

# THE CORPORATION OF THE MUNICIPALITY OF KINCARDINE



## BY-LAW

NO. 2017 - 136

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### BEING A BY-LAW TO REGULATE OPEN AIR BURNING WITHIN THE MUNICIPALITY OF KINCARDINE

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**WHEREAS** pursuant to the Municipal Act, 2001, S.O. 2001, c.25 as amended, Section 8 (1) and 9 provide that the powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues and has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

**AND WHEREAS** Section 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** Section 7.1 (1) of the Fire Protection and Prevention Act, S.O. 1997, c. 4. As amended provides authority to the Council of a municipality to pass by-laws to regulate fire prevention including the prevention of spreading fires, and regulating the setting of open-air fires, including establishing the times during which open-air fires may be set;

**AND WHEREAS** Section 7.1.(3). Of the Fire Protection and Prevention Act, 1997, S.O. 1997, c.4, as amended, provides that a by-law under this section may deal with different areas of the municipality differently;

**AND WHEREAS** Part 2 of the Ontario Fire Code, O. Reg. 388/97, provides that open-air burning shall not be permitted unless approved, or unless such burning consists of a small confined fire supervised at all times, and used to cook food on a grill or barbeque or such burning take place in an appliance that is in compliance with the Technical Standards and Safety Act, 2000, for outdoor use and is installed in accordance with the manufacturer's instructions;

**AND WHEREAS** Council considers excessive smoke, odour, airborne sparks or embers, and airborne particles of burnt materials to be or become or cause public nuisance by creating negative health effects on neighbouring residents, increasing fire exposure hazards, infringing the enjoyment of the use of neighbouring properties and generating false fire alarms;

**NOW THEREFORE** the Council of The Corporation of the Municipality of Kincardine **ENACTS** as follows:

#### **1.0 DEFINITIONS**

In this By-law:

- (a) "Municipality" shall mean The Corporation of the Municipality of Kincardine,

- (b) "Applicant" shall mean the person, organization, company or group that makes application to the Fire Chief for permission to hold an open air burning.
- (c) "By-law Enforcement Officer" shall mean the By-law Enforcement Officer of the Municipality of Kincardine.
- (d) "Chief Fire Official" – "Chief Fire Official" shall mean the Fire Chief of Kincardine Fire and Emergency Services or their appointed designates at the Kincardine and Tiverton Fire Stations.
- (e) "Barbeque" appliances including a hibachi, a permanent structure designed and intended solely for the cooking of food in the open air and other similar devices designed and intended solely for the cooking of food in the open air, but does not include devices designed for personal warmth, fire pits or camp fires.
- (f) "Open Air Fire" means the burning or combustion of materials in the open air, but shall not include any fire entirely contained in an apparatus designed, constructed or manufactured for the purpose of barbecuing food for consumption in a charcoal or propane barbecue.
- (g) "Prohibited Material" shall include, but is not limited to, materials such as automobile and truck bodies, tires, oil, grease, paint, rags, plastics, wire, leaves, asphalt shingles, rubber, construction materials, insulation and flammable or combustible liquids or accelerants.
- (h) "Recreational Fire" means a fire that burns within an area that is no larger than one (1) metre in diameter provided such fire is used for warmth or cooking food (camp fire).

## **2.0 ADMINISTRATION**

- 2.1 The Fire Chief, their designate, or the By-Law Enforcement Officer shall be responsible for the administration and enforcement of this By-Law.
- 2.2 The Chief Fire Official is hereby delegated authority to approve of the setting of fire in accordance with the provisions of this by-law, provided the applicant has completed the recreational or open air burning permit form.
- 2.3 The Chief Fire Official or designate is hereby authorized to enter, at all reasonable times and upon any property in the Municipality, in order to ascertain whether the provisions of this by-law are being obeyed. The Fire Chief or his designate is hereby further empowered to enforce or carry into effect the provisions of this By-law.

## **3.0 PROHIBITIONS**

No person may set a fire or allow a fire to burn except in accordance with the following provisions:

- 3.1 No person may set a fire or allow a fire to burn except in accordance with the provisions of this By-law and all applicable provincial, municipal and federal laws and regulations;
- 3.2 With the exception of barbeque fires (charcoal or propane), no person may set a fire or allow a fire to burn in the open air without obtaining a permit from the Chief Fire Official;
- 3.3 Only the following materials may be burned: wood, organic materials and paper products. Under no circumstances may paint, solvents, rubber, wire (including coating), plastics, asphalt, shingles, toxic chemicals, or any materials that violate the regulations of the

Ministry of the Environment be burned, ignited or added to the fire at any time;

- 3.4 No person may burn leaves;
- 3.5 No person may set or allow an uncontained fire to burn, such as a grass fire. Fires shall be set or allowed to burn in a container, apparatus, or physical construction that is capable of controlling the spread of fire;
- 3.6 No fire other than a recreational fire may be set to burn between sunset on the evening of any day and sunrise on the following day;
- 3.7 All Open Air Burning shall comply with the provisions of the Environmental Protection Act, R.S.O. 1990, c.E. 19, as amended.
- 3.8 No Open Air Burning shall be permitted when a Smog Alert has been issued for the forecast area of the Municipality of Kincardine.
- 3.9 No fire may be set during a fire ban declared by the Chief Fire Official.
- 3.10 Persons present at a fire shall ensure that an adequate means of extinguishing the fire is available at the fire site while the fire is burning; without limiting the generality of the foregoing, every permit holder shall ensure that the means of extinguishing the fire required in the terms of the permit is available at the fire site at all times while the fire is burning to the satisfaction of the Chief Fire Official.
- 3.11 No fire shall be left unattended.
- 3.12 No person shall ignite or use a flying lantern.

#### **4.0 PROHIBITED LOCATIONS**

No person may set a fire or allow a fire to burn except in accordance with the following locational criteria;

- 4.1 No fire may be set or allowed to burn in the front, side or rear yard of any commercial or industrial property;
- 4.2 No fire other than a recreational fire may be set or allowed to burn where said fire is less than fifty (50) metres from any building, structure, hedge, tree, fence, highway or vehicular right of way, overhead wires and within five (5) metres of any combustible ground cover.
- 4.3 No recreational fires may be set or allowed to burn where said fire is less than three metres from any building, structure, hedge, tree, fence, highway or vehicular right of way, overhead wire or combustible material of any kind.
- 4.4 No fire may be set or allowed to burn on a public highway or land that is owned by the Municipality without a permit therefore;
- 4.5 No fire may be set or allowed to burn on any land or premise without the consent of the owner of such land or premise;
- 4.6 No fire may be set or allowed to burn on any land or premise where construction of a building or structure is going on;
- 4.7 No person shall use or cause to be used any fuel burning barbeque or open air fire of any kind on balconies of multi-residential buildings unless the appliance is approved for such use by the governing body of the product's manufacturing industry.

#### **5.0 GENERAL PROVISIONS**

- 5.1 Notwithstanding the issuance of a permit and with or without a permit, no person may set or allow a fire to burn when the direction or intensity of the wind may cause:
- (i) a decrease in visibility on any highway;
  - (ii) any odour or smoke to such an extent or degree so as to cause discomfort to persons, or hazards to health, cause loss of enjoyment or normal use of property in the immediate area;
  - (iii) a rapid spread of fire through the grass to a bush area.
- 5.2 In issuing a Permit for Open Air Burning, the Fire Chief or designate may impose any additional requirements and/or exempt any conditions under Sections 3 and 4 of this By-Law as the Fire Chief or designate considers necessary in the interest of public safety, or to minimize inconvenience to the general public or to comply with the intent of this By-Law.
- 5.3 Failure to extinguish – liable for costs.
- Should the applicant fail to immediately extinguish the fire upon notification from the Chief Fire Official or their designate, the applicant may be held liable for any and all costs incurred by Kincardine Fire and Emergency Services in its efforts to extinguish the fire.
- 5.4 Order to extinguish unapproved fires.
- When made aware of an unapproved open air burning, the Chief Fire Official or designate shall order the land owner or occupant to immediately extinguish the fire.
- 5.5 Order – owner or occupant to extinguish fire.
- The owner or occupant of land on which an unapproved open air burning is located shall immediately extinguish the fire upon being ordered to do so by the Chief Fire Official.
- 5.6 Failure to extinguish unapproved fires – liable for costs.
- Should any land owner or occupant fail to extinguish an unapproved fire when ordered to do so by the Chief Fire Official, the Chief Fire Official may take action to have the fire extinguished, and the person who owns or occupies the land on which the open burning is located shall be responsible for any and all costs incurred by Kincardine Fire and Emergency Services in its efforts to extinguish the fire.
- 5.7 Indemnification.
- All persons granted permission under this by-law shall indemnify and save harmless the Municipality of Kincardine from any and all claims, demands, causes of action, losses, costs or damages that the Municipality of Kincardine may suffer, incur or be liable for resulting from the issuance of fire permits as set out in this by-law or its predecessor, whether with or without negligence on the part of the applicant, the applicant's employees, directors, contractors and agents.

## **6.0 ISSUANCE OF PERMITS**

- 6.1 Notwithstanding the provisions of this by-law in relation to the types of material that may be burned and the requirements for contained fires, any person who is actively farming land and who wishes to set or maintain a fire, on farm lands for purposes which are normal and incidental to the farm use shall obtain a permit in relation to the period proposed for the burning provided all other provisions of this by-law are satisfied, and the permit will require the applicant to notify the Chief Fire Official before setting the fire.

- 6.2 The fire permit may be cancelled at any time by the Chief Fire Official or his/her designate, and immediately upon receiving notice of such cancellation, the permittee shall extinguish any fire started under the permit.
- 6.3 The Chief Fire Official may refuse to grant a permit for an open air burning if the proposed open air burning would be in contravention of this by-law, if the applicant has contravened the provisions of this by-law in the past or if the applicant has not complied with any conditions attached to a permit for an open air burning that may have been imposed by the Chief Fire Official on a previous occasion.

## **7.0 PENALTY**

- 7.1 No Person shall fail to comply with regulations as set out in this by-law.
- 7.2 Every person who contravenes any provisions of this by-law is guilty of an offence and on conviction is liable to a fine as provided in the attached Schedule "A".
- 7.3 Any person who sets or allows a fire to burn without a permit and any person with a permit who is unable to control such fire, leading to the response of the fire department, shall be liable for the expenses of the fire department, including personnel, equipment and apparatus costs necessary to investigate, respond and extinguish the fire.
- 7.4 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, and such order shall be in addition to any other penalty imposed on the person convicted.
- 7.5 The Municipality has the right to collect any unpaid costs associated with sections 5.3, 5.6 and 7.3 of this by-law by action, in a like manner as municipal taxes, or the Municipal Council may provide that the expense incurred, with interest, shall be payable in annual instalments not exceeding ten years.

## **8.0 Miscellaneous**

- 8.1 That By-law No. 2001-127 be hereby repealed.
- 8.2 That this by-law shall come into full force and effect upon its final passing.
- 8.3 This By-law may be cited as the "Open Air Burning By-Law".

**READ a FIRST and SECOND TIME** this 4<sup>th</sup> day of October , 2017.

**READ a THIRD TIME and FINALLY PASSED** this 4<sup>th</sup> day of October, 2017.

Original Signed By  
Mayor – Anne Eadie

Original Signed by  
Deputy Clerk – Jennifer Lawrie

MUNICIPALITY OF KINCARDINE

SCHEDULE “A” TO BY-LAW NO. 2017 - 136

ITEM	COLUMN 1 DESCRIPTION OF OFFENCE	COLUMN 2 PROVISIONS CREATING OFFENCE	COLUMN 3 SET FINES INCLUDING COST
1.	Set or allow fire to burn in contravention of bylaw	Section 3.1	\$200.00
2.	Failing to obtain a permit	Section 3.2	\$150.00
3.	Burning prohibiting materials	Section 3.3	\$200.00
4.	Burning leaves	Section 3.4	\$150.00
5.	Fail to ensure fire is properly attended	Section 3.5	\$200.00
6.	Fire burning during prohibited hours	Section 3.6	\$150.00
7.	Fire during fire ban	Section 3.9	\$200.00
8.	Burning without adequate means of extinguishment	Section 3.10	\$150.00
9.	Use of prohibited flying lanterns	Section 3.11	\$150.00
10.	Fire in a side or rear yard of commercial or industrial property	Section 4.1	\$150.00
11.	Recreational fire within 3 metres of building, structure, highway, overhead wire or combustible material	Section 4.2	\$150.00
12.	Fire other than recreational fire set within 50 metres of structure, highway, overhead wire or combustible material	Section 4.3	\$150.00
13.	Fire on public land or highway	Section 4.5	\$150.00
14.	Fire on land or premises where construction of a building or structure is ongoing	Section 4.6	\$150.00
15.	Burning adversely affecting other persons	Section 5.1	\$150.00
16.	Permit a fire which decrease visibility on a highway	Section 5.1(i)	\$150.00
17.	Failure to extinguish fire or comply when ordered	Section 5.4	\$200.00

The penalty provisions for the offences indicated above is Section 7 of By-law No. 2017 -136 a certified copy of which has been filed.