



The Corporation of the City of Cornwall
Regular Meeting of Council
Notice of Motion

Department: Corporate Services
Division: Clerk's Division
Report Number: 2020-305-Corporate Services
Meeting Date: July 13, 2020
Subject: A By-law to regulate open-air burning of solid fuels within the boundaries of the municipality and to repeal By-law #2014-063

Proposed by: Councillor Todd Bennett

Seconded by: Councillor Syd Gardiner

Whereas the Municipal Act, S.O. 2001, c. 25, Part III, Section 130 authorizes the municipality to regulate matters not specifically provided for by this Act or any other Act for the purposes related to the health, safety and well-being of inhabitants of the municipality; and

Whereas the Municipal Act, S.O. 2001, c. 25, Part III, Section 128 that a 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, and the opinion of Council if arrived at in good faith is not subject to review by any court; AND Council is of the opinion that the setting of open air fires are or could become or cause public nuisances by creating negative health effects on neighbouring residents, increasing fire exposure hazards, infringing the enjoyment of the use of neighbouring properties, and generating false fire alarms; and

Whereas the Fire Protection and Prevention Act, S.O.1997, Chapter 4 Part II, Sections 7.1(a) 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

Whereas the Fire Protection and Prevention Act, S.O.1997, Chapter 4 Part II, Sections 7.1b) 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 the Fire Code Ontario Regulation 213/07 made under the Fire Protection and Prevention Act, S.O.1997, Div. B Part 2 Sentence 2.4.4.4.(1) as amended states that open-air burning shall not take place unless it has been “approved”, or the open-air burning consists of a small, confined fire that is used to cook food on a grill, barbecue or spit, commensurate with the type and quantity of food being cooked, and supervised at all times; and

Whereas the Fire Code Ontario Regulation 213/07 made under the Fire Protection and Prevention Act, S.O.1997, Div. A Part 1 Sentence 1.4.1.2 defines the term “Approved” as meaning approved by the Chief Fire Official.

Part 1 - Definitions

“Appliance” means a device to convert fuel into energy, and includes all components, controls, wiring and piping required to be part of the device.

“Barbecue or Spit” means a style of roasting where meat is skewered on a spit – a long solid rod used to hold food while it is being cooked over a grill.

“Burn Ban” means a complete prohibition on open air burning within the municipality for purposes determined by the Chief Fire Official.

“Commensurate” means suitable in amount or quality compared to something else matching in degree.

“Chief Fire Official” means the assistant to the Fire Marshal who is the Municipal Chief Fire Official or a member or members of the fire department appointed by the Municipal Chief Fire Official under Article 1.1.1.2. of Division C or a person appointed by the Fire Marshal under Article 1.1.1.1. of Division C.

“Farming Business” means a farming business as defined in the Farm Registration and Farm Organizations Funding Act, 1993, S.O. 1993, c. 21.

“Fire Department” means a group of firefighters authorized to provide fire protection services by a municipality, group of municipalities or by an agreement made under Section 3 of the Fire Protection and Prevention Act, 1997.

“Grill” means a device that cooks food by applying heat from below and is fueled with charcoal.

“Open-Air Burning” open-air burning includes bonfires, fire pits, sky lanterns and the use of various types of outdoor fireplaces (also known as a “Chimineá”). Although outdoor fireplaces can be purchased at retail outlets, it does not mean open-air burning is permitted.

“Owner” means any person, firm or corporation having control over any portion of the building or property under consideration and includes the persons in the building or property.

“Permit” means a permit issued by the Chief Fire Official to set a fire in the Open Air for a specified time period.

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

“Noxious Materials” includes 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;

“Nuisance” means any intrusive impact that reduces the ability of a person to utilize their property or cause a safety risk such as excessive smoke, smell, airborne sparks or embers that is likely to disturb others, or that is likely to reduce visibility on roads in the vicinity of the Open Air Burning or that has potential to cause health risk;

“Supervised” to watch a person or activity to make certain that everything is done correctly and safely.

“Wind Speed” means the wind speed for the City of Cornwall as reported on the Environment Canada website.

“Yard Waste” means any organic materials removed from plants and deemed as waste.

Now therefore the Council of the Corporation of the City of Cornwall enacts as follows:

Part 2 - General

2.1 No person shall set, maintain, or permit to be set or maintained, an Open Air Burning except as authorized under this By-law.

2.2 This By-law shall not apply to:

- a) a person using a Barbeque to cook food;
- b) a person using a fire in a device installed outside of a building that is used as a source of heat or power for the building or that is ancillary to a manufacturing process, and provided that such device is certified for the purpose by a recognized agency;
- c) the City, City contractors or City Officers for the purposes of education and training individuals;
- d) a person conducting fire extinguisher training who has obtained approval of the Chief Fire Official or designate.

2.3 No person shall set, maintain, or permit to be set or maintained, an Open Air Burning if the Chief Fire Official has imposed a Burn Ban within the municipality.

Part 3 – When Open Air Burning Allowed

3.3 (1) A person may conduct an Open Air Burning if the person has been issued a Permit, and if the person complies with all the conditions set out in this Part.

(2) Outdoor fire pits and gas fired bowls fueled by ethanol, propane or natural gas, are allowed if the appliance is designed and certified for outdoor use, and has been assembled and installed in accordance with the manufacturer’s instructions and the requirements of the Technical Standards and Safety Act, 2000.

(3) Every Permit is subject to the conditions in this Part of obtaining and continuing to hold a Permit, all of which shall be performed and observed by the applicant or the holder of the Permit:

- (a) the applicant shall apply for a permit through the City's process, and pay the Permit Fee as set out in the applicable Fees and Charges By-law;
- (b) the applicant must own the property or must have written consent from the owner in which the Open Air Burn is to be conducted;
- (c) the Permit Holder shall produce the Permit on demand to an Officer conducting an inspection of the Open Air Burning;
- (d) shall only conduct the Open Air Burning between the dates of May 1st to September 30th annually;
- (e) shall only conduct the Open Air Burning from 6:00 PM to midnight;
- (f) shall only use a non-combustible container, and shall contain the fire within it at all times;
- (g) shall not have a fire larger than 45 centimetres in length, by 45 centimeters in width, by 45 centimeters in height;
- (h) shall locate the Open Air Burning at least 7.5 metres away from any building, structure, property line, tree, hedge, fence, roadway, overhead wire or other combustible article;
- (i) any additional requirements or exemptions the Chief Fire Official considers necessary in the interest of public safety, or to minimize inconvenience to the general public, or advisable in the circumstances, or to give effect to the objects of this By-law; and
- (j) the Permit Holder shall indemnify and save harmless The Corporation of the City of Cornwall and its employees from any and all claims, demands, causes of action, costs or damages that the City may suffer, incur or be liable for resulting from the Open Air Burning as set out in this by-law, whether with or without negligence on the part of the Permit Holder, the Permit Holder's employees, directors, contractors and agents.

(4) An application for a permit must be completed on the forms provided by the Cornwall Fire Services of The Corporation of the City of Cornwall.

(5) A Permit shall only be valid for three years from date of purchase.

(6) The Chief Fire Official may refuse to issue a Permit:

- (a) if the proposed Open Air Burning would contravene this By-law; or
- (b) if the Owner or Permit Holder has previously contravened any Permit conditions or other provisions of this By-law, or an Order under this By-law.

Conditions of All Open Air Burning Under this Part

3.4 Every person setting, permitting to be set, maintaining, or permitting to be maintained, an Open Air Burning authorized under this Part shall comply with the following conditions:

- (a) shall allow, at any reasonable time, an Officer to inspect the location or proposed location of the Open Air Burning;
- (b) shall have legal title to the property at which the Open Air Burning is to occur, or the person, or Permit Holder, as the case may be, shall obtain the prior written consent of the person having legal title to the property;
- (c) shall only burn clean, cured, seasoned hard wood;
- (d) shall not burn Noxious Materials,
- (e) shall not burn Yard Waste;
- (f) shall have a rake or shovel and an effective extinguishing agent of sufficient size and with the capability of extinguishing the Open Air Burning immediately available for use;
- (g) shall attend, always control and supervise the Open Air Burning . The Open Air Burn must be supervised by a person who, in addition to holding a valid permit, must be at least 18 years of age;
- (h) shall completely extinguish the Open Air Burning before the site is vacated;
- (i) shall ensure the Wind Speed does not exceed 15 km per hour during the Open Air Burning;
- (j) shall not burn if it is rainy or foggy;
- (k) shall not burn if a Smog Alert has been declared for SD&G;
- (l) shall not burn if a Burn Ban has been implemented by the Chief Fire Official;

- (m) shall comply with the provisions of the Environmental Protection Act, R.S.O. 1990, c.E.19, as amended;
- (n) shall protect adjacent properties from the potential spread of fire; and
- (o) shall extinguish immediately any Open Air Burning that creates a Nuisance
Any permit holder that is required to extinguish a fire under this condition may ignite a fire after a waiting period of 24 hours if conditions above are met.

Part 4 – Open Air Burning Allowed

4.1 (1) Normal Farming Operations: A person may conduct an Open Air Burning if it is part of a normal farm practice carried on as part of an agricultural operation, as those terms are defined in the Farming and Food Production Protection Act, 1998, S.O. 1998, c.1, on lands zoned for agricultural use, and subject to the conditions set out in this Part.

(2) A person conducting an Open Air Burning under subsection (1) shall comply with the following conditions:

- (a) follow conditions and restrictions imposed by the Chief Fire Official.
- (b) notify Cornwall Fire Services' Communications Centre in person or by telephone prior to the Open Air Burning and at the conclusion of the Open Air Burning, and shall provide Cornwall Fire Services' Communications Centre with their municipal address;
- (c) not have a fire larger than 2 metres in length, by 2 metres in width, by 2 metres in height; and
- (d) locate the Open Air Burning at least 50 metres away from any building, structure, property line, tree, hedge, fence, roadway, overhead wire or other combustible article.
- (e) an open air burn that impedes a roadway or highway with smoke will be extinguished immediately.

(3) agricultural open air burns will not be permitted when there is a burn ban implemented by the Chief Fire Official.

(4) the conditions in subsection 4.1(2) shall not apply to fires under subsection 4.1(1) that are used to burn off dried vegetation along fence lines and in culverts.

4.2 (1) Open Air Burning Fires for the purpose of Clearing Land (non-agricultural) Open air burning for the purpose of clearing land may be permitted by the Chief Fire Official.

(2) A permit for the purpose of clearing lands will be valid for a time as determined by the Chief fire Official

(3) The Chief Fire Official shall provide restrictions as part of the permit process.

4.3 (1) Open Air Burning at Events: The Chief Fire Official may permit Open Air Burning to occur for any event using an occasional burning permit.

(2) An Occasional Burning Permit will only be valid for the date of the event.

(3) The Chief Fire Official shall provide restrictions as part of the permit process.

Part 5 – Order to Discontinue Activity

5.1 If the Chief Fire Official is satisfied that this By-law or any restrictions imposed through a permit process by the Chief Fire Official have been contravened, the Chief Fire Official may make an order requiring the person who contravened the by-law or restrictions, or who caused or permitted the contravention, or the owner or occupier of the land on which the contravention occurred, to discontinue the contravention. An order under this Part shall be known as an Order to Discontinue Activity, and such an Order can require a person not to conduct an Open Air Burning..

5.2 An Order to Discontinue Activity shall set out:

- (a) the municipal address of the property on which the contravention occurred;
- (b) the date of the contravention;
- (c) the contravention of the By-law;
- (d) the date by which there must be compliance with the order;
- (e) the date on which the order expires.

5.3 The Order to Discontinue Activity may be served personally on the person to whom it is directed or by regular mail to the last known address of that person, in which case it shall be deemed to have been given on the third day after it is mailed.

Part 6 - Order to Extinguish

6.1 If an Officer is satisfied that this By-law has been contravened, the Officer may issue an Order to Extinguish requiring the person contravening the By-law to immediately extinguish the fire.

6.2 An Order to Extinguish shall set out:

- (a) the municipal address of the property on which the fire is located;
- (b) the date of the inspection;
- (c) the contravention of the By-law;
- (d) that the fire is to be extinguished immediately
- (e) a notice that if the fire is not extinguished immediately, the municipality may extinguish the fire at the expense of the owner and the cost of the work may be recovered by adding the amount to the owner's tax roll.

6.3 The Order to Extinguish may be served personally on the person to whom it is directed or by regular mail to the last known address of that person, in which case it shall be deemed to have been given on the third day after it is mailed.

Part 7 - Remedial Action – Costs

7.1 (1) Should a person default in complying with an Order to Discontinue Activity or an Order to Extinguish, the fire may be extinguished at the person's expense.

(2) The City may enter on land at any reasonable time for the purpose of extinguishing a fire under subsection (1).

(3) The power of entry under this Part shall be exercised by an employee, officer or agent of the City, member of the Cornwall Fire Services, or a member of Cornwall Community Police Services. The person exercising the power of entry

must on request display or produce proper identification. The person exercising the power of entry may be accompanied by a person under his or her direction.

(4) The City may recover the costs of extinguishing the fire from the person directed to extinguish the fire by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes. The costs include interest calculated at a rate of fifteen percent (15%), calculated for the period commencing on the day the municipality incurs the costs and ending on the day the costs, including interest are paid in full. The amount of the costs, including interest, constitutes a lien on the land upon the registration of a notice of lien in the Land Registry Office.

Part 8 – Inspections Responses & Fees

Inspections and Responses

8.1 An Officer, and anyone under the Officer's direction, may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether this By-law, restrictions of a permit, an Order to Discontinue Activity, an Order to Extinguish, or an order under Section 431 of the Municipal Act, 2001 is being complied with.

8.2 For the purposes of an inspection, the Officer may:

- (a) require the production for inspection of documents relevant to the inspection;
- (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
- (c) require information from any person concerning a matter related to the inspection; and,
- (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take photographs necessary for the purposes of the inspection.

8.3 A receipt shall be provided for any document or thing removed under clause 8.2(b) and the document or thing shall be promptly returned after the copies or extracts are made.

8.4 A person exercising a power of entry shall not enter or remain in any room or place actually being used as a dwelling unless the consent of the occupier is obtained, the occupier first having been informed that the right of entry may be refused, and if refused, may only be made under the authority of an order issued under Section 438 of the Municipal Act, 2001, a warrant issued under section 439 of the Municipal Act, 2001, or a warrant under Section 386.3 of the Municipal Act, 2001.

8.5 The following conditions apply to a power of entry during an inspection:

- (a) shall only be exercised by an employee, officer or agent of the City or a member of Cornwall Community Police Services:
- (b) the person with the power of entry must on request display or produce proper identification;
- (c) the person exercising the power may be accompanied by a person under his or her direction.
- (d) May take such actions to extinguish an open air burn that is in violation of the By-law or permit restrictions as determined by the Chief Fire Official.

Fee

8.6 (1) Where the Officer determines that an Open Air Burning is not in compliance with this by-law or with an Order, the fee or charge set out in the applicable Fees and Charges By-law for inspecting or responding to and extinguishing the Open Air Burning may be imposed on the Owner, person responsible for the Open Air Burning, or Permit Holder.

(2) The fees imposed constitute a debt of the person to the City. The City Treasurer may add fees to the tax roll and collect them in the same manner as municipal taxes on any property for which all the owners are responsible for paying the fees.

Part 9 - Prohibitions

9.1 No person shall set or maintain Open Air Burning, or permit Open Air Burning to be set or maintained, contrary to any provision of this by-law.

9.2 No person shall contravene any conditions of a Permit issued under this By-law.

9.3 No person shall contravene any conditions of setting or maintaining an Open Air Burning under this By-law.

9.4 No person shall contravene an Order to Discontinue Activity.

9.5 No person shall contravene an Order to Extinguish.

Part 10 - Severability

10.1 In the event that any section, subsection, clause or provision of this By-Law be declared by a Court of competent jurisdiction to be invalid, the same shall not affect the validity of this By-Law as a whole or any part thereof, other than the part so declared to be invalid.

Part 11 – Enforcement and Penalties

Offences

11.1 Any person who contravenes any provisions of this By-Law is guilty of an offence as provided for in Section 28 of the Fire Protection and Prevention Act.

Collection

11.2 In addition to any penalties imposed through prosecution of an offence pursuant to this By-Law, the City is entitled to use all legal means at its disposal to collect the fees applicable pursuant to this By-Law and to recover its costs if remedial action is taken. Any and all collection methods lawfully applicable may be relied upon, including placement of unpaid fees on the tax collector's roll for property in question.

Penalties

11.3 Any person who contravenes any provisions of this By-law is guilty of an offense and, upon conviction, is subject to any applicable fines or penalties as provided in the Provincial Offenses Act.

Report Approval Details

Document Title:	By-law to regulate open-air burning of solid fuels - 2020-305-Corporate Services.docx
Attachments:	
Final Approval Date:	Jul 9, 2020

This report and all of its attachments were approved and signed as outlined below:

Manon L. Levesque - Jul 9, 2020 - 9:59 AM