

IMPORTANT NOTICE

Town of Black Diamond



OFFICE CONSOLIDATION

This document is consolidated into a single publication for the convenience of users. The official Bylaw and all amendments thereto are available from the Legislative Services Manager and should be consulted in interpreting and applying this Bylaw. In case of any dispute, the original Bylaw(s) must be consulted.

For easy reference the amending Bylaw Numbers are listed with a brief description.

Printed by the Legislative Services Manager, by the authority of Town Council.

Bylaw 18-08

Smoking and Vaping Bylaw

Office Consolidation

Office Consolidated Version dated: November 8, 2018

**BYLAW 18-08 OFFICE CONSOLIDATION
TOWN OF BLACK DIAMOND**

**A BYLAW TO REGULATE SMOKING IN PUBLIC PLACES AND WORKPLACES
WITHIN THE TOWN OF BLACK DIAMOND, IN THE PROVINCE OF ALBERTA.**

WHEREAS, the *Municipal Government Act*, R.S.A. 2000, c. M-26, and amendments thereto, provides that a Council may pass a Bylaw for municipal purposes respecting the safety, health and welfare of people and the protection of people and property, activities and things in, on or near a Public place or a place that is open to the Public, and Persons engaged in business, business activities and businesses in the municipality;

AND WHEREAS, the Council wishes to exercise its authority pursuant to the *Municipal Government Act* by limiting the effects of known health hazards and the nuisance or discomfort from Secondhand Smoke by regulating Smoking in Public Places and Workplaces;

NOW THEREFORE the Council of the Town of Black Diamond, in the Province of Alberta, duly assembled, hereby enacts as follows:

1. TITLE

- 1.1.** This Bylaw may be cited as the “Smoking and Vaping Bylaw”.

2. CONTENTS

1.	Title	1
2.	Contents	1
3.	Definitions	1
4.	Prohibition	7
5.	Exemption for Medical Cannabis	7
6.	Exemption for Special Events	7
7.	Penalties and Enforcement	7
8.	Severability	8
9.	General	8
	Schedule “A” Penalties	10

3. DEFINITIONS

- 3.1.** “Act” means the *Municipal Government Act*, R.S.A. 2000 c. M-26, as amended;
- 3.2.** “Building” means anything constructed or place on, in, over or under land, whether permanent or temporary, into which a Person could enter;
- 3.3.** “Bylaw” means a Bylaw of the Town;
- 3.4.** “Chief Administrative Officer” or “CAO” means the Person appointed to the position of Chief Administrative Officer by Council;
- 3.5.** “Cannabis” has the meaning given to it in the *Cannabis Act*, SC 2018, c. 16, as amended;

**BYLAW 18-08 OFFICE CONSOLIDATION
TOWN OF BLACK DIAMOND**

- 3.6.** “*Common Area*” means any areas forming part of a Private Residence, Building or structure that are deemed to be a Public Building and include but are not limited to:
- a) patios;
 - b) pools;
 - c) recreational areas;
 - d) washrooms;
 - e) corridors;
 - f) reception areas;
 - g) elevators;
 - h) escalators;
 - i) foyers;
 - j) hallways;
 - k) stairways;
 - l) lobbies;
 - m) laundry rooms; or
 - n) enclosed parking garages;
- 3.7.** “*Council*” means the Council of the Town of Black Diamond;
- 3.8.** “*Designated Public Place*” means any:
- a) Municipal Building and the area within 5 metres of an entrance or exit to any Municipal Building;
 - b) Public Building and the area within 5 metres of an entrance or exit to any Public Building
 - c) Workplace and the area within 5 metres of an entrance or exit to any Workplace;
 - d) Public Sidewalk and area within 5 metres of a Public Sidewalk;
 - e) Public Pathway and area within 5 metres of a Public Pathway;
 - f) Outdoor Public Event;
 - g) Outdoor Public Place;
 - h) Public Transportation Vehicle; or
 - i) Public Transportation Vehicle Shelter;
- 3.9.** “*Employee*” means any Person who performs work for or supplies any services to any Employer;
- 3.10.** “*Employer*” means any Person who, as the owner, Proprietor, manager, superintendent or overseer of an activity, business, work, trade, occupation or professions, has control over or direction of, or is directly or indirectly responsible for, the employment of a Person therein;
- 3.11.** “*Grandstand*” means a set of seats arranged in rising rows, sometimes covered by a roof, from which people can easily watch sports or other events;
- 3.12.** “*Greenspace*” means an area of grass, trees or other vegetation set apart for recreational or aesthetic purposes in an otherwise urban environment;
- 3.13.** “*Highway*” means any thoroughfare, street, road, trail, avenue, parkway, driveway, viaduct, lane, alley, square, bridge, causeway, trestleway or other place or any part of any of them, whether publicly or privately owned, that the public is

**BYLAW 18-08 OFFICE CONSOLIDATION
TOWN OF BLACK DIAMOND**

ordinarily entitled or permitted to use for the passage or parking of vehicles and includes

- a) a sidewalk, including a boulevard adjacent to the sidewalk,
- b) if a ditch lies adjacent to and parallel with the roadway, the ditch, and
- c) if a Highway right of way is contained between fences or between a fence and one side of the roadway, all the land between the fences, or all the land between the fence and the edge of the roadway, as the case may be, but does not include a place declared by regulation not to be a Highway;

3.14. “*Minor*” means a Person under 18 years of age;

3.15. “*Municipal Building*” means any Building owned, leased, operated or occupied by the Town;

3.16. “*Outdoor Patio*” means any area outside of a Building intended for the consumption of food or beverages by patrons of any business providing such food or beverages, and includes:

- a) any Public premises that is not fully contained within a Building; and
- b) any outside extension of an eating or drinking establishment regardless of whether it is covered or not;

3.17. “*Outdoor Public Event*” means any outdoor event requiring a municipal permit to which the Public is invited or permitted to attend, including but not limited to:

- a) markets;
- b) festivals;
- c) fairs;
- d) displays;
- e) exhibitions;
- f) fundraisers;
- g) races;
- h) concerts; or
- i) parades;

3.18. “*Outdoor Public Place*” means any outdoor location that is open to the Public from time to time, including but not limited to:

- a) Outdoor Patios;
- b) Grandstands;
- c) Playgrounds;
- d) Water Playgrounds;
- e) Skate Parks;
- f) Bicycle Parks;
- g) Seasonal Multi-purpose Pads;
- h) Sports Fields;
- i) vacant municipally-owned lands;
- j) Greenspaces;
- k) pools; or
- l) beaches;

**BYLAW 18-08 OFFICE CONSOLIDATION
TOWN OF BLACK DIAMOND**

- 3.19.** “*Peace Officer*” means:
- a) a member of the Royal Canadian Mounted Police;
 - b) a Community Peace Officer duly appointed by the Solicitor General of Alberta;
 - c) a Bylaw Enforcement Officer duly appointed by the Town of Black Diamond to enforce Bylaws of the Town;
- 3.20.** “*Person*” means any:
- a) individual;
 - b) proprietorship;
 - c) corporation; or
 - d) society;
- 3.21.** “*Playground*” means an area designed for children to play in outside, especially at a school or in a park, and may contain structures designed for recreational use by children, such as swings, slides, games or other like apparatus;
- 3.22.** “*Private Residence*” means any self-contained living premise for domestic use with a separate private entrance from the exterior of the Building or from a common hall, lobby or stairway, except:
- a) when a business is operated within a Private Residence, then a Private Residence is considered a Workplace during all hours of operation; and
 - b) when a Private Residence contains two or more Private Residences and includes Common Areas, then the Common Areas are considered a Public Building;
- 3.23.** “*Proprietor*” means the owner, or his agent or representative, of a Designated Public Place, and includes any Person in charge thereof or anyone who controls, governs or directs the activity carried on therein, and where applicable includes:
- a) the Person who ultimately controls, governs or directs the activity carried on within any premises referred to in this Bylaw and includes the Person usually in charge thereof;
 - b) a Regional Health Authority Board appointed pursuant to the provisions of the *Regional Health Authorities Act*, RSA 2000, c R-10; and
 - c) the Board of Governors, Board of Trustees, or President of a Public school, private school, or post-secondary institution;
- 3.24.** “*Public*” means any Person other than the owner, lessee, Proprietor or Employer of a Building, structure or place;
- 3.25.** “*Public Building*” means any Building or structure to which the Public has access as of right or by invitation, express or implied, whether or not:
- a) the Public has been invited;
 - b) the Public has access only at certain times, or from time to time;
 - c) the Public has access only if they are a member or accompanied by a member;
 - d) payment, membership or the performance of some formality is required prior to access;
 - e) a Proprietor has the right to exclude any particular Person;
 - f) the Public has access to only a portion of the Building or structure; or

**BYLAW 18-08 OFFICE CONSOLIDATION
TOWN OF BLACK DIAMOND**

- g) the Building or structure is a Private Residence if it contains two or more Private Residences and includes Common Areas;
- 3.26.** “*Public Sidewalk*” means that part of a Highway or open space especially adapted to the use of or ordinarily used by pedestrians;
- 3.27.** “*Public Pathway*” means a multi-purpose thoroughfare accessible to the Public which may be improved by asphalt, concrete, brick, stone, shale, gravel or any other surface treatment whether or not it is located in an open space, and includes any bridge or structure with which it is contiguous;
- 3.28.** “*Public Transportation Vehicle*” means a vehicle which is being used by a passenger or passengers or which is being offered for hire for a passenger or passengers, including but not limited to:
- a) a school bus;
 - b) a bus;
 - c) a taxicab;
 - d) a limousine; or
 - e) other similar vehicles;
- 3.29.** “*Public Transportation Vehicle Shelter*” means any structure with a roof designed to protect a passenger from the elements while waiting for a Public Transportation Vehicle;
- 3.30.** “*Seasonal Multi-purpose Pad*” means a surface on which members of the Public are permitted to engage in physical activities, whether on payment of a fee or not, and includes, but is not limited to:
- a) outdoor games or sports courts, such as basketball, tennis, etc.;
 - b) lakes;
 - c) ponds;
 - d) outdoor rinks; or
 - e) other ice support infrastructure;
- 3.31.** “*Secondhand Smoke*” means exhaled Smoke and the Smoke from lit cigarettes, cigars and pipes, or electronic smoking devices;
- 3.32.** “*Skate Park or Bicycle Park*” means an area designed and intended specifically for the use of one or more of the following:
- a) skateboards;
 - b) bicycles;
 - c) in-line skates; or
 - d) similar devices;
- 3.33.** “*Smoke or Smoking*” means to inhale, exhale, burn, or have control over a lighted cigarette, cigar, pipe, hookah pipe, or other lighted or heated device or apparatus designed to burn, heat or vaporize tobacco, Cannabis, any other weed, or any other substance for the purpose of inhaling or tasting its emissions;
- 3.34.** “*Sports Field*” means an area designed and intended for use in a specific sporting event, including spectator seating areas, and includes, but is not limited to:
- a) soccer pitches;
 - b) football fields;
 - c) rugby pitches;
 - d) baseball diamonds;

**BYLAW 18-08 OFFICE CONSOLIDATION
TOWN OF BLACK DIAMOND**

- e) tennis courts; or
 - f) other similar areas;
- 3.35.** “*Town*” means the Town of Black Diamond, a municipal corporation in the Province of Alberta, and where the contact so requires, means the area of land within the corporate boundaries thereof;
- 3.36.** “*Violation Tag*” means a notice or tag in a form as approved by the CAO, issued by the Town, allowing a voluntary payment option of a fine established under this Bylaw;
- 3.37.** “*Violation Ticket*” means a ticket issued pursuant to Part II of the *Provincial Offences Procedure Act*, RSA 2000, c P-34, and any amendments or regulations thereto;
- 3.38.** “*Water Playground*” means a structure or collection of structures designed and intended for recreational use by children that sprays or releases water;
- 3.39.** “*Workplace*” means any enclosed area of a Building, structure or area in which an Employee performs the duties of their employment, whether or not the Employee is employed by the Proprietor of the Building at which the Employee works, or whether or not members of the Public have access by right, or by express or implied invitation, and includes but is not limited to:
- a) a Private Residence during any hours a business is operated from the Private Residence;
 - b) washrooms;
 - c) corridors;
 - d) lounges;
 - e) eating areas
 - f) Outdoor Patios;
 - g) reception areas;
 - h) elevators;
 - i) escalators;
 - j) foyers;
 - k) hallways;
 - l) stairways;
 - m) amenity areas;
 - n) lobbies;
 - o) laundry rooms;
 - p) Work Vehicles;
 - q) enclosed parking garages;
 - r) pedways;
 - s) bridges;
 - t) connecting stairways; or
 - u) other similar physically enclosed structures;
- 3.40.** “*Work Vehicle*” means a vehicle owned or leased by an Employer and used by Employees during the course of employment.

**BYLAW 18-08 OFFICE CONSOLIDATION
TOWN OF BLACK DIAMOND**

4. PROHIBITION

- 4.1. No Person shall Smoke in a Designated Public Place whether or not “No Smoking” signs are posted or visible.
- 4.2. No Proprietor or Employer shall permit Smoking in a Designated Public Place whether or not “No Smoking” signs are posted or visible.
- 18-10* 4.3. No Person shall smoke in a vehicle in which a minor is present.
- 4.4. Notwithstanding sections 4.1 and 4.2, nothing in this Bylaw affects the rights of indigenous people respecting traditional aboriginal spiritual or cultural practices or ceremonies.
- 18-10* 4.5. Despite any other provision of this Bylaw a person may, inside an enclosed premises where the primary function of the premises is the sale of electronic smoking devices, use an electronic smoking device to sample a product, other than tobacco or cannabis, prior to purchase.

5. EXEMPTION FOR MEDICAL CANNABIS

- 5.1. Any Person who is authorized to possess Cannabis per a medical document issued pursuant to the Access to Cannabis for Medical Purposes Regulations, SOR/2016-230, and amendments thereto, is subject to this Bylaw.
- 5.2. Any Person exempt pursuant to section 5.1 must, on demand of a Peace Officer, produce a copy of such Person’s medical document.

6. EXEMPTION FOR SPECIAL EVENTS

- 6.1. Notwithstanding section 4.1, a Person may Smoke non-cannabis products at an event for which the CAO has granted a permit.
- 6.2. The CAO may impose conditions on any permit granted pursuant to Section 6.1.
- 6.3. The CAO may suspend or revoke any permit issued pursuant to Section 6.1 if the CAO determines that a permit holder or any Person at an event for which a permit has been issued has contravened any federal or provincial legislation or any other municipal Bylaw.
- 6.4. The holder of a permit issued pursuant to section 6.1 must ensure that:
 - a) the Smoking is only permitted in a designated area, separate and fenced off from the remainder of the event;
 - b) the sale of Cannabis is not permitted in the area designated for Smoking; and
 - c) any advertising or other materials relating to the promotion of Cannabis cannot be seen by Persons under the age of 18 years.

7. PENALTIES AND ENFORCEMENT

- 7.1. Any Person who contravenes any provision of this Bylaw is guilty of an offence and is liable on summary conviction to a fine of not more than Ten Thousand (\$10,000) Dollars.

**BYLAW 18-08 OFFICE CONSOLIDATION
TOWN OF BLACK DIAMOND**

- 7.2. Where there is a specified penalty listed for an offence in Schedule “A” to this Bylaw that amount is the minimum specified penalty for the offence.
- 7.3. 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.
- 7.4. The levying and payment of any fine provided in this Bylaw shall not relieve a Person from the necessity of paying any fees, charges or costs from which that Person is liable under the provisions of this Bylaw or any other Bylaw.
- 7.5. Any Peace Officer who has reasonable and probable grounds to believe that any Person has contravened any provision of this Bylaw may issue and serve:
- a) a Violation Tag allowing a payment of the specified penalty to the Town;
 - or
 - b) a Violation Ticket allowing payment according to the provisions of the *Provincial Offences Procedure Act*, RSA 2000, c P-34, and amendments thereto.
- 7.6. Service of a Violation Tag will be sufficient if it is:
- a) personally served; or
 - b) served by regular mail to the Person’s last known mailing address.
- 7.7. If a Violation Ticket is issued in respect to an offence, the Violation Ticket may:
- a) specify the fine amount established by this Bylaw for the offence; or
 - b) require a Person to appear in Court without the alternative of making a voluntary payment.
- 7.8. A Person who commits an offence may:
- a) if a Violation Ticket is issued in respect of the offence; and
 - b) if the Violation Ticket specified the fine amount established by this Bylaw for the offence;
- make a voluntary payment equal to the specified fine by delivering the Violation Ticket and the specified fine to the Provincial Courthouse specified on the Violation Ticket.

8. SEVERABILITY

- 8.1. It is the intention of the Council of the Town of Black Diamond that each section of this Bylaw should be considered as being separate and severable from all other sections. Should any section or part of this Bylaw be found to have been improperly enacted, then such section or part shall be regarded as being severable from the rest of this Bylaw and that the Bylaw remaining after such severance shall be effective and enforceable.

9. GENERAL

- 9.1. Any Person who contravenes any provision of this Bylaw by:
- a) doing any act or thing which the Person is prohibited from doing; or
 - b) failing to do any act or thing the Person is required to do;

**BYLAW 18-08 OFFICE CONSOLIDATION
TOWN OF BLACK DIAMOND**

**Schedule "A"
PENALTIES**

Section	Offence	Penalty	Second & Subsequent Penalty
4.1	Smoke in Designated Public Place	\$250.00	\$500.00
4.2	Permit Smoking in Designated Public Place	\$250.00	\$500.00
4.3	Smoke with Minor in motor vehicle in Public place	\$250.00	\$500.00

**BYLAW 18-08 OFFICE CONSOLIDATION
TOWN OF BLACK DIAMOND**

Bylaw 18-08
Smoking and Vaping Bylaw
Office Consolidation

Following are the amending bylaws used in the Office Consolidation of this Bylaw, in order of Occurrence, as listed on Page 2 of this Consolidation document.

**BYLAW 18-10
TOWN OF BLACK DIAMOND**

**A BYLAW TO AMEND A BYLAW WITHIN THE TOWN OF BLACK DIAMOND,
IN THE PROVINCE OF ALBERTA.**

WHEREAS, pursuant to the Municipal Government Act, R.S.A. 2000, c. M-26, and amendments thereto, the Council of the Town of Black Diamond in the Province of Alberta has adopted Bylaw 18-08 Smoking and Vaping Bylaw;

AND WHEREAS, the Council wishes to exercise its authority pursuant to the Municipal Government Act to amend Bylaw 18-08 Smoking and Vaping Bylaw;

NOW THEREFORE the Council of the Town of Black Diamond, in the Province of Alberta, duly assembled, hereby enacts as follows:

1. AMENDMENTS

- 1.1. Delete Section 3.18. k) in its entirety and renumber the remainder of Section 3.18. accordingly.
- 1.2. Delete Section 4.3 in its entirety and replace it with:
 - 4.3. No person shall smoke in a vehicle in which a minor is present.
- 1.3. Add a new Section 4.5., as follows:
 - 4.5. Despite any other provision of this Bylaw a person may, inside an enclosed premises where the primary function of the premises is the sale of electronic smoking devices, use an electronic smoking device to sample a product, other than tobacco or cannabis, prior to purchase.

2. SEVERABILITY

- 2.1. It is the intention of the Council of the Town of Black Diamond that each section of this Bylaw should be considered as being separate and severable from all other sections. Should any section or part of this Bylaw be found to have been improperly enacted, then such section or part shall be regarded as being severable from the rest of this Bylaw and that the Bylaw remaining after such severance shall be effective and enforceable.

This Bylaw will take force and effect upon third and final reading and signing thereof.

READ A FIRST TIME this 7th day of November A.D. 2018.

**BYLAW 18-10
TOWN OF BLACK DIAMOND**

READ A SECOND TIME this 7th day of November A.D. 2018.

READ A THIRD AND FINAL TIME this 7th day of November A.D. 2018.


MAYOR


LEGISLATIVE SERVICES MANAGER

November 7 2018
Date signed