

# THE CORPORATION OF THE TOWN OF HANOVER

## BY-LAW NO. 3173-21

**BEING** a By-law of the Town of Hanover to regulate and establish procedures for recreational campfires and open air burning within the Town of Hanover

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**WHEREAS** section 7.1 of the *Fire Protection and Prevention Act, 1997, S.O. 1997, c. 4*, provides that a municipality may pass a by-law to regulate fire prevention and the setting of open-air fires, including establishing the times during which open air fires may be set and the precautions to be observed by persons setting such fires;

**AND WHEREAS** section 128(1) of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended, provides that, without limiting sections 9, 10 and 11, a local 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 WHEREAS** section 129(a) of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended, provides that a local municipality may prohibit and regulate with respect to noise, vibration, odour, dust and outdoor illumination;

**AND WHEREAS** section 425(1) of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended, permits Council to pass by-laws providing that any person who contravenes any by-law of the municipality is guilty of an offence;

**AND WHEREAS** section 429(1) of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended, provides that a municipality may establish a system of fines for offences under a by-law of the municipality;

**AND WHEREAS** sections 435 and 436 of the *Municipal Act, 2001, S.O. 2001, c. 25*, provide for conditions governing powers of entry on land and the conduct of inspections;

**AND WHEREAS** section 444 of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended, provides that if a municipality is satisfied that a contravention of a by-law has occurred, the municipality may make an order requiring the person who contravened the by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity;

**AND WHEREAS** in section 446 of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended, that if a municipality has authority under the Act or under a bylaw under this or any other Act 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 Town of Hanover enacts as follows:

### 1. DEFINITIONS

- 1.1. "Agricultural Waste" means any animal fecal deposits or manure, and animal carcasses;
- 1.2. "By-law" means this Open-Air Burning By-law;
- 1.3. "Chief Fire Official" means the person appointed by the council to act as Fire Chief for the Town as defined in the Fire Protection and Prevention Act, 1997 or a member or members of the Fire Department appointed by the Fire Chief under Article 1.1.1.2. of Division C or a person appointed by the Fire Marshal under Article 1.1.1.1. of Division C of the Ontario Fire Code 213/07, as amended, or his or her designate;
- 1.4. "Controllable Fire" means an Open-Air fire which is used solely for the purpose of burning wood, tree limbs and branches, and is only granted through a special permit and must be authorized by the Chief Fire Official or his designate;
- 1.5. "Domestic Waste" means kitchen waste, food, scraps, cloth, rags, clothing, plastics and any other materials which contents include any of the aforementioned.
- 1.6. "Extinguish" means to put out or quench a fire completely, no smoke, hot or glowing embers are to remain;

- 1.7. "Fees and Service Charges By-law" means the Town of Hanover Fees and Service Charges By-law, as amended;
- 1.8. "Fire Department" means the Town of Hanover Fire Department;
- 1.9. "Fire Pit" means a pit not more than 1 meter (3 feet) in diameter, requiring not less than 5 meters (16 feet) of clearance. The fire pit must be enclosed on all sides and constructed of masonry, concrete, stone, heavy gauge metal or other non-combustible materials. The flames from the fire are no higher than 1 meter (3 feet) above ground level.
- 1.10. "Ground Cover" shall include but is not limited to, leaves, grasses, weeds, tree needles, or wood chips on the ground;
- 1.11. "Gas-fired Outdoor Campfire Device" means listed ULC or CSA gas (natural, propane) appliances, which shall not constitute open air fire under this By-law;
- 1.12. "Industrial Waste" means used automobile and truck bodies, tires, oil, grease, paint, cloth, rags, plastics or other material which contents include any of the aforementioned;
- 1.13. "Nuisance" means the excess smoke, smell, airborne sparks, or embers that are likely to disturb others;
- 1.14. "Officer" means a Fire Official, Municipal Law Enforcement Officer or Police Officer;
- 1.15. "Open Air" includes any open place, yard, field or construction area which is not enclosed by a building or structure;
- 1.16. "Outdoor Cooking Device" means a cooking appliance fueled by a commercially produced charcoal or briquette, which includes a barbeque, **or** a hibachi, 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;
- 1.17. "Permit" means a permit issued under this By-law which authorizes a person to establish an open-air fire;
- 1.18. "Person" means an individual, business, partnership or a corporation;
- 1.19. "Registered Owner" includes any person, entity, firm or corporation having control over any portion of a building, land or property and includes the persons in the building or property. For the purpose of this bylaw "registered owner" will be known as "owner";
- 1.20. "Structure" - Means anything constructed or erected, the use of which requires location on the ground or attached to something having location on the ground but for the purpose of this By-law, a fence not exceeding 2.0 metres in height shall be deemed not to be a structure, and for the purposes of setback and/or yard required in this By-law, a sign shall not be deemed to be a structure.
- 1.21. "Town" means The Corporation of the Town of Hanover;

## **2. GENERAL**

- 2.1. This By-law shall apply to all land within the geographical limits of the Town of Hanover and to the setting of fires in the open air (fires) on any such land.
- 2.2. A fire permit may be cancelled or suspended at any time by the Chief Fire Official or his designate and immediately upon receiving notice of such cancellation or suspension the permittee shall extinguish any fire started under the permit.
- 2.3. No burning shall be allowed in, or on, any highway, park, walkway, public land, or upon any land owned by the Corporation of the Town of Hanover without having first obtained permission to do so from the Chief Fire Official, or designate.
- 2.4. No burning shall be allowed on, or in the ditches of, any public road or highway
- 2.5. No person shall be allowed to burn industrial waste, agricultural waste, domestic waste, petroleum products, plastic, rubber, painted lumber, mixed demolition debris or anything else that will cause excessive smoke or fumes.
- 2.6. No person shall set or maintain a fire in open air unless a permit has been issued by the Chief Fire Official, or designate, under this by-law.

- 2.7. In the absence of being issued a permit, an owner shall be deemed to have permitted a fire to burn and the owner assumes all responsibility and liability where a fire has been set or permitted to burn in the open air.
- 2.8. Every person who applies for and receives a permit acknowledges having read and understood the terms and conditions of this by-law, and assumes all responsibility and liability in connection with the open-air burning permit.
- 2.9. Where a permit has been obtained under this by-law, no person shall set or maintain a fire in open air other than in compliance with the terms and conditions of the permit.
- 2.10. A permit may be issued to any property owner or occupant (with permission from the owner) pursuant to the following terms and conditions:

**2.10.1. Recreational Campfires**

Any person that sets, maintains or operates an open air fire must provide that:

- 2.10.1.1. the fire is set or maintained during the time period between sunrise and 1:00 a.m.;
- 2.10.1.2. it is located at a distance of not less than 5 meters (16 feet) between the fireplace and any building or structure, and 3 meters (10 feet) from a property line, tree, hedge, fence, roadway, overhead wires, or other combustible article;
- 2.10.1.3. the fire is not more than 1 meter (3 feet) by 1 meter (3 feet) in size and not more than 1 meter (3 feet) in height;
- 2.10.1.4. it is located on a non-combustible surface extending beyond the unit to a dimension equal to the height of the unit or unless it carries a UL/CSA rating and the manufacturers guidelines are followed;
- 2.10.1.5. there is no rain, fog, or high wind warning issued by Environment Canada present at the time of burning;
- 2.10.1.6. the material to be burned shall be limited to wood or by-products of wood, excluding materials that can be reused, recycled, mixed debris such as brush or leaves or vegetation that can be composted;
- 2.10.1.7. no fire shall contain rubber tires, plastic products, shingles, painted wood or other building materials that are known to create extensive smoke;
- 2.10.1.8. it does not create a nuisance where the wind direction causes the smoke to create a discomfort to persons residing in the immediate area of the owner, or occupant, who has been issued a permit;
- 2.10.1.9. a portable fire extinguisher or operable garden hose is available while the unit is in operation;
- 2.10.1.10. the owner, or occupant, maintains a consistent watch and control over the fire from the time of the setting of the fire until the fire is totally extinguished; and
- 2.10.1.11. the owner, or occupant, shall obtain a permit prior to commencing a fire to burn and the Owner, or occupant assumes all responsibility and liability where a fire has been set or permitted to burn in the open air.

**2.10.2. Controllable Fire**

- 2.10.2.1. Guidelines shall be provided by the Fire Chief Official or designate depending upon the situation of the controllable fire.

- 2.11. No person shall set or maintain any permitted fire when a burning ban or fire ban has been issued by the Chief Fire Official.
- 2.12. Notwithstanding any other provisions of this by-law, the Chief Fire Official may permit an open air fire:
  - 2.12.1. for the purpose of training or testing fire equipment;
  - 2.12.2. by the Town or any of its officials, employees, contractors or agents or any other persons for whom the Town is liable at law who are carrying out any operations of the Town, operating, maintaining or installing municipally-owned infrastructure and/or facilities; or
  - 2.12.3. for any extraordinary reason as deemed expedient by the Chief Fire Official.
- 2.13. The following are exempt from the provisions of this by-law:

- 2.13.1. outdoor Cooking Device; and
- 2.13.2. gas-fired Outdoor Campfire Device
- 2.14. Open Air fires SHALL NOT be permitted on any or all construction sites.

### 3. COMPLIANCE WITH THE ENVIRONMENTAL PROTECTION ACT

- 3.1. Nothing in this policy shall be deemed to authorize any fire, burning or other act which is in contravention of the *Environmental Protection Act, R.S.O. 1990, c. E. 19* or any regulation made thereunder and in the event of any conflict between the provisions of this policy and the said Act or regulations, the provisions of the said Act and regulations shall govern.

### 4. POWER OF ENTRY AND INSPECTION

- 4.1. An officer may, at any reasonable time, enter and inspect any land or premises to determine whether the provisions of this by-law or any direction or order made thereunder is being complied with.
- 4.2. An owner, or occupant, shall permit an officer to inspect any land, property or premises for the purposes of determining compliance with this by-law.
- 4.3. An officer may be accompanied by a person under his or her direction.
  - 4.3.1. Notwithstanding Sections 4.1 and 4.2, no person, including an officer, shall exercise a power of entry under this by-law to enter a place or part of a place that is actually being used as a dwelling unless:
    - 4.3.1.1 An occupier of the dwelling, having been informed that the right of entry may be refused, consents to the entry; or
    - 4.3.1.2 If the occupier refuses to consent, an order is issued pursuant to section 438 of the *Municipal Act, 2001* or a warrant issued pursuant to section 439 of the *Municipal Act, 2001*, or a warrant issued under the *Provincial Offences Act, R.S.O. 1990, c. P.33*.

### 5. OBSTRUCTION

- 5.1. No person shall hinder or obstruct, or attempt to hinder or obstruct, an officer exercising a power or performing a duty under this by-law.
- 5.2. Any person who has been alleged to have contravened any of the provisions of this by-law shall identify themselves to the officer upon request, and the failure to do so shall be deemed to constitute an obstruction or hindrance of the officer in the execution of his duties.

### 6. OFFENCES, PENALTIES & REMEDIES

- 6.1. Every person who contravenes any provision of this bylaw is guilty of an offence and upon conviction is liable to a fine as provided for by the Provincial Offences Act, R.S.O. 1990, Chapter P.33, as amended
- 6.2. Any person who contravenes any provision of this by-law is guilty of an offence ; and
- 6.3. Upon a first conviction is subject to a minimum fine of \$100.00 and a maximum fine of \$5,000.00; and
- 6.4. Upon a subsequent conviction is subject to a minimum fine of \$500.00 and a maximum fine of \$10,000.00.
  - 6.4.1. Despite Section 6.1, where the person convicted is a corporation, the corporation is liable:
  - 6.4.2. Upon a first conviction is subject to a minimum fine of \$500.00 and a maximum fine of \$10,000.00; and
  - 6.4.3. Upon a subsequent conviction is subject to a minimum fine of \$1,000.00 and a maximum fine of \$25,000.00.
- 6.5. If this by-law is contravened and a conviction is entered, in addition to any other remedy and to any penalty imposed by the by-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order:

- 6.6. Prohibiting the continuation or repetition of the offence by the person convicted; and
- 6.7. Requiring the person convicted to correct or remedy the contravention in the manner and within the time period that the court considers appropriate.

## **7. ADMINISTRATION AND ENFORCEMENT**

- 7.1. Any officer is hereby vested with the authority of enforcing this by-law.
- 7.2. Any permit issued under this by-law may be revoked if a person is, in the opinion of the Chief Fire Official or an Officer, in contravention of any provision of this by-law.

## **8. FEES**

- 8.1. The fee for a permit issued under this by-law shall be set forth within the Town of Hanover Fees and Services By-law.
- 8.2. Should the Fire Department attend to extinguish an open air fire that is not being carried out in accordance with the provisions of this by-law, the owner shall be responsible for any damage to property or injury to persons occasioned by said open air fire and shall be liable to pay any fees together with any costs, including, but not limited to, personnel, equipment and apparatus necessary and called in to extinguish said open air fire, as may be set out in the Fees and Service Charges By-law.

## **9. PERMITS**

- 9.1. An application for a permit shall be made to the Fire Department in the form of an online application utilizing a 3<sup>rd</sup> party provider or by completion of a paper application form. Burn permits are not considered active until the permit has been completed in full, the permit has been paid for, the owner of the location has agreed to the burn by-law specifics and the applicant has agreed to the terms and conditions of the by-law.
- 9.2. The Chief Fire Official may from time to time make amendments to the Fire Permit application form that are administrative in nature.

## **10. INDEMNIFICATION**

- 10.1. The applicant for a permit as required under this By-law shall indemnify and save harmless the Town of Hanover from any and all claims, demands, causes of action, losses, costs or damages that the Town of Hanover may suffer, incur or be liable for resulting from the performance of the applicant as set out in this By-law, whether with or without negligence on the part of the applicant, the applicant's employees, directors, contractors and agents.

## **11. CONSENT OF A REGISTERED OWNER**

- 11.1. No person shall set or maintain a permitted fire on any property in the Town of Hanover unless:
- 11.2. The person setting or maintaining the fire is the registered owner of the property on which the fire is set;
- 11.3. At least one registered owner of the property or his or her authorized designate is present at the site of the fire from the time fire is set until the fire is fully extinguished; or;
- 11.4. The person setting or maintaining the fire has the written consent of at least one registered owner of the property on which the fire is set, to the setting of a fire of that type on the property.

## **12. VALIDITY, SEVERABILITY AND INTERPRETATION**

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

12.2. Whenever any reference is made in this by-law to a statute or regulation of the Province of Ontario, such reference shall be deemed to include all subsequent amendments to such statute or regulation and all successor legislation to such legislation.

12.3. Words importing the singular number shall include the plural, and words importing the masculine gender shall include the feminine, and the converse of the foregoing also applies, unless the context of the by-law otherwise requires.

### 13. REPEAL

13.1. THAT By-law No. 2171-97 be hereby repealed.

### 14. TITLE

14.1. The short title of this by-law is "Open Air Burning By-law".

### 15. ENACTMENT

15.1. THAT this By-law shall come into full force and effect on the date of final passage hereof at which time all By-laws and/or resolutions that are inconsistent with the provisions of this By-law and the same are hereby repealed or rescinded insofar as it is necessary to give effect to the provisions of this By-law.

**READ a FIRST, SECOND and THIRD TIME and FINALLY PASSED** this 9<sup>th</sup> day of August, 2021.



Sue Paterson, Mayor



Brian Tocheri, CAO/Clerk

Town of Hanover

PART 1, PROVINCIAL OFFENCES ACT

**BY-LAW 3173-21:** Being a by-law for prescribing times during which fires may be set in the open air and the precautions to be observed by persons setting fires, and for setting fees for fire permits.

ITEM #	COLUMN 1	COLUMN 2	COLUMN 3
	Short Form Wording	Provision Creating or Defining Offence	Set Fine
1.	Setting or maintaining a fire in open air without a permit	Section 2.6	\$195
2.	Setting or maintaining a fire in open air other than in compliance with terms and conditions with permit	Section 2.9	\$195
3.	Setting or maintaining a fire when a fire ban has been issued	Section 2.11	\$500
4.	Hindering, obstructing, or attempting to hinder or obstruct an officer	Section 5.1	\$350

**Note:** The penalty provisions for the offences indicated above is Section 61 of the Provincial Offences Act, R.S.O. 1990, c. P. 33.