

CITY OF NANAIMO

BYLAW NO. 7268

A BYLAW TO REGULATE SMOKING IN THE CITY OF NANAIMO

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WHEREAS the Council of the City of Nanaimo has been granted authority under Section 8(3)(i) of the *Community Charter*, S.B.C. 2003, c.26 (the "*Community Charter*") in relation to public health;

AND WHEREAS Section 9(4) of the *Community Charter*, and the Public Health Bylaws Regulation, B.C. Reg. 42/2004, requires that a bylaw to be adopted under subsections 2(a) or (b) of B.C. Reg. 42/2004 not be adopted unless a copy of it is first deposited with the Minister of Health and the local government has consulted with either the Regional Health Board or Medical Health Officer responsible for public health matters within the municipality;

AND WHEREAS a copy of this bylaw has been deposited with the Minister of Health and the Council of the City of Nanaimo has consulted with the Medical Health Officer;

AND WHEREAS it is generally recognized by scientific and medical communities that no level of environmental smoke exposure is safe and scientific research has determined that whether smoking indoors or outdoors exposure to significant levels of environmental smoke can occur;

AND WHEREAS it is desirable for the purposes of maintaining, promoting and preserving the public health of the inhabitants of the City of Nanaimo, to prohibit, regulate and impose requirements in relation to smoking in the City of Nanaimo;

NOW THEREFORE the Council of the City of Nanaimo in open meeting assembled, hereby ENACTS AS FOLLOWS:

1. Title

This Bylaw may be cited as "Smoking Regulation Bylaw 2018 No. 7268".

2. Definitions

In this Bylaw, unless the context otherwise requires,

"beach"	means an area below the natural high watermark of the Strait of Georgia or any other body of water to which there is a means of public access;
"burning"	"burn" or "burning" means combustion or heating of a substance to produce smoke, vapour, aerosol or other substances that can be inhaled;
"City"	means the City of Nanaimo;
" <i>Controlled Drugs and Substances Act (Canada)</i> "	means the <i>Controlled Drugs and Substances Act</i> , S.C. 1996, c.19;

“customer service area”	means a partially enclosed or unenclosed area, including a balcony, patio, yard or side walk, that is part of or connected to or associated with a business or use in a building, facility or premises that includes the service of food or beverages to persons for consumption on site;
“designated public space”	includes, but is not limited to, public playing fields, public playground, public squares, and outdoor public places where individuals may gather for the purpose of education, worship, entertainment, recreation, business, amusement or queue for the receipt of any service;
" <i>Independent School Act</i> "	means the <i>Independent School Act</i> , R.S.B.C 1996, c. 216;
“park”	means land acquired, reserved or dedicated as community park in accordance with the <i>Community Charter</i> and land acquired, held, occupied, zoned or regulated as park by the City and shall include, without restricting the generality of the foregoing, within such parks, all beaches, public playgrounds, public playing fields, public squares, roadways and paths, but shall not include any highway passing through such parks that have been dedicated as highways by plan of subdivision or that has been laid out, constructed and maintained by the Ministry of Transportation of the Province of British Columbia, or a local government, or that is a public highway under the <i>Highway Act</i> ;
"public playground"	means lands held, occupied, zoned or regulated for use by the public as outdoor areas containing playground equipment;
"public playing field"	means lands held, occupied, zoned or regulated for use by the public as outdoor areas for sporting activities;
"public square"	means land acquired, reserved or dedicated as a public square in accordance with the <i>Local Government Act</i> or <i>Community Charter</i> ;
"responsible person"	means the person who controls, governs or directs the activity carried on within the building, place or premises referred to in this Bylaw and includes the person actually in charge thereof;
" <i>School Act</i> "	means the <i>School Act</i> , R.S.B.C. 1996, c. 412;
"school yard"	means that portion of the lands of a school or francophone school as defined in the <i>School Act</i> or <i>Independent School Act</i> without buildings;
“smoke” or “smoking”	means inhaling, exhaling, burning or carrying of a lighted or activated cigarette, cigar, pipe, e-cigarette, vapour equipment or other lighted smoking equipment, including the burning or lighting or activating of tobacco, cannabis, or other weed or substance, or e-vapour;
“transit stop”	means a sign-posted location where public transit vehicles or vehicles for hire stop to pick up and drop off passengers and includes a transit shelter;
“vapourizing device”	means an electronic device that vapourizes a solid, liquid or gas substance for inhalation.

3. Prohibitions

- 3.1 No person shall smoke, carry or have in his or her possession a burning cigarette or cigar containing tobacco, cannabis or another substance or a pipe containing burning tobacco, cannabis or another substance, or burn tobacco, cannabis or another substance using a pipe, hookah pipe, lighted smoking device or vapourizing device:
- a. in or on any City-owned property, except in designated areas;
  - b. in a park;
  - c. in a designated public space;
  - d. inside any part of a building or structure except in a private residence, hotel or motel room or tent or trailer in a campsite;
  - e. within six (6) metres of a transit stop measured on the ground from any point of the transit stop sign;
  - f. in a school yard;
  - g. in a customer service area;
  - h. contrary to any posted no smoking or vaping sign.
- 3.1.1 Notwithstanding Section 3.1.a., cannabis smoking is not permitted on any City-owned property.
- 3.2 No responsible person shall permit a person to carry or have in his possession a burning cigarette or cigar containing tobacco, cannabis or another substance or a pipe containing burning tobacco, cannabis or another substance, or to burn tobacco, cannabis or another substance using a hookah pipe, lighted smoking device or vapourizing device:
- a. inside any part of a building or structure, except inside a private residence, hotel or motel room, or tent or trailer in a campsite;
  - b. in any area of a customer service area where either or both food and beverages are served or consumed, or both served and consumed.
- 3.3 Sections 3.1 and 3.2 do not apply to a ceremonial use of tobacco in relation to a traditional Aboriginal cultural activity.
- 3.4 Sections 3.1 and 3.2 do not apply to a controlled substance within the meaning of the *Controlled Drugs and Substances Act (Canada)*.

4. Posting of Signs

- 4.1 A responsible person must display, or ensure the display of, a sign at all times, in the form established under paragraph 5(1):
- a. at the main entrances to a park;
  - b. at the main entrances to a designated public space;
  - c. at each entrance to a building or structure for which that person is a responsible person except a private residence, hotel or motel room, or a tent or trailer in a campsite;
  - d. inside a vehicle for passenger conveyance, except in a private vehicle;

- e. at any area of a customer service area where either or both food and beverages are served or consumed, or both served and consumed.
- 4.2 A responsible person must display, or ensure the display of, a sign, at all times, on each exterior wall of a building or structure where the prohibition applies, that states:

"Smoking is prohibited within six (6) metres of openings into this building or structure including doors and windows that open and any air intake."

## 5. Signs

- 5.1 A no-smoking sign shall state,
- a. the phrase "no smoking", or
  - b. a graphic symbol substantially in the form shown on Schedule "B" attached to this Bylaw, which shall be a minimum of six (6) centimeters in diameter,
- and may include
- c. the words "City of Nanaimo Bylaw No.7268 Maximum Penalty \$10,000."
- 5.2 No person shall remove, alter, conceal, deface, write upon or destroy any sign posted pursuant to this Bylaw.
- 5.3 A sign prescribed by former "City of Nanaimo Bylaw 1987 No. 3200" is a lawful no-smoking sign for the purpose of this Bylaw.

## 6. Offences and Penalties

- 6.1 A person or property owner who contravenes, violates, or fails to comply with any provision of this Bylaw, or who suffers or permits any act or thing to be done in contravention or violation of this Bylaw, or fails to do anything required by this Bylaw, commits an offence and should be liable on conviction, of a fine of not more than TEN THOUSAND DOLLARS (\$10,000) and not less than the fines prescribed in Schedule 'A' of this Bylaw, the cost of prosecution and any other penalty or order imposed pursuant to the *Community Charter* [SBC 2003], c. 26 or the *Offence Act* [RSBC 1996], c. 338 as amended from time to time.
- 6.2 Each day that an offence against the Bylaw continues or exists or is permitted to continue or exist shall be deemed to be a separate and distinct offence.
- 6.3 This Bylaw may be enforced by means of a ticket in the form prescribed for that purpose under section 264 of the *Community Charter*, or if this Bylaw or a contravention of it is designated as one to be enforced by "Bylaw Notice Enforcement Bylaw 2012 No. 7159" by bylaw notice under that Bylaw.

## 7. Schedules

Council authorizes that Schedules 'A' and 'B' may be omitted and established by resolution where the schedule can be more conveniently contained in a resolution.

8. Severability

If any section, subsection or clause of this Bylaw is for any reason held to be invalid by the decision of a court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this Bylaw.

9. Citation

This Bylaw may be cited as the City of Nanaimo "Smoking Regulation Bylaw 2018 No. 7268".

10. Effective Date

This Bylaw shall come into full force and effect immediately following adoption.

11. Previous Bylaw Repeal

City of Nanaimo "Smoking Regulation Bylaw 1987 No. 3200" and amendments thereto are hereby repealed.

PASSED FIRST READING: 2018-AUG-13  
PASSED SECOND READING: 2018-AUG-13  
PASSED THIRD READING: 2018-AUG-13  
THIRD READING RESCINDED: 2019-JAN-21  
PASSED THIRD READING AS AMENDED: 2019-JAN-21  
DEPOSITED WITH THE MINISTRY OF HEALTH: 2019-FEB-20  
ADOPTED: 2019-FEB-25

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L. E. KROG  
MAYOR

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S. GURRIE  
CORPORATE OFFICER

**SCHEDULE 'A'**

**FINE SCHEDULE**

Fines for tickets issued pursuant to this bylaw, shall be as follows:

SECTION	DESCRIPTION OF OFFENCE	Penalty
3.1	Smoking where prohibited	\$250.00
3.2	Permit Smoking where prohibited	\$250.00
4.1	Failure to post signs	\$250.00

**SCHEDULE 'B'**

**SIGNS**

The following graphic symbol is prescribed for the purpose of Section 5.1(b)

