

## BY-LAW NUMBER 113-2023

A BY-LAW TO REGULATE OPEN AIR BURNING IN THE CITY OF WINDSOR

Passed the 5<sup>th</sup> day of September, 2023.

**WHEREAS** Council of The Corporation of the City of Windsor ("Council") is empowered under section 7.1(1) of the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c.4, as amended, (the "FPPA") to pass by-laws regulating fire prevention, including the prevention of the spreading of fires;

**AND WHEREAS** Council is empowered under section 7.1(1) of the FPPA to pass bylaws regulating the setting of open air fires, including establishing the times during which open air fires may be set;

**AND WHEREAS** Council is empowered under section 7.1(4) of the FPPA to 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** Council is empowered under section 10 of the *Municipal Act, 2001*, c.25 to pass by-laws respecting the environmental well-being of the municipality, the health, safety, and well-being of persons, and the protection of persons and property;

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

**AND WHEREAS** Council considers excessive smoke, smell, airborne sparks or embers to be capable of causing or becoming 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** Council deems it advisable to enact a By-law to regulate open air burning within the City of Windsor;

**THEREFORE** the Council of the Corporation of the City of Windsor enacts as follows:

### Part 1- Definitions

1. In this By-law,

"Burning Ban" means an order issued at sole discretion of the Fire Chief prohibiting all Open Air Burning.

"Campfire" means an open air fire where the size of the material burned is contained by non-combustible material form and the flame is no larger than 60cm X 60cm X 60cm.

"Campground" means an area of land owned or operated by a person that contains camp sites for the purpose of providing accommodation for tents, trailers or cabins in exchange for monetary payment.

“City” means The Corporation of the City of Windsor, inclusive of its boundaries.

“Clean Wood” means wood that is dry and free of paint or attached plastics, and untreated wood.

“Cooking” means grilling or cooking using charcoal, wood, wood pellets, propane or natural gas in, or on, cooking or grilling appliances including barbeques.

“Fire Chief” means the person appointed by City Council to act as Fire Chief for the City as defined in the FPPA, or designate.

“FPPA” means the *Fire Protection and Prevention Act, 1997*, S.O.1997, c.4, as amended, and the regulations enacted thereunder as amended from time to time, or any act or regulation enacted as a substitution.

“Ground Cover” includes but is not limited to, leaves, grasses, weeds, tree needles or wood chips on the ground.

“Nuisance” means excessive smoke, smell, fumes, airborne sparks, ash, particulate matter, or embers that is likely to disturb others.

“Officer” means the Fire Chief, any firefighter of Windsor Fire & Rescue Services, City by-law enforcement officers, and any member of the Windsor Police Service.

“Open Air Burning” means any fire or burning practice that is conducted outside a building and includes but is not limited to, small confined fires and large confined fires, fires in burn barrels, in air curtain incinerators, outdoor recreational fireplaces, prescribed burning, and construction site and demolition site fires, campfires, fire pits, fire bowls, sky lanterns, and the use of various types of Outdoor Fireplaces.

“Outdoor Fireplace” means a manufactured, non-combustible enclosed container designed to hold a small fire for decorative purposes (known as a ‘Chimnea’).

“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 property.

“Permit” means a permit issued by the Fire Chief to carry out Open Air Burning for a specified period of time.

“Permit Holder” means a person to whom a Permit has been issued;

“Person” includes an individual or corporation.

“Prescribed Burning” means burning that is utilized as fire hazard abatement, forest management, agricultural soil conditioning, crop and pasture production, prevention or control of weeds and or control of insects or disease.

## Part 2 – General Prohibition

2.1 Except as otherwise provided in this By-law, no person shall set, maintain or allow to be set or maintained, Open Air Burning within the City unless a Permit for the Open Air Burning has been issued by the Fire Chief.

## Part 3 – Cooking Fires and Campfires

### **Cooking Fires**

3.1 The prohibition in section 2.1 does not apply to fires used for Cooking provided the following conditions are met:

- a) all fires for the purpose of Cooking shall be commensurate with the type and quantity of the food being cooked;
- b) any appliance used is designed and manufactured for the solitary purpose of outdoor Cooking;
- c) any such appliance shall be assembled and utilized with strict adherence to the manufacturer's instructions and/or building permit specifications, as applicable;
- d) there is no combustible ground cover within five (5) metres of the Cooking fire;
- e) the Cooking fire shall not be set or maintained carried on any highway, public park, walkway, public land, or any other land owned by or operated under agreement with the City without written permission from the City;
- f) the Owner or person setting the Cooking fire shall maintain a constant watch and control over the Cooking fire from the time of the setting of the fire until all fire, hot coals, and smoldering material are completely extinguished;
- g) a suitable means of extinguishing the Cooking fire must be immediately available at all times;
- h) the Cooking fire complies with the FPPA; and
- i) the Cooking fire does not otherwise cause a Nuisance.

### **Campfires**

3.2 The prohibition in section 2.1 does not apply to Campfires provided the following conditions are met:

- a) the Campfire takes place only in identified Campgrounds officially operating as Campground businesses and at the permission of the Campground owner or operator;
- b) there is a distance of at least 3m from any building, hedge, fence, overhead wiring, overhead vegetation, or a highway and at a distance greater than 10m from another open air burning;
- c) only Clean Wood/paper is utilized in the burning process and no refuse, plastics or treated wood shall be burned;
- d) no flammable liquids shall be utilized as a means to aid the ignition process for campfires;
- e) vegetation surrounding the individual campfire shall be maintained to a low height in a 30 cm circumference around the fire so as to prevent the spread of fire if it were to extend outside of the non-combustible form;
- f) a suitable means of extinguishing the campfire must be immediately available at all times;
- g) all Campfires shall be extinguished upon end of activity and in any event no later than 1:00 am;
- h) the person setting the Campfire shall maintain a constant watch and control over the Campfire from the time of the setting of the fire until all fire, hot coals, and smoldering material are completely extinguished;
- i) the Campfire complies with the FPPA; and

j) the Campfire does not otherwise cause a Nuisance.

3.3 Any fire at a Campground site exceeding the size of a defined Campfire requires a Permit.

## Part 4 – Open Air Burning With Permit

4.1 A person may conduct an Open Air Burning where a Permit has been obtained, subject to the conditions set out in this By-law, and any conditions of the Permit.

### Permit Applications

4.2 An application for a Permit must be completed on the forms prescribed by Windsor Fire & Rescue Services.

4.3 Each completed application for a Permit must be submitted to Windsor Fire & Rescue Services and accompanied by the appropriate fees as set out in the City's Fees and Charges By-law.

4.4 An application for a Permit may only be submitted by an Owner of the property where the Open Air Burning is proposed to take place, who is at least 18 years of age.

### Permit Conditions

4.5 Except as otherwise explicitly provided in the Permit issued under this Part, each Permit shall be deemed to include the following conditions:

- a) The Open Air Burning shall only occur between sunrise and sunset and on the date(s) specified on the Permit;
- b) The Open Air Burning is not permitted where the wind velocity is greater than 24 kilometers per hour;
- c) The Permit Holder must maintain constant watch and control over the Open Air Burning from the time it is set until all fire, hot coals, and smolder material are totally extinguished;
- d) The Open Air Burning is not permitted within five (5) metres of any combustible ground cover;
- e) The Open Air Burning shall be at a distance of not less than twenty-five (25) meters from any building, structure, property line, tree, hedge, fence, roadway, overhead wire or other combustible article;
- f) A suitable means of extinguishment commensurate with the size of the fire must be immediately available at all times during the Open Air Burning;
- g) The Open Air Burning shall not exceed 1m x 1m in size and 1m in height;
- h) The Open Air Burning shall not be allowed cause a Nuisance;
- i) The Open Air Burning shall not contain any plastics, rubber, asphalt shingles, roofing tiles, hazardous substances, or treated wood;
- j) The Permit Holder shall comply with the provisions of the FPPA and the *Environmental Protection Act*, R.S.O. 1990, c.E.19;
- k) The Permit Holder shall keep the Permit immediately available during the Open Air Burning and produce the Permit on demand to any Officer conducting an inspection of the Open Air Burning; and

- l) The Permit Holder shall indemnify and save harmless the City 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.

4.6 In issuing the Permit, the Fire Chief may impose such additional requirements, conditions, or exemptions as the Fire Chief 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.

#### **Refusal of Permits**

4.7 The Fire Chief may refuse to issue a Permit where:

- a) the application is incomplete; or
- b) there are reasonable grounds to believe that the Open Air Burning may be adverse to public safety; or
- c) there are reasonable grounds to believe that the Open Air Burning will result in a breach of this by-law, the FPPA, or any other provincial or federal law or statute.

#### **Revocation of Permits**

4.8 A Permit issued to a Permit Holder under this by-law may be revoked by the Fire Chief if:

- a) in the opinion of the Fire Chief, a dangerous condition exists in or near the site of the open air fire; or
- b) the Open Air Burning does not comply with the requirements of the Permit or any other provisions of this by-law, the FPPA or any other provincial or federal statute.

## **Part 5 – Prescribed Burning**

5.1 Prescribed Burning shall be permitted, subject to the conditions set out in this Part.

5.2 The person responsible for a Prescribed Burning, shall submit a 'Prescribed Burn Plan' to the Fire Chief for approval. Prescribed Burning may only be carried out in accordance with a Prescribed Burn Plan approved by the Fire Chief.

5.3 The 'Prescribed Burn Plan' shall consist of the following, to the satisfaction of the Fire Chief:

- a) the specific location and description of the area to be burned;
- b) subject vegetation types;
- c) an emergency telephone number;
- d) name and approval of the property owner;
- e) the agency/contractor conducting the burn;
- f) the burn prescription
- g) the number of hectares to be burned, the type of fuel, fuel loading estimates and the ignition technique to be used;
- h) a list of agencies and private parties involved;

- i) a map depicting prevailing winds and the potential impact of the smoke on occupied buildings and areas for up to one kilometer from the burn site;
- j) a discussion of the public notification procedures

5.4 In approving the Prescribed Burn Plan, the Fire Chief may impose such other terms and conditions as the Fire Chief 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.

## Part 6 – Further Restrictions

### Sensitive Receptors

6.1 Notwithstanding any other provision of this By-law, save and except for Cooking Fires which comply with Section 3.1, Open-Air Burning shall not be undertaken within 100 metres from a sensitive receptor. Sensitive receptors include:

- a) a health care facility;
- b) a senior citizens' residence or long-term care facility;
- c) a child care facility; and
- d) an educational facility;

6.2 Notwithstanding any other provision of this By-law, Open Air Burning shall not be undertaken in a place where the Open Air Burning or discharges of smoke may cause a risk to human health.

### Burning Ban

6.3 The Fire Chief may issue a Burning Ban applicable to all or part(s) of the City.

6.4 When a Burning Ban is in effect, notwithstanding any other provision of this Bylaw or any Permits issued, all Open Air Burning is prohibited within the parts of the City to which the Burning Ban applies, save and except Cooking fires conducted within an appliance designed and manufactured for the solitary purpose of outdoor Cooking which Cooking fire otherwise complies with section 3.1 of this By-law.

## Part 7 - Enforcement

7.1 A person is guilty of an offence if the person:

- a) furnishes false information in an application for a Permit under this Bylaw;
- b) sets, maintains or allows to be set or maintained, Open Air Burning without a Permit as required by this By-law;
- c) fails to comply with the conditions of Permit;
- d) fails to comply with a Burning Ban;
- e) fails to comply with an order, direction, or other requirement made under this By-law; or
- f) violates any provision of this By-law.

7.2 Every person who is convicted of an offence under this by-law is liable to a fine not exceeding the maximum fine from time to time prescribed by the *Provincial Offences Act*, R.S.O. 1990, c.P.33, as amended, or any legislation passed in succession thereto.

7.3 In accordance with Part II 7.1(4) of the FPPA, the municipality may direct an Officer to enter upon land and into structures at any reasonable time to inspect the land and structures to determine whether this by-law is being complied with.

7.4 For the purposes of an inspection an Officer may:

- a) require the production for inspection of documents or things 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 tests, samples or photographs necessary for the purposes of the inspection.

7.5 An Officer may order an Open Air Burning to be extinguished immediately where:

- a) the Open Air Burning contravenes this By-law, the FPPA, or any other provincial or federal statute; or
- b) it is determined upon inspection by the Officer to constitute a safety hazard or concern.

## Part 8 - Miscellaneous

### Severability

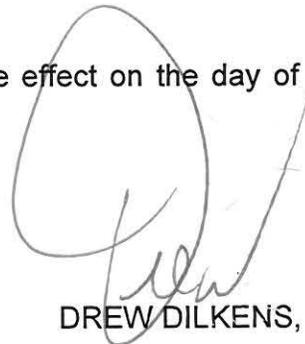
8.1 Where a court of competent jurisdiction declares any section or part of a section of this by-law invalid, the remainder of this by-law shall continue in force unless the court makes an order to the contrary. <sup>SV</sup>

### Short Title

8.2 This By-law may be referred to as the "Open Air Burning By-law."

### Effective Date

8.3 This By-law shall come into force and take effect on the day of the final passing thereof.



DREW DILKENS, MAYOR



CITY CLERK

First Reading - September 5, 2023  
Second Reading - September 5, 2023  
Third Reading - September 5, 2023