

BY-LAW NUMBER XX OF 2022
VILLAGE OF POINT EDWARD

A By-Law to Regulate Open Air Burning in the Village of Point Edward

WHEREAS section 210, paragraph 35 of the Municipal Act provides that Council may prescribe for the entire Municipality the times during which fires may be set in the open air, and the precautions to be observed by persons setting such open air fires; and

WHEREAS section 210, paragraph 49 of the Municipal Act provides that Council may make such other regulations for preventing fires and the spread of fires as is considered necessary; and

WHEREAS section 326 of the Municipal Act authorizes where a Municipal Council has the authority to direct or require by by-law or otherwise that any matter or thing be done, the Council may by by-law direct that, in default of its being done by the person directed or required to do it, such matter or thing shall be done at the person's expense and the corporation may recover the expenses incurred in doing it by action or the same may be recovered in like manner as municipal taxes or Council may provide that the expense incurred by it, with interest, shall be payable by such person in annual installments not exceeding ten years; and

WHEREAS section 220.1 of the Municipal Act authorizes a municipality to pass a by-law imposing a fee or charge on any class of persons for services or activities provided or done by or on behalf of it; and

WHEREAS Section 2.4.4.4 div b. of the Ontario Fire Code provides for the prohibition of open air burning unless such open air burning consists of the use of a barbecue to cook food, provided such devices contain a small, contained fire which is supervised at all times.

THEREFORE the Municipal Council of the Corporation of the Village of Point Edward enacts as follows:

Part 1
Definitions and Administration

1.1 Definitions

For the purposes of this By-Law:

- a) **Applicant** shall mean the person, organization, company or group that makes application to the Fire Chief for permission to hold an open air burning and includes such persons who contact the Fire Chief with notification of an intention to hold an open-air burning.
- b) **Barbecue appliances** include a hibachi, a permanent structure designed and intended solely for the cooking of food in the open air and other similar devices designed and intended solely for the cooking of food in the open-air but does not include devices predominantly designed for personal warmth, fire pits or camp fires.
- c) **Open air burning** shall mean the burning of any material, including without limiting the generality of the foregoing, wood, cardboard, brush or garden waste where the flame is not wholly contained and is, thereby, open to the air.
- d) **Open burning device** shall mean any device for the purpose of containing a recreational fire.
- e) **Village** shall mean the Corporation of the Village of Point Edward.

- f) **Fire Chief** shall mean the Fire Chief of Point Edward Fire and Rescue and members of the Point Edward Fire and Rescue acting under the Fire Chief's direction.

1.2 Administration

This By-Law shall be administered by the Fire Chief and the Chief Administrative Officer of the Village of Point Edward or their designates.

1.3 Fire Services – Exempt

Point Edward Fire and Rescue shall be exempt from the provisions of this by-law with respect to open air burnings set for the purpose of educating and training individuals.

Part 2 General Provisions

2.1 Open air burning – Regulations

No person shall conduct, or permit to be conducted, an open air burning within the boundaries of the Village of Point Edward unless permission is given by the Fire Chief or his designate.

2.2 Exception – Recreational Burning

Despite Section 2.1 above, permission is not required from the Fire Chief or his designate for open air burnings associated with the use of open burning devices or pits specifically designed for open air burnings, provided that the following regulations are complied with:

- a) Open air burning may only be conducted between the hours of 10:00 am and 12:00 midnight;
- b) Open burnings shall be confined to open burning devices or to a pit no larger than three(3) feet by three(3) feet in size;
- c) No materials other than commercially produced charcoal, briquettes, or clean, dry, seasoned wood, not including pressure treated or creosote-soaked wood, may be burned;
- d) The dimensions of the wood being burnt shall not be greater than the size of the appliance or fire pit and shall be totally confined within the appliance or pit at all times;
- e) An open-air burning shall be confined to an area that is a minimum of 3 metres in all directions, including vertically, from combustible structures or objects;
- f) An open-air burning shall be confined to a location that provides for a minimum distance of 3 metres in all directions from adjacent properties;
- g) An effective extinguishing agent of sufficient size and with the capability of extinguishing the fire shall be immediately available for use at all times;
- h) Open air burnings shall be attended, controlled and supervised at all times and shall be completely extinguished before the open air burn site is vacated;
- i) Open air burnings are not permitted when the wind speed exceeds 30 kms/h or during rainy or foggy weather or at times when a smog alert has been declared by the Ministry of the Environment, Conservation and Parks for Ontario; and
- j) Steps are to be taken to ensure that adjacent properties are protected from fire hazard. Should Point Edward Fire and Rescue be dispatched to such a complaint regarding public safety due to fire hazard the Fire Chief or his designate will have the discretion to determine compliance and this decision will be final.

2.3 Exception – barbecues

Despite Section 2.1 above, permission is not required from the Fire Chief or his designate for the use of barbecues to cook food, provided the following regulations are complied with:

- a) The barbecue is placed on non-flammable material, is supervised at all times and such appliance complies with the regulations of size found in 2.2(b);
- b) The fuel is a commercially produced charcoal or briquette, or a flammable liquid commercially produced for the purpose of cooking such as natural gas and propane gas, or clean, dry, seasoned wood, not including pressure treated or creosote-soaked wood.

2.4 Commercially produced liquid gas fire appliances

Despite Section 2.1 above, permission is not required from the Fire Chief or his designate for open air burnings associated with the use of commercially produced liquid gas fire appliances specifically designed for open air burnings, provided that the following regulations are complied with:

- a) The commercially produced liquid gas fire appliance is placed on non-flammable material, is supervised at all times and is CSA approved;
- b) An open-air burning shall be confined to an area that is a minimum of 3 metres in all directions, including vertically, from combustible structures or objects;
- c) An open-air burning shall be confined to a location that provides for a minimum distance of 3 metres in all directions from adjacent properties;

2.5 Permit – special events

- a) All persons seeking permission to hold a special event involving an open air burning that is not a recreational burning as per section 2.2 and does not employ the use of a barbecue as per section 2.3 and does not employ a commercially produced liquid gas fire appliance as per section 2.4 shall apply to the Fire Chief or his designate for a permit to have an open fire at such event.
- b) Application shall be made at least one week prior to the proposed date of the event in a form acceptable to the Chief and such application shall be accompanied by the applicable fee of \$50. The Fire Chief or his designate may issue permits to allow a special event to reoccur over an extended period of time.
- c) Prior to granting a permit to hold an open air burning for a special event consideration will be given to the location of the proposed event, the size of the proposed fire, the safety measures proposed, the supervision arrangements proposed, the time of year, the time of day and the anticipated weather conditions.
- d) The Fire Chief or his designate may refuse to grant a permit to hold open air burnings at special events which are proposed to take place on land that is zoned for residential uses
- e) The Fire Chief or his designate may refuse to grant a permit for an open air burning if the proposed open air burning would be in contravention of this by-law, if the applicant has contravened the provisions of this by-law in the past or if the applicant has not complied with any conditions attached to a permit for an open air burning that may have been imposed by the Fire Chief or his designate on a previous occasion.
- f) The Fire Chief or his designate shall not give permission for open air burnings of any non wood combustible material, pressure treated wood or creosote treated wood. Permissible fuels include clean, dry, seasoned wood, commercially produced charcoal, briquettes and flammable liquids such as natural gas and propane gas intended for cooking.
- g) The Fire Chief or his designate may attach such conditions as deemed appropriate to any permit granted for an open air burning at a special event.

- h) The Fire Chief or his designate may withdraw permission for and/or stop an open air burning if, in their opinion, the fire presents a fire hazard, smoke caused by the fire is causing visibility concerns on roads in the area of the burn, the weather has deteriorated and has become unfavourable for an open air burning, conditions attached to the granting of permission are not being adhered to or if this by-law is being contravened.
- i) Upon the notification of the withdrawal of permission by the Fire Chief or his designate, the applicant shall immediately extinguish the fire.
- j) Should the applicant fail to immediately extinguish the fire upon notification from the Fire Chief or his designate the applicant may be held liable for any and all costs incurred by the Point Edward Fire and Rescue in its efforts to extinguish the fire.

2.6 Order to extinguish unapproved fires

- a) When made aware of a prohibited open air burning not authorized under this By-Law, the Fire Chief or his designate shall order the landowner or occupant to immediately extinguish the fire.
- b) The owner or occupant of land on which a prohibited open air burning is located shall immediately extinguish the fire upon being ordered to do so by the Fire Chief or his designate.
- c) Should any landowner or occupant fail to extinguish a prohibited open air burning when ordered to by the Fire Chief or his designate action may be taken to have the fire extinguished, and the person who owns or occupies the land on which the open burning is located shall be responsible for any and all costs incurred by Point Edward Fire and Rescue in its efforts to extinguish the fire.
- d) Notwithstanding subsection 2.6(a), on the third attendance in any calendar year to a particular municipal address, Point Edward Fire and Rescue shall immediately take whatever steps are necessary to extinguish a fire that is an open-air burning found not to be in compliance with this By-Law. Upon verbal verification by Point Edward Fire and Rescue that the fire is extinguished, the person who owns or occupies the property shall pay the fee in accordance with the fee By-Law for the Village of Point Edward.

Part 3 Enforcement

3.1 Regulations – Offence

No person shall fail to comply with all regulations as set out in this by-law and any person who contravenes this by-law, upon conviction, is guilty of an offence and is liable to any penalty as provided in the Provincial Offences Act.

3.2 Continuation – repetition – prohibition by order

The court in which the conviction has been entered, and any court of competent jurisdiction, thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted, and such order shall be in addition to any other penalty imposed on the person convicted.

3.3 Default – collection of costs

The Village has the right to collect any unpaid costs as authorized by this by-law by adding such charges to the tax roll where they may be collected in a like manner as municipal taxes, all in accordance with Section 326 of the Municipal Act.

Part 4 Enactment

4.1 Headings

The headings in the body of this by-law form no part of the by-law but are inserted for convenience of reference only.

4.2 Severability

If any section of this by-law or parts thereof be found by any court to be illegal or beyond the power of Council to enact, such section or sections or parts thereof shall be deemed to be severable and all other sections or parts of this by-law shall be deemed to be separate and independent therefrom and continue in full force and effect unless and until similarly found and this by-law shall be enacted as such.

4.3

The short title of this by-law is "Open Burning By-Law".

4.4

This by-law will be in force on the day it is enacted by Council.

THIS By-Law is READ a FIRST, SECOND and THIRD TIME and FINALLY PASSED this 2nd day of November, 2022.

Mayor Bev Hand

Clerk Jim Burns