DISTRICT OF NORTH SAANICH

BYLAW NO. 1502

A BYLAW TO PROVIDE FOR REGULATION OF OPEN AIR BURNING

WHEREAS section 8(3)(h) of the *Community Charter* authorizes Council, by bylaw, to regulate, prohibit and impose requirements in relation to the protection and enhancement of the well-being of its community in relation to the emission of smoke, dust, gas, sparks, ash, soot, cinders, fumes or other effluvia that is liable to foul or contaminate the atmosphere;

AND WHEREAS the *Community Charter* permits a municipality in regulating under the *Community Charter* or *Local Government Act* to provide for a system of licenses, permit or approvals;

AND WHEREAS the Council of the District of North Saanich considers it expedient and desirable to restrict and regulate open burning in the District in the interest of public safety;

NOW THEREFORE, the Council of the District of North Saanich, in open meeting assembled, enacts as follows:

PART ONE – CITATION

1.1 This Bylaw may be cited for all purposes as the "Open Burning Bylaw No. 1502".

PART TWO – DEFINITIONS

2.1 Definitions

Schedule "A" to this Bylaw contains definitions of terms used in this Bylaw.

PART THREE – APPLICATION

3.1 Open Burning

This Bylaw applies to all open burning within the District except as provided in subsection 3.2.

3.2 Exceptions

This Bylaw does not apply to open burning for the following limited purposes:

(a) barbeques used for food cooking purposes provided the barbeque is:

(i) fueled by charcoal, natural gas or propane;
(ii) CSA certified; and
(iii) used in accordance with manufacturer's recommendations;

(b) outdoor heaters, provided the appliance is propane or natural gas fueled and CSA certified; and

(c) open burning authorized by the Fire Chief to eliminate Fire Hazards or for fire training exercises.

PART FOUR – OPEN BURNING PROHIBITION

4.1 Open Burning Prohibited

No person shall carry out an open burn except where expressly authorized by a Fire Permit and in accordance with this Bylaw.

PART FIVE – PERMITS

5.1 Fire Permits

The Fire Chief may issue a Fire Permit on terms and conditions including, but not limited to, the size specifications, distance requirements and payment of the fees listed in Schedule "B" to this Bylaw.

5.2 Application for Fire Permit

Any person wishing to carry out an open burn may apply to the Fire Chief for a Fire Permit in the form prescribed for that purpose from time to time by the Fire Chief. The application shall include the following:

(a) a non-refundable application fee in the amount set out in Schedule "B";

(b) the applicant's residential address and phone number;

(c) the address of the property on which the open burning is intended to take place; and

(d) a statement of purpose and reasonably detailed description of the burn to be conducted.

5.3 Validity of Fire Permits

A Fire Permit issued by the Fire Chief must be in writing and is valid only for the purposes, times and geographical locations specified in the Fire Permit.

5.4 Permit Inspection

A Fire Permit must be in the physical possession of the Fire Permit holder at all times while the open burn authorized by the Fire Permit is taking place and must be made promptly available for inspection if requested by a Member of the Fire Department.

5.5 Fire Permit Suspension and Cancellation

If, in the opinion of the Fire Chief, the holder of a Fire Permit or any person acting under the authorization of the Fire Permit fails to comply with a term or condition of the Fire Permit or fails to comply with this Bylaw, the Fire Chief may suspend or cancel that Fire Permit by providing written notice to the holder of that Fire Permit of the suspension or cancellation.

5.6 Consequences of Suspension and Cancellation

If a Fire Permit is suspended or cancelled under this Bylaw, the holder of the suspended or cancelled Fire Permit:

(a) must immediately and fully extinguish any fires upon receiving written notice of such suspension or cancellation; and

(b) is not entitled to an extension of the expiry date or return of the application fee paid for that Fire Permit under this Bylaw.

PART SIX – PERMIT CONDITIONS

6.1 Any lawful open burning must comply with, and every Fire Permit issued under this Bylaw is subject to the following requirements, restrictions and regulations, to the satisfaction and approval of the Fire Chief:

(a) Open burning may only take place on the first and the third consecutive Thursday, Friday and Saturday of each calendar month during the Burning Season, between the hours of 8:00 AM and 4:00 PM.

(b) Open burning is not permitted on any statutory holiday.

(c) All campfires and outdoor appliances shall be completely and properly extinguished by 10:00 PM on any day.

(d) No Prohibited Waste shall be burned at any time.

(e) No open burning may cause or create a nuisance to any person in the District by the emission of dense smoke, offensive smells or noxious fumes.

(f) Opacity shall not exceed 40% during the 30-minute period following the start of the open burning and shall not exceed 15% for more than 5 consecutive minutes during any other 30-minute period during the open burning.

6.2 Responsibilities of Fire Permit Holder

A Fire Permit holder must:

(a) ensure that a competent person at least 19 years of age is present to monitor and maintain the fire and that equipment for fire control is readily accessible, available and ready for use; and

(b) ensure compliance with all applicable federal, provincial and municipal laws, regulations, bylaws and orders, including, but not limited to, the Fire Code, the Open Burning Smoke Control Regulation, the Solid Fuel Burning Domestic Appliance Regulation and this Bylaw, all as amended or replaced from time to time.

6.3 Dean Park

No open burning is permitted, with the exception of outdoor appliances, in the Dean Park area located west of East Saanich Road, south of Forest Park Drive (both sides, including Texada Terrace) and all the way to the southern border of the District, as shown in the map depicted in Schedule "C" to this Bylaw.

6.4 Incinerators

In addition to any conditions imposed by the Fire Permit, all Incinerators must:

(a) be maintained by the owner, at all times, in a condition that provides for the safe operation of the Incinerator and the proper combustion of any material being burned;

(b) be emptied of ash on a regular basis to prevent any nuisance smoke;

(c) be constructed of materials suitable for the temperatures and purposes of the Incinerator, including suitable metal, stone or brick; and

(d) have a screen or grill with mesh less than 3/8 of inch over any opening to restrict any sparks or flying debris.

PART SEVEN – FIRE BAN

7.1 Fire Ban

The Fire Chief in their sole discretion may suspend any or all open burning when, in the opinion of the Fire Chief, conditions exist that may cause such burning to create a Fire Hazard.

PART EIGHT – OFFENCES AND PENALTIES

8.1 Penalties

A person who:

(a) contravenes this Bylaw or a Fire Permit,

(b) causes, permits or allows any act or thing to be done in contravention of this Bylaw or a Fire Permit, or

(c) fails or neglects to do anything required under this Bylaw or a Fire Permit,

commits an offence, and where the offence is a continuing one, each day that the offence continues amounts to a separate offence.

8.2 Fines

A person found guilty of committing an offence under this Bylaw is liable:

(a) if proceedings are brought under the *Offence Act*, to pay a fine of up to $50,000; or

(b) if a ticket is issued under the *North Saanich Municipal Ticket Information Bylaw No. 1013 (2002)*, to pay a fine of up to $1,000.

8.3 Cost Recovery

(a) If a fire is prohibited under this Bylaw or, in the opinion of the Fire Chief a fire constitutes a hazard, has escaped, or may imminently escape control, the Fire Department may attend to control or extinguish the fire with costs, expenses and penalties for doing so chargeable to the Fire Permit holder, owner, or person conducting the fire.

(b) Wherever this Bylaw imposes a requirement on a person that something be done, Council may, by resolution, direct that the person take the action and then provide written notice of the resolution to the person. If, after receiving written notice the person does not take the action within the time permitted in the resolution, the District staff may fulfill the requirement at the expense of the person and recover the cost incurred from that person as a debt.

PART NINE – INTERPRETATION

9.1 Interpretation

Unless otherwise defined, all words and phrases in this Bylaw shall be construed in accordance with the meaning assigned to them by the *Community Charter* and the Open Burning Smoke Control Regulation as the context or circumstances require, and the singular shall include the plural and masculine include the feminine gender.

9.2 Severability

If any portion of this Bylaw is for any reason held invalid by any court of competent jurisdiction, the invalid portion shall be severed and the severance shall not affect the validity of the remainder.

READ A FIRST TIME this 2nd day of November, 2020

READ A SECOND TIME this 2nd day of November, 2020

AMENDED the 23rd day of November, 2020

READ A THIRD TIME this 7th day of December, 2020

ADOPTED this 1st day of February, 2021

MAYOR

CORPORATE OFFICER

SCHEDULE "A" – DEFINITIONS

(a) "**Burning Season**" means the specific dates, as determined in writing by the Fire Chief each calendar year, between which open burning may occur in the District.

(b) "**CSA**" means the Canadian Standards Association.

(c) "***Community Charter***" means the *Community Charter*, [SBC 2003] c 26.

(d) "**Council**" means the Council for the District.

(e) "**District**" means the District of North Saanich.

(f) "**Fire Chief**" means the person duly appointed as such from time to time by the District Council and includes any person appointed or designated by the Fire Chief to act on their behalf.

(g) "**Fire Code**" means the current edition of the *British Columbia Fire Code*, as amended from time to time.

(h) "**Fire Department**" means the North Saanich Fire Department.

(i) "**Fire Hazard**" means any condition, arrangement, or act which:

(i) increases the likelihood of accidental or uncontrolled fires or explosions;
(ii) may provide a ready fuel supply to augment the spread or intensity of an uncontrolled fire; or
(iii) may obstruct, delay, hinder, or interfere with the operations of the Fire Department or the egress of occupants in the event of a fire.

(j) "**Fire Permit**" means a written permit issued pursuant to section 5.1 of this Bylaw, authorizing certain activities or undertakings subject to the conditions expressed on that permit and in this Bylaw.

(k) "**Incinerator**" means an approved apparatus, in which any combustion and flames are contained, for burning or incinerating permitted waste material at high temperatures until it is reduced to ash.

(l) "**Member of the Fire Department**" means a person regularly employed by the Fire Department, appointed as an auxiliary member of the Fire Department, or acting voluntarily as a fire fighter with the Fire Department under the directive of the Fire Chief.

(m) "**Nuisance**" means interferes with quiet enjoyment, either by creating smells, sounds, pollution or anything associated with the burning activity that extends past the boundaries of the property, where an affected party has made a claim in nuisance, or where the Fire Chief has deemed a nuisance has been produced.

(n) "**Opacity**" means the degree to which smoke obscures the view of an object in the background, expressed numerically from 0% (transparent) to 100% (opaque), as determined in accordance with the Open Burning Smoke Control Regulation.

(o) "**Open Burn**" means to burn any substance for any purpose in the open air and includes but is not limited to, small confined fires and large confined fires (e.g., some bonfires), fires in incinerators, and outdoor recreational fireplaces.

(p) "**Open Burning Smoke Control Regulation**" means the *Open Burning Smoke Control Regulation*, BC Reg 152/2019.

(q) "**Prohibited Waste**" means:

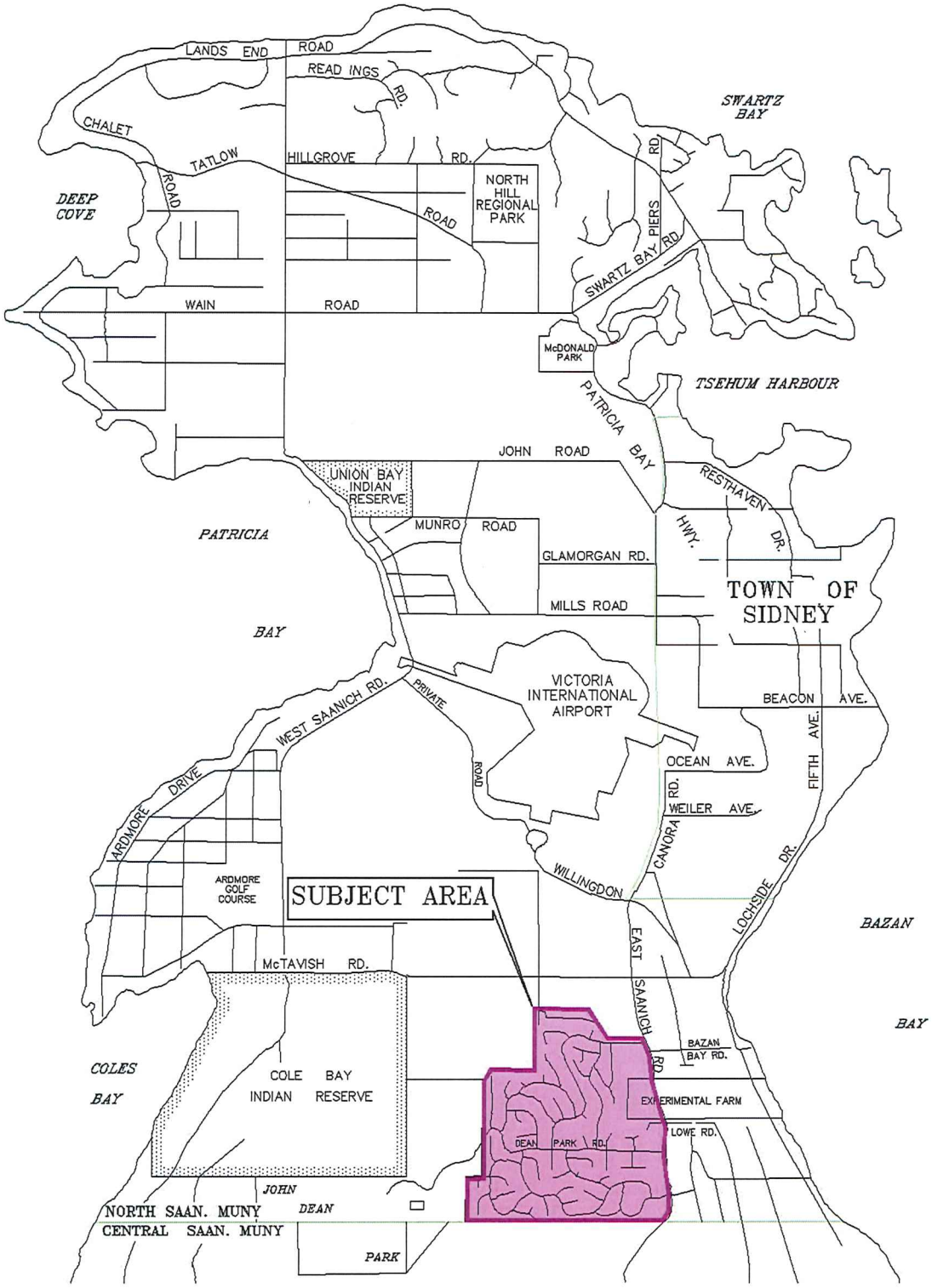
a) animal carcasses and waste from animal slaughtering;
b) asphalt or asphalt products;
c) batteries;
d) biomedical waste;
e) carpets;
f) construction waste other than lumber that has not been treated with wood preservatives or other chemicals and is not coated with paint, varnish, oil or other finishing material;
g) demolition waste;
h) drywall;
i) domestic waste;
j) electrical wire;
k) fibreglass and other fibre-reinforced polymers;
l) fuel and lubricant containers;
m) furniture and appliances;
n) grass;
o) hazardous waste;
p) leaves, with the exception of those still attached to their original branches, which are the primary material being burned;
q) manure;
r) paint and varnish;
s) plastics;
t) polystyrene foam;
u) railway ties;
v) rubber;
w) tar paper;
x) tires;
y) treated or painted wood products; and
z) used oil.

(r) "**Solid Fuel Burning Domestic Appliance Regulation**" means the *Solid Fuel Burning Domestic Appliance Regulation*, BC Reg 218/2016.

SCHEDULE "B" – FEES & ADDITIONAL TERMS FOR FIRE PERMITS

FIRE PERMIT TYPE	FEE	VOLUMETRIC DIMENSIONS	REQUIRED DISTANCES	VALIDITY
Small Fire	$25	Fires up to and including 3 ft x 3 ft x 3 ft	At least 25 feet from any structures or combustibles.	Valid for **one (1) Burning Season** from the date of issue. If issued part way through a Burning Season, the Fire Permit is only valid for the remainder of that same Burning Season.
Medium Fire	$35	Fires over 3 ft x 3 ft x 3 ft, up to and including 10 ft x 10 ft x 10 ft	At least 25 feet from any property line. At least 50 feet from any structures or combustibles.	Valid for **one (1) Burning Season** from the date of issue. If issued part way through a Burning Season, the Fire Permit is only valid for the remainder of that same Burning Season.
Large Fire	Up to $200	Fires larger than 10 ft x 10 ft x 10 ft	At least 50 feet from any property line. At least 100 feet from any structures or combustibles.	Valid for **one (1) fire** during the Burning Season for which it is issued. A new Fire Permit is required for each fire of this size.
Incinerator	$25	N/A	At least 25 feet from any structures or combustibles.	Valid for **one (1) Burning Season** from the date of issue. If issued part way through a Burning Season, the Fire Permit is only valid for the remainder of that same Burning Season.
Outdoor Appliance	$25	Maximum of 1 ft x 1 ft x 1 ft	At least 25 feet from any property line. At least 10 feet from any structures or combustibles.	Expires **two (2) years** from the date of issue.

SCHEDULE "C" – MAP OF DEAN PARK



VIA EMAIL: ENV.Minister@gov.bc.ca

December 15, 2020

Honourable George Heyman
Minister of Environment and Climate Change Strategy
PO Box 9047, Stn Prov Govt
Victoria, BC V8W 9E2

Dear Minister:

Re: Referral of District of North Saanich Open Burning Bylaw No. 1502 Under Section 9(3)(c) of the *Community Charter*

I write on behalf of the District of North Saanich (the "District") with regard to the District's proposed Open Burning Bylaw No. 1502 (the "Bylaw"), which Council has recently given third reading at its December 7, 2020 meeting.

The District's position is that the pith and substance of the Bylaw is in relation to the regulation of fire and smoke under section 8(h) of the *Community Charter*. However, given the BC Court of Appeal's recent decision in *Canadian Plastic Bag Association v. Victoria (City)*, 2019 BCCA 254, out of an abundance of caution, the District is referring the Bylaw to your Office so that, in the event that the Province considers the Bylaw to regulate the protection of the natural environment under section 8(3)(j) of the *Community Charter* to a degree which requires provincial approval under Section 9(3)(c) of the *Community Charter*, such approval may be considered.

Please find a draft of the Bylaw enclosed for your review. Please advise us of the Ministry's position regarding whether your approval of the Bylaw is necessary. In the event that approval is required, the District respectfully requests that such approval be granted.

Please do not hesitate to contact me should you require anything further.

Yours truly,

Curt Kingsley
Deputy CAO / Director of Corporate Services
District of North Saanich

Reference: 368013

January 12, 2021

Curt Kingsley
Deputy CAO / Director of Corporate Services
District of North Saanich
1620 Mills Road
North Saanich BC V8L 5S9
Sent via email: CKingsley@northsaanich.ca

Dear Curt Kingsley:

Thank you for your letter of December 15, 2020, regarding the District of North Saanich's proposed Open Burning Bylaw No. 1502. I appreciate the District of North Saanich's interest in seeking clarity on Section 9 of the Community Charter.

Section 9 of the Community Charter, entitled Spheres of Concurrent Authority, lists the municipal bylaw making provisions, or spheres, in which there is a provincial interest. Those spheres are:

- Section 8(3)(i) [public health];
- Section 8(3)(j) [protection of the natural environment];
- Section 8(3)(k) [animals in relation to wildlife]; and
- Section 8(3)(m) [removal and deposit of soil and other material].

Pursuant to Section 9(3) of the Charter, a municipality may not adopt a bylaw under section 8(3)(i), (j), (k) or (m) unless it is authorized by a minister's regulation or agreement, or the responsible minister has approved the bylaw. There is no minister's agreement in place regarding air quality, open burning or smoke. While there is a regulation for Section 9 (the Spheres of Concurrent Jurisdiction – Environment and Wildlife Regulation), it does not authorize bylaws for air quality, open burning or smoke.

You have indicated the District's position that the proposed bylaw is made under Section 8(3)(h) of the Charter. Section 8(3)(h) authorizes bylaws "for the protection and enhancement of the well-being of its community in relation to the matters referred to in section 64 [nuisances, disturbances and other objectionable situations]." Section 64(c) refers to several nuisances including "the emission of smoke." Therefore Section 8(3)(h) clearly and directly authorizes bylaws to regulate or control smoke emissions. No ministerial approval is required for municipal bylaws under section 8(3)(h).

…2

Ministry of Environment and Climate Change Strategy Office of the Minister
Mailing Address: Parliament Buildings Victoria BC V8V 1X4
Telephone: 250 387-1187
Facsimile: 250 387-1356
Website: www.gov.bc.ca/env

Thank you again for your consideration and taking the time to write.

Sincerely,



George Heyman
Minister