

The Corporation of the City of Pembroke

By-law Number 2023-63

A By-law to regulate “Recreational Open-Air Burning” and precautions to be taken by owner in the City of Pembroke

Whereas subsection 7.1(1) of the *Fire Protection and Prevention Act*, 1997, S.O. 1997, c. 4, authorizes the council of a municipality to pass by-laws regulating the setting of open-air fires, including establishing the times during which the open-air fires may be set; and

Whereas subsection 10(2) of the *Municipal Act*, 2001, S.O. 2001, c. 25 as amended, authorizes a municipality to pass by-laws respecting the health, safety and well-being of persons, the protection of persons and property, and the economic, social, and environmental well-being of the municipality, including respecting climate change; and

Whereas the regulation of Open-Air Fires will contribute to the health, safety, and well-being of the inhabitants of the municipality, the protection of persons and property within the municipality, and the economic, social, and environmental well-being of the municipality; and

Whereas section 391 of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, provides that a municipality may pass by-laws imposing fees or charges on any class of persons for services or activities provided or done by or on behalf of the municipality and for the use of the municipality’s property, including property under its control;

Now Therefore the Municipal Council of the Corporation of the City of Pembroke enacts as follows:

1. Definitions

For the purposes of this By-law:

“Adverse Effect” means one or more of the following, as determined by the Fire Chief:

- a. Material impairment of the quality of the natural environment for any use that can be made of it,
- b. Injury or damage to property, or plant or animal life,
- c. Harm or material discomfort to any person,
- d. A detrimental effect on the health, or the impairment of the safety of any person,
- e. Loss of enjoyment of normal use of property, or
- f. Interference with the normal operation of any business.

“Applicant” means the person making an application for an open-air permit under this By-law.

“Cooking Appliances” shall mean a portable or fixed device designed and intended solely for the cooking of food in the open air but does not include an outdoor fireplace or a campfire. Approved cooking appliances are barbecues, smokers, masonry barbecues, charcoal appliances, hibachis, and contained pizza ovens.

“Campground” means an area of land that contains campsites for the purpose of overnight accommodations for tents, trailers and/or motorhomes in exchange for monetary payment, and that has been approved by the Fire Chief. The only recognized campground for the purposes of this by-law is Riverside Park.

“Ceremonial/Sacred Fire” means an open-air fire carried out as part of or in observance of a ceremonial or sacred service and maintained by a Fire Keeper.

“City” means the municipal Corporation of the City of Pembroke or the geographic area of the City of Pembroke as the context requires.

“Dangerous Conditions” shall mean:

- a. A lack of precipitation, drought, or dry weather conditions, which in the opinion of the Fire Chief, increases the risk of the spread of fire;
- b. Winds 25 kilometers per hour or higher, or winds which, in the opinion of the Fire Chief, increase the risk of the spread of fire;
- c. The duration of any smog alert/smog watch/smog advisory, as determined by Environment and Climate Change Canada; or
- d. Any other condition declared by the Fire Chief to be a dangerous condition, from time to time, which increases the risk of the spread of fire or may cause increased adverse health effects such as air quality statements.

“Combustible Structure or Object” means any building or permanent structure, hedge, fence, overhead wiring, trees, unapproved combustible material, the property lot line, or any other object, that in the opinion of the Fire Chief, may increase the risk of the spread of fire or may cause adverse health effects.

“Extinguish” means to put out or quench the fire completely with no smoke, or hot or glowing embers remaining.

“Extinguishing Agent” means a medium that effectively extinguishes a fire. Acceptable extinguishing agents are portable fire extinguishers and garden hoses.

“Fire Ban” means a period of time declared by the Fire Chief during which the setting of fireworks and all open-air fires are prohibited but does not include Outdoor Appliances with mechanical shut-off (i.e., propane and natural gas appliances), smokers, barbecues, and charcoal appliances.

“Fire Chief” means the person appointed under Section 6 of the *Fire Protection and Prevention Act* as Fire Chief for the Corporation of the City of Pembroke, or their designate.

“Fire Protection and Prevention Act” means the *Fire Protection and Prevention Act*, 1997, S.O. 1997, c.4, as amended, and the regulations enacted thereunder, as amended from time to time, or any Act or Regulation enacted in substitution.

“Flying/floating lantern” means a warm air floating device made of combustible material and equipped with an open flame for floatation.

“Maintain” means to cause or permit an open-air fire to continue to burn.

“Material to be Burned” means the total volume of the materials contained in a fire.

“Non-approved Device” means a container that has not been approved by CSA/ULC or, the Fire Chief, to contain an open-air fire, including but not limited to drums, barrels, oil tanks, gas tanks.

“Nuisance Open-Air Fire” means an open-air fire that causes smoke, odour and/or airborne sparks or embers, alone or in combination, that is likely to, or does, disturb others, reduce visibility on a Highway or private driveway, and/or create a dangerous condition, and/or produce an adverse effect, inconvenience, or discomfort to others in the vicinity of the open-air fire.

“Open Air Fire” means the burning of material, including but not limited to untreated wood and wood fibre products where the flame and fuel is wholly contained, and includes campfires and outdoor appliance fires, but does not include the use of appliances with mechanical shut-offs (i.e., propane or natural gas appliances), smokers, barbecues, or charcoal appliances.

“Outdoor Appliance” means a wood burning device or a natural gas or propane device that is CSA/ULC approved or approved by the Fire Chief to contain an Open-Air fire.

“Outdoor Fireplace” means a CSA/ULC approved 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 chiminea.

“Outdoor Fire Structure” means a manufactured non-combustible enclosed container designed to hold a small fire for decorative purposes, and may include, but not limited to, chimineas, masonry constructed fireplaces or other appliances.

“Owner” means a person who is shown on the parcel register maintained by the Province of Ontario as the owner of property, and includes any person in legal possession of a property, and also includes a person who for the time being manages the property or receives rent for it, or who pays municipal taxes on the property, whether on their own account or as an agent or trustee of any other person, or who would carry out the aforementioned duties if the property were let, and shall also include a tenant or occupant of the property.

“Person” shall mean any individual, association, firm, partnership, corporation, agent or trustee and their heirs, executor or to the legal representative of a person that has been granted a permit for recreational fires.

“Permit Holder” shall mean any person who is a land owner, tenant, lessee, individual, association, firm, partnership, corporation agent or trustee and their heirs, executor or to the legal representative of a person that has been granted a permit for recreational fires.

“Prohibited Materials” means combustible material, including but not limited to: leaves, rubber, rubber products, plastic, plastic products, polyethylene terephthalate, polystyrenes (Styrofoam), waste petroleum products, rubbish, demolition materials, metal, tires, rubber, plastic, fibreglass, cloth, asphalt products, shingles, insulation, electrical wiring, painted or treated wood, furniture, synthetic fabrics, composite wood waste, residential waste (such as food scraps, diapers, and household trash), commercial, industrial, manufacturing, or construction waste, flammable or combustible liquids, oils, paints, solvents, batteries, acids, chemicals, explosives, radioactive, infectious, and other hazardous materials, and any material prohibited by the *Environmental Protection Act*, R.S.O. 1990, e. E. 19, as amended, but shall not include untreated wood and wood fiber products, such as non-laminated paper, cardboard and boxboard for use in starting the fire. Tree limbs and branches may be used as long as they meet the size requirements of Recreational Fire Pit listed below.

“Propane or Natural Gas Fired Outdoor Fireplace” shall mean only commercially manufactured CSA/ULC approved appliances designed for outdoor use as a fireplace and using commercial fuels such as natural gas and propane.

“Property” includes a building or structure or part of a building or structure and includes the lands appurtenant thereto and all mobile homes, mobile buildings or mobile structures and vacant land.

“Recreational Open-Air Fire” shall mean an open-air fire that does not exceed 1m (39”) in width and 460 millimeters (18”) in height that is set and maintained solely for the purposes of cooking food, providing warmth and recreational enjoyment.

“Recreational Fire Pit” shall mean a non-combustible pit dug or built on or within the ground no larger than 1m (39”) in width and 460 millimeters (18”) in height.

“Set” means to light an open-air fire.

“Special Event” means an event held by the City, or by a community not-for-profit organization, school, or an event that supports the local tourism industry.

“Unauthorized Burning” is burning outside of the regulations of this by-law and includes outdoor burning without a permit and without following safety precautions within this By-law and shall be subject to penalties.

2. Administration & Enforcement

- 2.1 This By-law does not apply to the setting or maintaining of a Ceremonial/Sacred Fire.
- 2.2 The Fire Chief shall be responsible for the administration of this By-law.
- 2.3 The provisions of this By-law may be enforced by an Officer, or other authorized employee or agent of the City.
- 2.4 No Person shall obstruct or hinder or attempt to obstruct or hinder an Officer or other authorized employee or agent of the City in the exercise of a power or the performance of a duty under this By-law.

3. Right of Entry

- 3.1 Upon producing proper identification, an Officer, or the Fire Chief may, at any reasonable time, enter upon and inspect any property to determine if there is a contravention of the By-law and to enforce or carry into effect the provisions of this By-law.

4. Regulations

- 4.1 Every person(s), with respect to open-air fires for recreational purposes, shall comply with the following regulations:
 - 4.1.1. No person shall cause or permit an open-air fire to be set or maintained unless that person holds a valid Open-Air Fire Permit.
 - 4.1.2. No person shall cause or permit an open-air fire to be set or maintained except in accordance with the provisions of this By-law and the terms and conditions of a valid Open-Air Fire Permit issued under this By-law.
 - 4.1.3. No person shall cause or permit an open-air fire to be set or maintained in dangerous conditions.
 - 4.1.4. No person shall cause or permit an open-air fire to be set or maintained, during a Fire Ban.
 - 4.1.5. The permit holder shall ensure that the recreational open-air fire is safe, remains contained, and does not cause a wildfire. The permit holder shall remain liable for any, and all damage caused as a result of the fire.
 - 4.1.6. No person shall set or maintain a recreational open-air fire except between the hours of 6:00 p.m. to 11:00 p.m. from March 2nd to December 20th and from 3:00 p.m. to 11:00 p.m. from December 21st to March 1st.
 - 4.1.7. A person shall only burn materials which are commercially produced such as charcoal, briquettes, or clean, dry seasoned wood free of chemicals, paint, or stain, as outlined under open-air fire definition.
 - 4.1.8. No person shall cause, permit, or maintain the burning of prohibited materials in a recreational open-air fire.
 - 4.1.9. Recreational open-air fires shall be confined to commercial, non-

combustible containers or to a pit no larger than 1m (39") in width and 460 millimeters (18") in height.

- 4.1.10. No person shall cause or permit an open-air fire to be set or maintained in a non-approved device.
- 4.1.11. The dimension of the fuel being burned shall not be greater than the size of the container or fire pit and shall be totally confined within the container or pit at all times.
- 4.1.12. A recreational open-air fire shall be confined to an area that is a minimum of four (4) meters from combustible structures or objects. Approved outdoor appliances, outdoor fireplaces or outdoor fire structures may reduce the clearance requirements to three (3) meters upon approval of the Fire Chief.
- 4.1.13. An effective extinguishing agent of sufficient size and with the capability of extinguishing the fire shall be at the site of the burning and be immediately available for use.
- 4.1.14. Recreational open-air fires shall be attended, controlled, and supervised at all times by the permit holder and shall be completely extinguished before the fire is left unattended.
- 4.1.15. No person shall cause or permit a nuisance open-air fire.
- 4.1.16. No person shall use, or cause or permit the use of a flying/floating lantern.

5. Cooking Appliances

- 5.1 Approval is not required from the City, or the Fire Chief, for the use of cooking appliances to cook food. Cooking appliances being used to cook food shall be attended, controlled, and supervised at all times.

6. Approved Fuels

- 6.1 The only approved fuels for use in cooking appliances are commercially produced charcoal, briquettes or other commercial fuels intended for the appliance for the purposes of cooking. Approved fuels for contained pizza ovens consists of clean, dry seasoned wood, free of chemicals, paint, or stain.

7. Exceptions

- 7.1 The City of Pembroke shall be exempt from the provisions of this By-law with respect to open-air burnings. Exemptions shall also include the recreational open-air fires, as approved by Park staff, at Riverside Park Campground.

Two public fire pits will be available at Riverside Park for use by City of Pembroke residents. Fire pits will be available from Victoria Day weekend to Thanksgiving. Reservations or use of the fire pits will be completed through the Campground Office at The Kiwanis Fieldhouse or the Parks and Recreation Department. All rules and regulations laid out by this By-law and by Riverside Park Campground staff shall be followed at all times. Hours of use are limited from 9:00 a.m. until 11:00 p.m. daily. Reservations and use shall be at no cost to user. All aspects of this By-law, aside from the time frame, apply to users of the public fire pits.

7.2 Special Events

Special events, as approved by the Fire Chief, shall be exempt. All exemptions require a formal letter of request with written approval of the

property owner, an approved letter from the Fire Chief, shall be subject to a site inspection, and may be subject to the permit fee.

7.3 Gas Fired Outdoor Fireplaces

CSA/ULC approved natural gas or propane fueled outdoor fireplaces are exempt. All regulations for fire safety included within this By-law shall be adhered to.

8. Issuance of Permits

8.1 Permit

8.1.1 Every application for a fire permit shall be submitted to the Pembroke Fire Department on forms approved by the Fire Chief and shall contain the applicant's contact information and all other information, documentation or materials as may be requested by the Pembroke Fire Department.

8.1.2 Every tenant shall provide a written and signed letter of approval from the property owner when applying for a permit. The letter shall contain the owner's current mailing address and phone number.

8.1.3 An incomplete application for a permit will not be processed.

8.2 Inspections

8.2.1 A site inspection of the proposed burn location for a recreational open-air fire shall be undertaken by the Fire Chief. This inspection may include a drawing or require pictures to be taken prior to issuing a permit.

8.3 Approval

8.3.1 The Fire Chief may, in their sole discretion, refuse to issue a permit if:

8.3.1.1 The application is incomplete;

8.3.1.2 The Fire Chief has reasonable grounds to believe that the Open-Air Fire may cause or result in an adverse effect or a dangerous condition;

8.3.1.3 The Applicant has an outstanding debt owing to the City as a result of unpaid fees or charges or fines issued pursuant to this By-law; or

8.3.1.4 The Fire Chief has reasonable grounds to believe that the Open-Air Fire will result in a breach of this By-law, the *Fire Protection and Prevention Act*, or any other provincial or federal statute.

8.3.2 A permit issued under this by-law is personal to the permit holder and shall not be transferred or assigned.

8.4 Permit Fees

8.4.1 The fee for the issuance of a Recreational Open-Air Burning Permit will be as set by the City's approved fees and charges schedule, which may be reviewed and changed from time to time. This permit is valid for one year from the date of issue and may be subject to an inspection prior to renewal.

8.4.2 Application and inspection fee payment shall be made at and to the Pembroke Fire Department.

8.5 Permit Withdrawal or Fire Ban

8.5.1. The Fire Chief may withdraw a previously issued permit or ban burning. In the event of any permit withdrawal or Fire Ban, all persons shall immediately extinguish any existing Recreational Open-Air Fires. In the case of a permit withdrawal or fire ban, there shall be no refund of permit fees.

8.5.2 The Fire Chief may, at any time, in their sole discretion, revoke any permit, if the Fire Chief has reasonable grounds to believe that:

8.5.2.1 Any information provided with the permit application or supporting documentation or materials is not accurate, is false or misleading;

8.5.2.2 A provision of this by-law or a term or condition of the permit is not being observed; or

8.5.2.3 The permit holder has caused or permitted a nuisance open air fire on one or more occasions.

8.5.3 If the Fire Chief revokes a permit, the Fire Chief shall notify the permit holder using the contact information provided on the application.

8.5.4 Notice of the revocation of a permit, if sent to the contact information provided on the application, shall, in the absence of evidence to the contrary, be deemed to be received:

8.5.4.1 On the date of delivery, if delivered personally;

8.5.4.2 On the date and time of transmission, if delivered via email;

8.5.4.3 Three (3) business days after the date of mailing, if delivered by registered mail to an address within the City;

8.5.4.4 Five (5) days after the date of mailing, if delivered by registered mail to an address outside of the City;

8.5.4.5 Five (5) days after the date of mailing, if delivered by regular mail to an address within the City;

8.5.4.6 Seven (7) days after the date of mailing, if delivered by regular mail to an address outside the City.

9. Extinguishing Any Fire

9.1 The Fire Chief may direct any person to extinguish an open-air fire where the Fire Chief has reasonable grounds to believe that the open-air fire is in contravention of this By-law or of the terms and conditions of a permit.

9.2 Where the action taken by such person to extinguish the fire, in the opinion of the Fire Chief, is not adequate, the Fire Chief may take such action as they consider necessary to control and extinguish the fire.

9.3 No action or other proceeding for damages shall be instituted against a firefighter, a fire coordinator, a fire inspector, a community fire safety officer, a member or employee of the Fire Safety Commission, an assistant to the Fire Marshal, a Deputy Fire Marshal, the Fire Marshal, or a person acting under their authority, or any other person directed by the Fire Chief pursuant to the above, for any act done in good faith in

the execution or intended execution of his or her power or duty or for any alleged neglect or default in the execution in good faith of his or her power or duty.

10. **Costs of Action Regarding Fires**

- 10.1 The owner(s) and/or permit holder may be responsible for any and all extraordinary costs and expenses of any action(s) taken by the Fire Chief pursuant to section 9.1 and/or section 9.2 of the By-law with respect to responding to, controlling or extinguishing an open-air fire on that property that is caused by, or results from, a contravention of this By-law, or is caused by or results from the failure to comply with any of the provisions of this By-law or the terms and conditions of an Open-Air Fire Permit issued pursuant to this By-law.
- 10.2 For the purposes of section 10.1 of this By-law, extraordinary costs and expenses include, but are not limited to: the costs and expenses of any actions related to the burning of prohibited materials or in prohibited conditions; the costs and expenses of multiple responses to the same address due to contraventions of the By-law; the costs and expenses related to the spread of an open-air fire onto property owned by the City, including to repair or replace damaged property.
- 10.3 The costs and expenses in Section 10.1 of this By-law shall be payable to the City.
- 10.4 If costs or expenses are assessed against an owner or permit holder under this By-law, the City shall deliver an invoice to each such owner or permit holder and the owner or permit holder shall pay the fee within thirty (30) days of receipt of the invoice or as may be otherwise specified on the invoice.
- 10.5 The City may deliver such invoice personally, by registered mail, or by regular mail to the owner(s)'s address listed on the written letter of permission, or the most recent address on file, or the permit holder's address listed on the permit application.
- 10.6 Receipt of the invoice shall be deemed to have occurred:
 - 10.6.1 On the date of delivery, if delivered personally;
 - 10.6.2 Three (3) business days after the date of mailing, if delivered by registered mail to an address within the City;
 - 10.6.3 Five (5) days after the date of mailing, if delivered by registered mail to an address outside the City;
 - 10.6.4 Five (5) days after the date of mailing, if delivered by regular mail to address within the City; or
 - 10.6.5 Seven (7) days after the date of mailing, if delivered by regular mail to an address outside the City.
- 10.7 If any amount payable under this By-law remains unpaid after thirty (30) days of the receipt of the invoice, the City may add such amount to the tax roll for any property for which all the owner(s) or permit holders are responsible and may collect the amount in the same manner as municipal taxes or through the use of other legal means as deemed appropriate.

11. **Offence and Penalty Provisions**

- 11.1 Every person who contravenes any provision of this By-law is guilty of an offence as provided in the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended.

11.2 Any person who contravenes any provisions of this By-law is guilty of an offence and is liable to the fine or penalties set in Schedule "A" of this By-law and Section 61 of the *Provincial Offences Act*, R.S.O. 1990, c.P33.

11.3 If 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 penalty imposed on the person convicted, issue an order prohibiting the continuation or repetition of the offence by the person convicted, and/or requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

11.4 In accordance with Section 398 of the *Municipal Act*, the treasurer of the City may add any unpaid fees, charges and/or fines imposed under this By-law to the tax roll and collect them in the same manner as property taxes.

12. Schedules

12.1 The following schedule is attached to and form part of this By-law:
a. Schedule A: Offences and Penalties

13. Validity

13.1 Should a court of competent jurisdiction declare any provision, or any part of any provision, of this By-law to be invalid or of no force and effect, the provision or part shall be deemed severable from this By-law and it is the intention of Council that the remainder of the By-law be applied and enforced in accordance with its terms to the extent possible under law.

14. Repeal & Enactment

14.1 That By-law 2020-21, 2021-43 and any other by-law inconsistent with the provision contained in this by-law are hereby repealed.

14.2 This By-law shall come into force and take effect upon the final passing thereof.

Passed and enacted this 5th Day of September 2023

Ron Gervais
Mayor

Heidi Martin
Clerk

**Schedule "A" to By-law 2023-63
Part 1 Provincial Offences Act**

By-law 2023-63: Recreational Open-Air Burning By-law

Item	Column 1 – Short Form Wording	Column 2 – Provision Creating or Defining Offence	Column 3 – Set Fine
1	Burning without a permit	ss. 4.1.1	\$200.00
2	Unsafe burning	ss. 4.1.3	\$200.00
3	Burning during a Fire Ban	ss. 4.1.4	\$200.00
4	Burning outside Permitted Times	ss. 4.1.6	\$200.00
5	Burning prohibited materials	ss. 4.1.8	\$200.00
6	Burning in a non-approved device	ss. 4.1.10	\$200.00
7	Fire larger than approved	ss. 4.1.11	\$200.00
8	Burning within 4m of structure/object	ss. 4.1.12	\$200.00
9	Failure to have an extinguishing agent on site	ss. 4.1.13	\$200.00
10	Failure to attend, control, supervise fire	ss. 4.1.14	\$200.00

“Note: The penalty provision for the offences indicted above is Section 11.1 of By-law 2023-63, a certified copy of which has been filed”.