THE CORPORATION OF THE TOWN OF EAST GWILLIMBURY

BY-LAW NUMBER 2019-071

Being a By-law to prohibit the smoking of tobacco, cannabis, and non-tobacco substances in prescribed locations in the Town of East Gwillimbury

WHEREAS Section 8 the *Municipal Act, 2001*, c. 25, as amended (the "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 Section 115 of the Municipal Act provides that a municipality may prohibit and regulate the Smoking of tobacco and cannabis in Public Places and workplaces; and,

WHEREAS clause 6 of subsection 11(2) of the Municipal Act provides that a municipality may pass Bylaws 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 of the Town of East Gwillimbury (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 Section 425 of the Municipal Act provides that a municipality may pass Bylaws providing that a person who contravenes any Bylaw of the municipality is guilty of an offence; and,

WHEREAS subsection 429(1) of the Municipal Act provides that a municipality may establish a system of fines for offences under a Bylaw of the municipality passed under the Municipal Act; and,

WHEREAS Section 434.1 of the Municipal Act provides that a municipality may require a person to pay an administrative penalty if the municipality is satisfied that a person has failed to comply with a Bylaw of the municipality passed under the Municipal Act; and,

WHEREAS Section 434.2(1) of the Municipal Act provides that an administrative penalty imposed by a municipality on a person constitutes a debt of the person to the municipality; and,

WHEREAS Section 435 of the Municipal Act provides for conditions governing the powers of entry of a municipality; and,

WHEREAS Section 436 of the Municipal Act provides that a municipality has the power to pass Bylaws providing that the municipality may enter on land at any reasonable time for the purpose of carrying out an inspection to determine compliance with a Bylaw; and

WHEREAS the Council wishes to prohibit the Smoking of tobacco, cannabis, and any other non-tobacco products in prescribed places within the Town of East Gwillimbury; and,

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

Now therefore the Council hereby enacts as follows:

1.0 BYLAW TITLE

1.1 This Bylaw may be cited as the "Smoking Bylaw".

2.0 DEFINITIONS

2.1 For the purpose of this Bylaw:

(a) "Council" means the Council of The Town of East Gwillimbury;

(b) "Designated Smoking Area" means an open-air unenclosed outdoor area marked by signage and approved by Council where an individual may Smoke, provided that this area does not conflict with the Smoke-Free Ontario Act.

(c) "Enclosed Public Place" means:

I. the inside of any place, building or structure or vehicle or conveyance, or a part of any of them,

a. that is covered by a roof,

b. to which the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry, or

II. a prescribed place;

(d) “Municipality” means The Corporation of the of the Town of East Gwillimbury;

(e) “Officer” means:

I. a Provincial Offences Officer of the Municipality or other person appointed by or under the authority of a municipal Bylaw to enforce municipal Bylaws; or

II. a Police Officer employed by York Regional Police, Ontario Provincial Police or the Royal Canadian Mounted Police.

(f) “Owner” means all registered owners of the Property and includes all tenants, any person that is responsible for managing and/or maintaining the Property or part of the Property, and any directors and officers of a corporation that owns, leases, manages or maintains the Property.

(g) “Private Dwelling” means Private self-contained living quarters in any detached or multi-unit building or facility

(h) “Property” means a building, and includes the lands and premises appurtenant thereto, and includes vacant Property.

(i) “Public Place” includes Property 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, but excludes public highways.

(j) “Smoke or Smoking” includes the holding or carrying of a lighted cigar, cigarette, pipe, e-cigarette, electronic vaporizer or any other lighted, heated or otherwise activated smoking or vaporizing equipment, that contains any tobacco, cannabis or other substance or product;

3.0 GENERAL PROHIBITIONS:

3.1 In addition to the prohibitions set out in the Smoke-Free Ontario Act no person shall Smoke in any of the following places:

(a) Those Public Places listed in Schedule A; and

(b) all Properties where schools, daycare facilities, and other child care facilities are located.

3.2 An Owner of a location listed in Section 3.1 shall not permit Smoking where Smoking is prohibited by this Bylaw.

4.0 APPLICABILITY AND EXCEPTIONS

4.1 This Bylaw does not apply to a Private Dwelling except when in use as a Public Place, school, daycare or other childcare facility.

4.2 A person may Smoke in a Designated Smoking Area.

4.3 Notwithstanding Section 3.1 (a), a person may Smoke cannabis in a Public Place listed in Schedule A other than an Enclosed Public Place where the person is authorized to possess cannabis for the individual's own medical purposes in accordance with Part 14 of the Cannabis Regulations (Canada) or in accordance with a court order.

4.4 A person claiming exemption in accordance with Section 4.3 shall have their medical document on their possession at all times of Smoking cannabis, and shall surrender the medical document for inspection upon demand of an Officer.

5.0 POWERS OF ENTRY AND INSPECTION

5.1 Officers and persons acting under their direction may, at any reasonable time, or at any time when there are reasonable grounds to believe that a contravention of this By-law is occurring or alleged to be occurring, enter onto any Public Place to determine if the provisions of this By-law are being complied with.

5.2 Officers are authorized, for the purposes of inspection to determine and enforce compliance with the By-law, to:

(a) require any person to produce for inspection all documents or things relevant to the inspection. Officers may inspect and remove documents and things for the purposes of making copies or extracts;

(b) alone or in conjunction with a person possessing special or expert knowledge, make examinations, take tests, samples, audio recordings, video recordings, or photographs necessary for the purposes of inspection; and,

(c) require information from any person concerning a matter related to the inspection including their name, date of birth and address.

6.0 ENFORCEMENT

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

6.2 An Officer who has reasonable grounds to believe that a person has contravened any provision of this Bylaw may require that person to provide their identification to the Officer.

6.3 Every person who is required by an Officer to provide identification under Section 6.2 shall identify themselves to the Officer. Giving their name, date of birth, and address shall constitute sufficient identification. Failure to provide sufficient identification shall constitute an offence as set out in Section 7.2 of this By-law.

7.0 OFFENCES

7.1 Any person who contravenes or fails to comply with any provision of this By-law is guilty of an offence.

7.2 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.

7.3 A court or hearing officer 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. For greater certainty, a witness need not possess special or expert knowledge for the court to make any such inference.

8.0 CONTINUATION, REPETITION PROHIBITED BY ORDER

8.1 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.

9.0 ADMINISTRATIVE PENALTIES

9.1 Instead of laying a charge under the *Provincial Offences Act*, R.S.O. 1990, c. P. 33, as amended (the “Provincial Offences Act”), for a breach of any provision of this Bylaw, an Officer may issue an administrative penalty to the person who has contravened this By-law.

9.2 The Officer has the discretion to either proceed by way of an administrative penalty or a charge laid under the Provincial Offences Act. 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.

9.3 The amount of the administrative penalty for a breach of a provision of this Bylaw, issued under this By-law, is fixed as set out in an administrative penalty bylaw as amended, or any successor Bylaw.

9.4 A person who is issued an administrative penalty shall be subject to the procedures as provided for in an administrative penalty bylaw, as amended, or any successor By-law.

9.5 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.

10.0 PENALTIES

10.1 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 $100.00 and not more than $5,000.00.

(b) Upon a second or subsequent conviction for the same offence, to a fine of not less than $250.00 and not more than $10,000.00.

(c) Upon conviction for a multiple offence, for each offence included in the multiple offence, to a fine of not less than $100.00 and not more than $10,000.00.

11.0 COLLECTION OF UNPAID FINES

11.1 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.

11.2 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 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.

12.0 SEVERABILITY

12.1 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.

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 Bylaw.

13.2 Where a term used in this By-law is not defined in this By-law, but is defined in the Smoke-Free Ontario Act that definition shall apply to the term used in this By-law.

13.3 The onus of proving an exception under Part 4 of this By-law is on the person claiming the exception, in accordance with s. 47(3) of the Provincial Offences Act as amended.

14.0 FORCE AND EFFECT

14.1 This By-law comes into force and effect on the day it is passed.

14.2 By-law 2012-029 is hereby repealed.

ENACTED and PASSED this 4th day of June, 2019.

Virginia Hackson, Mayor

Fernando Lamanna, Municipal Clerk

SCHEDULE A OF BY-LAW NO. 2019-071

Smoking shall be prohibited on all owned or leased Municipal property, including all municipal parks, trails, and facilities which shall include but not be limited to the following locations:

Place Name	**Address**
Civic Centre	19000 Leslie Street, Sharon, ON.
Judah Doan House	19040 Leslie Street, Sharon, ON
Fire Station 2-4	19314 Yonge Street, Holland Landing, ON
Fire Station 2-6	22 Princess Street, Mount Albert, ON
Fire Station 2-8	1590 Queensville Side Road, Queensville, ON
Holland Landing Library Branch	19513 Yonge Street
Ross Family Complex and Mount Albert Library Branch	19300 Centre Street, Mount Albert, ON
River Drive Park Community Centre	20 Oak Avenue, River Drive Park, ON
North Union Community Centre	2624 Boag Road, Queensville, ON
Sharon Temperance Hall	18974 Leslie Street, Sharon, ON
East Gwillimbury Sports Complex	1914 Mount Albert Road, Sharon, ON
Mount Albert Lions Community Centre	5057 Mount Albert Road, Mount Albert, ON
Harvest Hills Activity Centre	145 Harvest Hills Boulevard, East Gwillimbury, ON
Mount Albert Community Centre	53 Main Street, Mount Albert, ON