

## CORPORATION OF THE TOWN OF HAWKESBURY

### BY-LAW N° 45-2024

#### Being a by-law to regulate the setting of open air fires within the limit of the Town of Hawkesbury and the precautions to be observed

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**WHEREAS** it is deemed necessary to review and update By-law N° 16-2001 prescribing the setting of open air fires within the limits of the Town and the precautions to be observed.

**AND WHEREAS** the Council of the Corporation of the Town of Hawkesbury is desirous of enacting a by-law to regulate the setting of open air fires, including the provision of conditions for the purposes of ensuring fire safety from the risks of open air fires and reducing the public nuisance arising from such fires;

**AND WHEREAS** Section 128 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended provides that a municipality may pass by-laws to prohibit and regulate public nuisances, including matters that, in the opinion of Council, are or could become or cause public nuisance;

**WHEREAS** Section 7.1 (1) of the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c.4, as amended, states that the 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** Section 7.1 (3) of the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c.4, as amended, provides that a by-law under this section may deal with different areas of the municipality differently;

**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 the land and structures to determine whether by-laws enacted in accordance with this section are being complied with;

**AND WHEREAS** Part 2 of the *Ontario Fire Code*, O.Reg. 388/97, provides that open air burning shall not be permitted unless approved, or unless such burning consists of a small, confined fire, supervised at all times, and used to cook food on a grill or barbeque or such burning take place in an appliance that is in conformance with the *Technical Standards and Safety Act, 2000*, is for outdoor use, and is installed in accordance with the manufacturer's instructions;

**AND WHEREAS** Section 391 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that despite any Act, a municipality and a local board may pass by-laws imposing fees or charges on any class of person, for services or activities provided or done by or on behalf of it or for costs payable by it for services or activities provided or done by or on behalf of any other municipality or local board;

**AND WHEREAS** Section 442 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended provides that where the municipality has the authority by any Act or by-law to direct or require a person to do a matter or thing, the municipality may also provide that, in default or it being done by the person directed or required to do so, the matter or thing shall be done at the person's expense and the municipality may recover the costs of doing the matter or thing from the person required to do it, by action or by adding the costs to the tax roll and collecting them in the same manner as taxes;

**AND WHEREAS** Sections 23.2, 23.3 and 23.5 of the *Municipal Act, 2001* provides that a municipality may delegate its administrative and hearing powers;

**AND WHEREAS** Section 391 of the *Municipal Act, 2001* authorizes a municipality to impose fees or charges on persons for services or activities provided or done by or on behalf of it;

**AND WHEREAS** Section 434.1 (1) of the *Municipal Act, 2001*, provides that a municipality may require a person, subject to such conditions as the municipality considers appropriate, to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with a by-law passed under the *Municipal Act, 2001*;

**AND WHEREAS** By-law N° 8-2024 was adopted on February 12, 2024, establishing an Administrative Monetary Penalty System.

**NOW THEREFORE** the Municipal Council of the Corporation of the Town of Hawkesbury enacts as follows:

## **1. DEFINITIONS**

In this by-law:

“**Approved**” means approved by the Hawkesbury Fire Chief or his authorized subordinates or assistants;

“**Bonfire**” means a campfire;

**“By-law Officer”** means a person appointed by the Municipal Council of the Corporation of the Town of Hawkesbury as By-law Enforcement Officer to enforce the provisions of this by-law;

**“Chief of Police”** means the Detachment Commander of the Hawkesbury Ontario Provincial Police, or his or her designate;

**“Corporation”** means the Corporation of the Town of Hawkesbury;

**“Council”** means the Council of the Corporation of the Town of Hawkesbury;

**“Exterior fireplace”** means a manufactured, non-combustible, enclosed container designed to hold a small fire for decorative purposes and the size of which does not exceed 1 m in any direction and includes, but is not limited, to a chimney.

**“Fire”** means fuel in state of combustion, the phenomenon of combustion manifested in light, flame and heat;

**“Fire Chief”** means the Chief of the Fire Department of the Corporation of the Town of Hawkesbury or his authorized subordinates or assistants;

**“Permit Holder”** means the person applying (applicant) for a burning permit and shall be eighteen (18) years of age or over;

**“Person”** includes not only an individual but also a corporation, a company, a firm, a partnership and any association;

**“Town”** means the Town of Hawkesbury;

**“TSSA”** Technical Standards and Safety Authority is Ontario’s public safety regulator for Elevating & Amusement Devices, Ski Lifts, Fuels, Boilers & Pressure Vessels and Operating Engineers.

## 2. INTERPRETATION

- 2.1 In this by-law, a word interpreted in the singular number has a corresponding meaning when used in the plural.
- 2.2 It is declared that if any section, subsection or part or parts thereof be declared by any Court of Law to be illegal or ultra vires, such section, subsection or part or parts shall be deemed to be severable and all parts hereof are declared to be separate and independent and enacted as such.

### **3. GENERAL PROVISIONS**

- 3.1. No person shall set an open air fire in the Town of Hawkesbury without first obtaining a burning permit from the Fire Chief. The Fire Chief may issue an open air fire burning permit and may be subject to any additional conditions imposed by the Fire Chief.
- 3.2. The Fire Chief may issue a burning permit for any fire under special circumstances or may, at their sole discretion, refuse to issue any burning permit depending on the conditions encountered.
- 3.3. A site inspection of the proposed site of the open air fire may be required by the Fire Chief prior to issuing a permit.
- 3.4. A person eighteen (18) years of age or older shall maintain constant watch and control over the open air fire at all times, from the time of the setting of the fire until the fire is totally extinguished;
- 3.5. The material to be burned for an open air burning fire shall be limited to wood or by-products of wood unless otherwise specified and approved. Prohibited materials shall include but are not limited to grass, leaves, garbage, pressure treated or creosote wood, or any combustibles that produce toxic fumes other than those produced by the burning of untreated wood.
- 3.6. A burning permit may be cancelled or suspended at any time by the Fire Chief, the Chief of Police, or a By-law Officer and immediately upon receiving notice of such cancellation or suspension, the permit holder shall extinguish any fire started under the permit;
- 3.7. Open air burning fire shall only occur during daylight hours, unless otherwise specified and approved.
- 3.8. No person shall set an open air fire in the central business section and in the urban area of the Town where development is complete.
- 3.9. Burning permits may be issued for clean up of brush in fringe areas of the Town currently being serviced or under development and for a bonfire (campfire).
- 3.10. All persons setting an open-air fire or using an exterior fireplace in the Town of Hawkesbury shall:
  - a) Be responsible for any damage to property or injury to persons occasioned by the said fire;

- b) Be liable for costs incurred by the Fire Department including personnel, equipment, and apparatus necessary should they be called in to extinguish the said fire.

3.11. This by-law does not cover any requirements under the *Environmental Protection Act*, 1990. Any fire is subject to the regulations set out by the Ministry of Environment regarding air pollution.

#### **4. PERMITS**

##### **Open air burning fires**

- 4.1. Open air burning shall allow no more than one (1) cubic metre of material to be burned at any one time. Additional conditions may be imposed by the Fire Chief if size is greater than 1 cubic meter.
- 4.2. The methods of extinguishment of the fire designated on the permit form must be available at the site at all times during the fire;
- 4.3. Open air burning shall only occur during daylight hours unless otherwise specified and approved;
- 4.4. The permit holder must notify the Fire Department when the fire is lit and, at the end of the day, must extinguish the fire and inform the Fire Department accordingly;
- 4.5. The permit holder shall notify the occupant(s) of adjacent property(ies) of their intentions of setting an open-air fire prior to setting same;
- 4.6. No open air fire shall be maintained when the wind is in such direction or of such intensity so as to result in a decrease in visibility on any highway or roadway or a risk of a rapid spread of fire through grass or a brush area;
- 4.7. Open air fires shall not be set closer than thirty (30) metres from any buildings or standing timber.
- 4.8. Where combustible material other than a building, such as hedges, fences, or overhead wiring is present, a radius of 15 m from the open-air fire shall be kept.

##### **Exterior fireplaces (permit not required)**

4.9 No burning permit is required for a fire when such burning consists of a small, confined fire, supervised at all times and set in an approved exterior fireplace and when such a fireplace is installed and used as follows:

- a) Exterior fireplaces shall be made of metal, brick, ceramic or pottery and must be equipped with fireguards (spark-arresters) at every opening including top of chimney, etc.;
- b) The exterior fireplace shall be installed at a minimum of five (5) meters from any combustible material, trees and shrubs or structures, and at a minimum of three (3) meters from property lines;
- c) Exterior fireplaces shall rest on a non-combustible surface such as a concrete base or bare earth;
- d) Manufacturers' instructions must be followed when using exterior fireplaces, in as long as they do not contravene with this by-Law;
- e) The material to be burned in an exterior fireplace must be limited to dry, clean wood. A minimal amount of paper may be used to start the fire in order to limit the emission of embers;
- f) Flammable liquids shall never be used to start a fire in an exterior fireplace;
- g) A means of extinguishment such as a garden hose or fire extinguisher must be within close distance to the exterior fireplace;
- h) Burning in exterior fireplaces must not take place when winds are present or when weather conditions cause smoke to remain low. At no time must natural conditions allow smoke to disturb the neighbours. If these conditions occur or if the person or the Fire Department receives a complaint from a neighbour, the person must immediately extinguish the fire;
- i) Patio heaters and open-flame appliances such as fire pits, fireplaces, and tabletop units shall be used outside and installed according to the manufacturer's instructions. The distance to be kept above, around, and underneath heaters shall be respected at all times according to manufacturer specifications. Patio heaters shall be kept away from combustible materials such as umbrellas, awnings, walls, tablecloths, paper products, decorations, and signs. TSSA requirements for the storage, handling and transportation shall be respected at all times.

## **5. ENFORCEMENT**

5.1 The provisions of this By-law shall be enforced by the Fire Chief, or other individuals duly appointed for the purpose of enforcing this By-law.

- 5.2 No person shall hinder or obstruct or attempt to hinder or obstruct the Chief of Police or the By-law Officers while exercising a power or performing a duty under this by-law.

## **6. OFFENCES AND PENALTIES**

- 6.1. Every person who contravenes any of the provisions of this by-law is guilty of an offence.
- 6.2. Any person who contravenes any provision of this By-law shall be liable to pay the Town an Administrative Monetary Penalty, upon issuance of a penalty notice in accordance with the Town of Hawkesbury's Administrative Monetary Penalties System (AMPS) By-law, as may be amended from time to time.
- 6.3. Where a person has been convicted of an offence under this by-law the Ontario Court of Justice, or any court of competent jurisdiction thereafter may, in addition to any other penalty imposed on the person convicted, issue an order prohibiting the continuation or repetition of the offence or the doing of any act or thing by the person convicted directed towards the continuation or repetition of the offence.
- 6.4. Every person who acts in contravention of this by-law so as to cause the Town to incur costs due to his or her actions shall, in addition to any penalty provided for herein, be liable to the Town for all expenses incurred for the purpose of repairing or replacing damaged property or removing unauthorized materials, and such expenses may be recovered by court action or in a like manner as municipal taxes.
- 6.5. When a person has been convicted of an offence under this by-law, the court of competent jurisdiction may, in addition to any other penalty imposed on the person convicted, issue an order prohibiting the continuation or repetition of the offence or the doing of any act or thing by the person convicted, directed towards the continuation or repetition of the offence.

## **7. SEVERABILITY**

- 7.1. If a court of competent jurisdiction should declare any paragraph or part of a paragraph of this by-law to be invalid or ultra vires such paragraph or part of a paragraph shall not be construed as having persuaded or influenced Council to pass the remainder of this by-Law and it is hereby declared that the remainder of this by-law shall be valid and shall remain in force.

## **8. SHORT TITLE**

This by-law may be referred to as the “Exterior fire burning By-law”.

## **9. REPEALS**

That by-law N° 16-2001 be repealed.

## **10. ENACTMENT**

10.1. That Shedule A-10 be added to be part of Schedule A “Designated by-laws” of By-law N° 8-2024.

10.2. This by-law shall come into force and take effect upon its passing.

**READ A FIRST, SECOND AND ADOPTED UPON THIRD READING THIS 3<sup>rd</sup> DAY OF JUNE 2024.**

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**Robert Lefebvre, Mayor**

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**Sonia Girard, Clerk**