

THE CORPORATION OF THE TOWN OF GRAVENHURST

BY-LAW NO. 2023-20

Being a By-law to prescribe the parameters for
Open Air Burning within the Town of Gravenhurst
(Open-Air Burn By-law)

WHEREAS Section 7.1 of the Fire Protection and Prevention Act, 1997, provides that the council of a municipality may pass by-laws, regulating fire prevention, including the prevention of the spreading of fires; and, regulating the setting of open-air fires, including establishing the times during which open air fires may be set;

AND WHEREAS Section 8 of the Municipal Act, S.O. 2001, (hereinafter referred to as the “Municipal Act”) provides that the powers of a municipality under the Municipal Act 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 WHEREAS Section 9 of the Municipal Act provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Municipal Act or any other Act;

AND WHEREAS Section 11 of the Municipal Act provides that a lower-tier municipality may pass by-laws respecting matters within the spheres of jurisdiction set out therein;

AND WHEREAS Section 429 of the Municipal Act provides that a municipality may establish a system of fines for offences under a by-law of the municipality passed under the Municipal Act;

AND WHEREAS Section 434.1 (1) of the Municipal Act provides that a municipality may require a person to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with a by-law of the municipality passed under the Municipal Act.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF GRAVENHURST ENACTS AS FOLLOWS:

1. DEFINITIONS

1.1 In this By-law:

- (a) **Authorized Agent** – means any Responsible Person who can provide evidence they are authorized to act for the Owner of a particular property;
- (b) **Barbecue** – means any fuel-fired cooking device that is commercially manufactured, has the ability to completely contain the fire, expressly designed for the purpose of cooking and approved by the Underwriters Laboratories of Canada (ULC) or the Canadian Standards Association (CSA);
- (c) **Campfire** – means an open-air fire located within a commercial campground, located in a permitted fire pit not exceeding 61 centimetres (24 inches) by 61 centimetres (24 inches) in diameter, used for the purpose of cooking, warmth or personal enjoyment;

- (d) **Combustible** – means capable of catching fire and burning, this includes but is not limited to, structures, trees and forested areas;
- (e) **Commercial Campground** – means an area of land in which space and facilities are provided specifically for the temporary accommodation of persons in tents or recreation vehicles for vacation or recreational purposes and on which accessory facilities such as administrative offices, sanitary facilities, recreational facilities or an accessory convenience store may be provided for the benefit of occupiers of the campground;
- (f) **Extinguished** – means the fire and areas immediately around the fire have been completely cooled by water and are cold to the touch
- (g) **Cooking** – means the activity of preparing food for human consumption by placing over a fire until such time as it is ready to eat, and includes fire pre-burn time before the cooking commences but only as it is reasonably necessary;
- (h) **Fire Ban** – mean a restriction or prohibition on Open-Air Fires issued by the Fire Chief;
- (i) **Fire Chief** – means the Fire Chief of the Town of Gravenhurst or their designate;
- (j) **Fire Pit** - a pit dug into the ground or a freestanding metal vessel, in which a contained outdoor fire is made;
- (k) **Fireworks** – a device containing gunpowder and other combustible chemicals that causes a spectacular explosion when ignited, used typically for display or in celebration;
- (l) **Flying Lantern** – means a small hot air balloon or other device designed to carry an open flame as an airborne light, also known as Sky Lantern, Chinese Lantern, Kongming Lantern or Wish Lantern, or other similar device which are devices containing a fuel pack, which fuel pack is usually a petroleum or wax based fuel that when lit causes the lantern to rise.
- (m) **Grass Fire** – means an uncontrolled fire over vegetation;
- (n) **Non-Recreational Open-Air Fire** – means an open-air fire which does not exceed a burn area of 2 metres (6.5 feet) by 2 metres (6.5 feet) in diameter and 2 metres (6.5 feet) in height and is located outside of the urban centre;
- (o) **Nuisance** – means the travel of the products of fire, including but not limited to, smoke, odour, ash, and hot embers, which products in the opinion of the Fire Chief, may cause unreasonable discomfort to persons, loss of enjoyment of normal use of property, interference with normal conduction of business, or damage to property;

- (p) **Occupant** – means that person(s) who is present on a property;
- (q) **Officer** – means a municipal law enforcement officer appointed by council for the purpose of enforcing Town By-laws, the Town's Fire Chief or Designate or a police officer;
- (r) **Open-Air Fire** – means:
 - i. any fire set outdoors, ie. not in a building;
 - ii. any fire set in an unenclosed device or appliance located outside of a building.
- (s) **Owner** – means the person registered on title as the owner of a property or structure or building;
- (t) **Person** – for the purpose of this by-law, includes:
 - i. an Authorized Agent;
 - ii. a Responsible Person;
 - ii. an Occupant; and/or
 - iii. an Owner.
- (u) **Recreational Open-Air Fire** – means a fire contained within a permitted fire pit that does not exceed a diameter greater than 0.61 meters (2 feet) by 0.61 meters (2 feet) or 0.26 cubic meters (9 cubic feet) in size;
- (v) **Responsible Person** – means any adult person (18 years of age or older) who, in the opinion of the Officer or their designate, is capable of exercising the required judgement and is capable of performing the necessary actions to control a fire and prevent its unwanted spread;
- (w) **Smog Day** – means any day or portion of a day when a smog advisory or alert has been issued by the Ministry of the Environment and Climate Change, for the Town of Gravenhurst;
- (x) **Town** – means the Corporation of the Town of Gravenhurst;
- (y) **Urban Centre** – means the area defined through the official plan as seen in "Schedule A" as attached to this By-law;
- (z) **Yard Waste** – means natural debris collected from a property and includes dry branches, tree limbs and trunks and leaves.

2. GENERAL PROHIBITIONS

- 2.1 No person shall start, set or permit:

- a) a non-permitted open-air fire;
- b) more than one open-air fire on the same property;
- c) a permitted open-air fire in the Town between the hours of 8:00 a.m. and 6:00 p.m. between the months of April and October of each year, except as permitted under Section 6 of this By-law;
- d) for smoke to travel to a neighbouring property to such an extent or degree that it is a nuisance;
- e) for smoke to travel across any public roadway to the extent or degree that in the opinion of the Officer it may cause a public safety hazard to any person travelling on the roadway;
- f) a permitted open-air fire without ensuring that an adequate means of extinguishing or controlling the fire is immediately at hand. This may include, but is not limited to, a working garden hose charged with water, a device with a large enough water capacity to saturate the ground beneath the fire and area around the fire to ensure it can be extinguished, and any additional or alternate means as the circumstance may require;
- g) the fire is always under the care and control of a responsible person;
- h) without ensuring that the fire is completely extinguished before vacating the site;
- i) a grass fire;
- j) when the wind speed exceeds 30 kilometres per hour (30 km/h); or
- k) when a smog alert has been issued by the Ministry of the Environment for Ontario.
- l) materials for burning other than clean dry wood, dry yard waste or unprinted paper or cardboard used solely for the purpose of starting of the fire;
- m) an open-air fire to burn:
 - i. On land where the owner has not provided written permission.
 - ii. On roads, highways or lands owned by the Town, without first having obtained permission from the Fire Chief.
- n) an open air-fire in the Town when a Restricted Fire Zone is declared by the Ministry of Natural Resources and Forestry. Any exemptions or permissions shall be set by the Ministry of Natural Resources and Forestry;
- o) household garbage, appliances or any similar objects;

- p) release a sky-lantern.

2.2 No person shall start a restricted open-air fire outdoors except:

- a) In accordance with a permit issued under the Forest Fires Preventions Act R.S.O. 1990, c. F. 24;

3.0 RECREATIONAL OPEN-AIR FIRES

3.1 No person shall start, set, or permit a recreational open-air fire:

- a) using dry wood having a dimension greater than the size of the fire pit within which the fire is located;
- b) that is located less than six metres (20 feet) from any property line, combustible structure or object;

4. NON-RECREATIONAL OPEN-AIR FIRES

4.1 No person shall set or permit a non-recreational open-air fire:

- a) within the designated urban centre;
- b) that is located less than twenty metres (65 feet) from any property line , combustible structure or object;

5. FIRE BAN

5.1 The Fire Chief may issue a ban on any or all open-air fires and cause to be extinguished any or all open-air fires until such conditions as the Fire Chief may indicate are met.

5.2 During a declared fire ban, no person shall:

- a) set or permit an open-air fire;
- b) set or permit a campfire;
- c) cook on an unenclosed barbecue;
- d) set off or permit fireworks.

6. EXEMPTIONS

6.1 For the purpose of this By-law, the following are exempt:

- a) the Gravenhurst Fire Department for the purpose of educating and training individuals;

- b) fully enclosed barbecues provided the following conditions are met:
 - i. the appliance is supervised at all times.
- c) fires contained within incinerators;
- d) fires in devices installed outside of a building and that are used as a source of heat or power for the building or that are ancillary to a manufacturing process and provided that such device is certified for the purpose by a recognized and appropriate agency.

6.2 No person shall use an outdoor appliance that has not been approved by the Underwriters Laboratories of Canada (ULC) or the Canadian Standards Association (CSA).

7. ADMINISTRATION, ENFORCEMENT AND RIGHT OF ENTRY

7.1 This By-law shall be administered and enforced by an Officer as defined within this By-law.

7.2 An Officer may enter upon and inspect any land or property at any reasonable time to determine if any section of this by-law is being complied with, or to determine if any direction, notice, or order issued pursuant to this By-law, the *Municipal Act, 2001*, or the *Fire Protection and Prevention Act, 1997, S.O. 1997 c.4*, is being complied with.

7.3 In addition to any other action, where a Person is in contravention of any provision of the By-law, an Officer may post on site, or send a notice in the form of a letter or email to the Person, describing the contravention.

7.4 Any Order or direction given under this By-law may be given personally to the Owner or Occupant of the property, or may be posted on site, mailed by ordinary or registered mail, or by hand delivery to the mailing address of the registered Owner or Occupant of the property and any such delivery shall be deemed good and sufficient service.

7.5 No person shall obstruct or hinder or attempt to obstruct or hinder an Officer in the exercise of a power or the performance of a duty under this By-law.

7.6 No person shall refuse to produce any documents or things required by an Officer under this By-law, and every person shall permit the entry, inspection, examination, or inquiry by an Officer.

7.7 No person shall knowingly furnish false or misleading information to the Town or to an Officer with respect to this By-law.

8. ORDERS AND COST RECOVERY

8.1 If an Officer believes that this By-law has been contravened, they may issue an

Order directing compliance with this By-law and may require the work specified in the Order be carried out immediately, or within the time frame or other conditions specified in the Order.

- 8.2 An Officer may Order at any time that any open-air fire be immediately extinguished, and the site of the fire made safe.
- 8.3 No Owner or Authorized Agent of such Owner or Occupant of a property shall fail to comply with an Order issued under this By-law.
- 8.4 Should the Owner or Occupant, or Authorized Agent fail to rectify the non-compliance in accordance with the Order, the Town in addition to other remedies, shall have the right to correct the situation and, for this purpose, its servants and agents may from time to time enter in and upon the property at any reasonable time without a warrant.
- 8.5 Anything done or removed, under the direction of an Order, by the Town, its employees or agent or contractor, may be deposited elsewhere on the property or may be removed from the property and destroyed, or otherwise disposed of by the Town, its employees, agent, or contractor.
- 8.6 The Town shall not be liable to compensate such Owners, Occupants or any other person having an interest in the property, by reason of anything done by or on behalf of the Town in a reasonable exercise of its power under the provision of this Section.
- 8.7 If the Owner fails to pay the cost of any work done by or for the Town under an Order issued pursuant to this By-law, within thirty (30) calendar days of issuance of an invoice by the Town, then the outstanding amount shall be added to the tax roll of the subject property and collected in the same manner as property taxes.

9. OFFENCES AND PENALTIES

- 9.1 A person is guilty of an offence if the person;
 - a) Fails to comply with an order, notice direction or other requirements under this By-law, or
 - b) Contravenes any provision of the By-law.
- 9.2 A director or officer of a corporation who knowingly concurs in the contravention of this By-law by the corporation is guilty of an offence.
- 9.3 Any person who knowingly falsely reports a violation of the By-law shall, upon the second and any subsequent false reports, be guilty of an offence.
- 9.4 If the contravention of this By-law results in fire suppression or fire prevention personnel and vehicles being dispatched to respond to the property, the person in control of the fire and/or the Owner may be invoiced by the Fire Department,

for the cost of such response according to the rates established by the Town's Fees and Charges By-law, as amended. However, nothing in any schedule of rates shall be construed as limiting the rights of the Town to seek restitution for other direct or consequential damages or costs incurred beyond those listed.

- 9.5 An Officer may issue an Administrative Monetary Penalty to the Person, Owner, Agent or Person Responsible found in contravention of any provision of this By-law.
- 9.6 Any Person who contravenes any provision of this By-law is responsible for any fines and fees imposed under the Administrative Monetary Penalty System By-law.
- 9.7 Any Person who has been found in contravention of the By-law may request a review if the matter is in accordance with the Administrative Monetary Penalty System By-law.
- 9.8 Every person who contravenes any of the provisions of this By-law is guilty of an offence and shall be subject to a penalty in accordance with the Provincial Offences Act, R.S.O. 1990, c. P.33. as amended.
- 9.9 Every person who is guilty of any offence under this By-law may, if permitted under the Provincial Offences Act, pay a set fine, and the Chief Justice of the Ontario Court of Justice shall be requested to establish, pursuant to the Provincial Offences Act, set fines in accordance with this By-law.
- 9.10 The court in which the contravention 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.

10. SEVERABILITY

- 10.1 If a court of competent jurisdiction declares any provision or part of this by-law to be invalid or unenforceable for any reason whatsoever, then the particular provision or part thereof shall be deemed to be severed from the remainder of the by-law and shall be valid and enforceable to the fullest extent permitted by law, unless the court makes an order to the contrary.

11. FORCE AND EFFECT

- 11.1 That this By-law shall come into force and effect immediately upon passage.

12. SHORT TITLE

- 12.1 This By-law may be cited as the "Open-Air Burn By-law".

13. REPEAL

- 13.1 By-law number 2021-16 is repealed.

READ AND PASSED this 21st day of March, 2023.

Mayor

Clerk

SCHEDULE 'A'
BY-LAW 2023-20

