



REPORT FIR-2014-003

TO: Mayor and Members of Council

FROM: Steve Goode, Fire Chief

DATE: May 9, 2014

SUBJECT: Proposed By-law to regulate Open Air Burning
File No. C01FIR

RECOMMENDATIONS

That Report FIR-2014-003 regarding a proposed By-law to regulate open air burning be received; and

That Council enact a By-law to regulate open air burning as outlined in Schedule “A” to Report FIR-2014-003; and

That Council amend the Township’s Fee By-law to establish a fee of \$40.00 for an inspection.

DISCUSSION

Purpose

The purpose of this Report is to recommend that Council enact a new by-law to regulate open air burning.

Background

The Township passed By-law 54/2007 on November 7, 2007 to regulate open air burning.

The Fire and Rescue Committee (“Committee”) at its meeting held on November 20, 2013, discussed the need to review the Open Air Burning By-law to update the requirements and amendment to the permit process.

Subsequently, the Committee at its meeting held on January 15, 2014, reviewed the proposed by-law and passed Recommendation requesting Council to direct staff to hold a public meeting for the purpose of seeking input on the proposed by-law.

A public meeting was held on April 1, 2014.

The Fire and Rescue Committee at its meeting held on May 21, 2014 reviewed the comments made at the public meeting and supports the responses to those comments as outlined below.

Comments raised at the Public Meeting

1. Concern with the proposed \$20.00 open air burn permit fee?

Response

The fee for obtaining a permit for open air burning has been based on comparable municipalities.

The permit fee of \$20.00 is to offset the administration costs.

2. Concern that the proposed permit fee would be targeting those who have complied with the present by-law.

Response

The permit fee of \$20.00 is to offset the administration costs.

The Open Air Burning By-law states that no person shall set or permit an Open Air fire in the Township without obtaining a permit from the Township.

The By-law applies to all throughout the Township.

Refer to Section 2 of By-law

3. Clarification regarding item 4.1(i) – without a five (5) meter radius around the perimeter of the Open Air fire that is free and clear of combustible article and ground cover as the definition of “ground cover” as stated on page 2 of the proposed by-law states that “ground cover includes leaves, grass, weeds, tree needles or wood chips?”

Response

The definition of “Ground Cover” has been amended to exclude grass and weeds and now reads as follows:

“Ground Cover” includes leaves, tree needles or wood chips.

Refer to Section 1 of By-law for the definition.

4. Consider changing the By-law to permit open air burning (camp fires) after 9:00 pm.

Response

The current proposed By-law states “Notwithstanding any other provision contained in this By-law, no Person shall set or permit a fire in Open Air using an Outdoor Fireplace other than between the hours of 7:00 a.m. through 11:00 p.m.”

The hours set for open air burning have been based on comparable municipalities.

Refer to Section 6(1) of By-law

5. Explanation regarding the diameter and height of one (1) meter contained in item 4.1(f) of the proposed by-law.

Response

The allowable size for open air burning has been based on comparable municipalities.

The proposed draft By-law meets the recommendations of the Ontario Fire Code Article 2.6.3.4 and Forest Fire Prevention Act and Ontario Regulation 207/96.

Refer to Section 4.1(f) of By-law

6. Consider changing the By-law to permit open air burning in the summer months after 9:00 pm.

Response

Cooking Fires and Outdoor Fireplace burning are permitted between the hours of 7:00 a.m. through 11:00 p.m.

Current proposed draft By-law states “Open Air Fires are allowed between the hours of 7:00 a.m. through 9:00 p.m., unless otherwise permitted by this By-law or expressly authorized by the Fire Chief.

The hours set for open air burning have been based on comparable municipalities.

The proposed draft By-law meets the recommendations of the Ontario Fire Code Article 2.6.3.4 and Forest Fire Prevention Act and Ontario Regulation 207/96.

Refer to Section 4.1(c) of By-law

7. Concern regarding the restriction of 50 meters of grass, believed enforcement of this item would be difficult. Concern with a change in the 150 meter restriction in the present by-law.

Response

The current proposed By-law states “Any Person who is issued a Permit shall not set or permit a Fire in Open Air without a five (5) metre radius around the perimeter of the Open Air fire that is free and clear of combustible article and ground cover.

The allowable size for open air burning has been determined based on comparable municipalities.

The proposed draft By-law meets the minimum recommendations of the Ministry of Natural Resources.

The current Open Air Burning By-law setback of 150 metres provision is not achievable in many cases throughout the Township.

Refer to Section 4.1(h) and 4.1(i) of By-law

8. Consider cooking fire and campfires sections be contained in one area of the proposed by-law.

Response

Cooking Fire and Campfires contain separate clauses in the proposed draft By-law. Cooking Fire and Campfires do not require an open air burn permit.

Refer to Section 5(1) of By-law

9. Consider a height restriction with respect to cooking fires. The proposed by-law did not contain the same setback requirements for campfires and cooking fires.

Response

The setbacks for a cooking fire have been based on comparable municipalities.

Campfires are listed under Section 8 "Campgrounds".

The proposed draft By-law meets the recommendations of the Ontario Fire Code Article 2.6.3.4.

Refer to Sections 7 and 8 of By-law

10. Include the definition of Chiminea.

Response

The proposed draft By-law includes the definition of a Chiminea as follows:

"Chiminea" means a clay, porcelain or metal receptacle used for the purposes of burning.

Refer to Section 1 of By-law for the definition.

11. How will enforcement under clause 4.1(d) of the proposed by-law be dealt with?

Response

The enforcement of this By-law shall be conducted by an Officer.

Refer to Section 9(1) of By-law

12. Clarify why there was not enforcement of violations last year and why did the fire department not extinguish the fires and simply allowed them to burn out?

Response

The enforcement of the current By-law shall be conducted by a member of the fire department.

Fire department members investigated all previous complaints of open air burning.

13. Will an officer come out and enforce a 50 meter restriction.

Response

The enforcement of this By-law shall be conducted by an Officer. All complaints shall be investigated.

Refer to Section 9(1) of By-law

14. Will complaints of remnants of fire and excess fuel will be investigated.

Response

The enforcement of this By-law shall be conducted by an Officer. All complaints shall be investigated.

Refer to Section 9(1) of By-law

15. Suggest that the proposed open air burning times be from 6:00 a.m. as there is less wind for burning at this time of day.

Response

The hours set for open air burning have been based on comparable municipalities.

The proposed draft By-law meets the recommendations of the Ontario Fire Code Article 2.6.3.4 and Forest Fire Prevention Act and Ontario Regulation 207/96.

Open air burning before sunrise may cause a potential safety issue with fire department personnel.

Refer to Section 4.1(c)

16. Concern for the horses contained in a barn. Advised that if smoke enters the barn it can scare the horses. Concern for the safety of the animals in the barn.

Response

The following definition has been included to the By-law;

“Nuisance” as determined by the Fire Chief or their designate, or By-law, means excessive smoke, smell, airborne sparks or embers, and airborne particles of burnt materials 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.

The enforcement of this By-law shall be conducted by an Officer. All complaints shall be investigated.

Refer to Section 1 of By-law for the definition.

17. Clarify how fire bans are communicated.

Response

Fire bans will be advertised in the Wellington Advertiser, Township of Puslinch website and on Township sign(s).

18. Clarify that fires are permitted until June 8th.

Response

Yes. By-law # 54/2007 “Setting of Open Air Fires” is in effect and a permit is required.

19. Clarify as to where fire permits can be obtained?

Response

Open air burn permits can be obtained from the Township administrative office and the fire department.

20. Consider different restrictions for areas which contained barns?

Response

The restrictions set for open air burning have been based on comparable municipalities.

The proposed draft By-law meets the recommendations of the Ontario Fire Code Article 2.6.3.4 and Forest Fire Prevention Act and Ontario Regulation 207/96.

21. Concern with the Township issuing permits to individuals who have been advised not to burn?

Response

The permit holder is responsible to understand and comply with the terms and conditions of the open air burn permit.

22. Modify the By-law to allow the Fire Chief to exempt, upon request, the terms and conditions of By-law.

Response

The By-law has been amended to allow the Fire Chief to modify any conditions under section 4 of the By-law based on his evaluation of the circumstances.

Staff recommends that the Township's Fee By-law be amended to establish a \$40.00 inspection fee for any requests made to the Fire Chief to approve modifications to the terms and conditions of a permit based on his evaluation of the circumstances.

The \$40.00 fee set for open air burning inspection has been based on comparable municipalities.

Refer to Section 4(4) of By-law

Implementation

It is recommended that the By-law come into force on July 2, 2014.

Financial Implications

The fees for a obtaining a permit for open air burning have been included in the Township's Fee By-law which is reviewed on an annual basis as follows:

Annual Permit	\$20.00
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This fee will come into effect upon the passing of a new By-law to regulate open air burning.

The fee of \$40.00 for an inspection as a result of a request to modify the terms and conditions of a permit requires an amendment to the Township's Fee By-law.

Applicable Legislation and Requirements

Fire Protection and Prevention Act, S.O. 1997, c. 4

Municipal Act, S.O. 2001, c. 25

Schedule “A”

THE CORPORATION OF THE TOWNSHIP OF PUSLINCH

BY-LAW NUMBER 2014-XXX

A By-law to regulate the setting of Open Air fires
and to repeal By-law 54/2007

WHEREAS Section 7.1 (1) of the Fire Protection and Prevention Act, S.O. 1997, c. 4, as amended provides authority to the Council of a municipality to pass by-laws to regulate fire prevention including the prevention of the spreading of fires; and

WHEREAS Section 7.1 (1) of the Fire Protection and Prevention Act, S.O. 1997, c. 4, as amended provides authority to a Council of a municipality to 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 128 of the Municipal Act, S. O. 2001, as amended provides that a 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 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 the enjoyment of the use of neighbouring properties and generating false fire alarms;

NOW THEREFORE the Council of the Corporation of the Township of Puslinch enacts as follows:

1. **DEFINITIONS**

In this By-law:

“Barbeque” includes any portable appliance, hibachi or grill intended for cooking food;

“Chimineea” means a clay, porcelain or metal receptacle used for the purposes of burning;

“Cooking Fire” is used for the purposes of cooking food on a grill contained by non-combustible material such as cement blocks and rocks;

“Outdoor Fireplace” means a manufactured non-combustible enclosed container designed to hold a small fire for decorative purposes and the size of which is not larger than 1 meter in diameter and includes a Chiminea;

“Council” means the Council for the Corporation of the Township of Puslinch;

"Extinguish" means to put out or quench a fire completely, no smoke, hot or glowing embers remain;

“Fire Chief” means the Fire Chief for the Township or his/her designate;

“Gas-fired Outdoor Campfire Devices” means listed ULC or CSA gas (natural, propane) appliances;

“Ground Cover” includes leaves, tree needles or wood chips;

“Highway” includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof;

“Officer” means a police officer, Fire Chief, municipal law enforcement officer or other person appointed by by-law to enforce the provisions of this By-law;

“Open Air” means any open place, yard, field or construction area which is not enclosed by a building or structure;

“Permit” means a Permit issued pursuant to this By-law by the Township;

“Person” includes a corporation and their heirs, executors, administrators, or other legal representatives of a person to whom the context can apply according to law;

“Nuisance” as determined by the Fire Chief or their designate, or By-law, means excessive smoke, smell, airborne sparks or embers, and airborne particles or burnt materials 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;

“Smog Alert” means an alert issued by the Ministry of Environment with respect to air quality for the County of Wellington;

“Township” means the Corporation of the Township of Puslinch or the land within the geographic limit of the Corporation of the Township of Puslinch as the context requires.

2. GENERAL PROHIBITIONS

- (1) No Person shall set or permit a fire in Open Air in the Township without a current valid Permit.
- (2) No person shall set or maintain an Open Air fire in the Township other than in accordance with the terms and conditions of a Permit and the provisions of this By-law.
- (3) No person shall set or permit an Open Air fire upon any land owned by the Township without having obtained permission from the Township.
- (4) An owner of property on which an Open Air fire has been set or permitted to burn shall be deemed to have permitted the Open Air fire and assumes all responsibility.
- (5) No person under the age of eighteen (18) shall light or ignite an Open Air fire.

3. PERMIT – OPEN AIR FIRE

- (1) Every Person making an application for a Permit for an Open Air fire shall:
 - (a) submit a complete application in the form provided by the Township at least one (1) day prior to the Open Air fire;
 - (b) submit written permission of the property owner, if applicable;
 - (c) submit any other documents as may be required to substantiate compliance with any other legislation to the satisfaction of the Township;
 - (d) submit the required Permit fee in accordance with the Township’s Fee By-law.
- (2) A Permit is valid for the current calendar year in which it is issued.

- (3) A Permit is not transferable.
- (4) The Fire Chief may refuse to issue a Permit where a Person has previously failed to comply with the terms and conditions of a Permit or the provisions of this By-law.

4. **TERMS AND CONDITIONS OF PERMIT**

- (1) Any Person who is issued a Permit shall not set or permit a fire in Open Air:
 - (a) when the wind speed exceeds sixteen (16) kilometers per hour;
 - (b) during a Smog Alert;
 - (c) other than between the hours of 7:00 a.m. through 9:00 p.m., unless otherwise permitted by this By-law or expressly authorized by the Fire Chief;
 - (d) that creates a nuisance or has an adverse effect on a neighbouring property owner;
 - (e) that creates excessive smoke;
 - (f) that exceeds one (1) metre in diameter and height;
 - (g) other than burning unpainted wood, organic materials, ground cover and paper products;
 - (h) that is within fifteen (15) metres of any building, structure, hedge, fence, Highway or overhead wire;
 - (i) without a five (5) metre radius around the perimeter of the Open Air fire that is free and clear of combustible article and ground cover;
 - (j) other than in accordance with the Environmental Protection Act, R.S.O. 1990, c. E. 19, as amended;
 - (k) without maintaining constant watch over the Open Air fire until the fire is extinguished;
 - (l) without appropriate extinguishing agents on-hand at all times during the preparation of the fire, while the fire is underway, and until the fire is fully and completely extinguished;
 - (m) when a fire ban is in effect.
- (2) The Fire Chief may impose any additional terms or conditions that he considers necessary in the interest of public safety.
- (3) A Permit is automatically revoked when a Person fails to comply with the terms and conditions of a Permit or the provisions of this By-law.

- (4) The Fire Chief may vary the terms and conditions of a Permit upon conducting an inspection and determining safety is maintained through any approved site specific terms and conditions.

5. PERMIT – EXCEPTION

- (1) A Permit for an Open Air fire is not required for supervised cooking food on a Barbeque, Gas-Fired Outdoor Campfire Devices, Cooking Fire and Outdoor Fireplace.

6. OUTDOOR FIREPLACE

- (1) Notwithstanding any other provision contained in this By-law, no Person shall set or permit a fire in Open Air using an Outdoor Fireplace other than between the hours of 7:00 a.m. through 11:00 p.m.
- (2) Notwithstanding any other provision contained in this By-law, no Person shall set or permit a fire in Open Air using an Outdoor Fireplace within ten (10) metres of any building, structure, hedge, fence, Highway, overhead wire or other combustible article - obstruction of any kind or nature whatsoever.

7. COOKING FIRE

- (1) Notwithstanding any other provision contained in this By-law, no Person shall set or permit a Cooking Fire in Open Air other than between the hours of 7:00 a.m. through 11:00 p.m.
- (2) Notwithstanding any other provision contained in this By-law, no Person shall set or permit a Cooking Fire in Open Air within ten (10) metres of any building, structure, hedge, fence, Highway, overhead wire or other combustible article - obstruction of any kind or nature whatsoever.

8. CAMPGROUNDS

- (1) For the purpose of this section the following definitions apply:

“Camp Fire” means an open fire where the size of the open air fire is limited to the size of the device or area provided by the Campground and is solely for the purpose of cooking food, warmth and recreational enjoyment;

“Campground” means a travel trailer park with a Resort Commercial designation under the Township’s Zoning By-law.

- (2) No person shall have a Camp Fire in a Campground other than in a location approved by the Fire Chief.
- (3) No person shall have a Camp Fire in a Campground unless it is a safe distance from combustible structures or objects.
- (4) No person shall have a Camp Fire in a Campground except in accordance with the Campground rules and regulations.
- (5) Every owner of a Campground shall submit their Camp Fire rules and regulations to the Fire Chief for approval.

9. ENFORCEMENT AND PENALTY PROVISIONS

- (1) The enforcement of this By-law shall be conducted by an Officer.
- (2) No person shall hinder or obstruct an Officer in the enforcement of this By-law.
- (3) Any person who is alleged to have contravened any section of this By-law shall identify themselves to an Officer upon request, failure to do so shall be deemed to have hindered or obstructed an Officer in the execution of his duties.
- (4) An Officer may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not the By-law is complied with.
- (5) Any person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable:
 - a. on a first offence, to a fine of not less than \$250.00 and to a fine of not more than \$50,000.00; and

b. on a second and each subsequent offence, to a fine of not less than \$500.00 and a fine of not more than \$100,000.00

(6) Any person who is issued a Part I offence notice and is convicted of an offence under this By-law shall be liable to a fine as provided for in the Provincial Offences Act, R.S.O. 1990, c. P. 33, as amended.

(7) Every director or officer of a corporation who knowingly concurs in the contravention of any provision of this By-law by the corporation is guilty of an offence.

10. SEVERABILITY

(1) If a court of competent jurisdiction declares any section or part of the By-law invalid, it is the intention of Council that the remainder of the By-law shall continue in force.

11. SINGULAR AND PLURAL USE

(1) In this By-law, unless the context otherwise requires words importing the singular shall include the plural and use of the masculine shall include the feminine, where applicable.

12. EXEMPTION

(1) The Township is exempt from the provisions of this By-law for the purpose of conducting training, education or research for the Fire and Rescue Services Department and for operations associated with the Public Works Department.

13. REPEAL

(1) By-law 54/2007 is hereby repealed.

14. EFFECTIVE DATE

(1) This By-law shall come into effect on July 2, 2014.

**READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS XXXX
DAY OF XXXXXXXXXXXX, 2014.**

Dennis Lever, Mayor

Karen M. Landry, CAO/Clerk