

CORPORATION OF THE TOWNSHIP OF MCKELLAR

BY-LAW NO. 2018-30

**Being a By-law to Prescribe Times for Setting Fires and
Precautions / Restrictions for Burning and to Repeal By-law No. 2005-26,
By-law No. 2011-20 and By-law No. 2012-15**

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;

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;

“Chief Fire Official” means the Fire Chief of the Township of McKellar and/or his documented representative.

“Clean Wood” includes-dry vegetation debris, natural wood material, discarded natural wood products.* A discarded wood product does not include materials such as paneling, plywood, painted or stained wood or synthetics, or pressure treated products.

**** “Competent Person”** means a person who is: 16 years of age or older, and that person does not show signs of being under the influence of alcohol or drugs, and/or the person does not appear to be suffering from physical or physiological impairment.

****“Camp Grounds”** as referenced in this Open Burning Bylaw: means those property locations within the Township of McKellar which are licensed/permitted by the Township to have and operate therein -allow persons to place/have- trailers or similar accommodation structures facilities used primarily for seasonal recreational purposes.

“Enclosed Fire Source” means an enclosed fire source, which is only applicable to a residential or commercial Bar-B-Q or heating unit that is fueled by charcoal or propane. This includes CSA certified “propane fueled fire pit simulator.” Such appliances (when in use) must be kept clear of all combustibles around and above the device.

“Fire Ban” means a complete ban of ALL open fires. A Fire Ban status is enacted by the *Chief Fire Official* within the Municipality by the authority of the Fire Protection and Prevention Act. and/or- by the Ministry of Natural Resources under their Provincial Regulations.

“Fire Department” means a Fire Department or a Fire Emergency agency which may be called upon by the *Municipality’s Chief Fire Official* in the event of an unsafe fire condition within the Township; and may include the related resources of the Ministry of Natural Resources; as well as heavy equipment contractors who may be called upon to help contain/control a spreading fire.

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

“Fire Danger Rating: Low, Moderate, High or Extreme” means a Low, Moderate, High or Extreme Fire Hazard as declared by the Chief Fire Official.

“Municipality” means the Corporation of the Township of McKellar

“Municipal Employee” means an officer, person, or other appointed employee of the municipality, including a Municipal Law Enforcement Officer.

“Open-Air Fire” means fires that are set outdoors and are not contained in the confines of an *Enclosed Fire Source*, and are fires that are set for the purpose of disposing of *Clean Wood*. This includes fires set in outside Incinerators or Chimeras. *Open Air Fires* cannot be more than 2 meters in diameter by 2 meters high.

****“Campfire/Recreation Fire”** means a small fire set for the purpose of cooking, warmth or socializing. Can be best described as a fire no greater than 61 cm / 24 inches - by 61cm /24 inches wide - and burning no higher than 61cm, / 24 inches

“Owner” includes with respect to land or property, the registered owner, occupant, tenant, or the person for the time being managing or receiving the rent of the property whether on his own account or on account of an agent or trustee of any other person, or any of the aforesaid.

****“Provincial Offences Act” (POA)** is a Provincially (Ontario) set of various regulations which have been established /validated for the establishing of and enforcement of rules and enforcement criteria which are then administered and enforced by related agencies, which therein includes Municipalities under the Municipal Act and its benchmarks.

“Person” includes an individual, an Owner, corporation, partnership, company, firm, association, or party and includes the successors, assigns, heirs, executors, administrators, or other legal representatives of a person to whom the context can apply according to law and the singular shall include the plural. “Person” also includes those persons legally on a property as “Guest” and/or relatives of the site owner(s)

****“Sufficient /Adequate tools to control”** means having a minimum of: 2- 5 gal of water, or a pressurized garden hose and shovel/rake to quickly suppress the fire.

“Unsafe Conditions” includes a Fire Hazard Rating of High or Extreme, or a total Fire Ban which has been declared by the Chief Fire Official.

****2.0 GENERAL BURNING RESTRICTIONS FOR ALL OUTDOOR FIRES-**

This Section 2. etal- Applies primarily to “open-air fires”-generally used for the cleanup /removal of/burning of -natural wood materials, grass/weeds and related brush materials

- 2.1 No person shall start a fire in contravention to conditions of the Fire Danger Rating as declared by the Chief Fire Official. Fire Hazard Ratings can be ascertained by using the Municipality’s website or contacting the Municipal Office.
- 2.2 No person shall set an “Open Air Fire”, or permit it to exceed a size, more than 2 meters in diameter, by 2 meters high.
- 2.3 No person shall start any fire outdoors unless conditions/location will allow the fire to burn safely from ignition to extinguishment.

- 2.4. No person who starts a fire outdoors shall leave the fire without leaving a competent person in charge of the fire. This person must remain in line-of sight of the fire at all times, until it is totally extinguished.
- 2.5. No person shall start a fire outdoors, for any purpose, unless they have sufficient and adequate materials, devices, resources to immediately contain and extinguish the fire, when not attended or if it should it become a risk to persons or property.
- 2.6. No person shall use as a fuel for a fire outdoors any substance other than clean wood. Furthermore, no person shall start any fire to burn, or shall burn outdoors, any household kitchen garbage or other materials made of or containing rubber, plastic, paint, petroleum, tar, chemical wastes, pressure treated wood, synthetic or man-made materials or any other materials considered to create excessive smoke or smell.
- 2.7. CSA approved outdoor recreational fire simulators can only be fueled by propane fuel delivered via CSA approved/inspected delivery systems.
- 2.8. No person shall start or tend any fire outdoors when the wind or conditions are such that it may cause any of the following “unsafe conditions”:
- (a) A decrease in visibility on any highway or road or navigable channel;
 - (b) The rapid spread of fire through grass, brush, forested area or other property that was not intended to be burned;
 - (c) An adverse impact on other people or property;
 - (d) The contravention of any municipal law, provincial or federal legislation.
- 2.9. No person shall start an ***open-air fire*** outdoors during the Fire Season for the purpose of burning piled wood, brush, leaves or discarded acceptable wood by-products unless:
- (a) The fire is started not earlier than 6:00 p.m. in the evening and extinguished not later than 10:00 a.m. the following day or earlier;
 - (b) The fire is started on property that the person lawfully occupies;
 - (c) The fire is at least ten (10) meters from any combustible structures or objects;
 - (d) The fire is not larger than 2 metres by 2 metres in circumference and 2 metres high;
 - (e) The Chief Fire Official has declared that there is a Low Fire Danger or Moderate Fire Danger.
- 2.10. A person may be exempt from 2.9(a) upon contacting the *Chief Fire Official* for documented permission to conduct daytime burning.

3.0 GENERAL BURNING RESTRICTIONS FOR ALL “Campfire/Recreation Fires”

- 3.1. No person shall start a ***campfire/recreation fire*** during the Fire Season unless:
- (a) The fire is started not earlier than 6:00 p.m. in the evening and extinguished not later than 2:00 a.m. the following day or earlier;
 - (b) The fire is at least eight (8) meters from any combustible structures or objects;
 - (c) The fire is not larger than 61cm/2ft, in circumference and flames maximum of 61cm / 2ft high;
 - (d) The Chief Fire Official has declared that there is a Low Fire Danger or

Moderate Fire Danger.

- 3.2 Except during a *Fire Ban*, a person may start a fire outdoors during the fire season only for cooking or personal warmth or socializing if:
- (a) The site of the fire is bare rock or non-combustible material; for a minimum distance of 1M.diameter outside of the actual fire area;
 - (b) The fire is at least five (5) metres from any flammable material; around and/or above the fire;
 - (b) The fire does not exceed 2 ft. /61cm- in height and 2ft /61cm, in diameter;
 - (c) The person tending the fire has tools and/or water adequate to contain the fire within the fire site;
 - (d) The fire is under the care and control of a competent person at all times and that person is in the immediate visual location of the fire and “outdoors” near the fire source.

4.0 DECLARATION OF A FIRE BAN AND FIRE DANGER RATINGS

- 4.1 The *Chief Fire Official* or designate may declare a *Fire Ban* when conditions or local circumstances make such fires hazardous. *Fire Bans* against burning shall be advertised through the local media, posted on the Municipality’s website and posted on *Fire Danger Rating* signs within the Municipality.
- 4.2 The *Chief Fire Official* or designate is responsible for establishing the *Fire Danger Rating*. The dissemination of the *Fire Danger Rating* to the public shall be through a posting on the Municipality’s website and posted on *Fire Danger Rating* signs within the Municipality.
- 4.3 During the *Fire Season* the *Chief Fire Official* or designate shall regularly assess the *Fire Danger Rating* within the *Municipality* and establish a *Fire Danger Rating* as depicted on Schedule “A” to this by-law.

5.0 TOWNSHIP & PROVINCIAL AGENTS EXEMPT

- 5.1 Any fires under the direct and constant supervision and control of the Fire Department, or the Ministry of Natural Resources are exempt from the provisions of this By-law.

6.0 RIGHT OF ENTRY

- 6.1 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.
- 6.2 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.
- 6.3 An *Officer* must upon request, display or produce proper identification.

7.0 OBSTRUCTION

- 7.1 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.
- 7.2 Any *person*, who has been alleged to have contravened any of the provisions of this By-law, shall identify himself or herself to the *Officer* upon request. Said identification shall be validated by government issued documentation or other **identification** worn or carried by the **O**fficer. Failure to do so shall be deemed to have obstructed or hindered the *Officer* in the execution of his or her duties.

7.3 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 7.1 unless the municipality 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.

8.0 PENALTY

8.1 The *Chief Fire Official* of the Township of McKellar and/or a Municipal Law Enforcement Officer are hereby authorized to enforce the provisions of this By-law pursuant to the Provincial Offences Act, and the applicable Municipal Act regulations as identified in this Bylaw under Schedule "B".

8.2 Every person who contravenes or fails to comply with any of the provisions of this By-law is guilty of an offence and on conviction is liable to the fines and other penalties prescribed by the Provincial Offences Act. The applicable minimum fines for a first offense are identified on Schedule "B" of this Bylaw. Other applicable penalties include those provisions identified under Section 9 (Recovery of Cost

- 8.3 (a) The Enforcement Official may at their discretion, subject to the specific circumstances, or the fire rating is at "moderate or Low" may issue a first time warning, if the violator agrees to immediately extinguish the fire.
- (b) If the scene circumstances as observed by the Officer indicate a valid violation foundation, the Officer may issue a POA offense under attached Schedule "B".
- (c) If the registered property owner(s) are not on scene at the time of the violation, a copy of the warning, and/or the POA charge laid will be sent to the site owner's address as shown on the tax roll file. Thereafter Section 8.3(d) and Section 9.1 may be applied.
- (d) If there is a second violation of this By-law which occurs on property occupied by or owned by the same person(s) as 8.2, then that person or persons may be subject to relative fines under Schedule "B" and/or additional fines or further enforcement actions as determined under the Ontario Provincial Offences Act. Plus the property owners(s) are then also subject to penalties under Section 9.

9.0 RECOVERY OF COSTS

9.1 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 Schedules "C" 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 or designate, an Enforcement 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, the Chief Fire Official's designate or the Municipal Law Enforcement 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 Bylaw and therein resulted in:
- (b) The dispatching of a Municipal Law Enforcement 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* - an *Incinerator Fire* or a *Recreational Fire* that is in violation of this Bylaw.

- 9.2 All fees and charges payable under this By-law, Section 9.1 are due and owing to the Municipality within thirty (30) days of the date of an invoice rendered to the person liable to pay them.
- 9.3 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.
- 9.4 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 burning shall be jointly and severally liable to pay any fees and charges imposed by this By-law.
- 9.5 All fees and charges payable under this By-law constitute a debt of the person liable for payment of them to the Municipality and, in the case of owners of a property being responsible for payment of the fees and charges, the Municipality may add the amount owing to the tax roll for the owner(s) real property and collect them in like manner as municipal taxes.

10.0 SEVERABILITY

- 10.1 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.

11.0 SHORT TITLE

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

12.0 ADMINISTRATION

- 12.1 This By-law applies to the entire geographic area of the Municipality.
- 12.2 That By-law No. 2005-26, By-law No. 2011-20 and By-law No. 2012-15 be repealed.
- 12.3 This By-Law shall come into force and take effect on the date of its passing.

READ a **FIRST** and **SECOND** time this 30th day of July, 2018.

Original signed by Peter Hopkins

 Reeve

Original signed by Tammy Wylie

 Clerk

READ a **THIRD** time and **PASSED** in **OPEN COUNCIL** this day of , 2018.

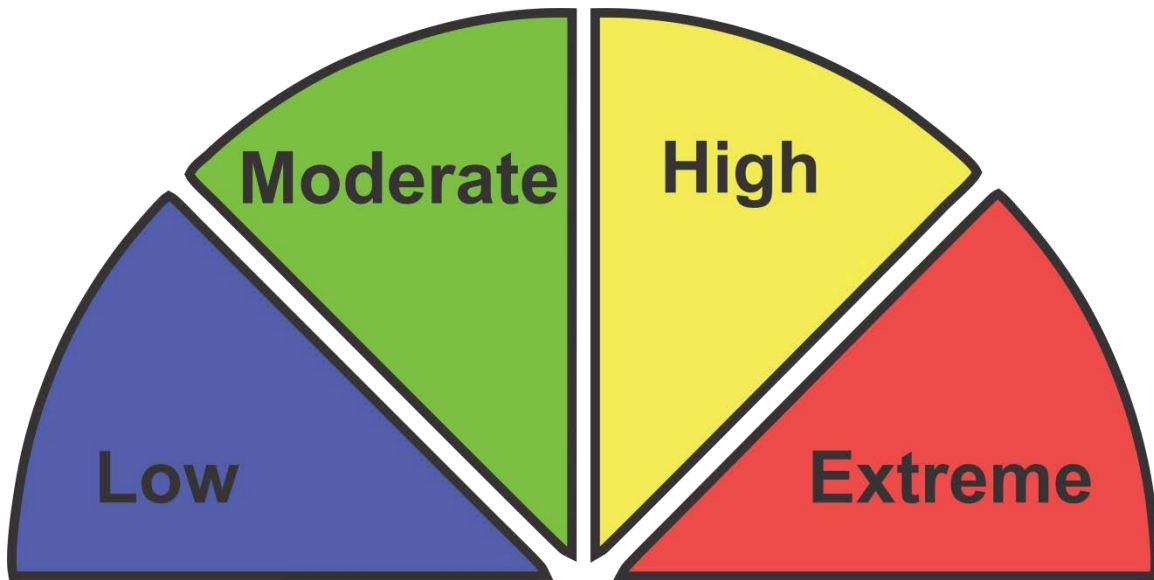
 Reeve





 Clerk

THE CORPORATION OF THE TOWNSHIP OF MCKELLAR

Schedule "A" of By-law No. 2018-30

FIRE RATINGS



 Fire Rating: LOW	 Fire Rating: MODERATE	 Fire Rating: HIGH	 Fire Rating: EXTREME
LOW	MODERATE	HIGH	EXTREME
<p>LOW and MODERATE FIRE RATINGS:</p> <p>No person shall start a fire outdoors during the Fire Season (April 1st to October 31st) unless the fire is started not earlier than 6:00 p.m. in the evening,</p> <ul style="list-style-type: none"> • Fires for "open burning" Sec. 2 are allowed to be burned under supervision, until 10AM the next day • Licensed campgrounds may allow-fires for cooking to commence @ 4pm until 2am the next day • Fires for cooking and warmth permitted at private residences from 6pm until 2am the next day. 		<p>Fire Danger is SERIOUS</p> <p>NO OPEN BURNING except "contained campfires" for recreation, cooking & warmth</p> <p>plus FIREWORKS PROHIBITED</p>	<p>Fire Danger is EXTREMELY HIGH</p> <p>NO OPEN BURNING of any kind!</p> <p>TOTAL FIRE BAN DECLARED</p> <p>plus FIREWORKS PROHIBITED</p>

THE CORPORATION OF THE TOWNSHIP OF MCKELLAR

Schedule “B” of By-law No. 2018-30

OPEN AIR BURNING BY-LAW – Part 1 - SET FINE SCHEDULE
Provincial Offences Act

ITEM	COLUMN 1 Description of Offence	COLUMN 2 Provision Creating or Defining an Offence	COLUMN 3 Set Fine
1.	Have an “Open Fire” in contravention of the posted Fire Danger Rating	Section 2.1	\$425.00
2.	Burn or permit burning in excess of 2M x 2M x 2M high	Section 2.2	\$425.00
3.	Burn without a person in charge	Section 2.4	\$300.00
4.	Burn without adequate fire containment devices	Section 2.5	\$300.00
5.	Burn prohibited items or materials	Section 2.6	\$250.00
6.	Burn during unsafe conditions	Section 2.8	\$300.00
7.	Burn outside of designated time period, without permit	Section 2.9	\$300.00
8.	Burn on property not lawfully occupied	Section 2.9(b)	\$250.00
9.	Burn during a High or Extreme Fire Hazard	Section 3.1(d)	\$425.00
10.	Burn recreation/camp fire outside of designated time period	Section 3.2 (a)	\$250.00
11	Recreation Fire in excess of 2/3M in diameter- or 2/3M in height	Section 3.2 (c)	\$250.00
12	Burn in an unsafe manor	Section 3.2 (a) or (b) or (c) or (d) or (e) “As noted on the violation Notice”	\$250.00

NOTE:

- The general penalty provision for offenses listed above is per section 8.1 of this Bylaw, a certified copy of which has been filed.
- “Victim Fine Surcharges” are added to all charges laid under a POA Part 1 process; Per Ontario Regulation 161/00 as amended O.Reg.66/16.

THE CORPORATION OF THE TOWNSHIP OF THE MCKELLAR

Schedule “C” part 1, of By-law No. 2018-30

COSTS OF INVESTIGATION / ENFORCEMENT’S PER SECTION 9.1

ITEM	AUTHORITY SECTION	RELATED COSTS MAY INCLUDE	CALCULATED & DOCUMENTED BY
Responding to a Scene	Section 9.1	TIME, per By-law Officer or Fire Officer @ \$50.00 per hour	Officer’s time sheets & related video/photo’s
Occurrence and Investigation Time	Section 9.1	TIME, per By-law Officer/Fire Officer @ \$75.00 per hour	Officer’s time sheets & related video/photo’s
Court – MLEO Time	Section 9.1	TIME, per By-law Officer/Fire Officer @ \$75.00 per hour	Officer’s time sheets & related video/photo’s
Court – Prosecutor(s) Costs	Section 9.1	TIME, as per Prosecutor’s Case Invoice	Legal Invoice(s)
Administrative Costs	Section 9.1	Staff TIME	Office Staff & Officer(s) logged hours

SCHEDULE “C part 2” of By-law No. 2018-30

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

The cost(s) for all Fire Control equipment or devises, or suppression personal, 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/devise or personnel are back at their base and have been returned to operational level.

The above category Costs will be invoiced by the Municipality 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” / “C” parts 1 & 2- may be amended at any time at the discretion of the Council of the Township of McKellar