

THE CORPORATION OF THE TOWN OF SMOOTH ROCK FALLS

BY-LAW NUMBER 2011-12

BEING A BY-LAW TO REGULATE OPEN AIR BURNING
AND THE USAGE OF OUTDOOR WOOD BURNING
APPLIANCES

WHEREAS Section 9 of the *Municipal Act*, S.O. 2001, c. 25, provided that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Act;

AND WHEREAS section 10 of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended, provides that a municipality may pass by-laws respecting:

- Economic, social and environmental well-being of the municipality;
- Health safety and well-being of persons;
- Protection of persons and property;

AND WHEREAS section 125 of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended, provides that a municipality may regulate the use and installation of heating and cooking appliances, and the storage of fuel for use in heating and cooking appliances;

AND WHEREAS section 128 of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended, provides that a municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of council, are or could become or cause public nuisances, and the opinion of Council if arrived at in good faith is not subject to review by any court;

AND WHEREAS Council considers excessive smoke, smell, airborne sparks, or embers as having the potential to create negative health effects on neighbouring residents, increase fire hazards and infringe the enjoyment of the use of neighbouring properties and generating false fire alarms and could become or cause public nuisances;

AND WHEREAS Section 129 of the *Municipal Act*, S.O. 2001, c. 25, as amended, provides that a municipality may prohibit and regulate with respect to odour, dust and outdoor illumination, and may prohibit those matters unless a permit is obtained from the municipality for those matters and may impose conditions for obtaining, continuing to hold and renewing the permit;

AND WHEREAS Section 391 of the *Municipal Act*, S.O. 2001, provides that municipalities 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 section 446 of the *Municipal Act*, S.O. 2001, provides that if a municipality has the authority under this or any other Act or under a by-law under this or any other Act to direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person's expense. And that for the purposes the municipality may enter upon land at any reasonable time. And that municipality may recover the costs of doing a matter or thing from the person directed or required to do it by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes.

AND WHEREAS section 2.6.3.4 of the *Ontario Fire Code*, Ontario Regulation 388/97, prohibits open air burning unless approved, or unless such burning consists of a small, confined fire, supervised at all times, and used to cook food on a grill or a barbecue;

AND WHEREAS the *Fire Prevention and Protection Act*, 1997, S.O. 1997, c. 4, as amended, provides in subsection 7.1(1) that a council of a municipality may pass by-laws regulating fire prevention, including the prevention of spreading of fires and regulating the setting of open air fires, including establishing the times during which open air fires may be set; and in subsection 7.1(4) that a municipality may appoint an officer to enter upon land and into structures at any reasonable time to inspect the land and structures to determine whether by-laws enacted in accordance with this section are being complied with;

NOW THEREFORE the Council of the Corporation of the Town of Smooth Rock Falls enacts as follows:

1. DEFINITIONS

For the purpose of this by-law the following definitions shall apply;

“Applicant” means the person, organization, company or group that makes application for permission to hold an open air burning and includes such persons who contact the Fire Chief with notification of an intention to hold an open air burning of brush.

“Barbeque” means appliances including a structure designed and intended solely for the cooking of food in the open air, and other similar commercially manufactured devices designed and intended solely for the cooking of food in the open air, but does not include devices predominantly designed for personal warmth, fire pits or campfires.

“Fire Chief” means the Fire Chief for the Smooth Rock Falls Fire Department or such designate appointed by the Fire Chief, acting under the Fire Chiefs direction.

“Fire Department” means the Smooth Rock Falls Fire Department and members thereof.

“Fire Season” means April 1 to October 31 of each year;

“Occupant” means the person having effective control over or apparent possession of any property or the relevant portion thereof, and for the purposes of this by-law, a mortgagee-in-possession of property, or a receiver and manager, personal representative or trustee in bankruptcy who has taken possession of that property shall be deemed to have effective control over the property

“Open Air” means any open place, yard, field or construction area which is not enclosed by a building or structure.

“Open Air Burning” means the burning of any material set outdoors, including without limiting the generality of the foregoing, wood, cardboard, brush or garden waste where the flame is not wholly contained and is, thereby, open to the air.

“Owner” means the registered owner or any person, firm or corporation having control over, or possession, of any portion of the building or property under consideration and includes the persons in the building or property.

“Person” means an individual, association, business, a partnership, or a corporation.

“Property” means any public or private land, building, structure or other real property within the Municipality.

“Town” means The Corporation of the Town of Smooth Rock Falls.

2. Permit Procedure

2.1 Any person eighteen years of age or over, who is or who has been authorized in writing by the owner or occupant of a property within the municipality, may apply for a Permit to conduct an open air burning.

2.2 The person to whom a Permit is granted shall be present in person at all times during which the burn is being conducted and cleaned up, and shall be responsible for the manner in which the same are carried out.

2.3 The Fire Department shall not issue a Permit under this section where it is of the opinion that the proposed site at which the open air burning is to be conducted is not suitable for that purpose.

2.4 No Permit shall be issued unless the Fire Department has carried out an inspection of the proposed site to determine whether the burn can be safely conducted without nuisance or risk to neighbouring properties, the proof of which shall lie on the applicant.

2.5 An applicant for a Permit shall provide, together with his or her application,

- such information or authorization as is required under this By-law;
- where required by the municipality, evidence of insurance on such terms and in such amount as the municipality may prescribe from time to time;
- a description of the site to be used for the open air burning, sufficient to identify each site for which application is made;
- such further information as the Fire Department may reasonably require.

2.6 A Permit issued under this section is valid on the date of issue and for the balance of the calendar year in which the permit is issued and is subject to fees set out in the attached fee schedule (schedule A).

- 2.7 A Permit issued under this section may be made subject to such terms and conditions as the Fire Department may consider to be necessary in the interests of public safety, or to minimize inconvenience to the general public, or advisable in the circumstances or to give effect to the objects of this By-law, and every Permit holder shall comply with those terms and conditions.
- 2.9 From time to time, the Fire Chief may transmit guidelines respecting the conduct of open air burning within the municipality, and where such guidelines are circulated;
 - (a) all such guidelines shall be deemed to constitute terms and conditions applicable to any Permit subsequently issued, so long as they remain in force;
 - (b) the Fire Department shall give a copy of the current guidelines to any person to whom a Permit is issued under this By-law.
- 2.10 A Permit issued under this By-law is not transferable.
- 2.11 Where any holder of a Permit fails or refuses to comply with a term or condition to which the Permit is subject, the Fire Department shall immediately revoke the Permit and send a written notice of that revocation to the Permit holder and of the occupant of the site at which the fire was to be conducted, if not the same person.
- 2.12 The Fire Department may require an applicant for a Permit under this By-law to provide such information as the Fire Chief considers necessary or advisable in his or her reasonable discretion to allow the Fire Department to make an informed decision as to whether or not to grant a Permit under this By-law, and where that information is not provided in the form and manner required, the Fire Department may refuse to issue that Permit.

3. Conduct of Open air burning

- 3.1 All persons setting an open-air fire in the Municipality must first apply for a fire burning permit. Application forms are available at the Municipal Offices and through the Fire Department.
- 3.2 Every person to whom a Permit is issued under section 3.1 shall:
 - (a) produce the Permit on demand to persons authorized to enforce this By-law;
 - (b) permit the inspection by the Fire Department of any site where the fire is being, is proposed to be, or has been conducted;
 - (c) comply with all guidelines governing the conduct of the open air burning, and such directions as may be given by a member of the Fire Department with respect to the fire.
- 3.3 Every person to whom a Permit is issued under this section shall, immediately after the fire is conducted and extinguished, carry out a site inspection and shall:
 - (a) remove all unburned flammable material from the site of the fire;
 - (b) gather remove all ash and debris remaining into a fire resistant receptacle;
 - (c) return the site to the condition it was in prior to the conduct of the fire.
- 3.4 So long as an open air burning is burning, the site of that fire shall be kept under continual surveillance by a person eighteen years of age or older, until the final site inspection has been completed by Permit-holder identified under section 3.2.
- 3.5 No person shall conduct an open air burning in a manner that creates a nuisance, taking into account all associated noise, smoke, sparks and other dangers relating to the spread of fire, the risk of explosion, and risk of death, injury and damage to property inherent in the conduct of a fire.
- 3.6 A person who conducts an open air burning shall use reasonable care to ensure that the site of the fire is not accessible to children.
- 3.7 Open air burning is not permitted when the wind speed exceeds 30 kilometres per hour, and any other steps shall be taken as may be reasonably necessary to prevent the fire from getting beyond control or causing damage or becoming a danger to life and/or property;
- 3.8 Smoke may not obscure roads and homes; sparks may not travel to nearby homes.
- 3.9 Open air burning is permitted at ground level only.
- 3.10 The person tending the fire has a charged water hose and/or tools or water adequate to contain the fire within the fire site;

- 3.11 Open Air Fires are not permitted if the Chief Fire Official has declared a High or Extreme Fire Hazard;
- 3.12 Where a Provincial or Federal ministry issues restrictions or total bans on open air burning, these directives shall supersede this by-law until such time as the restriction or ban has been lifted by the appropriate authorities.
- 3.13 **Recreational Burning Requirements**
No person shall start or tend a fire outdoors unless all of the following conditions are met:
- (a) the person is burning commercially produced charcoal, briquettes, clean wood, brush, leaves or discarded wood by-products **not including** pressure treated wood or creosote treated wood, may be burned;
 - (b) the material is burned in a single pile that is less than 2 meters in diameter and less than 2 meters high;
 - (c) open burnings shall be confined to open burning devices or to a pit no larger than 2 feet by 2 feet in size and no more than 8 inches of the containment area shall be above grade with a maximum depth of 16 inches. The fire shall be totally confined within the open burning device or pit at all times;
 - (d) the fire is started not earlier than 10:00 a.m. in the morning and extinguished not later than 1:00 a.m. in the evening or earlier;
 - (e) all fire locations shall be first approved by the Fire Chief or his designate who shall ensure appropriate distance;
 - from any property line
 - from the principle residence and principle residence on an adjacent property.
 - from any accessory building.
 - (f) fires will only be permitted in the rear yard.
 - (g) fuel for burning shall not be stored closer than 10 feet from any appliance.
- 3.14 **Open Air Burning – Land Clearing**
No person shall start or tend a fire outdoors unless all of the following conditions are met:
- (a) the Fire Department is to be notified one week prior to burning. Please call 705-338-2717.
 - (b) burning is to be between 10 a.m. and 9 p.m.
 - (c) Dry brush is the only material that can be burned.
 - (d) Burning to be at least 45 metres from adjacent property, structures, roads, highway or wooded areas and Steps must be taken to ensure that smoke caused by an open burn does not have a negative impact.
 - (e) The fire must not exceed 3 metres in length, by 3 metres in width, by 2 metres in height.
 - (f) Burning to be supervised by an adult AT ALL TIMES.
 - (g) Fire must be completely extinguished prior to burn site being vacated.
 - (h) Any other steps shall be taken as may be reasonably necessary to prevent the fire from getting beyond control or causing damage or becoming a danger to life and/or property.
- 3.15 **Special Events**
All persons seeking permission to hold a special event involving an open air burning shall apply for a permit at least one week prior to the proposed date of the event which must be approved by the Fire Chief or his designate. Registered not-for-profit charitable organizations may make application to the Fire Chief requesting a permit fee exemption. Prior to granting a permit to hold an open air burning for a special event, the Fire Chief shall give consideration to the proposed location of the event, size of the fire, safety measures, supervision arrangements, the time of year, the time of day, and the anticipated weather conditions. The Fire Chief may attach such conditions as deemed appropriate to any permit granted for an open air burning at a special event. The Fire Chief may withdraw permission for and/or stop an open air burning if, in the opinion, the fire presents a fire hazard, smoke produced by the fire is causing visibility concerns on roads in the area of the burn, the weather has deteriorated and has become unfavourable for an open air burning, conditions attached to the granting of permission are not being adhered to, or if this by-law is being contravened.

- 3.1.6 All persons setting a fire in the Municipality shall be responsible for any damage to property or injury to persons occasioned by the said fire and be liable for costs incurred by the fire department, including personnel, equipment and apparatus necessary and called in to extinguish the said fire.
- 3.1.7 Notwithstanding any provisions herein, no person shall set or maintain a fire:
- (a) 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;
 - (b) on any highway, or municipal property within the Municipality;
 - (c) on any asphalt surface;
 - (d) in any park owned or operated by the Municipality without the written permission of the Municipality;
- 3.18 **Exception - Fire Department**
The Fire Department shall be exempt from the provisions of this by-law with respect to open air burnings set for the purposes of educating and training individuals.

4. Offences

- 4.1 No person shall carry out, or permit a person to carry out on property of which he or she is the owner or occupant, any open air burning unless that person is the holder of a current Permit authorizing that burning to take place.
- 4.2 Section 4.1 does not apply where the open air burning consists of a small, confined fire, supervised at all times, and used to cook food on a grill or a barbecue.
- 4.3 No person shall carry out open air burning in an unsafe manner, or in a manner inconsistent with any terms and conditions applicable to the Permit issued under this By-law.
- 4.4 Every person who contravenes any provision of this By-law is guilty of an offence, and upon conviction, is liable to the penalties specified by Section 61 of the *Provincial Offences Act, R.S.O. 1990, Chapter P.33*.

5. Enforcement

- 5.1 The Fire Chief, the Chief Fire Prevention Officer, and every member of the Fire Department designated as an Assistant to the Fire Marshall are authorized to enforce this by-law.
- 5.2 From time to time, the Fire Chief may approve all such forms as may be contemplated under this By-law, including forms of Permit and applications for Permit, and an applicant for any Permit under this By-law shall use the appropriate form of application and provide all information required thereon.
- 5.3 Should the Fire Department be dispatched to a complaint regarding public safety due to fire hazard, the Fire Department will have the discretion to determine compliance with this by-law and this decision shall be final. (charges may be laid in accordance with the set fine schedule attached to this by-law).
- 5.4 **Order to Extinguish Unapproved Fires**
- (a) When made aware of a prohibited open air burning not authorized under this by-law, the Fire Chief shall order the land owner or occupant to immediately extinguish the fire.
 - (b) The owner or occupant of land on which a prohibited open air burning is located, shall immediately extinguish the fire upon being ordered to do so by the Fire Chief.
 - (c) Should any land owner or occupant fail to extinguish a prohibited open air burning when ordered to do so by the Fire Chief, the Fire Chief may take action to have the fire extinguished, and the person who owns or occupies the land on which the open air burning is located shall be responsible for any and all costs incurred by the Fire Department in its efforts to extinguish the fire in accordance with the set fine schedule attached to this by-law.
 - (d) On the third attendance in any calendar year to a particular municipal address, the Fire Department shall immediately take whatever steps are

necessary to extinguish a fire that is an open air burning found not to be in compliance with this by-law. The person who owns or occupies the land on which the open air burning is located shall be responsible for any and all costs incurred by the Fire Department in its efforts to extinguish the fire in accordance with the fees set out in the set fine schedule attached to this by-law.

5.5 In addition to any fines or penalties established elsewhere in accordance with this By-law, the person or persons responsible for setting or maintaining, or permitting to be set or maintained, an Open Air Fire shall be liable to the Town by way of a fee or charge, as calculated in accordance with Schedule 'A' to this By-law, on account of those costs and expenses incurred by the Town in:

(a) Investigating and responding to a complaint made to the Town or the Fire Department by any person acting reasonably and in good faith, which complaint results from setting and/or maintenance of the Open Air Fire and, in the opinion of the Chief Fire Official or the Chief Fire Official's designate, smoke or emissions from such Open Air Fire were causing or had caused actual discomfort to the complainant; and

(b) The dispatching of Fire Department vehicles and fire-fighting personnel for the purpose of controlling or extinguishing the Open Air Fire.

5.6 Collection of Costs

The Town of Smooth Rock Falls has the right to collect any unpaid costs as authorized by this by-law by adding such charges to the tax roll where they may be collected in a like manner as municipal taxes in accordance with section 427 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended.

6. Severability

If any section, clause or provision of this By-Law is for any reason declared to be invalid by a court of competent jurisdiction, the same shall not affect the validity of the By-Law as a whole or in part thereof, other than the section, clause or provision so declared to be invalid and it is hereby declared to be the intention that all the remaining sections, clauses or provisions of this By-Law shall remain in full force and effect until repealed.

7. That Schedule "A" and Schedule "B" form part of this By-Law

8. That By-Law #519 be repealed.

9. This By-Law shall come into force and take effect upon final passing.

READ a first and second time this 17th day of May, 2011

MAYOR

CLERK

READ a third time and finally passed this 17th day of May, 2011

MAYOR

CLERK