

Bill No. 191
2021

By-law No. F-____

A by-law to provide for the regulation of open air burning in the City of London and to repeal By-law F-7.

WHEREAS section 7.1(1)(b) of the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c. 4, as amended, provides 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(4) of the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c. 4, as amended, provides 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 this section are being complied with;

AND WHEREAS section 2.4.4.4(1)(b) of the Fire Code, O. Reg. 213/07, as amended, prohibits open air burning unless approved, or unless such burning consists of a small, confined 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, 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 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;

AND WHEREAS section 6 of the *Farming and Food Production Protection Act, 1998*, S.O. 1998, c. 1 provides that no municipal by-law applies to restrict a normal farm practice carried on as part of an agricultural operation;

AND WHEREAS The Corporation of the City of London has a city-wide yard waste collection program in which yard waste is collected and composted, which program decreases the need to burn yard waste;

AND WHEREAS the Council of The Corporation of the City of London 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 Municipal Council of The Corporation of the City of London enacts as follows:

PART 1 - DEFINITIONS

1. In this by-law:

“Approved” means approved by the Chief Fire Official;

“Barbeque” means a manufactured device or structure with a grill which is designed, intended and used solely for the purpose of cooking food outdoors, and includes a hibachi, but does not include devices or structures designed for personal warmth, fire pits, or Outdoor Fire Containers;

“Burn Ban” means a period of time by which the Chief Fire Official or designate determines that Open Air Burning is Prohibited;

“Camp fire” means a fire that is set, maintained and supervised at all times for the purpose of recreational enjoyment, cooking or providing warmth;

“Camp Site” means a site designated for camping purposes at:

- 1) Fanshawe Conservation Area;
- 2) a “children’s camp” as defined in Ontario Regulation 503/17 as a camp that is intended primarily for campers under 18 years of age and that is a class A camp or class B camp within the meaning of Regulation 568 of the Revised Regulations of Ontario, 1990 (Recreational Camps) under the *Health Protection and Promotion Act*, or
- 3) a camp operated by a charitable corporation approved under the *Charitable Institutions Act*,

“Chief Fire Official” means the Assistant to the Fire Marshal who is the Municipal Fire Chief or a member of the fire department appointed by the Municipal 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;

“City” means The Corporation of the City of London;

“Combustible” means able to catch fire and burn easily;

“Cooking Fire” means an Open Air Fire used for the purpose of cooking food in accordance with the O. Reg. 213/07 (*Fire Code*), as amended from time to time;

“Fire Chief” means the person appointed by City Council to act as Fire Chief for the City as defined in the *Fire Protection and Prevention Act, 1997* or designate;

“Noxious Materials” includes tires, plastics, rubber products, drywall, demolition waste, construction waste, paint, animal organic waste, vegetable waste, food waste, biomedical waste, tar, asphalt products, battery boxes, pressure-treated wood, creosote-treated wood, and painted wood;

“Nuisance” means excessive smoke, smell, airborne sparks or embers that is likely to disturb others, or that is likely to reduce visibility on roads in the vicinity of the Open Air Burning;

“Officer” means the Fire Chief, any member of London Fire Services within the Fire Fighting and Fire Prevention Divisions, City of London by-law enforcement officers, and Police officers;

“Open Air Burning” means a fire set outside of a building;

“Outdoor Fire Container” means a non-combustible container used to hold a small fire, and includes, but is not limited to, chimineas, metal tubs, fire pits, and outdoor brick fireplaces;

“Owner” means any person, firm or corporation having control over any portion of the building or property under consideration and includes the persons in the building or property;

“Permit” means a permit issued by the Fire Chief to set a fire in the Open Air for a specified time period;

“Permit Holder” means a person to whom a Permit has been issued by the fire Chief;

“Person” means an individual or a corporation;

“Prohibited” means that, for the purposes of this By-law, the Chief Fire Official does not Approve of any Open Air Burning as contemplated by clause 2.4.4.4(1)(a) of O. Reg. 213/07 (*Fire Code*), as amended from time to time, including that for which permission has otherwise been granted under this By-law;

“Smog Alert” means an alert issued by the Ministry of the Environment with respect to air quality;

“Strike” means a strike as defined in the *Labour Relations Act, 1995*, S.O. 1995, c.1, Sched. A;

“Wind Speed” means the wind speed for London as reported on the Environment Canada website.

PART 2 - GENERAL

2.1 No person shall set, maintain, or permit to be set or maintained, an Open Air Burning except as authorized under this By-law.

2.2 This By-law shall not apply to:

- a) a person using a Barbeque to cook food;
- b) a person using a fire in a device installed outside of a building that is used as a source of heat or power for the building or that is ancillary to a manufacturing process, and provided that such device is certified for the purpose by a recognized agency;
- c) a person using a device designed to heat pitch or asphalt;
- d) a person using welding equipment;
- e) a person setting or maintaining a fire at a Strike site in a metal 45 gallon drum;
- f) the City or City Officers for the purposes of education and training individuals;
- g) a person conducting fire extinguisher training who has obtained prior written approval of the Fire Chief or designate.

2.3. Notwithstanding the conditions in this By-law in which Open Air Burning is Approved, the Fire Chief, Chief Fire Official or designate shall have the authority to issue a burn ban under the conditions of a drought, pandemic, state of emergency, which would supersede all Approvals to conduct Open Air Burning in accordance with this By-law.

PART 3 – WHEN OPEN AIR BURNING ALLOWED

Open Air Burning Approved - Outdoor Fire Container

3.1 (1) A person may conduct an Open Air Burning in an Outdoor Fire Container, subject to the conditions set out in this Part.

(2) A person conducting an Open Air Burning shall comply with the following conditions for an Open Air Burning in an Outdoor Fire Container:

- a) shall only conduct the Open Air Burning between 4:00 p.m. and Midnight;
- b) shall only use an Outdoor Fire Container that is constructed from non-combustible material;
- c) shall not burn or attempt to burn a volume of combustible material greater than 46 centimetres wide by 46 centimetres long by 30 centimetres high;
- d) shall contain the fire within the Outdoor Fire Container at all times;

- e) shall locate the Outdoor Fire Container at least 4 metres from any building, structure, property line, tree, hedge, fence, roadway, overhead wire or other combustible article; and
- f) shall locate the Outdoor Fire Container on a non-combustible surface extending beyond the unit to a dimension equal to the height of the Outdoor Fire Container.

Open Air Burning Approved - With a Permit (Fires Greater than 46cm x 46cm x 30cm)

3.2 (1) A person may conduct an Open Air Burning if the person has been issued a Permit, and if the person complies with all of the conditions set out in this Part.

(2) Every Permit is subject to the conditions in this Part of obtaining and continuing to hold a Permit, all of which shall be performed and observed by the applicant or the holder of the Permit:

- a) the applicant shall pay the Application Fee and, if the application is approved, a Permit Fee as set out in the applicable Fees and Charges By-law;
- b) the Permit Holder shall produce the Permit on demand to an Officer conducting an inspection of the Open Air Burning;
- c) shall only conduct the Open Air Burning between 8:00 a.m. and 8:00 p.m.;
- d) shall only use a non-combustible container, and shall contain the fire within it at all times;
- e) shall not have a fire larger than 1 metre in length, by 1 metre in width, by 1 metre in height;
- f) shall locate the Open Air Burning at least 50 metres away from any building, structure, property line, tree, hedge, fence, roadway, overhead wire or other combustible article;
- g) shall locate the Open Air Burning at least 5 metres from any combustible ground cover;
- h) any additional requirements or exemptions the Fire Chief considers necessary in the interest of public safety, or to minimize inconvenience to the general public, or advisable in the circumstances, or to give effect to the objects of this by-law; and
- i) the Permit Holder shall indemnify and save harmless The Corporation of the City of London and its employees from any and all claims, demands, causes of action, costs or damages that the City may suffer, incur or be liable for resulting from the Open Air Burning as set out in this by-law, whether with or without negligence on the part of the Permit Holder, the Permit Holder's employees, directors, contractors and agents.

(3) An application for a permit must be completed on the forms provided by London Fire Services of The Corporation of the City of London.

(4) A Permit shall only be valid for the date indicated on the Permit, or 7 days after the Permit has been issued, whichever is shorter.

(5) The Fire Chief may refuse to issue a Permit:

- a) if the proposed Open Air Burning would contravene this by-law; or
- b) if the Owner or Permit Holder has previously contravened any Permit conditions or other provisions of this by-law, an Order under this by-law, or By-law F-5.

Open Air Burning Allowed - Cooking Fires

3.3 (1) A person may conduct an Open Air Burning for a Cooking Fire, subject to the conditions set out in this Part

(2) A person conducting an Open Air Burning shall comply with the following conditions for a Cooking Fire:

- a) shall only conduct the Open Air Burning between 11:00 a.m. and Midnight; and,

- b) the burning shall consist of a small, confined fire that is used to cook food on a grill, barbecue or spit, commensurate with the type and quantity of food being cooked, and is supervised at all times.

(3) Open Air Burning for a Cooking Fire is not prohibited during a Burn Ban, if conducted in accordance with O. Reg. 213/07 (*Fire Code*), as amended, and this Part.

Conditions of All Open Air Burning Under this Part

3.4 Every person setting, permitting to be set, maintaining, or permitting to be maintained, an Open Air Burning authorized under this Part shall comply with the following conditions:

- a) shall allow, at any reasonable time, an Officer to inspect the location or proposed location of the Open Air Burning;
- b) shall have legal title to the property at which the Open Air Burning is to occur, or the person, or Permit Holder, as the case may be, shall obtain the prior written consent of the person having legal title to the property;
- c) shall only burn commercially produced charcoal, briquettes, or clean, dry, seasoned wood;
- d) shall not burn Noxious Materials;
- e) shall have an effective extinguishing agent of sufficient size and with the capability of extinguishing the Open Air Burning immediately available for use;
- f) shall attend, control and supervise the Open Air Burning at all times;
- g) shall completely extinguish the Open Air Burning before the site is vacated;
- h) shall not burn if the wind speed exceeds 15 kilometres per hour during the Open Air Burning;
- i) shall not burn if it is rainy or foggy;
- j) shall not burn if a Smog Alert has been declared;
- k) shall comply with the provisions of the *Environmental Protection Act*, R.S.O. 1990, c.E.19, as amended;
- l) shall protect adjacent properties from the potential spread of fire; and
- m) shall ensure the Open Air Burning does not create a Nuisance.

PART 4 – OPEN AIR BURNING ALLOWED - NORMAL FARM PRACTICE

4.1 (1) A person may conduct an Open Air Burning if it is part of a normal farm practice carried on as part of an agricultural operation, as those terms are defined in the *Farming and Food Production Protection Act*, 1998, S.O. 1998, c.1, on lands zoned for agricultural use, and subject to the conditions set out in this Part.

(2) A person conducting an Open Air Burning under subsection (1) shall comply with the following conditions:

- a) notify London Fire Services' Communications Centre in person or by telephone prior to the Open Air Burning and at the conclusion of the Open Air Burning, and shall provide London Fire Services' Communications Centre with their municipal address;
- b) not have a fire larger than 2 metres in length, by 2 metres in width, by 2 metres in height; and
- c) locate the Open Air Burning at least 50 metres away from any building, structure, property line, tree, hedge, fence, roadway, overhead wire or other combustible article.

(3) The conditions in subsection 4.1(2) shall not apply to fires under subsection 4.1(1) that are used to burn off dried vegetation along fence lines and in culverts.

PART 5 – ORDER TO DISCONTINUE ACTIVITY

5.1 If the Fire Chief is satisfied that this by-law has been contravened, the Fire Chief 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 contravention. An order under this Part shall

be known as an Order to Discontinue Activity, and such an Order can require a person not to conduct an Open Air Burning for a certain period of time.

5.2 An Order to Discontinue Activity shall set out:

- a) the municipal address of the property on which the contravention occurred;
- b) the date of the contravention;
- c) the contravention of the by-law;
- d) the date by which there must be compliance with the order;
- e) the date on which the order expires.

5.3 The Order to Discontinue Activity may be served personally on the person to whom it is directed or by regular mail to the last known address of that person, in which case it shall be deemed to have been given on the third day after it is mailed.

PART 6 - ORDER TO EXTINGUISH

6.1 If an Officer is satisfied that this by-law has been contravened, the Officer may issue an Order to Extinguish requiring the person contravening the by-law to immediately extinguish the fire.

6.2 An Order to Extinguish shall set out:

- a) the municipal address of the property on which the fire is located;
- b) the date of the inspection;
- c) the contravention of the by-law;
- d) that the fire is to be extinguished immediately
- e) a notice that if the fire is not extinguished immediately, the municipality may extinguish the fire at the expense of the owner and the cost of the work may be recovered by adding the amount to the owner's tax roll.

6.3 The Order to Extinguish may be served personally on the person to whom it is directed or by regular mail to the last known address of that person, in which case it shall be deemed to have been given on the third day after it is mailed.

PART 7 - REMEDIAL ACTION – COSTS

7.1 (1) Should a person default in complying with an Order to Discontinue Activity or an Order to Extinguish, the fire may be extinguished at the person's expense.

(2) The City may enter on land at any reasonable time for the purpose of extinguishing a fire under subsection (1).

(3) The power of entry under this Part shall be exercised by an employee, Officer or agent of the City, or a member of London Police Services. The person exercising the power of entry must on request display or produce proper identification. The person exercising the power of entry may be accompanied by a person under his or her direction.

(4) The City may recover the costs of extinguishing the fire from the person directed to extinguish the fire by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes. The costs include interest calculated at a rate of fifteen percent (15%), calculated for the period commencing on the day the municipality incurs the costs and ending on the day the costs, including interest are paid in full. The amount of the costs, including interest, constitutes a lien on the land upon the registration of a notice of lien in the Land Registry Office.

PART 8 – INSPECTIONS & INSPECTION FEES

8.1 An Officer, and anyone under the Officer's direction, may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether this By-law, an Order to Discontinue Activity, an Order to Extinguish, or an order under section 431 of the Municipal Act, 2001 is being complied with.

8.2 For the purposes of an inspection, the Officer may:

- a) require the production for inspection of documents relevant to the inspection;
- 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 photographs necessary for the purposes of the inspection.

8.3 A receipt shall be provided for any document or thing removed under clause 8.2(b) and the document or thing shall be promptly returned after the copies or extracts are made.

8.4 A person exercising a power of entry shall not enter or remain in any room or place actually being used as a dwelling unless the consent of the occupier is obtained, the occupier first having been informed that the right of entry may be refused, and if refused, may only be made under the authority of an order issued under section 438 of the *Municipal Act, 2001*, a warrant issued under section 439 of the *Municipal Act, 2001*, or a warrant under section 386.3 of the *Municipal Act, 2001*.

8.5 The following conditions apply to a power of entry during an inspection:

- a) shall only be exercised by an employee, officer or agent of the City or a member of London Police Services;
- b) the person with the power of entry must on request display or produce proper identification;
- c) the person exercising the power may be accompanied by a person under his or her direction.

Inspection Fee

8.6 (1) Where the Officer determines that an Open Air Burning is not in compliance with this by-law or with an Order, the fee or charge set out in the applicable Fees and Charges By-law for inspecting the Open Air Burning may be imposed on the Owner, person responsible for the Open Air Burning, or Permit Holder.

(2) The fees imposed constitute a debt of the person to the City. The City Treasurer may add fees to the tax roll and collect them in the same manner as municipal taxes on any property for which all the owners are responsible for paying the fees.

PART 9 - PROHIBITIONS

9.1 No person shall set or maintain Open Air Burning, or permit Open Air Burning to be set or maintained, contrary to any provision of this by-law.

9.2 No person shall contravene any conditions of a Permit issued under this by-law.

9.3 No person shall contravene any conditions of setting or maintaining an Open Air Burning under this by-law.

9.4 No person shall contravene an Order to Discontinue Activity.

9.5 No person shall contravene an Order to Extinguish.

PART 10 – PENALTY

10.1 Any person who contravenes any provision of this by-law is guilty of an offence and:

- a) upon a first conviction is subject to a minimum fine of \$100.00 and a maximum fine of \$5,000.00;

- b) upon a subsequent conviction is subject to a minimum fine of \$500.00 and a maximum fine of \$10,000.00.

10.2 Despite section 10.1, where the person convicted is a corporation, the corporation is liable,

- a) on a first conviction, to a minimum fine of \$500 and a maximum fine of not more than Ten Thousand Dollars (\$10,000.); and
- b) on any subsequent conviction, to a minimum fine \$1000 and a maximum fine of not more than Twenty Five Thousand Dollars (\$25,000).

10.3 If this by-law is contravened and a conviction 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,

- a) prohibiting the continuation or repetition of the offence by the person convicted; and
- b) requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

PART 11 - MISCELLANEOUS

SHORT TITLE

11.1 This By-law may be referred to as the Open Air Burning By-law.

REPEAL

11.2 (1) The Corporation of the City of London By-law F-7, as amended, is repealed on the day this by-law comes into force and effect.

(2) Any penalty incurred, any investigation, legal proceeding or remedy under By-law F-7, as amended, may be continued to be enforced as if By-law F-7, as amended, had not been repealed.

11.3 This by-law comes into force and effect on May 4, 2021.

PASSED in Open Council on May 4, 2021.

Ed Holder
Mayor

Catharine Saunders
City Clerk