

City of Markham

Ontario



By-law 2018-135

**A By-law to prohibit the smoking or vaporizing of cannabis
in public places in the City of Markham**

(Consolidated for convenience only to October 3, 2019)

Amended by:

By-law 2019-103 – September 24, 2019



By-law 2018-135

A By-law to prohibit the smoking or vaporizing of cannabis
in public places in the City of Markham

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

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

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

WHEREAS the Council of The Corporation of the City of Markham (the “Council”) wishes to prohibit the smoking or vaporizing of cannabis in public places within the City of Markham; and,

WHEREAS Section 18 of the Smoke-Free Ontario Act, 2017, S.O. 2017, c. 26, Schedule 3, contemplates that a municipal by-law may deal with a matter to which that Act applies but in a more restrictive manner, and directs that the by-law prevails to the extent it is more restrictive than that Act.

Now therefore the Council hereby enacts as follows:

1.0 BY-LAW TITLE

1.1 This By-law may be cited as the “Cannabis 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) “City” means The Corporation of the City of Markham;
- (c) “Council” means the Council of The Corporation of the City of Markham;
- (d) “Officer” means:
 - I. a Provincial Offences Officer of the City or other person appointed by or under the authority of a City by-law to enforce City by-laws; or
 - II. a Police Officer employed by York Regional Police, Ontario Provincial Police or the Royal Canadian Mounted Police.

(e) “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.

(f) “Smoke or Smoking” includes the inhaling, exhaling, holding or carrying of any lighted cannabis or any heated or otherwise activated smoking equipment used to smoke or consume cannabis;

(Amended by By-law 2019-103)

(g) “Vaporizing” means:

- I. to inhale and exhale the vapour produced by an electronic cigarette or similar device containing Cannabis, or
- II. holding or otherwise having control of an electronic smoking device that is producing vapour, emissions or aerosol from Cannabis.

3.0 GENERAL PROHIBITIONS:

3.1 In addition to the prohibitions set out in the Smoke-Free Ontario Act, S.O. 1994, c.10 as amended from time to time, no person shall smoke or vaporize Cannabis, or hold or otherwise use lighted Cannabis in any Public Place, including but not limited to the following:

- a) the Anthony Roman Centre;
- b) parks, trails and natural areas in the City;
- c) public and private parking lots;
- d) facilities owned by the City of Markham, including arenas, community centres, libraries, parks, and pools;
- e) roads, sidewalks and municipal boulevards;
- f) all schools, daycare facilities, and other child care facilities; and,
- g) 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 containing one or more dwellings.

4.2 This By-law does not apply to a person who is entitled to possess Cannabis pursuant to a medical document issued pursuant to the *Access to Cannabis for Medical Purposes Regulations*, SOR/2016-230 or successor legislation or regulations.

5.0 ENFORCEMENT

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

5.2 An Officer who has reasonable grounds to believe that a person has contravened any provision of this By-law may require that person to provide their identification to the Officer.

5.3 Every person who is required by an Officer to provide identification under section 5.2 shall identify themselves to the Officer. Giving their correct name, date of birth, and address shall constitute sufficient identification. Failure to provide sufficient 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 by the Provincial Offences Act, R.S.O. 1990, Chapter 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 The court in which the 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.

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, Chapter 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. 2016-84, *A By-law to Implement an Administrative Monetary Penalty System for Non-Parking Offences*, 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 2016-84, *A By-law to Implement an Administrative Monetary Penalty System for Non-Parking Offences*, 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 City 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 City 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, Chapter P.33.
- 10.2 The City 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 the local municipality for which all of the owners are responsible for paying the fine, and 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 balance of the By-law, or its application in other circumstances, shall not be affected and shall continue to be in full force and effect.

12.0 INTERPRETATION

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

13.0 FORCE AND EFFECT

- 13.1 This By-law comes into force on the day the Cannabis Statute Law Amendment Act, 2018 comes into force.

Read a first, second, and third time and passed on this 16th day of October, 2018.

"Kimberley Kitteringham"

Kimberley Kitteringham
City Clerk

"Frank Scarpitti"

Frank Scarpitti
Mayor