

THE CORPORATION OF THE TOWN OF SMITHS FALLS
BY-LAW NO. 8792-2015

A BY-LAW TO REGULATE CONDITIONS UNDER WHICH FIRES MAY BE SET IN THE OPEN AIR.

The Council of the Town of Smiths Falls hereby enacts as follows:

1. DEFINITIONS

In this by-law,

"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, drums and campfires.

"building" means any structure used or intended for supporting or sheltering any use or occupancy;

"brush fire" means an open air fire where the size of the material to be burned does not exceed 3m in height, 3m in width and 3m in length and where the open air fire is set and maintained solely for the purposes of burning wood, tree limbs and branches;

"burn drum" means an open air fire set and maintained in an open top steel barrel that does not exceed 1.5m in diameter and 1.5m in height and where the open air fire is set and maintained for the purposes of burning wood, tree limbs, branches and non-compostable material limited to paper and sisal twine. A burn drum is not considered as an outdoor fireplace;

"combustible material" means material capable of burning including wood, paper, plastic and vegetation and be in class of fire as a class A material;

"dangerous condition" means any condition as determined by the Fire Chief, that increases the risk of the spread of a fire or is adverse to public safety;

"fire ban" means a period of time during which the Fire Chief declares a total ban on open air fires;

"Fire Chief" means the Fire Chief of the Town of Smiths Falls. For the purpose of this By-Law, the Fire Chief delegates his authority to Municipal Law Enforcement Officer, Chief Fire Official, or any Smiths Falls firefighter;

"fire truck(s)" means a pumper, a tanker or an aerial truck used by the Fire Department. Mutual aid fire department fire trucks are considered as fire truck(s).

"FPPA" means the Fire Protection and Prevention Act, 1997, S.O. 1997, c.4, as amended, and the regulations enacted thereunder as amended from time to time, or any Act or Regulation enacted in substitution therefor;

"highway" includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines 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 the total volume of the materials contained in the fire;

"open air fire" means the burning of material such as untreated wood, tree limbs and branches where the flame is not wholly contained and includes brush fires, burn drums, 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 with a chimney of a minimum of 30 cm in height, and to canalize the smoke of the fireplace and the size of which does not exceed 1m in any direction and includes, but is not limited, to a chimney;

"owner" means the registered owner of the land;

"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;

"set" means to light an open air fire and "setting" has a corresponding meaning;

"Town" means the municipal corporation of the Town of Smiths Falls;

2. INTERPRETATION

2.1 In this by-law, a word interpreted in the singular number has a corresponding meaning when used in the plural.

2.2 This by-law includes the Schedules annexed hereto and the Schedules are hereby declared to form part of this by-law.

2.3 It is declared that if any section, subsection or part or parts thereof be declared by any Court of Law to be bad, illegal or ultra vires, such section, subsection or part or parts shall be deemed to be severable and all parts hereof are declared to be separate and independent and enacted as such.

2.4 In this by-law, the word "meter" shall be represented by the abbreviation "m", and the word "centimeter" shall be represented by the abbreviation "cm".

3. PROHIBITIONS

- 3.1 No person shall set or maintain an open air fire or having a fire in an outdoor fireplace without first having obtained the necessary permit from the Fire Chief.
- 3.2 No person shall set or maintain an outdoor fireplace and open air fire in any piece of land smaller than 557 m².
- 3.3 No person shall set or maintain an open air fire in an outdoor fireplace in any fire zone 1, or fire zone 2, or fire zone 3 in accordance to schedule C unless, approved by the fire chief.
- 3.4 No person shall set or maintain an open air fire when a fire ban on open air fires has been issued by the Fire Chief.
- 3.5 No person shall set or maintain an open air fire within a radius of 100m where it is known that explosives are stored.
- 3.6 No person shall set fire to a building or structure for the purpose of demolishing the whole or any part thereof or a demolished building or any part thereof.
- 3.7 No person shall set or maintain a campfire.
- 3.9 No person shall set or maintain an outdoor fireplace or an open air fire between 23:00 and the sunrise.
- 3.10 No person shall set a fire that exceeds an open air fire requirement of section 6.1 and r 6.2.
- 3.11 No person shall set or maintain a fire containing prohibited materials.
- 3.12 No person shall set or maintain an open air fire or an outdoor fireplace that is not supervised.
- 3.13 No person shall set or maintain a fire that created nuisance smoke.

4. APPLICATION FOR AN OPEN AIR FIRE OR OUTDOOR FIREPLACE PERMIT

- 4.1 Any person eighteen (18) years of age or older may make a written application for an open air fire permit to the Fire Chief prior to the proposed date of the first open air fire or the first outdoor fireplace fire.

4.2 The application shall include:

- a. the name, address and phone number of the applicant;
- b. the owner's written consent to the open air fire, if the applicant is not the owner of the property;
- c. the municipal address of the location of the proposed open air fire if it differs from the address of the applicant;
- d. the applicable open air fire permit fee in accordance with Schedule A. The fees must be paid before permit issuance;
- e. an indemnification in writing or electronically in accordance with the terms of Section 10;
- f. allowing a Fire Department representative to go on site and take appropriate pictures of the location of the fire, pictures of the outdoor fireplace and a picture from the street side of the main building;
- g. such other information as may be required by the Fire Chief.
- h. In the case of an outdoor fireplace, a permit can be renewed if after inspection of the site, no change was made and the site remains the same with the same outdoor fireplace as was in the previous year.

4.3 The Fire Chief shall issue an open air fire permit unless,

- a. the application is incomplete;
- b. there are reasonable grounds to believe that the open air fire may be adverse to public safety; or
- c. there are reasonable grounds to believe that the open air fire will result in a breach of this by-law, the FPPA, or any other municipal, provincial or federal statute.

5. CONDITIONS FOR PERMIT ISSUANCE

5.1 No permit holder shall undertake to set or maintain any open air fire except in accordance with the conditions of the permit.

5.2 The permit holder shall comply at all times with the FPPA, and with all other applicable municipal by-laws and provincial and federal laws.

5.3 No holder of a permit issued under this by-law shall set or maintain an open air fire unless the permit holder,

- a. notifies the Fire Chief for permission on the day of each proposed open air fire;
- b. ensures that a person eighteen (18) years of age or older maintains constant watch and control over the open air fire at all times from the time of the setting of the fire until the fire is totally extinguished;
- c. produces his or her permit upon being so directed by the Fire Chief;
- d. immediately extinguishes the fire upon being so ordered by the Fire Chief;

- e. complies at all times with the requirements of this by-law
- f. has equipment capable of extinguishing the fire such as rakes, shovels, or water immediately available for use at the site of the open air fire.

5.4 The Fire Chief may attach such additional conditions to a permit as he or she deems necessary to ensure public safety.

5.5 A permit for an open air fire is not transferable to another person or to a new location.

5.6 Campfires are not allowed within the Town of Smiths Falls.

6. GENERAL REQUIREMENTS FOR OPEN AIR FIRES

6.1 Where the material to be burned in an open air fire is 2m or less in length, 2m or less in width and 2m or less in height or is in a burn drum, no permit holder shall set or maintain an open air fire,

- a. at a distance of less than 30m from any building, hedge, fence, overhead wiring or a highway and at a distance of less than 25m from another open air fire;
- b. at a distance of less than 45m from the property line;
- c. where combustible material, other than a building, hedge, fence, or overhead wiring or a highway is present within a radius of 15m from the open air fire;
- d. where the size of the open air fire will exceed the limits set by this by-law;
- e. that is set or maintained with the aid of flammable or combustible liquids of any kind;
- f. that uses fuel other than wood, tree limbs and branches or, if in a burn drum, fuel other than that permitted in a burn drum;
- g. that uses prohibited materials, which include grass, leaves, garbage, pressure treated or creosote wood, debris coming from a demolished structure, or any combustibles that produce toxic fumes other than those produced by the burning of untreated wood, tree limbs or branches;
- h. before sunrise and after sunset on any day, with the exception of outdoor fireplaces that comply with the requirements of this by-law; or
- i. unless the additional conditions specified on the permit deemed necessary by the Fire Chief have been met.
- j. when the fire department receive a complaint for smoke, odor or abnormal warm temperature coming from the open air fire, the permit holder must extinguish the fire without any delay.
- k. for more than 2 legitimate complaints against a permit holder within a year, the fire chief will revoke the permit and a fine will be issued under section 13.4 of this by-law.
- l. a permit issued for an Open Air Fire is valid for the permit issuance date and the next day.

6.2 Where the material to be burned in an open air fire is between 2m and 3m in length, 2m and 3m in width and 2m and 3m in height, no permit holder shall set or maintain an open air fire,

- a. at a distance of less than 60m from any building, hedge, fence, overhead wiring or a highway and at a distance of less than 25m from another open air fire;
- b. where combustible material other than a building, hedge, fence, or overhead wiring or a highway is present within a radius of 30m from the open air fire; and
- c. (c) unless the permit holder complies with the conditions of this by-law.

7. ADDITIONAL REQUIREMENTS FOR OUTDOOR FIREPLACES

No permit holder shall set or maintain an open air fire in an outdoor fireplace unless,

- a. the outdoor fireplace is located a distance of not less than 6 meters from any building, hedge, fence, overhead wiring or other combustible material or a highway and is equipped with a spark arrester;
- b. the outdoor fireplace is located on a non-combustible surface extending beyond the outdoor fireplace to a dimension equal to the height of the outdoor fireplace;
- c. the outdoor fireplace uses only dry firewood; and
- d. in compliance with the requirements of subsection 6(1), clauses (c) to (g) inclusive.
- e. a site inspection of the propose site will be required by the Fire Chief prior to issuing a permit.
- f. a permit issued for an outdoor fireplace is valid for a calendar year for the proposed site.
- g. No person shall set or maintain an outdoor fireplace with a fire between 23:00 and sunrise.
- h. when the fire department receive a legitimate complaint for smoke, and or odor, and or abnormal warm temperature coming from the outdoor fireplace, the permit holder must extinguish the fire without any delay.
- i. for more than 2 legitimate complaints against a permit holder within a year, the fire chief will revoke the permit and a fine will be issued under section 13.4 of this by-law.
- j. No outdoor fireplaces are allowed in the fire zone 1, or in zone 2, or in zone 3 in accordance to Schedule C.

8. ADDITIONAL REQUIREMENTS FOR A SPECIFIC EVENT

8.1 Despite subsection 3 of this by-law, a community not-for-profit organization or a religious institution may apply in writing to the Fire Chief for an open air fire permit to conduct open air fires in an outdoor fireplace for cultural, religious or recreational specific events.

8.2 The requirements of Section 4 of this by-law apply to an application under subsection 8.1.

- 8.3 The Fire Chief may issue an open air fire permit subject to compliance with Section 6 and 7 as applicable and any additional conditions imposed by the Fire Chief.
- 8.4 A site inspection of the proposed site of the open air fire may be required by the Fire Chief prior to issuing a permit.
- 8.5 A permit issued pursuant to subsection 8.3 is valid only for the day or days of the specific event.
- 8.6 No permit holder for a specific event open air fire shall set or maintain an outdoor fireplace that is not in compliance with the requirements of subsection 8.3.

9. DELEGATION OF AUTHORITY – UPDATING MAPS (SCHEDULES)

9.1 The Fire Chief is authorized to approve amendments to the Schedules to By-law No. xxxxx, as amended, being the Open Air Fire By-law, to amend the boundaries of areas in which open air fires and outdoor fireplace may be set or maintained provided that the amendment is a result of a change in one (1) or more of the following factors:

- 9.1.1 population density;
- 9.1.2 building density;
- 9.1.3 risk management issues, including but not limited to incidence of false alarms and proximity to forested areas;

10. INDEMNIFICATION

The applicant shall indemnify and save harmless the Town of Smiths Falls from any and all claims, demands, causes of action, losses, costs or damages that the Town of Smiths Falls may suffer, incur or be liable for resulting from the open air fires as set out in the by-law whether with or without negligence on the part of the applicant, the applicant's employees, directors, contractors and agents.

11. REVOCATION

- 11.1 Permits issued to a permit holder under this by-law may be revoked by the Fire Chief if, in the opinion of the Fire Chief, a dangerous condition exists in or near the site of the open air fire.
- 11.2 Permits issued to a permit holder under this by-law may be revoked by the Fire Chief if the permit holder fails to comply with the requirements of the permit or permits and any other provisions of this by-law.

12. EXEMPTIONS

- 12.1 Smiths Falls Fire Department shall be exempt from the provisions of this by-law with respect to open air fires for the purposes of training, educating individuals in fire safety or for research purposes.
- 12.2 Professional fire prevention trainers, recognized in writing by Smiths Falls Fire Department shall be exempt from the provisions of this by-law with respect to open air fires set for the purposes of fire safety training pursuant to Section 2.8.2.1 of the Fire Code.
- 12.3 Town of Smiths Falls' Departments shall be exempt from the provisions of this by-law with respect to open air fires related to municipal works. To be exempt, the Town of Smiths Falls' Departments must be in compliance with the requirements of section (3) and (4).

13. OFFENCES AND PENALTIES

- 13.1 Every person who commits an offence under Section 3 of this By-Law is, upon conviction, liable to the fines or others penalties as provided for in the Provincial Offences Act.
- 13.2 Upon registering a conviction of any provision of the By-Law, the Ontario Court, Provincial Division, may in addition to any penalty imposed by the By-Law make an order prohibiting the continuation or repetition of the offence by the person convicted.
- 13.3 Every person who sets a fire in contravention of this by-law or who fails to extinguish a fire once ordered to do so by the Fire Chief shall, in addition to any penalty provided for herein, be liable to the Town for all expenses incurred for the purpose of investigating, controlling and extinguishing any fire set or left to burn as approved by Town Council, and such expenses may be recovered by court action or in a like manner as municipal taxes. The fine associated to investigating, controlling and extinguishing any fire is:

\$875 / hour per fire truck.

14. REPEAL

The following by-laws and portions of by-laws of the old municipalities are repealed:

- a. By-law No. 4185-75 of 1974 of Corporation of the Town of Smiths Falls.

15. CONFLICT WITH OTHER BY-LAWS

- 15.1 In the event of any conflict between the provision of this by-law and any other by-law regarding the regulation of open air fires, including the by-laws referred to in Section 14,

the provisions of this by-law shall prevail, but nothing in this by-law shall invalidate the enforceability of other provisions of those by-laws.

16. EFFECTIVE DATE

16.1 This by-law shall come into force on the 4th day of May, 2015

ENACTED AND PASSED this 4th day of May, 2015

Mayor

Clerk

SCHEDULE A

Type of Permit	Fees
Open Air Fire Permit Fees	\$25
Renewal of an Open Air Fire Permit Fees	\$10
Outdoor Fireplace Permit Fees	\$25
Renewal of Outdoor Fireplace Permit Fees	\$10
Specific Event Open Air of Outdoor Fireplace Permit	\$25

SCHEDULE B

ITEM	INFRACTIONS	PROVISION CREATING OR DEFINING OFFENSE	SET FINE
1	Set or maintain an open air fire or having a fire in an outdoor fireplace without permit.	3.1	\$200
2	Set or maintain an outdoor fireplace and open air fire in any piece of land smaller than 557 m ² .	3.2	\$200
3	Set or maintain an open air fire in an outdoor fireplace in any fire zone 1, or fire zone 2, or fire zone 3.	3.3	\$200
4	Set or maintain an open air fire during a fire ban.	3.4	\$200
5	Set or maintain an open air fire within a radius of 100m stored explosives	3.5	\$200
6	Set fire to a building or structure for the purpose of demolishing.	3.6	\$200
7	Set or maintain a campfire.	3.7	\$200
8	Set or maintain an outdoor fireplace or an open air fire between 23:00 and the sunrise.	3.8	\$200
9	Set a fire that exceeds an open air fire requirement.	3.9	\$200
10	Set or maintain a fire containing prohibited materials.	3.10	\$200
11	Set or maintain an unsupervised open air fire or an outdoor fireplace.	3.11	\$200
12	Set or maintain a fire that created nuisance smoke	3.12	\$200

SCHEDULE C

FIRE ZONE MAP

