

# **CORPORATION OF THE TOWNSHIP OF FAUQUIER-STRICKLAND**

## **BY-LAW 2019-41**

### **BEING A BY-LAW TO REGULATE OPEN AIR BURNING AND ISSUANCE OF FIRE PERMITS**

**WHEREAS** Section 10(2)(8) of the *Municipal Act, S.O. 2001, c. 25* as amended, provides that a municipality may pass by-laws respecting the protection of persons and property as well as the health, safety and well-being of persons;

**AND WHEREAS** Section 128(1) 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 or cause public nuisances;

**AND WHEREAS** Section 129(b) of the *Municipal Act, S.O. 2001, c. 25* as amended, provides that a municipality may prohibit and regulate with respect to odour, dust and outdoor illumination, and may prohibit those matters unless a permit is obtained from the municipality for those matters and may impose conditions for obtaining, continuing to hold and renewing the permit;

**AND WHEREAS** Section 2.4.4.4 of the *Ontario Fire Code, Ontario Regulation 213/07*, prohibits open-air burning unless approved, or unless such burning consists of a small, confined fire that is used to cook food on a grill, barbecue or spit;

**AND WHEREAS** Section 7.1(1) of the *Fire Protection and Prevention Act, 1997* provides that a council of 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 12 of the *Forest Fires Prevention Act, R.S.O. 1990, Chapter F.24* states that no person shall start a fire outdoors in a restricted fire zone except in accordance with a permit issued under the regulations or unless the fire is for the purpose of cooking or obtaining warmth and the fire is in a stove or installation of a kind prescribed by the regulations. 1999, c.12, Sched. N, S.3(1).

**AND WHEREAS** Section 10 of the *Forest Fires Prevention Act, R.S.O. 1990, Chapter F.24* states that the fire season shall be defined as being from the 1<sup>st</sup> day of April to the 31<sup>st</sup> day of October, inclusively, in each calendar year.

**AND WHEREAS** Section 37(1) of the *Forest Fires Prevention Act, R.S.O. 1990, Chapter F.24* gives authority to the Minister of Natural Resources to declare any period between November 1 and March 31, both inclusive, in any year to be a fire season in a fire region or any part of a fire region and to declare any fire region or part of a fire region to be a restricted fire zone or restricted travel zone for any period.

**NOW THEREFORE**, Council of the Corporation of the Township of Fauquier-Strickland enacts as follows:

1. DEFINITIONS

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

**“Adequate Fire Suppression”** means a source of water of no less than 20 gallons or a fire extinguisher big enough to suppress the size of the fire.

**“Appliance”** means a portable or fixed appliance which is fueled by natural gas or propane including, but not limited to, a heater, barbeque, smoker, fireplace or fire pit.

**“Applicant”** means the person, organization, company or group that makes application for permission to hold an open air burning and includes such persons who contact the Fire Chief with notification of an intention to hold an open air burning of brush.

**“Barbeque”** means appliances including a structure designed and intended solely for the cooking of food in the open air, 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.

**“Beaufort Scale”**

<b>Beaufort #</b>	<b>Condition</b>	<b>KM per hour</b>	<b>Description</b>
0	Calm	less than 1	Calm, smoke rises vertically
1	Light air	1 – 5	Direction of wind shown by smoke, by wind vanes.
2	Light breeze	6 – 11	Wind felt on face, rustles leaves, ordinary vane moved by wind.
3	Gentle breeze	12 – 19	Leaves and small twigs in constant motion. Wind extends light flag.
4	Moderate breeze	20 – 29	Raises dust and loose paper. Small branches are moved.
5	Fresh breeze	30 – 38	Small tress and leaf begins to sway. Crested wavelets form on inland waters.
6	Strong breeze	39-50	Large branches in motion, telegraph wires whistle, umbrellas used with difficulty.

**“Fire Chief”** means the Fire Chief for the Fauquier-Strickland Fire Department or such designate appointed by the Fire Chief, acting under the Fire Chief’s direction.

**“Fire Department”** means the Fauquier-Strickland Fire Department and members thereof.

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

**“Occupant”** means the person having effective control over or apparent possession of any property or the relevant portion thereof, and for the purposes of this by-law, a mortgagee-in-possession of property, or a receiver and manager, personal representative or trustee in bankruptcy who has taken possession of that property shall be deemed to have effective control over the property.

**“Open Air”** means any open place, yard, field or construction area which is not enclosed by a building or structure.

**“Open Air Burning”** means the burning of any material set outdoors, including without limiting the generality of the foregoing, wood, cardboard, brush or garden waste where the flame is not wholly contained and is, thereby, open to the air.

**“Owner”** means the registered owner or any person, firm or corporation having control over, or possession, of any portion of the building or property under consideration and includes the persons in the building or property.

**“Person”** means an individual, association, business, a partnership, or a corporation.

**“Property”** means any public or private land, building, structure or other real property within the Municipality.

**“Township”** means the Corporation of the Township of Fauquier-Strickland.

## **2. PERMIT PROCEDURE**

- 2.1 Any person requesting an open air burning permit shall do so with the municipal office or the Fire Chief or his/her designate.
- 2.2 Any person eighteen years of age or over, who is or who has been authorized in writing by the owner or occupant of a property within the municipality, may apply for a Permit to conduct an open air burning.
- 2.3 The person to whom a Permit is granted shall be present in person at all times during which the burn is being conducted and cleaned up, and shall be responsible for the manner in which the same are carried out.
- 2.4 The municipal office or Fire Department shall not issue a Permit under this section where it is of the opinion that the proposed site at which the open air burning is to be conducted is not suitable for that purpose.
- 2.5 No Permit shall be issued unless the Fire Department has carried out an inspection of the proposed site to determine whether the burn can be safely conducted without nuisance or risk to neighbouring properties, the proof of which shall lie on the applicant.
- 2.6 A Permit issued under this section is valid on the date of issue and for the balance of the calendar year in which the permit is issued and is subject to fees set out in the attached fee schedule (Schedule “G”).
- 2.7 A Permit issued under this By-law is not transferable.

- 2.8 Where any holder of a Permit fails or refuses to comply with a term or condition to which the Permit is subject, the Fire Department shall immediately revoke the Permit and send a written notice of that revocation to the Permit holder and of the occupant of the site at which the fire was to be conducted, if not the same person.
- 2.9 The Fire Department may require an applicant for a Permit under this By-law to provide such information as the Fire Chief considers necessary or advisable in his or her reasonable discretion to allow the Fire Department to make an informed decision as to whether or not to grant a Permit under this By-law, and where that information is not provided in the form and manner required, the Fire Department may refuse to issue that Permit.
- 2.10 Open air burning is not permitted when the wind speed exceeds number 3 on the beaufort scale, and any other steps shall be taken as may be reasonably necessary to prevent the fire from getting beyond control or causing damage or becoming a danger to life and/or property.
- 2.11 Smoke may not obscure roads and homes; sparks may not travel to nearby homes.
- 2.12 Open air burning is permitted at ground level only.
- 2.13 The person tending the fire shall have a pressured water source adequate to contain the fire within the fire site.
- 2.14 Open air fires are not permitted if the Fire Chief Official has declared a ban on open air fires during high or extreme fire hazard.
- 2.15 Where a Provincial or Federal ministry issues restrictions or total bans on open air burning, these directives shall supersede this by-law until such time as the restriction or ban has been lifted by the appropriate authorities.
- 2.16 **Recreational Burning Requirements**  
No person shall start or tend a fire outdoors for recreational purposes unless all of the following conditions are met:
- a) The person is burning commercially produced charcoal, briquettes, clean wood, brush, leaves or discarded wood by-products **not including** pressure treated wood or creosote treated wood;
  - b) The material is burned is a single pile that is less than 4 feet in diameter and less than 2 feet high;
  - c) Open burnings shall be confined to open burning devices or to a pit no larger than 4 feet by 4 feet in size and no more than 8 inches of the containment area shall be above grade with a maximum depth of 16 inches. The fire shall be totally confined within the open burning device or pit at all times;

- d) The fire is started not earlier than 10 a.m. in the morning and extinguished not later than 6:00 a.m. the next day or earlier;
- e) Fires will only be permitted in the rear yard;
- f) Fuel for burning shall not be stored closer than 10 feet from any fire source;
- g) No person shall set open air fires to material substance that are prohibited under the Environmental Protection Act, which may include but are not limited to the following:
  - i. Kitchen garbage;
  - ii. Materials made of or containing rubber, plastics, tar, paint;
  - iii. Materials/substances that may emit and are noxious, poisonous or pollutes, including PCB's and any other chemicals.

**2.17 Open Air Burning – Land Clearing (winrows, slash piles, grass, etc.)**

No person shall start or tend a fire outdoors for open air burning unless all of the following conditions are met:

- a) The Fire Department is to be notified one week prior to burning. Please call 705-339-2521;
- b) A Land Clearing Fire Permit is required and will be valid for 7 days at a cost of \$25.00
- c) Burning is to be between 10:00 a.m. and 6:00 p.m., and shall only be permitted between October 31<sup>st</sup> and March 31<sup>st</sup>;
- d) Dry brush is the only material that can be burned;
- e) Burning to be at least 45 metres from adjacent property, structures, roads, highway or wooded areas and steps must be taken to ensure that smoke caused by an open burn does not have a negative impact;
- f) The fire must not exceed 3 metres in length, by 3 metres in width, by 2 metres in height;
- g) Burning to be supervised by an adult AT ALL TIMES;
- h) Fire must be completely extinguished prior to burn site being vacated;
- i) Any other steps shall be taken as may be reasonably necessary to prevent the fire from getting beyond control or causing damage or becoming a danger to life and/or property.

**2.18 Special Events**

All persons seeking permission to hold a special event involving an open air burning or fireworks shall apply for a Special permit at a cost of \$25.00

at least one week prior to the proposed date of the event which must be approved by the Fire Chief or his designate and shall be valid for only 10 days at a time. Prior to granting a permit to hold an open air burning or fireworks for a special event, the Fire Chief shall give consideration to the proposed location of the event, size of the fire or fireworks, safety measures, supervision arrangements, the time of year, the time of day, and the anticipated weather conditions. The Fire Chief may attach such conditions as deemed appropriate to any permit granted for an open air burning or fireworks at a special event. The Fire Chief may withdraw permission for and/or stop an open air burning if, in the opinion, the fire presents a fire hazard, smoke produced by the fire is causing visibility concerns on roads in the area of the burn, the weather has deteriorated and has become unfavourable for an open air burning, conditions attached to the granting of permissions are not being adhered to, or if this by-law is being contravened.

- 2.19 All persons setting a fire in the Municipality shall be responsible for any damage to property or injury to persons occasioned by the said fire and be liable for costs incurred by the fire department, including personnel, equipment and apparatus necessary and called in to extinguish the said fire.
- 2.20 Notwithstanding any provisions herein, no person shall set or maintain a fire:
- a) In contravention of the Ontario Fire Code, the Environmental Protection Act, or any other statutory requirements of the Province of Ontario, or the Government of Canada;
  - b) On any highway, or municipal property within the Municipality;
  - c) On any asphalt surface;
  - d) In any park owned or operated by the Municipality without the written permission of the Municipality.
- 2.21 **Exception – Fire Department**  
The Fire Department shall be exempt from the provisions of the by-law with respect to open air burnings set for the purposes of educating and training individuals.

### **3. CONDUCT OF OPEN AIR BURNING**

- 3.1 All persons setting an open-air fire in the Municipality must first apply for a fire permit from the municipal office signed by either the Clerk Treasurer Administrator, Deputy Clerk Treasurer or from the Chief Fire Official.
- 3.2 Every person to whom a Permit is issued under section 3.1 shall:
- a) Produce the Permit on demand to persons authorized to enforce this By-law;

- b) Permit the inspection by the Fire Department of any site where the fire is being, is proposed to be, or has been conducted;
  - c) Comply with all guidelines governing the conduct of the open air burning, and such directions as may be given by a member of the Fire Department with respect to the fire.
- 3.3 So long as an open air fire is burning, the site of that fire shall be kept under continual surveillance by a person eighteen years of age or older.
- 3.4 No person shall conduct an open air burning in a manner that creates a nuisance, taking into account all associated noise, smoke, sparks and other dangers relating to the spread of fire, the risk of explosion, and risk of death, injury and damage to property inherent in the conduct of fire.
- 3.5 A person who conducts an open air burning shall use reasonable care to ensure that the site of the fire is not accessible to children.

#### **4. OFFENCES**

- 4.1 No person shall carry out, or permit a person to carry out on property of which he or she is the owner or occupant, any open air burning unless that person is the holder of a current Permit authorizing that burning to take place.
- 4.2 Section 4.1 does not apply where the open air burning consists of a small, confined fire, supervised at all times, and used to cook food on a grill or a barbecue.
- 4.3 No person shall carry out open air burning in an unsafe manner, or in a manner inconsistent with any terms and conditions applicable to the Permit issued under this By-law.
- 4.4 Every person who contravenes any provision of the By-law is guilty of an offence, and upon conviction, is liable to the penalties specified by Section 61 of the *Provincial Offences Act, R.S.O. 1990*, Chapter P.33.

#### **5. ENFORCEMENT**

- 5.1 The Fire Chief and every member of the Fire Department designated as an Assistant to the Fire Marshall are authorized to enforce this by-law.
- 5.2 From time to time, the Fire Chief may approve all such forms as may be contemplated under this By-law, including forms of Permit and applications for Permit, and an applicant for any Permit under this By-law shall use the appropriate form of application and provide all information required thereon.
- 5.3 Should the Fire Department be dispatched to a complaint regarding public safety due to fire hazard, the Fire Department will have the

discretion to determine compliance with this by-law and his decision shall be final.

**5.4 Order to Extinguish Unapproved Fires**

- a) When made aware of a prohibited open air burning not authorized under this by-law, the Fire Department shall order the land owner or occupant to immediately extinguish the fire;
- b) The owner or occupant of land on which a prohibited open air burning is located, shall immediately extinguish the fire upon being ordered to do so by the Fire Department;
- c) Should any land owner or occupant fail to extinguish a prohibited open air burning when ordered to do so by the Fire Department, the Fire Department may take action to have the fire extinguished, and the person who owns or occupies the land on which the open air burning is located shall be responsible for any and all costs incurred by the Fire Department in its efforts to extinguish the fire in accordance with the set fine schedule attached to this by-law;
- d) On the third attendance in any calendar year to a particular municipal address, the Fire Department shall immediately take whatever steps are necessary to extinguish a fire that is an open air burning found not to be in compliance with this by-law. The person who owns or occupies the land on which the open air burning is located shall be responsible for any and all costs incurred by the Fire Department in its efforts to extinguish the fire in accordance with the fees set out in the set fine schedule attached to this by-law.

**5.5** In addition to any fines or penalties established elsewhere in accordance with the By-law, the person or persons responsible for setting or maintaining, or permitting to be set or maintained, an open air fire shall be liable to the Township by way of a fee or charge, as calculated in accordance with Schedule “G” of the Municipal Fees By-law, on account of those costs and expenses incurred by the Township in:

- a) Investigating and responding to a complaint made to the Municipal Office or the Fire Department by any person acting reasonably and in good faith, which complaint results from setting and/or maintenance of the open air fire and, in the opinion of the Chief Fire Official or the Chief Fire Official’s designate, smoke or emissions from such open air fire were causing or had caused actual discomfort to the complainant; and
- b) The dispatching of Fire Department vehicles and fire-fighting personnel for the purpose of controlling or extinguishing the open air fire.

**5.6 Collection of Costs**

The Township of Fauquier-Strickland has the right to collect any unpaid costs as authorized by this by-law by adding such charges to the tax roll where they may be collected in a like manner as municipal taxes in



accordance with section 434.2 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended.

**6. SEVERABILITY**

If any section, clause or provision of the 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 the By-law shall remain in full force and effect until repealed.

- 7. This By-law applies to all property classes within the Township of Fauquier-Strickland.
- 8. That By-law #1999-07 be repealed.
- 9. This By-law shall come into force and take effect upon final passing.

**READ** a first and second time this 25<sup>th</sup> day of November, 2019.

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**MAYOR – Madeleine Tremblay**

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**ACTING CLERK – Nathalie Vachon**

**READ** a third time and finally passed this 9<sup>th</sup> day of December, 2019.

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**MAYOR – Madeleine Tremblay**

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**ACTING CLERK – Nathalie Vachon**

**CORPORATION OF THE TOWNSHIP OF FAUQUIER-STRICKLAND**

**SCHEDULE "G"**

**TO BY-LAW 2019-38**

**FIRE DEPARTMENT SERVICES AND FEES**

An Open Air Burning and Recreational Burning permit may be purchased at a rate of \$25.00 per year and is payable once the permit is issued.

The expenses for which the Person may be liable cover the cost of sufficient personnel and equipment required to control a fire if negligence is found or if the property owner does not have a valid fire permit.

- a) \$350.00 for each Fire Department vehicle attending for the first hour or part thereof.
- b) \$175.00 for each Fire Department vehicle attending for every additional half hour or part thereof.
- c) \$350.00 for responding to a call where services are not required.

This shall be calculated from the initial dispatch of the Fire Department or any Fire Department under contract or agreement, until such time as each vehicle is back in service (defined as when the vehicle is back at the hall and has been replenished with the requirements for the unit to respond to the next activation).

Failure to comply with any part of section 3 of this By-law may cause the individual to incur a fine of \$125.00.

Costs will be invoiced by the Municipality and will be due thirty days from the days 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.