

**The Corporation of
The Township of Selwyn**

By-law No. 2021 - 034

**Being a By-law to Regulate the Setting of Fires in the Open Air in
the Township of Selwyn**

Whereas the Fire Protection and Prevention Act, 1997, S.O. 1997, c. 4, as amended, provides:

- in subsection 7.1(1)(a) that a council of a municipality may pass By-laws regulating fire prevention, including the prevention of the spreading of fires;
- in subsection 7.1(1)(b) that a council of a municipality may pass By-laws regulating the setting of open air fires, including the times during which open air fires may be set;
- in subsection 7.1(3) that a By-law passed under section 7.1 may deal with different areas of the municipality differently; and

Whereas the Municipal Act, 2001, S.O. 2001 c. 25, section 128(1), as amended provides that a local 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:

Whereas Council considers excessive smoke, smell, airborne sparks or embers to be or could become or cause public nuisances by creating negative health effects on neighboring residents, increasing fire exposure hazards, infringing the enjoyment of the use of neighboring properties and generating false alarms;

Whereas Council deems it is advisable to repeal Township of Smith-Ennismore-Lakefield By-law 2010 -054;

Now Therefore the Council of The Corporation of the Township of Selwyn enacts as follows:

Section 1 – Definitions and Interpretations

1.1 For the purpose of the By-law:

“Barbeque” means a manufactured device or structure with a grill which is designed, intended and used solely for the purpose of cooking food outdoors, and includes a hibachi, but does not include devices or structures designed for personal warmth, fire pits, or Outdoor Fire Containers;

“Built Up Area” means an area with buildings or structures in close proximity where appropriate clearances cannot be met to permit safe open air burning as determined by the Fire Chief or designate;

“Burn Ban” means a temporary measure put in place by the Fire Chief or designate, to prevent human-caused fires when the fire hazard is extreme or when firefighting resources are limited;

“Brushfire” means dry tree trunks (excluding stumps), tree branches and tree limbs that have fallen down, been cut down, pulled out, and/or pulled up;

“Campfire” means a small contained fire, which is supervised at all times and which is used to cook food or provide warmth;

“Certified Gas Fueled Outdoor Appliance ” means an approved appliance for use by the Technical Standards and Technical Safety Authority of Ontario (T.S.S.A.) or other approval agency and is operated as per the certified instruction manual;

“Corporation” means The Corporation of the Township of Selwyn;

“Extinguishing Agent” means a source of extinguishment in which to quickly and effectively suppress the fire. Examples of which may be; water hose, buckets of water, fire extinguisher, tractor backhoe;

“Fire Chief” means the person appointed by Council to act as Fire Chief for the Corporation as defined in the *Fire Protection and Prevention Act, 1997*, or their designate;

“Ground Cover” includes, but is not limited to, leaves, long/dry grasses, weeds, tree needles, or wood chips on the ground;

“Noxious Materials” includes, but is not limited to petroleum products, tires, plastics, rubber products, drywall, demolition waste, construction waste, tar, asphalt products, pressure-treated wood, creosote-treated wood and painted wood;

“Nuisance” means excessive smoke, smell, airborne sparks or embers that are likely to disturb others, or is likely to reduce visibility on the roads in the vicinity of the Open Air Burning;

“Officer” means the Fire Chief, Fire Prevention Officer, or designate of the Selwyn Fire Department;

“Open Air Burning” means a fire set outside of a building or structure;

“Outdoor Fire Container” means a non-combustible container used to hold a small fire, and includes, but is not limited to, chimineas and outdoor brick fireplaces, fire pits, but does not include a burn barrel;

“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;

“Permit” means a Permit issued by the Fire Chief or their designate to set a fire in the Open Air for a specified time period;

“Person” includes an individual, business, a partnership, or a corporation;

“Ratio for Fire Safe Distance” means a predetermined calculation for safe distance from the fire to any trailer, building, structure, property line, tree, hedge, fence, roadway, overhead wire, combustible article, or combustible ground cover in all directions. The ratio is set at 31 centimeters (1 foot) of fire in all directions x 3 meters (10 feet) of clearance from any trailer, building, structure, property line, tree, hedge, fence, roadway, overhead wire, combustible article, or combustible ground cover in all directions. An example of which would be a 92 centimeter (3 foot) fire in all directions would require 9.1 meters (30 feet) of clearance in all directions.

“Smog Alert” means an alert issued by the Ministry of the Environment with respect to air quality and/or high humidity air value.

“Trailer” means any vehicle constructed to be attached and propelled by a motor vehicle and that is capable of being used by persons for living, sleeping or eating, even if the vehicle is jacked-up or its running gear is removed and has affixed to it, a Recreation Industry Certification sticker, and/or CSAZ241 certified and includes a self-propelled recreational vehicle.

“Seasonal trailer park” means a parcel of land made available to members of the public containing sites upon which to locate trailers, tents or recreational

vehicles, and includes a campground. Any parcel of land with more than three trailers or tents erected or stored constitutes a “trailer park”, with the exception of the land of any lawful commercial operation which wholesales or retails trailers, tents or recreational vehicles. It includes parks where there is a combination of seasonal and permanent trailer sites.

- 1.2 In this By-law, a word interpreted in the singular number has the corresponding meaning when used in the plural and gender will be read according to the relevant context.

Section 2 – Exemptions

2.1 This By-law shall not apply to;

- a) a person using a Barbeque to cook food;
- b) a person using a fire in a device installed outside of a building that is used as a source of heat or power for the building, and provided that such device is certified for the purpose by a recognized agency;
- c) a person conducting fire extinguisher training who has obtained prior approval of the Fire Chief or designate;
- d) a Fire Department Officer for the purposes of education and training individuals, with prior approval of the Fire Chief or designate;
- e) a Certified Gas Fueled Outdoor Appliance that is approved for use by the Technical Standards and Technical Safety Authority of Ontario (T.S.S.A.) or other approval agency and is operated as per the certified instruction manual.

Section 3 – General Conditions for All Open Air Burning

- 3.1 No person shall set, maintain, or cause to be set or maintained, Open Air Burning except as authorized by this By-law.
- 3.2 No person shall set, maintain or cause to be set or maintained, Open Air Burning, even if a permit has been issued under this By-law, when a Burn Ban has been issued by the Fire Chief or designate.
- 3.3 Every person who applies for and receives a Permit acknowledges having read and understood the rules specified in this By-law and assumes all responsibility and liability in connection with the Open Air Burning Permit.
- 3.4 Every person setting, permitting to be set, maintaining, or permitting to be maintained, an Open Air Burning authorized under this By-law shall comply with the following conditions:
- a) Allow, at any time, an Officer to inspect the location or proposed location of the Open Air Burning;
 - b) Only burn commercially produced charcoal, briquettes, or clean, dry, seasoned wood or brush;
 - c) Not burn Noxious Materials, as defined;
 - d) Not burn leaves, grass clippings, or compost;
 - e) Have an effective extinguishing agent of sufficient size and with the capacity of extinguishing the Open Air Burning immediately available for use;
 - f) Ensure that the fire is attended at all times by a responsible person at least 18 years of age and shall ensure that such person attends to such fire until the fire is completely extinguished by water, burying, or complete burn out;
 - g) Ensure the wind speed is not in excess of 15 km per hour during the Open Air Burning according to Environment Canada for the Peterborough area;
 - h) Ensure wind direction does not cause the smoke from the Open Air Burning to create a discomfort to the persons residing in the immediate area of the Owner who has been issued the permit;
 - i) Not burn if it is foggy;

- j) Not burn if an Smog Alert has been declared;
- k) Protect the adjacent properties from the potential spread of fire;
- l) Ensure that Open Air Burning does not create a Nuisance as defined;
- m) Not burn in a burn barrel;
- n) Not burn in a built up area as defined which includes the Village of Lakefield, the hamlet of Bridgenorth, Woodland Acres, the hamlet of Ennismore, the hamlet of Young's Point or as determined by an officer of the Fire Department;

3.5 Permits

- a) A Permit is not required for an Outdoor Fire Container/Campfire, provided the fire complies with Section 3 and Section 4 as set out in this By-law.
- b) A Permit must be obtained for Open Air Burning as set out in Section 5.
- c) An application for a Permit of Open Air Burning must be completed on the forms provided by the Fire Department and to be valid must be signed by the Fire Chief or his designate.
- d) A Permit for Open Air Fires shall only be valid for the date(s) indicated on the Permit.
- e) A Permit will be revoked if an Officer has determined that the By-law has been contravened.
- f) The Fire Chief or designate may refuse to issue a Permit:
 - i. if the proposed Open Air Burning would contravene this By-law; or
 - ii. if the Owner or Permit holder has previously contravened any provisions of this By-law or previous By-laws.

Section 4 – Outdoor Fire Containers – Campfire, Chiminea or Outdoor Brick Fireplace (Permit Not Required)

4.1 A person may conduct a fire in an Outdoor Fire Container if the person complies with all the conditions set out in this Section and Section 3.

4.2 Outdoor Fire Container – Residence:

A person conducting Open Air Burning located at a residence by way of an Outdoor Fire Container shall:

- a) Only use an Outdoor Fire Container that is constructed from non-combustible material;
- b) Not burn or attempt to burn volumes of materials that exceed the container's capacity;
- c) Contain the fire within the Outdoor Fire Container at all times;
- d) Be responsible for the fire at all times;
- e) Locate the Outdoor Fire Container and comply with the defined ratio for fire distance to meet clearance requirements between any trailer, building, structure, line, tree, hedge, fence, roadways, overhead wires, or other combustible article, or as otherwise deemed acceptable by the Fire Chief or designate;
- f) Maximum Size

In the case of a Chiminea or Outdoor Brick Fireplace;

- i. Ensure that the chiminea or outdoor brick fire place is not greater than 92 centimeters (3 feet) in all directions;
- ii. Locate the Chiminea or Outdoor Brick Fireplace on a non-combustible surface that extends beyond the unit to a dimension equal to the height of the Chiminea or Outdoor Brick Fireplace or;
- iii. Ensure combustible ground cover is cleared from around the unit a dimension equal to the height of the Chiminea or Outdoor Brick Fireplace;

In the case of a Camp Fire;

- i. Ensure that the fire does not exceed 92 centimeters (3 feet, maximum) in all directions;
- ii. Is located in compliance with the ratio for fire safe distance;
- iii. Is constructed in such a manner to contain the fire.

4.3 **Outdoor Fire Container – Campground or Seasonal Trailer Park**

The Campground Owner/Operator and any Person (tenant) conducting Open Air Burning located at a seasonal campground or seasonal trailer park by way of an Outdoor Fire Container shall:

- a) Comply with Section 3 – General Rules, with the exception of Section 3.4 n)
- b) Only conduct Open Air Burning during approved hours regulated by campground or park;

Effective April 1, 2022

- c) Locate Outdoor Fire Container and comply with the ratio for fire distance between any trailer, building, structure, line, tree, hedge, fence, roadways, overhead wires, or other combustible article, or as otherwise deemed acceptable by the Fire Chief or designate;
- d) Only use an Outdoor Fire Container that is constructed from non-combustible material, that has been provided by the campground or park that has been provided or approved by the campground or park owner and/or management;
- e) Maximum Size
 - i) Ensure that the fire does not exceed 92 centimeters (3 feet, maximum) in all directions;
 - ii) Is located in compliance with the ratio for fire safe distance;
 - iii) Is constructed in such a manner to contain the fire.

Section 5 – Open Air Fires – Brush Fires (Permit Required)

5.1 A person may conduct Open Air Burning if the person has been issued a Permit, and if the person complies with all the conditions set out in Section 3 and Section 5 of the By-law;

5.2 A person conducting Open Air Burning shall;

- a) Contact the Fire Department prior to any Open Air Burning to confirm that burning can take place;
- b) Produce the Permit on demand to an Officer conducting an inspection of the Open Air Burning;
- c) Only conduct the Open Air Burning between sunrise and sunset;
- d) Locate the open air burning in compliance with the ratio for fire safe distance as defined to ensure clearance from any trailer, building or structure, property line, tree, hedge, fence, roadways, overhead wires, or other combustible article, or as otherwise deemed acceptable by the Fire Chief or designate;
- e) Adhere to any additional requirements or exemptions the Fire Chief or designate considers necessary in the interest of public safety, or to minimize inconvenience to the general public, or advisable in the circumstances, or give effect to the objects of the By-law.
- f) Size
 - i) Fires 7.6 meters (25 feet), or less, in all directions cannot be more than 3 meters (10 feet) high;
 - ii) Fires greater than 7.6 meters (25 feet) in all directions cannot be more than 3 meters (10 feet) high and must be inspected by the Fire Chief or designate prior to any Open Air Burning taking place;
 - iii) Fires shall not be greater than 15.2 meters (50 feet) in all directions and cannot be more than 3 meters (10 feet) high.

Section 6 – Order to Extinguish

- 6.1 If an Officer is satisfied that this By-law has been contravened, the Officer may order the Permit holder or Owner to extinguish the fire.
- 6.2 If the Permit holder or Owner refuses to extinguish the fire or the Officer feels that correct action will not or cannot be taken to extinguish the fire, the Officer will extinguish the fire using resources at the Officer's disposal.

Section 7 - Severability

- 7.1 Should any section of this By-law be declared by a court of competent jurisdiction to be ultra vires or illegal for any reason, the remaining Sections shall nevertheless remain valid and binding, and shall be read as if the offending section or Section had been struck out.

Section 8 – Penalty and Costs

- 8.1 Any person setting, maintaining or allowing to burn a fire, and all Owners of the property upon which a fire is set, maintained or allowed to burn who contravenes any provision of this By-law shall:
 - a) Be responsible for any damages to property occasioned by said fire; and
 - b) Be liable for the cost of any firefighting equipment and personnel necessary to extinguish said fire, including the aid of neighboring departments, which cost will be calculated in accordance with a cost schedule to be established from time to time by the Council of the Township of Selwyn in accordance with the Township's current Tariff of Fees By-law; and
 - c) Be responsible for the inspection fees incurred by the Township related to the administration and enforcement of the Township's Open Air Burning By-law in accordance with the Township's current Tariff of Fees By-law.
- 8.2 The Corporation shall, if such amounts remain unpaid sixty (60) days following notification of the amounts owing, have the right to collect any unpaid costs, including interest, 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, all of which is in accordance with Section 398 of the Municipal Act, 2001, c. 25, as amended;
- 8.3 The Corporation shall, prior to adding any amounts owing to the tax roll of any property, provide at least ten (10) days written notice of its intention to do so.
- 8.4 Any person who contravenes any provision of the By-law is guilty of an offence and liable on conviction to a penalty not exceeding \$5000, exclusive of costs, and the provisions of the Provincial Offences Act, R.S.O. 1990, c. P. 33 as amended, shall apply to said fine.

Section 9 - Miscellaneous

Repeal

- 9.1 Upon the passage of this By-law, By-law 2010-054 and all amendments thereto shall be repealed;

Short Title

- 9.2 This By-law may be referred to as the *Open Air Burning By-law*.

Section 10 – Enactment

10.1 That this By-law shall come into force and effect immediately upon the final passing thereof. Sections 4.3 c) d) and e) shall come into effect as of April 1, 2022.

Read a first, second and third time and finally passed this 11th day of May, 2021.

Original signed

Mayor, Andy Mitchell

Original signed

Clerk, Angela Chittick

Corporate Seal