

THE REGIONAL MUNICIPALITY OF HALTON

BY-LAW NO. 41-21

A BY-LAW TO REGULATE WATERPIPE SMOKING IN THE REGIONAL MUNICIPALITY OF HALTON.

WHEREAS waterpipe smoke from both tobacco-based products and non-tobacco “herbal” products contains harmful toxins and chemicals such as particulate matter, polycyclic aromatic hydrocarbons, carbon monoxide and heavy metals, with similar levels of toxins in both tobacco-based and nicotine-free waterpipe smoke (except nicotine);

AND WHEREAS waterpipe smoking (also known as hookah or narghile or shisha) and exposure to waterpipe smoke are associated with multiple harmful health outcomes including lung cancer, adverse cardiovascular effects, adverse respiratory effects (including reduced lung function), dental disease, and negative pregnancy outcomes (including infants with low birth weight);

AND WHEREAS waterpipe smoking, in general, negatively affects indoor and outdoor air quality for indicators including carbon monoxide and particulate matter, which are themselves associated with impacts on human health;

AND WHEREAS subsection 11(2) of the *Municipal Act, 2001*, S.O. 2001, c. 25, authorizes Regional Council to pass by-laws respecting the health, safety and well-being of persons;

AND WHEREAS subsection 115(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, authorizes a municipality to prohibit or regulate the smoking of tobacco in public places and workplaces;

AND WHEREAS it is desirable for the health, safety and well-being of the inhabitants of Halton Region to prohibit the use of waterpipes in enclosed public places, enclosed workplaces, and other specified areas within Halton Region to protect individuals from conditions hazardous to human health;

AND WHEREAS Regional Council in its capacity as the Region’s Board of Health has a mandate under the *Health Protection and Promotion Act*, R.S.O. 1990, c. H.7, to reduce the burden of preventable injuries and substance use, including protecting the public from exposure to second-hand smoke.

NOW THEREFORE THE COUNCIL OF THE REGIONAL MUNICIPALITY OF HALTON HEREBY ENACTS AS FOLLOWS:

## 1.0 DEFINITIONS

### 1.1 In this By-law:

- (a) “child care centre” means a child care centre within the meaning of the *Child Care and Early Years Act, 2014*, S.O. 2014, c. 11, Sched. 1, and for greater certainty does not include home child care or in-home services as defined in that Act;
- (b) “employee” means a person who performs any work for, or supplies any service to, an employer, or a person who receives any instruction or training in the activity, business, work, trade, occupation or profession of an employer;
- (c) “employer” includes an owner, operator, proprietor, manager, superintendent, overseer, receiver or trustee of an activity, business, work, trade, occupation, profession, project or undertaking who has control or direction of, or is directly or indirectly responsible for, the employment of a person in it;
- (d) “enclosed public place” means the inside of any place, building or structure, or vehicle or conveyance or a part of any of them,
  - i. that is covered by a roof; and
  - ii. to which the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry;
- (e) “enclosed workplace” means the inside of any place, building or structure or vehicle or conveyance or a part of any of them,
  - i. that is covered by a roof; and
  - ii. that employees work in or frequent during the course of their employment whether or not they are acting in the course of their employment at the time;
- (f) “Enforcement Officer” means a public health inspector acting under the direction of the Medical Officer of Health for the Region or a person appointed by any Local Municipality for the purpose of enforcing the provisions of this By-law;
- (g) i. “entrance or exit”, in connection with a municipally owned or leased building, means any entrance or exit used by the public and/or staff to enter or exit the building, but in the case of a building leased only in part by the Municipality means only such entrance or exit used exclusively for the purpose of entering into or exiting from the premises leased by the

Municipality and not for the purpose of entering into or exiting from premises leased by any other tenant(s) or premises used in common with any other tenant(s); “entrance or exit” also means any external serving window of a municipally owned building, or part thereof, which is used as a concession stand;

- ii. “entrance or exit”, in connection with a child care centre, means any entrance or exit used by the children attending the child care centre and/or their parents or guardians to enter or exit the building, but in the case of a building used only in part by the child care centre means only such entrance or exit that is either (a) used only to access the child care centre and no other part of the building or (b) designated by signage as an entrance or exit intended to access the child care centre;
- (h) “highway” means a highway as defined in the *Municipal Act, 2001*, S.O. 2001, c. 25;
- (i) “Local Municipality” means the Corporation of the City of Burlington, the Town of Oakville, the Town of Milton or the Town of Halton Hills;
- (j) “Medical Officer of Health” means the Medical Officer of Health for the Region, duly appointed under the *Health Protection and Promotion Act*, R.S.O. 1990, c. H.7;
- (k) “Municipality” means the Region or a Local Municipality;
- (l) “municipally owned or leased building” means any building owned or leased, in whole or in part, by a Municipality and includes, but is not limited to, municipal offices, community centres, libraries, indoor swimming pools, arenas, museums, art galleries, public washrooms, recreational centres, police stations, fire halls and ambulance stations, but does not include a building used by or for the purposes of the Halton Community Housing Corporation; and “municipally owned building” and “municipally leased building” shall have corresponding meanings;
- (m) “person” means an individual or a corporation;

- (n) “playground” means an area where the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry, that is primarily used for the purposes of children’s recreation, and is equipped with children’s play equipment including but not limited to slides, swings, climbing apparatuses, splash pads, wading pools, or sand boxes;
- (o) “proprietor” means the person, governing body or agency which controls, governs or directs activity carried on within an enclosed public place, enclosed workplace, or other area specified by this By-law and includes the person who is actually in charge thereof;
- (p) “public park” means land owned by a Municipality that is designed or used for public recreation including, but not limited to, parklands, parkettes, trails, playgrounds, sports fields, playing fields, beaches and dog parks, and includes any land and walkway leading thereto, any parking lots connected thereto, and any spectator or player seating areas;
- (q) “Region” means The Regional Municipality of Halton;
- (r) “Regional Council” means the Council of the Region;
- (s) “restaurant or bar patio” means an area that is not an enclosed public place or an enclosed workplace where the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry, or that is worked in or frequented by employees during the course of their employment, whether or not they are acting in the course of their employment at the time, and where food or drink is served or sold or offered for consumption, or that is part of or operated in conjunction with an area where food or drink is served or sold or offered;
- (t) “roof” means a physical barrier of any size, whether temporary or permanent, that covers an area or place or any part of an area or place, and that is capable of excluding rain or impeding airflow, or both;
- (u) “school” means the lands or premises included in the definition of a school under the *Education Act*, R.S.O. 1990, c. E.2 or the building or the grounds surrounding the building of a private school as defined in the *Education Act*, where the private school is the sole occupant of the premises, or the grounds annexed to a private school as defined in the *Education Act*, where the private school is not the sole occupant of the premises;

- (v) “spectator area” means an area with tiered seating or benches;
- (w) “smoke” or “smoking” includes the use or carrying or holding of any part of any lighted or heated waterpipe as well as the fumes or byproducts of heating or combustion associated with waterpipe use;
- (x) “sporting area” means an area where the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry, used primarily for the purposes of sports including, but without being limited to soccer, football, basketball, tennis, baseball, softball, cricket, skating, beach volleyball, running, swimming, or skateboarding;
- (y) “waterpipe” means any lighted or heated smoking equipment, whether called a waterpipe or any other name, used to burn or heat tobacco or a non-tobacco substance or a combination thereof, with which the vapor or smoke may be passed through a water basin before inhalation.

## 2.0 PROHIBITIONS

### 2.1 No person shall smoke a waterpipe in the following places:

- (a) an enclosed public place;
- (b) an enclosed workplace;
- (c) a restaurant or bar patio or public areas within a nine (9) metre radius surrounding any point on the perimeter of such patios;
- (d) a playground;
- (e) a sporting area;
- (f) a spectator area adjacent to a sporting area;
- (g) a school;
- (h) any area under public ownership that is within twenty (20) metres of any point on the perimeter of a school, playground, sporting area or spectator area adjacent to a sporting area;
- (i) a child care centre or within nine (9) metres from any entrance or exit of a child care centre;
- (j) a public park;
- (k) within nine (9) metres from any entrance or exit of a municipally owned or leased building; or
- (l) any area or place where smoking is prohibited under the *Smoke-Free Ontario Act, 2017*, S.O. 2017, c. 26, Sched. 3, or its regulations not enumerated above.

### 2.2 The prohibitions in this By-law shall apply whether or not a notice is posted that waterpipe smoking is prohibited.

2.3 No person shall provide or supply a waterpipe for use in an area where smoking a waterpipe is prohibited by this By-law.

2.4 No proprietor, employer, or employee shall permit the smoking of a waterpipe in an enclosed public place, enclosed workplace, or restaurant or bar patio.

### 3.0 EXEMPTIONS

3.1 This By-law does not apply to a highway including a pedestrian sidewalk adjacent to a highway, but does apply to public transportation vehicles and taxicabs on a highway.

3.2 This By-law does not apply to the portion of a premises used primarily as a private dwelling.

### 4.0 ENFORCEMENT

4.1 Where any person contravenes any provision of this By-law, an Enforcement Officer may direct such person to comply with this By-law. Every person so directed shall comply with such direction without delay.

4.2 Where an Enforcement Officer has reasonable grounds to believe that an offence has been committed by a person, the Enforcement Officer may require the name, address, and proof of identity of that person, and the person shall supply the required information.

### 5.0 INSPECTIONS

5.1 An Enforcement Officer may enter and inspect all places, including buildings, structures or parts thereof that are subject to this By-law at any reasonable time for the purposes of determining whether there is compliance with this By-law.

5.2 For the purposes of an inspection under this By-law, an Enforcement Officer may:

- (a) require the production for inspection of documents or things relevant to the inspection;
- (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;

- (c) require information from any person concerning a matter related to the inspection;
- (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection;
- (e) in order to produce a record in readable form, use data storage, information processing or retrieval devices or systems that are normally used in carrying on business in the place; and
- (f) question a person on any matter that is or may be relevant to the inspection, including questioning a person separate and apart from others.

## 6.0 OBSTRUCTION

- 6.1 No person shall hinder or obstruct, or attempt to hinder or obstruct, an Enforcement Officer lawfully carrying out a power, duty or direction under this By-law.
- 6.2 No person shall knowingly produce a false document or make a false or misleading statement to an Enforcement Officer who is acting pursuant to the authority of this By-law.

## 7.0 OFFENCES

- 7.1 Every person other than a corporation or a director or officer of a corporation who contravenes any provision of this By-law, is guilty of an offence and on conviction is liable, for every day or part thereof upon which such offence occurs or continues, to a fine of not more than \$10,000 for a first offence and not more than \$25,000 for any subsequent conviction.
- 7.2 Every person who is a director or officer of a corporation who contravenes any provision of this By-law, is guilty of an offence and on conviction is liable, for every day or part thereof upon which such offence occurs or continues, to a fine or not more than \$25,000 for a first offence and not more than \$50,000 for any subsequent conviction.
- 7.3 Every corporation which contravenes any provision of this By-law, is guilty of an offence and on conviction is liable, for every day or part thereof upon which such offence occurs or continues, to a fine of not more than \$50,000 for a first offence and not more than \$100,000 for any subsequent conviction.

- 7.4 Without limiting any other section of this By-law, every person who contravenes any provision of this By-law is guilty of an offence and on conviction is liable to a fine in accordance with the *Provincial Offences Act*, R.S.O. 1990, c. P.33.
- 7.5 If any person is in contravention of any provision of this By-law, and the contravention has not been corrected, the contravention of the provision shall be deemed to be a continuing offence for each day or part of a day that the contravention remains uncorrected.
- 7.6 For the purposes of this By-law, subsequent conviction means a conviction for an offence which occurs after the date of conviction for an earlier offence under this By-law.
- 7.7 Where any person contravenes any provision of this By-law, such person shall be responsible for all costs incurred by the Region directly related to the contravention.
- 8.0 SEVERABILITY
- 8.1 If, for any reason, any provision of this By-law is held invalid, it is hereby declared to be the intention of Council that all the remainder of this By-law shall continue in full force and effect until repealed, reenacted or amended, in whole or in part, or dealt with in any other way.
- 9.0 CONFLICT AND INTERPRETATION
- 9.1 In the event of a conflict between any provision of this By-law and any applicable Act or regulation, the provision that is the most restrictive prevails.
- 9.2 Any reference in this By-law to any statutes, regulations or by-laws shall be deemed to be a reference to such statutes, regulations or by-laws, as amended, restated or replaced from time to time.
- 10.0 EFFECTIVE DATE
- 10.1 This By-law comes into force and effect on the date which is ninety (90) days after the date on which the Clerk of the Region has received certified copies of resolutions giving consent to this By-law passed by the councils of three of the Local Municipalities.



11.0 HEADINGS FOR REFERENCE ONLY

11.1 The headings inserted in this By-law are for convenience of reference only and shall not affect the construction or interpretation of this By-law.

12.0 SHORT TITLE

12.1 The short title of this By-law is the “Halton Region Waterpipe Smoking By-law”.

READ and PASSED this 20th day of October, 2021.

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REGIONAL CHAIR

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REGIONAL CLERK

Report MO-05-21