

BY-LAW NO. 45-08

OF THE CORPORATION OF THE TOWN OF AYLMER

BEING A BY-LAW TO REGULATE
OPEN AIR BURNING IN THE TOWN OF AYLMER

WHEREAS Section 7.1(1) 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 fire prevention, including the prevention of the spreading of fires and the setting of open air fires, including the times during which open air fires may be set,

AND WHEREAS Section 7.1(4) of the *Fire Protection & Prevention Act*, 1997, op cit, as amended, provides 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 7.1(5) of the *Fire Protection and Prevention Act*, 1997, op cit, as amended, provides the exercise of powers by an officer appointed under this section shall be carried out in accordance with Part XIV of the *Municipal Act*, 2001, S.O. 2001, c.25, as amended, other than clause 431(a) of that Act,

AND WHEREAS Section 13(1.1) of the *Fire Protection and Prevention Act*, 1997, op cit, as amended, provides a firefighter or such other person as may be authorized by the fire chief may, without a warrant, enter on lands or premises on which a fire is occurring, or that are adjacent to those lands or premises for the purpose of pulling down or removing buildings, structures or things on or attached to the lands on which a fire is occurring or that are adjacent to those lands or premises if, in the opinion of the fire chief or designate, it is necessary to do so to prevent the spread of fire,

AND WHEREAS Section 425 of the *Municipal Act*, 2001, op cit, as amended, provides by-laws may be passed by all municipalities for providing that any person who contravenes any by-law of the municipality, passed under this Act, is guilty of an offence,

AND WHEREAS Section 429 of the *Municipal Act*, 2001, op cit, as amended, provides the authority for the municipality to establish a system of fines for offences under a by-law that the municipality has passed under this Act, including restrictions thereto,

AND WHEREAS Section 446 of the *Municipal Act*, 2001, op cit, as amended, provides that were a municipality has authority by by-law or otherwise to direct or require that a matter or thing be done, the municipality may in the same or another by-law direct that, in default of it being done by that person directed or required to do it, such matter or thing shall be done at the persons expense and the municipality may recover the costs of doing a thing or matter from the person directed or required to do it and the municipality may recover the costs by action or by adding the costs to the tax roll and collecting them in the same manner as taxes,

AND WHEREAS Section 19(2) of the *Fire Protection and Prevention Act*, 1997, op cit, as amended, provides an inspector may, without a warrant, enter and inspect lands and premises for the purposes of assessing fire safety,

AND WHEREAS Section 2.6.3.4. of the *Ontario Fire Code* , O.R. 388/97 and O.R. 213/07 as amended, provides that open air burning shall not be permitted unless *approved*, or unless such burning consists of a small confined fire, supervised at all times, and used to cook food on a grill or a barbecue,

AND WHEREAS it is deemed desirable to regulate open air burning in the Town of Aylmer,

AND WHEREAS it is deemed desirable to repeal By-Law No. 41-07.

NOW THEREFORE the Municipal Council of the Corporation of the Town of Aylmer hereby enacts as follows:

PART 1 – DEFINITIONS AND ADMINISTRATION

1.1 Definitions

For the purposes of this By-law:

- (a) **“Applicant”** shall mean the person, organization, company or group that makes application to the Fire Chief for permission to hold an open air burn;
- (b) **“Approved”** shall mean approved by the Fire Chief of the Town of Aylmer ;
- (c) **“Approved Open Air Burning”** shall mean an Open Air Burn which has been approved by the Fire Chief or his or her designate and has a valid Burn Permit;
- (d) **“Barbecue”** appliances include 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 predominantly designed for personal warmth, fire burn areas or camp fires;
- (e) **“Burning Permit”** shall mean a permit issued by the Fire Chief of the Town of Aylmer and is valid only for the dates specified and the rules attached to the Burn Permit for Open Air Burning are followed;
- (f) **“Competent Person”** means a responsible adult 18 years of age or older, who is capable of exercising the required judgment and capable of performing the necessary actions to control the fire and prevent its unwanted spread.
- (g) **“Fire Chief”** shall mean the Fire Chief appointed for the Town of Aylmer Fire Department or designate including members of the Town of Aylmer Fire Department;
- (h) **“Noncombustible”** means that a material meets the acceptance criteria of CAN4-S114 “Standard Method of Test for Determination of Non-Combustibility in Building Materials” as found in 2006 Building Code Division A, Part 1.4.1.2.
- (i) **“Open Air Burning”** shall mean the burning of brush, clean wood and clean wood products, cardboard, garden waste or vegetation where the flame is not wholly contained and is thereby open to the air;
- (j) **“Open Air Cooking Fire”** shall mean a small confined fire, supervised at all times and used to cook food on a grill or a barbecue and not to exceed 2’ wide x 2’ long and 1’ in height of burning materials;
- (k) **“Recreational Open Air Burning”** means a small wholly contained fire used for recreational purposes in accordance with the provisions of Section 2.5 herein.
- (l) **“Town”** shall mean the Corporation of the Town of Aylmer;
- (m) **“Unauthorized Open Air Burning”** shall mean all open air burning that has not been approved by the Fire Chief, with the exception of a Open Air Cooking Fire that meets the definition in Item 1. (d);

1.2 Administration

This By-Law shall be administered by the Fire Chief, By-Law Enforcement Officer and Police Officers of the Town of Aylmer.

1.3 Fire Services – Exempt

The Town of Aylmer Fire Department shall be exempt from the provisions of this By-Law with respect to Open Air Burning set for the purposes of educating and training individuals.

PART 2 – GENERAL PROVISIONS

2.1 Open Air Burning Regulations

- (a) Persons shall not conduct or permit to be conducted, an Open Air Burn within the boundaries of the Town of Aylmer unless permission has been granted by the Fire Chief and they are in possession of a valid Burning Permit.

2.2. Open Air Cooking Fires

All persons conducting an open air cooking fire shall comply with the following conditions:

- (a) Open Air Cooking Fires shall be in a non-combustible container or a barbecue.
- (b) An Open Air Cooking Fire shall not be located on a covered porch, veranda, or on a balcony of a multi-unit residential building.
- (c) Persons shall take steps to ensure that adjacent properties and individuals are protected from any fire hazard and are not adversely affected by the products of combustion.
- (d) The said fire shall not be in or near dry vegetation or in any other place conducive to the development or the spread of fire or explosion.
- (e) Only charcoal, clean dry wood (not pressure treated), compressed gases or other commercially manufactured fuels for the purposes of cooking food are permitted.
- (f) Open Air Cooking Fires shall be supervised at all times by a competent person.
- (g) Cooking Fires fueled by wood shall not exceed 2' wide x 2' long and 1' in height.
- (h) Persons conducting a cooking fire shall immediately extinguish the fire upon notification of the Fire Chief or designate , By-law Enforcement Officer or Police Officer of the Town of Aylmer when in his or her opinion the fire presents a hazard, or the fire is having a negative impact on persons using a highway , street or roadway adjacent to the burn site, or the burn is creating a health hazard for the persons near or adjacent to the fire site, or the regulations of this by-law are being contravened, or any combination of these matters exists or applies.
- (i) Persons shall place the barbecue on a non flammable material.

2.3 Open Air Burning Permits

Persons in possession of a valid “Burn Permit” shall adhere to the following rules:

- (a) Open air burning shall be limited to the burning of clean dry wood, clean dry wood products, cardboard, garden waste or vegetation.
- (b) Persons holding an Approved Open Air Burn Permit shall have immediately available an effective extinguishing agent of sufficient size and capability of extinguishing the fire.
- (c) Persons shall take steps to ensure that adjacent properties and individuals are protected from any fire hazard and are not adversely affected by the products of combustion.
- (d) Persons conducting an open air burn shall attend, control and supervise the fire at all times and shall completely extinguish fire and the burn site made safe after each burn.
- (e) The burn area shall not exceed 10 feet in length, 10 feet in width and 5 feet in height.
- (f) Open air burning shall be confined to an area which is at least 200 feet (60 m) from any building, highway, road, wooded area or adjacent property and shall be clear of any overhead objects (i.e. hydro wires).
- (g) Persons shall not conduct open air burning when the wind speed exceeds 20 km per hour or during rainy or foggy weather or at times when a smog alert has been issued by Ministry of the Environment and Energy of Ontario or any successor and relevant Ministry.
- (h) Persons shall not conduct an open air burn when a fire ban or restriction has been issued by the Fire Chief or the Ministry of Natural Resources.
- (i) Before issuing a Burning Permit, the Fire Chief or designate may set out any other regulations that he or she deems necessary, and the burn permit holder shall comply with any such regulations.

- (j) The burn shall take place on the property noted on the permit.
- (k) A copy of the Permit shall be with a responsible person at the burn site and shall be produced on demand by request of the Fire Chief or designate, By-law Enforcement Officer or Police Officer of the Town of Aylmer.
- (l) The Permit holder shall call Fire Dispatch before and after the burn at:
1-519-842-3495.
- (m) Open air burning shall only be conducted between 8 a.m. and sunset.
- (n) Persons conducting a burn shall immediately extinguish the fire upon notification of the Fire Chief or designate, By-law Enforcement Officer or Police Officer of the Town of Aylmer when in his or her opinion the fire presents a hazard, or the fire is having a negative impact on persons using a highway, street or roadway adjacent to the burn site, or the burn is creating a health hazard for the persons near or adjacent to the burn site, or the regulations of this by-law are being contravened, or any combination of these matters exists or applies.

2.4 Unauthorized Open Air Burning

- (a) Persons conducting an “Unauthorized Open Air Burn” in any area of the Town shall immediately extinguish the fire upon notification of the Fire Chief or designate, By-law Enforcement Officer or Police Officer of the Town of Aylmer.
- (b) Should the person conducting the “Unauthorized Open Air Burn” fail to extinguish the fire, the Fire Chief or designate, By-Law Enforcement Officer or Police Office of the Town of Aylmer may call the Aylmer Fire department to extinguish the fire. The person who owns or occupies the land on which the fire occurred shall be responsible for any and all costs incurred by the Town of Aylmer Fire Department in its efforts to extinguish the fire.

2.5 Recreational Open Air Burn

Persons having a “Recreational Open Burn” shall adhere to the following rules:

- (a) A “Recreational Open Air Burn” fire shall be wholly contained in a manufactured device such as a Chiminea or fire place designed for the out doors that has a substantially enclosed hearth and equipped with a chimney as determined by the Fire Chief or designate.
- (b) The burning appliance as mentioned above, must be located at least 3m/10ft from a structure or adjacent property and situated on non-combustible materials.
- (c) Only clean dry wood, charcoal or commercially manufactured fuels designed for this purpose shall be used.
- (d) Persons holding a “Recreational Open Air Burn” shall have immediately available an effective extinguishing agent of sufficient size and capability of extinguishing the fire.
- (e) Persons conducting a “Recreational Open Air Burn” shall attend, control and supervise the fire at all times and shall completely extinguish fire and the burn site made safe after each burn.
- (f) Persons shall not conduct a “Recreational Open Air Burn” when the wind speed exceeds 20 km per hour or during rainy or foggy weather or at times when a smog alert has been issued by Ministry of the Environment and Energy of Ontario or any successor and relevant Ministry.
- (g) Persons shall not conduct a “Recreational Open Air Burn” when a fire ban or restriction has been issued by the Fire Chief or the Ministry of Natural Resources.
- (h) Persons shall not conduct a “Recreational Open Air Burn” when the smoke created by said burn affects the quality of life of the residents of the surrounding area.
- (i) “Recreational Open Air Burning” shall only be conducted between the hours of 4 p.m. and 12 p.m.

PART 3 – ENFORCEMENT

3.1 Regulations – Offence

- (a) Persons who contravenes any provision of this by-law is guilty of an offence and is liable upon conviction and at the discretion of the Presiding Justice of the Peace or Judge of the Ontario Court (Provincial Division) or other relevant Justice or Judge

or Court, to a fine pursuant to the provisions of the *Provincial Offences Act*, R.S.O. 1990 Chapter P.33, as amended.

- (b) The set fines for an offence under this by-law are set out in Schedule “A” attached hereto and form part of this By-law.
- (c) The set fines described herein shall come into force and effect upon receipt of a Judge’s Order from the Ministry of the Attorney General approving the set fines herein.

3.2 Repeated Offence-Prohibited Open Air Burning

Should any land owner or occupant repeat the offence of conducting a prohibited open air burning, the person who owns or occupies the land on which the open air burning has occurred, shall be responsible for any and all costs incurred by the Town of Aylmer Fire Department in responding to and extinguishing the prohibited open air burning.

3.3 Causing False Alarms and/or Responses

Should it be determined that the landowner or occupant of adjacent property(s) falsely notify the Town of Aylmer Fire Department or Police Department of an Open Air Burning contrary to Section 2 of this By-law, the person who owns or occupies the land in which the false call originated shall on a repeated offence be responsible for any and all costs incurred by the Town of Aylmer Fire Department for said response.

3.4 Continuation-Repetition-Prohibited by Order

The Court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted, and such order shall be in addition to any other penalty imposed on the person convicted.

3.5 Costs for Fire Department Services

If the contravention of this By-law results in the need for fire department vehicles and personnel to respond, the person responsible for the fire and/or the property owner may be charged, at the discretion of the Fire Chief, for the costs of such response according to the rates as defined from time to time in the Town’s Rates & Fees By-law or other By-law. However, nothing in any schedule of rates shall be construed as to limiting the rights of the Municipality to seek restitution for other direct or consequential damages or costs incurred beyond those listed.

3.6 Default-Collection of Costs

The Town shall have the right to collect any unpaid costs as authorized by this By-law adding such charges to the tax roll where they may be collected in like manner as municipal taxes, all of which is in accordance with Section 446 of the Municipal Act, 2001, op cit, as amended.

3.7 Enforcement

The Town’s Fire Chief, Deputy Fire Chief, Police Officers, and By-law Enforcement Officers, or designates, are hereby authorized to enforce the provisions of this By-law pursuant to the Provincial Offences Act.

PART 4 – ENACTMENT

4.1 Severability

If any section of this By-law or parts thereof shall be found by any Court to be illegal or beyond the powers of the Municipal Council of the Town of Aylmer to enact, such section or sections or parts thereof shall be deemed to be severable and all other sections or parts of this By-law shall be deemed to be separate and independent there from and shall continue in full force and effect unless and until similarly found and this By-law shall be enacted as such.

4.2 Short Title

The short title of this By-law shall be “The Open Air Burning By-Law”.

4.3 Clerk’s Authority

In the event the Ministry of the Attorney General directs or recommends housekeeping modifications or corrections to this By-law or its schedules, then pursuant to the provisions of Section 23.1 of the *Municipal Act*, 2001, the Clerk of the Town of Aylmer is hereby authorized to effect any such modification or corrections of a numerical, semantical, grammatical or descriptive nature or kind.

4.4 Effective date

This By-law shall come into force and effect on its final passage thereof.

PART 5 – REPEAL FORMER BY-LAW

5.1 By-law No. 41-07 be and is hereby repealed.

READ A First and Second time this 24th day of November, 2008.

MAYOR, Robert C. Habkirk

CLERK, Nancie J. Irving

READ A Third time and finally passed this 1st day of December, 2008.

MAYOR, Robert C. Habkirk

CLERK, Nancie J. Irving