



By-law 2019-052

Smoking By-law

(Consolidated)

This By-law printed under and by the authority of the Council of the City of Barrie

A By-law of The Corporation of the City of Barrie to regulate smoking outdoors on City owned property, at work places and public places and to repeal and replace By-law 2009-086 and 2010-034 regarding Smoking.

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Bill No. 052

BY-LAW NUMBER 2019-052

A By-law of The Corporation of the City of Barrie to regulate smoking outdoors on City owned property, at work places and public places and to repeal and replace By-laws 2009-086 and 2010-034 regarding Smoking.

WHEREAS Section 8 of the *Municipal Act, S.O. 2001* provides that the Act shall be interpreted broadly so as to confer broad authority on municipalities to (a) enable municipalities to govern their affairs as they consider appropriate and, (b) enhance their ability to respond to municipal issues;

AND WHEREAS Section 9 of the *Municipal Act, 2001, S.O. 2001, c. 25* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising the authority under the Act;

AND WHEREAS Section 10 of the *Municipal Act, S.O. 2001, c. 25* provides that single tier municipalities have the authority to pass by-laws respecting the health, safety and well-being of persons;

AND WHEREAS Section 115 of the *Municipal Act, S.O. 2001, c. 25* provides that without limiting section 10, a municipality may prohibit or regulate the smoking of tobacco in public places and provide for the definition of a "public place" for the purpose of the by-law;

AND WHEREAS Section 115 (3) of the *Municipal Act, S.O. 2001, c. 25* provides that Section 115 of the Act shall not apply to a highway;

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 the Act and a provision of another Act, regulation or a Municipal By-law that deals with a matter to which the Act applies, the provision that is more restrictive shall prevail;

AND WHEREAS by resolution 19-G-146, the Council of The Corporation of the City of Barrie deems it expedient to enact a by-law to regulate smoking outdoors on City owned property, work places and public places and repeal and replace By-laws 2009-086 and 2010-034 regarding Smoking.

NOW THEREFORE the Council of the Corporation of the City of Barrie enacts as follows:

1.0.0.0 DEFINITIONS

For the purposes of this by-law:

1.1.0.0 **CANNABIS** – means cannabis as defined by the Cannabis Act (Canada) and shall include medical cannabis obtained for medical purposes in accordance with applicable Federal law.

1.2.0.0 **CITY** – means the Corporation of the City of Barrie.

1.3.0.0 **CITY CLERK** – means the Clerk of the Corporation of the City of Barrie or his/her designate.

1.4.0.0 **CITY EMPLOYEE** – means an Officer, servant or other staff member of the City authorized or employed whose duties include monitoring city owned property for unauthorized activities which are not permitted but shall not include:

- a) a member of Council;
- b) a Council appointee to a local board and whose remuneration from the City results from his/her membership on such local board or other body;
- c) an employee of a local board or other body; or;
- d) a municipal auditor.

1.5.0.0 **CITY PROPERTY** – means property which belongs exclusively to the City of Barrie and to which legal rights apply and shall include but not be limited to a park, municipal reservoir, playground, sports field, spectator seating area, a building, structure, vessel, vehicle or conveyance, or part thereof as may be defined in this by-law but shall not include a highway as defined by this by-law

- 1.6.0.0.0 **DESIGNATED SMOKING AREA** – means an area approved for the act of smoking located in a parking lot or parking area which has been established or set out for the legal parking of vehicles, but does not include that area of the parking lot designed only for the passage of vehicles.
- 1.7.0.0.0 **DWELLING UNIT** – means any building or part thereof used as a home, residence, or sleeping place of a family or individual either continuously, permanently, temporarily or transiently.
- 1.8.0.0.0 **ELECTRONIC CIGARETTE** – means a vapourizer or inhalant type device whether called an Electronic Cigarette, E-Cigarette, Vape or any other name, that contains a power source and heating element designed to heat a product or substance and produce a vapour intended to be inhaled .
- 1.9.0.0.0 **EMPLOYEE** – includes a person who, being paid or unpaid, performs any work for or supplies any services to an employer or receives any instructions or training in the activity, business, work, trade, occupation, or profession of the employer or his agent and includes a volunteer and a person who is self-employed and “employment” has a corresponding meaning.
- 1.10.0.0.0 **EMPLOYER** – includes any person who as the owner, proprietor, manager, superintendent or overseer of any activity, business, premises, work, trade, occupation or profession, has control over or direction of, or is directly or indirectly responsible for the employment of a person.
- 1.11.0.0.0 **HIGHWAY** – means a common and public highway, street, road, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, and any part of which is intended for or used by the general public for the passage of vehicles or pedestrians and includes the area between the lateral property lines thereof.
- 1.12.0.0.0 **NON-SMOKING POLICY** - means a written policy that prohibits smoking in the workplace in accordance with the *Smoke Free Ontario Act* and this by-law.
- 1.13.0.0.0 **MUNICIPAL RESERVOIRS** - means a reservoir, lake, pond or other receptacle or water storage area connected with any park, open space or environmentally protected land.
- 1.14.0.0.0 **OFFICER** – means a person appointed as a Municipal Law Enforcement Officer, a Police Officer, or other individual duly appointed to enforce this by-law.
- 1.15.0.0.0 **OUTDOORS** – means any open space which is outside of a facility, building, structure, premise including any temporary building, structure or part thereof, whether covered by a roof or not in relation to City owned property.
- 1.16.0.0.0 **OUTDOOR PATIO** – means an area of a restaurant or bar that:
- a) Food or drink is served or sold or offered for consumption in the area, or the area is part of or operated in conjunction with an area where food or drink is served or sold or offered;
 - b) is not covered by a temporary or permanent roof; or if covered by a temporary or permanent roof, has one or more unobstructed exterior openings in the walls surrounding the roofed area to provide at least 40% of the perimeter enclosed walls to be open to the movement of outdoor air at all times;
 - c) does not share open windows with an enclosed public place;
 - d) does not share open doors with an enclosed public place, except when doors are being opened by individuals to enter or exit the outdoor patio;
 - e) does not share thermostat controlled heating or air conditioning systems with an enclosed public place; and
 - f) has a circulation of outdoor air throughout its designated space.
- 1.17.0.0.0 **PARK** – means all lands owned or operated by or belonging to the City of Barrie or other public body such as school boards or conservation authorities which may be designed or designated as Open Space or Environmental Protection Area and used by the public for active or passive recreational use including but not limited to sporting fields, splash pads, fitness equipment and any spectator area associated with such, or as gathering places such as urban squares, or which may be left in their natural state for environmental reasons.
- 1.18.0.0.0 **PERSON** - means and includes any individual, corporation, partnership, company, association or party and the heirs, executors, administrators, or other legal representative of such person, to whom the context can apply according to law; shall include any group of persons comprising a society or other organizations and shall include the plural wherein the context requires. Wherever the word he or him is used, it shall mean and include the feminine or neuter gender wherever the context so requires.
- 1.19.0.0.0 **PROPRIETOR or OTHER PERSON IN CHARGE** – means the person who controls, governs or directs the activity carried on within the premises designated as prohibited areas under this by-law and includes the person who is actually in charge of the premises at any particular time.

- 1.20.0.0.0 **PUBLIC PLACE-** means any building, structure, vessel, vehicle or conveyance, or part thereof, whether covered by a roof or not, to which the public has access as of right or by invitation, expressed or implied, whether or not a fee is charged for entry being owned by a private entity and shall include an outdoor patio as defined in this by-law but does not include a highway.
- 1.21.0.0.0 **RECREATION FACILITY** – means any building, structure or premise, or part thereof, which is designed or designated for the playing of sports, fitness activities, conducting scheduled programming or other approved activity.
- 1.22.0.0.0 **SMOKE or SMOKING** – means the inhaling or exhaling of a lighted tobacco or lighted cannabis product or any other lighted paraphernalia or product commonly used for or has the intended purpose of the act of smoking and shall include the holding of a tobacco or cannabis product or any paraphernalia or product whether or not the product is lighted.
- 1.23.0.0.0 **TOBACCO** – means tobacco in any processed or unprocessed form that may be lighted and smoked or inhaled.
- 1.24.0.0.0 **VAPE or VAPING or VAPOURIZING** – means inhaling or exhaling the vapour produced by a lighted Electronic Cigarette or similar device regardless of the product or substance being vaped or vaporized and shall include the holding of an Electronic Cigarette or similar device whether or not such device is lighted.
- 1.25.0.0.0 **WALKWAY** – means an area of a park designated or designed specifically for the passage of pedestrians or cyclists and shall include but not be limited to a pathway, trail, bicycle path, promenade or boardwalk but shall not include a municipal sidewalk within a highway.
- 1.26.0.0.0 **WORKPLACE** – means a building, structure, vessel, vehicle or conveyance or part thereof, to which the public may or may not have access either expressed or implied, in which one or more employees work, including any other area in the building, structure, vessel, vehicle or conveyance utilized by employees, but does not include an outdoor patio.
- 2.0.0.0.0 GENERAL PROHIBITIONS**
- 2.1.0.0.0 No person shall smoke or vape on any city property owned and occupied by the City of Barrie whether or not a No Smoking No Vaping sign is posted.
- 2.2.0.0.0 No person shall smoke or vape outdoors on any walkway set out, on or through City owned and occupied property whether or not a No Smoking No Vaping sign is posted.
- 2.2.1.0.0 Notwithstanding sections 2.1.0.0.0 and 2.2.0.0.0 such prohibition shall not apply to a municipal sidewalk within a road allowance or any part of a highway as defined by this by-law and shall further not apply to a Designated Smoking Area as set out in Schedule “A” to this by-law.
- 2.3.0.0.0 No person shall smoke or vape on any property owned and occupied by the City of Barrie upon which is located a Recreation Facility whether or not a No Smoking No Vaping sign is posted.
- 2.4.0.0.0 No person shall smoke or vape outdoors within 20 metres of any point on the perimeter property boundary of a Recreation Facility whether or not a No Smoking No Vaping sign is posted.
- 3.0.0.0.0 WORKPLACE**
- 3.1.0.0.0 Every employer or other person in charge of a workplace shall prohibit smoking or vaping in such workplace as regulated by the *Smoke Free Ontario Act, S.O. 2017, c. 26* as may be amended from time to time.
- 3.2.0.0.0 No employer or other person in charge of a workplace shall permit smoking or vaping where smoking or vaping is prohibited under this by-law.
- 3.3.0.0.0 No person shall smoke or vape in any workplace within the City of Barrie whether or not a No Smoking No Vaping sign is posted.
- 3.4.0.0.0 Every employer or other person in charge of a workplace shall post No Smoking No Vaping signs in accordance with the *Smoke Free Ontario Act, S.O. 2017, c. 26* as may be amended from time to time.

4.0.0.0 PUBLIC PLACE

4.1.0.0.0 Every proprietor or other person in charge of a public place shall prohibit smoking or vaping in such public place as regulated by the *Smoke Free Ontario Act, S.O. 2017, c. 26* as may be amended from time to time.

4.2.0.0.0 No proprietor or other person in charge of a public place shall permit smoking or vaping where smoking or vaping is prohibited under this by-law.

4.3.0.0.0 No person shall smoke or vape in any public place within the City of Barrie whether or not a No Smoking No Vaping sign is posted.

4.4.0.0.0 Every proprietor or other person in charge of a public place shall post No Smoking No Vaping signs in accordance with the *Smoke Free Ontario Act, S.O. 2017, c. 26* as may be amended from time to time.

4.5.0.0.0 No person shall smoke or vape outdoors on the public area within a 9 metre radius surrounding any point on the perimeter boundary of an outdoor patio.

5.0.0.0 EXEMPTIONS

5.1.0.0.0 No provision of this by-law that prohibits smoking or vaping in a place or area shall apply to:

5.1.1.0.0 an Indigenous Person smoking as part of an activity or event if such activity or event is carried out for traditional Indigenous cultural or spiritual purposes, or

5.1.2.0.0 a Non-Indigenous Person smoking as part of an activity or event if such activity or event is carried out with an Indigenous Person and for traditional Indigenous cultural or spiritual purposes.

5.1.3.0.0 a person smoking where that act of smoking is used in a stage production of a theatrical performance.

6.0.0.0 ENFORCEMENT

6.1.0.0.0 A Municipal Law Enforcement Officer, Police Officer, or other duly appointed individual shall enforce the provisions of this by-law.

6.2.0.0.0 An Officer may, at any reasonable time, enter any public place for the purposes of determining compliance with this by-law.

6.3.0.0.0 An Officer may, upon producing proper identification, at any reasonable time, enter any workplace or any building or structure in which a workplace is situated for the purposes of determining compliance with this by-law.

6.4.0.0.0 No Officer may enter a workplace that is also a dwelling without the consent of the occupant or without first obtaining and producing a warrant.

6.5.0.0.0 No person shall obstruct, hinder, or otherwise interfere with an Officer or other duly appointed individual in the lawful carrying out of their duties and responsibilities under the provisions of this by-law.

7.0.0.0 CONFLICTS

7.1.0.0.0 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 smoking shall prevail.

8.0.0.0 SEVERABILITY

8.1.0.0.0 Should any section of this by-law be declared by a Court of competent jurisdiction to be ultra vires or illegal for any reason, the remaining parts shall nevertheless remain valid and binding, and shall be read as if the offending section or part had been struck out.

9.0.0.0 PENALTY

9.1.0.0.0 Every person who contravenes any provision of this By-law is guilty of an offence under the provisions of the *Provincial Offences Act, R.S.O 1990, c P.33*, as amended, and is liable on conviction to a penalty not exceeding \$5,000, exclusive of costs, subject to the provisions of the Act.

9.2.0.0.0 Every person who contravenes any provision of this By-law, and every director or officer of a corporation who knowingly concurs in the contravention of this By-law by the corporation, is guilty of an offence under the provisions of the *Municipal Act, 2001, S.O. 2001, c. 25* as amended.

- 9.3.0.0.0 Every person who contravenes the provisions of any section of this By-law, and every director or officer of a corporation who knowingly concurs in the contravention of this By-law by the corporation, is guilty of an offence under the provisions of the *Municipal Act, 2001, S.O. 2001, c. 25* as amended and is liable on conviction to a penalty where the minimum fine shall not exceed \$500 and a maximum fine shall not exceed \$100,000 exclusive of costs under the provisions of the *Municipal Act, 2001, S.O. 2001, c. 25* as amended.
- 9.4.0.0.0 For the purpose of continuous offences, every person who contravenes any provision of this By-law, and every director or officer of a corporation who knowingly concurs in the contravention of this By-law by the corporation, is guilty of an offence and is liable on conviction to a penalty not exceeding \$10,000 per day or part thereof, exclusive of costs, under the provisions of the *Municipal Act, 2001, S.O. 2001, c. 25* as amended.
- 9.5.0.0.0 For the purpose of multiple offences, every person who contravenes any provision of this By-law, and every director or officer of a corporation who knowingly concurs in the contravention of this By-law by the corporation, is guilty of an offence and is liable on conviction to a penalty not exceeding \$10,000 per offence, exclusive of costs under the provisions of the *Municipal Act, 2001, S.O. 2001, c. 25* as amended.
- 9.5.1.0.0 Notwithstanding Sections 9.3.0.0.0 and in accordance with the provisions of the *Municipal Act, 2001, S.O. 2001, c. 25* as amended, the total of all fines for the continuous offences or multiple offences is not limited to \$100,000.
- 10.0.0.0.0 CONTINUATION PROHIBITED BY ORDER**
- 10.1.0.0.0 The Court in which a conviction has been entered, and any Court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted and such order shall be in addition to any other penalty imposed on the person convicted
- 11.0.0.0.0 REPEAL**
- 11.0.0.0.0 That By-law 2009-086 as amended regarding smoking outdoors on City owned property be repealed.
- 11.1.0.0.0 That By-law 2010-034 as amended regarding smoking in public places and workplaces be repealed.
- 12.0.0.0.0 FORCE AND EFFECT**
- 12.1.0.0.0 **THAT** this By-law shall come into force and take effect immediately upon the final passing thereof.

READ a first and second time this 17th day of June, 2019.

READ a third time and finally passed this 17th day of June, 2019.

THE CORPORATION OF THE CITY OF BARRIE

“ORIGINAL SIGNED”

DEPUTY MAYOR – B. WARD

“ORIGINAL SIGNED”

CITY CLERK – WENDY COOKE

SCHEDULE "A"

DESIGNATED SMOKING AREAS	
FACILITIES (PERMITTED PARKING LOTS)	
Name of Facility	Municipal Address
2NTower - Bayfield 2N Tower	444 Bayfield Street
2S Reservoir - Harvey Road Reservoir	90 Harvey Road
3NTower - Ferndale Tower	434 Ferndale Drive South
3STower - Maplevue 3S Tower	65 Maplevue Drive
Barrie Police Service Headquarters	29 Sperling Drive
BPS1 – Codrington Booster Station	64 Codrington Street
BPS2 - Anne Street Booster Station	164 Anne Street North
BPS3 - Innisfil Booster Station	380 Innisfil Street
BPS3N - Leacock Booster Station	319 Leacock Street
BPS3S - Big Bay Booster Station	20 Big Bay Point Road
Emergency Services Campus	110 Fairview Drive
Environmental Centre (except designated parking areas that are within 9 metres of a building)	272 Ferndale Drive N.
Fire Station #1	155 Dunlop Street West
Fire Station #2	15 Bell Farm Road
Fire Station #3	340 Big Bay Point Road
Fire Station #4	250 Ardagh Road
Grove Street Sewage Pumping Station	238 Penetanguishene Road
Holly Sewage Pumping Station	65 Logan Crescent
Huronion Road Sewage Pumping Station	644 Huronia Road
Lakeshore Mews	West of Mulcaster Street between Simcoe Street and Dunlop Street East
Little Lake Sewage Pumping Station	510 Duckworth Street
Lockhart Road Sewage Pumping Station	799 Bayview Drive
Operations Centre (except designated parking areas that are within 9 metres of a building)	165 Ferndale Drive
South Shore Community Centre	205 Lakeshore Drive
Surface Water Treatment Plant	20 Royal Parkside Drive
Water Pollution Control Centre (Secondary Pumping Station Designated Parking Area) and (Southeast Designated Parking Area except southeast designated parking areas that are within 9 metres of a building)	249 Bradford Street
WPS10 – Huronia Road Well and Pumping Station	294 Huronia Road
WPS16 – Brownwood Drive Well and Pumping Station	101 Brownwood Drive
WPS17 & 18 – Cross Street Well	34 Cross Street
WPS3A – Anne Street Well and Pumping Station	54 Anne Street South
WPS4 – Perry Street Well and Pumping Station	83 Perry Street
WPS5 – John Street Well and Pumping Station	217 John Street
WPS6 – Wood Street Well	12 Wood Street
WPS7 – Tiffin Street Well and Pumping Station	44 Sarjeant Drive
WPS9 & WPS13 – Johnson Street Wells and Pumping Station	168 Johnson Street

PARKS DESIGNATED SMOKING AREAS - (PERMITTED PARKING LOTS)	
Name of Park	Municipal Address
Centennial Park North	75 Lakeshore Drive (includes Victoria North and Victoria South and transient vehicle with trailer lots)
Centennial Park South	95 Lakeshore Drive
Heritage Park (west parking section only)	5 Simcoe Street
Johnson Beach	81 Shanty Bay Road
Lakeshore Drive Lot West (Spirit Catcher)	15 Simcoe Street
Lakeshore Lot	25 Simcoe St
Marina Lot	55 Lakeshore Drive
North Marina Lot	15 Simcoe Street
Tiffin Launch (upper parking section only)	105 Lakeshore Drive