

**BY-LAW No. 2011-020
OF THE
CORPORATION OF THE TOWN OF COBALT**

Amended by By-law 2014-017



BEING A BY-LAW TO REGULATE AND ESTABLISH
PROCEDURES FOR OPEN AIR BURNING

WHEREAS section 7.1 of the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c. 4, provides that a municipality may pass a by-law to regulate fire prevention and the setting of open air fires, including establishing the times during which open air fires may be set and the precautions to be observed by persons setting such fires;

AND WHEREAS sections 425 and 429 of the *Municipal Act, 2001*, S.O. 2001, c. 25, authorize a municipality to create offences and to establish fines for offences under by-laws;

AND WHEREAS sections 435 and 436 of the *Municipal Act, 2001*, S.O. 2001, c. 25, provide for conditions governing powers of entry on land and the conduct of inspections;

AND WHEREAS the Council of The Corporation of the Town of Cobalt deems it advisable to pass such a by-law to regulate the setting of fires in open air;

NOW THEREFORE THE CORPORATION OF THE TOWN OF COBALT ENACTS AS FOLLOWS:

1. DEFINITIONS

1.2 "By-law" means this Open Air Burning By-law.

1.3 "Chief Fire Official" means the person appointed by the council to act as Fire Chief for the Town as defined in the *Fire Protection and Prevention Act, 1997* or a member or members of the Fire Department appointed by the Fire Chief under Article 1.1.1.2. of Division C or a person appointed by the Fire Marshal under Article 1.1.1.1. of Division C of the Ontario Fire Code 213/07, as amended, or his or her designate.

1.4 "Cooking Fire" means an open air fire used for the purpose of cooking food on a grill but does not include a manufactured barbeque.

1.5 "Controllable Fire" means a fire that is no greater than one (1) cubic metre of material at a time and that may be extinguished by the use of on-site resources.

1.6 "Extinguish" means to put out or quench a fire completely, no smoke, hot or glowing embers are to remain.

1.7 "Fees and Service Charges By-law" means the Town of Cobalt Fees and

Service Charges By-law.

- 1.8 "Fire Department" means the Town of Cobalt Fire Department.
- 1.9 "Ground Cover" shall include but is not limited to, leaves, grasses, weeds, tree needles, or wood chips on the ground.
- 1.10 "Gas-fired Outdoor Campfire Devices" means listed ULC or CSA gas (natural, propane) appliances, which shall not constitute open air fire under this By-law.
- 1.11 "Nuisance" means the excess smoke, smell, airborne sparks, or embers that are likely to disturb others.
- 1.12 "Officer" means a Chief Fire Official, Municipal Law Enforcement Officer and Police Officer.
- 1.13 "Open Air" includes any open place, yard, field or construction area which is not enclosed by a building or structure.
- 1.14 "Outdoor Fireplace" means a manufactured non-combustible enclosed container designed to hold a small fire for a decorative purpose and the size of which is no larger than 0.3 meters in any direction, and may include chimineas.
- 1.15 "Outdoor Cooking Device" means a cooking appliance fueled by a commercially produced charcoal or briquette, which includes a barbeque, a hibachi, a structure designed and intended solely for the cooking of food in the open, 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.
- 1.16 "Owner" includes any person, entity, firm or corporation having control over any portion of a building, land or property and includes the persons in the building or property.
- 1.17 "Permit" means a permit issued under this By-law which authorizes a person to establish an open air fire.
- 1.18 "Person" means an individual, business, partnership or a corporation.
- 1.19 "Smog Alert" means an alert issued by the Ministry of the Environment with respect to air quality.
- 1.20 "Town" means The Corporation of the Town of Cobalt.

2. GENERAL

- 2.1 No person shall set or maintain a fire in open air unless a permit has been issued by the Chief Fire Official under this by-law.
- 2.2 In the absence of being issued a permit, an owner shall be deemed to have permitted a fire to burn and the owner assumes all responsibility and liability where a fire has been set or permitted to burn in the open air.
- 2.3 Every person who applies for and receives a permit acknowledges having read and understood the terms and conditions specified in Section 2.6 of this by-law and

assumes all responsibility and liability in connection with the open air burning permit.

- 2.4 A permit obtained under this by-law is valid for any purpose noted or indicated on the permit issued by the Chief Fire Official.
- 2.5 Where a permit has been obtained under this by-law, no person shall set or maintain a fire in open air other than in compliance with the terms and conditions of the permit.
- 2.6 A permit will be issued to any owner pursuant to the following terms and conditions:
- a) Any person that sets, maintains or operates an **outdoor fireplace** with a spark arrestor must provide that:
- i) the fire is set or maintained during the time period between 6pm and midnight;
 - ii) it is located at a distance of not less than 4.5 meters between the fireplace and any building or structure, property line, tree, hedge, fence, roadway, overhead wires, or other combustible article;
 - iii) it is located on a non-combustible surface extending beyond the unit to a dimension equal to the height of the unit or unless it carries a UL/CSA rating and the manufacturers guidelines are followed;
 - iv) there is no rain or fog and the wind velocity is not greater than 15 kilometers per hour as reported by Environment Canada;
 - v) it does not create a nuisance;
 - vi) a portable fire extinguisher or operable garden hose is available while the unit is in operation;
 - vii) the owner maintains a consistent watch and control over the outdoor fireplace from the time of the setting of the fire until the fire is totally extinguished; and
 - viii) the owner shall be deemed to have permitted a fire to burn and the owner assumes all responsibility and liability where a fire has been set or permitted to burn in the open air.
- b) Any person that sets, maintains or operates a **cooking fire** must provide that:
- i) the fire is set or maintained during the time period between 6:00pm and midnight;
 - ii) the fire is not more than 0.3 meters by 0.3 meters in size and not more than 0.3 meters in height;
 - iii) the fire is located at a distance of not less than 7.5 metres between the fire and any building, structure, property line, tree, hedge, fence, roadway, overhead wires or any other combustible article;
 - iv) there is no rain or fog and wind velocity is not greater than 10 kilometers per hour as reported by Environment Canada;

- v) there is no combustible ground cover within 7.5 meters of the fire;
 - vi) the fire does not cause a nuisance;
 - vii) a portable fire extinguisher or operable garden hose is available while the fire is burning;
 - viii) the owner maintains constant watch and control over the cooking fire from the time of the setting of the fire until the fire is totally extinguished; and
 - ix) the owner shall be deemed to have permitted a fire to burn and the owner assumes all responsibility and liability where a fire has been set or permitted to burn in the open air.
- c) Any owner of lands that sets, maintains or operates a fire that is no more than **(1) one cubic metre** of material, must provide that:
- i) the lands are inspected by the Chief Fire Official or designate and the lands are sufficient size to meet all the setback requirements, as follows:
All such fires shall be at least:
 - a. 150 metres from any dwelling; and
 - b. 50 metres from any building structure; and
 - c. 100 metres from any highway or public road.
 - ii) no more than one (1) controllable fire per residence on property;
 - iii) the material to be burned shall be limited to wood or by-products of wood, excluding materials that can be reused, recycled, mixed debris such as brush or leaves or vegetation that can be composted;
 - iv) no fire shall contain rubber tires, plastic products, shingles, painted wood or other building materials that are known to create extensive smoke;
 - v) no fire shall be permitted if rain or fog is present, wind speeds are higher than normal and/or the wind direction causes the smoke to create a discomfort to persons residing in the immediate area of the owner who has been issued a permit;
 - vi) no fire shall be more than one (1) cubic metre of material at a time;
 - vii) no fire shall be permitted unless a person that is able to supervise such fire is present and that person is equipped with adequate tools and/or water to extinguish the fire promptly in the event of danger of the spread of such fire and is in constant immediate attendance at the specific location or place where the fire is burning;
 - viii) no fire shall be permitted outside of the date and hours (if specified) in the permit; and
 - ix) no fire shall be permitted unless it complies with all the relevant provisions of the *Environmental Protection Act*, R.S.O. 1990, c. E.19.

2.7 No person shall set or maintain any permitted fire when a smog alert has been issued for the forecast area that includes the Town of Cobalt.

- 2.8 No person shall set or maintain any permitted fire when a burning ban or fire ban has been issued by the Chief Fire Official.
- 2.9 Notwithstanding any other provisions of this by-law, the Chief Fire Official may permit an open air fire:
- a) for the purpose of training or testing fire equipment;
 - b) by the Town or any of its officials, employees, contractors or agents or any other persons for whom the Town is liable at law who are carrying out any operations of the Town, operating, maintaining or installing municipally-owned infrastructure and/or facilities; or
 - c) for any extraordinary reason as deemed expedient by the Chief Fire Official.
- 2.10 The following are exempt from the provisions of this by-law:
- a) an outdoor cooking device; and
 - b) a gas-fired outdoor campfire device.
- 2.11 Outdoor open air fires will not be permitted on any or all construction sites.

3. POWER OF ENTRY AND INSPECTION

- 3.1 An officer may, at any reasonable time, enter and inspect any land or premises to determine whether the provisions of this by-law or any direction or order made thereunder is being complied with.
- 3.2 An owner shall permit an officer to inspect any land, property or premises for the purposes of determining compliance with this by-law.
- 3.3 An officer may be accompanied by a person under his or her direction.
- 3.4 Notwithstanding Sections 6.1 and 6.2, no person, including an officer, shall exercise a power of entry under this by-law to enter a place or part of a place that is actually being used as a dwelling unless:
- a) the occupier of the dwelling, having been informed that the right of entry may be refused, consents to the entry; or
 - b) if the occupier refuses to consent, an order is issued pursuant to section 438 of the *Municipal Act, 2001* or a warrant issued pursuant to section 439 of the *Municipal Act, 2001*, or a warrant issued under the *Provincial Offences Act*, R.S.O. 1990, c. P.33.

4. OBSTRUCTION

- 4.1 No person shall hinder or obstruct, or attempt to hinder or obstruct, an officer exercising a power or performing a duty under this by-law.
- 4.2 Any person who has been alleged to have contravened any of the provisions of this by-law shall identify themselves to the officer upon request, and the failure to do so shall be deemed to constitute an obstruction or hindrance of the officer in the execution of his duties.

5. FEES

- 5.1 The fee for a permit issued under this by-law shall be twenty-five dollars (\$25.00) or as identified in the Fees and Service Charges By-law as established and amended from time to time, whichever fee is the successor.
- 5.2 Should the Fire Department attend to extinguish an open air fire that is not being carried out in accordance with the provisions of this by-law, the owner shall be responsible for any damage to property or injury to persons occasioned by said open air fire and shall be liable to pay any fees together with any costs, including, but not limited to, personnel, equipment and apparatus necessary and called in to extinguish said open air fire, as may be set out in the Fees and Service Charges By- law.

6. PENALTY

- 6.1 Any person who contravenes any of the provisions of this by-law is guilty of an offence and:
- a) upon a first conviction is subject to a minimum fine of \$100.00 and a maximum fine of \$5,000.00; and
 - b) upon a subsequent conviction is subject to a minimum fine of \$500.00 and a maximum fine of \$10,000.00.
- 6.2 Despite Section 6.1, where the person convicted is a corporation, the corporation is liable:
- a) upon a first conviction is subject to a minimum fine of \$500.00 and a maximum fine of \$10,000.00; and
 - b) upon a subsequent conviction is subject to a minimum fine of \$1,00.00 and a maximum fine of \$25,000.00.
- 6.3 If this by-law is contravened and a conviction is entered, in addition to any other remedy and to any penalty imposed by the by-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order:
- a) prohibiting the continuation or repetition of the offence by the person convicted; and
 - b) requiring the person convicted to correct or remedy the contravention in the manner and within the time period that the court considers appropriate.

7. ADMINISTRATION AND ENFORCEMENT

- 7.1 Any officer is hereby vested with the authority of enforcing this by-law.
- 7.2 Any permit issued under this by-law may be revoked if a person is, in the opinion of the Chief Fire Official or an Officer, in contravention of any provision of this by-law.

8 PERMITS

- 8.1 An application for a permit shall be made to the Fire Department in the form attached as Schedule "A".
- 8.2 A permit is valid for a period as determined by the Chief Fire Official, up to a maximum of one (1) year.

9 VALIDITY, SEVERABILITY AND INTERPRETATION

- 9.1 Should a court of competent jurisdiction declare a part or whole of any provision of this by-law to be invalid or of no force and effect, the provision or part is deemed severable from this by-law, and it is the intention of Council that the remainder survive and be applied and enforced in accordance with its terms to the extent possible under law.
- 9.2 Whenever any reference is made in this by-law to a statute or regulation of the Province of Ontario, such reference shall be deemed to include all subsequent amendments to such statute or regulation and all successor legislation to such legislation.
- 9.3 Words importing the singular number shall include the plural, and words importing the masculine gender shall include the feminine, and the converse of the foregoing also applies, unless the context of the by-law otherwise requires.

10 REPEAL

- 10.1 All by-laws and/or resolutions that are inconsistent with the provisions of this by-law are hereby repealed or rescinded insofar as it is necessary to give effect to the provisions of this by-law.

11 TITLE

- 11.1 The short title of this by-law is "Open Air Burning By-law".

12 ENACTMENT

- 12.1 This by-law shall come into force and effect upon the final passing thereof.

ENACTED and PASSED this 28th day of June, 2011

MAYOR

CLERK