

THE CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2022-033

By-law to Regulate Open Air Burning within the Town of Amherstburg

WHEREAS the Municipal Act, S.O. 2001, c. 25, as amended authorizes the municipality to regulate matters related to the health, safety and well-being of persons;

AND WHEREAS Section 7.1 (1) (a) of the Fire Protection and Prevention Act, S.O. 1997, c. 4, as amended provides that a Council of a municipality may pass By-laws regulating fire prevention, including the prevention of spreading fire;

AND WHEREAS Section 7.1 (1) (b) of the Fire Protection and Prevention Act, 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 391 states that a municipality may pass by-laws imposing fees or charges on any class of Persons for services or activities provided or done by or on behalf of it; and

AND WHEREAS the Council of the Corporation of the Town of Amherstburg deems it expedient to regulate the setting of Open Air Fires, including establishing the times during which Open Air Fires may be Set.

NOW THEREFORE the Council of the Corporation of the Town of Amherstburg enacts as follows:

1. DEFINITIONS

In this by-law:

"Act" means the Fire Protection and Prevention Act, 1997, S.O. 1997, c.4, as amended, and the regulations enacted thereunder as amended from time to time;

"Adverse Effect" includes:

- i. impairment of the quality of the natural environment for any use that can be made of it
- ii. injury or damage to property or to plant or animal life
- iii. harm or material discomfort to any Person
- iv. an adverse effect on the health of any Person
- v. impairment of the safety of any Person
- vi. rendering any property or plant or animal life unfit for human use
- vii. loss of enjoyment of normal use of property
- viii. interference with the normal conduct of business
- ix. nuisances including but not limited to excessive smoke, odour, dust, airborne sparks, embers or reduced visibility on roadways, railways or airfields
- x. Smoke that enters into a Building located on other property that may cause discomfort or loss of enjoyment to persons;

"Applicant" means a Person eighteen (18) years of age or more who is a registered legal Owner of the property upon which the Open Air Fire is to be burned or a Person eighteen (18) years of age or more who is the Occupier of the property up on which the Open Air Fire is to be burned and who has been provided with permission by a registered legal Owner of the property to burn an Open Air Fire;

"Attended" means open-air fire supervised at all times. Farm properties exempt: must maintain frequent check on fire conditions, must remain in vicinity excluding lunch break, etc.

"Barbeque" means a portable or fixed device fueled by propane, natural gas or charcoal briquettes and designed and intended solely for the cooking of food in the open air, but does

not include Outdoor Fireplaces and Campfires;

"Bon Fire" means a fire on a farm or large rural property contained by non-Combustibles and exceeds 1m in length X 1m in width, but less than 2m, X 1m height is for recreational purposes and/or occurs after sunset and before sunrise;

"Brush Fire" means a pile of branches, trees, brush, that is set in an pile on large estate sized properties or farms ranging from 2 metres in diameter not exceeding 5 metres in diameter;

"Building" means any structure having a roof supported by walls and/or columns which is used or intended to be used for the shelter accommodation or enclosure of Persons animals or chattels;

"Burn Barrel / Drum" means an Open Air Fire Set and Maintained in an open top steel barrel that does not exceed 0.75 m in diameter and 1.2m in height and where the Open Air Fire is Set and Maintained for the purposes of burning wood, tree limbs, branches and non-Compostable Material limited to paper and sisal twine;

"Campfire" means a fire designed for cooking, recreational enjoyment or warmth that meets the following conditions:

- i. the site of the fire is bare rock or other non-Combustible Material
- ii. the space above the one metre area around the fire is at least three metres from vegetation and
- iii. the fire does not exceed one metre in height and one metre in diameter.

"Campground" means an area of land owned or operated by a Person and that contains camp sites for the purpose of providing overnight accommodation for tents and trailers in exchange for monetary payment;

"Cooking Fire" is defined as a fire created for the sole purpose of cooking food and the burning consists of a small, confined fire that is supervised at all times and used to cook food on a grill or Barbecue. The Cooking Fire must be fully Extinguished after the food is cooked;

"Combustible material" means material capable of burning including wood, paper, plastic and vegetation;

"Council" means the Council of the Corporation of the Town of Amherstburg;

"Dangerous condition" means any condition as determined by the Fire Chief that increases the risk of the spread of a fire or is adverse to public safety;

"Extinguish" means an Open Air Fire that fully ceases from burning to a degree that the ashes are cold or no longer emits heat ensuring smouldering of material does not occur. (A buried fire is not considered extinguished);

"Farm" means land devoted to the practice of farming and used primarily for the raising of livestock or the production, storage or processing of agricultural and horticultural produce or foods but does not include land used only as a residential occupancy. The Farm shall be registered as a farming business as defined in the *Farm Registration and Farm Organizations Funding Act, 1993*, S.O. 1993, c. 21, as amended;

"Fire ban" means a period of time during which the Fire Chief declares a total ban on Open Air Fires;

"Firebreak" means open space that surrounds an Open Air Fire and serves as a non-combustible obstacle to the spread of fire;

"Fire Chief" means the person appointed by Town Council as Fire Chief for the Town or authorized designate, and for the purposes of this by-law includes Municipal Law Enforcement Officer;

"Highway" means a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, designed and intended for, or used by, the general public for the passage of vehicles and includes the area between the lateral property lines thereof;

"Lot Line" means any boundary of a lot or the vertical projection thereof

"Maintain" means to allow an Open Air Fire to continue to burn, and "maintained" and "maintaining" have a corresponding meaning;

"Municipal Law Enforcement Officer" means an individual appointed by the Town for the purpose of enforcing Town by-laws;

"Occupant" means any Person or Persons over the age of eighteen (18) years in possession of the property;

"Open Air Fire" means the burning of material such as untreated wood, tree limbs and branches where the flame is not wholly contained and includes Campfires, Bonfires, Brush fire, Burn Drums, Windrows and Outdoor Fireplaces, but does not include Barbecues and Personal Warming Devices;

"Open Air Fire Permit (Permit)" means a written conditional authorization issued and administered by the Fire Chief to Set an Open Air Fire, as per any restrictions and conditions contained within this by-law or as may be specified on the Open Air Permit itself;

"Outdoor Fireplace Unit or Recreational Fireplace Unit" means a: manufactured wood-burning appliance, site-built masonry fireplace, fire pit, chimenea, clay or metal fireplace, portable wood-burning devices used for outdoor recreation or heating, or other enclosed container used outdoors and not fuelled by natural gas or propane and designed to hold a small fire, not exceeding one metre (3.2 feet) in any direction; but does not include pellet fuelled Barbeques or industrial 'wood-waste' combustors;

"Owner" shall include any Person who is an owner of land either jointly or in common with any other Person or persons and shall include any or all of such persons;

"Permit Holder" means a Person eighteen (18) years of age or more to whom an Open Air Permit has been issued by the Fire Chief;

"Person" means any individual, Owner, Occupant, association, firm, partnership, corporation, agent or trustee and the heirs, executors, or other legal representatives of a Person to whom the context can apply according to law;

"Personal warming device" means a gas-fueled appliance used for personal warming that is in conformance with the Technical Standards and Safety Act, 2000, S.O. 2000, c. 16, as may be amended from time to time, is for outdoor use and is installed in accordance with the manufacturer's instructions;

"Prohibited Materials" include:

- i. Construction and demolition waste or materials including roofing tiles or shingles
- ii. Hazardous substances including but not limited to batteries, household chemicals, pesticides, asbestos, used oil, gasoline, paints, varnishes, and solvents
- iii. Furniture and appliances
- iv. Tires and rubber materials
- v. Any plastic materials including but not limited to nylon, PVC or ABS plastics, polystyrene or urethane foam, and synthetic fabrics, plastic films and plastic containers
- vi. Newspaper, cardboard, office paper
- vii. Treated or painted wood including but not limited to plywood, composite wood products or other wood products that are painted, varnished or treated with preservatives
- viii. Leaves and grass clippings except leaves attached to tree limbs;

"Restricted Area" means areas where types of Open Air Fires are prohibited or Permits are denied by the Fire Chief;

"Rural property" means for the purpose of this bylaw, property outside the urban and suburban settlements;

"Sensitive Receptor Place" include:

- i. A health care facility
- ii. A senior citizens' residence or long-term care facility
- iii. A child care facility during operating hours
- iv. An educational facility during operating hours
- v. An environmentally sensitive area
- vi. A place specified by the Town as a place where discharges of smoke may cause a risk to human health;

"Set" means to light an Open Air Fire, and "setting" has a corresponding meaning;

"Town" means the Corporation of the Town of Amherstburg;

"Windrow" means an Open Air Fire on a Farm where the size of the material to be burned does not exceed 50 m in length, 5 m in width and 3 m in height and that is set and maintained solely for the purposes of burning wood, tree limbs and branches as part of farming practices for clearing agricultural land.

2. INTERPRETATION

- 2.1 In this by-law, a word interpreted in the singular number has a corresponding meaning when used in the plural.
- 2.2 Nothing in this by-law shall be interpreted as reducing or eliminating compliance with the provisions of all applicable Federal or Provincial statutes and regulations related to open air burning, and in particular the Fire Protection and Prevention Act.
- 2.3 In this by-law the word "metre" shall be represented by the abbreviation "m" and the word "centimeter" shall be represented by the abbreviation "cm".

3. PROHIBITIONS

- 3.1 No Person shall Set or Maintain an Open Air Fire without an Open Air Permit.
- 3.2 No Person shall Set or Maintain an Open Air Fire in a Restricted Area.
- 3.3 No Person shall Set or Maintain an Open Air Fire during a Fire Ban.
- 3.4 No Person shall Set or Maintain an Open Air Fire that burns Prohibited Materials.
- 3.5 No Person shall Set or Maintain an Open Air Fire in a manner that violates a condition of the Open Air Permit in Section 6, 7, 8, or 9.
- 3.6 No Person shall Set or Maintain an Open Air Fire on any roadway, Highway, park, easement, beach, or on ice of a lake, pond, stream or body of water.
- 3.7 No Person shall Set or Maintain an Open Air Fire on public property owned or operated by the Town without written permission of the Fire Chief and/or Council.
- 3.8 No Person shall Set or Maintain an Open Air Fire where it causes Adverse Effects.
- 3.9 No Person shall Set or Maintain an Open Air Fire within 100 m from a Sensitive Receptor Place.

- 3.10 No person shall set or Maintain an Open Air Fire defined as a Bon Fire or Windrow, unless on a Farm and under a valid Permit.
- 3.11 No Person shall obstruct, hinder or otherwise interfere with a Municipal Law Enforcement Officer in the lawful carrying out of their duties and responsibilities under the provisions of this by-law.

4. EXEMPTIONS

- 4.1 The Amherstburg Fire Department shall be exempt from the provisions of this by law with respect to Open Air Fires for the purposes of training, educating individuals on fire safety or for research purposes.
- 4.2 Professional fire prevention trainers shall be exempt from the provisions of this by-law with respect to Open Air Fires set for the purposes of fire safety training pursuant to Section 2.8.2.1 of the Fire Code.
- 4.3 The Town shall be exempt from the provisions of this by-law with respect to Open Air Fires related to municipal work being done or tasks.
- 4.4 The use of a Barbeque or a Personal Warming Device is exempt from obtaining an Open Air Fire Permit

5. OPEN AIR FIRE PERMIT

- 5.1 Any Person eighteen (18) years of age or older may make a written application for an Open Air Fire Permit to the Fire Chief prior to the proposed date of the first Open Air Fire of the calendar year.
- 5.2 Any Person Owning or operating a Campground may make a written application for an Open Air Fire Permit to the Fire Chief prior to the proposed date of the first Open Air Fire of the calendar year.
- 5.3 Any Person Owning and operating a Farm may make a written application for an Open Air Fire Permit to the Fire Chief prior to the proposed date of the first Open Air Fire of the calendar year.
- 5.4 The application shall include:
- 5.4.1 the name, address, email address and phone number of the Applicant;
 - 5.4.2 the Owner's written consent to an Open Air Fire, if the Applicant is not the Owner of the property;
 - 5.4.3 the municipal address of the location of the proposed Open Air Fire;
 - 5.4.4 the Open Air one-time site inspection fee renewal permits are not subject to additional fees unless another site inspection is required due to changes or circumstances at the location of the Open Air Permit.
 - 5.4.5 Farm business registration number if required;
 - 5.4.6 other information as may be required by the Fire Chief;
- 5.5 A Permit is valid on the date of issue and for the balance of the calendar year in which the permit is issued.

- 5.6 The Fire Chief reserves the right to issue or deny issuing an Open Air Fire Permit.

6. OPEN AIR FIRE PERMIT CONDITIONS

- 6.1 The Permit Holder shall comply at all times with the Act and all other applicable municipal by-laws, provincial and federal laws.

- 6.2 A Permit for an Open Air Fire is not transferable to another Person or to a new location.
- 6.3 No Permit Holder shall Set or Maintain an Open Air Fire unless the Permit Holder:
- 6.3.1 Open-Air burning shall be constantly attended and supervised by a competent Person of at least eighteen (18) years of age to ensure that the Fire is kept under control. The Person shall have readily available for use such Fire Extinguishing equipment as may be necessary for the total control of the fire.
 - 6.3.2 Prior to leaving the site, the Open-Air Fire shall be completely Extinguished.
 - 6.3.3 Produces his or her Permit upon being so directed by the Fire Chief;
 - 6.3.4 Has equipment capable of extinguishing the fire such as rakes, shovels, or water immediately available for use at the site of the Open Air Fire;
 - 6.3.5 Immediately extinguishes the Open Air Fire upon so ordered by the Fire Chief;
 - 6.3.6 Burns from sunrise to sunset on any day with the exceptions of Campfires and Outdoor Fireplaces; Bon Fires
 - 6.3.7 Burns only Combustible Materials or fuel permitted
 - 6.3.8 Complies to any additional conditions to a Permit imposed by the Fire Chief;
- 6.4 Where the material to be burned in an Open Air Fire is more than 1 m but less than 2m in length, width and height, no Permit Holder shall Set or Maintain an Open Air Fire:
- 6.4.1 At a distance of less than 30 m from any Building, hedge, fence, lot line, overhead wiring or a Highway and at a distance of less than 25 m from another Open Air Fire;
 - 6.4.2 At a distance of at least a 15 m radius where Combustible Material, that is not a Building, hedge, fence, lot line or overhead wiring or a Highway is present;
- 6.5 Where the material to be burned in an Open Air Fire is between 2 m and 3 m in length, width and height, no Permit Holder shall Set or Maintain an Open Air Fire:
- 6.5.1 At a distance of less than 60 m from any building, hedge, fence, lot line, overhead wiring or a Highway and at a distance of less than 25 m from another Open Air Fire;
 - 6.5.2 At a distance of at least a 15 m radius where Combustible Material other than a Building, hedge, fence, lot line or overhead wiring or a Highway is present.
- 6.6 Where the material to be burned in an Open Air Fire is between 4 m but less than 5 m in a Brush fire, no Permit Holder shall Set or Maintain an Open Air Fire
- 6.6.1 At a distance of less than 90 m from any building, hedge, fence, overhead wiring or a Highway and at a distance of less than 30 m from another Open Air Fire
 - 6.6.2 At a distance of at least a 30 m radius where Combustible Material other than a Building, hedge, fence or overhead wiring or a Highway is present.

7. OPEN AIR PERMIT CAMPFIRE CONDITIONS

- 7.1 No Permit Holder shall Set or Maintain a Campfire unless the Permit Holder:

- 7.1.1 Receives permission on the day of the proposed Campfire by calling the designated campfire hotline ;
- 7.1.2 Ensures that a Person eighteen (18) years of age or older Maintains constant watch and control over the Campfire at all times from the time of the Setting of the Campfire until it is fully Extinguished;
- 7.1.3 Produces his or her Permit upon being so directed by the Fire Chief
- 7.1.4 Has equipment capable of Extinguishing the fire such as rakes, shovels, or water immediately available for use at the site of the Campfire;
- 7.1.5 Immediately extinguishes the Campfire upon so ordered by the Fire Chief;
- 7.1.6 Burns only dry firewood;
- 7.1.7 Ensures the Campfire does not exceed 1 metre in width at the largest point or is piled higher than 1 metre in height;
- 7.1.8 Ensures the Campfire is located at a distance of not less than 15 m from any Building, hedge, fence, lot line, Highway, overhead wiring or other Combustible Material;
- 7.1.9 Ensure the Campfire is located a distance of not less than 10 m from any Building, hedge, fence, lot line, overhead wiring or other Combustible Material or a Highway where the Campfire is surrounded by non-Combustible material to a minimum height of 40 cm.
- 7.1.10 Complies with any additional conditions to a Permit imposed by the Fire Chief.

8. OPEN AIR PERMIT OUTDOOR FIREPLACE CONDITIONS

- 8.1 No Permit Holder Shall Set or Maintain an Outdoor Fireplace unless the Permit Holder:
 - 8.1.1 Receives permission on the day of the proposed Outdoor Fireplace Fire by calling the designated campfire hotline;
 - 8.1.2 Ensures that a Person eighteen (18) years of age or older Maintains constant watch and control over the Outdoor Fire Place Fire at all times from the time of the Setting of the Outdoor Fireplace Fire until it is fully extinguished;
 - 8.1.3 Produces his or her Permit upon being so directed by the Fire Chief;
 - 8.1.4 Has equipment capable of extinguishing the fire such as rakes, shovels, or water immediately available for use on the Outdoor Fireplace Fire;
 - 8.1.5 Immediately extinguishes the Outdoor Fireplace Fire upon so ordered by the Fire Chief;
 - 8.1.6 Burns only dry firewood;
 - 8.1.7 Ensures the Outdoor Fireplace Fire is located at a distance of not less than 5 m from any Building, hedge, fence, Lot Line, Highway, overhead wiring or other Combustible Material or in accordance with manufacturer or listing agency (i.e. ULC, Warnock Hersey) recommendations;
 - 8.1.8 Complies with any additional conditions to a Permit imposed by the Fire Chief.

- 9. Bonfire** (Farm and Rural properties only) Larger than 1m, but no larger than 2m with a minimum of 30 metres from buildings, fences, highways

9.1 No Permit Holder Shall Set or Maintain an Outdoor Fireplace unless the Permit Holder:

- 9.1.1 Receives permission on the day of the proposed Bon Fire at least 2 hours prior to the proposed Bonfire from the on-duty officer at the prescribe number;
- 9.1.2 Ensures that a Person eighteen (18) years of age or older Maintains constant watch and control over the Outdoor Fire Place Fire at all times from the time of the Setting of the Outdoor Fireplace Fire until it is fully extinguished;
- 9.1.3 Produces his or her Permit upon being so directed by the Fire Chief;
- 9.1.4 Has equipment capable of extinguishing the fire such as rakes, shovels, or water immediately available for use on the Outdoor Fireplace Fire;
- 9.1.5 Immediately extinguishes the Outdoor Fireplace Fire upon so ordered by the Fire Chief;
- 9.1.6 Burns only dry firewood;
- 9.1.7 Ensures the Bon Fire is located at a distance of not less than 30 m from any Building, hedge, fence, Highway, overhead wiring or other Combustible Material;
- 9.1.8 Complies with any additional conditions to a Permit imposed by the Fire Chief.

10. OPEN AIR FIRE PERMIT BURN DRUM / BARREL

10.1 No Permit Holder Shall Set or Maintain a Burn Drum / Barrel unless the Permit Holder:

- 10.1.1 Receives permission on the day of the proposed Burn drum / barrel Fire from the on-duty officer at the prescribed number.
- 10.1.2 Ensures that a Person eighteen (18) years of age or older Maintains constant watch and control over the Burn Drum / Barrel Fire at all times from the time of the Setting of the fire until it is fully extinguished;
- 10.1.3 Produces his or her Permit upon being so directed by the Fire Chief;
- 10.1.4 Has equipment capable of extinguishing the fire such as rakes, shovels, or water immediately available for use on the Burn Drum / barrel Fire;
- 10.1.5 Immediately extinguishes the Burn Drum /Barrel Fire upon so ordered by the Fire Chief;
- 10.1.6 Burns only dry firewood;
- 10.1.7 Ensures the Burn Drum / Barrel Fire is located at a distance of not less than 10 m from any Building, hedge, fence, Highway, overhead wiring or other Combustible Material

Complies with any additional conditions to a Permit imposed by the Fire Chief.

11. OPEN AIR PERMIT WINDROW CONDITIONS

11.1 No Permit Holder shall Set or Maintain a Windrow unless the Permit Holder:

- 11.1.1 Receives permission on the day of the proposed Windrow from the on duty officer at the prescribed number;
- 11.1.2 Sets or Maintains a Windrow between Monday to Friday, inclusive;

- 11.1.3 Ensures that a Person eighteen (18) years of age or older Maintains constant watch and control over the Windrow at all times from the time of the Setting of the Windrow until it is fully Extinguished;
- 11.1.4 Produces his or her Permit upon being so directed by the Fire Chief;
- 11.1.5 Has equipment capable of Extinguishing the fire such as Front end loader, excavator rakes, shovels, or water immediately available for use at the site of the Windrow;
- 11.1.6 Immediately Extinguishes the Windrow upon so ordered by the Fire Chief;
- 11.1.7 Ensures the Windrow is located a distance of not less than 90 m from a Building, overhead wiring or Highway;
- 11.1.8 Ensures the Windrow is located a distance of not less than 60 m from a wooden fence rail, hedge or standing timber;
- 11.1.9 Ensures the Windrow is located a distance of not less than 30 m from any other Combustible Material;
- 11.1.10 Ensures a firebreak of 5 m in width surrounds the Windrow until it is Extinguished;
- 11.1.11 Ensures the Windrow is constructed at right angles to the prevailing wind direction;
- 11.1.12 Ensure the Windrow is constructed on soil other than peat soil types;
- 11.1.13 Ensure there is a separation distance of at least 15 m between the ends of the Windrows and at least 25 m between parallel Windrows, of more than one Windrow is Set or Maintained at the same time;
- 11.1.14 Ensure the Windrow is Set first at its centre;
- 11.1.15 Ceases to add material to the Windrow if a Fire Ban comes into effect;

12 SPECIAL EVENT OPEN AIR FIRE

- 12.1 A community not-for-profit organization or a religious institution may apply in writing to the Fire Chief for an Open Air Fire Permit to conduct Campfires or Open Air Fire in an Outdoor Fireplace for cultural, religious or recreational specific events.
- 12.2 The Fire Chief may issue an Open Air Permit subject to compliance with Section 6, 7, 8 ,9,or 10 as applicable and any other conditions imposed by the Fire Chief.
- 12.3 A Permit issued for a special event is valid only for the specific dates outlined in the application.

13 PERMIT FEES

- 13.1 The non-refundable Permit application fee and site inspection fee is set out in of the Town's User Fee By-law as amended from time to time.

14 REVOCATION

- 14.1 A Permit issued to a Permit Holder may be revoked by the Fire Chief if in his or her opinion a dangerous condition exists in or near the site of the Open Air Fire.
- 14.2 A Permit issued to a Permit Holder may be revoked by the Fire Chief if the Permit Holder fails to comply with the requirements of the Permit and any other provisions of this by-law.

15 OFFENCES AND PENALTIES

- 15.1 Every person who contravenes any section of this by-law is, upon conviction, guilty of an offence and shall be liable to a fine as provided for by the Provincial Offences Act, R.S.O. 1990, c.P. 33, as amended, and be subjected to any other penalties permitted by law for each offence.
- 15.2 If a contravention of this by-law results in Amherstburg Fire Services being dispatched to the property, the Owner may be invoiced at the discretion of the Fire Chief for the cost of the response in accordance with the Town's User Fee By-law as amended from time to time.

16 SEVERABILITY

- 16.1 Should any paragraph, clause or provision of the By-law be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of the By-law as a whole or any part of thereof, other than the part which was declared to be invalid.
- 16.2 When any requirement of this by-law is at variance with any other by-law in effect in the Town or with any applicable provincial or federal statute or regulation, the more restrictive requirement shall apply unless otherwise stated in such legislation.

17 REPEAL

- 17.1 By-law 1998-91 as amended by bylaw 2019-99 being a by-law restricting the setting of fires within the Town of Amherstburg is hereby repealed.

18 SHORT TITLE

- 18.1 This by-law may be referred to as the Open Air Fire By-law.

Read a first, second and third time and finally passed this ____ day of _____, 2022.

MAYOR ALDO DICARLO

CLERK VALERIE CRITCHLEY