



*A People Place, A Change of Pace*  
**SHELBURNE**  
ONTARIO, CANADA

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**Meeting Date:** Monday, July 25, 2022

**To:** Members of Council

**From:** Jennifer Willoughby, Director of Legislative Services/Clerk

**Report:** LS2022-15

**Subject:** **Town of Shelburne Smoking & Vaping Bylaw**

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### Recommendation

BE IT RESOLVED THAT Council receives report LS 2022-15 for information;

AND THAT leave be given for the reading and enacting of Bylaw #35-2022 being a bylaw to regulate the smoking and vaping of tobacco on municipally owned or leased properties within the Town of Shelburne.

### Background

At the Regular Council meeting held June 27, 2022, Council reviewed report LS 2022-13 regarding a newly proposed smoking and vaping bylaw and directed staff to return with a revised draft bylaw based on the comments made by Council as follows:

1. Smoking and vaping on public sidewalks;
2. Smoking and vaping during special events, attendance concerns and the ability to provide for an exemption within a reasonable time frame;
3. Smoking and vaping at the Non-Profit Housing Residence.

## Analysis

Staff took the opportunity to engage the public by way of survey through the Town's public engagement tool – Bang the Table. Results of the survey are attached as Appendix 1 and note the following:

The site had a total of 311 visits with 182 contributing to the survey.

107 respondents or 57.35% support the proposed bylaw while 55 respondents or 29.6% oppose the bylaw.

120 respondents or 64.5% support dedicated smoking area's during special events while 61 respondents or 32.8% do not support dedicated smoking area's during special events.

90 respondents or 48.4% said no to allowing smoking by those walking or standing on sidewalks while 83 or 44.6% said yes.

112 or 60.2% said it bothers them when someone smokes near them when they are in an outdoor public place and 74 or 39.8% said it does not bother them.

94 or 50.5% said they are more likely to visit an area if they know it is smoke free, 21 or 11.3% said they are less likely while 71 or 38.2% indicated neither more nor less likely.

Changes made to the proposed bylaw, attached as Appendix 2, as per Council direction are as follows:

### **1. Smoking and vaping on public sidewalks:**

The definition of highway has been updated to the following:

"Highway" means a common and public highway, street, boulevard, court, centre, crescent, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and pedestrians and includes sidewalks and all other lands within the lateral boundaries of the highway.

**\*\*Which will allow smoking on sidewalks.**

## **2. Smoking and vaping during special events, attendance concerns and the ability to provide for an exemption within a reasonable time frame:**

Section 4.3 of the bylaw allows for an exemption to be applied for through Council 45 days prior to the date required for the exemption. Event organizers have the ability to apply for exemptions prior to their event with the option of setting up a dedicated smoking area.

## **3. Smoking and vaping at the Non-Profit Housing Residence:**

The Smoke Free Ontario Act notes the following:

Multi-Unit Dwellings: Condominiums, Apartment Buildings and College and University Campuses

Smoking and vaping is not permitted in the indoor common areas of condominiums, apartment buildings, and college and university residences. This includes elevators, stairwells, hallways, parking garages, laundry facilities, lobbies, exercise areas and party or entertainment rooms. Note: Additional restrictions on smoking and vaping may exist in condominium bylaws, lease agreements, and the policies of universities and colleges.

Additionally, Bayshore Property Management has their own policy that applies to tenants of the subject property and included in their lease agreement:

"No-Smoking Policy. Effective January 1, 2017, smoking is prohibited inside the building, including private units and on the residential property. For the greater clarity, a balcony is defined as part of the private unit. Smoking any substance on the balcony of the unit is deemed a violation of this agreement. Tenant agrees and acknowledges that the premises to be occupied by tenant and members of tenant's household have been designated as non-smoking. Tenant, members of tenant's household, visitors, guests and business invitees shall not smoke anywhere in the unit rented by tenant, or the building where the tenant's dwelling is located or in any of the common areas or adjoining grounds of such building or other parts of the rental community, and not within 3 metres of the doorway. The no-smoking policy will be adopted through attrition. This means that:

- a) Existing tenants will be grandfathered (exempted) for the length of their tenancies, unless they choose to sign a no-smoking policy lease addendum; and
- b) New tenants will sign leases with the no-smoking policy included.

It is important to note that staff continually receive complaints relating to second-hand smoke from those not respectful of public places and within rental units, specifically rental units within the downtown core.

The proposed bylaw will be reactively enforced with a requirement for written complaints to be received and will allow staff the opportunity to address complaints in an appropriate manner as currently the Smoke Free Ontario Act is enforced by Public Health Officers and not municipal staff.

[The Smoke Free Ontario Act](#) (SFOA), 2017, became effective on October 17, 2018, and is enforced by Public Health Officers. The Act prohibits the smoking of tobacco or cannabis (including medical and non-medical cannabis) and vaping in enclosed workplaces, enclosed public places, and other designated places an excerpt from the Act identifying some of the prohibitions is provided below, additionally fact sheets can be found on the [Wellington Dufferin Guelph Public Health website](#):

### **Restaurant and bar patios**

You cannot smoke or vape on a patio of any bar or restaurant, including the public areas within 9 metres of the patio.

The only exception is any branch of the Royal Canadian Legion or veterans' organization that established an uncovered patio before November 18, 2013. There, you:

- can smoke tobacco and vape
- cannot smoke cannabis or vape cannabis or a controlled substance

### **Community recreational facilities**

You cannot smoke or vape on the outdoor grounds of a community recreational facility and any public areas within 20 metres of its grounds.

A community recreational facility is an enclosed public place or enclosed workplace that offers athletic and recreational programs to the local community and is owned or operated by:

- a not-for-profit corporation
- an organization registered as a charity
- the province

- a municipality
- Enclosed workplaces
- You cannot smoke or vape in an enclosed workplace, even when the workplace is closed.

An enclosed workplace means any part of a building, structure or vehicle with a roof that an employee works in or visits, even during off-hours, including:

- an office building
- a trailer office on a construction site
- a delivery truck

### **Enclosed public places**

You cannot smoke or vape in an enclosed public place.

An enclosed public place means any part of a building, structure or vehicle that is covered by a roof and where the public is invited or has access. It doesn't matter if there is a fee to get in or not.

### **Sheltered areas**

You cannot smoke or vape in an outdoor shelter that has more than two walls and a roof if the public or employees are invited to use it (for example, a bus shelter).

The proposed bylaw for Council's consideration references the Smoke Free Ontario Act provisions while giving staff the authority to provide enforcement as opposed to Public Health Officers.

### **Schools**

The smoking or vaping of tobacco or cannabis in schools is strictly prohibited, on school property, and within 20 metres of school property. All school property owned or leased by the school boards must be smoke-free at all time

### **Current Bylaws**

Currently the Town has several dated bylaws [#9-1993](#), [#6-1994](#), [#13-1995](#) and [#7-1997](#). Neither of the aforementioned bylaws reference the Smoke Free Ontario Act or are compliant with current legislation.

The smoking and vaping of cannabis in public places is addressed through bylaw [#61-2018](#) and [#65-2018](#).

## Policies and Implications

N/A

## Financial Impact

Signage will be required to be installed and the estimated financial impact is approximately \$2,000 for signage installation.

## Consultation and Communications

Staff reviewed the following municipalities in developing the proposed bylaw: Wasaga Beach, Cornwall, Kingston, Barrie and Toronto.

Further review with Halton and Niagara Regions and the Town of Orangeville have been taken into consideration.

The proposed bylaw has received legal review from the Town Solicitor.

## Council Strategic Priorities

Council's Strategic Priorities have three Goals - Sustainable, Engaged and Livable. There are a total of 12 targets with the three Goals.

This report aligns with the sustainable goals within the targets:

Target T2 – municipal services review and evaluation

Target T10 – Improve and enhance parks and recreation services

## Supporting Documentation

Appendix 1 – Smoke Free Parks in Shelburne Survey Results

Appendix 2 – Draft Bylaw #35-2022

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Report Respectfully Submitted and Prepared By:

Jennifer Willoughby, Director of Legislative Services/Clerk

Reviewed By:

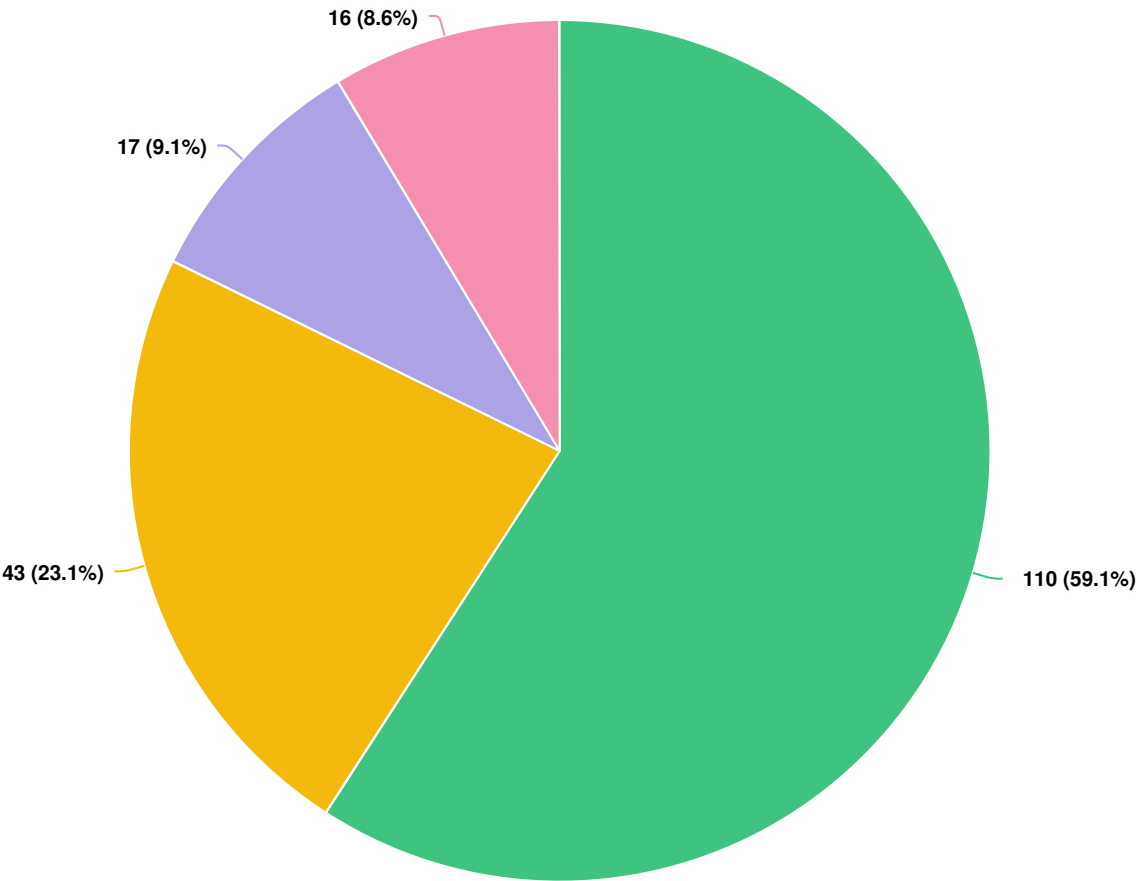
Denyse Morrissey, CAO

ENGAGEMENT TOOL: SURVEY TOOL

Quick Survey

Visitors	224	Contributors	182	CONTRIBUTIONS	186
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Do you live or work in Shelburne?



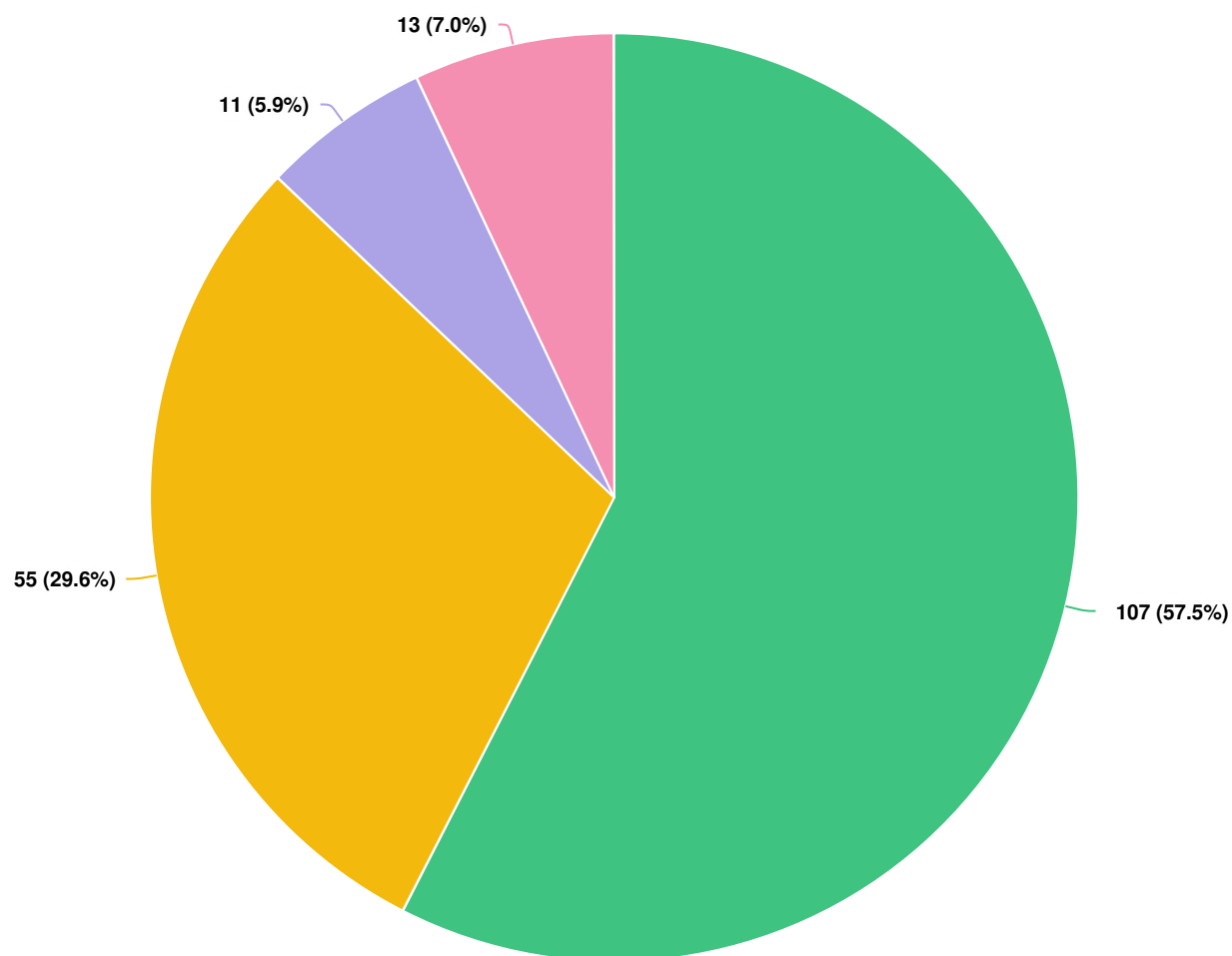
Question options

- Yes I Live in Shelburne
- Yes I Live and work in Shelburne
- I work in Shelburne
- I neither live or work in Shelburne

Mandatory Question (186 response(s))

Question type: Radio Button Question

**Do you support or oppose a bylaw that makes all Town of Shelburne Parks, Trails and Properties non-smoking public spaces?**



**Question options**

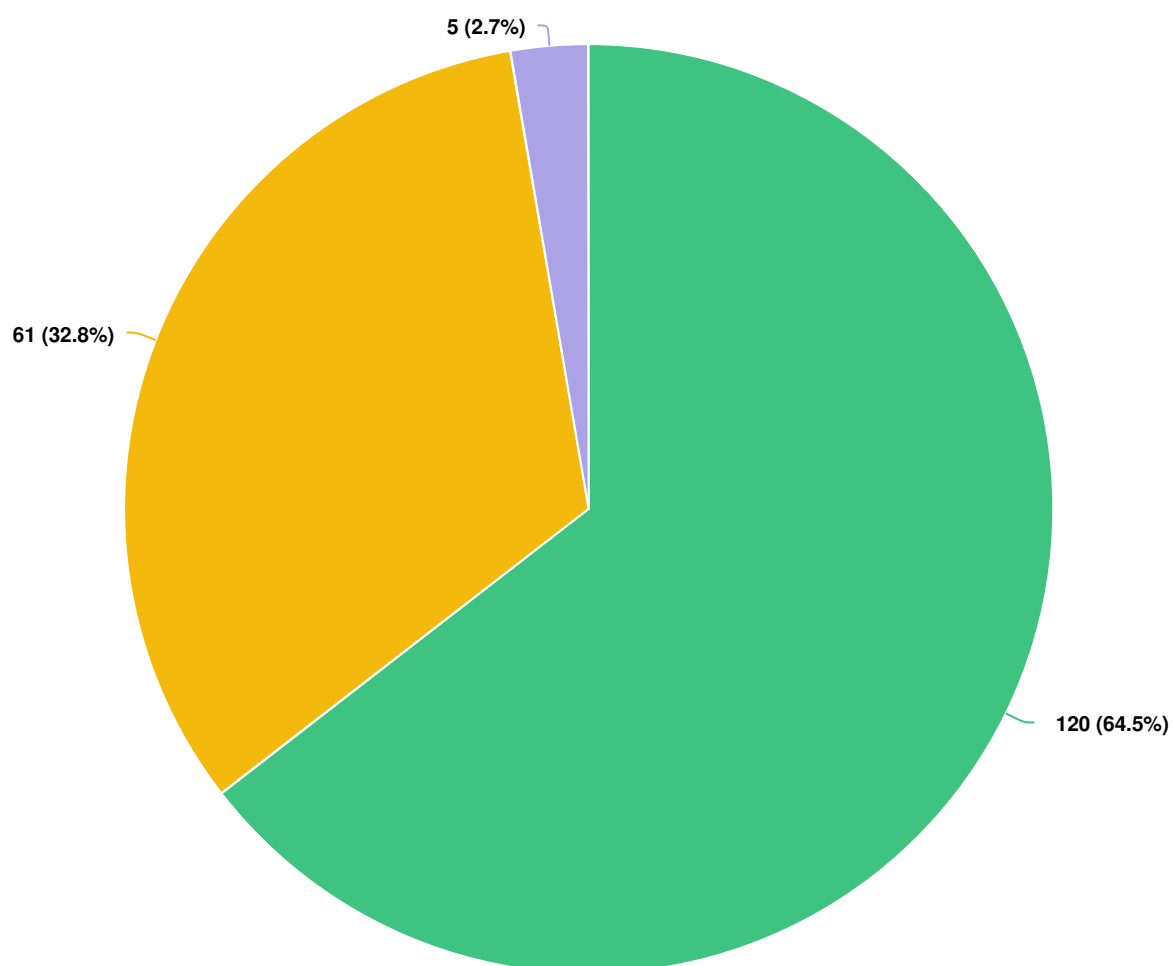
☒ Support ☐ Oppose ☐ Neither support or oppose ☐ Comment (please specify)

*Mandatory Question (186 response(s))*

*Question type: Radio Button Question*



**Do you think designated smoking areas should be allowed during special events held in parks?**



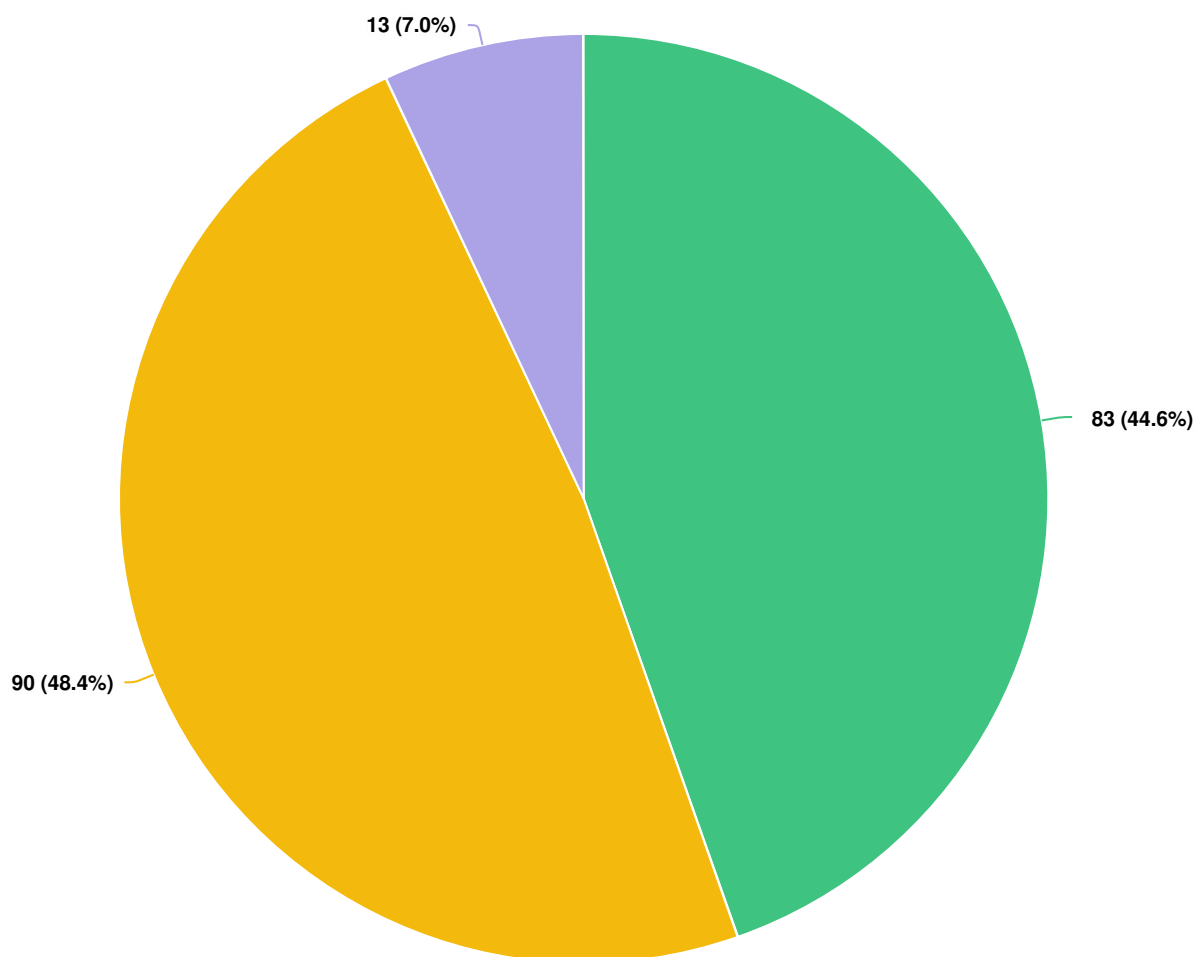
**Question options**

☒ Yes ☐ No ☐ Comment

*Mandatory Question (186 response(s))*

*Question type: Radio Button Question*

**Should the Town of Shelburne allow smoking by those walking or standing on sidewalks?**



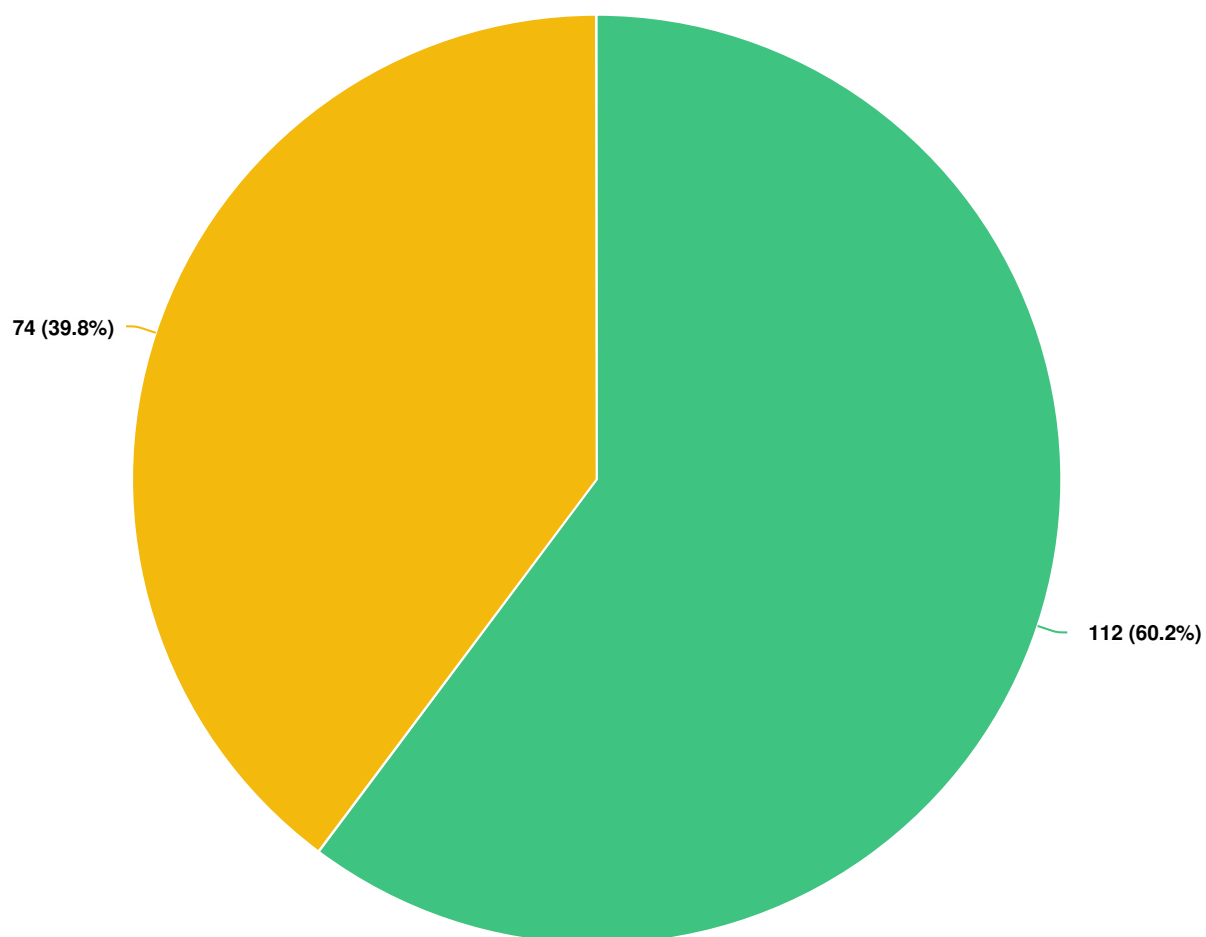
**Question options**

☒ Yes ☒ No ☒ Comment

*Mandatory Question (186 response(s))*

*Question type: Radio Button Question*

**Does it bother you when someone smokes near you when you are in outdoor public places?**



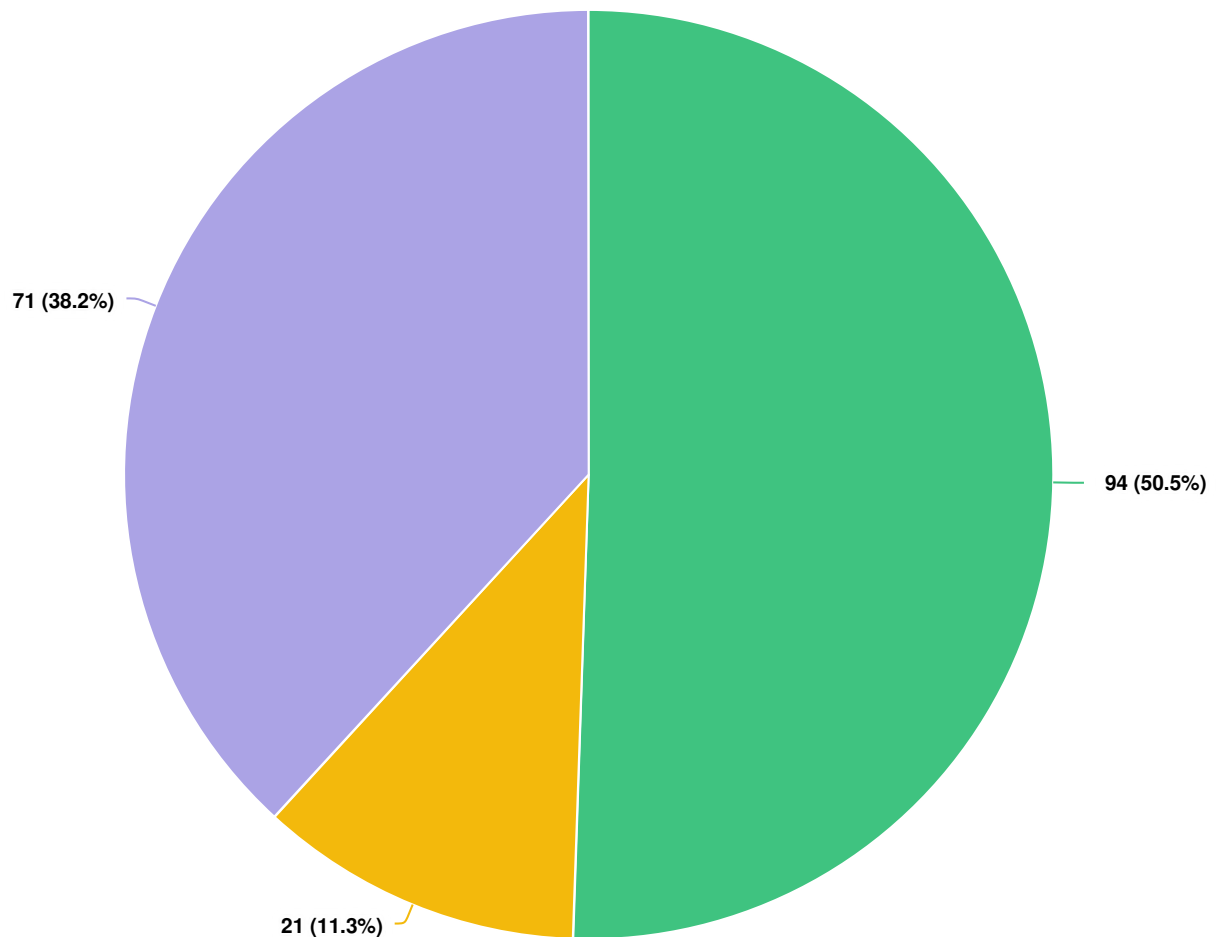
**Question options**

☒ Yes ☐ No

*Mandatory Question (186 response(s))*

*Question type: Radio Button Question*

**Are you more or less likely to visit an area if you know it is smoke-free?**



**Question options**

☒ More Likely ☐ Less Likely ☐ Neither more or less likely

*Mandatory Question (186 response(s))*

*Question type: Radio Button Question*

## THE CORPORATION OF THE TOWN OF THE TOWN OF SHELBURNE

### BY-LAW NO. 35-2022

A By-law to regulate the smoking or vapourizing of tobacco on municipally owned or leased properties in the Town of Shelburne

**WHEREAS** Section 8 of the *Municipal Act, 2001*, S.O. 2001, c.25 as amended provides that the powers of a municipality shall be interpreted broadly so as to confer broad authority on the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues;

**AND WHEREAS** Section 9 of the *Municipal Act*, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising the authority under the Act;

**AND WHEREAS** clause 6 of subsection 11(2) of the *Municipal Act*, provides that a municipality may pass by-laws in the interest of the health, safety and well-being of its residents;

**AND WHEREAS** Section 115(1) of the *Municipal Act* authorizes the Council of a municipality to pass a by-law to prohibit or regulate the smoking or vapourizing of tobacco in defined public places within the municipality;

**AND WHEREAS** Section 115(3) of the *Municipal Act*, provides that Section 115 of the Act shall not apply to a highway;

**AND WHEREAS** Section 18 of the *Smoke Free Ontario Act 2017*, S.O. 2017, c. 26, Schedule 3 contemplates that where there is a conflict between a provision of the Act and a provision of another Act, regulation or a Municipal By-law that deals with a matter to which the Act applies, the provision that is more restrictive shall prevail;

**AND WHEREAS** the Council of the Corporation of the Town of Shelburne (the "Council") has deemed it desirable for the health, safety and well-being of the residents of the Town of Shelburne to prohibit or regulate smoking or vapourizing of tobacco on municipally owned or leased properties within the Town of Shelburne in accordance with the provisions of this By- law;

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF SHELBURNE HEREBY ENACTS AS FOLLOWS:**

## 1.0 BY-LAW TITLE

1.1 This By-law shall be known as the “Smoking/Vaping By- law”.

## 2.0 DEFINITIONS

2.1 For the purpose of this By-law:

- (a) **“Council”** means the Council of the Corporation of the Town of Shelburne;
- (b) **“Electronic Cigarette”** means a vapourizer or inhalant-type device, whether called an Electronic Cigarette or any other name, which 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;
- (c) **“Highway”** means a common and public highway, street, boulevard, court, centre, crescent, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the sidewalks and all other lands within the lateral boundaries of the highway;
- (d) **“Municipal Building”** means any building, facility or structure owned, leased, controlled or used by the Municipality for municipal purposes, including without limitation municipal offices, bus shelters, libraries, arenas, public washrooms, recreational centres and fire halls;
- (e) **“Municipality”** means The Corporation of the Town of Shelburne;
- (f) **“Officer”** means a Municipal Law Enforcement Officer or Police Officer;
- (g) **“Outdoor Recreational Facility”** means any area located on municipal property that is designed, designated or delineated for the playing of sports or for activities, together with any lane, walkway or public parking area leading thereto including but not limited to: swimming pools, splash pads, soccer fields, baseball diamonds, skateboard parks, tennis courts, cricket pitches, pickleball courts, player benches, side lines, player warm up areas and spectator areas;

- (h) **“Park”** means lands owned by the Municipality that is designed or used for public recreation including, but not limited to, parklands, parkettes, trails, community gardens and includes any lane, walkway or public parking area leading thereto and any spectator or player seating areas;
- (i) **“Playground Area”** means any part of an outdoor area fitted with play equipment, including but not limited to slides, swings, and climbing equipment, and includes any surrounding natural or manmade safety surface of sand, rocks, wood chips, rubber or any similar material that may typically define its border and any trail or pathway within a twenty-metre radius of a Playground Area;
- (j) **“Smoking”** means smoking (exhaling and inhaling) or holding lighted tobacco;
- (k) **“Special Event”** means an exhibition, event or function held within the Town of Shelburne where a person has applied to the Town of Shelburne to conduct a Special Event and Council has approved the event, with or without conditions;
- (l) **“Tobacco”** means tobacco, in whatever manner it may be used or consumed, and in any processed or unprocessed form, and includes any product made in whole or in part of tobacco and/or tobacco leaves, including without limitation, pipe tobacco, water pipe tobacco, cigarettes, cigars, and cigarillos.
- (m) **“Use”** with respect to Electronic Cigarettes, includes any of the following:
  - 1) Inhaling vapour from an Electronic Cigarette.
  - 2) Exhaling vapour from an Electronic Cigarette.
  - 3) Holding an activated Electronic Cigarette.
- (n) **“Vape or Vaping or Vapourizing”** means inhaling or exhaling the vapour produced by a lighted Electronic Cigarette or similar device and shall include the holding of an Electronic Cigarette or similar device whether or not such device is lighted.
- (o) **“Walkway”** means an area of land designated, designed, or intended for the passage of pedestrians and shall include a pathway or boardwalk, but does not include a walkway located within the boundary of a Highway.

### **3.0 GENERAL PROHIBITIONS**

**3.1** No person shall smoke or vapourize on or within any property owned or leased by the Municipality, including the following:

- (a) any property upon which is located a Municipal Building;
- (b) any municipal trail or walkway;
- (c) any park located within the Municipality or within a 20-metre radius of the perimeter of such areas;
- (d) all playground areas, or within a 20-metre radius of the perimeter of playground areas;
- (e) all Outdoor Recreational Facilities or within a 20-metre radius of the perimeter of an Outdoor Recreational Facility;
- (f) within a Special Event.

**3.2** The prohibitions in Section 3.1 apply whether or not a no smoking/vaping sign of any format or content is posted.

### **4.0 EXEMPTIONS**

**4.1** Sections 3.1 do not apply to a person:

- (a) smoking/vapourizing in a privately-owned property that is primarily a private dwelling;
- (b) smoking/vapourizing on any portion of a Highway.



**4.2** This By-law does not apply to traditional and or sacred tobacco that is used and kept sacred by indigenous communities.

**4.3** Notwithstanding anything contained in this By-law, any person may make application a minimum of 45 days prior to the date(s) requiring an exemption, to Council through the appropriate committee of Council as specified by the Clerk or their designate, to be granted an exemption from any of the provisions of this By-law with respect to smoking/vapourizing on prohibited properties. Council, by resolution, may refuse to grant any exemption or may grant the exemption applied for or any exemption of lesser effect and any exemption granted shall specify the time period of a duration during which it is effective, and may contain such items and conditions as Council sees fit.

## **5.0 ENFORCEMENT**

**5.1** The provisions of this By-law may be enforced by an Officer.

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

**5.3** Where an Officer has reasonable grounds to believe that a person has contravened any provision of this By-law, the Officer may require the name, address and proof of identity of that person, and the person shall supply that information. Failure to provide sufficient or any identification shall constitute obstruction of the Officer as set out in section 6.5 of this By-law.

## **6.0 PENALTY**

- 6.1** Any person, who contravenes or fails to comply with any provision of this By-law is guilty of an offence and upon conviction is liable to a fine as provided for in the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended.
- 6.2** Upon conviction any penalty imposed under this By-law may be collected under the authority of the *Provincial Offences Act*, R.S.O 1990, c. P.33, as amended.
- 6.3** Every person who is convicted of an offence, is liable to a maximum fine of \$10,000 for a first offence and a maximum fine of \$25,000 for a subsequent offence.
- 6.4** Upon conviction, in addition to any other remedy and to any penalty imposed by this Chapter, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order prohibiting the continuation or repetition of the offence by the person convicted.
- 6.5** No person shall hinder or obstruct, or attempt to hinder or obstruct, an Officer who is exercising a power or performing a duty under this By-law.

## **7.0 SEVERABILITY**

- 7.1** If any provision or part of this By-law is declared by any court or tribunal of competent jurisdiction to be illegal or inoperative, in whole or in part, or inoperative in particular circumstances, the validity of this By-law as a whole or any part thereof, other than that part which is declared invalid, shall not be affected and it shall continue to apply in full force and effect to all other circumstances.

## **8.0 CONFLICTS**

- 8.1** If any provision of this By-law conflicts with an Act or a regulation or another by-law, the provision that is the most restrictive of the smoking or vapourizing of tobacco or Cannabis or vapourizing of any substance, as the case may be, shall prevail.

## **9.0 INTERPRETATION**

- 9.1** The provisions of Part VI of the *Legislation Act, 2006*, S.O. 2006, c.21, Schedule F shall apply to this By-law.

## **10.0 REPEAL**

- 10.1 THAT By-Law #9-1993, #6-1994, #13-1995 and #7-1997, as amended, are hereby repealed.
- 10.2 Should any section of this By-law be declared invalid by a court of competent jurisdiction, such section shall be construed as being severed here from and the remainder of this By-law shall continue in full force and effect.

## **11.0 EFFECTIVE DATE**

- 11.1 This By-law shall come into force and effect on the final passage thereof.

**BY-LAW READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS  
25th DAY OF JULY 2022.**

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Wade Mills  
Mayor

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Jennifer Willoughby  
Clerk

