



THE CORPORATION OF THE TOWN OF COBALT

BY-LAW NO. 2021-015

Being a By-Law to Regulate and Establish Procedures for Open Air Burning

WHEREAS section 7.1 (1) of the *Fire Protection and Prevention Act, 1997, S.O. 1997, c. 4*, as amended, provides that a municipality may pass By-Law, regulating fire prevention, including the prevention of the spreading of fires, and the setting of open air fires, including establishing the times during which open air fires may be set.

AND WHEREAS Section 7.1 (4) of the *Fire Protection and Prevention Act, 1997, S.O. 1997, c.4*, as amended, provides that a municipality may appoint an officer to enter upon land and into structures at any reasonable time to inspect land and structures to determine whether By-Law enacted in accordance with this section are being complied with. 2001. c.25, c. 475 (3);

AND WHEREAS Section 7.1 (5) of the *Fire Protection and Prevention Act, 1997, S.O. 1997, c.4*, as amended, provides that the exercise of powers by an officer appointed under this section in accordance with Part XIV of the *Municipal Act, 2001*, other than clause 431 (a) of that Act;

AND WHEREAS sections 425 (1) of the *Municipal Act, S.O. 2001, c. 25*, as amended, provides a municipality may pass By-Law providing that a person who contravenes a By-Law of the municipality passed under this Act is guilty of an offence. 2006, c. 32, Sched A, s. 184;

AND WHEREAS Section 429 (1) of the *Municipal Act, S.O. 2001, c. 25*, as amended provides that 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 Section 446 (1) of the *Municipal Act, S.O. 2001, c. 25*, as amended, provides that if the 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 require to do it, the matter or thing shall be done at the person's expense. 2006, c. 32, Sched. A, s. 184;

AND WHEREAS the Council of The Corporation of the Town of Cobalt deems it advisable to adopt a new By-Law to regulate and establish procedures for open air burning within the Town of Cobalt and to repeal By-Law 2011-020, as amended;

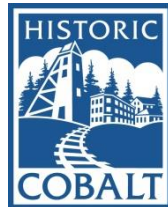
NOW THEREFORE the Council of the Corporation of the Town of Cobalt hereby enacts as follows:

1. That Council adopts a By-Law to regulate and establish procedures for open air burning within the Town of Cobalt identified as Schedule "A", attached hereto and forming part of this By-Law;
2. That By-Law 2011-020, as amended, being a By-Law to regulate and establish procedures for open air burning within the Town of Cobalt is hereby repealed;
3. That the Clerk of the Town of Cobalt is hereby authorized to make any minor modifications or corrections of an administrative, numerical, grammatical, semantically or descriptive nature or kind to the By-Law and Schedule as may be deemed necessary after the passage of this By-Law, where such modifications or corrections do not alter the intent of the By-Law.
4. That this By-Law shall come into force and take effect on the date of its final passing.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED this 27th day of April, 2021.

MAYOR

CLERK TREASURER



**THE CORPORATION OF THE TOWN OF COBALT
Schedule "A" TO BY-LAW NO. 2021-015
TO REGULATE AND ESTABLISH PROCEDURES FOR OPEN AIR BURNING**

**PART 1
SHORT TITLE**

1.1 Short Title

This *By-Law* shall be cited as the “*Open Air Burning By-Law*”.

**PART 2
DEFINITION**

For the purpose of this *By-Law*, all words shall have their normal and customary meaning save and except for those hereinafter defined:

- 2.1 “Applicant”** means the *person* (18 or older) that makes application for a *permit* to hold *open air burning*;
- 2.2 “By-Law”** means this *Open Air Burning By-Law*;
- 2.3 “By-Law Enforcement Officer”** means the *person* or *persons* duly appointed by Council as Municipal Law Enforcement Officers for the purpose of enforcing regulatory *By-Law* of the Town of Cobalt;
- 2.4 “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*;
- 2.5 “Cooking Fire”** means an open air fire used for the purpose of cooking food on a grill but does not include a manufactured barbeque;
- 2.6 “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;
- 2.7 “Designate”** means the *person* or *persons* appointed by the *Chief Fire Official* authorized to issue *open air burning permits* in accordance with this *By-Law*;
- 2.8 “Extinguish”** means to put out or quench a fire completely, no smoke, hot or glowing embers are to remain;
- 2.9 “Fire Ban”** means a period of time during which the Fire Chief or their *designates*, prohibits all outdoor burning activities with the Town of Cobalt;
- 2.10 “Fire Department”** means the Town of Cobalt *Fire Department*;
- 2.11 “Fire Restricted Time”** means the time of day in which *open air burning* activities are not permitted;
- 2.12 “Fire Restricted Zone”** means the area in which the Ministry of Natural Resources has suspended all *open air burning*;
- 2.13 “Flying Lanterns”** means a small, hot air balloon made of paper, with an opening at the bottom where a small fire is suspended. Also known as “sky lantern”;
- 2.14 “Ground Cover”** shall include but is not limited to, leaves, grasses, weeds, tree needles, or wood chips on the ground.

- 2.15 “**Gas Fired Outdoor Campfire Devices**” means listed ULC or CSA gas (natural, propane) appliances.
- 2.16 “**Noxious Material**” includes but is not limited to tires, plastics, rubber products, drywall, demolition waste, construction waste, paint, animal organic waste, vegetable waste, food waste, biomedical waste, tar, asphalt products, battery boxes, pressure treated wood, creosote-treated wood, and painted wood;
- 2.17 “**Nuisance**” means the excess smoke, smell, airborne sparks, or embers that are likely to disturb others, or that is likely to reduce visibility on roads in the vicinity of the *open air burning* activity.
- 2.18 “**Officer**” means a *Chief Fire Official, Municipal Law Enforcement Officer* and Police Officer.
- 2.19 “**Open Air Burning**” means any fire that is conducted outside a building, including a fire conducted in a garden, yard, alley, field, construction area or other open place. For the purpose of this definition *open air burning* does not include the following:
- (a) the operation of welding or similar equipment;
 - (b) a manufactured outdoor wood furnace installed and operated in accordance with the manufacturer’s instructions;
 - (c) an appliance which is fueled by natural gas or propane, including but not limited to a barbeque.
- 2.20 “**Outdoor Fireplace**” means a manufactured non-combustible enclosed container designed to hold a small fire for a decorative, recreational, cooking or warmth purposes and the size of which is no larger than 0.3 meters in any direction, and may include chimineas.
- 2.21 “**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.
- 2.22 “**Owner**” means the registered *owner* of the land.
- 2.23 “**Permit**” means a *permit* issued under this *By-Law* which authorizes a *person* to establish an open air fire;
- 2.24 “**Person**” means an individual, business, partnership or a corporation;
- 2.25 “**Police Officer**” means a member of the Ontario Provincial Police Service;
- 2.26 “**Provincial Offences Act**” means the *Provincial Offences Act*, R.S.O. 1990, c. P.33. as amended;
- 2.27 “**Town**” means The Corporation of the Town of Cobalt.

PART 3 REGULATIONS

- 3.1 A *person* may conduct an *Open Air Burning* in an *outdoor fireplace* if the *person* has been issued a *permit* by *Chief Fire Official* or *designate* and if the *person* complies with all the terms and conditions set out in this *By-Law*.

(a) an application for a *permit* must be completed on the forms provided by the *Town* in Appendix "2" of Schedule "A" attached to this *By-Law*

(b) the *permit* shall only be valid for the year indicated on the *permit*.

(c) the *officer* may refuse to issue a *permit*:

(i) if the proposed *Open Air Burning* would contravene this *By-Law*;

(ii) if the *Owner* or *Permit Holder* has previously contravened any *permit* conditions or other provisions of this *By-Law*, or an Order under this *By-Law*, or

(iii) furnishes false information in the application for a *permit* under this *By-Law*.

3.2 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.

3.3 Every *person* who applies for and receives a *permit* acknowledges having read and understood the terms and conditions specified in Section 3.6 of this *By-Law* and assumes all responsibility and liability in connection with the *open-air burning permit*.

3.4 A *permit* obtained under this *By-Law* is valid for any purpose noted or indicated on the *permit* issued by the *Chief Fire Official*.

3.5 No person shall conduct and open-air burn without first obtaining a permit. No *permit* shall be issued to any *person* other than the *owner* of the property where the fire is to occur, save an authorized agent acting on the *owner(s)* behalf who produces written authorization signed and dated by the *owner*.

3.6 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 6:00pm and midnight. No *person* shall conduct an open-air burn at any time in a *fire restricted time*.

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* 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 *person* shall set any fire outdoors to burn household garbage, construction material or material made of/or containing rubber, plastic, tar, pressure treated or creosote treated wood, or any material which may emit noxious or poisonous substances or pollutants, including PCB's or other chemicals at anytime.
- 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 in the *permit*; and

x) 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.

- 3.7** If the *Chief Fire Official* or their *designate*, determines that this *By-Law* has been contravened, the *Officer* may withdraw a previously issued *permit*. In the event of any *permit* withdrawn, all *persons* shall immediately *extinguish* any fires. In the case of a *permit* withdrawal, there shall be no refund of *permit* fees.
- 3.8** No *person* shall set or maintain any permitted fire when a burning ban or *fire ban* has been issued by the *Chief Fire Official*.
- 3.9** No *person* shall conduct an open air burn at any time in a Ministry of Natural Resources declared *fire restricted zone(s)*.
- 3.10** No *person* shall ignite or use a *Flying Lantern*.
- 3.11** Outdoor open air fires will not be permitted on any or all construction sites.
- 3.12** 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.
- 3.13** An *owner* shall permit an *officer* to inspect any land, property or premises for the purposes of determining compliance with this *By-Law*.
- 3.14** An *officer* may be accompanied by a *person* under their direction.
- 3.15** 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.
- 3.16** 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*.
- 3.17** 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.

PART 4 EXEMPTION

- 4.1** The *Cobalt Fire Department* shall be exempt from the provisions of this *By-Law* with respect to open air fires for the purpose of training, educating individuals in fire safety or for research purposes;
- 4.2** The *Town* shall be exempt from the provisions on this *By-Law* with respect to open air fires

related to municipal works and Council approved or sanctioned events upon approval of the *Chief Fire Official* or their *designate*.

4.3 The following are exempt from the provisions of this *By-Law*:

- a) *an outdoor cooking device*; and
- b) *a gas-fired outdoor campfire device*.

PART 5 FEES

5.1 The fee for a *permit* issued under this *By-Law* shall identified in the *User Fees By-Law* as established and amended from time to time.

PART 6 PENALTIES

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 \$1,000.00 and a maximum fine of \$25,000.00.

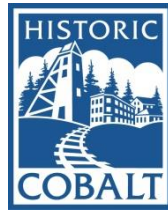
6.3 Where an offence is a continuing offence, each day that the offence is continued shall constitute a separate and distinct offence.

6.4 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.

6.5 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*.

6.6 The *Town* may recover the costs of *extinguishing* the fire from the *person* directed to *extinguish* the fire by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes. The costs include interest calculated at a rate of 1.25% per month, calculated for the period commencing on the day the *Town* incurs the costs and ending on the day the costs, including interest are paid in full.



THE CORPORATION OF THE TOWN OF COBALT
Appendix "1" of Schedule "A"
OPEN AIR BURNING BY LAW 2021-015

PART 1 PROVINCIAL OFFENCES ACT
SET FINES

Item	COLUMN 1 Short Form Wording	COLUMN 2 Provision creating or defining offence	COLUMN 3 Set Fine
1	Conduct open air burning in outdoor fireplace without a permit	Sch. "A", section 3.1	\$100.00
2	Conducting open air burning without written authorization	Sch. "A", section 3.5	\$100.00
3	Conducting open air burning in an outdoor fireplace during restricted times	Sch. "A", section 3.6 (a)(i)	\$100.00
4	Conducting open air burning too close to a combustible	Sch. "A", section 3.6 (a)(ii)	\$100.00
5	Open air burning creates nuisance	Sch. "A", section 3.6 (a)(v)	\$100.00
6	Fail to provide extinguishing agent	Sch. "A", section 3.6 (a)(vi)	\$100.00
7	Open air burning other than dry woody type materials	Sch. "A", section 3.6 (c)(iii)	\$100.00
8	Open air burn beyond restricted size	Sch. "A", section 3.6 (c)(vi)	\$100.00
9	Fail to supervise open air burning	Sch. "A", section 3.6 (c)(vii)	\$100.00
10	Conducting open air burning in a restricted fire zone	Sch. "A", section 3.9	\$300.00

Note: The general penalty provision for the offences listed above is Section 61 of the Provincial Offences Act, R.S.O. , 1990, c. P 33, as amended.

THE CORPORATION OF THE TOWN OF COBALT
 Appendix "2" of Schedule "A"
 OPEN AIR BURNING BY LAW 2021-015

OPEN AIR BURN PERMIT

Year: _____

Name:	
Are you the registered owner of this property:	
<input type="checkbox"/> Yes <input type="checkbox"/> No - <i>Please provide a letter of approval from the registered owner</i>	
Municipal Address:	
Mailing Address:	
Email Address:	
Phone Number:	
Location of Appliance: <input type="checkbox"/> Front <input type="checkbox"/> Side <input type="checkbox"/> Back	
Type of Extinguisher on Location	
<input type="checkbox"/> Class "A" Extinguisher <input type="checkbox"/> Garden Hose	
Type of Appliance	
<input type="checkbox"/> Chimenea <input type="checkbox"/> Fire Bowl <input type="checkbox"/> Outdoor Fireplace	
Type of Permit Requested	
<input type="checkbox"/> Recreational Residential	<input type="checkbox"/> New Application <input type="checkbox"/> Renewal

BY SIGNING BELOW, THE APPLICANT AGREES TO COMPLY WITH THE PROVISIONS OF THE OPEN AIR BURNING BY-LAW OF THE CORPORATION OF THE TOWN OF COBALT AND AGREES TO ASSUME RESPONSIBILITY FOR ANY DAMAGES OCCURRING FROM THE FIRE FOR WHICH THIS PERMIT IS ISSUED.

PLEASE NOTE:

- FIRE PERMIT CAN TAKE UP TO 5 BUSINESS DAYS TO BE ISSUED.
- NOT PERMITTED TO BURN UNTIL THIS PERMIT IS APPROVED AND IN YOUR POSSESSION.

Applicant Signature: _____ Date: _____

Administrative Use Only		
Fire Department Signature:	Receipt: #	Fee: \$
Permit: <input type="checkbox"/> Approved <input type="checkbox"/> Declined	Notes:	Received Stamp
BURNING PERMITTED FROM 6PM TO MIDNIGHT ONLY		