking or vaping in designated place, whether or not a 'No Smoking No Vaping ' sign is posted or visible.
9. A person must not smoke or vape in, on or within 10 metres of:
- (a) an entrance or exit to an educational service facility;
 - (b) an entrance or exit to a child care facility;
 - (c) An entrance or exit to a place of worship;
 - (d) an entrance or exist to a community recreation facility;
 - (e) outdoor pool;
 - (f) outdoor skating rink;
 - (g) playground;
 - (h) skate park;
 - (i) sports field;
 - (j) tennis court.
10. Every proprietor or employer of a designated place shall:
- (a) ensure compliance with this Bylaw;
 - (b) prohibit smoking and vaping in the public place; and
 - (c) post 'No Smoking No Vaping ' signs in accordance with Part 3 of this Bylaw.
11. Every proprietor or employer shall inform each employee that smoking and vaping are prohibited in the designated place.
12. A proprietor or employer who takes, or ensures that, the following steps are taken shall be deemed to have complied with the obligation described in Section 10:
- (a) advises a person who is smoking or vaping that smoking or vaping are not allowed and requests them to extinguish any lit tobacco or cannabis product, or electronic smoking device or other smoking equipment;
 - (b) asks any person who is smoking or vaping who refuses to comply with such a request to leave the premises;
 - (c) refuses to provide any further service to such person; and
 - (d) immediately reports to a Bylaw Officer any person who is smoking or vaping, and who refuses to extinguish any lit tobacco or cannabis product, electronic smoking device or other smoking equipment, and who refuses to leave the premises when requested to do so.

13. The proprietor or employer of a designated place shall ensure that no ashtrays are placed or allowed to remain in any designated place.
14. A proprietor or employer of a designated place may, where sufficient space exists, ensure that ashtrays are placed more than 10 metres from the entrance or exit of the designated place, if employees or members of the public, from time to time, gather to smoke in a location outside the designated place. At all times, the ashtray must remain on the proprietor's and/or employer's property.
15. No person may dispose of ashes, butts or residue of tobacco or cannabis products in anything other than an ashtray, as defined within this Bylaw. Any person who does not comply with this Section is guilty of an offense.
16. No person shall smoke or vape inside any vehicle that is used as a public transportation vehicle, regardless of whether the vehicle is on or off duty.
17. Consumption of Cannabis in any form including smoking or vaping is prohibited in a public place.

PART 3 – SIGNS

18. The proprietor and/or employer of a designated place shall ensure that signs are posted in a prominent, clearly visible location and in accordance with this Bylaw so as to clearly identify that smoking and vaping is prohibited.
19. The proprietor and/or employer of the designated place shall ensure that:
 - (a) signs are posted at all entrances to the designated place;
 - (b) signs are posted at the entrance to each washroom;
 - (c) signs are posted in the vicinity of any seating area where food or beverages are sold or consumed;
 - (d) signs are posted at the entrance to or within in the vicinity of a park and outdoor recreation facility; and
 - (e) signs are posted on or in public transportation vehicle shelters.
20. The signs referred to in this Bylaw shall consist of graphic symbols that comply with the provisions contained herein.
21. The following graphic symbol, on a white background with the circle and the interdictory stroke in red, shall be used for reference purposes only to indicate the areas where smoking and vaping is prohibited pursuant to this Bylaw:



22. The graphic symbol referred to in Section 20 shall include the text "Regional Municipality of Wood Buffalo Smoking and Vaping Bylaw". Text shall be a minimum of 1.3 centimetres in height and at no time will be less than one-quarter (1/4) of the height of all other letters of the sign.
23. The graphic symbol referred to in Section 20 shall include the text "No Smoking No Vaping". In letters at least fifty (50%) percent of the diameter of the circle or symbol, and of a letter height not less than 2.54 centimetres.
24. The lettering of signs may be in either upper or lower case or combination thereof, but the words "letter height", as used in Sections 21 and 22 shall mean the actual height of a letter whether it is in upper or lower case.
25. Notwithstanding that the graphic symbol in Subsection 20 is a cigarette and an electronic cigarette, it shall be deemed to include a reference to lit tobacco, cannabis and any other such product, any electronic smoking device and any other smoking or vaping equipment.
26. Any sign prohibiting smoking and vaping that refers to a former non-smoking bylaw of the Regional Municipality of Wood Buffalo is deemed to refer to this Bylaw and to provide proper notice.
27. No person shall remove, alter, conceal, deface or destroy any sign posted pursuant to this Bylaw. Any person who does not comply with this section is guilty of an offence.

PART 4 – OFFENCES

28. 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.

PART 5 – PENALTIES

29. Any person who fails or neglects to perform the duties or requirements imposed upon it under the provisions of this Bylaw is guilty of an offence and liable on summary conviction to a fine not exceeding ten thousand dollars (\$10,000.00).
30. The specified fine for an offence committed pursuant to this Bylaw shall be two hundred fifty dollars (\$250.00) for each such occurrence.
31. Any person convicted of an offence shall also be liable, in default of payment of any fine, to imprisonment for up to six (6) months.
32. In the case of an offence that is of a continuing nature, a contravention shall constitute a separate offence in respect of each day, or part of a day, on which that offence continues and a person guilty of such an offence is liable to a fine in an amount not less than that established by this Bylaw for each such day.

PART 6 – VIOLATION TICKET

33. A Bylaw Officer is hereby authorized and empowered to issue a violation ticket pursuant to Part II of the *Provincial Offences Procedure Act*, R.S.A. 2000, c.P-34, as amended, or replaced from time to time, to any person who the Bylaw Officer has reasonable grounds to believe has contravened any provision of this Bylaw.

PART 7 – EXEMPTION

34. Traditional pipe ceremonies are exempt from this Bylaw.
35. Despite any other provision of this Bylaw a person may, inside 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.
36. Section 10 does not apply to an employer, 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 enclosed premises where the primary function of the premises is the sale of electronic smoking devices.

PART 8 – SEVERABILITY

37. If any section or sections of this Bylaw or parts thereof are found in any court of law to be illegal or beyond the power of Council to enact, such section or sections or parts thereof shall be deemed to be severable and all other sections or parts of this Bylaw shall be deemed to be separate and independent therefrom and to be enacted as such.

PART 9 – ENFORCEMENT

38. For the enforcement of this Bylaw, a Bylaw Officer, upon producing proper identification, may enter any designated place and public place and may make examinations, investigations and inquiries.
39. No Bylaw Officer may enter a workplace that is also a private residence without the consent of the occupant or without first obtaining and producing a warrant.
40. Where a Bylaw Officer has reason to believe that a person has contravened any provision of this bylaw, he or she may serve upon such person:
- (a) a violation ticket requiring a person to appear in Court with the alternative of making a voluntary payment in lieu of prosecution; or
 - (b) a violation ticket requiring a person to appear in Court without the alternative of making a voluntary payment.

PART 10 – REPEAL AND COMING INTO EFFECT

- 41. Bylaw No. 18/015 be repealed.
- 42. This Bylaw comes into effect when it is passed.

READ a first time this 1st day of October, A.D. 2018.

READ a second time this _____ day of _____, A.D. 2018.

READ a third and final time this _____ day of _____, A.D. 2018.

SIGNED and PASSED this _____ day of _____, A.D. 2018.

Mayor

Chief Legislative Officer