



## CITY OF FORT SASKATCHEWAN

### SMOKING BYLAW

#### BYLAW NO. C17-18

#### A BYLAW OF THE CITY OF FORT SASKATCHEWAN IN THE PROVINCE OF ALBERTA TO AUTHORIZE THE LIMITATION OF PUBLIC USE OF TOBACCO, VAPORIZERS, CANNABIS, AND SIMILAR PRODUCTS.

The Council of the City of Fort Saskatchewan, duly assembled enacts the Smoking Bylaw, as follows:

#### 1. SHORT TITLE

- 1.1. This Bylaw shall be referred to as the Smoking Bylaw.

#### 2. DEFINITIONS

For the purpose of this Bylaw:

- 2.1. "Bingo Hall" means any premises for which the Province of Alberta has issued a bingo licence under the *Gaming and Liquor Act*.
- 2.2. "Cannabis related product" means any product that is derived from, in any way, a cannabis plant for the purposes of consumption or smoking.
- 2.3. "Casino" means any premises for which the Province of Alberta has issued a casino licence under the *Gaming and Liquor Act*.
- 2.4. "City" means the City of Fort Saskatchewan.
- 2.5. "City Manager" means the Chief Administrative Officer or designate, appointed pursuant to the MGA.
- 2.6. "Drinking Establishment" means a business the primary purpose of which is the sale of alcoholic beverages for consumption on the premises and the secondary purposes of which may include entertainment, dancing, music, the preparation and sale of food for consumption on the premises, take-out food services and the sale of alcoholic beverages for consumption away from the premises.
- 2.7. "Electronic Cigarette Retailer" means a retail store that's primary business is the sale of electronic cigarettes, vaporizers, and related products.
- 2.8. "Grandstand" means an open-air seating facility primarily but not exclusively limited to use in watching sporting events.

- 2.9. "MGA" means the *Municipal Government Act* in the province of Alberta.
- 2.10. "Municipal Tag" means a tag or similar document issued by the City pursuant to the MGA for the purpose of notifying a person that an offence has been committed, and which fine or prosecution may follow.
- 2.11. "Order" means a written order pursuant to the MGA, to remedy a contravention of this Bylaw.
- 2.12. "Outdoor Area" means an outdoor area also known 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 Drinking Establishment, but does not include an outdoor area or structure made available by a Restaurant or Drinking Establishment 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.
- 2.13. "Outdoor Public Event" means an outdoor market, festival, celebration, concert or parade requiring a City Special Event Permit, and to which the public is invited or permitted to attend.
- 2.14. "Peace Officer" means a Peace Officer as defined in the *Provincial Offences Procedure Act*.
- 2.15. "Private Club" means an enclosed place or premises that operates primarily for the benefit and pleasure of the members of a non-profit corporation, service club or branch of the Royal Canadian Legion.
- 2.16. "Proprietor" means the owner, operator, manager or any other person in charge or in control of a place or premises and includes:
- i. a person who is in charge of the place or premises at any particular time;
  - ii. the owner or driver of a taxi-cab;
  - iii. the owner or driver of a public bus or other form of public transportation;
  - iv. the owner or driver of a school bus; and
  - v. the Board of Trustees of a school, college or hospital.
- 2.17. "Public Building" means an enclosed or substantially enclosed building or structure to which the public is customarily admitted or invited. Without limiting the generality of the foregoing, public building includes bus shelters.
- 2.18. "Public Area" means any building, structure or other indoor space, or outdoor space,

whether publicly or privately owned or controlled, to which members of the public have access as of right, or are expressly or impliedly invited to use the space, with or without payments and includes, but is not limited to:

- i. all locations defined as a public place under the *Tobacco and Smoking Reduction Act*, and any other enactment that prohibits smoking. These locations include:
  - a. in a public place;
  - b. in a workplace;
  - c. in a vehicle in which a minor is present;
  - d. in a public vehicle; or
  - e. within a prescribed distance from a doorway, window, or air intake of a public place or workplace.
- ii. school buildings or structures, parking areas or lots, and school grounds;
- iii. sidewalks;
- iv. playgrounds;
- v. City Parks, sports fields, and green spaces;
- vi. City Facilities and the land they sit on;
- vii. outdoor recreation areas;
- viii. parking lots;
- ix. spray parks;
- x. skateboard or bicycle parks;
- xi. skating rinks and arenas;
- xii. swimming pools;
- xiii. theatres;
- xiv. golf courses;
- xv. patios;
- xvi. public transportation vehicles and bus stops;
- xvii. roadways, but does not restrict occupants of a vehicle from smoking tobacco products in the passenger compartment of a vehicle on a roadway, provided

no minors are present;

- xviii. zoos or animal conservation areas; and events and markets operating under City licences, permits or approvals, including, but not limited to, holiday celebrations, concerts, parades, organized sporting events, and farmers markets;

but does not include a person's private residence.

- 2.19. "Public Transportation Vehicle" means any vehicle used for the transportation of people upon the payment of a fee.
- 2.20. "Sidewalk Café" means an outdoor area, located on a public sidewalk, to which the public is invited or permitted access and which abuts and is operated as part of a Restaurant.
- 2.21. "Smoking" or "Smoke" means to inhale, exhale, burn, vaporize, or have control over a lit cigarette, cigar, or other lit smoking implement designed to burn or heat tobacco, cannabis, or any other substance for the purpose of inhaling or tasting of its smoke or emissions, but does not include smoking by an actor as part of a stage or theatrical performance.
- 2.22. "Violation Ticket" means a Violation Ticket as defined in the *Provincial Offences Procedure Act*.
- 2.23. "Work Place" means a permanent location where individuals engage in tasks for an employer.

### **3. REGULATION OF SMOKING**

- 3.1. No person shall smoke in any indoor place to which the public is ordinarily invited or permitted to attend or within 10 metres of the following places while in use:
  - i. Child Care Facility Property;
  - ii. Outdoor Pools;
  - iii. Outdoor Theatres;
  - iv. Playgrounds;
  - v. School Property;
  - vi. Skateboard or Bicycle Parks;
  - vii. Sports Fields;
  - viii. Spray Parks;

or in any of the following places;

- ix. Bingo Hall;
- x. Casino;
- xi. Drinking Establishment;
- xii. Grandstand;
- xiii. Outdoor Public Event;
- xiv. Patio;
- xv. Private Club;
- xvi. Public Building;
- xvii. Public Transportation Vehicle;
- xviii. Sidewalk Café; and
- xix. Work Place.

3.2. Cannabis and cannabis related products may not be smoked or consumed in any Outdoor Area or Public Area.

3.3. Notwithstanding anything in this Bylaw, the prohibitions set out in Section 3 do not apply to any private residence.

3.4. No proprietor of a premises where smoking is prohibited by Section 3.1 shall permit smoking in that premises.

3.5. A proprietor who takes the following steps shall be deemed to have complied with the obligation described in Section 3.4:

- i. advise a smoker that smoking is not permitted and request the smoker to extinguish any lit substance;
- ii. any smoker who refuses to comply with such a request shall be asked to leave the premises;
- iii. refuse to provide any further service to such person; and
- iv. immediately report to a Peace Officer any smoker who refuses to extinguish any lit substance or refuses to leave the premises when requested to do so.

3.6. No proprietor of a premise where smoking is prohibited shall permit ashtrays to be available for use or remain in that premises.

- 3.7. Nothing in this Bylaw affects the rights of people respecting traditional spiritual practices or ceremonies.
- 3.8. Nothing in this Bylaw will prevent 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 a dedicated electronic cigarette retailer.

#### 4. INSPECTIONS

- 4.1. For the purpose of determining if the provisions of this Bylaw are being complied with, a Peace Officer pursuant to the MGA, may inspect such places or premises at all reasonable times.

#### 5. ENFORCEMENT

- 5.1. Orders to Remedy Contraventions:
  - i. If the City Manager finds that a person is contravening this Bylaw, the City Manager may by written Order in accordance with the MGA, require any person responsible for the contravention to remedy it.
  - ii. The Order may:
    - a. direct a person to stop doing something, or to change the way in which they are doing it;
    - b. direct a person to take any action necessary to remedy the contravention of this Bylaw to prevent a re-occurrence of the contravention;
    - c. state a specified time to comply; and
    - d. state that if the person does not comply within a specified time, the City shall take necessary action, at the expense of the person.
  - iii. The expenses and costs resulting from action taken by the City under this Section are due and payable by the person in contravention of this Bylaw.
  - iv. The City may in accordance with the MGA, add outstanding amounts for unpaid expenses and costs referred to in Section 5.1.iii to a property Tax Roll, if the contravention of the Bylaw occurred on all or part of the Proprietor's property.
- 5.2. Service of Order:
  - i. In the case of an individual, an Order issued in accordance with this Bylaw may be served:
    - a. by delivering it personally to the individual;
    - b. by leaving it for the individual at their apparent place of residence, with someone who appears to be at least 18 years of age; or

- c. by regular mail addressed to the individual at their apparent place of residence, or to any address for the individual on the property Tax Roll of the City.
    - ii. In the case of a corporation, an Order issued in accordance with this Bylaw may be served:
      - a. by delivering it personally to any director or officer of the corporation;
      - b. by delivering it personally to a person apparently in charge of an office of the corporation at an address believed to be the corporation's address; or
      - c. by regular mail addressed to the registered office of the corporation.
- 5.3. Review by Council:
- i. A person who receives a written notice or Order under this Bylaw, may submit a written request for Council to review the notice or Order within 14 days after the date it was received.
  - ii. After review, Council may confirm, vary, substitute or cancel the notice or Order.
- 5.4. Offence:
- i. A person who contravenes any provision of this Bylaw is guilty of an offence.
  - ii. A person shall not interfere with a Peace Officer in the exercise of their powers and duties under this Bylaw.
- 5.5. Vicarious Liability:
- i. For the purpose of this Bylaw, an act or omission by the owner or another person acting on their behalf is deemed to be an act or omission of the owner, if the act or omission occurred in the course of exercising the powers or performing any duties on behalf of the owner.
- 5.6. Corporations and Partnerships:
- i. When a corporation commits an offence under this Bylaw, every principal, director, manager, employee or agent of the corporation who authorized the act or omission, or agreed or participated in the act or omission that constitutes the offence, is guilty of the offence whether or not the corporation has been prosecuted.
  - ii. If a partner in a partnership is guilty of an offence under this Bylaw, each partner in that partnership who authorized the act, who agreed or participated in the act or omission that constitutes the offence, is guilty of the offence.

5.7. Fines and Penalties:

- i. A person who is guilty of an offence is liable for a fine pursuant to Schedule "A", not to exceed \$1,000.00 or for the imprisonment of not more than 6 months for non-payment of a fine, as per the MGA.
- ii. Without restricting the generality of Section 5.7.i, the fine amounts set out in Schedule "A" are established for use on Municipal Tags and Violation Tickets, if a voluntary payment option is offered.

5.8. Municipal Tag:

- i. A Peace Officer is hereby authorized to issue a Municipal Tag to any person who the Peace Officer believes has contravened any provision of this Bylaw.
- ii. A Municipal Tag may be issued:
  - a. personally;
  - b. by mailing a copy to such person at their last known municipal address; or
  - c. by leaving it at the last known municipal address of such person.

5.9. The Municipal Tag shall be in a form approved by the City Manager and shall state:

- i. the name of the person;
- ii. the offence;
- iii. the specified penalty established by this Bylaw for the offence;
- iv. that the penalty shall be paid within 7 days of the issuance; and
- v. any other information as may be required by the City Manager.

5.10. Payment in Lieu of Prosecution:

- i. Where a Municipal Tag is issued pursuant to this Bylaw, the person to whom it is issued may, in lieu of being prosecuted for the offence, pay the penalty to the City, specified within the prescribed time indicated on the Municipal Tag.

5.11. Violation Ticket:

- i. Where a Municipal Tag has been issued and the specified penalty has not been paid within the prescribed time, the Peace Officer is authorized to issue a Violation Ticket pursuant to the *Provincial Offences Procedure Act*.
- ii. Notwithstanding Section 5.11.i, a Peace Officer is hereby authorized to issue a Violation Ticket pursuant to the *Provincial Offences Procedure Act* to any

person who the Peace Officer believes has contravened any provision of this Bylaw.

- 5.12. Where a Violation Ticket is issued in respect of an offence, it may:
- i. specify the fine amount established by this Bylaw for the offence; or
  - ii. require a person to appear in court, without the alternative of making a voluntary payment.

5.13. Voluntary Payment:

- i. A person who commits an offence may submit the voluntary payment noting the specified penalty to the Provincial Court Clerk, on or before the initial appearance date indicated on the Violation Ticket, if:
  - a. the Violation Ticket is issued with respect to the offence; and
  - b. the Violation Ticket specifies the fine amount established by this Bylaw for the offence.

## **6. GENDER REFERENCES**

- 6.1. All references in this Bylaw will be read with such changes in number and gender as may be appropriate, and references shall be read as a corporation or partnership, and pronouns shall be deemed to not be gender specific.

## **7. INTERPRETATION**

- 7.1. Wherever the provisions of this Bylaw are, or are deemed to be in at variance with each other, the more restrictive of the provisions shall apply.
- 7.2. Any reference in this Bylaw to provisions of statute, rules or regulations, shall be deemed to include references to such provisions as amended, modified or re-enacted from time to time.
- 7.3. Nothing in this Bylaw relieves any person from compliance with any other bylaw or applicable federal or provincial law, regulation or enactment.
- 7.4. The use of headings is for convenience of reference only and shall not be construed so as to affect the interpretation of this Bylaw.

## **8. SEVERABILITY**

- 8.1. If any portion of this Bylaw is declared invalid by a court of competent jurisdiction, the invalid portion must then be severed and the remainder of the Bylaw is deemed valid.

## **9. EFFECTIVE DATE**

- 9.1. This Bylaw becomes effective upon third and final reading.

READ a first time this 8<sup>th</sup> day of May 2018.

READ a second time this 25 day of September 2018.

READ a third and passed this 25 day of September 2018.

  
MAYOR

  
DIRECTOR, LEGISLATIVE SERVICES

Date Signed: September 28, 2018

**Schedule "A"**

Section	Description of Offence	Penalty, 1 <sup>st</sup> Offence	Penalty, 2 <sup>nd</sup> and Subsequent Offence
3.1 & 3.2	Smoking where prohibited	\$250	\$500
3.4 & 3.6	Permitting smoking where prohibited	\$250	\$1000