

THE CORPORATION OF THE TOWN OF KINGSVILLE

BY-LAW 57 - 2019

Being a By-law of the Town of Kingsville to Regulate the Setting of Open Air Fires

WHEREAS Section 391(1) of the *Municipal Act, 2001*, S.O. c. 25 provides that the Council of a Municipality may pass by-laws imposing fees or charges on any class of persons for services or activities provided or done by or on behalf of it;

AND WHEREAS the *Fire Protection and Prevention Act, 1997*, S.O. c.4, s.7.1 (1) (a) provides that a Council of a Municipality may pass By-laws regulating fire prevention, including the prevention of the spreading of fires;

AND WHEREAS the *Fire Protection and Prevention Act, 1997*, S.O. c.4, s.7.1. (1) (b) provides that a Council of a Municipality may pass By-laws regulating the setting of open air fires, including establishing the times during which open air fires may be set;

AND WHEREAS, the Council of the Town of Kingsville deems it necessary and prudent to set out laws governing open air fires to protect persons and property within the limits and boundaries of the municipality from open air fires that may become out of control;

NOW THEREFORE the Council of the Town of Kingsville hereby enacts as follows:

SECTION 1: DEFINITIONS

1.1 For the purpose of this By-Law:

Adverse Effect means one or more of,

- i) Impairment of the quality of the natural environment for any use that can be made of it,
- ii) Injury or damage to property or to plant or animal life,
- iii) Harm or material discomfort to any person,
- iv) An adverse effect on the health of any person,
- v) Impairment of the safety of any person,
- vi) Rendering any property or plant or animal life unfit for human use,
- vii) Loss of enjoyment of normal use of property, and
- viii) Interference with the normal conduct of business.

Approved – shall mean permission granted and a Permit issued by the Fire Chief.

Approved Incinerator Fire - shall mean a fire set in a container designed for incineration purposes and shall conform to the National Fire Protection Association 82 Standard “Incinerators and Waste Linen Handling Systems and Equipment”. This does **not** include a barrel.

Burn Ban – shall mean absolutely no Open Air Burning including Campfires or Cooking Fires, but does not include the use of propane which is equipped with a shutoff mechanism or a charcoal barbecue.

Building - shall mean any structure used or intended for supporting or sheltering any use or occupancy.

Bylaw – shall mean Bylaw 57-2019

Campfire - shall mean a Fire, having a maximum fuel volume of 1 metre x 1 metre x 1 metre height. (3 feet x 3 feet x 3 feet), that is set and maintained solely for the purposes of cooking food, providing warmth or recreational enjoyment and where;

- i) The site of the fire is on non-combustible material,
- ii) The fire is at least 3 metres (9.9 feet) from any flammable material,
- iii) The space above the fire is at least 3 metres (9.9 feet) from vegetation,
- iv) The fire is at least 4.75 metres (15 feet) from the property line,
- v) The fire is at least 4.75 metres (15 feet) from a structure, and,
- vi) The flame length does not exceed 1 metre (3.3 feet) in height and 1 metre (3.3 feet) in diameter.

Contractor/Agricultural Fire - shall mean an Open Air Fire, having been approved, that is set and maintained for the sole purpose of burning cut piled wood or brush, the disposal of certain paper based refuse or non- toxic building materials.

Cooking Fire – Shall mean a small contained fire, no greater than 12 inches (30 centimetres) in diameter and used to cook food on a grill. The Fire shall be in a pit or a permanent structure designed and intended for the cooking of food on a grill or within a smoker.

Council - shall mean the Council of the Town of Kingsville.

Dangerous Condition - means:

- i) A lack of precipitation which, in the opinion of the Fire Chief, increases the risk of the spread of fire; or
- ii) Winds or wind direction which in the opinion of the Fire Chief increases the risk of spread of fire; or
- iii) The issuance, by the Fire Chief, Fire Marshall, or other fire officials in the exercise of their statutory powers, of a fire ban or prohibition against any and all Open Air Fires; or
- iv) Any other condition declared by the Fire Chief to be a dangerous condition from time to time, which increases the risk of the spread of fire.

Extinguish – Put out or quenched completely with no smoke, hot or glowing embers remaining.

Fire - shall mean any fire set out in open air for the purpose of burning, cut piled brush, the disposal of certain paper based refuse or non-toxic building materials or campfire, but shall **not** include:

- i) Fires emanating from blow torches, cutting or welding torches, paving equipment or other such apparatus as associated with a service or occupation.
- ii) Small confined fires used for the purpose of cooking which is supervised at all times by a competent person and shall include a grill or barbecue.

Fire Chief - shall mean the Chief of the Town of Kingsville Fire Department, or his/her designate.

Household Waste – shall mean combustible material such as plastics, polyethylene terephthalate (PET), paints, oils, solvents, rubber, insulation, batteries, acids, polystyrenes (styrofoam), pressure treated or painted lumber, tires, upholstered furniture, synthetic fabrics, diapers, hazardous wastes and other materials as defined in the *Environmental Protection Act* R.S.O. 1990,c.e. 19, as amended and all other similar and like materials but shall not include untreated wood and wood fiber products such as un-laminated paper and cardboard and boxboard and brush.

Municipal Law Enforcement Officer - shall mean any Ontario Provincial Police Officer acting on behalf of the Town of Kingsville.

Municipal By-law Enforcement Officer shall mean the officer(s) so appointed by the Town of Kingsville and those officers appointed as fire officers by the Town of Kingsville authorities to enforce local by-laws including open air burning regulations.

Ontario Fire Code - shall mean O.Reg. 388/97 made under the *Fire Protection and Prevention Act*, S.O. 1997, C.4, as amended.

Open Air Burning – shall mean the same definition as Fire.

Open Air Fire – shall mean the same definition as a Fire.

Out Of Control – shall mean a fire which spreads beyond the boundaries of the parcel of land or containment area in which it was first ignited, or threatens to do so, or when it endangers any life, Building or property, or when the flying ash or burning brands are causing or have the potential to cause other fires, or when such fire is left unattended.

Owner- shall mean any person, firm, company or corporation having ownership or control of the property(s) and shall include the persons occupying such property.

Person - shall mean any individual, association, firm, partnership, Corporation, agent or trustee and their heirs, executors, or other legal representatives thereof.

Permit- shall mean a permit issued by the Fire Chief signifying permission to set or maintain or allow to be set or maintained a Fire and establishing the conditions under which the permission is granted.

Prohibited Materials - includes “*Household Waste*”, rubber or rubber products, plastic or plastic products, and waste petroleum products and any material or materials which are prohibited by the *Environmental Protection Act*, R.S.O. 1990, Chapter E.19, as amended.

Town - shall mean the Corporation of the Town of Kingsville.

Town of Kingsville Fire Department – shall mean the fire department operated by the Town.

SECTION 2: REQUIREMENTS

- 2.1 The provisions of the By-Law shall apply to all land and areas so designated as being within the legal boundaries of the Town of Kingsville.
- 2.2 No Person shall set out Fire without first obtaining a fire Permit. Fees for said Permits shall be located within the fees & charges by-law.
- 2.3 Permits shall be issued only to the Owner of the property where the Fire is to be set out save for an authorized person or agent acting upon the Owners behalf who has dated and signed written authorization by the Owner.

- 2.4 No Permit shall be issued to a property owner where Open Air Burning will have a detrimental effect on his/her neighbors because of the substance(s) being burned or the size or the location of the burn area.
- 2.5 Upon obtaining a Permit in accordance with 2.3 the Owner or his agent shall:
- i) Ensure that the fire is supervised at all times by a competent person who is at least 16 years of age or older.
 - ii) In the opinion of fire department member so authorized or the person responsible shall have sufficient resources available to control the fire at all times.
 - iii) Ensure all special requirements imposed by the Fire Chief within the Permit are met.
 - iv) Ensure that any Fire set out is never left unattended.
 - v) Ensure that where debris is to be burned, the Fire shall be properly contained.
 - vi) Ensure that any Contractor/Agricultural Fire set out shall not be within a distance of 10 metres of any Building or within 10 metres of any other combustibles, vehicular roadway of any kind or nature, overhead wiring or property lines.
 - vii) Ensure that any Fire set out is not larger than approved.
- 2.6 Where in the opinion of the Fire Chief, a potentially dangerous situation exists due to fire, smoke, weather, environmental or health concerns the Fire Chief may rescind, suspend or cancel any or all Permits.
- 2.7 Permits must be obtained through the Town of Kingsville Fire Department.
- 2.8 Notwithstanding any provisions herein, no Person shall set or maintain a Fire;
- i) In contravention of the Ontario Fire Code, the *Environmental Protection Act*, or any other statutory requirements of the Province of Ontario or the Government of Canada;
 - ii) Containing Prohibited Materials
 - iii) In any property owned or operated by the Town without the written permission of the Town;
 - iv) In any outdoor fireplace or any other burning appliance or container unless same complies with the requirements contained within 2.2 and 2.5 of the bylaw.
 - v) Burn any allowed material without obtaining and having on their person a Permit for those types of Open Air Burns requiring one;
 - vi) Which does not meet the definition of a Cooking Fire, Approved Incinerator Fire or is an appliance that is in conformance with the *Technical Standards and Safety Act, 2000*, is for outdoor use and is installed in accordance with the manufacturer's instructions, without having obtained a Permit;
 - vii) When a Burn Ban has been declared and put in place by the Fire Chief.
- 2.9 No Open Air Burning shall be commenced or maintained when the wind is in such a direction or intensity to cause any or all of the following:

- i) The possible spread of the Fire beyond the approved burn site;
 - ii) A decrease in the visibility on any highway or roadway;
 - iii) Any odor to such an extent or degree so as to cause discomfort to the persons in the immediate areas;
 - iv) Excessive smoke or any other Adverse Effect;
 - v) Any Dangerous Condition;
- 2.10 No Open Air Burning shall be commenced or maintained when rain or fog is present or weather conditions prevent the ready dispersion of smoke.
- 2.11 No Permit shall be required for domestic barbeques or permanent outdoor fireplaces used for the purpose of cooking of food on a grill and extinguished immediately upon completion of its use to cook, is an appliance that is in conformance with the *Technical Standards and Safety Act, 2000*, is for outdoor use and is installed in accordance with the manufacturer's instructions or Approved Incinerator Fires.
- 2.12 No Person shall allow any Cooking Fire to create an Adverse Effect.
- 2.13 No Person shall cause to be burned more than one pile at any one time, without the written approval of the Fire Chief.
- 2.14 No hay, straw, leaves, grass clippings or standing material may be burned, unless approved by the Fire Chief.
- 2.15 The time indicated for no burning does not apply to a Cooking Fire, if a Burn Ban is not in place and all precautions have been taken as defined and outlined.
- 2.16 The Town of Kingsville Fire Department is exempt from this by-law.
- 2.17 A blanket Permit for all campfires at a trailer park, resort, or campground may be issued by the Fire Chief. The issuance of a Permit will require an inspection by the Fire Chief and a detailed diagram of the grounds showing each campfire site.
- 2.18 The Fire Chief may grant special approval for a variance to the open air burning regulations contained in this by-law.
- 2.19 Any person may make application in writing to the Fire Chief for special approval of Open Air Burning with religious, cultural or environmental significance, as an exception to the provisions of this By-law. Any such application shall include statement(s) to describe the purpose, reason and intent of the request, location and size of the fire, date and time of the fire, safety measures and supervision arrangements. The application shall also include a site diagram including distances showing the fire location relative to Buildings, trees, shrubs, hedges, fences, overhead obstructions, flammable materials and property lines.
- 2.20 Permits may be cancelled at any time by the Fire Chief. Upon receiving notice of such cancellation or suspension, the holder of the permit shall immediately Extinguish the fire(s) started under said permit.

SECTION 3: ISSUANCE OF PERMIT

- 3.1 The issuance of a Permit will require the prior inspection of the proposed burn site by the Fire Chief.
- 3.2 In applying for a Permit, no Person shall furnish false or misleading information.
- 3.3 Permit(s) may be obtained from Town of Kingsville Fire Department.

- 3.4 It is the responsibility of the Person granted a Permit to check and monitor burning conditions and adhere to any Burn Ban that may be in place.
- 3.5 It is the responsibility of the Person who is burning to have immediately available to them the Permit which they were issued for inspection by the Fire Chief, Municipal By-law Enforcement Officer or the Municipal Law Enforcement Officer.
- 3.6 Any prosecution under a provision of this By-law that requires a Permit, the onus is on the Person charged to prove that the Person had a Permit at the time the offense is alleged to have been committed.
- 3.7 In the event a Permit is revoked for non-compliance or any violation of this Bylaw, the property owner will be banned from the issuance of a permit for ninety (90) days.

SECTION 4: FIRE DEPARTMENT RESPONSE

- 4.1 In the event that the Town of Kingsville Fire Department is called to respond to an alarm to Extinguish any Open Air Fire which is Out Of Control, the cost of said response shall be charged against the Person and / or Owner in accordance with Schedule "C" as set out in this By-Law.

SECTION 5: ADMINISTRATION AND ENFORCEMENT

- 5.1 The Fire Chief, Municipal Law Enforcement Officer, Municipal By-Law Enforcement Officer and any person so appointed by the Town shall have the authority to administer this By-Law in its entirety.
- 5.2 The Fire Chief may, at any time, and in the exercise of his or her sole discretion, issue a Burn Ban, effective for a specified period of time, prohibiting the setting of any and all Open Air Fires within any area of the Town.
- 5.3 Notwithstanding Section 2 of this By-Law, the Fire Chief may revoke any or all Permits, or refuse to issue Permits where, in the opinion of the Fire Chief, that the ability to control the Fire is hampered by the existence of a Dangerous Condition, which exists on or in the proximity of the proposed Open Air Burning site.
- 5.4 Any Person and/or Owner who fails to comply with the provisions of this By-law, or who fails to properly supervise and maintain a fire, or who fails to Extinguish a Fire once notification to do so has been given to him/her by the Fire Chief shall, in addition to any penalty provided for herein, be liable to the Town for all expenses incurred for the purposes of Extinguishing of any Fire so set or left to burn and such expenses may be recovered by court action. The expenses for which the Person and/or Owner may be liable cover the cost of sufficient personnel and equipment required to control a Fire, as set out within Schedule "D" hereof. Such expenses shall be equally chargeable in the event that a deliberately set Fire burns out of control, such that the services of the Kingsville Fire Department are necessary.
- 5.5 Any costs chargeable to any Person and/or Owner pursuant to section hereof shall be invoiced to the Person and/or Owner and paid to the Town within thirty (30) days of the date of such invoice.
- 5.6 No action or other proceeding for damages shall be brought against the Town or any employee or agency of the Town, as a result of any act done in good faith in the issuance of approval, permission, or authorization under this By-law. Notwithstanding the above, the Person who receives approval, permission or authorization under this By-law, shall indemnify and hold the Town harmless from any damages, causes of action, claims or costs of any kind arising from or resulting from any damages or injuries caused by Fire, smoke, or other causes.

- 5.7 It shall be the responsibility of the Person and/or Owner to ensure that no damage is done to any property or injury caused to any person while setting a Fire or permitting a Fire to burn, and shall otherwise jointly and severally be responsible for any damage or injury to persons or property as a result of setting the fire or permitting the fire to burn.

SECTION 6: VIOLATIONS AND PENALTIES

- 6.1 In addition to any other penalty prescribed by this By-law, any Person who contravenes any provision of this By-law is guilty of an offence and is liable to a fine or penalty for each offence, exclusive costs and upon conviction is liable to a fine as set out in the *Provincial Offences Act* R.S.O. 1990 Chapter P.33 and the *Fire Protection and Prevention Act*, 1997 S.O. 1997.

- 6.2 Any person who sets a Fire;

- without first obtaining the necessary Permit, or;
- without following the conditions detailed in this By-law or any special requirements of the Permit to set out a Fire;

Shall be liable for a fine as per Schedule "D", and, if the services of the Kingsville Fire Department are necessary due to the Fire being Out of Control, charges as set out in Schedule "C" shall also be payable.

SECTION 7: SCHEDULES AND SEVERABILITY

- 7.1 Schedules "A", "B", "C" and "D" attached to this by-law shall also be read with and form part of this By-law.
- 7.2 The provisions of this By-law are severable. If any provision, section or word is held to be invalid or illegal, such invalidity or illegality shall not affect or impair any of the remaining provisions, sections or words.

SECTION 8: VALIDITY

- 8.1 This By-Law shall come into force effective June 25, 2019.

SECTION 9: REPEAL

- 9.1 That all previous By-laws to regulate the setting of Open Air Fires be repealed effective June 25, 2019.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 24th DAY OF JUNE, 2019.

MAYOR, Nelson Santos

CLERK, Jennifer Astrologo