

THE CORPORATION OF THE TOWN OF GREATER NAPANEE

BY-LAW NO. 2019-0021

A By-law to Regulate Open Air Burning within the Town of Greater Napanee

WHEREAS subsection 7.1 (1) of the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c.4, as amended, authorizes the council of a municipality to pass by-laws regulating the setting of open-air fires, including establishing the times during which open air fires may be set;

AND WHEREAS subsection 11(2) of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, authorizes the municipality to pass by-laws respecting the health, safety and well being of persons;

AND WHEREAS the regulation of open-air burning is important for the health, safety and well-being of the inhabitants of the municipality;

AND WHEREAS the Council of The Corporation of the Town of Greater Napanee deems it advisable to enact such a by-law;

NOW THEREFORE the Council of The Corporation of the Town of Greater Napanee hereby enacts as follows:

PART 1 - INTERPRETATION

Definitions

1. In this By-law:
 - “Adverse Effect” means impairment of the safety of any person and or damage to property;
 - “Agricultural Fire” means an open-air fire where materials to be burned does not exceed 6 metres in height, 6 metres in width and 6 metres in length and where the open-air fire is set and maintained solely for the purposes of burning wood, tree limbs and branches;
 - “Approved Device” means a container that is CSA/ULC approved or approved by the Fire Chief to contain an open-air fire;
 - “Barbecue” means a portable or fixed device designed and intended solely for the cooking of food in the open air but does not include outdoor fireplaces or campfires.;
 - “Balcony” means a platform projecting from a wall of a multiple dwelling, surrounded by a railing or balustrade;
 - “Brush fire” means an open-air fire where the material to be burned does not exceed 3 metres in height, 3 metres in width and 3 metres in length

and where the open-air fire is set and maintained solely for the purposes of burning wood, tree limbs and branches;

- “Burn permit” means a permit that is issued in accordance with this By-law, authorizing an open-air fire;
- “By-law Enforcement Officer” means a person duly appointed by the Council of the Town of Greater Napanee to enforce by-laws;
- “Campfire” means an open-air fire that is set and maintained solely for the purpose of cooking food, providing warmth and/or recreational enjoyment;
- “Cooking device” means a non-combustible device designed for and used for the cooking of food;
- “Dangerous condition” means any condition as determined by the Fire Chief that increases the risk of the spread of a fire or is averse to public safety;
- “Farming business” means a farming business as defined in the *Farm Registration and Farm Organizations Funding Act, S.O. 1993*, as amended;
- “Fire Chief” means the Fire Chief of the Town of Greater Napanee and includes his or her duly authorized designate;
- “Flying/floating lanterns” means a combustible material warm air floating device which uses an open flame for floatation;
- “FPPA” means the *Fire Protection and Prevention Act, S.O. 1997, c4*, as amended, and the regulations enacted thereunder as amended from time to time, or any Act or Regulation enacted in substitution therefor;
- “Household waste” means combustible material such as plastics, paints, oils, solvents, rubber, insulation, batteries, acids, polystyrenes (Styrofoam), pressure treated or painted lumber, tires, upholstered furniture, synthetic fabrics, diapers and hazardous waste as defined in the *Environmental Protection Act* and all other similar and like materials;
- “Highway” means a common and public highway and includes any bridge, trestle, viaduct or other structure forming part of the highway and, except as otherwise provided, includes a portion of the highway;
- “Lot line” means any boundary of a lot or the vertical projection thereof;
- “Maintain” means to allow an open-air fire to continue to burn and “maintained” and “maintaining” have a corresponding meaning;
- “Material to be burned” means total volume of materials contained in the fire;
- “Municipality” means The Corporation of the Town of Greater Napanee or the geographic area of the Municipality of Greater Napanee as the context requires;
- “Non-approved Device” means a container that is not CSA/ULC approved to contain an open-air fire and can include but are not limited to drums, barrels, oil tanks, gas tanks, wheel rims;
- “Open air fire” means the burning of material such as untreated wood and wood fiber products like non-laminated paper and cardboard and boxboard, brush, tree branches / limbs and leaves where the flame is not

wholly contained and included campfires, brush fires, and outdoor fireplaces, but does not include barbecues;

- “Outdoor fireplace” means a manufactured, non-combustible, enclosed container designed to hold a small fire for decorative purposes and includes, but is not limited to, a chiminea or fire bowl;
- “Partial Burn Ban” means a period of time which the Fire Chief declares open-air burning restricted to the use of campfires, outdoor fireplaces and cooking devices;
- “Person” means any individual, association, firm, partnership, corporation, agent or trustee and the heirs, executors, or other legal representatives of a person to whom the context can apply according to law;
- “Portable appliance” means an appliance that is used for the sole purpose of heating a material for construction purposes and is CSA and/or ULC approved;
- “Prohibited Materials” includes wet materials, 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, c.E.19*, as amended;
- “Property” includes a building or structure or part of a building or structure, and includes the lands appurtenant thereto and all mobile homes, mobile buildings or mobile structures and vacant land;
- “Registered owner” includes the person who is shown as owner of a property in the records of the Land Registry Office, a trustee acting on behalf of the registered owner, the estate trustee of a registered owner, a person with a leasehold interest in the land and an authorized representative of a corporate registered owner;
- “Town” means the Town of Greater Napanee;
- “Total Burn Ban” means a period of time during which the Fire Chief declares a ban on any open air burning other than cooking devices.

Short Title

2. This By-law shall be known as the “Open Air Burning By-law”.

PART 2 - APPLICATION

Application

3. This By-law applies within the geographic limits of the Town.

Non-Application

4. This By-law does not apply to a person who sets a fire:
 - (a) In an incinerator operated in accordance with the Certificate of Approval issued pursuant to the *Environmental Protection Act, R.S.O. 1990, c. E. 19* and Regulations thereunder;

- (b) In a device which has been installed outside of a building which meets each of the following conditions:
 - (i) the device is designed for and used as a source of heat or power for the building or is designed for and used for a purpose ancillary to a manufacturing process;
 - (ii) the device is certified for use for a purpose described in paragraph 4(b)(i) by a recognized agency mandated in part for that purpose;
 - (iii) the certification of the device is produced upon request of a By-law Enforcement Officer or the Fire Chief; and
 - (iv) the device is in good working order.

Effect of Other Legislation

5. Nothing in this By-law shall be deemed to authorize any fire, burning or other act that is in contravention of the *Environmental Protection Act R.S.O. 1990, c.E.19*, the *Forest Fires Prevention Act, R.S.O. 1990, c.F.24*, the *Fire Protection and Prevention Act, S.O. 1997, c4*, or other federal or provincial statute, or any Regulation made thereunder. In the event of any conflict between the provisions of the By-law and said Act or Acts or Regulations, the said Act or Acts or Regulations made thereunder shall govern. In the event of any conflict between the provisions of the By-law and any other municipal by-law, the provision that establishes the higher standard to protect the health, safety and welfare of the general public shall prevail.

Prohibition - Setting Fires

6. Except as provided in Section 4, no person shall set a fire in the Town unless the fire is in accordance with this By-law.

Training or Demonstration Fire

7. (a) For the purpose of the By-law, a training or demonstration fire is a fire which is set in the Town for the purpose of demonstrating fire fighting equipment or as a training exercise.
- (b) The Fire Chief is authorized to give written consent for the setting of a demonstration or training fire.

Permitted Fires

8. For the purposes of this By-law, a permitted fire is a fire that complies with all regulations and conditions of the permit issued for the type of open-air permit requested under this by-law. And where a permit is not required, all other conditions or regulations which apply thereto.

PART 3 - GENERAL PROHIBITIONS - PERMITTED FIRES

General Prohibitions

9. (a) No person shall set or maintain an open-air fire without first having obtained the necessary permit from the Fire Chief.
- (b) No person shall set or maintain any open-air fire not in compliance with issued permit;
- (c) No person shall set or maintain a fire in a burn barrel or other non-approved device;
- (d) No person shall burn prohibited materials in an open-air fire;
- (e) No person shall use a flying/floating lantern as defined;
- (f) No person shall set or maintain any open-air fires other than a permitted campfire as defined and the use of cooking devices as defined, when a partial burn ban on open-air fires has been issued by the Fire Chief;
- (g) No person shall set or maintain any open-air fire other than the use of cooking devices as defined, when a total burn ban on open-air fires has been issued by the Fire Chief.

Consent of a Registered Owner

10. No person shall set or maintain a permitted fire on any property in the Town unless:
 - (a) The person setting or maintaining the fire is the registered owner or their authorized designate of the property on which the fire is set;
 - (b) 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.

Prohibited Conditions

12. No person shall set or maintain a permitted fire in the Town in a location or in conditions likely to cause or result in:
 - (a) A decrease in visibility on any highway from smoke;
 - (b) Inconvenience or irritation to others from smoke or fumes;
 - (c) The spread of the fire due to the proximity of any combustible materials;
 - (d) Wind speed does not exceed 30 kph.

PART 4 - PROHIBITIONS - SPECIFIC TYPES OF PERMITTED FIRES

Campfire

13. No person shall set or maintain a campfire unless they ensure all of the following conditions are met:
- (a) The campfire is contained within an area of non-combustible metal, masonry, ceramic or stone or is contained within a pit in the ground;
 - (b) The material burned in the campfire is clean dry wood in a single pile that is less than 60 centimetres in height, width and length;
 - (c) The campfire is located a distance of not less than four (4) metres from any building, hedge, fence, overhead wiring or other combustible material or lot line;
 - (d) The person tending the campfire has tools or water adequate to contain the fire within the campfire area;
 - (e) The fire is not set or maintained except during the time frame set out on the issued burn permit.

Fire in a Outdoor Fireplace

14. No person shall set or maintain a fire in an outdoor fireplace unless they ensure all of the following conditions are met:
- (a) The outdoor fireplace is not located on a balcony
 - (b) The outdoor fireplace is not located on any combustible surface;
 - (c) The outdoor fireplace is in good working order.
 - (d) The outdoor fireplace is located a distance of not less than four (4) metres from any building, hedge, fence, overhead wiring or other combustible material or lot line;
 - (e) The person burns only clean dry wood or commercial charcoal in the outdoor fireplace;
 - (f) The fire is not set or maintained except during the time frame set out on the issued burn permit.

Brush Fire

15. No person shall set or maintain a brush fire unless they ensure all of the following conditions are met:
- (a) The fire is set and maintained at a distance of no less than thirty (30) metres, or such greater distance as may be specified in the burn permit, from any building, hedge, fence, overhead wire or other combustible material, or lot line;
 - (b) The pile of materials to be burned in the fire do not exceed three (3) metres in length, three (3) metres in width, and three (3) metres in height;
 - (c) They have the necessary means immediately available at the site of the fire to permit them to extinguish the fire, to limit its spread, and if necessary, to summon the Town's Emergency Services Department;

- (d) The fire is not set or maintained except during the time frame set out on the issued burn permit.

Agricultural Fire

16. No person shall set or maintain an agricultural fire unless they ensure all of the following conditions are met:
- (a) The fire is set and maintained at a distance of no less than thirty (90) metres, or such greater distance as may be specified in the burn permit, from any building, hedge, fence, overhead wire or other combustible material, or lot line;
 - (b) The materials to be burned in the fire do not exceed six (6) metres in length, six (6) metres in width and six (6) metres in height;
 - (c) The person setting the fire has the necessary means immediately available at the site of the fire to permit them to extinguish the fire, to limit its spread, and if necessary, summon the Town's Emergency Services Department;
 - (d) The fire is not set or maintained except during the time frame set out on the issued burn permit.

Specific Event

17. A community not-for-profit organization, school, religious institution or a resident may apply in writing to the Fire Chief for a specific event permit to conduct open air fires or the setting off of fireworks for cultural, religious or recreational specific events and if they ensure all of the following conditions are met:
- (a) All conditions as set out on the permit are followed;
 - (b) The person or organization issued the permit has the necessary means immediately available at the site of the permit to extinguish the fire or any, to limit its spread and if necessary, summon the Town's Emergency Services Department;
 - (c) Permit issued is valid only for the time(s) and day(s) set out on the issued specific event permit.

Campgrounds

18. Approved campgrounds may apply for a campfire/outdoor fireplace open-air permit if they ensure all of the following conditions are met:
- (a) All conditions as set out on the permit are followed;
 - (b) The owner/operator/supervisor shall be responsible for regulation, monitoring and enforcement of campfire/outdoor fireplaces within the campgrounds;
 - (c) The following are approved and recognized campgrounds;

Adolphustown Park	45 Park Road
Ashton Park	5893 County Road 9
Bass Cove Park	5558 County Road 8

Bayview Resort	5067 County Road 9
Mohawk Bay Park	9698 County Road 2
Pickereel Park	665 South Shore Road
Perfect Vue Resort	4159 County Road 9

Fire in a Cooking Device

19. No person shall set or maintain a fire in a cooking device unless they ensure all of the following conditions are met:
- (a) The cooking device:
 - (i) is not located on a balcony;
 - (ii) is located at least one (1) metre from any building or structure; and
 - (iii) is in good working order;
 - (b) The person burns only commercial charcoal, compressed gas or wood in the cooking device, as is appropriate for that cooking device.

Heating During Construction

20. No person may set or maintain a fire in a portable appliance during a construction or maintenance process unless they ensure all of the following conditions are met:
- (a) The portable appliance is designed for that purpose;
 - (b) The portable appliance is only used for that purpose;
 - (c) The portable appliance is used in accordance with manufacturer's instructions;
 - (d) The portable appliance is in good working order.

PART 5 - BURN PERMITS

Request for Burn Permit

21. (a) Any person eighteen (18) years of age or older may apply for an open-air fire permit to the Fire Chief prior to the proposed date of any open air burning;
- (b) The applicant for a burn permit shall provide all of the information and such other documentation or materials as may be requested by Greater Napanee Emergency Services prior to obtaining the burn permit.

Issuing a Burn Permit

22. (a) The Fire Chief shall review the request for a burn permit and the documentation or materials filed with the request and shall:
- (i) approve the request and issue the burn permit to the applicant;
 - (ii) conditionally approve the request subject to such restrictions, regulations or conditions as the Fire Chief in his or her sole

- discretion considers advisable; or
- (iii) refuse to approve the request.
- (b) Where the Fire Chief refuses to approve a request for an open-air burn permit, the Fire Chief shall advise the applicant that the request has been refused.

Burn Permit

- 23. (a) Any permit issued under this by-law is personal to the permit holder and shall not be transferred or assigned.
- (b) A permit shall be valid only for the period of time for which it was issued and shall expire on the date or in the manner specified in the burn permit.
- (d) Any fees for open-air and specific event permits shall be in accordance with Schedule "A"

Permit Holder

- 24. No person holding a burn permit or specific event permit shall set or maintain a fire under the authority of said permit, except in accordance with the terms and conditions said permit and this by-law.

Revocation of Permit

- 25. The Fire Chief may, at any time, in their sole discretion, revoke any burn permit, with no refund of any fees paid by the permit holder if the Fire Chief reasonably believes that:
 - (a) Any of the information provided with the request or supporting documentation or materials are not accurate;
 - (b) A term or condition of the burn permit is not being observed;

PART 6 - ENFORCEMENT AND RECOVERY OF COSTS

Enforcement

26. No person shall obstruct, hinder or in any way interfere with any person designated to enforce this By-law.

Right of Entry

27. Upon producing proper identification, a By-law Enforcement Officer or the Fire Chief may, at all reasonable times enter upon and inspect any property to determine if there is a contravention of this by-law and to enforce or carry into effect the by-law.

Extinguishing Any Fire

28. (a) The Fire Chief may direct a person to extinguish any fire where in their opinion, there is a contravention of this by-law.
(b) Where the action taken by such person in extinguishing any such fire pursuant to 28(a) is, in the opinion of the Fire Chief not adequate, the Fire Chief may take such action as he or she considers necessary to control and extinguish the fire.

Cost of Action Regarding Fire

29. Any costs and expenses of any action by the Town with respect to controlling or extinguishing a fire that is caused by, or results from, the conduct of a person acting contrary to this by-law, or is caused by or results from a person disobeying or refusing or neglecting to carry out any of the provisions of this by-law, will be assessed in accordance with the Town's current *Fees or Charges for Services Provided By-law* and are payable by that person to the Town on the date specified in the request for payment and if not paid on the date specified, such costs and expenses together with costs of collection, including legal fees and disbursements, are recoverable as a debt due to the Town by any remedy or procedure available to the Town by law and may be recovered in a like manner as taxes.

Civil Action

30. Nothing in this by-law affects or shall be held to limit or interfere with the right of any person to bring and maintain a civil action for damages occasioned by fire.

Offence

31. Every person who contravenes any of the provisions of this By-law is guilty of an offence and upon conviction is liable to a fine as provided in the *Provincial Offences Act*, R.S.O. 1990, c. P.33 as amended and as listed in Schedule "B".

PART 7 – DELEGATION OF AUTHORITY

Administration

32. The Fire Chief shall be responsible for the administration of this by-law. Persons who are employed or appointed as By-law Enforcement Officers and Fire Chief for the Town are all deemed appointed and entitled to enforce the provisions of this by-law.

Severability

33. 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 shall be is deemed severable from this by-law and it is the intention of Council that the remainder of the by-law survive and be applied and enforced in accordance with its terms to the extent possible under law.

Repeal

34. The Town of Greater Napanee By-law No. 2013-0038 is hereby repealed.

Effective

35. This By-law shall come into force and take effect upon final passage by the Council of The Corporation of the Town of Greater Napanee.

Read a first and second time and finally passed this 12th day of March, 2019.

Marg, Isbester, Mayor

Susan Beckel, Clerk

The Corporation of the Town of Greater Napanee
By-law No. 2019-0021
Schedule "A"

Fees for Permits:

Campfire/Outdoor Fireplace Open-Air Burning Permit	\$ 00.00
Brush Fire Open-Air Burning Permit	\$ 00.00
Agricultural Open-Air Burning Permit	\$ 00.00
Campground Campfire/Outdoor Fireplace Open-Air Burning Permit	\$ 00.00
Specific Event Permit	\$ 00.00

The Corporation of the Town of Greater Napanee
By-law No. 2019-0021
Schedule "B"

Chargeable Offences:

Offence	Section	Fine
Set or maintain open air fire without a permit.	S. 9(a)	\$150
Set or maintain open air fire not in compliance with issued permit.	S. 9(b)	\$150
Set or maintain open air fire in a burn barrel or other non-approved device.	S. 9(c)	\$150
Burn prohibited materials in an open-air fire.	S. 9(d)	\$150
Use a flying/floating lantern	S. 9(e)	\$150
Set or maintain open air fire when a partial burn ban issued by Fire Chief	S. 9(f)	\$200
Set or maintain open air fire when a total burn ban issued by Fire Chief	S. 9(g)	\$200