

THE CORPORATION OF THE TOWN OF TECUMSEH

BY-LAW NUMBER 2007-41

(Consolidated – By-law Number 2007-51)

A by-law to regulate the setting of open air fires and identify the precautions and conditions to be observed for such fires within The Corporation of the Town of Tecumseh.

WHEREAS Council considers excessive smoke, smell, airborne sparks or embers to be or could become or cause public nuisances by creating negative health effects on neighbouring residents, increasing fire exposure hazards, infringing on the enjoyment of the use of neighbouring properties and generating false or nuisance alarms;

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

AND WHEREAS in accordance with Section 425 of the *Municipal Act* 2001, S.O. 2001, c. 25 as amended, a municipality may pass by-laws providing that a person who contravenes a by-law of the municipality passed under this Act is guilty of an offence;

AND WHEREAS Section 444 of the *Municipal Act* 2001 c. 25 states if a municipality is satisfied that a contravention of a by-law of the municipality passed under this Act 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(1) of the *Municipal Act* 2001 c.25 states that if a municipality has the authority under this or any other 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:

- 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;
- enter upon land at any reasonable time;
- 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 property taxes; and
- that costs include interest calculated at a rate of 15 per cent or such lesser rate as may be determined by the municipality, calculated for the period commencing on the day the municipality incurs the costs;
- the costs, including interest, constitutes a lien on the land upon the registration in the proper land registry office of a notice of lien;

AND WHEREAS Section 390 of the *Municipal Act* 2001 c.25 provides that a "person" includes a municipality and a local board and the Crown;

AND WHEREAS Section 426 of the *Municipal Act* 2001 c. 25 provides that no person shall hinder or obstruct, or attempt to hinder or obstruct any person exercising a power or performing a duty under this Act or a by-law under this Act and that any person who contravenes subsection (1) is guilty of an offence;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF TECUMSEH ENACTS AS FOLLOWS:

1. DEFINITIONS

In this By-law:

- 1.1 "Burning Appliance" means any device designed or engineered to have a fire set within a contained area and totally enclosed by various means of screening and/or other methods.
- 1.2 "By-law Enforcement Officer" means the municipal person appointed by the Town of Tecumseh who shall be responsible for the enforcement of the provisions of this by-law.
- 1.3 "Chief Fire Official" means the Fire Chief of the Tecumseh Fire/ Rescue Services or designate.
- 1.4 "Competent Adult" means any person (18 years of age or older) who, in the opinion of those charged with enforcement of this By-Law, is capable of exercising the required judgement and capable of performing the necessary actions to control and prevent its unwanted spread.
- 1.5 "Farmer" means the owner or operator of an agricultural operation within an area zoned for agricultural pursuant to the *Farming & Food Protection Act*, 1998.
- 1.6 "Farmlands" means land designated "agricultural".
- 1.7 "Firefighter" means any person or any rank of person employed in, or appointed to the Tecumseh Fire/Rescue Services and assigned to undertake fire protection or fire prevention services.
- 1.8 "Full Cost Recovery Basis" has the meaning as described in Schedule "A" attached hereto.
- 1.9 "Open Air" means any open place, yard, field, lot, part lot or construction area which is not enclosed by a building or structure.
- 1.10 "Open Air Burning" means any fire set in the Open Air.
- 1.11 "Owner" means the registered owner or any person, firm or corporation having control over, or possession, of any portion of the building or property under consideration and includes the persons in the building or on the property.
- 1.12 "Permit" means a permit issued by the Chief Fire Official to set a fire in the Open Air for a specified date and period of time.
- 1.13 "Person" means an individual, business, a partnership or a corporation.
- 1.14 "Pit" means an area dug into the ground and/or surrounded by materials designed to contain the fire and prevent its spread to areas beyond the Pit.
- 1.15 "Police Officer" means any member of the Ontario Provincial Police.
- 1.16 "Tenant" means the occupant having possession or Person having control of a property or premises.
- 1.17 "Town" means The Corporation of the Town of Tecumseh.

2. ADMINISTRATION AND ENFORCEMENT

- 2.1 The Chief Fire Official shall be responsible for the administration of this by-law.
- 2.2 Enforcement of this by-law is the responsibility of the Chief Fire Official, any Fire-fighter, any Police Officer or any By-law Enforcement Officer.
- 2.3 The Chief Fire Official may refuse to issue a Permit or revoke any or all issued Permits.
- 2.4 The Fire Chief, Firefighters or Police Officers may, at all times enter and inspect any property or premises in order to ascertain whether the provisions of this by-law are complied with and to enforce or carry into effect the by-law.
- 2.5 Any person who fails to comply with the provisions of this by-law or fails to extinguish a fire once notification to do so has been given to him by the Chief Fire Official, a Police Officer or a Firefighter shall, in addition to any penalty provided herein, be liable to the municipality for all expenses incurred for the purposes of controlling and extinguishing of any fire so set or left to burn and such expenses may be recovered by court action or in a like manner as municipal taxes.

3. ENVIRONMENT

- 3.1 All Open Air Burning shall comply with the provisions of the *Environmental Protection Act*, R.S.O. 1990, c. E19.
- 3.2 No Open Air Burning shall be permitted when a smog alert has been issued for the region of Essex County, which includes the Town.
- 3.3 No Open Fire shall be started or maintained when wind condition is in such direction or intensity so as to cause any or all of the following:
 - (a) decrease in visibility on any highway or roadway;
 - (b) threaten a rapid spread of fire through a grass or brush area;
 - (c) smoke which causes annoyance or irritation to adjacent persons, properties or premises.

4. GENERAL PROVISIONS

- 4.1 No Person being the Owner or Tenant in possession of lands within the Town shall allow a fire to be set or burn on such lands unless a Permit has been obtained.
- 4.2 No Person shall allow a fire to be set or burned exceeding the requirements of Sections 4.8 and 4.9.
- 4.3 Notwithstanding any provisions herein, no Person shall set or maintain a fire,
 - (a) in contravention of the *Ontario Fire Code*, the *Environmental Protection Act* or any other statutory requirements of the Province of Ontario or the Government of Canada;
 - (b) where the consumption of material or size and area of the fire will exceed the limits set by the Chief Fire Official and/or listed within this by-law in Sections 4.8 and 4.9.

- 4.4 (a) No Permit shall be required for domestic barbeques or permanent outdoor fireplaces used solely for the cooking of food on a grill and extinguished immediately upon completion of the cooking process or any Burning Appliance, or a Pit or open area where the requirements of Sections 4.8 and 4.9 are not exceeded;
- (b) installation and location of Burning Appliances must meet the manufacturer's specifications.
- 4.5 (a) A farmer who intends to set or maintain a fire in the Open Air on a specified day for disposal of vegetable matter or vegetation on Farmlands which is normal and incidental for farming purposes shall obtain a Permit to cover the period of the proposed Open Air fire, and will be required to notify the Tecumseh Fire/Rescue Services for each day that the proposed Open Air fire will take place;
- (b) an Open Air fire shall be supervised by a Competent Adult equipped with sufficient equipment to control and contain the Open Air fire to prevent the spread of the Open Air fire that would endanger or put at risk other properties or premises;
- (c) an Open Air fire shall be restricted to daylight hours only;
- (d) an Open Air fire shall be surrounded by a tilled area wide enough to prevent an Open Air fire from jumping across the tilled area and to maintain the area of the burn to be no greater than one (1) hectare in size;
- (e) the leading edge of the flame of an Open Air fire shall not exceed thirty (30) metres in length.
- 4.6 No Person shall set any fire in the Open Air to burn asphalt products, tires, treated wood, construction materials or rubble, kitchen garbage or any garbage or trash, rubber plastics and like items.
- 4.7 No Person shall set any fire in the Open Air except where permitted and only in the presence of a Competent Adult. The Competent Adult shall not leave the burning operation until such time as the fire has been completely extinguished and there is no threat of re-ignition or spreading of the fire.
- 4.8 Every Person that starts a fire in the Open Air shall ensure that there are adequate tools and/or water on hand to contain or extinguish the fire.
- 4.9 Permitted fires, except those described in Section 4.4, shall:
- (a) be kept to manageable size that shall not be greater than one (1) square metre with flames no higher than one (1) metre in height; and
- (b) in residentially zoned areas, be completely extinguished by 2:00 a.m.
(By-law No. 2007-51)
- 4.10 Every Person who sets an Open Air fire in the Town of Tecumseh shall be:
- (a) responsible and liable for any damage to property or injury to person occasioned by said fire;
- (b) liable for all costs incurred by the Town of Tecumseh, including but not limited to, the Fire/Rescue Services, including personnel and other agencies called to control and extinguish said fire on a Full Cost Recovery Basis. All fees and charges to be paid under this subsection shall be payable in the manner and subject any interest and penalties set forth in

paragraph 5 and 6 of the Administrative Fees and Charges By-law 2007-12, as may be amended or repealed from time to time;

- (c) the fees and charges under this section shall not be payable by that class of persons which have obtained a permit for an Open Air fire and complied with the terms of such permit.

- 4.11 Notwithstanding the aforementioned sections listed herein, the Fire Chief may issue a Permit upon application and approve the setting of any fire subject to the fire being adequately supervised and controlled through special conditions addressed by the Chief Fire Official.
- 4.12 No fire shall be set to dispose of commercial, industrial or construction waste or other like materials in areas zoned for commercial or industrial occupancies and such aforementioned materials shall not be transported to residential or agricultural areas for burning purposes.
- 4.13 No fires shall be set at construction and/or demolition sites for the purpose of disposing of waste, building material or rubble.

5. FIRES REQUIRING PERMITS

- 5.1 Except as provided in section 4.3 of this by-law, no Person shall set, maintain or cause to be set or maintained, a fire in the Open Air unless a Permit has been issued by the Chief Fire Official.
- 5.2 An application for a Permit must be completed on the form/forms provided by the Tecumseh Fire/Rescue Services.
(By-law No. 2007-51)
- 5.3 An application must be filed with the Chief Fire Official of the Tecumseh Fire/Rescue Services. Approved permits must be retained and presented to an attending fire official in the event that there is a need for a fire official to attend at the burn location due to complaint.
(By-law No. 2007-51)
- 5.4 In issuing a Permit under this part for Open Air Burning, the Chief Fire Official may impose any additional requirements or conditions as may be deemed necessary.

6. OFFENCES

- 6.1 (a) Any person who contravenes any of the provisions of this by-law is guilty of an Offence;
- (b) any person who hinders or obstructs a person lawfully carrying out the enforcement of this by-law is guilty of an Offence.

7. FINES

- 7.1 Every Person who is convicted of an Offence is liable to a Fine of not more than Five Thousand (\$5,000.00) Dollars as provided for in the *Provincial Offences Act*, R. S.O. 1990, Chap. P.33.

8. SEVERABILITY

- 8.1 If any section or sections of this by-law or parts thereof are found in any court to be illegal or beyond the power of Council to enact, such section or

sections or parts thereof shall be deemed severable and all other sections or parts of this by-law shall be deemed separate and independent there from and enacted as such.

9. SHORT TITLE

9.1 The short title of this by-law shall be TECUMSEH OPEN AIR BURNING BY-LAW.

10. EFFECTIVE DATE

10.1 This by-law shall come into full force and take effect on the 1st day of July, 2007.

11. REPEAL

11.1 By-law No. 2005-57 is hereby repealed.

READ a first, second, third time and finally passed this 26th day of June, 2007.

"Gary McNamara"
Gary McNamara, Mayor

"Laura Moy"
Laura Moy, Clerk

SCHEDULE "A"
By-law Number 2007-41

THE CORPORATION OF THE TOWN OF TECUMSEH
TECUMSEH FIRE/RESCUE SERVICES EQUIPMENT SERVICES RATES

"Full Cost Recovery Basis" includes any and all charges and costs howsoever incurred by the Town directly or indirectly in controlling and extinguishing the Open Air fire and shall include without limitations:

Emergency Services Rendered:

- (a) \$350.00 first hour or part thereof per piece of equipment;
- (b) \$175.00 each additional half-hour or part thereof per piece of equipment;
- (c) \$42.00 first hour or part thereof per firefighter who responds to the call;
- (d) \$27.50 for each additional hour or part thereof per firefighter until all equipment is cleaned, checked and returned to service;
- (e) the cost of all extinguishing agents required to extinguish the fire.

No Emergency Services Rendered:

- (a) \$350.00 flat rate per piece of equipment where services are not required nor provided;
- (b) \$42.00 flat rate per firefighter who responds to the call for service.