

THE CORPORATION OF THE MUNICIPALITY OF KILLARNEY

BY-LAW NO. 2024-22

BEING A BY-LAW TO REGULATE SMOKING AND VAPING IN PUBLIC PLACES AND ENCLOSED WORKPLACES IN THE MUNICIPALITY OF KILLARNEY

WHEREAS Section 115 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality may pass By-Laws regulating vaping and the smoking of tobacco and cannabis in public places and enclosed workplaces within the municipality;

AND WHEREAS Section 10 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality may pass by-laws respecting the economic, social and environmental well-being of the municipality, the health, safety and well-being of persons, and the protection of persons and property;

AND WHEREAS it has been determined that second-hand smoke and vapour are a health hazard or discomfort for many inhabitants of and visitors to the Municipality of Killarney;

AND WHEREAS the establishment of a community standard of smoke-free public places assists in de-normalizing tobacco, electronic cigarettes and cannabis use and promotes a smoke-free and vape-free culture;

AND WHEREAS Section 18 of the *Smoke-Free Ontario Act, 2017*, S.O. 2017, c. 26, as amended, provides that if there is a conflict between a provision of that Act and a provision of another Act, a regulation or a municipal By-Law that deals with a matter to which that Act applies, the provision that is more restrictive of the matter to which the Act applies prevails;

AND WHEREAS Section 425 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality may pass By-Laws providing that a person who contravenes a By-Law of the municipality passed under that Act is guilty of an offence;

AND WHEREAS Section 429 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides that a municipality may establish a system of fines for offences under a By-Law of the municipality passed under that Act;

NOW THEREFORE THE COUNCIL FOR THE CORPORATION OF THE MUNICIPALITY OF KILLARNEY HEREBY ENACTS AS FOLLOWS:

1. PART 1 SHORT TITLE

This By-law shall be cited as the “**Smoke-Free By-law**”.

2. PART 2 DEFINITIONS

For the purposes of this By-Law:

“**Cannabis**” has the same meaning as in Subsection 2 (1) of the *Cannabis Act* (Canada);

“**Council**” means the Council of the Municipality of Killarney;

“**Electronic Cigarette**” or “**E-Cigarette**” means a vaporizer or inhalant-type device, whether called an electronic cigarette or any other name, that contains a power source and heating element designed to heat a substance and produce a vapour intended to be inhaled by the user of the device directly through the mouth, whether or not the vapour contains nicotine;

“Employee” includes a person who:

- i. performs any work for or supplies any service to an employer;
- ii. receives any instructions or training in the activity, business, work, trade, occupation or profession of the employer;
- iii. receives remuneration for services provided; or
- iv. is self-employed.

“Employer” includes any person who is the owner, proprietor, manager, superintendent, or overseer of any activity, business, work, trade, occupation or profession, has control over the direction of, or is directly or indirectly responsible for the employment of a person therein;

“Enclosed Public Place” means an enclosed public place as defined in the *Smoke-Free Ontario Act, 2017*, S.O. 2017 c. 26, Schedule 3;

“Enclosed Workplace” means an enclosed workplace as defined in the *Smoke-Free Ontario Act, 2017*, S.O. 2017 c. 26, Schedule 3;

“E-substance” means a substance that is manufactured or sold to be used in an electronic cigarette, whether or not the substance contains nicotine;

“Highway” means any provincial or municipal highway within the geographic limits of the Municipality of Killarney, and includes the sidewalks and all other lands within the lateral boundaries of the highway.

“Inspector” means a person appointed by Council as a municipal law enforcement officer to enforce this By-Law;

“Municipality” means the The Corporation of the Municipality of Killarney;

“Municipal Lands” means any building or property owned, leased or controlled by the Municipality;

“Park” means any land, owned or leased or controlled by the Municipality, designed or used for public recreation, including but not limited to: trails, gardens, playgrounds, sports fields, playing fields, swimming pools and beach areas;

“Person” means a corporation as well as an individual;

“Proprietor or Other Person in Charge” means the person who owns, occupies or operates an enclosed public place or an enclosed workplace to which this By-Law applies, or the person who controls, governs, or directs the activities that are carried on in the place, and includes the person who is actually in charge at any particular time;

“Public Place” means the whole or part of any building, place or area to which members of the general public are invited or permitted access but does not include any area located on a Highway;

“Public Entranceway” means the main entrance to a public building or workplace, but does not include any ancillary entrances, or any public highway;

“Public Exit” means the main exit to a public building or workplace, but does not include any ancillary exits, or any public highway;

“Smoke” and **“Smoking”** include the carrying, holding or inhaling of lighted cannabis, a lighted cigar, cigarette, water-pipe, pipe, or any other lighted smoking equipment;

“Vaporizer” means an inhalant-type device that contains a power source and heating element designed to heat a substance and produce a vapour intended to be inhaled by the user of the device directly through the mouth, whether or not the vapour contains nicotine, cannabis or any other substance;

“Vaporizing”, “Vape” and “Vaping” mean the act of heating and converting cannabis, an e-substance or any other substance through a vaporizer or an electronic cigarette, for the purpose of simulating the inhalation of smoke or vapour.

3. PART 3 INTERPRETATION

This By-Law applies to the smoking and vaporizing of tobacco, cannabis, e-substance, shisha, whether or not it contains tobacco, and other materials intended for inhalation in every enclosed public place and in every enclosed workplace within the geographic limits of the Municipality of Killarney.

4. PART 4 ADMINISTRATION

The Municipality of Killarney is responsible for the administration and enforcement of this By-law.

5. PART 5 REGULATIONS

WORKPLACES

1. No person shall smoke and/or vape in any enclosed workplace within the Municipality whether or not a “No Smoking/No Vaping” sign is posted.
2. Every employer shall:
 - a. ensure compliance with this By-law;
 - b. prohibit smoking and/or vaping in the workplace;
 - c. inform each employee in the workplace that smoking and/or vaping is prohibited in the workplace;
 - d. post “No Smoking/No Vaping” signs in accordance with Part 6 of this By-law in conspicuous locations at every public entranceway, public exit and washrooms in the workplace indicating that smoking and/or vaping is prohibited in the workplace; and
 - e. ensure that no ashtrays or like paraphernalia are placed or permitted to remain in any part of the workplace.
 - f. ensure that a person who refuses to comply with the Act does not remain in the enclosed workplace or place or area. Section 14(1)e.
3. Section 5 (2) does not apply to:
 - a. a part of a workplace that is used as a private residence;
 - b. a workplace located in a dwelling where the only employees of that workplace are persons who live in the dwelling; or
 - c. a room in a hotel, motel or other place where rooms are rented for sleeping accommodation, provided the room is used for sleeping accommodation only and the room is designated and specifically set aside as a room in which smoking and/or vaping is permitted.

PUBLIC PLACES

4. No person shall smoke and/or vape within a nine (9) metre radius of any public entranceway or public exit to any public place within the Municipality whether or not a “No Smoking/No Vaping” sign is posted.
5. No person shall smoke and/or vape in any enclosed public places within the Municipality.

6. Every proprietor of a public place shall:
 - a. ensure compliance with this By-law;
 - b. prohibit smoking and/or vaping in the public place;
 - c. post “No Smoking/No Vaping” signs in accordance with Part 6 of this By-law in conspicuous locations at every public entranceway, public exit and washrooms in the public place indicating that smoking and/or vaping is prohibited in the public place;
 - d. ensure that no ashtrays or like paraphernalia are placed or permitted to remain in the public place.

7. No person shall smoke and/or vape in or on the property of the public places as shown on Schedule “B”, except in the designated smoking and/or vaping areas as shown on Schedule “C”.

8. No person shall smoke and/or vape within any children’s playground / play area or park or within twenty (20) metres of any point on the perimeter of any children’s playground / play area or park within the Municipality, whether or not a “No Smoking/No Vaping” sign is posted.

9. No person shall smoke and/or vape within:
 - a. 9 metre perimeter around restaurant or bar patios
 - b. 20 metre perimeter around school property
 - c. 20 metre perimeter around playgrounds and publicly owned sporting area
 - d. 20 metre perimeter around community recreational facility grounds

within the Municipality, whether or not a “No Smoking/No Vaping” sign is posted.

10. Smudging ceremonies of Indigenous peoples, in which sacred herbs and medicines are burned as part of a ritual, or for cleansing or health purposes, is permitted in enclosed public places and public places.

**6. PART 6
SIGNAGE REQUIRED**

1. Every employer and every proprietor shall post and maintain in conspicuous locations at each public entranceway and public exit to the facility and in the washrooms, a sign having the proportions, characteristics and minimum measurements as set out and depicted in Schedule “A” of this By-law, and consist of two (2) contrasting colors, or if the lettering and graphic symbol is to be applied directly to a surface or to be mounted on a clear panel, the lettering and graphic symbol shall contrast with the background. Every employer and every proprietor must post enough of the individual (tobacco/e-cigarette) signs or combined (tobacco *and* e-cigarette) signs at each public entranceway and public exit to the facility and in the washrooms, to ensure that employees and the public know that they cannot smoke and/or vape anything there.

2. Where a “No Smoking/No Vaping” sign is required to be placed or posted under this By-law, the sign shall have the proportions, characteristics and minimum measurements as set out in section 6 (1) as depicted in Schedule “A” of this By-law.

3. Deviations from the color or content of the sign prescribed by this section that does not affect the substance or that are not calculated to mislead do not invalidate the sign.

4. A reference to a by-law of a former municipality or township, or to a predecessor to this By-law on any signs that identifies a public place or a workplace in which smoking and/or vaping are prohibited is deemed to be a reference to this By-law.

**7. PART 7
ENFORCEMENT**

1. An enforcement officer or inspector of the Municipality may, at any reasonable time, enter any public place, enclosed public place or workplace for the purposes of determining compliance with this By-law.

2. No enforcement officer or by-law officer or inspector of the Municipality may enter a workplace that is also a dwelling without the consent of the occupant or without first obtaining and producing a warrant.
3. The provisions of this By-law respecting the designation of non-smoking areas, the posting of signs and the duties imposed on the proprietor, employer or other person in charge of a playground area, recreation field, park, public place or workplace shall be enforced by municipal law enforcement officers or municipal by-law enforcement officers.

**8. PART 8
OFFENCES**

1. Any person who contravenes any of the provisions of this By-law, or who hinders or obstructs an enforcement officer or by-law officer or inspector lawfully carrying out the enforcement of this by-law, is guilty of an offence and upon conviction is liable to a fine of not more than five thousand dollars (\$5,000.00) as provided for in the *Provincial Offences Act*, R.S.O. 1990, chapter 33, or any successor thereof.
2. If this By-law is contravened and a conviction entered, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty that is imposed, make an order prohibiting the continuation or repetition of the offence by the person convicted.

**9. PART 9
CONFLICTS**

If a provision of this By-law conflicts with an Act or Regulation or another by-law, the provision that is the most restrictive of smoking and/or vaping shall prevail.

**10. PART 10
SEVERABILITY**

If any section or sections of this By-law or part thereof, is found in any court of law to be illegal or beyond the power of the Municipality to enact, such section or sections or part thereof shall be deemed to be severable and all other sections or parts of the By-law shall be deemed to be separate and independent thereof and to be enacted as such.

**11. PART 11
REPEAL**

By-law No. 2002-12 and any other by-law on the same subject matter which is inconsistent with this By-law are hereby repealed.

**12. PART 12
SCHEDULES**

That the following schedules attached hereto shall form part of this By-law:

- SCHEDULE "A" – Signage
- SCHEDULE "B" – Municipal Lands where Smoking and/or Vaping is Prohibited
- SCHEDULE "C" – Designated Smoking Areas
- SCHEDULE "D" – Set Fines Schedule
- SCHEDULE "E" – Policy

**13. PART 13
MODIFICATIONS OR CORRECTIONS**

The Clerk of The Corporation of the Municipality of Killarney is hereby authorized to make any minor modifications or corrections of an administrative, numerical, grammatical, semantically of descriptive nature or kind to this By-law and Schedules as may be deemed necessary after the passage of this By-law, where such modifications or corrections do not alter the intent of the By-law.

**14. PART 14
EFFECTIVE DATE**

This By-law shall come into force and take effect on the day it is passed.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED IN OPEN COUNCIL THIS 12TH DAY OF JUNE, 2024.

Michael Reider, Mayor

Gilles Legault, Deputy Clerk-Treasurer

SCHEDULE “A” of BY-LAW 2024-22
SMOKE-FREE BY-LAW – SIGNAGE

The following graphic symbols, or likeness thereof, shall be used to indicate the areas where smoking and/or vaping is prohibited pursuant to this By-law:



Signage Specifications

Official sign names:

- Tobacco Sign for Employers
- Tobacco Sign for Proprietors
- Tobacco Sign for Hotels, Motels, and Inns

Minimum size: 10 centimetres (cm) high, 10 centimetres (cm) wide



Signage Specifications

Official sign names:

- Electronic Cigarette Sign for Employers
- Electronic Cigarette Sign for Proprietors
- Electronic Cigarette Sign for Hotels, Motels, and Inns

Minimum size: 10 centimetres (cm) high, 10 centimetres (cm) wide



Signage Specifications

Official sign names:

- Tobacco and Electronic Cigarette Sign for Employers
- Tobacco and Electronic Cigarette Sign for Proprietors
- Tobacco and Electronic Cigarette Sign for Hotels, Motels, and Inns

Minimum size: 15 centimetres (cm) high, 20 centimetres (cm) wide

The graphic symbols as depicted above are available for download on the Province of Ontario’s website at: www.ontario.ca/page/no-smoking-no-vaping-signs-businesses.

Despite the fact that the symbol referred to is a cigarette, it shall include a lighted cigar, cigarette, pipe or any other lighted smoking and/or vaping instrument including e/cigarettes or inhalant-type devices.

Deviations from the color or content of the signs prescribed by this section that do not affect the substance or that are not calculated to mislead do not invalidate the signs.

Any sign prohibiting smoking and/or vaping that refers to a by-law of a former municipality or township, or to a predecessor to this By-law is deemed to be a reference to this By-law.

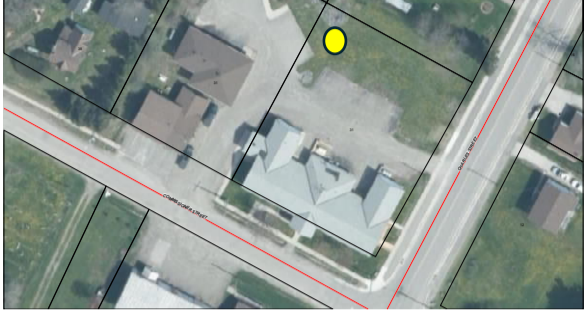

SCHEDULE “B” of BY-LAW 2024-22
SMOKE-FREE BY-LAW – MUNICIPAL LANDS
WHERE SMOKING AND/OR VAPING IS PROHIBITED

As identified in Section 7 of Part 5, no person shall smoke and/or vape in or on the following properties:

Address	Description	Details
32 Commissioner Street	Killarney Municipal Office	Entire property except at designated smoking and/or vaping area
1096 Highway 637	Public Works Dept.	Entire property except at designated smoking and/or vaping area
34 Commissioner Street	Water Treatment Plant	Entire property
27 Channel Street	Low Lift Station	Entire property
36-B Commissioner Street	Killarney Health Centre	Entire property
31 Commissioner Street	Fire Hall	Entire property
36-A Commissioner Street	EMS Station	Entire property
100 Ontario Street	Killarney Airport	Entire property
56-B Charles Street	Veteran’s Memorial Hall	Entire property
58 Charles Street	Killarney Community Centre	Entire property
29 Commissioner Street	Killarney Museum	Entire property
9 Charles Street	Jailhouse	Entire property
23 Channel Street	Channel Marina	Entire property
Commissioner Street	St. Bonaventure Cemetery	Entire property
Highway 637	All Saints Cemetery	Entire property
Perry Avenue	Town Beach	Entire property

SCHEDULE "C" of BY-LAW 2024-22
SMOKE-FREE BY-LAW – DESIGNATED SMOKING AREAS

As identified in Section 7 of Part 5, the following are designated smoking and/or vaping areas:

Address	Description	*Map/Details
32 Commissioner Street	Killarney Municipal Office	
1096 Highway 637	Public Works Department	

**Location may vary – not to scale*

SCHEDULE “D” of BY-LAW 2024-22
SMOKE-FREE BY-LAW – SET FINES SCHEDULE

ITEM	COLUMN 1 Short form wording	COLUMN2 Provision creating or Defining Offence	COLUMN3 Set fines
1.	Smoking and/or vaping in any enclosed workplace (including municipal vehicles/machinery).	5(1)	\$150.00
2.	Employer – fail to post a “No Smoking/No Vaping” sign at every public entranceway, public exit and washrooms.	5(2) (d)	\$150.00
3.	Smoking and/or vaping within a nine (9) metre radius of any public entranceway or public exit to a public place.	5(4)	\$150.00
4.	Smoking and/or vaping in any enclosed public places within the Municipality.	5(5)	\$150.00
5.	Proprietor – fail to post a “No Smoking/No Vaping” sign at every public entranceway, public exit and washrooms.	5(6) (c)	\$150.00
6.	Smoking and/or vaping in or on the property of a public place shown on Schedule “B”.	5(7)	\$150.00
7.	Smoking and/or vaping within any children’s playground / play area or park or within twenty (20) metres of any point on the perimeter of any children’s playground / play area or park.	5(8)	\$150.00
8..	Smoking and/or vaping within sporting areas, spectator areas adjacent to sporting areas and/or public areas within twenty (20) metres of any point on the perimeter of a sporting area or a spectator area adjacent to a sporting area.	5(9)	\$150.00

***NOTE: Penalty provisions for the offences indicated above is Part 8 of By-Law 2024-22, a certified copy of which has been filed.**

SCHEDULE “E” of BY-LAW 2024-22
SMOKE-FREE BY-LAW – POLICY

In order to promote the health, safety and welfare of the residents and workers within the Municipality and to ensure that all public places including workplaces, public parks and playgrounds are protected from second-hand smoke, Council has enacted a “Smoke-Free By-law”.

All residents of the Municipality are required to follow the provisions of the standards set in the “Smoke-Free By-law”.

“Smoking” is defined as the “carrying, holding or inhaling of lighted cannabis, a lighted cigar, cigarette, water-pipe, pipe, or any other lighted smoking equipment”.

“Vaping” is defined as “the act of heating and converting cannabis, an e-substance or any other substance through a vaporizer or an electronic cigarette, for the purpose of simulating the inhalation of smoke or vapour”.

Smoking and/or vaping will not be allowed in the following areas:

- All enclosed workplaces/municipal vehicles (unless they are a part of a private dwelling);
- Within a nine (9) metre radius of any public entranceway or public exit to any public place within the Municipality;
- Inside any public place within the Municipality;
- Inside or on the property of the public places as shown on Schedule “B”;
- Within any children’s playground / play area or park or within twenty (20) metres of any point on the perimeter of any children’s playground / play area or park;
- Within sporting areas, spectator areas adjacent to sporting areas and/or public areas within twenty (20) metres of any point on the perimeter of a sporting area or a spectator area adjacent to a sporting area.

This information is for convenience and quick reference only. For specific information, contact the Municipal By-law Enforcement Officer.