



THE CORPORATION OF THE TOWN OF KEARNEY

BY-LAW No. 2023 - 65

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**Being a By-law to provide for the regulation of Open Air Burning and precautions to be taken by persons setting fires**

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**WHEREAS** Section 7.1 of the *Fire Prevention and Protection Act, S.O. 1997* as amended, provides that the Council may pass By-laws regulating the setting of open air fires, including establishing the times during which open air fires may be set;

**AND WHEREAS** the *Fire Prevention and Protection Act, S.O. 1997* provides that the Chief Fire Official is required to approve open air burning and appropriate fire safety provisions;

**AND WHEREAS** Section 128 of the *Municipal Act, S.O. 2001*, 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;

**AND WHEREAS** Section 391 of the *Municipal Act, S.O. 2001*, as amended, provides that municipalities may pass By-laws imposing fees or charges on persons for services or activities provided or done by or on behalf of it;

**AND WHEREAS** Section 446 of the *Municipal Act, S.O. 2001*, as amended, provides that if a municipality has the authority under this or any other Act or under a By-law 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 and the Municipality may recover the costs of doing a matter or thing from the person directed or required to do it by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes;

**NOW THEREFORE** the Council of the Corporation of the Town of Kearney hereby enacts as follows:

**1.0 DEFINITIONS:**

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

**1.01 "CAMPFIRE"** means a small fire no greater than 0.5 metre by 0.5 metre by 0.5 metre high, and contained in a ring or fire pit.

**1.02 "CHIEF FIRE OFFICIAL"** means the Fire Chief as defined in the *Fire Protection and Prevention Act* or Designate.

**1.03 "FIRE BAN"** means a complete ban of all open fires. A Fire Ban is enacted by the Chief Fire Official or Designate within the Municipality by the authority of the *Fire Protection and Prevention Act*.

**1.04 "FIRE DEPARTMENT"** means the Kearney Fire and Emergency Services.

**1.05 "FIRE HAZARD - LOW, MODERATE, HIGH, OR EXTREME"** as declared by the Chief Fire Official or Designate means:

**1.05.1 LOW Hazard – No control problems**

- **No Daytime Burning** April 1<sup>st</sup> to October 31<sup>st</sup>; Burning permitted between 6 p.m. and 10 a.m. only
- Campfire allowed with Burn Permit
- Incinerator burning allowed with Permit issued by the Fire Chief or his designate
- Fire to be monitored at all times by a responsible adult with means to extinguish fire immediately if requested
- **NO FIREWORKS**



**1.05.2 MODERATE Hazard – exercise CAUTION- Control may be difficult**

- No Daytime Burning April 1<sup>st</sup> to October 31<sup>st</sup>; Burning permitted between 6 p.m. and 10 a.m. only
- Campfire allowed with Burn Permit
- Incinerator burning allowed with Permit issued by the Fire Chief or his designate
- Fire to be monitored at all times by a responsible adult with means to extinguish fire immediately if requested
- NO FIREWORKS

**1.05.3 HIGH Hazard – exercise EXTRA CAUTION - Control would be difficult**

- No Daytime Burning April 1<sup>st</sup> to October 31<sup>st</sup>; Burning permitted between 6 p.m. and 10 a.m. only
- Campfire only – NO BRUSH BURNING
- Fire to be monitored at all times by a responsible adult with means to extinguish fire immediately if requested
- No Incinerator burning
- CSA approved portable gas/propane/naphtha stove or BBQ that has a fuel source with a control valve may be used
- NO FIREWORKS

**1.05.4 EXTREME Hazard – TOTAL FIRE BAN**

- NO Outdoor Burning of any kind
- Campfire NOT permitted at any time – All Fire Permits no longer valid
- CSA approved portable gas/propane/naphtha stove or BBQ that has a fuel source with a control valve may be used
- NO FIREWORKS

**1.06 “FIRE PERMIT”** means a document issued to a person wishing to open air burn.

**1.07 “FIRE PERMIT FEE”** means a fee charged for a fire permit in the amount of \$2.00 for a ‘three (3) consecutive evenings’ burning permit; \$20.00 for an ‘annual evening’ burning permit or annual incinerator permit; and \$50.00 for a day burning permit. Day burning permits are issued only by the Fire Chief or his designate.

**1.08 “FIRE SEASON”** means April 1<sup>st</sup> to October 31<sup>st</sup> of each year.

**1.09 “FIREWORKS”** are prohibited in the municipality unless expressly approved by Council, in accordance with the current By-law to prohibit the setting off of Fireworks.

**1.10 “MUNICIPALITY”** means the Corporation of the Town of Kearney.

**1.12 “MUNICIPAL EMPLOYEE”** means an officer, servant, or other employee of the municipality, including a volunteer fire fighter.

**1.13 “OPEN AIR FIRE”** means:

**1.13.1** fires that are set outdoors and are not contained in the confines of a cooking device;

**1.13.2** fires that are set for the purpose of disposing of clean wood debris, including fires set in outside incinerators;

**1.13.3** fires cannot be more than 1.5 metres in diameter by 1.5 metres high.

**1.14 “PERSON”** includes an individual, association, firm, partnership, or corporation.

**2.0 GENERAL BURNING RESTRICTIONS**

**2.01** No person shall start a fire outdoors between April 1 and October 31 of each calendar year without a valid fire permit issued by the Fire Chief or his designate.

**2.02** No person shall start a fire outdoors unless conditions will allow the fire to burn safely from ignition to extinguishment.



- 2.03** No person who starts a fire outdoors shall leave the fire without leaving a competent person in charge of the fire.
- 2.04** Any person who starts a fire outdoors or, if the person who started the fire is not present, a person in charge of a fire outdoors shall take all necessary steps to tend the fire, keep the fire under control, and extinguish the fire before leaving the site.
- 2.05** No person shall start any fire to burn, or shall burn outdoors, any household kitchen garbage or construction materials or other materials made of or contain 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.
- 2.06** No person shall start or tend any fire outdoors when the wind or conditions are such that it may cause any of the following:
  - 2.06.1** a decrease in visibility on any highway or road;
  - 2.06.2** the rapid spread of fire through grass, brush, forested area or other property that was not intended to be burned;
  - 2.06.3** an adverse impact on other people or property;
  - 2.06.4** the contravention of any municipal law, provincial or federal legislation.
- 2.07** No person shall start or tend a fire outdoors during a period of Extreme Fire Hazard.
- 2.08** Notwithstanding any provisions herein, no person shall set or maintain a fire:
  - 2.08.1** 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;
  - 2.08.2** on any highway, or municipal property within the Municipality;
  - 2.08.3** on any asphalt surface;
  - 2.08.4** in any park owned or operated by the Municipality without the written permission of the Municipality.
- 2.09** No person shall set or maintain an open air fire during a municipal fire ban or a restricted fire zone.

### **3.0 CONDITIONS FOR OPEN AIR BURNING**

- 3.01** Except as provided in Section 4.1 of this By-law, no person shall start or tend a fire outdoors during Fire Season (April 1<sup>st</sup> – October 31<sup>st</sup>) unless all of the following conditions are met:
  - 3.01.1** the person is burning clean wood, brush, leaves or discarded wood by-products;
  - 3.01.2** a responsible person is available to tend and supervise the fire until it is completely extinguished;
  - 3.01.3** the material is burned in a single pile that is less than 1.5 metres in diameter and less than 1.5 meters high;
  - 3.01.4** 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;
  - 3.01.5** the fire is at least ten (10) metres from any combustible structures or objects;
  - 3.01.6** the person tending the fire has tools or water adequate to contain the fire within the fire site;
  - 3.01.7** the Chief Fire Official has declared that there is a Low Fire Hazard, a Moderate Fire Hazard or a High Fire Hazard;



- 3.02** No person shall make or tend a fire in an incinerator during the Fire Season (April 1st – October 31st) unless all of the following conditions are met:
- 3.02.1** the person is burning clean wood, brush, leaves or discarded wood by-products;
  - 3.02.2** the incinerator is an enclosed device constructed entirely of non-combustible materials;
  - 3.02.3** the incinerator is placed on base mineral soil, bare rock, concrete or non-combustible material of at least 4 cm. (2") thickness, extending a minimum of 30 cm. (12") beyond the perimeter;
  - 3.02.4** the incinerator is at least eight (8) metres away from any forest, woodland, or building;
  - 3.02.5** the incinerator is at least eight (8) metres away from any flammable materials;
  - 3.02.6** the outlet of the incinerator is covered with a screen having a mesh size of not more than five (5) millimeters (1/4");
  - 3.02.7** a responsible person is available to tend and supervise the fire until it is completely extinguished;
  - 3.02.8** 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;
  - 3.02.9** the Chief Fire Official has declared that there is a Low Fire Hazard or a Moderate Fire Hazard;
- 3.03** No person shall start or tend a fire outdoors during the Fire Season for the purpose of burning grass or leaf litter unless all of the following conditions are met:
- 3.03.1** a responsible person is available to tend the fire until the fire is extinguished; and
  - 3.03.2** the fire is started after 6:00 p.m and is extinguished before 10:00 a.m. the following day; and
  - 3.03.3** the person tending the fire has tools and water adequate to contain the fire within the fire site.
- 3.04** The Chief Fire Official may, in extenuating circumstances for major projects or activity not previously considered, authorize in writing a person to burn under conditions other than those permitted in Sections 3.01, 3.02 and 3.03 of this By-law.

#### **4.0 CAMPFIRES**

- 4.01** No person shall start or tend a campfire outdoors unless all of the following conditions are met:
- 4.01.1** the fire does not exceed 0.5 metre in diameter and 0.5 metre in height, is in a contained ring or fire pit and a Fire Permit has been obtained;
  - 4.01.2** a responsible person is available to tend the fire until the fire is extinguished;
  - 4.01.3** the person tending the fire has tools and/or water adequate to contain the fire within the fire site;
  - 4.01.4** the fire must be surrounded by at least one (1) metre of non-combustible material and be at least two (2) metres from any combustible material; and
  - 4.01.5** a municipal fire ban or a restricted fire zone is not in effect.



**4.02** Campfires permitted from November 1st to March 31st unless posted otherwise, fire signs, website. No additional burn permits required

**5.0 FIRE DEPARTMENT EXEMPT**

**5.01** Any fires under the direct and constant supervision and control of the Kearney Fire and Emergency Services are exempt from the provisions of this By-law.

**6.0 ENFORCEMENT, PENALTY AND RECOVERY OF COSTS**

**6.01** The Chief Fire Official, Deputy Fire Chief, Fire Prevention Officer and By-law Enforcement Officer are hereby authorized to enforce the provisions of this By-law pursuant to the Provincial Offences Act.

**6.02** Pursuant to Section 7.1 (4) of the *Fire Protection and Prevention Act*, the Chief Fire Official or designate may enter upon land and into structures at any reasonable time to inspect the land and structures to determine compliance with this By-law.

**6.03** 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.

**6.04** In addition to any fines or penalties established elsewhere in accordance with this 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 Municipality by way of a fee or charge, as calculated in accordance with Schedule 'A' to this By-law, on account of those costs and expenses incurred by the Municipality in:

**6.04.1** investigating and responding to a complaint made to the Municipality or the Kearney Fire and Emergency Services by any person acting reasonable 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 designate, smoke or emissions from such Open Air Fire were causing or had caused actual discomfort to the complainant; and

**6.04.2** the dispatching of the Fire Department vehicles and fire-fighting personnel for the purpose of controlling or extinguishing the Open Air Fire; and

**6.04.3** the dispatching of Ministry of Natural Resources ground crews or aircraft for the purpose of controlling or extinguishing the Open Air Fire upon spread to Municipal or Crown protected land as defined in the Municipal/MNR Forest Fire Management Agreement; and

**6.04.4** the hiring of equipment or additional manpower or any other costs associated to aid in the extinguishment of the Open Air Fire.

**6.05** All fees and charges payable under this By-law 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.

**6.06** 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.

**6.07** 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.

**6.08** 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 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.



**6.09** The Chief Fire Official or designate may at their discretion, issue a first time warning if the person or persons setting out the fire agrees to immediately extinguish the fire.

**7.0 SEVERABILITY**

**7.01** 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 remaining sections, clauses or provisions of this By-law shall remain in full force and effect until repealed.


**8.0 ADMINISTRATION**

**8.01** This By-law applies to the entire geographic area of the Corporation of the Town of Kearney.

**8.02** This By-law shall come into force and take effect on the date of its passing.

**8.03** That the passing of this By-law Repeal and Replace Bylaw 2021 – 27 and any other By-laws that may conflict with it.

**READ A FIRST, SECOND and THIRD time this 14<sup>th</sup> day of December, 2023.**

  
Mayor

  
Clerk





**Town of Kearney**

**SCHEDULE "A"  
To By-law No. 2021-27**

**PART I Provincial Offences Act**

**By-law No. 2021-xx: To provide for the regulation of Open Air Burning and precautions to be taken by persons setting fires**

<b>ITEM</b>	<b>COLUMN 1 Short Form Wording</b>	<b>COLUMN 2 Provision creating or defining Offence</b>	<b>COLUMN 3 Set Fine</b>
1	Burning without a Permit	s. 2.01	\$300.00
2	Burn in unsafe conditions	s. 2.02	\$300.00
3	Fail to have fire supervised by competent person	s. 2.03	\$300.00
4	Burning prohibited materials not permitted	s. 2.05	\$300.00
5	Burn in incinerator- high fire hazard	s. 2.09	\$300.00
6	Burn – fail to comply with permit conditions	s. 3.01	\$300.00
7	Burn materials other than wood, leaves or brush	s. 3.01.1	\$300.00
8	Burning outside during prohibited hours	s. 3.01.4	\$300.00
9	Burning within 10 meters (30 feet) of a combustible structure	s. 3.01.5	\$300.00
10	Fail to have campfire supervised to extinguishment	s. 4.01.2	\$300.00
11	Burning without extinguishing devices/tools to contain fire	s. 4.01.3	\$300.00
12	Failure of owner to comply during a Fire Ban or in a Restricted Fire Zone	s. 4.01.5	\$300.00

**“Note:** The penalty provision for the offences indicated above is Section 6.03 of By-law No. 2021-27, a certified copy of which has been filed.”