

The Corporation of the Municipality of Powassan

By-Law No. 2019-___

Being a By-Law to Regulate the Setting of Fires, Fireworks and to Set Out Precautions to be Taken with Open Air Fires, Barbecues and Gas Fired Outdoor Appliances

Whereas section 9 of the Municipal Act, 2001, SO 2001, c. 25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under that Act or any other Act.

And whereas section 7.1(1) of the Fire Protection and Prevention Act, 1997, SO 1997, c. 4 provides that a 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 the Municipality is situated within the East Fire Region as defined and prescribed by the Forest Fires Prevention Act, RSO 1990, c. F.24 and O Reg 207/96 made pursuant to the Forest Fires Prevention Act, and must therefore comply with this Act and Regulation;

And whereas section 10(2) of the Municipal Act, 2001, provides that a single-tier municipality may pass by-laws with respect to social and environmental well-being of the municipality, health, safety and well-being of persons, services and things that the municipality considers necessary or desirable for the public, and protection of persons and property;

And whereas section 391(1) of the Municipal Act, 2001, provides that a municipality may pass by-laws imposing fees or charges on persons for services or activities provided or done by or on behalf of it;

And whereas the Municipality deems it necessary to regulate the setting of fires and to set out precautions to be taken with open air fires, barbecues and gas fired outdoor appliances;

BE IT THEREFORE ENACTED by the Municipal Council of the Corporation of the Municipality of Powassan as follows

1. That the attached "Schedule A" form part of this by-law and be adopted;
2. That By-Law No. 2001-47, 2001-28, 2013-40 and all amendments thereto are hereby repealed
3. That this by-law come into force upon adoption.

Considered READ a FIRST and SECOND Time the ____ day of _____, 2019.
To be READ a THIRD and FINAL TIME and considered PASSED this _____ the day of _____, 2019

Mayor CAO/Clerk-Treasurer

SCHEDULE "A"

Part 1 – Interpretation and Application

1.1 Short Title

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

1.2 Severability

If any provision or part of a provision of this By-Law is declared by a court of competent jurisdiction to be illegal or inoperative in whole or in part, or inoperative in particular circumstances, such provision or part of the provision shall be deemed to be severable, and the balance of the by-law, or its application in other circumstances, shall not be affected and shall continue to be in full force and effect.

1.3 Definitions

For the purposes of this By-Law:

"Agricultural Open Air Fire" means an open air fire conducted for the disposal of crop residue, vegetable matter or vegetation on farm lands that is a normal farm practice within the meaning of the Farming and Food Production Protection Act, 1998, SO 1998, c. 1.

"Authorized Campground" means a commercial campground or children's summer camp operation which has been inspected by the Chief Fire Official for compliance with the requirements for campgrounds pursuant to O Reg 207/96, made under the Forest Fires Prevention Act, RSO 1990, c F.24, and for which the Chief Fire Official has issued a permit under this By-Law.

"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.

"Campfire" means a small contained open air fire ignited for cooking or warmth.

"Chief Fire Official" means the Chief of the Municipality of Powassan Fire Department or his/her designate.

"Municipality" means The Corporation of the Municipality of Powassan.

"Council" means the Council for The Corporation of the Municipality of Powassan.

"Enforcement Officer" means the Chief Fire Official or their designate, a Municipal Law Enforcement Officer, or any police officer.

"Extinguish" means to completely put out a fire.

"Farmer" means the owner or operator of an agricultural operation.

"Fire Management Area" means a designated area of land as indicated in section 2.1.

“Firework” means a device for producing a striking display by the combustion of explosive or flammable compositions

“Flying Lantern”, also known as Sky Lantern, Kongming lantern or Chinese lantern, means a small hot air balloon made of paper, with an opening at the bottom where a small fire is suspended.

“Gas Fired Outdoor Appliance” means a portable or fixed appliance designed for use outdoors and which is fuelled by natural gas or propane including, but not limited to, a heater, barbecue, smoker, fireplace or fire pit.

“Municipal Fire Ban” means a ban on burning within the Municipality of Powassan imposed by the Chief Fire Official.

“Non-Recreational Open Air Fire” means any open air fire that is not recreational.

“Nuisance” when used in relation to a fire means circumstances in which a fire causes discomfort, irritation or danger to any person occupying in the area of the fire through sparking, smoke or unpleasant odour from the fire or, in the opinion of the Enforcement Officer is a nuisance.

“Open Air Burning Device” means a commercially manufactured device for the purpose of containing a recreational fire, which is made of a non-combustible material and has a spark screen or other spark-arresting device to prevent sparks from escaping, and which is installed in accordance with the manufacturer’s recommendations. Examples of open air burning devices include a chiminea, an outdoor fireplace, and a fire pit, provided that the device in question meets the requirements above.

“Open Air Fire” means the burning of material outside of a building.

“Owner” means the registered owner of the land.

“Permit” means the permit issued by the Chief Fire Official granting approval to set an open air fire and establishing the conditions under which the permit is granted.

“Police Officer” means a sworn member of the Police Service having jurisdiction within the Municipality.

“Recreational Open Air Fire” means a small, controlled and contained fire that is utilizing an open air burning device for the purpose of cooking, warmth or personal enjoyment.

“Restricted Fire Zone Order” means a ban on burning ordered by the Ontario Minister of Natural Resources and Forestry, that restricts the use of open air fires in a specific area of the province. It is used when the fire hazard is extreme and/or when firefighting resources are stretched to capacity. For the purposes of this By-Law, any reference to a restricted fire zone order means a restricted fire zone order that includes the Municipality or a part of the Municipality within its geographic boundaries.

“Yard Waste” means natural debris collected from a property and includes branches, tree limbs and trunks and leaves.

Part 2 – Fire Management Areas

2.1 Fire Management Areas

For the purposes of this By-Law the Municipality shall be divided into two Fire Management Areas described as follows:

(a) "Settlement Area": Includes Butler Subdivision, those lands that make up the Powassan Urban Service Area, and "Trout Creek Area" as outlined in the current Municipality of Powassan Zoning By-Law and.

(b) "Rural Area": Includes those lands surrounding the Settlement Area within the geographical boundaries of the Municipality of Powassan other than Butler Subdivision.

Part 3 – General Conditions and Prohibitions

3.1 Prohibition

(1) No person shall set, maintain, or cause or permit to be set or maintained an open air fire within the Municipality, except as permitted under this By-Law.

(2) While this By-Law also creates specific prohibitions in order to address the most common circumstances relating to fires and fire safety, nothing in the specific prohibitions shall have the effect of limiting the general prohibition against open air fires set out in subsection (1)

(3) No person shall sell or discharge fireworks, or cause or permit fireworks to be discharged except as permitted under this by-law.

(4) No person shall set fire or permit the setting of fire to flying lanterns within the Municipality.

(5) No person shall sell or display for sale fireworks except for a period of one month preceding the Victoria Day long weekend and for a period of one month preceding July 1st.

(6) No person shall sell or distribute fireworks to a person less than 18 years of age.

3.2 Permit Required

(1) No person shall set, maintain, or cause or permit to be set or maintained, an open air fire without a current valid permit. Without limiting the generality of the foregoing, this includes recreational open air fires being conducted in an open air burning device.

(2) No person shall set, maintain, or cause or permit to be set or maintained, an open air fire in contravention of any condition on a permit.

(3) No person shall discharge fireworks, or cause or permit fireworks to be discharged without a current valid permit.

(4) No person shall discharge fireworks or cause or permit fireworks to be discharged other than Consumer Fireworks (class 7.2.1/F.1 as classified in the Authorization Guidelines for Consumer and Display Fireworks in accordance with Part 3 of Explosives Regulations, 2013, SOR/2013-211), outdoor, low-hazard recreational fireworks such as showers, fountains, golden rain, Roman candles, volcanoes, sparklers and caps for toy guns.

(5) The permit holder shall keep the permit at the site of the open air fire and, upon request of an enforcement officer, shall forthwith produce the permit for inspection.

3.3 Hours of Burning

(1) Where a non-recreational fire or the discharge of fireworks is permitted under this By-Law, it shall only be permitted between the hours of 6:00 p.m. and 1:00 a.m. No person shall set, maintain, or cause or permit to be set or maintained, an open air fire or discharge fireworks outside of these hours.

(2) Subsection (1) does not apply to agricultural open air fires.

3.4 Fire Bans

(1) Notwithstanding any other provisions of this By-Law, the Chief Fire Official may impose a municipal fire ban prohibiting all open air fires for the whole or any part of the Municipality, when weather or other conditions so warrant, for any period of time as the Chief Fire Official deems necessary.

(2) The provisions of this By-Law and any permit issued under it shall be superseded by:

- (a) a municipal fire ban; and
- (b) a restricted fire zone order.

(3) No person shall set, maintain, or cause or permit to be set or maintained, an open air fire during a municipal fire ban or a restricted fire zone order.

(4) No person shall discharge fireworks, or cause or permit fireworks to be discharged during a municipal fire ban or a restricted fire zone order.

3.5 No Burning of Grass

No person shall burn grass in any area.

3.6 Environmental Conditions

(1) No person shall set, maintain, or cause or permit to be set or maintained, an open air fire unless conditions will allow the fire to burn safely from start to extinguishment.

(2) No person shall discharge fireworks, or cause or permit fireworks to be discharged unless conditions will allow for safe discharge.

(3) No person shall set, maintain, or cause or permit to be set or maintained, an open air fire when there is rain or fog.

(4) No person shall set, maintain, or cause or permit to be set or maintained, an open air fire when a smog alert has been issued by the Ontario Ministry of the Environment and Climate Change for an area that includes the Municipality.

(5) No person shall set, maintain, or cause or permit to be set or maintained, an open air fire that causes a nuisance or creates a hazardous situation.

3.7 Land Owned by Others

(1) Subject to subsection (2), no person shall set, maintain, or cause or permit to be set or maintained, an open air fire on land of which the person is not the registered owner, without first having obtained the written permission of the registered owner.

(2) No person shall set, maintain, or cause or permit to be set or maintained, an open air fire on a highway, park, walkway, public land or upon any vacant or other land owned by the Municipality, without first having obtained written permission from the Chief Fire Official.

(3) No person shall discharge fireworks, or cause or permit fireworks to be discharged on land of which the person is not the registered owner, without first having obtained the written permission of the registered owner.

(4) No person shall discharge fireworks, or cause or permit fireworks to be discharged on a highway, park, walkway, public land or upon any vacant or other land owned by the Municipality, without first having obtained written permission from the Chief Fire Official.

3.8 General Requirements for Open Air Fires or Discharging of Fireworks

(1) In addition to any other requirements of this By-Law, every person who sets, maintains, or causes or permits to be set or maintained an open air fire **or** discharges fireworks, or causes or permits fireworks to be discharged shall:

(a) while the fire is burning, have immediately available a suitable means of extinguishment that is capable of extinguishing the fire, such as a charged garden hose or fire extinguisher;

(b) take all other precautions as may be reasonably necessary to prevent the fire or fireworks from getting beyond control, causing damage, or becoming a danger to life or property, and to ensure that adjacent properties and individuals are not adversely affected by the products of combustion; and

(c) ensure that there is constant supervision and control over the fire or fireworks by a competent adult from start to extinguishment.

(2) Every person who sets, maintains, or causes or permits to be set or maintained an open air fire shall, in the event that the fire becomes out of control, report the fire immediately to the Powassan Fire Department.

(3) In a prosecution for an offence under subsection (2), the onus is on the person charged to prove that he or she reported the fire in accordance with the requirements of subsection (2).

3.9 Unfounded and Frivolous Complaints

No person shall make repeated complaints about a fire for which a current valid permit exists, when those complaints are unfounded or frivolous in nature.

3.10 Exemption

The Municipality of Powassan Fire Department is exempt from this By-Law with respect to an open air fire conducted for the purpose of educating, training, or any other purpose as approved by the Chief Fire Official.

Part 4 – Permits

4.1 Authority and Discretion to Issue Permits

(1) The Chief Fire Official may issue permits authorizing open air fires or fireworks at his or her sole discretion.

(2) In issuing any permit, the Chief Fire Official may impose any additional requirements or exempt any conditions under Parts 3, 5, 6 and 7 of this By-Law as the Chief Fire Official considers necessary in the interest of public safety, or advisable in the circumstances, or to minimize inconvenience to the general public, or to give effect to the objects of this By-Law.

(3) Notwithstanding any other provisions of this By-Law, the Chief Fire Official may issue a special 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. Failure to comply with any of the conditions of the special permit will render the permit invalid.

(4) The Chief Fire Official may refuse, revoke or suspend a permit at any time in his or her sole discretion.

4.2 Application for Permit

(1) Application forms for permits may be obtained from the Municipal Office.

(2) In order to obtain a permit, the applicant must submit the completed application for a permit to Municipal Office accompanied by the appropriate fees as set out in the Municipality's current User Fees By-Law.

(1) For properties located within the Settlement Area permits may only be issued for recreational open air fires.

(2) For properties located within the Rural Area, permits may be issued for recreational, non-recreational and agricultural open air fires or for discharging fireworks.

4.4 General Provisions Relating to Permits

(1) A permit may only be obtained by the owner of the property to which the permit applies.

(2) A permit is not transferable to another person or to a new location.

(3) A permit for recreational burning is valid on the date of issue and for the balance of the calendar year in which the permit is issued, unless otherwise specified on the permit.

(4) A permit for non-recreational or agricultural burning is valid on the day of issue for the time specified on the permit.

(5) A permit to discharge fireworks is valid for the days specified on the permit.

Part 5 – Recreational Open Air Fires

5.1 Additional Requirements for Recreational Open Air Fires

In addition to the requirements of Part 3 of this By-Law, every person setting or maintaining a recreational open air fire shall also comply with the provisions of this Part.

5.2 Open Air Burning Device Required

Every person setting or maintaining a recreational open air fire shall:

- (a) ensure that the fire is contained in an open air burning device with a dimension not greater than 61 centimetres by 61 centimetres or a volume not greater than 0.26 cubic metres;
- (b) use only commercially produced charcoal, briquettes or clean, dry seasoned wood and, without limiting the generality of the foregoing, shall not burn painted wood, pressure treated wood, creosote treated wood, or any type of yard waste;
- (c) if burning wood, burn only wood that has a dimension smaller than that of the open air burning device;
- (d) ensure that the fire is completely confined within the open air

burning device at all times; and

(e) ensure that the open air burning device is located:

(i) in a safe area;

(ii) at least 3 metres from any adjacent property line; and

(iii) at least two metres from any combustible structure or object, including but not limited to trees, other tall vegetation, houses, garages, sheds, fences, and overhead wires.

5.3 Open Air Burning Devices on Decks, Balconies and Rooftops

(1) No person shall use, or cause or permit the use of, an open air burning device on a balcony or rooftop.

(2) No person shall use, or cause or permit the use of, an open air burning device on a deck that is situated above the first storey of the building.

(3) No person shall use, or cause or permit the use of, an open air burning device on a deck located at the level of the first storey of the building unless the requirements of subsection (4) are complied with.

(4) The use of an open air burning device is permitted on a first storey deck provided that all other provisions of this Part are complied with and, in addition, if the deck is constructed with wood, composite decking material, or any other combustible material, there is:

(a) at least one course of brick or stone installed under the appliance;
and

(b) sheet metal installed under the brick or stone, extending at least two inches beyond the perimeter of the brick or stone.

5.4 Wind Velocity

No person shall set, maintain, or cause or permit to be set or maintained a recreational open air fire when there is a wind exceeding 15 kilometres per hour.

5.5 Owner's Duty

Every owner shall ensure that any recreational open air fire on his or her property complies with the provisions of this Part.

Part 6 – Non-Recreational Open Air Fires

6.1 Additional Requirements for Non-Recreational Open Air Fires

(1) In addition to the requirements of Part 3 of this By-Law, every person setting or maintaining a non-recreational open air fire shall also comply with the provisions of this Part.

(2) Every person setting or maintaining a non-recreational open air fire shall ensure that all of the following conditions are met:

- (a) the burn pile is less than two metres in diameter and less than two metres in height;
- (b) only clean, dry seasoned wood or yard waste materials are burned and, without limiting the generality of the foregoing, kitchen garbage, construction materials or debris or materials made of or containing rubber, plastic or tar shall not be burned at any time; and
- (c) the fire is located:
 - (i) in a safe area;
 - (ii) at least **six** metres from any adjacent building or structure;
 - (iii) at least **six** metres from any adjacent property line; and
 - (iv) at least six metres from any combustible object.

6.2 Wind Velocity

No person shall set, maintain, or cause or permit to be set or maintained a non-recreational open air fire when there is a wind exceeding 15 kilometres per hour.

6.3 Owner's Duty

Every owner shall ensure that any non-recreational open air fire on his or her property complies with the provisions of this Part.

Part 7 – Agricultural Open Air Fires

7.1 Additional Provisions for Agricultural Open Air Fires

(1) In addition to the requirements of Part 3 of this By-Law, every person setting or maintaining an agricultural open air fire shall also comply with the provisions of this Part.

(2) Every farmer or other person setting or maintaining an agricultural open air fire shall ensure that all of the following conditions are met:

- (a) the fire is conducted between sunset and sunrise only;
- (b) the fire is for the purpose of burning crop residue, vegetable matter or vegetation only, on farm lands, and is a normal farm practice with the meaning of the Farming and Food Production Protection Act, 1998; and
- (c) the fire is located:
 - (i) in a safe area;
 - (ii) at least 20 metres from any adjacent building or structure;
 - (iii) at least 20 metres from any adjacent property line; and
 - (iv) at least six metres from any combustible structure or object.

7.2 Wind Velocity

No person shall set, maintain, or cause or permit to be set or maintained an agricultural open air fire when there is a wind exceeding 15 kilometres per hour.

7.3 Owner's Duty

Every owner shall ensure that any agricultural open air fire on his or her property complies with the provisions of this Part.

Part 8 – Fireworks

8.1 Additional Requirements for the discharge of fireworks.

(1) In addition to the requirements of Part 3 of this By-Law, every person discharging fireworks or causing or permitting fireworks to be discharged shall also comply with the provisions of this part.

(2) Every person discharging fireworks or causing or permitting fireworks to be discharged shall ensure that all of the following conditions are met:

(a) the fireworks are discharged:

- (i) in a safe area;
- (ii) at least 20 metres from any adjacent building or structure;
- (iii) at least 20 metres from any adjacent property line; and
- (iv) at least 20 metres from any combustible structure or object.

8.2 Wind Velocity

No person shall discharge fireworks or cause or permit fireworks to be discharged when there is a wind exceeding 15 kilometres per hour.

8.3 Owner's Duty

Every owner shall ensure that any setting or discharge of fireworks on his or her property complies with the provisions of this Part.

Part 9 – Gas Fired Outdoor Appliances

9.1 Conditional Exemption

(1) The provisions of this By-Law do not apply to the use of a gas fired outdoor appliance provided that all of the provisions of this Part are complied with.

(2) No person shall use a gas fired outdoor appliance on a balcony or rooftop, or on a deck that is situated above the first storey of the building.

(3) In addition, a person who is using a gas fired outdoor appliance shall:

- (a) ensure that the gas fired outdoor appliance has been approved for use by the Underwriters Laboratories of Canada (ULC) or the Canadian Standards Association (CSA);
- (b) use only propane or natural gas as a fuel source;
- (c) ensure that the gas fired outdoor appliance is located in a safe area so that it is securely situated and a safe distance away from any combustible materials; and
- (d) ensure that the gas fired outdoor appliance is supervised by a competent adult at all times while ignited or while still warm from use.

Part 10 – Barbecues

10.1 Conditional Exemption

(1) Without limiting the generality of Part 9, the provisions of this By-Law do not apply to the use of a barbecue, whether gas fired or designed or intended to use charcoal, briquettes or other fuel, provided that all of the provisions of this Part are complied with.

(2) No person shall use a barbecue on a balcony or rooftop, or on a deck that is situated above the first storey of the building.

(3) In addition, a person who is using a barbecue shall:

- (a) use only commercially produced charcoal, briquettes, natural gas or propane as a fuel source;
- (b) ensure that the barbecue is located in a safe area so that it is securely situated and a safe distance away from any combustible materials; and
- (c) ensure that the barbecue is supervised by a competent adult at all times while ignited or while still warm from use.

Part 11 – Enforcement

11.1 Authority to Enforce

(1) Any enforcement officer as defined in section 1.3 is authorized to enforce this By-Law pursuant to the provisions hereof, the Municipal Act, 2001, the Provincial Offences Act, RSO 1990, c. P.33, and the Fire Protection and Prevention Act, 1997.

(2) 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 Right of Entry

(1) An enforcement officer shall be permitted to enter upon any land at any reasonable time for the purpose of enforcing this By-Law.

(2) A person exercising a power of entry on behalf of the Municipality under this By-Law shall, on request, display or produce proper identification.

11.3 Order to Extinguish / Comply

(1) An enforcement officer may at his or her sole discretion, order a fire extinguished or brought into compliance with this By-Law and this order shall be final.

(2) Every person who is ordered by an enforcement officer to extinguish a fire/firework or otherwise bring a fire/firework into compliance with this By-Law shall comply immediately.

(3) In the event that an order of an enforcement officer under subsections (1) or (2) is not complied with, the enforcement officer may take action to have the fire/firework extinguished or otherwise brought into compliance with this By-Law.

(4) Every person who fails to comply with an order of an enforcement officer under this By-Law shall be liable for any costs incurred by the Municipality of Powassan Fire Department to extinguish the fire/firework or bring it into compliance. Where applicable, such costs shall be calculated in accordance with the Municipality's current User Fees By-Law.

11.4 Remedial Costs and Recovery

(1) The Municipality may recover the remedial action costs incurred under this Part by action, or by adding such costs to the tax roll and collecting them in the same manner as property taxes in accordance with section 446 of the Municipal Act, 2001.

(2) Prior to recovering remedial costs under subsection (1), the Municipality may invoice the owner requesting voluntary payment of those remedial costs.

Part 12 – Offences and Penalty

12.1 Offences

(1) Every person who contravenes any provision of this By-Law is guilty of an offence.

(2) Every director or officer of a corporation who knowingly concurs in the contravention by the corporation of any provision of this By-Law is guilty of an offence.

(3) Every person who contravenes an Order issued by a court pursuant to this By-Law is guilty of an offence.

12.2 Penalty

(1) Every person who is found guilty of an offence under this By-Law is liable to a fine up to \$100,000.

(2) If any provision of this By-Law is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by this By-Law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order prohibiting the continuation or repetition of the offence by the person convicted.

(3) Any fine imposed under this Part shall be payable in addition to any fees, charges and costs payable under this By-Law.