

THE CORPORATION OF THE TOWNSHIP OF WILMOT

BY-LAW NO. 2021 - 40

Being a by-law to regulate the setting of open air fires including establishing the times during which open air fires may be set and to repeal By-law No. 2004-42

WHEREAS section 7.1(1)(b) of the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c. 4, as amended (the “**FPPA**”), states that a Council of a municipality 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 section 7.1(3) of the FPPA states that a by-law under this section may deal with different areas of the municipality differently;

AND WHEREAS section 7.1(4) of the FPPA states that a municipality may appoint an officer to enter upon land and into structures at any reasonable time to inspect the land and structures to determine whether by-laws enacted in accordance with that section are being complied with;

AND WHEREAS section 2.4.4.4(1)(b) of the Fire Code, O. Reg. 213/07, as amended (the “**Fire Code**”), prohibits open air burning unless approved, or unless such burning consists of a small, contained fire, supervised at all times, and used to cook food on a grill, barbeque or spit, and is commensurate with the type and quantity of food being cooked;

AND WHEREAS section 128(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended (the “**Municipal Act, 2001**”) 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 Council considers excessive smoke, smell, airborne sparks with ember to be or could become or cause public nuisance by creating negative health effects on neighbouring residents, increasing fire exposure hazards, infringing the use and enjoyment of neighbouring properties;

AND WHEREAS section 129(a) of the *Municipal Act, 2001* provides that a local municipality may prohibit and regulate with respect to noise, vibration, odour, dust and outdoor illumination;

AND WHEREAS in section 446 of the *Municipal Act, 2001* that if a municipality has authority under the 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;

NOW THEREFORE the Council of The Corporation of the Township of Wilmot enacts as follows:

1. SHORT TITLE

1.1 This by-law may be referred to as the “Open Air Fire By-law”.

2. DEFINITIONS

2.1 For the purposes of this by-law:

2.1.1 “**Approved Device**” means a commercially-manufactured device designed to contain a fire, complete with a mesh spark arresting screen to control sparks and embers, such as, but not limited to, chimineas, fire bowls or outdoor fireplaces;

2.1.2 “**Barbeque**” means a portable or fixed device including a hibachi, a permanent structure designed and intended solely for the cooking of food in the open air, and other similar devices, designed and intended solely for the cooking of food in the open air but does not include devices designed for personal warmth, fire pits or recreational fires;

2.1.3 “**Campground**” means a campground that meets all of the criteria outlined in section 8.7 of Ontario Regulation 207/96 entitled “Outdoor Fires”, under the *Forest Fire Prevention Act*, R.S.O. 1990, c. F.24, as amended;

2.1.4 “**Council**” means the Council of the Township;

2.1.5 “**Equipment and Resources**” means sufficient personnel and equipment, such as rakes or shovels, sustainable water supply, heavy equipment that are reasonably suitable to control and/or extinguish an Open Air Fire;

2.1.6 “**Fire Ban**” means a period of time during which the Fire Chief determines that Open Air Fires are prohibited;

2.1.7 “**Fire Chief**” means the person appointed by the Township to act as the Fire Chief for the Township pursuant to section 6 of the FPPA, or their designate;

2.1.8 “**Municipal Law Enforcement Officer**” means a person appointed by the Township under section 15 of the *Police Services Act*, R.S.O. 1990, c. P.15, as amended;

- 2.1.9 **“Open Air Fire”** means a fire that takes place outside of a building or structure in the Township and includes Recreational Fires;
- 2.1.10 **“Permit”** means a permit issued by the Fire Chief to set and maintain an Open Air Fire for a specified period of time;
- 2.1.11 **“Permit Holder”** means a person to whom a Permit has been issued by the Fire Chief;
- 2.1.12 **“Person”** means an individual or a corporation;
- 2.1.13 **“Prohibited Materials”** means:
- (a) newspaper, cardboard, fliers, office paper or paper;
 - (b) automobile and truck bodies;
 - (c) tires, rubber, oil, grease or paint;
 - (d) cloth, rags, carpet or mats;
 - (e) Styrofoam;
 - (f) plastics or plastic materials including, but not limited to, nylon, PVC or ABS plastics, polystyrene or urethane foam, synthetic fabrics, plastic film, bale wrap and plastic containers;
 - (g) construction or demolition waste materials, such as shingles, tiles, drywall, insulation, painted or treated wood or other materials whose contents include any of the above;
 - (h) weeds, brush, leaves, grass clippings, yard waste or crop stubble;
 - (i) animal-related refuse, such as fecal deposits, manure, or carcasses;
 - (j) flammable or combustible liquids or accelerants;
 - (k) chemicals including, but not limited to, pesticides, Asbestos, polychlorinated biphenyls (PCBs) industrial lubricants or oils containing heavy metals, perchloroethylene (perc) waste from dry cleaners or discarded batteries of any description, paint, varnish, or solvents;
 - (l) furniture;

- (m) painted or treated wood or other materials, such as treated skids or pallets; and,
- (n) material that is normally collected under the Region's waste collection program, such as any household garage, refuse or waste or any recyclable materials.

2.1.14 "**Recreational Fires**" means a type of Open Air Fire conducted in a ring made of brick, concrete, rock, or in an Approved Device, for the principal purpose of warmth or recreational enjoyment;

2.1.15 "**Region**" means the Regional Municipality of Waterloo;

2.1.16 "**Rural Area**" means any lands zoned "Z1 (Agriculture)" in the Township of Wilmot's Zoning By-law 83-38, as amended;

2.1.17 "**Strike**" means a strike as defined in the *Labour Relations Act, 1995*, S.O. 1995, c. 1, Sched. A, as amended; and

2.1.18 "**Township**" shall mean The Corporation of the Township of Wilmot.

2.2 In this by-law, whenever a word imparts the masculine gender, it is deemed to include the feminine gender.

2.3 In this by-law, the singular sense is deemed to be inclusive and interchangeable with the plural sense.

3. GENERAL PROHIBITIONS

Permit Required

3.1 No Person shall set or maintain an Open Air Fire or permit an Open Air Fire to be set or maintained, at any time, without a Permit.

No Open Air Fires During a Fire Ban

3.2 No Person shall set or maintain an Open Air Fire or permit an Open Air Fire to be set or maintained, at any time, during a Fire Ban.

Must Comply with Permit Conditions

3.3 No Person shall set or maintain an Open Air Fire, or permit an Open Air Fire to be set or maintained, at any time, in contravention of any of the conditions of a Permit as outlined in sections 6.1, 6.2 or 6.3 of this by-law.

4. SPECIFIC PROHIBITIONS

- 4.1 No Person shall use, or cause to be used, a Barbeque on a balcony of a building or store any kind of fuel intended for a Barbeque on a balcony of a building.

5. APPLYING FOR A PERMIT

Application Requirements

- 5.1 Any Person may apply for a Permit, in the form prescribed by the Fire Chief, by submitting, at a minimum, the following information prior to the commencement of the proposed Open Air Fire:

- (a) the name, address and other contact information of the applicant;
- (b) the purpose or rationale, if any, behind having an Open Air Fire;
- (c) the date, time and location of the proposed Open Air Fire;
- (d) written consent from the owner of the location at which the proposed Open Air Fire is to occur, if not owned by the applicant;
- (e) the distance between the proposed Open Air Fire and any buildings or structures at the location in question;
- (f) the proposed material to be burned in the Open Air Fire;
- (g) the name of the contact person who will supervise the Open Air Fire;
- (h) the applicable fee, as set out in the Township's Fees and Charges By-law, as amended;
- (i) such further and other information as the Fire Chief may request.

Decision of the Fire Chief

- 5.2 Upon receiving a complete application pursuant to section 5.1 of this by-law, the Fire Chief may:
- (a) issue a Permit;
 - (b) refuse to issue a Permit; or
 - (c) issue a Permit with additional conditions pursuant to section 6.2 of this by-law.

- 5.3 In determining whether or not to issue a Permit, or whether to impose additional conditions to a Permit pursuant to section 6.2 of this by-law, the Fire Chief shall consider the following:
- (a) the health, safety and well-being of persons and property within the Township;
 - (b) the general intent and purpose of this by-law; and,
 - (c) whether the applicant has previously contravened any of the provisions of this by-law or failed to comply with any of the conditions of a Permit that was previously issued under this by-law.

Permit Not Transferrable

- 5.4 A Permit issued by the Fire Chief is for a specific Person in order to allow them to set or maintain an Open Air Fire, or to permit an Open Air Fire to be set or maintained, on a specific date, at a specific time and at a specific location and is, therefore, not transferrable to any other Person or for any other date, time or location.

Duration of Permit

- 5.5 A Permit issued by the Fire Chief shall specify the time period during which it is effective but in no case shall a Permit be effective for more than one (1) calendar year.
- 5.6 If a Permit has expired, the Permit Holder shall immediately extinguish the Open Air Fire for which the Permit was issued.

Revocation of Permit

- 5.7 The Fire Chief may suspend or revoke a Permit, at any time, if:
- (a) the information provided on the application was false or misleading;
 - (b) any provisions of this by-law are not being complied with;
 - (c) the Open Air Fire is causing a public nuisance, as determined by the Fire Chief; or,
 - (d) the Open Air Fire is impacting, or could potentially impact, the health, safety and well-being of persons and property within the Township, as determined by the Fire Chief.
- 5.8 If a Permit has been suspended or revoked, the Permit Holder shall immediately extinguish the Open Air Fire for which the Permit was issued.

6. CONDITIONS FOR ALL PERMITS

Conditions for All Permits

6.1 All Permits shall be subject to the following conditions:

- (a) No Person shall set or maintain an Open Air Fire, or permit an Open Air Fire to be set or maintained:
 - (i) without having, readily available in the vicinity of the Open Air Fire, all necessary Equipment and Resources to control fire spread;
 - (ii) within fifty (50) metres of any building, structure or other combustible material in a Rural Area for an Open Air Fire other than a Recreational Fire;
 - (iii) within four (4) metres of a residential overhead wire or seven (7) metres of a powerline;
 - (iv) in a barrel, such as, but not limited to, a steel drum;
 - (v) so as to decrease the visibility on a highway;
 - (vi) so as to create an odour or smoke that would be likely to disturb the inhabitants of the Township;
 - (vii) when wind speeds in the vicinity of the Open Air Fire and include recreational fires are higher than 15 km/hr;
 - (viii) when rainy or foggy weather are present; or,
 - (ix) when a smog alert or advisory has been declared by the federal or provincial government for an area incorporating the Township.
- (b) No Person shall leave an Open Air Fire unattended or unsupervised at any time.
- (c) The Permit Holder shall attend at, and supervise, at all times, the Open Air Fire for which they received a Permit.
- (d) The Permit Holder shall ensure that an Open Air Fire is completely extinguished prior to leaving the location at which the Open Air Fire occurred.
- (e) No Person shall burn any Prohibited Materials in an Open Air Fire.

- (f) No Person shall lose control of an Open Air Fire so that it poses a danger to the health, safety or well-being of persons or property within the Township.

Additional Permit Conditions

- 6.2 The Fire Chief, in addition to the conditions outlined in section 6.1 of this by-law, may impose any additional conditions to a Permit that the Fire Chief deems reasonably necessary to protect the health, safety and well-being of persons and property within the Township.

Recreational Fire Permit Conditions

- 6.3 All Permits for Recreational Fires, in addition to those conditions imposed by sections 6.1 and 6.2 of this by-law, shall be subject to the following conditions:

- (a) No Person shall set or maintain a Recreational Fire, or permit a Recreational Fire to be set or maintained:
 - (i) larger than one (1) metre in diameter, unless expressly authorized otherwise by the Fire Chief in the Permit;
 - (ii) outside of the hours of 12:00 p.m. to 11:59 p.m., unless expressly authorized otherwise by the Fire Chief in the Permit;
 - (iii) if the width of the lot at the point at which the Recreational Fire is to be held is fifteen (15) metres wide or more, within seven (7) metres of any building, structure or other combustible material, unless expressly authorized otherwise by the Fire Chief in the Permit; or,
 - (iv) if the width of the lot at the point at which the Recreational Fire is to be held is less than fifteen (15) metres, within three (3) metres from any building, structure or other combustible material, unless expressly authorized otherwise by the Fire Chief in the Permit.

Order to Extinguish

- 6.4 If, for any reason, the Fire Chief requests that an Open Air Fire be extinguished, the Permit Holder shall immediately extinguish the Open Air Fire.

7. FIRE BANS

- 7.1 Notwithstanding any of the provisions of this by-law, the Fire Chief may institute a Fire Ban, upon a notification being published on the Township's website, if it is necessary to ensure the health, safety, and well-being of all persons within the Township, as determined by the Fire Chief.
- 7.2 No Permits may be issued during a Fire Ban and any Permits that have been issued shall be immediately suspended during a Fire Ban.
- 7.3 In addition to publishing a notification of the Fire Ban on the Township's website, pursuant to section 7.1 of this by-law, the Fire Chief shall immediately notify, in writing, any Permit Holder affected by the Fire Ban. The Fire Chief may also provide written notification of any Fire Ban to anyone else, including any local media or social media as deemed necessary by the Fire Chief, in order to notify the citizens of the Township of the Fire Ban.

8. EXCEPTIONS

- 8.1 Notwithstanding any other provision of this by-law, a Permit shall not be required for an Open Air Fire that is set or maintained, or permitted to be set or maintained:
- (a) by the Township or by the Region;
 - (b) within a Campground;
 - (c) at a site where a Strike is occurring;
 - (d) for any traditional, cultural, ceremonial or religious purpose;
 - (e) in a Barbeque; or,
 - (f) for a device intended for heating, power, construction, manufacturing, or maintenance activities that is designed and certified for such purpose.

9. INSPECTIONS

Any Reasonable Time

- 9.1 The Fire Chief or a Municipal Law Enforcement Officer may enter upon land and into structures at any reasonable time to inspect the land and structures to determine whether this by-law is being complied with.

No Hindrance or Obstruction

- 9.2 No person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this by-law.

Powers During Inspection

- 9.3 For the purposes of an inspection, the Fire Chief or Municipal Law Enforcement Officer may:

- (a) require the production for inspection of documents or things relevant to the inspection, such as the Permit;
- (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
- (c) require information from any person concerning a matter related to the inspection; and,
- (d) alone, or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.

- 9.4 A sample taken under section 9.3(d) of this by-law shall be divided into two parts, and one part shall be delivered to the person from whom the sample is taken, if:

- (a) the person requests that the sample be divided at the time it is taken and provides the necessary facilities; and
- (b) it is technically feasible to divide the sample.

- 9.5 If a sample is taken under section 9.3(d) of this by-law and the sample has not been divided into two parts, a copy of any report on the sample shall be given to the person from whom the sample was taken.

- 9.6 A receipt shall be provided for any document or thing removed under section 9.3(b) of this by-law and the document or thing shall be promptly returned after copies or extracts are made.

- 9.7 Copies of or extracts from documents and things removed under section 9.3(b) of this by-law and certified as being true copies of or extracts from the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the originals.

10. ADMINISTRATION AND ENFORCEMENT

- 10.1 The Fire Chief shall be responsible for the administration of this by-law.
- 10.2 The Fire Chief or a Municipal Law Enforcement Officer are authorized to enforce this by-law.

11. FEES AND CHARGES

- 11.1 Council may impose fees and charges to recover its costs in relation to the administration and enforcement of this by-law.

12. REMEDIAL ACTION

- 12.1 If a Person fails to do a matter or thing, as directed or required by this by-law, the Township may, in default of it being done by the Person directed or required to do it, do the matter or thing at the Person's expense. The Township 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.
- 12.2 For the purpose of section 12.1 of this by-law, the Township may enter on land at any reasonable time.
- 12.3 The costs outlined in section 12.1 of this by-law shall include interest at a rate of 15 per cent per annum, calculated for the period commencing on the day the Township incurs the costs and ending on the day the costs, including the interest, are paid in full.
- 12.4 The amount of the costs, including interest, constitutes a lien on the land upon the registration in the proper land registry office of a notice of lien. The lien is in respect of all costs that are payable at the time the notice is registered plus interest accrued to the date the payment is made. Upon receiving payment of all costs payable plus interest accrued to the date of payment, the City shall register a discharge of the lien in the proper land registry office.

13. OFFENCES

- 13.1 Any Person who contravenes any of the provisions of this by-law is guilty of an offence and, upon conviction, is liable to a fine as provided for in the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended.

14. SEVERABILITY

14.1 If a Court of competent jurisdiction should declare any section or part of a section of this by-law to be invalid, such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of this by-law and it is hereby declared that the remainder of this by-law shall be valid and shall remain in full force and effect.

15. REPEAL

15.1 By-law 2004-42 is hereby repealed as well as all by-laws amending same.

15.2 Any permits that were issued under By-law 2004-42 are hereby revoked and of no force or effect.

15.3 Any existing investigation, legal proceeding or remedy under By-law 2004-42 shall be continued as if By-law 2004-42 had not been repealed.

16. COMING INTO FORCE

15.1 This by-law shall come into force and effect on January 1, 2022.

READ a first and second time this 13th day of September 2021.

READ a third time and finally passed this 13th day of September 2021.

Mayor

Clerk

THE CORPORATION OF THE TOWNSHIP OF WILMOT

BYLAW NO. 2021-40

TITLE: BYLAW TO REGULATE THE SETTING OF OPEN AIR FIRES

SCHEDULE "A" – FINES

| Short Form Wording | | Provision Creating or Defining Offence | Set Fine |
|--|---|---|-----------------|
| 1 | Burning without a permit | Section 3.1 | \$300.00 |
| 2 | Burning during a Fire Ban | Section 3.2 | \$300.00 |
| 3 | Contravention of permit condition | Section 3.3 | \$300.00 |
| 4 | Use Fuel fired Barbeque or storage of fuel on a balcony | Section 4.1 | \$300.00 |
| Any Person who contravenes any of the provisions of this by-law is guilty of an offence and, upon conviction, is liable to a fine as provided for in the <i>Provincial Offences Act</i> , R.S.O. 1990, c. P.33, as amended | | | |