

CORPORATION OF THE VILLAGE OF BURK'S FALLS

BY-LAW NO. 14-2017

BEING A BY-LAW TO REGULATE AND PRECRIBE OPEN AIR BURNING

WHEREAS pursuant to section 7.1 of the Fire Protection and Prevention Act, 1997, S.O. 1997, c. 4, as amended, Council may pass by-laws to regulate the setting of open air fires, including establishing the times during which open air fires may be set with the Municipality of the Village of Burk's Falls; and

AND WHEREAS pursuant to section 128 of the Municipal Act, 2001, c.25, s. 128 (1), as amended, permits a local municipality to 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 WHEREAS: pursuant to Part XII, section 391 of the Municipal Act, 2001, S.O. 2001, c. 25 without limiting sections 9, 10 and 11, those sections authorize a municipality to impose fees or charges on persons,

- (a) for services or activities provided or done by or on behalf of it;
- (b) for costs payable by it for services or activities provided or done by or on behalf of any other municipality or any local board; and
- (c) for the use of its property including property under its control. 2006, c. 32, Sched. A, s. 163 (1);

AND WHEREAS: pursuant to Part XIV, section 429, subject to subsection (4), of the Municipal Act, 2001, S.O. 2001, c.25, a municipality may establish a system of fines for offences under a by-law of the municipality passed under this Act. 2006, c. 32, Sched. A, s. 184;

AND WHEREAS: pursuant to Part XIV, section 446 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. 2006, c. 32, Sched. A, s. 184.

- a) For the purposes of subsection (1), the municipality may enter upon land at any reasonable time. 2006, c. 32, Sched. A, s. 184.
- b) The municipality may recover the costs of doing a matter or thing under subsection (1) 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. 2006, c. 32, Sched. A, s. 184.

AND WHEREAS the Council of The Corporation of the Village of Burk's Falls deems it expedient to regulate the setting of open fires, including establishing the times during which open-air fires may be set;

NOW THEREFORE the Council of the Corporation of the Village of Burk's Falls hereby enacts as follows:

1. ADMINISTRATION AND INTERPRETATION

Short Title

1. This By-law may be referred to as "Open Air By-law".

Administration

- 1.1 This By-law will be administered by the Clerk and may be enforced by the Officers for the Village of Burk's Falls.

DEFINITIONS:

- a) **"Applicant"** means a person, organization, company, or group that makes application to the Chief Fire Official for permission to set or permit an open-air fire;
- b) **"Barbeque"** means an appliance or structure designed and intended solely for the cooking of food in the open-air, including a hibachi, and any other similar commercially manufactured device designed and intended solely for the cooking of food in the open

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- air, but does not include devices predominantly designed for personal warmth, fire pits or campfires;
- c) **"Fire Department"** Means the Burk's Falls and District Fire Department.
 - d) **"By-Law Enforcement Officer"** means the Village's By-Law Enforcement Officer and/or his or her Designate, and includes any other employee of the Village designated by Council to carry out duties specified in this By-law;
 - e) **"Chief Fire Official"** means the Fire Chief and/or his or her Designate;
 - f) **"Designate"** means any member of the Burk's Falls & District Fire Department.
 - g) **"Dwelling Unit"** means a building, structure or suite operated as a housekeeping unit, used or intended to be used as a domicile by one or more persons and usually containing cooking, eating, living, sleeping and sanitary facilities;
 - h) **"Fire site/Pit"** means a fire burn area specifically designed for open-air fire;
 - i) **"Flying Lanterns"** means a small hot air balloon or other device designed to carry an open flame as an airborne light, also known as Sky lanterns, Chinese lanterns, Wish lantern, sky candle and Fire Balloon.
 - j) **"Yard Incinerator"** means a metal container similar in size to a 45-gallon metal drum for burning garden waste materials ONLY.
 - k) **"Non-recreational Open-air fire"** means any open-air fire that is not recreational;
 - l) **"Open air fire"** means the burning of any material outside of a building, 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;
 - m) **"Open air fire Device"** means any 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;
 - n) **"Permit Holder"** means a person, organization, company, or group that makes application to the Chief Fire Official and has been granted permission to set an open-air fire;
 - o) **"Owner"** means the registered owner of the land on which open air fire occurs, and includes a trustee acting on behalf of the registered owner, the estate of a registered owner and a person with a leasehold interest in the land;
 - p) **"Recreational Open Air fire"** means a small, controlled, and contained fire for the purpose of cooking, warmth, or personal enjoyment;
 - q) **"Structure"** means a building occupying an area consisting of a wall(s), Pillars, and a roof.
 - r) **"Village"** means the Corporation of the Village of Burk's Falls;
 - s) **"Trailer & Campground Parks"** means an area with special amenities where tents are set up for camping and where trailers are parked and used for recreational or as permanent homes.
 - t) **"Yard Waste"** includes but is not limited to grass, leaves, trees, brush trimmings, spent flowers, garden plants, weeds, pine needles, hay, straw and sawdust.

2 GENERAL PROHIBITIONS

- 2.1 No person shall set or permit an open-air fire in the Village between the hours of 10am and 6pm during the months of April, May, June, July, August, September, and October in each

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year, except as permitted under Parts 3 and 4 of this By-law.

2.2 No person shall set or permit an open-air fire in the Village at any other time except as permitted under Parts 3, 4, 5 and 6 of this By-law.

2.3 Notwithstanding the exceptions set out in Parts 3, 4, 5 and 6 of this By-law, the Chief Fire Official may declare a total ban against open-air fire when atmospheric conditions or local circumstances make such fires hazardous. Bans against open-air fire shall be advertised through the local media and fire rated signs throughout the fire service area.

2.4 No person in the Village shall set or permit a flying lantern or any other device designed to carry an open flame as an airborne light, also known as Sky Lanterns, Chinese Lanterns, Wish Lantern, Sky Candle and Fire Balloon.

3 GENERAL EXEMPTIONS

3.1 Barbecues used to cook food shall be exempt from this By-law provided the following conditions are followed:

- (a) the barbeque shall be supervised at all times;
- (b) the barbeque shall be placed on non-flammable material; and
- (c) the fuel used is a commercially produced charcoal, briquette, or a flammable liquid commercially produced for the purpose of cooking, such as natural gas and propane gas.

3.2 The Fire Department shall be exempt from the provisions of this By-law with respect to open-air fire set or permitted for the purpose of educating and training individuals.

3.3 Recreational campfires for cooking and warmth are exempt from this by-law providing the following conditions are followed:

- (a) the recreational camp fire shall be supervised at all times;
- (b) Every owner shall ensure that all recreational open-air fire on his or her land complies with Part 5, sections 5.1 through 5.12 of this by-law.

4 PERMITS

4.1 Notwithstanding any other provisions of this By-law, the Chief Fire Official may issue a fire permit to an applicant and approve any open-air fire subject to the fire being adequately supervised, and to any special conditions, the Chief Fire Official may direct.

4.2 An applicant setting or permitting an open-air fire authorized by a permit issued under this By-law shall comply with all conditions of such permit and the provisions of this By-law.

4.3 A permit is required:

- (a) if the pile is greater than two meters in diameter OR two meters in height;
- (b) if the fire is part of a demolition permit issued by the building department or removal of a structure, and
- (c) for fire during prohibited times.

4.4 A farmer who intends to set or permit an open air fire for the disposal of vegetable matter or vegetation on farm lands that is a normal farm practice within the meaning of the Farming and Food Production Protection Act, S.O. 1998, c. 1 shall be issued a permit for the specific dates of the proposed fire. The conditions of such a permit will require that the farmer setting or permitting the fire:

- (a) set or permit it in accordance with the Outdoor Fires Regulation, O. Reg. 207/96 s amended;
- (b) comply with any conditions attached to the permit; and
- (c) notify the Fire Department at the start of each day on which the proposed fire is being set or permitted, if it is a multi-day permit.

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- 4.5 The Chief Fire Official may withdraw permission for and/or stop an open air fire if, in his or her opinion,
- (a) the fire presents a fire hazard;
 - (b) smoke produced by the fire is causing visibility concerns on roads in the area of the burn;
 - (c) the weather has deteriorated and has become unfavorable for an open air fire, or;
 - (d) conditions attached to the granting of permission are not being adhered to, or if this By-law is being contravened.
- 4.6 Upon the notification of the withdrawal of permission by the Chief Fire Official or Designate, the permit holder or the owner shall immediately extinguish the fire. If the permit holder or the owner fails to immediately extinguish the fire upon such notification, the Chief Fire Official or Designate may take action to have the fire extinguished, and the permit holder and/or the owner may be held liable for any and all costs incurred by the Fire Department to extinguish the fire. Where applicable, such costs shall be calculated in accordance with the Fire Fees By-law. In addition to the fire department costs, fines can also be laid against the Permit Holder, Owner, or any person setting the fire.
- ### 5 RECREATIONAL OPEN AIR FIRE
- 5.1 Every person setting or permitting a recreational open air fire shall confine the fire to either an open air fire device or to a fire pit with a burn area no larger than two (2) feet (61 cm) by two (2) feet (61 cm) or 8 cubic feet (0.26 cubic meters) in size.
- 5.2 No person shall set or permit any recreational open-air fire in which any kitchen garbage, household waste, construction materials, or materials made of or containing rubber, plastics, treated wood or tar are burned.
- 5.3 Every person setting or permitting a recreational open-air fire shall take 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. (size of fire and smoke)
- 5.4 No person setting or permitting a recreational open air fire shall burn materials other than commercially produced charcoal, briquettes or clean, dry, seasoned wood.
- 5.5 No person setting or permitting a recreational open air fire shall burn wood having a dimension greater than the size of the open air fire device or burn pit. All such fires shall be totally confined within the open fire device or fire pit or site at all times.
- 5.6 Every person setting or permitting a recreational open-air fire shall confine the fire pit or site to a location that provides for a minimum distance of 6 meters (19.5 feet) in all directions from adjacent properties. **Trailer and Campground Parks** are exempt from these requirements.
- 5.7 Every person setting or permitting a recreational open-air fire shall confine the fire to a location that provides for a minimum distance of 6 meters (19.5 feet) from combustible structures or objects. **Trailer and Campground Parks** are exempt from these requirements.
- 5.8 Every person setting or permitting a recreational open-air fire shall have immediately available for use an effective extinguishing agent or device of sufficient size and with the capability of extinguishing the fire.
- 5.9 Every person setting or permitting a recreational open-air fire shall ensure the fire site is attended, controlled, and supervised at all times by a competent adult and that the fire is completely extinguished before the fire site is vacated.
- 5.10 No person shall set or permit a recreational open-air fire when the wind speed exceeds 30 kilometers per hour, or at times when a smog alert for an area including the Village has been declared by the Ministry of the Environment for Ontario.

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- 5.11 Every person setting or permitting a recreational open air fire shall take any other precautions as may be reasonably necessary to prevent the fire from getting beyond control, causing damage, or becoming a danger to life and/or property. (Adequate water, shovels, rakes or any other machinery that can assist in containing a fire, should it beyond its origin)
- 5.12 If the Fire Department attends at a recreational open-air fire to respond to public safety concerns due to fire hazard, whether in response to a complaint or otherwise, the Chief Fire Official or Designate has the discretion to order the fire extinguished and/or brought into compliance with this By-law and this order shall be final. Any person setting or permitting such fire, the permit holder and or owner shall comply with the order of the Chief Fire Official. If the permit holder or the owner fails to comply as directed, the Chief Fire Official may take action to have the fire extinguished or otherwise brought into compliance, and that person and/or the owner may be held liable for any and all costs incurred by the Fire Department to extinguish the fire or bring it into compliance. Where applicable, such costs shall be calculated in accordance with the Fire Fees By-law. In addition to the fire department costs, fines can also be laid against the Permit Holder, Owner or any person setting the fire.
- 5.13 No person shall set or permit a fire in open air or in a yard incinerator if the Chief Fire Official or the Ministry of Natural Resources has declared a total fire ban due to atmospheric conditions or local circumstances make such fires hazardous.
- 5.14 Every permit holder and owner shall ensure that all recreational open-air fire on his or her land complies with sections 5.1 through 5.12 of this By-law.
- 6 NON-RECREATIONAL OPEN AIR FIRE**
- 6.1 No person shall set or permit any non-recreational open-air fire if the burn pile is greater than two (2) meters (6.5 ft.) in diameter and two (2) meters (6.5 ft.) in height unless permission from the Chief Fire Official has been granted.
- 6.2 No person shall set or permit any non-recreational open-air fire in which any kitchen garbage, construction materials, or materials made of or containing rubber, plastics, treated or tar are burned.
- 6.3 Every person setting or permitting a non-recreational open-air fire shall burn only clean, dry seasoned wood or yard waste as defined in this By-law.
- 6.4 Every person setting or permitting a non-recreational open-air fire shall confine the fire to a location that provides for a minimum distance of (25) twenty meters (82 ft.) from any adjacent dwelling units.
- 6.5 Every person setting or permitting a non-recreational open-air fire shall take 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.
- 6.6 Every person setting or permitting a non-recreational open-air fire shall ensure the fire is attended, controlled and supervised at all times by a competent adult and that the fire is completely extinguished before the open air burn site is vacated.
- 6.7 Every person setting or permitting a non-recreational open-air fire shall have immediately available for use an effective extinguishing agent or device of sufficient size and with the capability of extinguishing the fire.
- 6.8 No person shall set or permit a non-recreational open-air fire when the wind speed exceeds 30 kilometers per hour, or at times when a smog alert for an area including the Village has been declared by the Ministry of the Environment for Ontario.
- 6.9 Every person setting or permitting a non-recreational open-air fire shall take any other precautions as may be reasonably necessary to prevent the fire from getting beyond control, causing damage, or becoming a danger to life and/or property. (Adequate water, shovels, rakes or any other machinery that can assist in containing a fire, should it beyond its origin)

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- 6.10 If the Fire Department attends a non-recreational open-air fire to respond to public safety concerns due to fire hazard, whether in response to a complaint or otherwise, the Chief Fire Official or Designate has the discretion to order the fire extinguished and/or brought into compliance with this By-law and this order shall be final. The permit holder setting or permitting such fire and the owner shall comply with the order of the Chief Fire Official or Designate. If the permit holder or permitting the fire or the owner fails to comply as directed, the Chief Fire Official or Designate may take action to have the fire extinguished or otherwise brought into compliance, and the permit holder and/or the owner may be held liable for any and all costs incurred by the Fire Department to extinguish the fire or bring it into compliance. Where applicable, such costs shall be calculated in accordance with the Fire Fees By-law. In addition to the fire department costs, fines can also be laid against the permit holder, Owner or any person setting the fire.
- 6.11 No person shall set or permit a fire in open-air or in a yard incinerator if the Chief Fire Official or the Ministry of Natural Resources has declared a total fire ban due to atmospheric conditions; or local circumstances make such fires hazardous
- 6.12 Every permit holder and owner shall ensure that all non-recreational open-air fire on their land complies with sections 6.1 through 6.11 of this By-law.

7 RESPONSE TO COMPLAINTS

- 7.1 The Chief Fire Official, Designate or the By-Law Enforcement Officer may give an owner, permit holder, or a person setting or permitting an open-air fire a verbal notice of remedy and require immediate action or other means of remediation, where in the sole discretion of either there is an immediate risk to public health or safety.
- 7.2 When the Fire Department is dispatched to a fire due to a fire hazard created by an open-air fire, whether upon a complaint or notification of a prohibited open air fire not authorized under this By-law or otherwise, the Chief Fire Official or Designate can order the owner, permit holder or person setting or permitting the fire to immediately extinguish the fire.
- 7.3 Any permit holder, owner or person setting or permitting an open-air fire shall extinguish the fire when ordered to do so by the Chief Fire Official or Designate. If such owner or person fails to immediately extinguish the fire upon such notification, the Chief Fire Official or Designate may take action to have the fire extinguished, and the permit holder, owner and/or the person setting or permitting the fire may be held liable for any and all costs incurred by the Fire Department to extinguish the fire. Where applicable, such costs shall be calculated in accordance with the Fire Fees By-law. In addition to the fire department costs, fines can also be laid against the permit holder, owner or any person setting the fire.

8 RIGHTS OF ENTRY

- 8.1 The Chief Fire Official, Designate or the By-Law Enforcement Officer may enter upon lands or into structures at any reasonable time to inspect the land to determine whether an open air fire is being set or permitted in accordance with this By-law.
- 8.2 The Chief Fire Official, Designate or the By-Law Enforcement Officer may enter upon lands or into structures at any reasonable time to inspect barbecues, fire pits/sites or open air fire devices that are being used or can be used for open air fire to determine whether such things are in compliance with this By-law.
- 8.3 The Chief Fire Official, Designate or the By-Law Enforcement Officer may enter upon lands or into structures at any reasonable time to direct or require that a matter or thing be done, and in default of that matter or thing being done, to do such matter or thing in accordance with this By-law.
- 8.4 A person exercising a power of entry on behalf of the Village under this By-law may be accompanied by any person under his or her direction.
- 8.5 A person exercising a power of entry on behalf of the Village under this By-Law must, on request, display or produce proper identification.

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9 REMEDIATION

9.1 The Chief Fire Official or Designate Municipal By-law Enforcement Officer is authorized to order any person to extinguish any fire or to cause such a fire to be extinguished when there is a breach of any of the provisions of this By-law or where, in his or her sole discretion, there is a danger of such fire spreading or otherwise endangering life or property and the permit holder, owner or person setting the fire shall comply with any such order.

9.2 Where an owner is in default of doing any matter or thing directed or required to be done under this By-law, The Chief Fire Official, Designate or the Municipal By-law Enforcement Officer may direct such matter or thing to be done at the owner's expense.

9.3 The Village may recover the remedial action costs incurred under sections 4.5, 5.10, 6.9, 7.3 or 9.2 by action, or by adding them to the tax roll and collecting them in the same manner as taxes in accordance with section 446 of the Municipal Act.

9.4 Prior to recovering remedial costs under section 9.3, the Village may invoice owners requesting voluntary payment of those remedial costs.

10 OFFENCES AND PENALTIES

10.1 Every person who contravenes any of the provisions of this By-law is guilty of an offence and is subject to the set fines.

10.2 Every person who is convicted of an offence under this By-law shall be subject to a fine of not more than Five Thousand Dollars (\$5,000.00) for each offence. Such fines shall be recoverable under the Provincial Offences Act, R.S.O. 1990, c. P.22, as amended.

10.3 The provisions of this By-law may be enforced pursuant to the provisions of the Provincial Offences Act, R.S.O. 1990, c. P.33 as amended, and where any provision of this By-law is contravened and a conviction entered, in addition to any other remedy and to any other penalty the person convicted may also be prohibited from continuing or repeating the offence in accordance with the provisions of section 442 of the Municipal Act.

11 OBSTRUCTION

11.1 No person shall hinder or obstruct, or attempt to hinder or obstruct, any person exercising a power or performing a duty under this By-law.

11.2 Any person who has been alleged to have contravened any of the provisions of this By-law, shall identify themselves to the Chief Fire Official, Designate or By-Law Enforcement Officer upon request, failure to do so shall be deemed to have obstructed or hindered the Chief Fire Official, Designate or By-Law Enforcement Officer in the execution of his/her duties.

12 Village NOT LIABLE

12.1 The Village assumes no liability for property damage or personal injury resulting from remedial action or remedial work undertaken with respect to any person or property that is subject of this By-law.

13 VALIDITY AND SEVERABILITY

13.1 Should any section, subsection, clause, paragraph, or provision of this By-law be declared by a Court of competent jurisdiction to be invalid or unenforceable, the same shall not affect the validity of the enforceability of any other provision of this By-law, or of the By-law as a whole.

14 SEPARATE OFFENCE

14.1 For the purpose of this By-law, each day of a continued offence shall be deemed to be a separate offence.

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15 SHORT TITLE

15.1 The short title of this By-law is the Open-Air Fire By-law.

16 REPEALED

16.1 By-law No. 2004-12 is hereby repealed.

17 FORCE AND EFFECT

This By-law comes into effect on the date of its passing.

18 SCHEDULE 'A'

Part 1 Offences short form wording and set fines for such offences.

AS READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED IN OPEN COUNCIL THIS 25th DAY OF JULY 2017.

Seal


REEVE CATHY \$TILL


CLERK NICKY KUNKEL

CORPORATION OF THE VILLAGE OF BURK'S FALLS

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PART 1 PROVINCIAL OFFENCES ACT

SCHEDULE "A"

Item #	Short Form Wording	Provision Creating Or Defining Others	Set Fine
1	Set or permit open air fire during prohibited hours	2.1	\$300.00
2	Set or permit open air fire contrary to general prohibition	2.2	\$300.00
3	Set or permit a flying lantern	2.4	\$300.00
4	Failure to comply with permit conditions	4.2	\$300.00
5	Failure to extinguish fire otherwise allowed under permit when ordered to do so	4.5	\$300.00
6	Recreational Fire in fire pit larger than permitted	5.1	\$300.00
7	Recreational Fire adversely affecting other persons	5.2	\$300.00
8	Recreational Fire of materials not permitted	5.3	\$300.00
9	Recreational Fire of oversized wood	5.4	\$300.00
10	Recreational Fire within 6 meters (19.5 ft.) of Adjacent Property	5.5	\$300.00
11	Recreational Fire within 6 meters (19.5 ft.) of combustible structure	5.6	\$300.00
12	Recreational Fire without extinguishing provisions and devices	5.7	\$300.00
13	Failure to supervise recreational Fire	5.8	\$300.00
14	Recreational Fire during high winds or during smog alert	5.9	\$300.00
15	Failure to take reasonable precautions during recreational Fire	5.10	\$300.00
16	Failure to extinguish fire or comply when ordered during recreational Fire	5.11	\$300.00
17	Failure by owner to ensure compliance during recreational Fire	5.12	\$300.00
18	Non-recreational Fire pile larger than permitted	6.1	\$300.00
19	Non-recreational Fire of materials not permitted	6.2	\$300.00
20	Non-recreational Fire of materials other than dry wood or permitted yard waste	6.3	\$300.00
21	Non-recreational Fire adversely affecting other persons	6.5	\$300.00
22	Failure to supervise non-recreational Fire	6.6	\$300.00
23	Non-recreational Fire during high winds or smog alert	6.8	\$300.00
24	Failure to take reasonable precautions during non-recreational Fire	6.9	\$300.00
25	Failure to extinguish fire or comply when ordered during non-recreational Fire	6.10	\$300.00
26	Failure by owner to ensure compliance during non-recreational Fire	6.11	\$300.00
27	Failure to extinguish fire creating hazard when ordered to do so	7.3	\$300.00
28	Hinder or obstruct any person exercising a power or performing a duty under this By-law	11.1	\$300.00

NOTE: the general penalty provision for the offences listed above is Section 10 of By-law 14-2017, a certified copy of which has been filed.