

being a by-law to regulate open air burning within the City of Oshawa.

**WHEREAS** the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, (the “Act”) provides that municipalities may pass by-laws for the economic, social and environmental well-being of the municipality.

**AND WHEREAS** the Act also provides that municipalities may pass by-laws for the health, safety and well-being of persons.

**AND WHEREAS** the Council of The Corporation of the City of Oshawa desires 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 City of Oshawa enacts as follows:

**1. SHORT TITLE:**

1.1 This by-law may be cited as the “Open Air Burning By-law”.

**2. INTERPRETATION:**

In this by-law:

2.1 “**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. The Barbeque must be ULC/CSA/Warnock-Hersey listed and used in accordance with the manufacturers’ instructions.

2.2 “**Chief Fire Official**” means the Fire Chief, the Deputy Fire Chief, the Chief Fire Prevention Officer, any Fire Prevention Officer or any Fire Prevention Inspector.

2.3 “**City**” means The Corporation of the City of Oshawa.

2.4 “**Director**” means the City’s Director, Municipal Law Enforcement and Licensing Services.

2.5 “**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 owner of the land must possess a valid farm registration number.

2.6 “**Fire Permit**” means a permit issued by the Chief Fire official to set a fire in the open air for a specific period of time.

2.7 “**Hearings Officer**” means a person appointed by the Council of the City pursuant to By-law 26-2008, as amended.

2.8 “**Officer**” means a Municipal Law Enforcement Officer appointed to enforce the by-laws of the City and a Fire Prevention Officer from the Fire Prevention Division of the Oshawa Fire Services, including the Fire Chief and any member of the Oshawa Fire Services designated by the Fire Chief.

2.9 “**Open Air Fire**” means any fire situated outside, whether burned in a container or on the ground, not including a Barbeque or Personal Warming Device.

2.10 “**Penalty Notice**” means a notice given pursuant to subsection 6.2 and 6.3.

2.11 “**Permit Holder**” means a Person to whom a Fire Permit has been issued by the Chief Fire Official.

- 2.12 **“Person”** includes an individual, association, firm, partnership, corporation, trust, organization, trustee, or agent, and their heirs, executors, or legal representatives.
- 2.13 **“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.
- 2.14 **“Supervisor”** means:
- (a) 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;
  - (b) a Person eighteen (18) years of age or more who is the occupier of the property upon 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; or
  - (c) a Person eighteen (18) years of age or more who is an authorized representative of the registered legal owner of the property upon which the Open Air Fire is to be burned.

**3. OPEN AIR BURNING:**

- 3.1 No Person shall start, set or maintain an Open Air Fire or permit to be started, set or maintained an Open Air Fire except pursuant to this by-law including the following conditions:
- (a) a Fire Permit respecting the Open Air Fire has been issued pursuant to this by-law;
  - (b) no Open Air Fire which is greater than one (1) cubic metre is permitted unless the Person has obtained from the Chief Fire Official a Fire Permit permitting an oversized fire;
  - (c) no Open Air Fire is permitted which is a distance of fifteen (15) metres or less from the nearest building, structure or forested area, regardless of whether or not a Fire Permit has been obtained;
  - (d) no Open Air Fire is permitted under weather conditions that will not allow for the rapid dispersion of smoke, regardless of whether or not a Fire Permit has been obtained;
  - (e) no Open Air Fire is permitted where the fire will, in Chief Fire Official’s sole discretion, create unsafe visibility conditions or pose a hazardous health risk, regardless of whether or not a Fire Permit has been obtained;
  - (f) no burning of petroleum products, plastics, rubber or other materials that create excessive or toxic smoke, regardless of whether or not a Fire Permit has been obtained;
  - (g) no Open Air Fire shall be left unsupervised regardless of whether or not a Fire Permit has been obtained;
  - (h) no burning of Open Air Fires between dusk and dawn;
  - (i) all Open Air Fires must be completely extinguished before vacating the location of the Open Air Fire;
  - (j) all Open Air Fires must be monitored at all times by a Supervisor;

- (k) the burning of Open Air Fires is restricted to properties having an area of more than ten (10) acres, and to the areas located north of Conlin Road and bounded by the Town of Whitby on the west, and the Municipality of Clarington on the east, or in the sole discretion of the Chief Fire Official; and
- (l) an on-site water supply may be required under certain conditions in the Chief Fire Official's sole discretion.

3.2 No Fire Permit is required by:

- (a) a Person using a Barbeque to cook food provided that the Barbeque is supervised at all times;
- (b) a Person using a Personal Warming Device; and
- (c) any Person other than the Provincial Council for Ontario: Boy Scouts of Canada on the lands municipally known as 1711 Simcoe Street North and legally described as Concession 4, Part Lots 9, 10 and 11 (the "Property") provided:
  - (i) the registered legal owner of the Property, the Provincial Council for Ontario: Boy Scouts of Canada, obtains a Fire Permit in relation to the Property pursuant to the terms and conditions of this by-law;
  - (ii) every Open Air Fire on the Property is confined to the areas designated by the Property owner and approved by the Chief Fire Official;
  - (iii) every Open Air Fire complies with the requirements of this by-law.

**4. PROVISIONS FOR FARMS:**

4.1 This By-law does not prevent an Open Air Fire on a Farm to the extent that the Open Air Fire is:

- (a) located and maintained in a manner that does not pose a risk to the occupants of buildings or the buildings or structures in the vicinity of the fire;
- (b) approved by the Chief Fire Official prior to the issuance of a Fire Permit for an Open Air Fire at that location;
- (c) otherwise in compliance with the provisions of this by-law;
- (d) composed of only dry brush or vegetation materials from the Farm where the Farm is located;
- (e) attended to, controlled by and supervised at all times by a Person over the age of 18 years and shall be completely extinguished before the location is vacated;
- (f) confined to an area which is at least 45 metres (150 feet) from any building, highway, road or wooded area;
- (g) controlled at all times in such a way that smoke caused by the Open Air Fire does not affect the visibility of motorists or pedestrians using roads and property within the vicinity of the Open Air Fire; and
- (h) capable of being controlled or extinguished with the use of a loader/back hoe or other equipment.

**5. ISSUANCE OF FIRE PERMITS:**

- 5.1 The Chief Fire Official may issue a Fire Permit where the conditions set out in this by-law are met and the appropriate fees as set out in the City's General Fees and Charges By-law are remitted.
- 5.2 Fire Permits are issued by the Chief Fire Official on an annual basis.
- 5.3 The Chief Fire Official may impose further requirements for approval in addition to those set out in this by-law in his/her sole and absolute discretion.
- 5.4 The Chief Fire Official may revoke a Fire Permit and/or extinguish or cause to be extinguished an Open Air Fire if, in the opinion of the Chief Fire Official:
- (a) the Open Air Fire presents a fire hazard;
  - (b) the Open Air Fire represents a smoke hazard which may limit visibility on roads;
  - (c) the weather has deteriorated and has become unfavourable for an Open Air Fire;
  - (d) the Permit Holder has not complied with the conditions imposed by the Fire Permit; or
  - (e) any of the provisions of this by-law have been or are being contravened.
- 5.5 The decision of the Chief Fire Official to revoke a Fire Permit is effective immediately and not subject to review by any Court.
- 6. ADMINISTRATIVE PENALTIES:**
- 6.1 Each Person who contravenes any provision of this by-law shall, when given a Penalty Notice in accordance with subsection 6.2, be liable to pay to the City an administrative penalty in the amount of \$250 for each day or part of a day on which the contravention continues.
- 6.2 An Officer who has reason to believe that a Person has contravened any provision of this by-law may give to the Person a Penalty Notice.
- 6.3 The Penalty Notice shall be given to the Person as soon as is reasonably practicable and shall include the following information:
- (a) particulars of the contravention;
  - (b) the amount of the administrative penalty;
  - (c) information respecting the process by which the Person may exercise the Person's right to appeal against the administrative penalty; and
  - (d) a statement advising that an administrative penalty will, unless cancelled or reduced pursuant to the appeal process, constitute a debt of the Person to the City.
- 6.4 No Officer may accept payment of an administrative penalty.
- 6.5 The Director may cancel the Administrative Penalty before 4:30 p.m. of the seventh (7<sup>th</sup>) day after the date on which the Penalty Notice was given.
- 6.6 A Person who is given a Penalty Notice may appeal to the Hearings Officer against the administrative penalty pursuant to section 7.
- 6.7 An administrative penalty that is deemed to be affirmed pursuant to subsection 7.1 or that is affirmed or reduced or in respect of which the time for payment has been

extended pursuant to subsection 7.6, constitutes a debt to the City of each Person to whom or to which the Penalty Notice was given.

- 6.8 Where a Person has paid an administrative penalty that is then cancelled or reduced pursuant to subsection 6.5 or subsection 7.6, the City shall refund the amount cancelled or reduced.
- 6.19 Where an administrative penalty is paid within fifteen (15) days after the date that it becomes due and payable, no Person to whom the Penalty Notice was given shall be liable for an offence in respect of the contravention described in the Penalty Notice.
- 6.10 Where an administrative penalty is not paid within fifteen (15) days after the date that it becomes due and payable, each Person to whom the Penalty Notice was given shall pay to the City a late payment administrative fee as from time to time prescribed by the City's General Fees and Charges By-law.

## **7. HEARINGS OFFICER:**

- 7.1 A Person's right to appeal expires if it has not been exercised in the manner prescribed in subsection 7.2 before 4:30 p.m. on the tenth (10<sup>th</sup>) day after the Penalty Notice is given to the Person at which time the Penalty Notice is final and is not subject to review including review by any Court.
- 7.2 A right to appeal is exercised by:
- (a) giving to the Director written notice of the appeal that includes particulars of all grounds upon which the appeal is made; and by
  - (b) paying the fee from time to time prescribed by the City's General Fees and Charges By-law.
- 7.3 The Person shall be given no fewer than seven (7) days' notice of the date, time and place of the hearing of the appeal.
- 7.4 Where the Person fails to appear at the time and place scheduled for a hearing of the appeal, the Person's appeal shall be deemed to be dismissed and the Person shall pay to the City an administrative fee as from time to time prescribed by the General Fees and Charges By-law.
- 7.5 Subject to subsection 7.4, the Hearings Officer shall not decide the appeal unless the Hearings Officer has given each of the Person and the Officer an opportunity to be heard at the time and place scheduled for the hearing of the appeal.
- 7.6 The Hearings Officer may make any decision that an Officer could have made pursuant to this by-law.
- 7.7 The decision of the Hearings Officer is final and not subject to review including review by any Court.

## **8. OFFENCES:**

- 8.1 Each Person who contravenes any provision of this by-law is guilty of an offence and on conviction is liable to a fine of:
- (a) not less than \$300 and not more than \$5,000;
  - (b) not less than \$400 and not more than \$10,000 for a second conviction of the same offence; and
  - (c) not less than \$500 and not more than \$25,000 for a third or subsequent conviction of the same offence.

8.2 Prosecution under this by-law shall not preclude any other legal actions required to recover damages required to repair, replace or restore damaged real or personal property, as the case may be.

**9. NOTICE:**

9.1 Any notice or document respecting this by-law may be given in writing in any of the following ways and is effective:

- (a) when a copy is delivered to the Person to whom it is addressed;
- (b) on the fifth (5<sup>th</sup>) day after a copy is sent by registered mail to the Person's last known address;
- (c) upon the conclusion of the transmission of a copy by facsimile transmission to the Person's last known facsimile transmission number; or
- (d) upon the sending of a copy by e-mail transmission to the Person's last known e-mail address.

**10. GENERAL:**

10.1 For the purpose of section 23.2(4) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, it is the opinion of Council that the powers delegated to the Hearings Officer and to the Director pursuant to this by-law are of a minor nature, having regard to the number of people, the size of geographic area and the time period affected by the exercise of the delegated powers.

**11. CONFLICT:**

11.1 This by-law shall not be construed to reduce or mitigate any restrictions or regulations lawfully imposed by the City or by any governmental authority having jurisdiction to make such restrictions or regulations.

11.2 If there is a conflict between a provision of this by-law and a provision of any other City by-law, the provision that establishes the higher standard to protect the health and safety of the public shall apply.

**12. SEVERABILITY:**

12.1 If any provision or part of a provision of this by-law is declared by any court or tribunal of competent jurisdiction to be illegal or inoperative, in whole or in part, or inoperative in certain circumstances, the balance of the by-law, or its application in other circumstances, shall not be affected and shall continue to be in full force and effect.

**13. EFFECTIVE DATE:**

13.1 This By-law is effective on the date of its passing.

13.2 By-law 41-97 is hereby repealed.

By-law passed this twenty-fifth day of June, 2012.

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Mayor

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City Clerk