

CORPORATION OF THE TOWNSHIP OF MCKELLAR

BY-LAW NO. 2019-24

**Being a By-law to Prescribe Times for Setting Fires and
Precautions / Restrictions for Burning and to Repeal By-law No. 2018-30**

WHEREAS Section 7.1 of the Fire Protection and Prevention Act, 1997, S.O. 1997, c.4, as amended, provides that the Council 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 391 of the Municipal Act, 2001, S.O. 2001, c. 25, authorizes Council to pass by-laws imposing fees or charges on any class of persons for services or activities provided or done by or on behalf of it, and for costs payable by it for services or activities provided or done by or on behalf of any other municipality, or local board;

WHEREAS Section 128 of the Municipal Act, S. O. 2001, c. 25, as amended provides that a municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council are or could become public nuisances; and

AND WHEREAS Section 429, subject to subsection (4), of the Municipal Act, 2001, S.O. 2001, c. 25, provides that a municipality may establish a system of fines for offences under a by-law of the municipality passed under this Act;

AND WHEREAS Section 446 of the Municipal Act, 2001, S.O. 2001, c. 25, provides that where a municipality has the authority 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 required to do it, the matter or thing shall be done at the person's expense;

NOW THEREFORE the Council of the Corporation of the Township of McKellar hereby enacts as follows:

1.0 DEFINITIONS:

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

"Campfire/Recreation Fire" means a fire situated outdoors set for the purpose of cooking, warmth or recreational enjoyment.

"Camping Establishment" means a tourist establishment of at least six **campsites** and comprising of land used or maintained as grounds for the camping or parking of trailers, motorized coach, truck campers, campers or tents but not including mobile homes.

“**Campsite**” means an area of land within a tent and trailer park or **camping establishment** which is designed to accommodate the placement of tents, travel trailers, motor coach or truck campers for the temporary quarters of a travelling or vacationing public.

“**Chief Fire Official**” means the Fire Chief of the **Township** and **Township** staff as designated by the Fire Chief.

“**Chiminea**” means clay, porcelain or metal receptacle used for the purposes of burning and constitutes an **open air fire** under this by-law.

“**Controllable Fire**” means an **open air fire** that can be **extinguished** using resources on the **property**.

“**Extinguish**” means to put out or quench an **open air fire** completely, no smoke, hot or glowing embers are to remain.

“**Fire Ban**” means a ban of an **open-air fire** as declared by the Chief **Fire Official** or by the applicable Ministry.

“**Fire Season**” means the period of April 1 to October 31 of each year.

“**Flammable Material**” includes solids, liquids or vapours which could quickly ignite into flames or explode should sparks or flames or hot gases from an ignition or fire source come in contact with them.

“**Incinerator Fire**” means a non-combustible container used for the purposes of burning and constitutes an **open air fire** under this by-law.

“**Officer**” means a Municipal Law Enforcement Officer, Police Officer, **Chief Fire Official**, or any other person appointed by by-law to enforce the provisions of this By-law.

“**Open Air Fire**” means a fire situated outdoors, whether burned in a container or on the ground, and includes a **chiminea, campfire/recreational fire** and an **incinerator fire** but does not include an **outdoor campfire device**.

“**Outdoor campfire device**” means listed ULC or CSA gas (natural or propane) appliances, and includes a BBQ or heating unit that is fueled by charcoal and does not constitute an **open air fire** under this By-law.

“**Owner**” includes,

- (a) the registered owner of the land; and
- (b) the **person** for the time being managing or receiving the rent of the land, lot or premises in connection with which the word is used, whether on the **person’s** own account or as agent or trustee of any other **person**, or who would receive the rent if the land, lot and premises were let; and

- (c) a lessee or occupant of the lot who, under the terms of a lease, is required to repair and maintain the lot in accordance with the standards for the maintenance and occupancy of lot;

“Permit” means a Permit issued by the **Township** in accordance with this By-law.

“Person” includes an individual, sole proprietorship, partnership, limited partnership, trust, corporation, and an individual in his or her capacity as a trustee, executor, administrator, or other legal representative.

“Property” means a parcel of land which is capable of being legally conveyed.

“Provincial Offences Act” means the Provincial Offences Act, R.S.O. 1990, c. P. 33 and its regulations, as amended.

“Township” means the Corporation of the Township of McKellar or the land within the geographic limit of the Corporation of the Township of McKellar as the context requires

2.0 APPLICATION

2.1 This by-law shall apply throughout the whole of the **Township**.

3.0 GENERAL PROVISIONS

3.1 No **person** shall set, maintain, permit or cause to be set or maintained an **open air fire** on **Township** lands without a current valid **permit**.

3.2 No **person** shall set, maintain, permit or cause to be set or maintained an **open air fire** in the **Township** other than in accordance with this By-law and the terms and conditions of this By-law.

3.3 No **person** shall set, maintain, permit or cause to be set or maintained an **open air fire** other than in accordance with the terms and conditions of a **permit**.

3.4 An **owner** of **property** on which an **open air fire** has been set or permitted to burn shall be deemed to have permitted the **open air fire** and assumes all responsibility.

3.5 No **person** shall set, maintain, permit or cause to be set or maintained an **open air fire** during a **Fire Ban**.

3.6 Notwithstanding any other provision of this By-law, an **open air fire** may be set or maintained at any time of the day when **Fire Season** is not in effect.

4. TERMS AND CONDITIONS OF AN OPEN AIR FIRE

4.1 No **person** shall set, maintain, permit or cause to be set or maintained an **open air fire** in the **Township** other than in accordance with the following:

- (a) where a **permit** is required, the **permit** shall be available for inspection at the **property** upon request;

- (b) no more than one (1) **controllable fire** on a **property**, except on a **campsite** or **camping establishment** at any time, unless otherwise approved by the **Chief Fire Official**;
- (c) an **open air fire** shall not exceed 2 metres in diameter or height or as otherwise restricted by this By-law;
- (d) the burning only of brush, leaves and unpainted/untreated wood is permitted;
- (e) an **open air fire** shall be attended and supervised at all times by a **person** at least sixteen (16) years of age;
- (f) an **open air fire** shall not occur without appropriate extinguishing agents such as portable fire extinguishers, pressurized garden hose, shovel, rake, portable pump and hose, bobcat (or similar) being on-hand at all times until the **open air fire** is **extinguished**;
- (g) an **open air fire** shall be **extinguished** when not attended and supervised by a **person** at least sixteen (16) years of age;
- (h) an **open air fire** is not permitted when the wind velocity may cause the following unsafe conditions:
 - (i) a decrease in visibility on any highway, road or navigable channel;
 - (ii) the rapid spread of fire through grass, brush, forested area or other **property** that was not intended to be burned;
- (i) an **open air fire** shall not create excessive smoke;
- (j) an **open air fire** is not permitted during a **fire ban**;
- (k) an **open air fire** shall not create a nuisance or have an adverse effect on a neighbouring **property owner**;
- (l) in conditions or a location that the **open air fire** is not safe from ignition to **extinguishment**;
- (m) a safe distance from combustible structures or objects and **flammable materials**;
- (n) on a **property** other than on a **property** that the **person** owns or lawfully occupies;
- (o) an **open air fire** shall be a minimum of ten (10) metres from a building, fence, hedge, other combustible material, highway, overhead wire or a **property** line or as otherwise restricted by this By-law;
- (p) between the hours of 6:00 p.m. on one day and no later than 10:00 a.m. the following day;

- (q) is only permitted during a low or moderate fire danger rating, unless otherwise permitted by this By-law;

5.0 GENERAL BURNING RESTRICTIONS FOR CAMPFIRE/RECREATION FIRES

- 5.1 Notwithstanding any other provision contained in this By-law, no **person** shall set, maintain, permit or cause to be set or maintained a **campfire/recreation fire** other than in accordance with the following:
 - (a) the **campfire/recreation fire** shall not exceed 2 feet (61 centimetres) in diameter or height;
 - (b) be a minimum of 1.5 metres from a building, fence, hedge, other combustible material, **flammable** material, highway, overhead wire or a **property** line;
 - (c) during a low, moderate or high fire danger rating.
 - (d) where the site of the **campfire/recreation fire** is bare rock or non-combustible material for a minimum distance of one (1) metre in diameter from the **campfire/recreation fire**;
 - (e) CSA approved outdoor recreational fire simulators can only be fueled by propane fuel delivered via CSA approved/inspected delivery systems.

6.0 CAMPSITE AND CAMPING ESTABLISHMENT

- 6.1 Notwithstanding any other provision of this By-law, a **campfire/recreation fire** may be set, permitted or maintained in a **campsite** or **camping establishment** by a **person** registered with the **campsite** or **camping establishment** between the hours of 4:00 p.m. one day and no later than 10:00 a.m. the following day.

7.0 INCINERATOR FIRE

- 7.1 Notwithstanding any other provision of this By-law, no **person** shall set, maintain, permit or cause to be set or maintained an **incinerator fire** other than in accordance with the following:
 - (a) with a screen cover in place during the **incinerator fire**;
 - (b) the size of the non-combustible container shall not exceed a size, more than 2 meters in diameter, by 1 meter in height.
 - (c) be a minimum of eight (8) metres from a building, fence, hedge, other combustible material, **flammable material**, highway, overhead wire or a **property** line;
 - (d) during a low or moderate fire danger rating.

8.0 DECLARATION OF A FIRE BAN AND FIRE DANGER RATINGS

- 8.1 The **Chief Fire Official** is responsible for establishing and declaring fire danger ratings and a **Fire Ban**. A graphical depiction of the fire danger ratings are outlined on Schedule A to the By-law.
- 8.2 A Fire Danger Rating or a **Fire Ban** may be posted or advertised through the local media, on the **Township's** website or on Fire Danger Rating signs within the **Township**.

9. PERMIT

- 9.1 A **person** making an application for a **permit** for an **open air fire** shall:
- (a) submit a complete application in the form provided by the **Township**;
 - (b) submit plans showing the location of buildings in relation to **property** lines;
 - (c) submit any other documents as may be required by the **Township**;
 - (d) submit the required **permit** fee.
- 9.2 A **permit** is valid for the event and period of time in which it is issued for.
- 9.3 A **permit** is valid only for the **property** identified on the **permit**.
- 9.4 A **permit** is not transferable.
- 9.5 A **permit** is non-returnable and non-refundable.
- 9.6 The **Chief Fire Official** may:
- (a) refuse to issue a **permit** where a **person** has previously failed to comply with the terms and conditions of a **permit** or the provisions of this By-law;
 - (b) impose any additional terms or conditions that he considers necessary in the interest of public safety;
 - (c) vary the terms and conditions of a **permit** upon conducting an inspection and determining safety is maintained through approved site specific terms and conditions;
 - (d) revoke a **permit** for failing to comply with the terms and conditions of a **permit** or the provisions of this By-law;
 - (e) issue a **permit** for an **open air fire** to be set during hours not otherwise permitted by this By-law.

9.7 The **Chief Fire Official** is hereby delegated authority to issue a **permit** in accordance with the provisions of this By-law.

10. FEES

10.1. The fee for a **permit** shall be as prescribed in the **Township's Fees and Charges By-law**.

11.0 TOWNSHIP & PROVINCIAL AGENTS EXEMPT

11.1 The **Township** and the Ministry are exempt from the provisions of this By-law.

12.0 RIGHT OF ENTRY

12.1 An **Officer** may enter at all reasonable times upon any premises or **property** to ascertain whether the provisions of this By-law are obeyed and to enforce and carry into effect the provisions of this By-law.

12.2 No **person** shall hinder or obstruct, or attempt to hinder or obstruct, an **Officer** from carrying out inspections of premises or **property** to ensure compliance with this By-law.

12.3 An **Officer** must upon request, display or produce proper identification.

13.0 OBSTRUCTION

13.1 No **person** shall hinder or obstruct, or attempt to hinder or obstruct, any **Officer** exercising a power, or performing a duty under this By-law.

13.2 Any **person**, who has been alleged to have contravened any of the provisions of this By-law, shall identify himself/herself to the **Officer** upon request. Failure to do so shall be deemed to have obstructed or hindered the **Officer** in the execution of his/her duties.

13.3 A refusal of consent to enter or to remain in a room or place actually used as a dwelling does not constitute hindering or obstruction within the meaning of subsection 13.1 unless the **Township** is acting under an order under Section 438 of the Municipal Act, or a warrant under Section 439 of the Municipal Act, or in the circumstances described in Section 437(d) or (e) of the Municipal Act.

14.0 ENFORCEMENT AND PENALTY

14.1 The enforcement of this By-law shall be conducted by an **Officer**.

14.2 Every **person** who contravenes any provision of this By-law or every director or **Officer** of a corporation, who knowingly concurs in the contravention by a corporation is guilty of an offence and upon conviction is liable to a fine as provided for under the **Provincial Offences Act**.

14.3 Upon conviction any penalty imposed under this By-law may be collected under the authority of the **Provincial Offences Act**.

15.0 RECOVERY OF COSTS

15.1 In addition to any fines or penalties established elsewhere in accordance with this By-law, the **person(s)** responsible for setting or maintaining, or permitting to be set or maintained, an **Open Air Fire** and/or the **property owners** shall be liable to the **Township** by way of a fee or charge, as calculated in accordance with Schedule B to this By-law, on account of those costs and expenses incurred by the **Township** including:

- (a) Investigating and responding to a complaint made to the **Township**, the **Chief Fire Official**, an **Officer** or by any **person** acting reasonably and in good faith, which results from setting and/or maintenance of the **Open Air Fire** and, in the opinion of the **Chief Fire Official** an **Officer**, the smoke or emissions from such **Open Air Fire** are causing or have caused actual discomfort to the complainant, or was in violation of a By-law and therein resulted in.
- (b) The dispatching of an **Officer**, a Fire Department and/or other agencies, their vehicles, equipment or aircraft, and fire-fighting and/or emergency support personnel for the purpose of: investigating a complaint and/or initiating the controlling or extinguishing an **Open Air Fire** that is in violation of the By-law.

15.2 All fees and charges payable under this By-law, Section 15.1 are due and owing to the **Township** within thirty (30) days of the date of an invoice rendered to the **person** liable to pay them.

15.3 All overdue accounts shall accrue interest at the rate of 1.25% per month (15% per annum), calculated monthly, from the due date until paid in full.

15.4 If a **person** who sets or maintains an **Open Air Fire** contrary to this By-law is not the **owner** of the **property** but occupies or is using the **property** with the **owner's** consent, the **owner** and the **person** conducting the **Open Air Fire** shall be jointly and severally liable to pay any fees and charges imposed by this By-law.

15.5 All fees and charges payable under this By-law constitute a debt of the **person** liable for payment of them to the **Township** and, in the case of **owners** of a **property** being responsible for payment of the fees and charges, the **Township** may add the amount owing to the tax roll for the **owner(s)** real property and collect them in like manner as municipal taxes.

16.0 SEVERABILITY

16.1 If any section, clause or provision of this By-law is for any reason declared to be invalid by a court of competent jurisdiction, the same shall not affect the validity of the By-law as a whole or in part thereof, other than the section, clause or provision so declared to be invalid and it is hereby declared to be the intention that all the remaining sections, clauses or provisions of this By-law shall remain in full force and effect until repealed.

17.0 SINGULAR AND PLURAL

17.1 In this By-law, unless the context otherwise requires words importing the singular shall include the plural and use of the masculine shall include the feminine, where applicable.

18.0 SHORT TITLE

18.1 The short title of this By-law is the "Burning By-law".

19.0 ADMINISTRATION

19.1 That By-law No. 2018-30 is hereby repealed.

19.2 This By-Law shall come into force and take effect on the date of its passing.

READ a FIRST and SECOND TIME this 21st day of May, 2019.




Mayor




Clerk

READ a THIRD time and PASSED in OPEN COUNCIL this 21st day of May, 2019.



Mayor

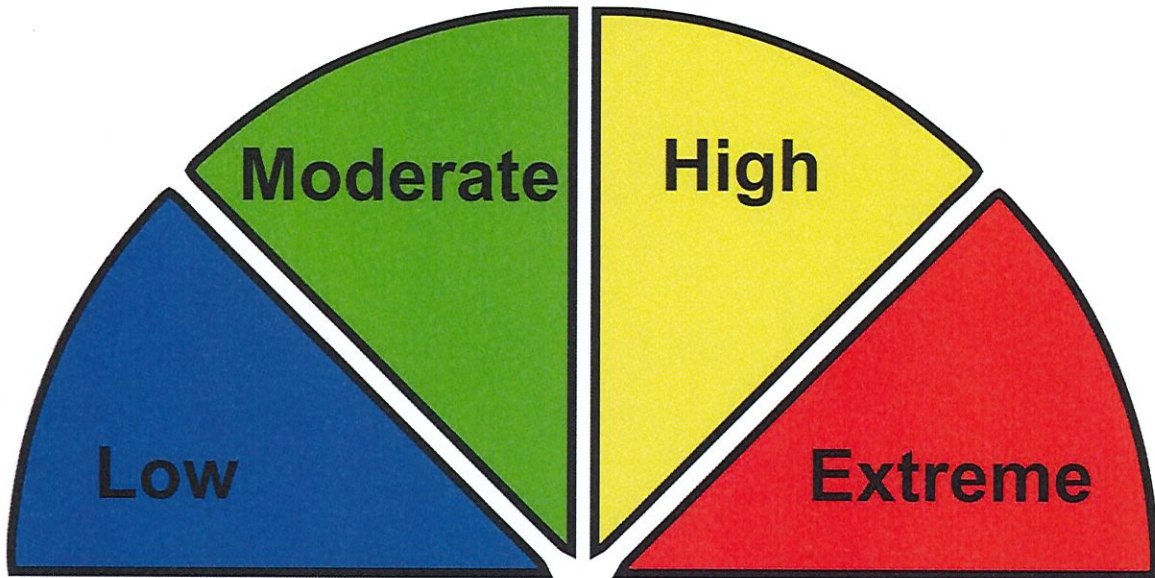



Clerk

THE CORPORATION OF THE TOWNSHIP OF MCKELLAR

Schedule "A" of By-law No. 2019-24

FIRE RATINGS



 Fire Rating: LOW	MODERATE	HIGH	EXTREME
<p>LOW and MODERATE FIRE RATINGS:</p> <p>No person shall start an open air fire during the Fire Season (April 1st to October 31st) other than between the hours of 6:00 p.m. one day and 10:00 a.m. the following day.</p> <p>A Campfire/Recreation Fire at a Campsite or Camping Establishment may be conducted between the hours of 4:00 p.m. one day and 10:00 a.m. the following day.</p>		<p>Fire Danger is SERIOUS</p> <p>An open air fire is not permitted except a Campfire/Recreation Fire</p>	<p>Fire Danger is EXTREMELY HIGH</p> <p>NO OPEN BURNING of any kind!</p> <p>TOTAL FIRE BAN DECLARED</p>

THE CORPORATION OF THE TOWNSHIP OF MCKELLAR

Schedule "B" of By-law No. 2019-24

OPEN AIRBURNING BY-LAW – Part 1 – SET FINES SCHEDULE

Provincial Offenses Act

<u>ITEM</u>	<u>COLUMN 1</u> Short form wording	<u>COLUMN 2</u> Prevision creating or defining offense	<u>COLUMN 3</u> Set Fine
1.	Burn without a valid permit.	Section 3.1	\$425.00
2.	Have or permit more than one (1) controllable fire.	Section 4.1(b)	\$425.00
3.	Fire exceeds permitted size.	Section 4.1(c)	\$425.00
4.	Burn prohibited items or material.	Section 4.1(d)	\$425.00
5.	Burn without a person in charge.	Section 4.1(e)	\$425.00
6.	Failure to have means to extinguish fire.	Section 4.1(f)	\$425.00
7.	Fail to extinguish unattended fire.	Section 4.1(g)	\$425.00
8.	Burn during unsafe conditions.	Section 4.1(h)	\$425.00
9.	Burn creating excessive smoke.	Section 4.1(i)	\$300.00
10.	Burning during a Fire Ban.	Section 4.1(j)	\$425.00
11.	Burn – cause adverse effect.	Section 4.1(k)	\$300.00
12.	Burning too close to structure and flammable material.	Section 4.1(m)	\$425.00
13.	Burning on property not lawfully occupied.	Section 4.1(n)	\$300.00
14.	Burning between 6 p.m. on one day and no later than 10 a.m. the following day.	Section 4.1(p)	\$425.00
15.	Burn when prohibited.	Section 4.1(q)	\$425.00
16.	Burning campfire/recreational fire in contravention of posted Fire Danger Rating.	Section 5.1(c)	\$425.00
17.	Burning an incinerator fire that does not meet all requirements.	Section 7.1	\$425.00
18.	Burning incinerator fire in contravention of posted Fire Danger Rating.	Section 7.1(d)	\$425.00
19.0	Hinder/obstruct or attempt to hinder/obstruct an Officer.	Section 12.2	\$425.00

The general penalty provision for offenses listed above is section 14.0 of by-law 2019-24 a certified copy of which has been filed.

THE CORPORATION OF THE TOWNSHIP OF THE MCKELLAR

Schedule "B part 1, of By-law No. 2019-24

COSTS OF INVESTIGATION / ENFORCEMENT'S PER SECTION 15.1

ITEM	AUTHORITY SECTION	RELATED COSTS MAY INCLUDE	CALCULATED & DOCUMENTED BY
Responding to a Scene	Section 15.1	TIME, per Officer @ \$50.00 per hour	Officer's time sheets & related video/photo's
Occurrence and Investigation Time	Section 15.1	TIME, per Officer @ \$75.00 per hour	Officer's time sheets & related video/photo's
Court – Officer Time	Section 15.1	TIME, per Officer @ \$75.00 per hour	Officer's time sheets & related video/photo's
Court – Prosecutor(s) Costs	Section 15.1	TIME, as per Prosecutor's Case Invoice	Legal Invoice(s)
Administrative Costs	Section 15.1	Staff TIME	Office Staff & Officer(s) logged hours

SCHEDULE "B part 2" of By-law No. 2019-24

COST OF: FIRE CONTAINMENT and/or SUPPRESSION SERVICES AND FEES

The cost(s) for all Fire Control equipment or devices, or suppression personnel, are based on the rates established by the organization supplying said resources.

This shall be calculated from the initial dispatch of The Fire Department or support agency under contract or agreement, until such time as each is back in service and the vehicle/device or personnel are back at their base and have been returned to operational level.

The above category Costs will be invoiced by the **Township** and will be due thirty days from the date of the invoice and interest shall accrue and be added to the amount at the rate of 1.25% per month commencing 30 days following the delivery or sending of the invoice.

These fees are in addition to any fines or penalties established elsewhere, in accordance with this By-law.

The above cost and fee schedule(s) "B" parts 1 & 2- may be amended at any time at the discretion of the Council of the **Township**