

THE CORPORATION OF THE VILLAGE OF POINT EDWARD
BY-LAW NUMBER 18 of 2023

BEING A BY-LAW TO REGULATE
THE ESTABLISHMENT OF OPEN-AIR BURNING

WHEREAS the Fire Protection and Prevention Act, 1997, S.O. 1997, c.4, Section 7(1) 1(a) (b), as amended states that a council of a municipality may pass by-laws regulating fire prevention, including the prevention of the spreading of fires, and regulating the settling of open-air fires, including establishing the times during which open air fires may be set;

AND WHEREAS Section 2.4.4.4 of the Ontario Fire Code provides for the prohibition of open air burning unless approved or unless such open air burning consists of the use of a barbeque to cook food, provided such devices contain a small, contained fire which is supervised at all times;

AND WHEREAS Section 5(3) of the Municipal Act, 2001, S.O. 2001, c.25, as amended (the "*Municipal Act*") allows Councils of Municipalities to pass by-laws;

AND WHEREAS section 128(1) of the *Municipal Act* provides that without limiting sections 9, 10 and 11, a local municipality may prohibit and regulate in 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 444 of the *Municipal Act*, 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*, 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;

AND WHEREAS the Council of the Corporation of the Village of Point Edward deems it appropriate that open air fires could cause a public nuisance by creating excessive smoke or odour, infringing on the enjoyment of neighbouring property use, generating false alarms, and creating negative health effects on neighbouring residents;

NOW THEREFORE the Council of the Corporation of the Village of Point Edward hereby enacts as follows:

DEFINITIONS

"Acceptable Burn Materials" includes the following:

- commercially produced wood pellets, charcoal or briquettes
- small amounts of white or brown paper or cardboard used to start a fire
- dry seasoned wood that has not been chemically treated, painted, or stained
- purchased fire logs or purchased firewood sold for the purpose of recreational campfires and not exceeding the maximum permitted Recreational Fire dimensions defined in this By-Law

"Applicable Law" means any and all laws, by-laws, rules, orders, regulations, guidelines and policies of the Municipality, the Province of Ontario and the Government of Canada and includes any rules, regulations, orders, guidelines,

and policies of any governmental authority and/or any common law from a court of competent jurisdiction.

“Complaint” for the purposes of this by-law means a complaint that meets the requirements of sections 16 – 19.

“Cooking Appliance” means appliances including a Hibachi, a permanent apparatus designed and intended solely for the cooking of food in the open air, a commercially produced smoker, pizza oven, barbecue, but does not include any appliances designed predominantly for personal warmth, including but not limited to fire pits, campfires, **Recreational Fire**.

“Cooking Fire” means a small, confined fire that is supervised and used to cook food on a **Cooking Appliance** including but not limited to a grill and/or barbecue;

“Flying Lanterns” means a small paper hot air balloon, fuelled by open flame.

“High Risk Period” means any period of time, when due to extreme dry, high wind, poor weather conditions or any other conditions, as determined by the Ontario Fire Marshall, the Village of Point Edward Fire Chief, or the Village of Point Edward Fire and Rescue, and/or Village of Point Edward and their designates.

“Municipality” means the Corporation of the Village of Point Edward.

“Nuisance” means excessive or unusual smoke, smell, airborne sparks, embers likely to disturb others, or that is likely to reduce visibility on roads;

“Open Air Burning” means a fire set in the Open Air;

“Open Fire” means any open fire other than that defined as a “Cooking Fire” or “Recreational Fire” under this By-Law.

“Air Quality Day” means any period of time when a Special Air Quality Advisory has been listed by Environment Canada or other recognized government health or meteorological agency.

“Prohibited Burn Materials” means any material other than as described under “Acceptable Burn Materials” specifically prohibited under this By-Law and not to be burned under any circumstances including but not limited to household waste, human or animal excrement, leaves, grass, yard waste, treated lumber, insulation, asphalt shingles or other construction materials, commercial by-products such as those generated from wood working, deckbuilding or landscaping businesses, tires, rubber, plastic, polystyrene like products, petroleum, or any other potentially toxic waste material.

“Recreational Fire” means a small outdoor fire such as a campfire set within a confined area or device including but not limited to an outdoor fireplace, non-combustible container, fire pit, situated in a **“Safe Location”** and measuring no more than 0.91metres (36 inches) in any dimension and shall be supervised at all times.

“Restricted Area” means those lands within the Corporation of the Village of Point Edward other than those areas zoned as a residential area in the Village of Point Edward’s Comprehensive Zoning By-law.

“Safe Location” means outdoors and not on a porch or balcony area that is roofed or otherwise covered, or near dry vegetation, or in any place conducive to unwanted development or spread of fire or explosion or supported by combustible material. The Safe Location shall be a minimum of 3 metres vertically and horizontally from any structure and a minimum of 3 metres from adjacent property lines, trees, brush, and shrubs;

“Structure” shall mean anything that is erected, built or constructed of parts joined together or requiring a foundation to hold it erect, but shall not include free standing walls and fences;

“Village of Point Edward Enforcement Officers” means any representative of the Village of Point Edward, including the Fire Chief or their representative, any officer of the Ontario Provincial Police, any Manager of the Village, or the Chief Administrative Officer of the Village, or their designates, any By-Law Officer as appointed by by-law of the Village of Point Edward, or any Peace Officer.

“Village of Point Edward Fire Chief” means the Fire Chief of the Village of Point Edward and Point Edward Fire and Rescue and/or his or her designates.

GENERAL PROVISIONS:

1. This By-law shall apply to all property within the limits of the Village of Point Edward and may be enforced on a complaint basis subject to the complaint meeting the requirements for a complaint as set out in this by-law, by the Village’s Municipal By-Law Enforcement Officers, and the Village of Point Edward Fire Chief.
2. No person shall set or maintain an **Open Fire** in contravention of any Applicable Law including but not limited to the Ontario Fire Code, the *Environmental Protection Act* R.S.O 1990, Chapter E. 19.
3. Every person setting, permitting to be set, maintaining, or permitting to be maintained a **Recreational Fire** under this By-law shall comply with the following conditions:
 - a. **Recreational Fires** may, subject to the provisions of this By-law, be permitted in the Village of Point Edward between the hours of 12:00 noon until 12:00 midnight;
 - b. No person shall set a **Recreational Fire** during a period identified as an **Air Quality Day** or a **High-Risk Period**;
 - c. **Recreational Fires** shall not be permitted when rain and/or fog are present, and/or unusual or excessive winds and/or air quality warnings have been issued and/or a prohibition issued by the Village of Point Edward;
 - d. No person shall set a **Recreational Fire** as to have smoke or debris interfere with vehicular traffic or otherwise pose a safety hazard on a public roadway;
 - e. The **Recreational Fire** shall be supervised at all times and shall be fully extinguished before being left unsupervised and/or between the hours of 12:01 a.m. up to and including 11:59 a.m.;
 - f. No person shall set a **Recreational Fire** during conditions where the wind conditions or the quality of the burn results in a nuisance that restricts neighbours from the reasonable use and enjoyment of their property or causes discomfort to persons in the immediate area;
 - g. No **Recreational Fire** shall be permitted between the hours of 12:01 a.m. up to and including 11:59 a.m.;
 - h. Effective means of extinguishment must be readily available at all **Recreational Fires**;
 - i. A **Recreational Fire** that is fuelled by propane or natural gas must be used in accordance with the manufacturer’s guidelines at all times and are permitted to be used at any time of day;
 - j. **Recreational Fires** shall at no time be permitted on Municipally owned land without written consent from the Village of Point Edward and subject to the requirements of the Village of Point Edward as may be amended from time to time;
 - k. **Recreational Fires** shall not be permitted in **Restricted Areas** at any time.

- I. A **Recreational Fire** fuelled by **Acceptable Burn Material** must take place in a **Safe Location**.
4. **Cooking Appliances and/or Cooking Fires** are permitted on any privately owned property in the Village of Point Edward provided every person using or permitting to be used Cooking Appliances and/or Cooking Fires shall comply with the following conditions:
 - a. The **Cooking Appliance and/or Cooking Fires** shall be used in compliance with the manufacturer's guidelines and instructions and shall only be permitted on private property unless otherwise permitted;
 - b. The **Cooking Appliance and/or Cooking Fires** must be fueled only with commercially produced charcoal and/or briquettes, propane, or natural gas;
 - c. The **Cooking Appliance and/or Cooking Fires** shall be fully extinguished when not in use;
 - d. At all times there must be an effective means of extinguishment for the **Cooking Appliance and/or Cooking Fires** readily available;
 - e. **Cooking Appliances** and/or **Cooking Fires** may be used at any time of day and are only to be used for the sole and limited purpose of cooking food and shall be immediately extinguished when food preparation is completed;
 - f. **Cooking Appliances and/or Cooking Fires** shall not at any time be permitted to be used on Municipally owned land without obtaining the prior written consent of the Village of Point Edward.
5. No person shall use a **flying lantern** or **flying lanterns** in the Village of Point Edward.
6. No person shall set an **Open Fire** for training purposes or fire extinguisher safety demonstrations without the prior written approval of the Village of Point Edward.
7. No person shall burn anything defined as **Prohibited Burn Material** at anytime.
8. **Open Air Burnings** are not permitted in the Village of Point Edward without prior written approval from the Fire Chief of the Village of Point Edward or their designate.
9. Every person using an enclosed heating device or incinerating device shall comply with the provisions of this By-law as it pertains to "**Acceptable Burn Materials**" and "**Prohibited Burn Materials**."
10. No person shall be permitted to have a **Recreational Fire** larger than 0.91 metres by 0.91 metres (3 feet by 3 feet).

LIABILITY & ENFORCEMENT

11. The following Liability and Enforcement provisions shall apply:
 - a. Where **Open Air Burning, Recreational Burning, Cooking Fire, Cooking Appliance** or **Open Fire** is permitted subject to the provisions of this By-Law, any person who engages in **Open Air Burning, Recreational Burning, Cooking Fire, Cooking Appliance** or **Open Fire** shall:
 - i. Take all reasonable steps to keep the **Open Air Burning, Recreational Burning, Cooking Fire, Cooking Appliance** or **Open Fire** under control and shall comply with the provisions of this By-law including but not limited appropriate supervision and readily accessible effective means of extinguishment;
 - ii. Fully extinguish the **Open Air Burning, Recreational Burning, Cooking Fire, Cooking Appliance** or **Open Fire**;

- iii. Be responsible for any and all damages to property or injury to persons that may result from the **Open Air Burning, Recreational Burning, Cooking Fire, Cooking Appliance or Open Fire.**
 - b. Any **Open Air Burning, Recreational Burning, Cooking Fire, Cooking Appliance or Open Fire** that is not in compliance with the provisions of this By-law shall be subject to an Order to Extinguish issued by any Village of Point Edward Enforcement Officers and the following provisions shall apply:
 - i. Upon issuance of an Order to Extinguish the owner and/or occupant of any land on which a prohibited **Open Air Burning, Recreational Burning, Cooking Fire, Cooking Appliance or Open Fire** is occurring shall be required to immediately extinguish the **Open Air Burning, Recreational Burning, Cooking Fire, Cooking Appliance or Open Fire**;
 - ii. In the event any land owner and/or occupant fails to extinguish the **Open Air Burning, Recreational Burning, Cooking Fire, Cooking Appliance or Open Fire** as required by an Order to Extinguish the Village of Point Edward Enforcement Officer may in their own discretion take any action necessary to extinguish the **Open Air Burning, Recreational Burning, Cooking Fire, Cooking Appliance or Open Fire**;
 - iii. Any person who owns and/or occupies the land on which the **Open Air Burning, Recreational Burning, Cooking Fire, Cooking Appliance or Open Fire** is located shall be responsible for any and all costs incurred by the Village of Point Edward Fire under the provisions of this By-law including but not limited to extinguishing the **Open Air Burning, Recreational Burning, Cooking Fire, Cooking Appliance or Open Fire** in accordance with the Village fee schedule (By-Law 26 of 2022, as may be amended and/or replaced from time to time);
- 12. Any person failing to comply with the provisions of this By-law shall be liable for any and all costs incurred by the Village of Point Edward including but not limited to personnel, equipment and any apparatus that are called to investigate, respond, or extinguish the **Open Air Burning, Recreational Burning, Cooking Fire, Cooking Appliance or Open Fire.**
- 13. Where the person subject to a fine, penalty, charge, or fee under the provisions of this By-law is a tenant of the property where the **Open Air Burning, Recreational Burning, Cooking Fire, Cooking Appliance or Open Fire** is situated the Village will make reasonable attempts to charge and collect any fines or fees from the tenant provided such tenant information is readily available;
- 14. Any unpaid amounts, fines, penalties, or charges issued under this By-law shall be added to the tax roll and collected in the same manner like property taxes.

COMPLAINT

- 15. Any complaint under this By-law shall include the name, address and telephone number or other contact information of the complainant. Failure to provide the required complainant information shall render the complaint incomplete and may not be investigated by the **Village of Point Edward Enforcement Officer**, acting reasonably.
- 16. Anonymous complaints or third party complaints that attempt to obscure the identity of the complainant may not be investigated in the discretion of the **Village of Point Edward Enforcement Officer**, acting reasonably.
- 17. Where a **Village of Point Edward Enforcement Officer** has determined that a complaint has not been deemed a valid complaint by the **Village of Point Edward Enforcement Officer** the Village of Point Edward may cease the investigation with no further action taken.

18. Nothing in this By-Law prevents any individual from privately initiating a charge for an alleged offence.

PROVINCIAL LEGISLATION

19. Nothing in this By-Law shall supersede or waive the requirements of any Applicable Law.

PENALTY PROVISIONS

20. Any person who contravenes any provision of this By-Law is guilty of an offence and upon conviction for such contravention, shall forfeit and be liable to pay the fine, plus costs incurred in enforcement, and costs associated therewith may be recovered under the provisions of the *Provincial Offences Act* R.S.O 1990, Chapter p-33, as amended.

21. Any person who contravenes any portion of this By-Law may also be subject to paying the fees, charges, and/or fines established under this By-law and the Village of Point Edward’s fee By-Law (By-Law 26 of 2022, as may be amended or replaced from time to time.) Failure to pay any fees, charges, fines, or penalties will result in them being added to the tax roll and collected in a like manner as unpaid taxes.

THAT the short form title of this By-law shall be the **Open-Air Burning By-Law**

THAT any By-Laws or provisions of By-Laws found to be inconsistent with the provisions found in this By-Law shall be and are hereby repealed including the Village of Point Edward By-Law 28 of 2015.

THAT this By-Law to go into force and effect upon the final passing thereof.

THAT this By-Law be Read a FIRST and SECOND TIME this 27th day of June 2023.

THAT this By-Law be Read a THIRD TIME and FINALLY PASSED this 24th day of October 2023.

Mayor B. Hand

Clerk J. Burns

THE CORPORATION OF THE VILLAGE OF POINT EDWARD
BY-LAW 18 of 2023
OPEN AIR BURNING BY-LAW

SCHEDULE “A”
SHORT FORM WORDING AND SET FINES
PART 1 PROVINCIAL OFFENCES ACT

ITEM	COLUMN 1 Short Form Wording	COLUMN 2 Offence Creating Provision or Defining Offence	COLUMN 3 Set Fine
1.	Set Recreational Fire on air quality day or high risk period	Sect 3(b)	\$400.00
2.	Set/permit Recreational Fire during rain/fog/ excessive wind	Sect 3(c)	\$400.00
3.	Interfere with traffic/pose safety hazard on roadway	Sect 3(d)	\$400.00
4.	Fail to properly supervise Recreational Fire	Sect 3(e)	\$750.00
5.	Fail to fully extinguish Recreational Fire	Sect 3(e)	
6.	Cause nuisance/discomfort	Sect 3(f)	\$400.00
7.	Permit Recreational Fire outside of permitted hours	Sect 3(g)	\$400.00
8.	Fail to make available means of extinguishment	Sect 3(h)	\$750.00
9.	Fail to accord with manufacture's guidelines - propane or natural gas	Sect 3(i)	\$400.00
10.	Permit Recreational Fire on Municipal Land without consent	Sect 3(j)	\$750.00
11.	Permit Recreational Fire in a Restricted Area	Sect 3(k)	\$750.00
12.	Permit/set Recreational Fire held in an unsafe location	Sect 3(l)	\$750.00
13.	Permit Cooking Appliance or Cooking Fire used not in accordance with manufacturer's guidelines	Sect 4(a)	\$400.00
14.	Permit Cooking Appliance or Cooking Fire not using permitted charcoal, briquettes, wood pellets, propane, or natural gas	Sect 4(b)	\$400.00
15.	Fail to properly supervise Cooking Appliance or Cooking Fire	Sect 4(c)	\$750.00
16.	Fail to properly extinguish Cooking Appliance or Cooking Fire	Sect 4(c)	
17.	Fail to make available means of extinguishment	Sect 4(d)	\$750.00
18.	Permit Cooking Appliance or Cooking Fire on Municipal land without consent	Sect 4(f)	\$750.00
19.	Permit use of a Flying Lantern	Sect 5	\$400.00
20.	Set/permit fire for training purposes or demonstration without approval	Sect 6	\$400.00
21.	Permit burning of prohibited material	Sect 7	\$750.00
22.	Set/permit Open Air Burnings without written approval	Sect 8	\$750.00
23.	Burn Prohibited Materials in an enclosed heating/incinerating device	Sect 9	\$750.00
24.	Set/Permit Recreational Fire larger that 0.91x 0.91 meters (3 x 3 feet)	Sect 10	\$400.00

Note: The penalty provision(s) for the offence(s) is indicated above in Section 20 of By-law Number 18 of 2023, a certified copy of which by-law has been filed.

CHECK LIST FOR RECREATIONAL BURNING

VILLAGE OF POINT EDWARD BY-LAW 18 OF 2023 – Schedule B

Person Completing Checklist	YES	NO
“Fire” for the purposes of this checklist refers to any one of the following Open Air Burning, Recreational Burning, Cooking Fire, Cooking Appliance or Open Fire		
Is the Fire taking place during permitted hours?		Fine Possible
Is the Fire confined to an open burning device or to a pit no larger than 0.91 meters by 0.91 meters (3 feet by 3 feet) in size?		Fine Possible
Is the Burning Material approved on the list of Acceptable Burn Materials?	Fine Possible	
Are the materials being burned confined to the fire pit at all times?		Fine Possible
Is the Fire held in a Safe Location, that provides a minimum distance of 3 metres in all directions, including vertically, from adjacent properties, structures or objects including trees, hedges, and shrubs?		Fine Possible
Is an effective extinguishing agent of sufficient volume with the capability of extinguishing the fire immediately available for use?		Fine Possible
Is the Fire attended, controlled, and supervised at all times?		Fine Possible
Is the Fire causing a nuisance or having an adverse effect on neighbouring properties, or resulting in an unreasonable disturbance to any persons (i.e., excessive smoke, smell, airborne sparks, or embers) in contravention of the By-law provisions?	Fine Possible	
Fires are prohibited under the following conditions. 1. Excessive or unusual wind speed. 2. Rain or foggy weather present. 3. Air quality or smog warnings in place issued by Environment Canada, or other recognized government health or weather agencies. Is the Fire in compliance with these conditions?		Fine Possible
Any non-compliant burning requires a request to extinguish. Fees for Services will be charged as per the Village Fee By-Law if there is a failure to comply with any requirements of the By-Law to Regulate Open Air Burning.		

Date and Time of Call_____ Address_____

Name_____ Signature_____

Officer in Charge_____ Fire Fighters Responding_____

Trucks Responding_____ Officer’s Signature_____

If any violation of this check list exists, you may be fined according to this By-Law and/or charged according to the Fee By-Law.