

THE CORPORATION OF THE TOWN OF GRAVENHURST BY-LAW NO. 2021-16

Being a By-law to prescribe the parameters for
Open Air Burning within the Town of Gravenhurst
(Open Air Burning 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 this act;

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

DEFINITIONS

1. In this By-law:
 - 1.1. **Barbecue** – means an appliance or structure designed and intended solely for the cooking of food in the open air, including a Hibachi or any other similar commercially manufactured device designed and intended solely for the cooking of food in the open air, but does not include devices predominately designed for personal warmth, fire pits or campfires;
 - 1.2. **Campfire** - means a small contained open air fire no larger than 61 centimetres (2 feet) by 61 centimetres (2 feet) or 0.26 cubic meters (eight cubic feet) in size;
 - 1.3. **Chief Fire Official** – means the Chief of the Gravenhurst Fire Department or his/her designate;
 - 1.4. **Class "A" Combustibles** - means natural material such as wood, fibres and paper;

- 1.5. **Combustible** – means capable of catching fire and burning, this includes but is not limited to trees and forested areas;
- 1.6. **Council** – means the Council for the Corporation of the Town of Gravenhurst;
- 1.7. **Extinguish** - means to completely put out an open air fire;
- 1.8. **Fire Pit** – means open air fire burn area specifically designed for open air burning;
- 1.9. **Gas Fired Outdoor Appliance** – means a portable or fixed appliance which is fuelled by natural gas or propane including, but not limited to, a heater, barbeque, smoker, fireplace or fire pit;
- 1.10. **Incinerator** - means an enclosed device other than a barbecue used for burning waste materials. It is not designed or approved for cooking, recreational or heating uses;
- 1.11. **Non-Recreational Open Air Fire** – means any controlled open air burning that exceeds the size requirements of a recreational open air fire. Not permitted in the Urban Centre of Gravenhurst;
- 1.12. **Officer** - means an enforcement officer appointed by Council or a through authority of applicable legislation (by-law officer, fire prevention officer etc.) or a member of the Ontario Provincial Police;
- 1.13. **Open Air Fire** – means the burning outside of a building where the flame is not wholly contained and is therefore open to the air. Open Air Fire and fire shall have the same meaning;
- 1.14. **Open Air Burning Device** – means any commercially or non-commercially manufactured device for the purpose of containing a recreational fire which is made of a non-combustible material and installed in accordance with the manufacturer’s recommendations, this includes but is not limited to chimeneas and outdoor fireplaces;
- 1.15. **Owner** – means the registered owner of, or anyone with a leasehold interest in a property;
- 1.16. **Person** – means any human being, association, firm, partnership, incorporated company, corporation agent or trustee, and the heirs, executors or other legal representatives of a Person to whom the context can apply, according to law;
- 1.17. **Recreational Open Air Fire** – means a small, controlled and contained fire for the purpose of cooking, warmth or personal enjoyment and includes Open Air Burning Devices;
- 1.18. **Town** – means the Corporation of the Town of Gravenhurst;

- 1.19. **Urban Centre** – area defined through the official plan as seen in “Schedule A” as attached to this By-law;
- 1.20. **Yard Waste** – includes but is not limited to natural debris collected from a property and includes branches, tree limbs and trunks and leaves. It does not include household garbage.

GENERAL PROHIBITIONS

2. No person shall:
 - 2.1. Set or permit an open air fire in the Town between the hours of 0800 hr. (8:00 a.m.) and 1800 hr. (6:00 p.m.) during the months of April, May, June, July, August, September and October each year, except as permitted under Section 6 and 7 of this By-law.
 - 2.2. Set or permit a grass fire.
 - 2.3. Set or permit a non-recreational open air fire not in accordance with Section 5.
 - 2.4. Set or permit a non-recreational open air fire within the urban centre.
 - 2.5. Set or permit an open air fire that burns material other than Class “A” combustibles.
 - 2.6. Set or permit open air fire to burn:
 - 2.6.1. On land on which the person setting such fire, or permitting such fire, is not the registered owner, without the written permission of the registered owner.
 - 2.6.2. On a highway, park, walkway, public land or upon any vacant or other land owned by the Town, without first having obtained permission from the Chief Fire Official.

Fire Ban

3. No person shall:
 - 3.1. Notwithstanding the exceptions set out in Section 8 of this By-law, the Chief Fire Official may declare a total ban against open air fires when environmental conditions or local circumstances make such fire hazardous. No person shall set or permit an open air fire during a declared fire ban.
 - 3.2. Set or permit 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.

RECREATIONAL OPEN AIR FIRES

4. No person shall set or permit a recreational open air fire:
 - 4.1. within open air fire pit or burn area larger than 61 centimetres (2 feet) by 61 centimetres (2 feet) or 0.26 cubic meters (eight cubic feet) in size;
 - 4.2. unless all reasonable steps have been taken to ensure that adjacent properties and individuals are protected from fire hazards and are not adversely affected by the products of combustion;
 - 4.3. using materials other than commercially produced charcoal, briquettes or clean, dry seasoned wood and in particular no painted wood, pressure treated wood, or creosote treated wood or any type of yard waste may be burned at any time;
 - 4.4. using wood having a dimension greater than the size of the pit within which the fire is located. All such fires shall be totally confined within the open air burning device or fire pit at all times;
 - 4.5. that is located less than six metres (20 feet) from any adjacent property;
 - 4.6. that is located less than six metres (20 feet) from any combustible structure or object;
 - 4.7. without having immediately available for use an effective extinguishing agent or device of sufficient size and with the capability of extinguishing the fire;
 - 4.8. without ensuring that the fire is attended, controlled and supervised at all times by a competent person;
 - 4.9. without ensuring that the fire is completely extinguished before vacating the site;
 - 4.10. when the wind speed exceeds 30 kilometres per hour (30 km/h); or
 - 4.11. when a smog alert for an area including the Town has been issued by the Ministry of the Environment for Ontario;

NON-RECREATIONAL OPEN AIR FIRES

5. No person shall set or permit a non-recreational open air fire:
 - 5.1. with a burn pile exceeding either two metres (6.5 feet) in diameter or two metres (6.5 feet) in height;
 - 5.2. in which any kitchen garbage, construction materials or debris or materials made of/or containing rubber, plastic or tar are burned;
 - 5.3. using materials other than clean, dry seasoned wood or yard waste;

- 5.4. within 20 metres (65 feet) of any adjacent building or structure;
- 5.5. within 20 metres (65 feet) of any combustible object;
- 5.6. without first taking all reasonable steps to ensure that adjacent properties and individuals are protected from any fire hazard and are not adversely affected by the products of combustion;
- 5.7. without ensuring that the fire is attended, controlled and supervised at all times by a competent person;
- 5.8. without ensuring that the fire is completely extinguished before vacating the site;
- 5.9. without having immediately available for use an effective extinguishing agent or device of sufficient size and with the capability of extinguishing the fire;
- 5.10. when the wind speed exceeds 30 kilometres per hour (30 km/h); or
- 5.11. when a smog alert for an area including the Town has been issued by the Ministry of Environment for Ontario.

BARBECUES AND GAS FIRED OUTDOOR APPLIANCES

6. Barbecues shall be exempt from this by-law provided the following conditions are met:
 - 6.1. No person shall barbeque unless the barbeque is supervised at all times.
 - 6.2. No person shall barbeque with a fuel source other than charcoal, briquette, natural gas or propane.
7. Gas fired outdoor appliances shall be exempt from this by-law provided the following conditions are met:
 - 7.1. No person shall use a gas fired outdoor appliance unless the appliance is supervised at all times.
 - 7.2. No person shall fuel an outdoor appliance with anything other than propane or natural gas.
 - 7.3. 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).

EXEMPTIONS

8. The Gravenhurst Fire Department is exempt from this By-law with respect to open air burning for the purpose of educating and training individuals.

RIGHT OF ENTRY

9. The Chief Fire Official, a Police Officer or a By-law Enforcement Officer shall be permitted to enter into land at any time for the purpose of enforcing this by-law and may at their sole discretion, order the fire extinguished and/or brought into compliance with the order and this order shall be final. Any person setting or permitting such fire and the owner shall immediately comply with the order. If the person setting or permitting the fire or the owner fails to comply as directed, the Chief Fire Official, Police Officer or By-law Enforcement Officer may take action to have the fire extinguished or otherwise brought into compliance with the order.

PENALTY

10. Where the Fire Department is required to extinguish any open air fire or call on additional resources to extinguish a very large fire, the owner shall be responsible for paying any Fire Department fees and/or cost recovery as approved by Council which may be amended from time to time.
11. The Town may recover the remedial action costs incurred under Section 9 by action, or by adding to the tax roll and collecting them in the same manner as taxes in accordance with Section 446 of the Municipal Act.
12. Prior to recovering remedial costs under Section 10, the Town may invoice owners requesting voluntary payment of those remedial costs.
13. Where an Officer has reasonable grounds to believe that an offence has been committed by a person, the Officer may require the name, address and proof of identity of that person and the person shall supply the required information.
14. No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a lawful power or performing a lawful duty under this by-law.
15. 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.
16. 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 Schedule "B" attached to this By-law.

SEVERABILITY

17. 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.

FORCE AND EFFECT

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

REPEAL

19. Upon the date the set fines are approved by the Chief Justice of the Ontario Court of Justice, By-law No. 2005-208 and any amendments thereto shall be repealed.

SHORT TITLE

20. This By-law may be cited as the "Burning Control By-law".

READ A FIRST TIME ON THE 16th DAY OF FEBRUARY 2021.

Mayor

Clerk

READ A SECOND AND THIRD TIME AND FINALLY PASSED THIS 16th DAY OF MARCH 2021.

Mayor

Clerk

SCHEDULE "A"
TO BY-LAW NO. 2021-16
URBAN CENTRE

