

THE CORPORATION OF THE TOWN OF OAKVILLE

BY-LAW NUMBER 2021-028

A by-law to amend Licensing By-law 2015-075 with
respect to tobacco/electronic cigarette retailers

WHEREAS pursuant to the provisions of Part IV of the *Municipal Act*, 2001, S.O. 2001, c. 25 (“*Municipal Act*”), the Council of the Corporation of the Town of Oakville (“Council”) may provide for a system of licences with respect to businesses;

WHEREAS Licensing By-law 2015-075 was approved by Council on November 16, 2015;

WHEREAS Council is desirous of amending Licensing By-law 2015-075;

COUNCIL ENACTS AS FOLLOWS:

1. The entry for Schedule 35 in Schedule 1: Businesses Requiring a Licence of By-law 2015-075 be amended to read “Tobacco/Electronic Cigarette Retailer.
2. The following definitions be added to Schedule 1, Section 2: General Definitions of By-law 2015-075:

“**Automatic Prohibition**” means a notice issued by the Minister to the owner or occupier of a business who has been convicted of tobacco sales offences and satisfies the conditions set out in the Smoke Free Ontario Act;

“**E-substance**” means a substance that is manufactured or sold to be used in an electronic cigarette;

“**Electronic 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;

“**Electronic Cigarette Retailer**” means any person engaged in the business of selling vapour products;

“Minister” “with respect to Schedule 35 of this By-law means as defined in the Smoke Free Ontario Act;

“Smoke Free Ontario Act” means the *Smoke Free Ontario Act, 2017*, S.O. 2017, c. 26, Schedule 3, or successor legislation;

“Specialty tobacco products” includes tobacco products and tobacco product accessories, but does not include cigarettes within the meaning of the Tobacco Tax Act, R.S.O. 1990, c. T.10 or successor legislation;

“Tobacco product” means any product that contains tobacco, and includes the package in which tobacco is sold, and “tobacco products” has a similar meaning;

“Tobacco product accessories” means a product that may be used in the consumption of a tobacco product, including, but not limited to, a humidor, pipe, cigarette holder, cigar clip, lighter and matches;

“Tobacco Retailer” means any person engaged in the business of selling tobacco products and/or specialty tobacco products, but does not include a retailer that sells only lighters, matches and ashtrays;

“Vapour Products” means an electronic cigarette, an e-substance, or any component of an electronic cigarette and includes the package in which the electronic cigarette, e-substance or component is sold.

3. Delete the phrase “and includes any place where tobacco, cigars, cigarettes or other smoking materials are sold by retail” from the definition of Food Shop/Ancillary Use in Schedule 1, Section 2: General Definitions of By-law 2015-075.
4. Delete the definition of “Tobacconist” in Schedule 1, Section 2: General Definitions of By-law 2015-075.
5. Amend the title of Schedule 35 in Schedule 1, Section 3: Licence Application/Renewal Requirements of By-law 2015-075 to read “Tobacco/Electronic Cigarette Retailer” and add a requirement for a Health Department Inspection Report to be provided for all applications to the list of requirements for Schedule 35.
6. Delete subsection 2(b) of Schedule 14: Exhibition and replace it with a new subsection 2(b):

2. No Licensee shall:
 - (b) permit any person while operating an amusement device to smoke or hold lighted tobacco or use an electronic cigarette; or
7. Delete section 2 of Schedule 16: Food Shop/Restaurant & Food Shop Ancillary Use & Special Event Food Shop of By-law 2015-075 and replace it with the following new section 2:
 2. Every Food Shop/Ancillary use where tobacco products, specialty tobacco products and/or vapour products are also sold shall comply with the provisions of Schedule 35: Tobacco/Electronic Cigarette Retailer of this By-law.
8. Amend the title of Schedule 35 of By-law 2015-075 to read "TOBACCO/ELECTRONIC CIGARETTE RETAILER".
9. Delete section 1 of Schedule 35 of By-law 2015-075 and replace it with new sections 1, 2 and 3:

1. Licence Application/Renewal Requirements

1. No licence will be issued to an applicant if the intended premises for the retail sale or distribution of tobacco products, specialty tobacco products, tobacco product accessories or vapour products is an outdoor property, a facility, a building or a property leased or owned by the Town, without the express written permission of Town.

2. Regulations

1. All tobacco retailers and electronic cigarette retailers shall comply with the Smoke Free Ontario Act, the *Tobacco Tax Act*, R.S.O. 1990, c. T.10 and the *Tobacco and Vaping Products Act*, S.C. 1997, c. 13 and any other relevant legislation.
2. Every tobacco retailer shall immediately notify the Licensing Commissioner if an Automatic Prohibition is issued to the owner or occupier of the premises.
3. Every electronic cigarette retailer shall immediately notify the Licensing Commissioner if they are convicted of an offence under the Smoke Free Ontario Act.

3. Additional Grounds for Licence Suspension or Revocation

1. In addition to the requirements contained in Section 4 of this By-law:
 - (a) where an Automatic Prohibition is issued against a premises for tobacco sales offences, the tobacco/electronic cigarette retailer's licence issued by the Town shall be automatically suspended for the period of time specified in the Automatic Prohibition. There shall be no appeal under this By-law for a licence suspended under this subsection;
 - (b) upon an electronic cigarette retailer's first conviction under the Smoke Free Ontario Act, the Licensing Commissioner shall issue a written warning to the electronic cigarette retailer that their tobacco/electronic cigarette retailer licence issued by the Town shall be suspended upon further convictions under the Smoke Free Ontario Act;
 - (c) upon an electronic cigarette retailer's second conviction under the Smoke Free Ontario Act within five (5) years of the first conviction, the tobacco/electronic cigarette retailer's licence issued by the Town shall be automatically suspended for six (6) months following the date of the conviction under the Smoke Free Ontario Act; and
 - (d) upon an electronic cigarette retailer's third conviction under the Smoke Free Ontario Act within five (5) years of the first conviction, the tobacco/electronic cigarette retailer's licence issued by the Town will be permanently revoked.

10. All other provisions of By-law 2015-075 hereby remain in force and effect.

11. This By-law comes into force on March 1, 2021.

PASSED this 22nd day of February, 2021.

MAYOR

CLERK