

**BY-LAW No. 2015-097
OF THE
CORPORATION OF THE TOWN OF COLLINGWOOD**



BEING A BY-LAW TO REGULATE AND ESTABLISH PROCEDURES FOR
OPEN AIR BURNING WITHIN THE TOWN OF COLLINGWOOD

WHEREAS section 7.1 of the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c. 4, provides that a municipality may pass a by-law to regulate fire prevention and the setting of open air fires, including establishing the times during which open air fires may be set and the precautions to be observed by persons setting such fires;

AND WHEREAS sections 425 and 429 of the *Municipal Act, 2001*, S.O. 2001, c. 25, authorize a municipality to create offences and to establish fines for offences under by-laws;

AND WHEREAS sections 435 and 436 of the *Municipal Act, 2001*, S.O. 2001, c. 25, provide for conditions governing powers of entry on land and the conduct of inspections;

AND WHEREAS By-law No. 2009-037, a by-law to regulate and establish procedures for open air burning within the Town of Collingwood was enacted and passed April 27, 2009;

AND WHEREAS the Council deemed it expedient to repeal and replace the Open Air Burning By-law to streamline the types of permits available;

NOW THEREFORE THIS COUNCIL OR THE CORPORATION OF THE TOWN OF COLLINGWOOD ENACTS AS FOLLOWS:

1. DEFINITIONS

- 1.1. **“By-law”** means this Open Air Burning By-law;
- 1.2. **“Chief Fire Official”** means the person appointed by the council to act as Fire Chief for the Town as defined in the *Fire Protection and Prevention Act, 1997* or a member or members of the Fire Department appointed by the Fire Chief under Article 1.1.1.2. of Division C or a person appointed by the Fire Marshal under Article 1.1.1.1. of Division C of the Ontario Fire Code 213/07, as amended, or his or her designate;
- 1.3. **“Controllable Fire”** means an Open Air fire which is used solely for the purpose of burning wood, tree limbs and branches, and is only granted through a special permit and must be authorized by the Chief Fire Official or his designate;
- 1.4. **“Extinguish”** means to put out or quench a fire completely, no smoke, hot or glowing embers are to remain;
- 1.5. **“Fees and Service Charges By-law”** means the Town of Collingwood Fees and Service Charges By-law 2014-087, as amended;
- 1.6. **“Fire Department”** means the Town of Collingwood Fire Department;
- 1.7. **“Fire Pit”** means a pit not more than 1 meter (3 feet) in diameter, requiring not less than 7.5 meters (25 feet) of clearance. The fire pit must be enclosed on all sides and constructed of masonry, concrete, stone, heavy gauge metal or other non-combustible materials. The flames from the fire are no higher than 0.5 meters (1.6 feet) above ground level.
- 1.8. **“Ground Cover”** shall include but is not limited to, leaves, grasses, weeds, tree needles, or wood chips on the ground;
- 1.9. **“Gas-fired Outdoor Campfire Device”** means listed ULC or CSA gas (natural, propane) appliances, which shall not constitute open air fire under this By-law;
- 1.10. **“Nuisance”** means the excess smoke, smell, airborne sparks, or embers that are likely to disturb others;
- 1.11. **“Officer”** means a Chief Fire Official, Municipal Law Enforcement Officer or Police Officer;

- 1.12. **“Open Air”** includes any open place, yard, field or construction area which is not enclosed by a building or structure;
- 1.13. **“Outdoor Cooking Device”** means a cooking appliance fueled by a commercially produced charcoal or briquette, which includes a barbeque, a hibachi, a structure designed and intended solely for the cooking of food in the open, and other similar commercially-manufactured devices designed and intended solely for the cooking of food in the open air, but does not include devices predominantly designed for personal warmth;
- 1.14. **“Outdoor Fireplace”** means a manufactured non-combustible enclosed container such as fire bowls with spark arrestors on the top or chimineas, this type of permit requires not less than 4.5 meters (15 feet) of clearance;
- 1.15. **“Permit”** means a permit issued under this By-law which authorizes a person to establish an open air fire;
- 1.16. **“Person”** means an individual, business, partnership or a corporation;
- 1.17. **“Registered Owner”** includes any person, entity, firm or corporation having control over any portion of a building, land or property and includes the persons in the building or property. For the purpose of this bylaw “registered owner” will be known as “owner”;
- 1.18. **“Smog Alert”** means an alert issued by the Ministry of the Environment with respect to air quality;
- 1.19. **“Town”** means The Corporation of the Town of Collingwood;

2. GENERAL

- 2.1. No person shall set or maintain a fire in open air unless a permit has been issued by the Chief Fire Official under this by-law.
- 2.2. In the absence of being issued a permit, an owner shall be deemed to have permitted a fire to burn and the owner assumes all responsibility and liability where a fire has been set or permitted to burn in the open air.
- 2.3. Every person who applies for and receives a permit acknowledges having read and understood the terms and conditions specified in Section 2.6 of this by-law and assumes all responsibility and liability in connection with the open air burning permit.
- 2.4. A permit obtained under this by-law is valid for any purpose noted or indicated on the permit issued by the Chief Fire Official.
- 2.5. Where a permit has been obtained under this by-law, no person shall set or maintain a fire in open air other than in compliance with the terms and conditions of the permit.
- 2.6. A permit may be issued to any property owner pursuant to the following terms and conditions:

Outdoor Fireplace

- a) Any person that sets, maintains or operates an **Outdoor Fireplace** must provide that:
 - i. the fire is set or maintained during the time period between sunrise and midnight;
 - ii. it is located at a distance of not less than 4.5 meters (15 feet) between the fireplace and any building or structure, property line, tree, hedge, fence, roadway, overhead wires, or other combustible article;
 - iii. it is located on a non-combustible surface extending beyond the unit to a dimension equal to the height of the unit or unless it carries a UL/CSA rating and the manufacturers guidelines are followed;
 - iv. there is no rain or fog and the wind velocity is not greater than 10 kilometers per hour as reported by Environment Canada;
 - v. the material to be burned shall be limited to wood or by-products of wood, excluding materials that can be reused, recycled, mixed debris such as brush or leaves or vegetation that can be composted;
 - vi. no fire shall contain rubber tires, plastic products, shingles, painted wood or other building materials that are known to create extensive smoke;

- i. it does not create a nuisance; where the wind direction causes the smoke to create a discomfort to persons residing in the immediate area of the owner who has been issued a permit;
- vii. a portable fire extinguisher or operable garden hose is available while the unit is in operation;
- viii. the Owner maintains a consistent watch and control over the outdoor fireplace from the time of the setting of the fire until the fire is totally extinguished; and
- ix. the Owner shall obtain a permit prior to commencing a fire to burn and the Owner assumes all responsibility and liability where a fire has been set or permitted to burn in the open air.

Fire Pit

b) Any person that sets, maintains or operates a **Fire Pit** must provide that:

- ii. the fire is set or maintained during the time period between sunrise and midnight;
- iii. the fire is not more than 1 meter (3 feet) by 1 meter (3 feet) in size and not more than 1 meter (3 feet) in height;
- iv. the fire is located at a distance of not less than 7.5 meters (25 feet) between the fire and any building, structure, property line, tree, hedge, fence, roadway, overhead wires or any other combustible article;
- v. no fire shall be permitted if rain or fog is present and wind speeds are greater than 10 kilometers per hour as reported by Environment Canada;
- vi. the fire does not cause a nuisance; where the wind direction causes the smoke to create a discomfort to persons residing in the immediate area of the owner who has been issued a permit;
- vii. a portable fire extinguisher or operable garden hose is available while the fire is burning;
- viii. the owner maintains constant watch and control over the fire pit from the time of the setting of the fire until the fire is totally extinguished;
- ix. the Owner must obtain a permit prior to commencing a fire to burn;
- x. the material to be burned shall be limited to wood or by-products of wood, excluding materials that can be reused, recycled, mixed debris such as brush or leaves or vegetation that can be composted;
- xi. no fire shall contain rubber tires, plastic products, shingles, painted wood or other building materials that are known to create extensive smoke;
- xii. no fire shall be permitted unless a person that is able to supervise such fire is present and that person is equipped with adequate tools and/or water to extinguish the fire promptly in the event of danger of the spread of such fire and is in constant immediate attendance at the specific location or place where the fire is burning; the owner assumes all responsibility and liability where a fire has been set or permitted to burn in the open air; and
- xiii. no fire shall be permitted outside of the date and hours (if specified) in the permit;

Controllable Fire

c) Any person that sets, maintains or operates a **Controllable Fire** must provide that:

- i. Guidelines are to be provided by the Fire Chief Official or designate depending upon the situation of the controllable fire.

2.7. No person shall set or maintain any permitted fire when a smog alert has been issued for the forecast area that includes the Town of Collingwood.

2.8. No person shall set or maintain any permitted fire when a burning ban or fire ban has been issued by the Chief Fire Official.

- 2.9. Notwithstanding any other provisions of this by-law, the Chief Fire Official may permit an Open Air fire:
- a) for the purpose of training or testing fire equipment;
 - b) by the Town or any of its officials, employees, contractors or agents or any other persons for whom the Town is liable at law who are carrying out any operations of the Town, operating, maintaining or installing municipally-owned infrastructure and/or facilities; or
 - c) for any extraordinary reason as deemed expedient by the Chief Fire Official.
- 2.10. The following are exempt from the provisions of this by-law:
- a) Outdoor Cooking Device; and
 - b) Gas-fired Outdoor Campfire Device.
- 2.11. Open Air fires SHALL NOT be permitted on any or all construction sites.
- 2.12. No burning shall be allowed on, or in the ditches of, any public road or highway.

3. COMPLIANCE WITH THE ENVIRONMENTAL PROTECTION ACT

- 3.1 Nothing in this policy shall be deemed to authorize any fire, burning or other act which is in contravention of the *Environmental Protection Act*, R.S.O. 1990, c. E.19 or any regulation made thereunder and in the event of any conflict between the provisions of this policy and the said Act or regulations, the provisions of the said Act and regulations shall govern.

4. POWER OF ENTRY AND INSPECTION

- 4.1. An officer may, at any reasonable time, enter and inspect any land or premises to determine whether the provisions of this by-law or any direction or order made thereunder is being complied with.
- 4.2. An owner shall permit an officer to inspect any land, property or premises for the purposes of determining compliance with this by-law.
- 4.3. An officer may be accompanied by a person under his or her direction.
- 4.4. Notwithstanding Sections 6.1 and 6.2, no person, including an officer, shall exercise a power of entry under this by-law to enter a place or part of a place that is actually being used as a dwelling unless:
- a) an occupier of the dwelling, having been informed that the right of entry may be refused, consents to the entry; or
 - b) if the occupier refuses to consent, an order is issued pursuant to section 438 of the *Municipal Act, 2001* or a warrant issued pursuant to section 439 of the *Municipal Act, 2001*, or a warrant issued under the *Provincial Offences Act*, R.S.O. 1990, c. P.33.

5. OBSTRUCTION

- 5.1. No person shall hinder or obstruct, or attempt to hinder or obstruct, an officer exercising a power or performing a duty under this by-law.
- 5.2. Any person who has been alleged to have contravened any of the provisions of this by-law shall identify themselves to the officer upon request, and the failure to do so shall be deemed to constitute an obstruction or hindrance of the officer in the execution of his duties.

6. PENALTY

- 6.1. Any person who contravenes any of the provisions of this by-law is guilty of an offence and:
- a) upon a first conviction is subject to a minimum fine of \$100.00 and a maximum fine of \$5,000.00; and
 - b) upon a subsequent conviction is subject to a minimum fine of \$500.00 and a maximum fine of \$10,000.00.
- 6.2. Despite Section 6.1, where the person convicted is a corporation, the corporation is liable:
- a) upon a first conviction is subject to a minimum fine of \$500.00 and a maximum fine of \$10,000.00; and
 - c) upon a subsequent conviction is subject to a minimum fine of \$1,000.00 and a maximum fine of \$25,000.00.

- 6.3. If this by-law is contravened and a conviction is entered, in addition to any other remedy and to any penalty imposed by the by-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order:
- a) prohibiting the continuation or repetition of the offence by the person convicted; and
 - b) requiring the person convicted to correct or remedy the contravention in the manner and within the time period that the court considers appropriate.

7. ADMINISTRATION AND ENFORCEMENT

- 7.1. Any officer is hereby vested with the authority of enforcing this by-law.
- 7.2. Any permit issued under this by-law may be revoked if a person is, in the opinion of the Chief Fire Official or an Officer, in contravention of any provision of this by-law.

8. FEES

- 8.1. The fee for a permit issued under this by-law shall be thirty dollars (\$30.00) or as identified in the Fees and Service Charges By-law as established and amended from time to time, whichever fee is the successor.
- 8.2. Should the Fire Department attend to extinguish an open air fire that is not being carried out in accordance with the provisions of this by-law, the owner shall be responsible for any damage to property or injury to persons occasioned by said open air fire and shall be liable to pay any fees together with any costs, including, but not limited to, personnel, equipment and apparatus necessary and called in to extinguish said open air fire, as may be set out in the Fees and Service Charges By-law.

9. PERMITS

- 9.1. An application for a permit shall be made to the Fire Department in the form attached as Schedule "A".
- 9.2. A permit is valid for a period as determined by the Chief Fire Official, up to a maximum of one (1) year.

10. INDEMNIFICATION

- 10.1 The applicant for a permit as required under this By-law shall indemnify and save harmless the Town of Collingwood from any and all claims, demands, causes of action, losses, costs or damages that the Town of Collingwood may suffer, incur or be liable for resulting from the performance of the applicant as set out in this By-law, whether with or without negligence on the part of the applicant, the applicant's employees, directors, contractors and agents.

11. CONSENT OF A REGISTERED OWNER

- 11.1 No person shall set or maintain a permitted fire on any property in the Town of Collingwood unless:
- a) the person setting or maintaining the fire is the registered owner of the property on which the fire is set;
 - b) at least one registered owner of the property or his or her authorized designate is present at the site of the fire from the time fire is set until the fire is fully extinguished; or
 - c) the person setting or maintaining the fire has the written consent of at least one registered owner of the property on which the fire is set, to the setting of a fire of that type on the property.

12. VALIDITY, SEVERABILITY AND INTERPRETATION

- 12.1. Should a court of competent jurisdiction declare a part or whole of any provision of this by-law to be invalid or of no force and effect, the provision or part is deemed severable from this by-law, and it is the intention of Council that the remainder survive and be applied and enforced in accordance with its terms to the extent possible under law.
- 12.2. Whenever any reference is made in this by-law to a statute or regulation of the Province of Ontario, such reference shall be deemed to include all subsequent amendments to such statute or regulation and all successor legislation to such legislation.
- 12.3. Words importing the singular number shall include the plural, and words importing the masculine gender shall include the feminine, and the converse of the foregoing also applies, unless the context of the by-law otherwise requires.

13. REPEAL

13.1. THAT By-law No. 2009-037 be hereby repealed.

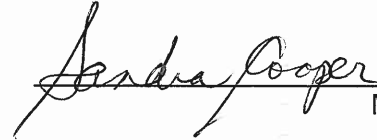
14. TITLE

14.1. The short title of this by-law is "Open Air Burning By-law".

15. ENACTMENT

15.1. THAT this By-law shall come into full force and effect on the date of final passage hereof at which time all By-laws and/or resolutions that are inconsistent with the provisions of this By-law and the same are hereby repealed or rescinded insofar as it is necessary to give effect to the provisions of this By-law.

ENACTED AND PASSED this 16th day of November, 2015.


MAYOR


CLERK