

The Corporation of the City of Owen Sound

By-law No. 2022-051

A By-law to regulate open air fires in the City of Owen Sound

WHEREAS subsection 7.1(1)(b) of the *Fire Protection and Prevention Act, 1997, S.O. 1997, c. 4, as amended*, (the "Fire Protection and Prevention Act") 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 section 7.1(4) of the Fire Protection and Prevention Act, provides 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 this section are being complied with; and

WHEREAS subsection 2.4.4.4(1)(b) of the Fire Code, O. Reg. 213/07, as amended, prohibits open air burning unless approved, or unless such burning consists of a small, confined fire, supervised at all times, and used to cook food on a grill, barbeque or spit, and is commensurate with the type and quantity of food being cooked; and

WHEREAS subsection 128(1) of the *Municipal Act, 2001, S.O. 2001, c. 25, as amended*, (the "Municipal Act") provides that, without limiting sections 9, 10, and 11, a local municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council, are or could become public nuisances; and

WHEREAS subsection 425(1) of the Municipal Act permits Council to pass by-laws providing that any person who contravenes any by-law of the municipality is guilty of an offence; and

WHEREAS subsection 429(1) of the Municipal Act provides that a municipality may establish a system of fines for offences under a by-law of the municipality; and

WHEREAS section 444 of the Municipal Act provides that if a municipality is satisfied that a contravention of a by-law has occurred, the municipality may make an order requiring the person who contravened the by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity; and

WHEREAS section 446 of the Municipal Act provides that if a municipality has authority under the Act or under a by-law under this or any other Act to direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person's expense; and

WHEREAS on August 21, 2017, the Council of the Corporation of the City of Owen Sound (the "City") passed Fire By-law No. 2017-140 to regulate open air fires in the City of Owen Sound, and

WHEREAS on April 25, 2022, City Council passed Resolution No. R-220425-012 directing staff to bring forward a by-law to repeal By-law No. 2017-140 and replace it with an updated by-law to regulate open air fires in the City, in

consideration of staff report CR-22-035 presented to the Corporate Services Committee on March 24, 2022;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF OWEN SOUND HEREBY ENACTS AS FOLLOWS:

Part I. Short Title, Purpose and Scope

Short Title

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

Purpose

2. This by-law has been enacted to allow and regulate certain types of fires in a manner that:
 - a. protects the public from fire risks;
 - b. protects properties from fire damage; and
 - c. mitigates nuisance caused by smoke and odours from fires.

Scope

3. This by-law shall apply to all open air fires within the City except:
 - a. propane and natural gas fired barbecues, outdoor gas fired fireplaces or home smokers;
 - b. approved camp fires located within City owned campgrounds; or
 - c. fires for training purposes set by the Fire Department or Georgian College.

Part II. Interpretation

Headings

4. The division of this by-law into parts and the insertion of headings are for convenient reference only and shall not affect interpretation of the by-law.

References to Applicable Law

5. All references to applicable law are ambulatory and apply as amended from time to time.

Definitions

6. For the purposes of this by-law:

"City" means the City of Owen Sound and a reference to the City is a reference to the geographical area of the City of Owen Sound or to the Corporation of the City of Owen Sound as the context requires;

"Clean Dry Wood" means wood that has is free of other materials that has been allowed to dry for at least one year;

"Ceremonial or Special Purpose Fire" means a Fire for first nations ceremonial or special purposes recognized by the Fire Department and subject to the limits set out in this by-law;

"Chief" shall mean the Fire Chief or Deputy Fire Chief of the Fire Department;

"Cooking Fire" means a Fire fueled by commercially produced briquettes or charcoal subject to the limits set out in this by-law;

“Enforcing Officer” means a Police Officer, By-law Enforcement Officer, and any member of the Owen Sound Fire and Emergency Services Department;

“Fire” means any outdoor fire larger than a single match, candle or lighter with or without control of the combustion air and without a stack or chimney to vent the emitted products of combustion to the atmosphere;

“Fire Department” means the Owen Sound Fire and Emergency Services Department;

“Fire Prevention and Protection Act” means the *Fire Prevention and Protection Act, 1997, SO 1997, c. 4*;

"Multiple Dwelling Unit" means a building which contains two or more dwelling units on the property.

“Nuisance” means the excess smoke, smell, airborne sparks or embers that are likely to disturb others;

“Occupant” shall mean a person or persons over the age of eighteen years in possession or control of a property.

“Owner” includes any registered owner, occupant, resident, lessee or tenant of residential dwelling and includes any person managing any residential building on behalf of the owner.

“Person” means and includes any person, corporation, association or any other non-incorporated entity.

“Provincial Offences Act” means the *Provincial Offences Act, RSO 1990, c. P.33*; and

“Recreational Fire” means a Fire primarily for recreational purposes subject to the limits set out in this by-law.

“Townhouse” means a building divided vertically or horizontally into two or more separate dwelling units, each of which has an independent entrance either directly or through a common vestibule.

Part III. General

Fires – General

7. No person, owner or occupant shall set a Fire or allow a Fire to continue burning in the City other than a Ceremonial Fire, a Cooking Fire or a Recreational Fire.

Prohibited Locations

8. No person shall set a Fire or allow a Fire to continue burning in the following locations:
 - a. the downtown area in the City as set out in Schedule “B” of this By-law; or
 - b. any highway, park, walkway, public land, or any other land owned by or operated under agreement with the City without written permission from the City.

Prohibited Materials

9. No person shall burn prohibited materials, as set out in Schedule ‘A’ of this by-law, in the City.

Fire Safety

10. No person shall set a Fire or allow a Fire to continue burning during a smog alert or a fire ban declared by the Fire Department.
11. No person shall set a Fire or allow a Fire to continue burning without having a portable fire extinguisher, operable garden hose, water supply or other means of safely extinguishing the Fire is readily available while the Fire is burning and the Fire is monitored by a person capable of extinguishing the Fire with the extinguishing device provided.
12. No person shall ignite or release a Flying Lantern within, or that flies over, the geographical boundaries of the City.
13. No person shall set a recreational fire on a property that contains a multiple dwelling unit or townhouse.

Orders

14. Any Enforcing Officer may order the extinguishing of any Fire or order that no additional burning material be added to a Fire that:
 - a. contravenes this by-law; or,
 - b. in the opinion of the Enforcing Officer, presents or could present a safety hazard or Nuisance.
15. No person shall allow a Fire to continue burning or add additional burning material to a Fire contrary to an order issued by an Enforcing Officer.
16. In addition to any penalty set out in this by-law, any person who fails to abide by an order issued by an Enforcing Officer shall be responsible for all costs and expenses resulting from any activity by the Fire Department to control or extinguish the Fire. Where applicable, such costs shall be calculated in accordance with the City's Fees and Charges By-law.

Part IV. Cooking Fires**Combustible Materials**

17. No person shall burn or allow the burning of any material other than commercially produced briquettes, clean dry wood or charcoal in a Cooking Fire.

Fire Safety

18. No person shall set a Cooking Fire or allow a Cooking Fire to continue burning with a flame higher than 15 cm tall.
19. No person shall set a Cooking Fire or allow a Cooking Fire to continue burning unless:
 - a. the Cooking Fire is enclosed in a device manufactured for cooking and the device is setback from all combustible materials in accordance with the manufactures instructions; or
 - b. the Cooking Fire is enclosed on the bottom and all sides by non-combustible materials and the enclosure is;
 - i. less than 0.46 square meters/5 square feet in size; and
 - ii. setback 1 m from all property lines and combustible materials.
20. No person shall set a Cooking Fire or allow a Cooking Fire to continue burning unless the Cooking Fire is monitored by a person on the property capable of extinguishing the Fire until it is completely extinguished.

Part V. Recreational Fires

Combustible Materials

21. No person shall burn or allow the burning of any material other than Clean Dry Wood in a Recreational Fire.

Fire Safety

22. No person shall set a Recreational Fire or allow a Recreational Fire to continue burning unless:
- a. the Recreational Fire is enclosed in a device manufactured for Recreational Fires and:
 - i. the device is setback from all combustible materials in accordance with the manufactures instructions;
 - ii. the recreational fire is located in a container, apparatus or has a physical barrier;
 - iii. the device is setback 3 meters from buildings, structure, decks, combustibles and all lot lines;
 - iv. the fire is contained completely within the device;
 - v. the enclosure is less than 0.46 square meters/5 square feet in size; and
 - vi. the height of the flame is less than 45 cm;
23. No person shall set a Recreational Fire or allow a Recreational Fire to continue burning between 2:00 am and 2:00 pm.
24. No person shall set a Recreational Fire or allow a Recreational Fire to continue burning where:
- a. rain or fog is present; or
 - b. the wind may endanger a person or structure or cause the fire, ash or cinders to spread beyond the perimeter of the Recreational Fire.
25. No person shall set a Recreational Fire or allow a Recreational Fire to continue burning without a person capable of extinguishing the Fire constantly monitoring the Fire from a position with a direct line of sight until the Fire is completely extinguished.

Part VI. Ceremonial or Special Purpose Fires

Exemptions by Fire Chief or City Council

26. Upon request, the Chief or City Council, at their discretion, may authorize in writing an exemption to this by-law for a Ceremonial or Special Purpose Fire deemed a public benefit, subject to the following conditions:
- a. a request for a Ceremonial or Special Purpose Fire shall not be authorized which burns material that is prohibited by section 9 of this by-law;
 - b. in authorizing a fire, the Chief or City Council may, in writing, set out any terms or conditions for the Fire deemed necessary to:
 - i. protect the public from fire risks;
 - ii. protect properties from fire damage; and
 - iii. mitigate nuisance caused by smoke and odours from fires.

Exemption – General

- 27. Breach of any of the terms or conditions of an exemption shall render the exemption null and void.

Part VII. Enforcement and Penalty

Enforcement

- 28. Any Enforcing Officer may enforce the provisions of this by-law.
- 29. Any Enforcing Officer may enter on any property at all reasonable times to enforce the provisions of this by-law.
- 30. No person shall interfere with or obstruct an Enforcing Officer while performing their duties under this by-law.

Penalty

- 31. Any person, owner, occupant, organization, or business who contravenes the provisions of this by-law is guilty of an offence and, upon conviction, is subject to the penalty set out in the Provincial Offences Act.

Part VIII. Part VIII. Conflict and Transition

Conflict and Severability

- 32. In the event the provisions of this by-law are inconsistent with the provisions of the Fire Protection and Protection Act, its regulations or any other Act, the provisions of the act or regulation shall prevail.
- 33. The terms and provisions of this by-law shall be severable and should any term or provision be found by a court of competent jurisdiction to be legally unenforceable, in operative or invalid, the remainder of the by-law shall continue to be in full force and effect.

Repeal and Enactment

- 34. By-law No. 2017-140 is repealed.
- 35. This by-law shall come into full force and effect on the date it is passed at which time all by-laws, policies and resolutions that are inconsistent with the provisions of this by-law are hereby repealed insofar as it is necessary to give effect to the provisions of this by-law.

FINALLY PASSED AND ENACTED this 9th day of May 2022.

Signature on file _____
 Mayor Ian C. Boddy

Signature on file _____
 Briana M. Bloomfield, City Clerk

Schedule A to By-law No. 2022-051
Prohibited Materials

36. Prohibited materials for the purposes of section 9 of this by-law include:
- a. Agricultural waste including any animal fecal deposits or manure, and animal carcasses;
 - b. Automotive waste including used automobile and truck bodies, tires, oil, grease, paint, cloth, rags, plastics or other material, which contents include any of the aforementioned;
 - c. Compostable materials including waste products from plants, trees, or other vegetation that are naturally bio-degradable including grass clippings, leaves, tree needles, garden waste, and weeds;
 - d. Construction waste including any material resulting from, or produced by, the complete or partial construction of a structure, including, but not limited to, pipe, concrete, asphalt, roofing material, masonry, wire, treated wood, particle board, paint, painted wood, drywall, tar, and asphalt products;
 - e. Demolition waste including any material resulting from or produced by the complete or partial destruction or tearing down of a building;
 - f. Domestic waste including kitchen waste, food, scraps, cloth, rags, clothing, plastics and any other materials which contents include any of the aforementioned, including cardboard or newspaper; and
 - g. Industrial or commercial waste including any material resulting from, or produced by, any business, manufacturing process, trade, market or other undertaking.

**Schedule B to By-law No. 2022-051
No Open Air Burn District**

