

**BY-LAW NUMBER 5-2006
OF
THE CORPORATION OF THE CITY OF STRATFORD**

BEING a By-law to regulate the setting of open fires, including establishing the times during which open fires may be set and to repeal By-law 68-96 and all amendments thereto.

WHEREAS the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c.4, as amended (the "FPPA") provides that a council of a municipality may pass by-laws regulating fire prevention, including the prevention of the spreading of fires, and regulating the setting of open air fires, including establishing the times during which open air fires may be set;

AND WHEREAS the Council of The Corporation of the City of Stratford ("Council") deems it expedient to regulate the setting of open fires, including establishing the times during which open air fires may be set;

AND WHEREAS Council is empowered under section 128 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended to pass by-laws to prohibit and regulate public nuisances, including matters that, in the opinion of Council, are or could become or cause public nuisance;

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;

NOW THEREFORE BE IT ENACTED as a By-law of The Corporation of the City of Stratford as follows:

1.0 TITLE

1.1 This By-law shall be cited as the "Open Air Burning By-law".

2.0 DEFINITIONS

2.1 For the purpose of this By-law:

- a) "**authorized container**" means a metal drum of not more than 1.21 metres in height and 0.914 metres in diameter which is open on one end and that end is covered with a fire screen which prevents the emission of sparks or flames into the atmosphere;
- b) "**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;
- c) "**burn permit**" means a permit issued by the Fire Chief authorizing an open air fire;
- d) "**City**" means The Corporation of the City of Stratford;
- e) "**combustible waste**" means, but is not limited to used vehicle bodies, tires, oil, grease, paint, cloth, rags, plastics, kitchen waste, food, scraps,

garbage, refuse or other material which contents include the aforementioned;

- f) **"Fire Chief"** means the Fire Chief, Deputy Fire Chief, and Director of Fire Prevention for the City of Stratford Fire Department and any other person employed in or appointed to the City of Stratford Fire Department and assigned to undertake fire protection service;
 - g) **"highway"** means and includes a common and public highway, street, roadway, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, designed and intended for, or used by the general public;
 - h) **"open air burning"** means any fire in an authorized container set by any person in any open place, yard, field, or construction area which is not enclosed by a building or structure, located within the boundaries of the City of Stratford;
 - i) **"outdoor solid fuel burning appliance"** means any manufactured enclosed appliance, whether portable or fixed in place, constructed of non-combustible material, that contains a chamber located within the firebox of the appliance used to contain a combustion flame, a stack to control the flow of air or combustion gases from the appliance, a spark arrestor located at the end of the stack to control dispersement of sparks, and is enclosed on all sides;
 - j) **"permit holder"** means any person, organization, partnership, company or group that has been granted by the Fire Chief, a valid permit under this By-law for an open air burning;
 - k) **"permitted hours"** means from 9:00 am until 4:00 pm local time in the same day;
 - l) **"recreational fire"** means the burning of clean wood products in an outdoor solid fuel burning appliance for personal heating, enjoyment, religious ceremony or similar purpose, but does not include a barbecue. A recreational fire is limited in size to 0.1 cubic metre (3.4 cubic feet);
 - m) **"yard waste"** includes but is not limited to leaves, brush, grass and vegetation clippings, wood chips, peat moss and other material which contents include the aforementioned.
- 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.

3.0 BURN PERMITS

- 3.1 Any person may make application in writing to the Fire Chief for a burn permit to authorize open air burning or allow open air burning in an authorized container within the City, in accordance with the provisions of this By-law.
- 3.2 Notwithstanding section 3.1 herein, the Fire Chief may issue a burn permit to authorize open air burning or allow open air burning in a container, other than in an authorized container.
- 3.3 The applicant shall, together with his application and at the time of the application, forward payment in the amount as established from time to time in the City's User Fee By-law.
- 3.4 Where the applicant is not the owner of the land on which the fire will occur, the applicant shall together with this application and at the time of application, provide written approval of the property owner for a burn permit to be issued.

- 3.5 No permit shall be processed until payment is made. Any default in such payment shall result in the immediate revocation of the burn permit.
- 3.6 The Fire Chief may:
- a) Revoke or refuse to grant a burn permit for open air burning if the owner or occupant of the property or the permit holder has contravened the provisions of this By-law or if the owner, occupant or permit holder has not complied with any conditions attached to a permit for an open air burn that may have been imposed by the Fire Chief on a previous occasion;
 - b) Temporarily suspend a burn permit for open air burning where the temporary suspension of the permit;
 - i) Promotes compliance with the conditions of approval granted;
 - ii) Takes into consideration the conduct of the owner or occupant of the property or the permit holder;
 - iii) Takes into account the public interest;
 - iv) Takes into account the state of the premises, facilities, equipment or vehicle;
 - v) Takes into account whether or not it is a First, Second, Third, or more breach of the conditions of approval;
 - vi) Takes into account whether the owner or occupant of the property or the permit holder surrendered the permit to the Fire Chief.
- 3.7 The Fire Chief may withdraw a burn permit for an open air burning, if in the Fire Chief's opinion this By-law is being contravened.
- 3.8 Upon notification by the Fire Chief to extinguish an open air burning, the land owner, occupant or permit holder shall immediately extinguish the fire.
- 3.9 Should any land owner or occupant fail to extinguish an unapproved fire when ordered to do so by the Fire Chief, the Fire Chief may take action to have the fire extinguished and the person who owns or occupies the land on which the open air burning is located, shall be responsible for any and all costs incurred by the City of Stratford Fire Department in its efforts to extinguish the fire.

4.0 OPEN-AIR BURNING

- 4.1 Except as otherwise provided in this By-law, no person shall open-air burn or allow open-air burning without a burn permit from the Fire Chief.
- 4.2 Except as otherwise provided under this By-law, no permit holder shall set or maintain open air burning or cause open air burning to be set or maintained:
- a) except in an authorized contained;
 - b) so as to decrease the visibility on any highway so as to cause, or potentially cause an accident;
 - c) so as to cause danger to any person or structure;
 - d) in a highway, park, walkway, public land, or upon any vacant or other land owned by the City, without first having obtained permission to do so from the property owner;
 - e) so as to create an odour which causes discomfort to any person residing in the area;
 - f) when rain or fog is present;

- g) at times when a smog alert has been declared. The appropriate Federal and/or Provincial Government agency shall be used as the source for this information;
- h) when the wind is in such a direction or intensity so that the fire or smoke causes discomfort to any person or causes loss of enjoyment of normal use of the property in the immediate area;
- i) within 5 metres of an overhead wire;
- j) except during permitted hours, unless expressly authorized by a burn permit issued under the provisions of this By-law;
- k) in contravention of the *Environmental Protection Act*, R.S.O. 1990, c.E.19, as amended;
- l) burn combustible materials, plastics, rubber, animal carcasses, petroleum products, demolition debris or any other item or material which will cause excessive smoke or fumes;
- m) on land without the written permission of the owner of the land. Such permission shall be evidenced by the signature of the owner of the land on the application for the burn permit required pursuant to this By-law; or
- n) without a burn permit, and fail to immediately extinguish such fire upon the request of the Fire Chief.

4.3 Where a burn permit has been issued pursuant to this By-law, the person to whom the burn permit has been issued, is responsible for the supervision of the fire, and shall:

- a) ensure that no damage is done to any property or injury caused to any person while open air burning or allowing open air burning and shall otherwise jointly and severally be responsible for any damage or injury to persons or property as a result of open air burning or allow open air burning;
- b) ensure that the open air burning is kept at least 5 metres from any dwelling, structure, overhead wire or other combustible material;
- c) ensure that the open air burning is attended at all times by the permit holder and shall ensure that such person attends to such fire until the fire is completely extinguished;
- d) ensure that sufficient equipment and resources are available at the burn site to properly control or extinguish the fire and for ensuring that the fire is completely extinguished as may be required by the Fire Chief or otherwise at the end of the burn;
- e) ensure that the fire is completely extinguished before leaving the burn site;
- f) ensure that the Fire Chief is informed, prior to setting a fire, of the approximate time the fire will be set and extinguished and the name of the person who will be supervising such fire; and
- g) give access to the property by the Fire Chief at all times during the term of the permit.

5.0 BURN BAN

5.1 Notwithstanding the provisions of this By-law, the Fire Chief may institute a burn ban at any time, as may be deemed necessary in the opinion of the Fire Chief

and it is in the interests of public safety. No person, organization, partnership, company or group shall be entitled to a burn permit during a burn ban.

- 5.2 No person shall open air burn or allow open air burning at any time during a burn ban.

6.0 EXEMPTIONS

- 6.1 No permit shall be required for:

- a) a barbeque; or
- b) a recreational fire wholly contained within an outdoor solid fuel burning appliance.

- 6.2 The City of Stratford Fire Department shall be exempt from the provisions of this By-law for the purposes of educating and training individuals.

7.0 BARBEQUES

- 7.1 Barbeques being used to cook food shall be attended, controlled and supervised at all times by a competent person.

- 7.2 The only approved fuels for use in barbeques are commercially produced charcoal, briquets or other commercial fuels such as natural gas and propane gas that are produced specifically for the purpose of cooking.

- 7.3 Barbeques shall not be permitted on balconies.

8.0 RECREATIONAL FIRES

- 8.1 Recreational fires contained within outdoor solid fuel burning appliances specifically designed for recreational fires shall be permitted subject to the provisions of this By-law which apply.

- 8.2 No person shall burn or allow to burn, a recreational fire except:

- a) between the hours of 4:00 pm and 11:00 pm;
- b) commercially produced charcoal, briquets or clean, or dry seasoned wood shall only be used;
- c) the recreational fire shall be confined in such a manner as to preclude the escape from the fire of combustible solids such as sparks and ash;
- d) where the dimensions of the fuel being burnt are totally confined within the appliance at all times;
- e) in an outdoor location that provides a minimum of 5 metres clearance in all directions from any building, structure, overhead wire or other combustible material;
- f) with an effective extinguishing agent of sufficient size and with the capability of extinguishing the fire immediately available for use;
- g) where the recreational fire is attended, controlled and supervised at all times by a competent person and is completely extinguished before the recreational fire site is vacated.

- 8.3 No person shall burn or allow to burn, a recreational fire:

- a) when the wind is in such a direction or intensity so that the fire or smoke causes discomfort or safety risk to any person or causes loss of enjoyment of normal use of the property in the immediate area;
 - b) when rainy or foggy weather are present;
 - c) at times when a smog alert has been declared. The appropriate Federal and/or Provincial Government agency shall be used as the source for this information;
- 8.4 The owner or occupant of the land on which the recreational fire is taking place must take steps to ensure that adjacent properties are protected and that the byproducts of recreational fires do not have a negative impact on persons or the environment.
- 8.5 No person shall fail to immediately extinguish a recreational fire upon the request of the Fire Chief or enforcement officer.
- 8.6 The owner or occupant of property wherein a recreational fire is occurring must give access to the property by the Fire Chief at all times during the recreational fire.

9.0 USER FEES

- 9.1 In addition to the burn permit fee(s) required under this By-law, the Fire Chief may charge user fees for the attendance of the Fire Chief at any location to control, extinguish or regulate open air burning or recreational fires in accordance with this By-law, said user fees as set by the City's User Fee By-laws.
- 9.2 In the event that payment is not received by the City within 90 days, the outstanding balance may be collected and recovered in the same manner and in the same priority as municipal taxes.

10.0 SCOPE

- 10.1 This By-law shall apply to all land within the geographic limits of the City of Stratford.

11.0 SEVERABILITY

- 11.1 Should any section of this By-law be declared by a court of competent jurisdiction to be ultra vires or illegal for any reason, the remaining parts shall nevertheless remain valid and binding, and shall be read as if the offending section or part had been struck out.

12.0 OFFENCES

- 12.1 Any person who contravenes any provision of this By-law is guilty of an offence and liable on conviction to a penalty not exceeding \$5,000 exclusive of costs and the provisions of the *Provincial Offences Act*, R.S.O. 1990, c.P.33 as amended, shall apply to the said fine.
- 12.2 In the event of a contravention of any of the provisions of this By-law, the City, in addition to any other remedies contained herein may enter upon the lands and do such work as is necessary to rectify the breach and all expenses thereof which shall be recoverable from the owner(s) in the same manner and in the same priority as municipal taxes.
- 12.3 A burn permit issued under this By-law may be revoked by the Fire Chief if the permit holder fails to comply with the requirements of the permit and/or any of the provisions of this By-law.

13.0 ADMINISTRATION AND ENFORCEMENT

- 13.1 The City of Stratford Fire Department is responsible for the administration of this By-law.
- 13.2 Any Police Officer or Municipal Law Enforcement Officer of the City designated by Council for the purpose of this Section is authorized to enforce this By-law.

14.0 REPEAL

- 14.1 Upon the passage of this By-law, By-law 68-96 and all amendments thereto, shall be repealed.
- 14.2 Any existing investigation, legal proceeding or remedy under By-law 68-96 shall be continued as if By-law 68-96 had not been repealed.

15.0 ENACTMENT

- 15.1 This By-law shall come into force and effect immediately upon the passing thereof.

Read a FIRST, SECOND and THIRD time and

FINALLY PASSED this 9th day of January, 2006.

Mayor – Daniel B. Mathieson

Clerk – Joan L. Thomson