

Bylaw No. 8286

The Smoking Control Bylaw, 2004

**Codified to Bylaw No. 9636
(August 26, 2019)**

Bylaw No. 8286

The Smoking Control Bylaw, 2004

Whereas, under the provisions of Section 8(1)(b) of *The Cities Act*, S.S. 2002, c. C-11.1, bylaws may be passed by a city in relation to the safety, health and welfare of people and the protection of people and property;

And whereas, under the provisions of Section 8(1)(c) of *The Cities Act*, bylaws may be passed by a city in relation to people, activities and things in, on or near a public place or place that is open to the public;

And whereas second-hand smoke, also called environmental tobacco smoke (ETS), comes from smouldering cigarettes, cigars or pipes, as well as from exhaled smoke;

And whereas breathing second-hand smoke is considered smoking involuntarily;

And whereas, according to Health Canada, there is no known safe level of exposure to second-hand smoke;

And whereas, according to Health Canada, second-hand smoke contains more than 4,000 chemicals, including 50 known carcinogens such as arsenic, benzene, lead, formaldehyde, carbon monoxide, nitrogen dioxide and hydrogen cyanide;

And whereas, according to Health Canada, second-hand smoke can cause sore throats, croup, asthma, bronchitis, middle ear infections, reduced lung function, pneumonia, heart disease, leukemia and other cancers;

And whereas, according to Health Canada, it is estimated that exposure to second-hand smoke causes over 1,000 deaths per year in Canada;

And whereas, according to Health Canada, air filters, air purifiers and ventilation systems are not enough to protect from second-hand smoke;

And whereas, under the provisions of Section 11 of *The Tobacco Control Act*, S.S. 2001, c. T-14.1, the Province of Saskatchewan has prohibited smoking in certain public places;

And whereas, Section 15 of *The Tobacco Control Act* provides that a city may pass a bylaw in respect of smoking with provisions that are more restrictive than *The Tobacco Control Act*;

And whereas electronic cigarettes have no legal age restrictions and therefore are more easily accessible to youth than traditional cigarettes or other tobacco products;

And whereas electronic cigarettes may be more appealing to youth as they are perceived as being less harmful than smoking;

And whereas electronic cigarettes are designed to mimic the motions and experience of smoking tobacco and may be viewed as a gateway to smoking in youth;

And whereas electronic cigarettes that do not contain nicotine and do not make a health claim can be imported, advertised or sold in Canada without restrictions;

And whereas electronic cigarettes are not subject to the packaging, labelling, advertising, promotion and sponsorship restrictions that apply to traditional cigarettes and other tobacco products;

And whereas electronic cigarette use may undermine or diminish tobacco cessation efforts.

And whereas The City of Saskatoon wishes to enact a bylaw with more restrictive provisions than *The Tobacco Control Act* in respect of smoking in billiard halls, bingo establishments, bowling centres, casinos, licensed premises, outdoor public places operated by the City, outdoor seating areas, private clubs, restaurants and sidewalk cafes.

And whereas The City of Saskatoon wishes to enact a bylaw to restrict the use of electronic cigarettes in the same manner as smoking is currently restricted under *The Tobacco Control Act* and existing bylaw provisions.

And whereas The City of Saskatoon wishes to enact a bylaw to restrict the smoking and vaping of cannabis in public places.

Now therefore, the Council of The City of Saskatoon enacts as follows:

Short Title

1. This Bylaw may be cited as The Smoking Control Bylaw, 2004.

Definitions

2. In this Bylaw,

- (a) “bingo establishment” means the portion of an enclosed place or premises for which a bingo licence has been issued by the Liquor and Gaming Authority;
- (a.1) “cannabis” means cannabis as defined in *The Cannabis Control (Saskatchewan) Act* and includes any products containing cannabis;
- (b) “casino” means:
 - (i) a casino as defined in *The Saskatchewan Gaming Corporation Act*, or
 - (ii) an enclosed place or premises for which a casino licence has been issued by the Liquor and Gaming Authority;
- (c) “City” means The City of Saskatoon;
- (c.1) “electronic cigarette” means a handheld device containing a liquid that is vapourized and inhaled, and includes but is not limited to electronic cigarettes, e-cigarettes, vapourizer cigarettes, personal vapourizers and electronic nicotine delivery systems;
- (c.2) “electronic cigarettes retailer” means a fully enclosed premises where the sole function of the premises is the sale of electronic cigarettes and electronic cigarette products, and for which a valid City business licence has been issued pursuant to Bylaw No. 8075, *The Business License Bylaw, 2002*;
- (d) “enclosed public place” means all or any part of a building or other enclosed place that is open to the public or to which the public is customarily admitted or invited and includes:
 - (i) an outdoor bus shelter;
 - (ii) a public building or facility, or any part of a public building or facility, that is rented out for private events;
 - (iii) a vehicle that:
 - (A) is used or made available for public transit or as a commercial vehicle; and

- (B) is used to transport members of the public;
but only during any period that the vehicle is made available for hire, including any break period;
 - (iv) a building, enclosed place or facility owned or leased by a private club that restricts admission to members and guests;
 - (v) any prescribed building, place, facility or vehicle or class of prescribed buildings, places, facilities or vehicles;
 - (vi) the common areas of a multi-unit residential building.
- (e) “licensed premises” means any of the following places or premises:
- (i) the portion of an enclosed public place or premises for which a restaurant permit, tavern permit or special use permit has been issued pursuant to *The Alcohol and Gaming Regulation Act, 1997*; or
 - (ii) the portion of a tent or other portable shelter used in connection with a community event that is open to the public or to which the public is customarily admitted or invited and for which a permit or an endorsement or extension to an existing permit has been issued pursuant to *The Alcohol and Gaming Regulation Act, 1997*;
- (e.1) “outdoor public place” means any outdoor space owned or operated by the City of Saskatoon that is open to the public or to which the public is customarily admitted or invited, and includes parks, swimming pools, playgrounds, outdoor sports-fields, public squares or recreation areas, but does not include streets or sidewalks;
- (f) “outdoor seating area” means an outdoor area or structure commonly referred to as a patio, deck, terrace or rooftop, whether enclosed or not, that is open to the public or to which the public is customarily admitted or invited that is operated as part of a restaurant or licensed premises, but does not include an outdoor area or structure made available by a restaurant or licensed premises if:
- (i) there is no seating of any kind provided in the area or on the structure;
 - (ii) there is no service of any kind provided in the area or on the structure; and
 - (iii) there is no food or drink permitted in the area or on the structure at any time;

- (g) “private club” means an enclosed place or premises that operates solely for the benefit and pleasure of the members of a non-profit corporation or service club and to which a special use permit has been issued pursuant to *The Alcohol and Gaming Regulation Act, 1997*.

For greater certainty and for the purpose of enforcing the bylaw, a place or premise is considered to be a private club if the following criteria are met:

- (i) the club must have a fixed membership;
 - (ii) each member must pay an annual or periodic membership fee;
 - (iii) the club must have a board of directors or officers that are elected by all the members on an annual or periodic basis;
 - (iv) the club must have a constitution or bylaws that provide the governing rules for the membership, officers, fees and the day-to-day operation of the club;
 - (v) the club must be a non-profit corporation or service club; and
 - (vi) non-members cannot enter the premises unless accompanied by a member;
- (h) “proprietor” means a person who controls, governs or directs the activities carried on within the place or premises, and includes a person who is actually in charge of the place or premises at any particular time;
- (h.1) “public place” means a public place as defined by *The Cannabis Control (Saskatchewan) Act* and includes child care facilities and schools as defined by *The Cannabis Control (Saskatchewan) Act*;
- (i) “restaurant” means any of the following places or premises:
- (i) an enclosed public place or premises for which a public eating establishment license has been issued pursuant to *The Public Health Act, 1994*; or
 - (ii) the portion of a tent or other portable shelter used in connection with a community event that is open to the public or to which the public is customarily admitted or invited and for which a temporary food service license has been issued pursuant to *The Public Health Act, 1994*;
- (i.1) “school or independent school” means a school or an independent school as defined in *The Education Act, 1995*;

- (i.2) “sidewalk” means the part of the street adapted to the use of or ordinarily used by pedestrians;
- (j) “sidewalk cafe” means an outdoor area, located on a public sidewalk, to which members of the general public are invited or permitted access and which abuts and is operated as part of a restaurant;
- (j.1) “street” means a street as defined in *The Cities Act*;
- (k) “tobacco” means tobacco in any form in which it is used or consumed, and includes snuff and raw leaf tobacco, but does not include any food, drug or device that contains nicotine to which the *Food and Drugs Act (Canada)* applies;
- (l) “vape or vaping” means the utilization of an electronic cigarette or any other heated smoking equipment used to vaporize any tobacco or non-tobacco substance whether or not it contains nicotine.

Interpretation

- 3. (1) This Bylaw is intended to supplement the legislative scheme established under Part III of *The Tobacco Control Act*.
- (2) The provisions of *The Tobacco Control Act* shall apply in The City of Saskatoon, except as provided in Subsection (3).
- (3) In the event of a conflict between the provisions of this Bylaw and *The Tobacco Control Act*, the provisions of this Bylaw shall prevail provided the provisions of this Bylaw are more restrictive.
- (4) Whenever possible, the terms in this Bylaw shall have the same meaning as those terms are defined in *The Tobacco Control Act*.

Scope

- 4. (1) This Bylaw applies with respect to places or premises operated as:
 - (a) billiard halls;
 - (b) bingo establishments;
 - (c) bowling centres;
 - (d) casinos;

- (e) licensed premises;
 - (e.1) outdoor public places operated by the City;
 - (f) outdoor seating areas;
 - (g) private clubs;
 - (h) restaurants; and
 - (i) sidewalk cafes.
- (2) Smoking in public places or premises other than those mentioned in Subsection (1) shall be controlled under the provisions of Part III of *The Tobacco Control Act*.
- (2.1) The provisions mentioned in Subsection (2) shall not apply to vaping or cannabis use.

Smoking Prohibited

5. (1) No person shall smoke or hold lighted tobacco in any place or premises mentioned in Subsection 4(1).
- (2) No proprietor of a place or premises mentioned in Subsection 4(1) shall permit persons to smoke or hold lighted tobacco within that place or premises.
- (3) Nothing in this Bylaw prohibits a person from smoking or holding lighted tobacco or tobacco-related products in a City-owned public place for traditional Aboriginal spiritual or cultural practices or ceremonies, if the use of tobacco or tobacco-related products is an integral part of the traditional Aboriginal spiritual or cultural practices or ceremonies being carried out in the City-owned public place.

Vaping Prohibited

- 5.1 (1) No person shall vape in any place or premises mentioned in Subsection 4(1).
- (2) No proprietor of a place or premises mentioned in Subsection 4(1) shall permit persons to vape within that place or premises.

- (3) In addition to those places or premises mentioned in Subsection 4(1), no person shall vape and no proprietor shall permit persons to vape in the following places or premises:
 - (a) an enclosed public place that is a school or an independent school or on the grounds surrounding a school or an independent school;
 - (b) in an enclosed public place other than a school or an independent school;
 - (c) within three metres from a doorway, window or air intake of an enclosed public place mentioned in clause (a); or
 - (d) any vehicle while another person who is under the age of 16 years is present in the vehicle.
- (4) Subsection (3) does not apply to:
 - (a) a separate enclosed ventilated place that:
 - (i) is within:
 - (A) a facility designated as a special-care home pursuant to *The Provincial Health Authority Act*; or
 - (B) a personal care home as defined in *The Personal Care Homes Act* that offers care and accommodation to more than 10 persons; and
 - (b) a child care facility that is a group family child care home or a licensed family child care home during the times that no child care services are being provided in the facility.

Vaping Exemption

- 5.2 (1) Nothing in this Bylaw prohibits a person from using an electronic cigarette for the sole purpose of testing the device, or sampling products used with the device, prior to purchase within an electronic cigarettes retailer.
- (2) The burden of proving that an exemption under subsection (1) applies in a particular case is on the person alleging such exemption on a balance of probabilities.

Cannabis Smoking Prohibited

- 5.3 (1) No person shall smoke or vape cannabis in any public place.
- (2) No proprietor of a place or premises mentioned in Subsection 4(1) shall permit persons to smoke or vape cannabis within that place or premises.
- (3) Subsections (1) and (2) do not apply to a child care facility that is a group family child care home or a licensed family child care home during the times that no child care services are being provided in the facility.

Signs Required

6. (1) Every proprietor of a place or premises mentioned in Subsection 4(1) shall ensure that signs containing a statement respecting the prohibition against smoking or holding lighted tobacco are posted in the place or premises.
- (2) For the purposes of Subsection (1), “statement respecting the prohibition against smoking or holding lighted tobacco” includes a depiction of the international no smoking symbol as set out in the Appendix to *The Tobacco Control Regulations*, Chapter T-14.1 Reg 1.
- (3) A sign that is required to be posted pursuant to Subsection (1) shall comply with Subsection 6(2) of *The Tobacco Control Regulations*, Chapter T-14.1 Reg 1.

Ashtrays Prohibited

7. Every proprietor of a place or premises mentioned in Subsection 4(1) shall ensure that ashtrays and similar products associated with the use of tobacco are not available for use in the place or premises.

Inspections

8. For the purpose of determining if the provisions of this Bylaw are being complied with, inspections of places or premises mentioned in Subsections 4(1), 5.1(3) and 5.3(2) are hereby authorized.

Appointment of Bylaw Enforcement Officers

9. The following persons are appointed as bylaw enforcement officers and are designated to carry out inspections for the purpose of administering and enforcing this Bylaw:

- (a) a member of the Saskatoon Police Service;
- (b) a person designated as a tobacco enforcement officer pursuant to Section 16 of *The Tobacco Control Act*;
- (c) a person designated as a public health officer pursuant to Section 11 of *The Public Health Act, 1994*; and
- (d) any other person appointed by the City for the purpose of administering and enforcing this Bylaw.

Powers of Bylaw Enforcement Officers

10. For the purpose of administering and enforcing this Bylaw, a bylaw enforcement officer may do any or all of the things authorized by Section 324 of *The Cities Act*.

Obstruction, False Statement, etc. Prohibited

11. (1) No person shall obstruct a bylaw enforcement officer who is acting pursuant to the authority of this Bylaw.
- (2) No person shall knowingly make a false or misleading statement to a bylaw enforcement officer or produce a false document or thing to a bylaw enforcement officer.

Sign Removal, Alteration, etc. Prohibited

12. No person shall remove, cover up, mutilate, deface or alter any sign required pursuant to this Bylaw to be posted or displayed.

Evidence

13. In a prosecution for an offence pursuant to this Bylaw, the trial judge may infer that any substance or object in question is tobacco within the meaning of this *Bylaw* from the fact that a witness describes it as tobacco or by a name that is commonly applied to tobacco.

Disposition of Property Seized

14. Where a person is convicted of an offence pursuant to this Bylaw, the convicting judge may make an order for the disposition of any substance or thing seized in relation to the contravention that the judge considers appropriate.

Offences and Penalties

15. (1) Every person who contravenes Subsections 5(1), 5.1(1) or 5.3(1) of this Bylaw is guilty of an offence and liable on summary conviction to a fine of not more than \$500.
- (2) Every person who contravenes Subsections 5(2), 5.1(2) or 5.3(2), or Section 6 or 7 of this Bylaw is guilty of an offence and liable on summary conviction to a fine of not more than \$5,000.
- (2.1) Every person who contravenes Subsection 5.1(3) of this Bylaw is guilty of an offence and liable on summary conviction:
 - (a) in the case of a person who vapes, to a fine of not more than \$500; and
 - (b) in the case of a proprietor who permits a person to vape, to a fine of not more than \$5,000.
- (3) Every person who contravenes Section 11 of this Bylaw is guilty of an offence and liable on summary conviction to a fine of not more than:
 - (a) in the case of a first offence, \$3,000; and
 - (b) in the case of a second or subsequent offence, \$5,000.
- (4) Every person who contravenes Section 12 of this Bylaw is guilty of an offence and liable on summary conviction to a fine of not more than \$3,000.
- (5) In default of payment of a fine imposed pursuant to Subsection (1), (2), (2.1), (3) or (4), the individual convicted may be imprisoned for a term of not more than 90 days.
- (6) Notwithstanding Subsection (1), in the case of a contravention of Subsections 5(1), 5.1(1) or 5.3(1), a bylaw enforcement officer shall issue a notice of violation to the person contravening the Bylaw, which notice shall provide that, if the person pays the City the sum of \$150 within 14 calendar days of the date of the notice of violation, the person shall not be prosecuted for the contravention.
- (7) Notwithstanding Subsection (2), in the case of a contravention of Subsections 5(2), 5.1(2) or 5.3(2), or Section 6 or 7, a bylaw enforcement officer shall issue a notice of violation to the person contravening the Bylaw, which notice shall provide that, if the person pays the City the sum of \$500 within 14 calendar days of the date of the notice of violation, the person shall not be prosecuted for the contravention.

- (7.1) Notwithstanding Subsection (2.1), in the case of a contravention of Subsection 5.1(3), a bylaw enforcement officer shall issue a notice of violation to a person who vapes or to a proprietor who permits a person to vape in contravention of the Bylaw, which notice shall provide that:
- (a) in the case of a person who vapes, if the person pays the City the sum of \$150 within 14 calendar days of the date of the notice of violation, the person shall not be prosecuted for the contravention; and
 - (b) in the case of a proprietor who permits a person to vape, if the person pays the City the sum of \$500 within 14 calendar days of the date of the notice of violation, the person shall not be prosecuted for the contravention.
- (8) Notwithstanding Subsection (4), in the case of a contravention of Section 12, a bylaw enforcement officer shall issue a notice of violation to the person contravening the Bylaw, which notice shall provide that, if the person pays the City the sum of \$150 within 14 calendar days of the date of the notice of violation, the person shall not be prosecuted for the contravention.
- (9) The amounts referred to in Subsections (6), (7), (7.1) and (8) may be paid:
- (a) in person, during regular office hours, to the cashier located at City Hall, 222 - 3rd Avenue North, Saskatoon, Saskatchewan, S7K 0J5;
 - (b) by deposit, at the depository located at the main entrance to City Hall, 222 - 3rd Avenue North, Saskatoon, Saskatchewan, S7K 0J5; or
 - (c) by mail addressed to the Office of the City Treasurer, City Hall, 222 - 3rd Avenue North, Saskatoon, Saskatchewan, S7K 0J5.
- (10) The date of payment shall be determined as follows:
- (a) for payment in person, the date of payment shall be the date the payment is received by the City;
 - (b) for payment by deposit, the date of payment shall be the date payment is deposited in the depository at City Hall; and
 - (c) for payment by mail, the date of payment shall be the date of the federal post mark on the remittance.

Severability

16. A determination of invalidity or unconstitutionality by a court of competent jurisdiction of any provision of this Bylaw shall not affect the validity of the remaining parts of this Bylaw.

Smoking Control Bylaw, 1996 Repealed

17. Bylaw No. 7554, the *Smoking Control Bylaw, 1996*, is hereby repealed.

Coming Into Force

18. This Bylaw shall come into force on the 1st day of July, 2004.

Read a first time this 9th day of February, 2004.

Read a second time this 9th day of February, 2004.

Read a third time and passed this 9th day of February, 2004.

“Donald J. Atchison”
Mayor

“Janice Mann” “SEAL”
City Clerk