

THE CORPORATION OF THE TOWNSHIP OF WELLESLEY

BY-LAW NO. 47/2017

Being a by-law to regulate open air fires within the Township of Wellesley
and to repeal By-law 50/2015

WHEREAS section 7.1(1)(b) of the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c. 4, as amended (the “**Act**”), states 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(3) of the Act states that a by-law under that section may deal with distinct areas of the municipality differently;

AND WHEREAS section 7.1(4) of the Act states 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 that section are being complied with;

AND WHEREAS section 10(1) of the Act states the Fire Marshall may delegate any power or duty that is granted to or vested in the Fire Marshal under this Act to any person or class of persons, subject to such limitations, restrictions, conditions and requirements as may be set out in the delegation.

AND WHEREAS section 11(1)(a) of the Act states the fire chief and every fire department are assistants to the Fire Marshal and shall follow the Fire Marshal’s directives in carrying out the Act;

AND WHEREAS section 128(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended provides that a local municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of council, are or could become or cause public nuisances;

NOW THEREFORE the Council of The Corporation of the Township of Wellesley enacts as follows:

Definitions

1. In this by-law:

“**Act**” means the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c. 4, as amended;

“**Air Quality Advisory**” means an advisory issued by the Ministry of the Environment with respect to air quality;

“**Barbeque**” means a portable or fixed manufactured device or structure designed, intended and used solely for the purpose of cooking of food in open air, but does not include structures designed for personal warmth, fire pits, outdoor fireplaces, chimineas or campfires;

“**Building**” means a building as defined in subsection 1(1) of the *Building Code Act, 1992*, S.O. 1992, c. 23, as amended;

“**Combustible**” means capable of catching fire and burning;

“**Contained Site Camp Fire**” means an Open Air Fire that occurs within a circle of stones, bricks, concrete, or a truck or tire rim, of a maximum diameter of 60 cm (24 inches), that is set and maintained for the purposes of cooking food, providing warmth or recreational enjoyment;

“**Contained Fire**” means a fire that is contained in a Barbeque, fire pit, chiminea or similar vessel specifically designed to contain fire and heat;

“**Council**” means the Council of the Township;

“**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;

“**Fire Ban**” means a period of time during which the Fire Chief declares a total ban on Open Air Fires;

“Fire Chief” means the person appointed by Council pursuant to sections 6 (1), (2) or (4) of the Act, or his or her designate;

“Ground Cover” means any vegetation that grows over an area of the ground;

“Hazardous Fumes” means fumes that result from burning hazardous materials including plastics, flammable or combustible liquids, hazardous substances, drywall, demolition waste, construction waste, paint, biomedical waste, tar, asphalt products, battery boxes, pressure-treated wood, creosote-treated wood, and painted wood;

“Highway” means a common and public highway and includes any bridge, trestle, viaduct or other structure forming part of the highway and, except as otherwise provided, includes a portion of a highway;

“Lose Control” means a state of control that increases the risk of the spread of a fire or is adverse to public safety;

“Municipal Law Enforcement Officer” means a person appointed by the Township under s. 15 of the *Police Services Act*, R.S.O. 1990, c. P.15, as amended;

“Obnoxious Odours” means odours that result from burning noxious materials including 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;

“Open Air Fire” means a fire that takes place outside of a building;

“Owner” means the registered owner of a property;

“person” means an individual, corporation, unincorporated association or partnership;

“Region” means the Regional Municipality of Waterloo;

“Rural Area” means any property in the Township that is zoned agricultural;

“Township” means The Corporation of the Township of Wellesley; and,

“Unattended” or **“Unsupervised”** means when no one is actively monitoring an open air fire or when someone is actively monitoring an open air fire but is incapable of controlling the open air fire;

General Prohibitions

2. No person shall set or maintain an Open Air Fire, or permit an Open Air Fire to be set or maintained, at any time without a permit from the Township.
3. No person shall leave an Open Air Fire Unattended or Unsupervised, or permit an Open Air Fire to be Unattended or Unsupervised, at any time.
4. No person shall contravene any of the conditions of a Contained Site Camp Fire that are set out in **Schedule “A”**.
5. No person shall contravene any of the conditions of an Open Air Fire permit, including those set out in **Schedule “B”**.
6. No person shall burn anything, or permit anything to be burnt, in an Open Air Fire so as to create Obnoxious Odours or Hazardous Fumes.
7. Without limiting the generality of section 6 of this by-law, no person shall burn, or permit to be burnt, in an Open Air Fire:
 - (a) waste or rubbish;
 - (b) plastics;
 - (c) asphalt products;
 - (d) painted or stained wood;
 - (e) plywood and other laminates;
 - (f) pressure treated wood;

- (g) hazardous substances; or
 - (h) flammable or Combustible liquids of any kind.
8. No person shall burn anything, or permit anything to be burnt, in an Open Air Fire so as to cause a decrease in visibility on a Highway.
 9. No person shall, at any time, Lose Control of a permitted Open Air Fire.
 10. No person shall set, light, ignite, or maintain an Open Air Fire, or permit an Open Air Fire to be set, lit, ignited, or maintained, during a Fire Ban.

Exemptions

11. This by-law shall not apply to:
 - (a) the Township;
 - (b) the Region;
 - (c) a Contained Site Camp Fire, provided that the regulations contained in **Schedule "A"** are complied with; or,
 - (d) Contained Fires.

Permits

12. An Open Air Fire permit shall be issued by the Fire Chief.
13. Any person, at least eighteen (18) years of age or older, may apply to the Fire Chief to be granted a permit to have an Open Air Fire.
14. An application for an Open Air Fire shall be completed and submitted to the Township in the form prescribed by the Fire Chief and shall require, at a minimum, the following:
 - (a) the name and address of the applicant(s);
 - (b) an Owner's written consent to the Open Air Fire, if the applicant is not the Owner of the property on which the Open Air Fire is to occur;
 - (c) the name and address of the organization(s) represented by the applicant(s), if applicable;
 - (d) the purpose or rationale, if any, behind having an Open Air Fire;
 - (e) the date(s), time(s) and location(s) of the proposed Open Air Fire;
 - (f) the name of the contact person or persons who will be supervising the Open Air Fire;
 - (g) the applicable fee, as set out in the Township's Fees and Charges By-Law, as amended; and,
 - (h) such further and other information as the Fire Chief may request.
15. Once a complete application has been received by the Township, the Fire Chief shall review the application and may:
 - (a) issue a permit, subject to the Standard Conditions outlined in **Schedule "B"**;
 - (b) deny a permit; or,
 - (c) issue a permit, subject such additional or other conditions as the Fire Chief deems reasonably necessary.
16. In determining whether or not to issue or deny a permit, the Fire Chief shall consider the following:
 - (a) the health and safety of the citizens of the Township;
 - (b) the general intent and purpose of this by-law; and,

- (c) whether the applicant(s) have complied with previous permits that have been issued under this by-law.
17. All permits issued by the Fire Chief shall specify the time period during which the permit is effective. If no time period is indicated on the permit, then the permit shall automatically expire sixty (60) days after its issuance.

Indemnification

18. All applicants shall indemnify and save harmless the Township from any and all claims, demands, causes of action, losses, costs or damages that the Township may suffer, incur or be liable for resulting from the issuance of an Open Air Fire permit as set out in this by-law or its predecessor, whether with or without negligence on the part of the applicant, the applicant's employees, directors, contractors and agents.

Revocation of Permits

19. The Fire Chief may immediately revoke an Open Air Fire permit if, in the opinion of the Fire Chief:
- (a) any of the conditions of a Contained Site Camp Fire that are set out in **Schedule "A"** are being contravened;
 - (b) any of the conditions of an Open Air Fire permit, including those set out in **Schedule "B"**, are being contravened;
 - (c) the provisions of this or any other Township by-law are being contravened; or,
 - (d) a Dangerous Condition exists at or near the location of the Open Air Fire.

Fire Ban

20. Notwithstanding any other provision of this by-law, the Fire Chief may issue a complete ban on any and all Open Air Fires in the Township, including a Contained Site Camp Fire and a Contained Fire, for a specified period of time if, in the Fire Chief's opinion, drought conditions are occurring that increase the potential fire hazard.
21. Any Open Air Fire permits in effect during a Fire Ban shall be deemed to be immediately revoked.
22. The Fire Chief shall declare a Fire Ban by posting a notice of the Fire Ban on the Township's official website prior to or at the time of the Fire Ban taking effect.

Inspections

23. The Fire Chief or a Municipal Law Enforcement Officer may enter upon land and into structures at any reasonable time to inspect the land and structures to determine whether this by-law is being complied with.
24. Prior to a permit being issued under this by-law, the Fire Chief may require an inspection of the property for which an Open Air Fire permit is being applied and/or inspect the materials that are proposed to be burnt.

Hindrance or Obstruction

25. No person shall hinder or obstruct, or attempt to hinder or obstruct, those individuals charged with the enforcement of the by-law from carrying out their duties under this by-law.

Order to Extinguish

26. If the Fire Chief or a Municipal Law Enforcement Officer are satisfied that this by-law has been, or is being, contravened, then the Fire Chief or Municipal Law Enforcement Officer may order that an Open Air Fire be immediately extinguished and, if that order is not being complied with, may use all reasonable methods to extinguish the Open Air Fire themselves.

Order to Discontinue Activity

27. Where the Fire Chief or a Municipal Law Enforcement Officer has reasonable grounds to believe that a contravention of this by-law has occurred, the Fire Chief or Municipal Law Enforcement Officer may make an order requiring the person who contravened this by-law, or who caused or permitted the contravention, or the Owner of the land on which the contravention occurred, to discontinue the contravening activity..
28. An order under s. 27 of this by-law shall set out:
 - (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and,
 - (b) the date by which there must be compliance with the order.
29. Any person who contravenes an order under s. 27 of this by-law is guilty of an offence.

Work Order

30. Where the Fire Chief or a Municipal Law Enforcement Officer has reasonable grounds to believe that a contravention of this by-law has occurred, the Fire Chief or Municipal Law Enforcement Officer may make an order requiring the person who contravened this by-law, or who caused or permitted the contravention, or the Owner of the land on which the contravention occurred, to do work to correct the contravention.
31. An order under s. 30 of the by-law shall set out:
 - (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and,
 - (b) the work to be done and the date by which the work must be done.
32. An order under s. 30 of this by-law may require work to be done even though the facts which constitute the contravention of this by-law were present before this by-law came into force.
33. Any person who contravenes an order under s. 30 of this by-law is guilty of an offence.

Remedial Action

34. If a person fails to do a matter or thing, including comply with an order under this by-law, as directed or required by this by-law, the Township may, in default of it being done by the person directed or required to do it, do the matter or thing at the person's expense. The Township may recover the costs of doing a matter or thing from the person directed or required to do it by action or by adding the costs to the tax roll and collecting them in the same manner as municipal taxes.
35. The costs outlined in s. 34 of this by-law shall include interest calculated at a rate of 15 per cent per annum, calculated for the period commencing on the day the Township incurs the costs and ending on the day the costs, including the interest, are paid in full.
36. The amount of the costs, including interest, constitutes a lien on the land upon the registration in the proper land registry office of a notice of lien. The lien is in respect of all costs that are payable at the time the notice is registered plus interest accrued to the date the payment is made. Upon receiving payment of all costs payable plus interest accrued to the date of payment, the Township shall register a discharge of the lien in the proper land registry office.

Enforcement

37. The Fire Chief shall be responsible for the administration of this by-law.
38. This by-law may be enforced by the Fire Chief, an Assistant to the Fire Marshal, a Municipal Law Enforcement Officer or a Police Officer.

Penalties

39. Every person who contravenes a provision of this by-law is guilty of an offence and, upon conviction, is liable to a fine as provided for in the *Provincial Offences Act*, R.S.O 1990, Chapter 33, as amended.

40. When a person has been convicted of an offence under this by-law, any court of competent jurisdiction thereafter may, in addition to any other penalty imposed, make an order prohibiting the continuation or repetition of the offence by the person convicted.

Fees & Charges

41. Council may impose fees and charges to recover its costs in relation to the administration and enforcement of this by-law.
42. Every person who contravenes a provision of this by-law shall, in addition to any penalty provided for herein, be liable to the Township for all fees, charges and expenses incurred by the Township in order to investigate, administer and enforce this by-law and such fees, charges or expenses may be added to the person's tax roll and collected in the same manner as municipal taxes.
43. Every person who sets an Open Air Fire without a permit or who contravenes the conditions of a permit, shall, in addition to any penalty provided for herein, be liable to the Township for all fees, charges and expenses incurred by the Township in order to investigate, control and/or extinguish any Open Air Fire and includes the cost of any attendances at the location of the Open Air Fire by the Township's Fire Department. The fees, charges or expenses incurred by the Township may be added to the person's tax roll and collected in the same manner as municipal taxes.

Short Title

44. This by-law shall be known as the "Open Air Fire By-Law".

Severability

45. If a Court of competent jurisdiction should declare any section or part of a section of this by-law to be invalid, such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of this by-law and it is hereby declared that the remainder of this by-law shall be valid and shall remain in full force and effect.

Schedules

46. **Schedules "A" through "C"** which are attached hereto shall form a part of this by-law.

Repeal

47. By-Law 50/2015 is hereby repealed.

Coming Into Force

48. This by-law shall come into force and effect on January 1, 2018.

Read a first and second time this 10th day of October, 2017.

Mayor Joe Nowak

Grace Kosch Clerk

Read a third and final time and passed this 10th day of October, 2017.

Mayor Joe Nowak

Grace Kosch Clerk

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SCHEDULE "A" – CONTAINED SITE CAMP FIRES

The following conditions shall apply to all Contained Site Camp Fires:

1. The minimum distance between a Contained Site Camp Fire and buildings, structures, hedges, fences, Highways, Combustibles or overhead wires shall be three (3) metres.
2. The minimum distance from a Contained Site Camp Fire to a property line shall be three (3) metres.
3. Combustible Ground Cover shall be removed within two (2) metres of a Contained Site Camp Fire.
4. Only clean, dry wood shall be burnt in a Contained Site Camp Fire.
5. Contained Site Camp Fires shall not be permitted on days when:
 - (a) there is an Air Quality Advisory in effect;
 - (b) atmospheric conditions such as rain or fog may cause smoke to remain close to ground level; or,
 - (c) wind speeds are high or wind directions are changing frequently, which could allow a fire to spread rapidly.
6. No person shall leave a Contained Site Camp Fire Unattended or Unsupervised, or permit a Contained Site Camp Fire to be Unattended or Unsupervised, at any time.
7. No person shall burn anything, or permit anything to be burnt, in a Contained Site Camp Fire, so as to create Obnoxious Odours or Hazardous Fumes.
8. Without limiting the generality of section 7 of this Schedule, no person shall burn, or permit to be burnt, in a Contained Site Camp Fire:
 - (a) waste or rubbish;
 - (b) plastics;
 - (c) asphalt products;
 - (d) painted or stained wood;
 - (e) plywood and other laminates;
 - (f) pressure treated wood;
 - (g) hazardous substances; or
 - (h) flammable or Combustible liquids of any kind.
9. No person shall burn anything, or permit anything to be burnt, in a Contained Site Camp Fire so as to cause a decrease in visibility on a Highway.
10. No person shall, at any time, Lose Control of a permitted Contained Site Camp Fire.
11. An appropriate extinguishing agent such as water, fire extinguisher or sand shall be present at all times within two (2) metres of the Contained Site Camp Fire until the fire is fully and completely extinguished.
12. Flames from a Contained Site Camp Fire shall not exceed 60cm in height at any time.

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SCHEDULE "B"

STANDARD TERMS AND CONDITIONS FOR OPEN AIR FIRE PERMITS

In addition to the requirements set out in this by-law, and any other conditions imposed, the following conditions shall apply to all Open Air Fire permits:

1. No person shall burn anything, or permit anything to be burnt, in an Open Air Fire within 30 meters of any building, structure, hedge, fence, overhead wiring or Highway.
2. No person shall burn anything, or permit anything to be burnt, in a pile larger than 4.5 meters in diameter and 2.4 metres in height.
3. Sufficient water or other fire retardant equipment shall be readily available within two (2) metres of the Open Air Fire to keep the Open Air Fire under control.
4. The applicant(s) shall notify Fire Dispatch at least two (2) hours prior to the commencement of an Open Air Fire and within one (1) hour of its completion.
5. Open Air Fires shall be immediately extinguished if the smoke arising therefrom creates a nuisance or by order of the Fire Chief, an Assistant to the Fire Marshal, a Municipal Law Enforcement Officer or a Police Officer.
6. Open Air Fire permits shall be deemed to be void on days when:
 - (a) there is an Air Quality Advisory in effect;
 - (b) atmospheric conditions such as rain or fog may cause smoke to remain close to ground level; or
 - (c) wind speeds are high or wind directions are changing frequently, which could allow a fire to spread rapidly.

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SCHEDULE "C" – SET FINE SCHEDULE

PART I - PROVINCIAL OFFENCES ACT

COLUMN 1 DESCRIPTION OF OFFENCE Short Form Wording		COLUMN 2 PROVISION CREATING OR DEFINING OFFENCE	COLUMN 3 SET FINE (Includes Costs)
1.	Burn or permit to burn without a permit	s. 2	\$200.00
2.	Failing to supervise fire at all times	s. 3	\$200.00
3.	Burn or permit to burn materials that creates obnoxious odours or hazardous fumes	s. 6	\$200.00
4.	Burn or permit to burn waste or rubbish	s. 7(a)	\$200.00
5.	Burn or permit to burn plastics	s. 7(b)	\$200.00
6.	Burn or permit to burn asphalt products	s. 7(c)	\$200.00
7.	Burn or permit to burn painted or stained wood	s. 7(d)	\$200.00
8.	Burn or permit to burn plywood or other laminates	s. 7(e)	\$200.00
9.	Burn or permit to burn pressure treated wood	s. 7(f)	\$200.00
10.	Burn or permit to burn hazardous substances	s. 7(g)	\$200.00
11.	Burn or permit to burn flammable or combustible liquids	s. 7(h)	\$200.00
12.	Burn or permit to burn a fire during a Fire Ban	s. 10	\$200.00
13.	Failing to adhere to Contained Site Camp Fire Requirements	s. 4	\$200.00
14.	Failing to adhere to permit requirements	s. 5	\$200.00
15.	Lost control of a permitted fire	s. 9	\$200.00
16.	Fail to comply to discontinue activity	s. 29	\$200.00
NOTE: Penalty provision for the offences indicated above is Section 39 of By-Law xx/2017, a certified copy of which has been filed.			