

CITY OF SPRUCE GROVE

BYLAW C-1053-18

SMOKING BYLAW

Being a bylaw of the City of Spruce Grove in the Province of Alberta to regulate Smoking in Public Places.

WHEREAS, the Municipal Government Act, RSA, 2000, cM-26 grants the Municipal Council of the City of Spruce Grove the authority to pass bylaws respecting the safety, health and welfare of people and the protection of people and property, and

WHEREAS, it has been determined that second hand tobacco smoke including exhaled smoke and the smoke from idling tobacco products poses a health hazard or causes physical discomfort to many persons,

NOW THEREFORE, the Municipal Council of the City of Spruce Grove, duly assembled hereby enacts as follows:

1. BYLAW TITLE

1.1 This bylaw is called the "Smoking Bylaw".

2. DEFINITIONS

2.1 "Act" shall mean the *Municipal Government Act*, RSA 2000 cM-26.

2.2 "Athletic Field or Facility" means any indoor or outdoor playing surface or structure owned by or operated by the City of Spruce Grove, and made available to the public by a formal agreement, booking permit or drop in spontaneous use. This includes:

- (a) cycling facilities;
- (b) skate parks;
- (c) courts used for volleyball, tennis, basketball, pickleball, etc.;
- (d) fields used for soccer, football, baseball, rugby, disk sports, track and field, cricket, lacrosse, etc.; and
- (e) rinks, boarded and leisure ice surfaces.

- 2.3 “City” shall mean the City of Spruce Grove.
- 2.4 “City Facility” shall mean all buildings either owned, leased or rented by the City of Spruce Grove which are used for the conduct of City business or the provision of services to the public. It shall also mean any structure or enclosure, including but not limited to a tent or baseball dugout, bleacher seating either permanent or temporary erected by the City for any purpose, any deck or patio either free standing or attached to a City facility, and all City Vehicles whether owned, leased or rented.
- 2.5 “Deck” see Patio.
- 2.6 “Dog Park” or “Off Leash Park” means a definable space within a park that is identified by signage as available for off leash dog activity. The space may be enclosed by perimeter fencing, defined by park elements such as topography, landscaping or pathways or a combination of elements to separate the off leash area from nearby roadways. Design elements may include shade trees, a dog water fountain, benches, dog waste dispenser and covered trash receptacles.
- 2.7 “Electronic Smoking Device” means an electronic device that can be used to deliver a vapour, emission or aerosol to the person inhaling from the devices, including but not limited to an electronic cigarette, e-cigarette, vapourizers and electronic nicotine delivery system.
- 2.8 “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 license has been issued.
- 2.9 “Employee” means any full time, part time, contracted, or volunteer worker whether or not they receive money for the work performed and whether or not they are employed by the proprietor of the workplace.
- 2.10 “Employer” includes any person who as the owner, proprietor, manager, superintendent or overseer of any activity, business, work, trade, occupation, profession, has control over, or direction of, or is directly or indirectly responsible for the employment of a person therein.
- 2.11 “Patio” means an outdoor area licensed for service or consumption of food or beverages which:
- (a) has no roof or awning; or
 - (b) if it has a roof or awning has a maximum of two walls.

(c) if contiguous to a City Facility is considered a City Facility.

- 2.12 "Person" includes an individual, proprietorship, corporation or society.
- 2.13 "Picnic Site" means a place that may include one or more of the following: picnic tables, fire pit, barbeque, shelter, or power, in an assigned area.
- 2.14 "Playground" means a structure or collection of structures designed and intended for recreational use by children and, where mounted in a distinct material such as sand, gravel, or wood chips, includes the material in which those structures are mounted.
- 2.15 "Private Club" or "Lodge" means a development used for the meeting, social, or recreational activities of members of non-profit, philanthropic, social service, athletic, or fraternal organizations to which access is restricted to members or invited guests and to which the general public does not have access.
- 2.16 "Private Function" means a specific social event for which an entire and enclosed hall or room which is not a private residence has been reserved, at which attendance is limited to people who have been specifically invited or designated by the sponsor, and at which all the seating is under the control of the sponsor of the event and not the proprietor of the hall or room, but does not include events which are held primarily for the purpose of business, sales or education.
- 2.17 "Private Residence" means accommodation providing sleeping quarters, washrooms, and a kitchen intended for domestic use, and used or intended to be used permanently or semi-permanently for a household.
- 2.18 "Proprietor" means the owner or his agent or representative of the premises referred to in this bylaw, and includes any person in charge thereof or anyone who controls, governs or directs the activity carried on therein. For the purposes of this bylaw Proprietor shall also mean the designated manager when the activity refers to a Private Club.
- 2.19 "Public Place" means all or any part of a building, structure or other enclosed area to which the members of the public have access as of right or by express or implied invitation and shall include but not limited to: common areas of multi-unit residential facilities, licensed premises, churches, areas used for worship, recreational and amusement areas, hotels, restaurants, theaters, lecture halls, libraries, auditoriums, retail stores. It does not include a Private Club or a place where a Private Function is being held.

- 2.20 “Public Vehicle” means a bus, taxi, limousine or other vehicle used to transport members of the public for a fee.
- 2.21 “Reception Area” means the public space used by an office or any business establishment for the receiving of customers, clients, patients or other persons dealing with such office or establishment. Reception Area includes any service counter associated with the office or establishment.
- 2.22 “Restaurant” means any place of business where food or refreshments are prepared to order and sold for human consumption on the premises or take-out, and includes a lunch counter or cafeteria. For the purposes of this bylaw Restaurant shall also include any contiguous outdoor patio.
- 2.23 “Retail Store” means any building, booth, stall, tent or place where goods are exposed, auctioned or offered for sale to the public.
- 2.24 “Service Line” means a line of one (1) or more persons awaiting service of any kind regardless of whether or not such services include the exchange of money including but not limited to sales, provision of information, a transaction, advice or the transfer of money or goods.
- 2.25 “Signs” means those signs detailed in Section 7 and Schedules 2 and 3 of this bylaw.
- 2.26 “Smoke” or “Smoking” means the carrying or custody and control of a lighted cigar, cigarette, pipe or lighted equipment for use to inhale vapours or fumes and shall include electronic smoking and vaping devices.
- 2.27 “Smudging” means an aboriginal spiritual and cultural practice comprised of a cleansing or sacred smoke bath, created from burning medicinal or sacred plants that is used to purify the body, aura, energy, ceremonial/ritual space or any other space and personal articles.
- 2.28 “Spray Park” means a structure or collection of structures that spray or release water which is designed and intended for recreational use.
- 2.29 “Traditional Pipe Ceremony” means a cultural or religious ceremony performed by Canada’s Aboriginal Peoples involving the use of tobacco products and is commonly held out of doors or in a separate and specific aboriginal structure such as a tipi.
- 2.30 “Transit Property” means any premises owned, used or occupied by the City of Spruce Grove for the purpose of providing transit services.
- 2.31 “Workplace” means all or any part of a building, structure or other enclosed area in which employees perform the duties of their employment,

whether or not members of the public have access to the building, structure or area as of right or by express or implied invitation, and includes reception areas, corridors, lobbies, stairwells, elevators, escalators, eating areas, washrooms, lounges, storage areas, laundry rooms, enclosed parking garages and work vehicles.

2.32 "Work Vehicle" means a vehicle owned or leased by an employer and used by employees during the course of their employment.

3. APPLICATION

3.1 This bylaw applies within the City Limits of the City of Spruce Grove.

4. PROHIBITIONS

4.1 Subject to the specific exemptions granted in this bylaw, Smoking is not permitted in, on or within ten (10) meters of:

- (a) any public place;
- (b) any playground areas, or spray park;
- (c) dog park or designated "off leash area";
- (d) picnic site;
- (e) athletic field or facility;
- (f) any City Facility whether or not the activity is a private function;
- (g) any public vehicle, whether carrying passengers or not;
- (h) any transit property;
- (i) any workplace; and
- (j) any doorway, window or air intake of a building, Patio, or Service Line.

4.2 An employer, operator or proprietor must not permit a person to Smoke on premises controlled or owned by them where it is prohibited by this bylaw.

Prohibitions respecting minors

4.3 Person under the age of 18 years shall not Smoke.

- 4.4 Persons under the age of 18 years are not permitted to enter any place where smoking is otherwise permitted under this bylaw, including a Private Club or Private Function.
- 4.5 A Proprietor or other person who permits a person under the age of 18 years to enter and remain in an area where Smoking is permitted is guilty of an offence. This applies to customers, staff or volunteers.

5. **EXCEPTIONS**

Home Based Business

- 5.1 If the Workplace is also a Private Residence operating as a licensed home based business as permitted under Bylaw C-824-12 Land Use Bylaw, Smoking is permitted except in any Reception Area at any time the workplace is open to the public.

Private Club

- 5.2 An owner, proprietor or person who operates a Private Club where Smoking is otherwise prohibited, in such a place, may permit Smoking, other than tobacco or cannabis products, in that place when smoking is permitted pursuant to provincial or federal legislation or powers exercised pursuant to such legislation.
- 5.3 If smoking is permitted pursuant to section 5.2, the person who owns and occupies the private club shall ensure that:
 - (a) Sections 4.1(g) and 4.3 to 4.5 inclusive of this bylaw shall apply.
 - (b) The building must be a detached, stand-alone building, which does not share walls with any other building or structure and must have its own separate and independent ventilation system where smoke does not enter any place where smoking is prohibited.
 - (c) Signage is clearly and prominently displayed at each entrance indicating that smoking is permitted inside.
 - (d) If at any time a Private Club is open to the public it becomes a Public Place for the period that it is open to the public and Smoking is not permitted. Examples are an open house of the Private Club to invite new membership, the use of the Private Club's facilities by a third party for an open house or cultural event that is not a Private Function, or the use of the Private Club's facilities for a community event or celebration.

Private Functions

- 5.4 A sponsor may permit Smoking at a Private Function if a proprietor wishes to grant that option. If a sponsor permits Smoking, Sections 5.3(a) to 5.3(c) inclusive of this bylaw shall apply.

6. EXEMPTIONS

Traditional Aboriginal Spiritual or Cultural Practices

- 6.1 The rights of aboriginal people respecting traditional aboriginal spiritual or cultural practices of ceremony are exempt from this bylaw, and include such practices as Traditional Pipe Ceremony or Smudging.
- 6.2 The Traditional Pipe Ceremony or Smudging exemption only applies to those persons actually participating in the ceremony.
- 6.3 The Traditional Pipe Ceremony or Smudging exemption does not apply to spectators or on lookers, not directly involved in the ceremony.

Electronic Cigarette Retailer Exemption

- 6.4 A person may use an electronic smoking device within the premises of an Electronic Cigarettes Retailer to sample product, other than tobacco or cannabis, prior to purchase.
- 6.5 Section 4.2 does not apply to an employer, operator or proprietor who allows a person to use an electronic smoking device, within the premises of an Electronic Cigarette Retailer to sample a product, other than tobacco or cannabis, prior to purchase.

Group Living Facilities and Hotel Guest Rooms

- 6.6 In accordance with the *Tobacco and Smoking Reduction Act*, SA 2005 cT-3.8, smoking may be permitted in a group living facility or a hotel guest room.

Outdoor Special Event Permits

- 6.7 An application may be made to the City Manager for a permit to assign a designated smoking area at an outdoor special event, provided that:
- (a) the application is made in writing;
 - (b) the smoking area is fenced off and is clearly marked as a smoking area;
 - (c) the smoking area is 10 meters away from any location identified in Section 4.1;

- (d) the special event permit must be presented to a peace officer upon request; and
- (e) no person under the age of 18 is permitted within the designated smoking area.

Private Residence

6.8 This bylaw does not apply to a building, structure, or vehicle, or a part of a building or structure that is used as a private residence.

7. SIGNAGE

- 7.1 The proprietor or manager of a place or Private Club is responsible to post and maintain in good condition all signage required by this bylaw.
- 7.2 The proprietor or manager must replace any Sign that becomes defaced or has been subject to fading or deterioration due to the elements.
- 7.3 Failure to post Signs or to maintain those Signs in good condition is an offence.
- 7.4 Signs used to designate Smoking permitted and Smoking prohibited areas that carry a representation of a lighted cigarette, shall also mean a cigar, pipe or other Electronic Smoking Device.
- 7.5 Signs used to designate Smoking permitted and Smoking prohibited must comply with the standards in Schedule 2 of this bylaw.
- 7.6 Where Smoking is permitted all entrances to that area must display a Smoking Permitted No Entry to Persons Under 18 Years of Age Sign. The Sign must comply with the standards shown at Schedule 3 to this bylaw. The Sign may not be combined with any other sign.
- 7.7 If at any time a Private Club that permits Smoking, other than tobacco or cannabis, is open to the public and therefore becomes a public place in accordance with this bylaw, for the period that it is open to the public Smoking is not permitted. All Smoking Permitted Signs must be fully covered or removed from view and replaced with Smoking Prohibited Signs.

8. PROSECUTIONS

- 8.1 In a prosecution for a contravention of this bylaw, it is not necessary that a witness testify to the precise description, kind, brand, name of the product or electronic smoking device possessed, smoked or consumed.

- 8.2 In a prosecution for a contravention of this bylaw, the court may, in the absence of evidence to the contrary, infer that a person was smoking from the fact that a witness describes the act of smoking, the device used to smoke and or the product being consumed.
- 8.3 The burden of proving that an exception applies in a particular case is on the person alleging such exception on a balance of probabilities.

9. ENFORCEMENT

- 9.1 Any person who contravenes any provision of this bylaw, by doing any act or thing which the person is prohibited from doing, or by failing to do any act or thing the person is required to do, is guilty of an offence, pursuant to this bylaw.
- 9.2 In the case of an offence that is of a continuing nature, a contravention constitutes a separate offence in respect of each day, or part of a day, on which it continues and a person guilty of such offence is liable to a fine in an amount not less than that established by this bylaw for a Second and/or Subsequent Offence(s).
- 9.3 This bylaw may be enforced by members of the RCMP or City of Spruce Grove Enforcement Services.
- 9.4 For the enforcement of this bylaw a member of the RCMP or a City of Spruce Grove Enforcement Officer, upon presentation of proper identification, may at all reasonable hours, enter any Public Place, Workplace or Private Club and make investigations and enquiries.
- 9.5 Where an officer believes that a person has contravened any provision of this bylaw, the officer may commence proceedings against the person by issuing a violation ticket in accordance with the *Provincial Offences Procedure Act*, RSA 2000 cP-34.
- 9.6 An officer may also issue a summons, requiring a court appearance of the defendant, if in the officer's opinion there are compelling reasons requiring such attendance, pursuant to the *Provincial Offences Procedure Act*, RSA 2000 cP-34.

10. SEVERABILITY

- 10.1 If at any time, any provision of this bylaw is declared or held to be illegal, invalid, or ultra vires, in whole or in part, then the provision shall not apply

and the remainder of this bylaw shall continue in full force and effect and be construed as if it had been enacted without the illegal, invalid or ultra vires provision.

11. EFFECTIVE DATE

11.1 This bylaw shall come into force and effect when it receives third reading and is duly signed.

12. REPEAL OF BYLAW C-470-03

12.1 Bylaw C-470-03 is hereby repealed.

First Reading Carried 24 September 2018

Second Reading Carried 24 September 2018

Third Reading Carried 9 October 2018

Date Signed 10 October 2018

Mayor

City Clerk

SCHEDULE 1

<u>Offence</u>	<u>Penalty</u>	<u>Section(s)</u>
<u>First Offence</u>		
Smoking where prohibited which includes within 10 meters of those areas	\$250.00	4.1
Proprietor permit smoking where prohibited	\$250.00	4.2
Smoking by person under 18 years of age	\$250.00	4.3
Person under 18 year of age in an Area where Smoking is permitted	\$250.00	4.4
Proprietor permitting a person under the age of 18 years to enter and remain in an area where Smoking is permitted by this bylaw	\$250.00	4.5
Fail to display appropriate signage	\$250.00	7.3
<u>Second and subsequent offences</u>	\$500.00	All

SCHEDULE 2
SMOKING PROHIBITED SIGN



Lettering minimum of 1cm in height

SCHEDULE 3

SMOKING PERMITTED SIGN
NO ENTRY TO PERSONS UNDER 18 YEARS OF AGE SIGN



Lettering minimum of 1cm in height