

THE CORPORATION OF THE MUNICIPALITY
OF NORTHERN BRUCE PENINSULA

BY-LAW NO. 2019-47

BEING A BY-LAW TO REGULATE THE SETTING OF OPEN-AIR FIRES
WITHIN THE CORPORATION OF THE MUNICIPALITY OF
NORTHERN BRUCE PENINSULA

WHEREAS Section 10 (2) of the Municipal Act S.O., 2001, Chapter c.25 provides that the Council of a Municipality may pass by-laws with respect to the economic, social and environmental well-being of the municipality and the health, safety and well-being of persons;

AND WHEREAS the Fire Protection and Prevention Act, 1997, S.O. 1997, c.4, s.7.1 (1) (a) provides that a Council of a Municipality may pass By-laws regulating fire prevention, including the prevention of the spreading of fires;

AND WHEREAS the Fire Protection and Prevention Act, 1997, S.O. 1997, c.4, s.7.1. (1) (b) provides that a Council of a Municipality may pass By-laws regulating the setting of open-air fires, including establishing the times during which open air fires may be set;

AND WHEREAS, the Council of the Corporation of the Municipality of Northern Bruce Peninsula deems it necessary and prudent to set out laws governing open air fires to protect persons and property within the limits and boundaries of the municipality from hazards that may be created by open air fires;

AND WHEREAS Section 435, 436, 437 and 438 of the Municipal Act, S.O. 2001, c.25, as amended set out additional powers and restrictions in regards to the power of entry.

NOW THEREFORE the Council of the Corporation of the Municipality of Northern Bruce Peninsula hereby enacts as follows:

SECTION 1: DEFINITIONS

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

“Adverse Effect” means one or more of the following:

1. Impairment of the quality of the natural environment for any use that can be made of it;
2. Injury or damage to property or to plant or animal life;
3. Harm or material discomfort to any person;
4. Impairment of the safety of any person, without actual harm occurring;
5. Rendering any property or plant or animal life unfit for human use;
6. Loss of enjoyment of normal use of property;
7. Interference with the normal conduct of business.

“Approved Brush Pile”-shall mean an Open Fire, having a maximum wood or plant fuel size of 1 metre x 1 metre x 1 metre in height, (one cubic metre) that is set and maintained for the sole purpose of burning cut, piled wood.

“Building”-shall mean any structure composed of walls and a roof or any part or combination thereof which is used as shelter, accommodation, enclosure or storage

containing humans, animals, equipment, goods or material or a structural system housing any of the above.

“Burning Ban”–shall mean cancellation of fire permits for all open-air burning, in the discretion of the Fire Chief or his/her designate.

“Burn Safety Plan”–shall mean procedures and facilities provided a “Person” and/or “Owner to prevent and combat the spread of fire, and shall include provisions for facilitating emergency vehicle access and response, and Open-Air fire safety and control, and protection of the environment.

“Campfire/Recreational Fires”–shall mean a fire that is set and maintained solely for the purposes of providing warmth or recreational enjoyment when all of the following provisions are met:

1. The fire is contained in an above-ground, metal fire grate or fireplace that is designed to burn wood in a contained space and that cannot be moved to an unsafe location while a fire is contained therein, or a pit in the ground that has a non-combustible wall and is intended to burn wood safely;
2. The closest edge of the fire shall not at any time be started or located less than four (4) metres from any building, structure, property line, tree, canopy, hedge, fence, roadway, overhead wire or other combustible article;
3. The area designed to contain the fire is not more than 66 centimeters diameter and not more than 66 centimeters in height.
4. That the fire is controlled such that flames and hot embers do not pose an undue risk of fire to nearby combustible materials, and that the fire is attended and supervised at all times by at least one responsible adult person, of eighteen or more years of age.

“Campground” –shall mean an area of land owned or operated by a person that contains campsites, for the purpose of providing overnight accommodation for tents and trailers.

“Contractor Fire” –shall mean an open-air Fire, having a maximum fuel size of 3 metres x 3 metres x 1.8 metres in height, that is set and maintained for the sole purpose of burning cut and piled wood or brush, the disposal of paper-based refuse or nontoxic building materials and separated by at least 7.62 metres.

“Cooking Fires” –shall mean fires which are:

1. fueled only by charcoal, compressed gas, briquette, or wood and
2. that are only large enough for cooking domestic meals, and
3. which are confined within a barbecue or grilling device constructed of metal, ceramic, stone, or masonry, and
4. that are exclusively designed for and being used for the cooking of food for human consumption, and
5. are continuously supervised by a responsible adult person of eighteen or more years of age, and
6. not on a porch, balcony, or verandah that is roofed or attached to a multi-unit residential building, and
7. not in or near dry vegetation; and
8. not in any other place conducive to the development or the spread of fire or explosion; and

9. when in a barbeque or upon a grill shall be located at least 1.5 metres horizontal distance from and 3 metres below any porch, balcony, or veranda that is roofed and is attached to a multi-unit residential building; and

10. where means to extinguish the fire are readily accessible; and

11. where at the completion of the burn the fire is and shall be completely extinguished and the burn site shall be made safe before it is left unattended.

“Council” – shall mean the members of Council so elected in and for the Corporation of the Municipality of Northern Bruce Peninsula.

“Dangerous Condition” –shall mean, in the opinion of the Fire Chief or his/her designate:

1. A lack of recent or predicted precipitation which, could increase the risk of the spread of fire; or
2. The existence or predicted commencement of winds which could increase the risk of spread of fire; or
3. The issuance, by the Fire Chief, Ontario Fire Marshal, or other fire officials in the exercise of their statutory powers, of a fire ban or prohibition against any and all “Open Air Fires” or fires generally; or
4. Any other condition declared by the Fire Chief or his/her designate to be a dangerous condition from time to time, which could increase the risk of the spread of fire.

“Extinguish” –shall mean to put out or quench completely any fire, eliminating all smoke, hot, or glowing embers.

“Farmer or Agricultural Operation” –shall have the same meanings as defined under the Farming and Food Production Protection Act, 1998, as amended from time to time, and may include the power to purchase, permit and /or operate a farm under a present lease agreement.

“Fire” –shall mean any fire set out in open air for the purpose of burning, cut piled wood or brush, the disposal of certain paper-based refuse or non-toxic building material, any campfire, and recreational fire, but shall not include:

1. Fires emanating from blow torches, cutting or welding torches, paving equipment or other such apparatus associated with a service or occupation;
2. Small confined fires used for the purpose of cooking which is supervised at all times by a competent person and shall include a grill or barbeque and shall be referenced to the Forest Fires Protection Act, Ontario Regulation 207/96.

“Fire Chief” –shall mean the Chief of the Northern Bruce Peninsula Fire and Emergency Services or his/her designate.

“Flying Lantern” -shall mean hot air balloon made out of paper, or other material, commonly known as Chinese lanterns, sky lanterns, sky candles, wish lanterns, Hawaii lanterns or Konming lanterns.

“Household Waste” –for the purposes of this by-law means combustible material such as plastics, polyethylene terephthalate (PET), paints, oils, solvents, rubber, insulation, batteries, acids, polystyrenes (Styrofoam), pressure treated or painted lumber, tires, upholstered furniture, synthetic fabrics, diapers, hazardous wastes and other materials as defined in the Environmental Protection Act and all other similar and like materials but

shall not include untreated wood and wood fiber products such as unlaminated paper and cardboard and boxboard and brush.

“Incinerator or Burn Barrel” -shall mean an enclosed device used for burning and covered by a heavy steel screen mesh with opening less than five (5) millimeters.

“Municipal By-law Enforcement Officer” –shall mean the officer(s) so appointed by the Corporation of the Municipality of Northern Bruce Peninsula and those officers appointed to enforce municipal by-laws.

“Municipality” –shall mean the Corporation of the Municipality of Northern Bruce Peninsula.

“Other Flaming Devices” -shall mean patio torches, and candles. Patio torches and candles can be used provided that all of the following conditions are met:

1. Such devices shall not be operated in or near dry vegetation;
2. Such devices shall not be operated in any other place conducive to the development or the spread of fire or explosion.
3. Flying lanterns or other such devices shall not be permitted.

“Ontario Fire Code”–shall mean O. Reg. 388/97 made under the Fire Protection and Prevention Act, S.O. 1997, C. 4, as amended.

“Open Air Fire”–shall mean any fire set outdoors, and not in an enclosed building, or any fire set in a device or appliance located outside of a building, but does include fires in Incinerators or Burn barrels; however, does not include fires in devices installed outside of a building that are used as a source of heat or power for the building or that are ancillary to a manufacturing process, provided that such device is certified for the purpose by a recognized and appropriate governmental agency.

“Owner”–shall mean any person, firm, company or corporation owning real property and shall include the persons occupying such property.

“Person”–shall mean any individual, association, firm, partnership, corporation, agent or trustee and their heirs, executors, or other legal representatives thereof.

“Permit”–shall mean a permit issued on-line, signifying permission to set, maintain or allow to be set or maintained a “fire” and establishing the conditions under which the permission granted in the permit are to be exercised.

“Prescribed Burn”-shall mean the deliberate and knowledgeable application of fire by authorized personnel to a specific land area, for a specific purpose authorized under this by-law.

“Prohibited Materials”–includes “Household Waste”, rubber or rubber products, plastic or plastic products, and waste petroleum products and any material or materials which are prohibited by the Environmental Protection Act, as amended.

SECTION 2: REQUIREMENTS

1. The provisions of this By-law shall apply to all areas within the legal boundaries of the Corporation of the Municipality of Northern Bruce Peninsula.
2. No permit shall be issued to an owner where open-air burning will have a detrimental effect on his/her neighbours because of the substance(s) being burned or the size or the location of the burn area, in the sole and absolute discretion of the Fire Chief or his/her designate.

3. Upon obtaining a fire permit, the owner or his/her agent shall:
 - a) Ensure that the fire is supervised at all times by a competent person who is at least eighteen (18) years of age or older.
 - b) Keep sufficient resources available to control the fire at all times.
 - c) Ensure that any fire set out is never left unattended.
 - d) Ensure that fire is not set until after 6:00 p.m. during the Ministry of Natural Resources Fire Season.
 - e) Ensure that any fire set or maintained is extinguished before 10:00 a.m. during the Ministry of Natural Resources Fire Season.
 - f) Ensure that where debris is to be burned, the fire shall be properly contained.
 - g) Ensure that any fire to be set is not ignited by gasoline, oil, petroleum by-products or any toxic or hazardous material.
 - h) Customers can create an account for those applying for a fire permit on-line or visit the Municipal Office to obtain a fire permit. The fire permit is applicable for a calendar year and shall expire on December 31. Customer then calls in to the automated system, whenever they are burning. Permits shall be issued only to the owner of the property where the fire is to be set, to an owner's agent applying upon an owner's behalf who has dated and signed written authorization from the owner. No person shall set an open-air fire without first obtaining a permit.
4. Where, in the opinion of the Fire Chief or his/her designate, a potentially dangerous situation exists due to fire, smoke, weather, environmental or health concerns the Fire Chief may rescind, suspend or cancel any permits.
 - a) The automated system provides a means of informing customers of notice of cancellation of a permit through electronic message. In addition, public news media, and notice of cancellation may be constructively implied if reasonable measures to communicate the same have been attempted by the Fire Chief or his/her designate.
5. Notwithstanding anything herein, no Person shall set or maintain a fire:
 - a) in contravention of the Ontario Fire Code, the Environmental Protection Act or any other statute, regulation or rule imposed by the Province of Ontario or the Government of Canada;
 - b) that contains prohibited materials as defined in this by-law;
 - c) in any park owned or operated by the Municipality without the written permission of the Municipality;
 - d) that burns any allowed material without obtaining and on their person a valid Permit for those types of fires requiring one;
 - e) when a burning ban has been declared and put in place by the "Fire Chief" or his/her designate.
6. No open-air burning shall be commenced or maintained by any person when the wind is in such a direction or intensity that may cause any or all of the following:
 - a) The possible spread of the fire beyond the burn site approved by the permit;
 - b) A decrease in the visibility on any highway or roadway;

- c) Any odour to such an extent or degree so as to cause discomfort to the persons in the immediate area; and/or
 - d) Excessive smoke;
 - e) An adverse effect; or
 - f) Any dangerous condition
7. No person shall set or maintain and no open-air fire shall be commenced or maintained when rain or fog is present or weather conditions prevent the ready dispersion of smoke.
 8. No Permit shall be required for domestic barbecues or permanent outdoor fireplaces used for the purpose of cooking of food on a grill and extinguished immediately upon completion of its use to cook.
 9. No Owner shall cause or permit to be burned more than one fire at any one time upon the Owner's property, without the written approval of the Fire Chief or his/her designate.
 10. No Person shall set any unpermitted fire including, but not limited to, a grass fire.
 11. No person shall burn any hay, straw, leaves, grass clipping or standing material may be burned unless approved by the Fire Chief or his/her designate through the issuance of a permit.
 12. During the annual open-air fire season, no person shall set or maintain an open-air burn between the time of 10:00 a.m. until 6:00 p.m. each day, seven (7) days a week.
 13. Despite the foregoing, the time restricted to no burning does not apply to cooking fires as defined herein, but only if a Burning Ban is not declared and all precautions have been taken required in the By-law.
 14. The Northern Bruce Peninsula Fire and Emergency Services Department is exempt from the operation of this by-law for the purposes of educating and training individuals who are firefighters or the general public.
 15. The Fire Chief may grant, in his/her discretion, and in writing only, a special approval, variance or exception to the open-air burning prohibitions contained in this by-law or any Permit issued under this By-law.
 16. Any person may make application in writing to the Fire Chief for special approval of open-air burning intended for religious, cultural or environmental significance, and an exception may be granted to the prohibitions in this By-law. Any such applications shall include statement(s) describing the purpose, reason and intent of the request, location and size of the fire, date and time of the fire, safety measures and supervision arrangements. The application shall also include a site plan diagram including distances from a proposed fire location relative to buildings and structures, trees, shrubs, hedges, fences, overhead obstructions, flammable materials and property lines.
 17. Permits may be cancelled at any time by the Fire Chief or his/her designate. Upon receiving notice of such cancellation or suspension, the holder of the permit shall immediately extinguish the fire(s) started or maintained under said permit.

SECTION 3: ISSUANCE OF PERMIT

1. The issuance of a Permit may require the prior inspection of the proposed burn site by the Fire Chief or his/her designate.

2. In applying for a permit, or a special approval, variance or exception to a permit no Person shall furnish false or misleading information.
3. Permit(s) may only be obtained on-line or at the Municipal Office. Customers call a local number from any telephone and an automated system indicates risk level status and allows the customer to register his/her intent to burn. Every call is logged in the system.
4. Every person who is burning or responsible to attend a fire shall forthwith upon demand produce an issued permit for inspection by the Fire Chief or his/her designate or the Municipal By-law Enforcement Officer.
5. In any prosecution under a provision of this by-law that requires a permit, the onus is on the person charged to prove that the person had a validly issued permit at the time the offence is alleged to have been committed.

SECTION 4: ADMINISTRATION AND ENFORCEMENT

1. The Fire Chief or his/her designate, Municipal By-law Enforcement Officer and any person so appointed by the Corporation shall have the authority to administer and enforce this By-law in its entirety.
2. The Fire Chief or his/her designate may, at any time, and in the exercise of his/her sole discretion, issue a burning ban, effective for a specified period of time, prohibiting the setting of any and all open-air fires within any area of the Municipality to which its jurisdiction applies.
3. Notwithstanding Section 2 of this By-law, the Fire Chief or his/her designate may revoke any or all permits, or refuse to issue permits where, in the opinion of the Fire Chief or his/her designate, the ability to control a fire or fires is hampered by the existence of a dangerous condition, which exists on or in the proximity of the proposed open-air burning site. Any person or owner who fails to comply with the provisions of this By-law, or who fails to properly supervise and maintain a fire, or who fails to extinguish a fire once notification to do so has been given to him/her by the Fire Chief or his/her designate shall, in addition to any penalty provided for herein, be liable to the Municipality for all expenses incurred in attending, controlling and extinguishing of any fire so set or left to burn and such expenses may be recovered in accordance with law.
4. No action or other proceeding for damages shall be brought against the Municipality or any employee of the Municipality or Municipally selected agencies, as the result of any act done in good faith in the issuance of any permit, approval, variation, exception, permission, or authorization under this By-law. Notwithstanding the above, the person who received approval, permission, variation, exception, or authorization under this By-law shall indemnify and hold the Municipality harmless for any damages, causes of action, claims or costs of any kind arising from or resulting from any damages or injuries caused by fire, smoke, or other causes.
5. It shall be the responsibility of the permit and owner to ensure that no damage is done to any property or injury caused to any person while setting a fire or permitting a fire to burn, and each shall otherwise jointly and severally be responsible for any damage or injury to persons or property as a result of setting the fire or permitting the fire to burn.

SECTION 5: FARMS OR AGRICULTURAL OPERATIONS

1. Where other approved open-air fires are set on rural properties being agricultural operations, they shall first require a permit and such fires shall:

- a) Have a Burn Safety Plan when the proposed fire size is greater than 36 square metres;
 - b) Be limited in size to 200 square metres and up to 5 metres in height. More than one fire is permitted at a time provided there are adequate supervisory personnel and fire extinguishing capability to satisfy the Fire Chief or his/her designate, and each distinct fire is separated from another by not less than 30 metres distant and devoid of combustible material. Where more than one fire is set at any one time, an approved Burn Safety Plan for the burn site must be made in writing, submitted for approval by the Fire Chief and adhered to in full by an Owner.
 - c) Have, in addition to a permit, a demolition permit issued by the Chief Building Official or his/her designate pursuant to the Building Code Act, 1992, where an open-air fire is set for the purpose of demolishing a building or structure.
2. Distance to structures, abutting land and crops may be approved by the Fire Chief to be closer than ordinarily required, if shown in the Burn Safety Plan in the event a safe practice can be demonstrated.
 3. Large burns may take several days to complete, at one hour before sundown each day, no more material shall be added to any large fire, and the fire shall be controlled such that the flames, smoke and embers will not pose a risk to neighbours before it is left unattended until the next meeting.
 4. In all cases, materials being burned are restricted to those which are authorized in this By-law or any Permit unless written permission is granted from the Ministry of the Environment.
 5. No fire on an agricultural operation shall burn during times of wind speed greater than twenty (20) km/hour unless approved in the discretion of the Fire Chief or his/her designate.
 6. No fire upon an Agricultural Operation shall emit smoke or other emissions that travel to a neighbouring property to such an extent or degree that, in the opinion of the Fire Chief or the Municipal By-Law Enforcement Officer, it may cause discomfort to persons, loss of enjoyment or normal use of the property, interference with normal conduction of business, or damage to property.

SECTION 6: VIOLATIONS AND PENALTIES

1. In addition to any other penalty prescribed by this by-law, any person who contravenes any provision of this by-law is guilty of an offence and is liable to a fine or penalty for each offence, upon conviction as set out in the Provincial Offences Act, as amended and the Fire Protection and Prevention Act, 1997, as amended.
2. Any person who sets an open-air fire:
 - a) Without first obtaining any necessary permit, or;
 - b) Without following the conditions or restrictions detailed in this By-law or a permit to set or maintain a fire;
 - c) Shall be liable to pay a fine as per Schedule A and, if the services of the Fire Department are necessary due to the fire being out of control, additional charges as set out by the Municipality or any other agency shall also be payable.
 - d) No person shall interfere with a Municipal By-law Enforcement Officer, Fire Chief or his/her designate or any person so appointed by the Corporation while carrying out his/her duties of enforcing this By-law.

SECTION 7: SEVERABILITY

The provisions of this By-law are severable. If any provision, section or word is held to be invalid or illegal, such invalidity or illegality shall not affect or impair any of the remaining provisions, sections or words.

SECTION 8: VALIDITY

This By-law shall come into force effective the 13th day of May, 2019.

SECTION 9: REPEAL

This By-law supersedes any by-law not consistent with this By-law.

SECTION 10: SHORT TITLE

This By-law shall be known as the Open-Air Fire By-law.

READ A FIRST AND SECOND TIME THIS 13th DAY OF MAY, 2019.

READ A THIRD TIME, FINALLY PASSED, SIGNED AND SEALED THIS 13th DAY OF MAY, 2019.

Original signed by Mayor, Milt McIver and Clerk, Mary Lynn Standen.

The signed By-law is available upon request.

The Corporation of the Municipality of Northern Bruce Peninsula

Schedule A to By-law No. 2019-47

A By-law to Regulate the Setting of Open-Air Fires

Set Fine Schedule- Part 1 Provincial Offences Act

Item	Column 1 Short Form Wording	Column 2 Provision creating or defining Offence	Column 3 Set Fine
1	Set fire without permit	Section 2(3)(h)	\$150.00
2	Fail to maintain constant supervision of fire	Section 2(3)(c)	\$150.00
3	Set/Maintain Open-Air Fires outside of permitted times	Section 2(12)	\$150.00
4	Set or maintain a fire during a "Burning Ban" period	Section 2(5)(e)	\$150.00
5	Set or maintain a fire containing "Prohibited Materials"	Section 2(5)(b)	\$150.00
6	Burn fire which causes adverse effects to residents	Section 2(6)(e)	\$150.00

NOTE: The general penalty provision for the offences listed above is Section 6 of the By-law No. 2019-47, a certified copy of which has been filed.

ONTARIO COURT OF JUSTICE

PROVINCIAL OFFENCES ACT

PART I

IT IS ORDERED pursuant to the provisions of the Provincial Offences Act and the rules for the Ontario Court of Justice that the amount set opposite each of the offences in the schedule of offences under the Provincial Statutes and Regulations thereunder and Municipal By-law No. 2019-47, of the Municipality of Northern Bruce Peninsula, attached hereto are the set fines for those offences. This Order is to take effect May 28, 2019.

Dated at London this 28th day of May, 2019.


Jeanine E. LeRoy
Regional Senior Justice
West Region