

The Corporation of the City of Port Colborne

By-law no. 6788/38/20

Being a By-law to regulate open air burning and recreational fires in the City of Port Colborne and to repeal by-law no. 6280/106/15

Whereas Section 7.1 (1)(b) of the *Fire Protection and Prevention Act, 1997, S.O. 1997, c.4*, as amended provides that a council of a municipality may pass by-laws regulating fire prevention, including the prevention of the spreading of fires and the setting of open air fires, including establishing the times during when open air fires may be set; and

Whereas Section 7.1 (3) of the *Fire Protection and Prevention Act, 1997, S.O. 1997, c.4*, as amended provides a by-law under this section may deal with different areas of the municipality differently; and

Whereas Section 7.1 (4) of the *Fire Protection and Prevention Act, 1997, S.O. 1997, c.4*, as amended provides 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 Section 7.1 (5) of the *Fire Protection and Prevention Act, 1997, S.O. 1997, c.4*, as amended provides the exercise of powers by an officer appointed under this section shall be carried out in accordance with Part XIV of *Municipal Act, 2001*, other than clause 431 (a) of that Act; and

Whereas Section 13 (1.2) of the *Fire Protection and Prevention Act, 1997, S.O. 1997, c.4*, as amended provides a fire fighter or such other person as may be authorized by the Fire Chief may, without a warrant enter on lands or premises on which a fire is occurring, or that are adjacent to those lands or premises, for the purposes of pulling down or removing buildings, structures or things on or attached to the lands or premises on which a fire is occurring or that are adjacent to those lands or premises if, in the opinion of the Fire Chief, it is necessary to do so to prevent the spread of fire; and

Whereas Section 425 (1) of the *Municipal Act, 2001, S.O. 2001, c.25, as amended* (the Act), provides by-laws may be passed by all municipalities for providing that any person who contravenes any by-law of the municipality passed under the Act, is guilty of an offence; and

Whereas Section 429 (1) of the *Municipal Act, 2001, S.O. 2001, c.25, as amended*, provides that a municipality may establish a system of fines for offences under a by-law of the municipality passed under this Act. 2006, c. 32, Sched. A, s. 184; and

Whereas Section 2.4.4.4 of the *Ontario Fire Code* provides as follows:

(1) Open air burning shall not take place unless:

- (a) it has been approved, or
- (b) the open air burning consists of a small, confined fire that is:
 - (i) used to cook food on a grill, barbecue or spit,
 - (ii) commensurate with the type and quantity of food being cooked, and;
 - (iii) supervised at all times.

(2) Sentence (1) does not apply to the use of an appliance that:

- (a) meets the requirements of the *Technical Standards and Safety Act, 2000*, or
- (b) is for outdoor use,

- if assembled, has been assembled in accordance with the manufacturer's instructions, and
- (c) if installed, has been installed in accordance with the manufacturer's instructions.

Whereas Section 19 (2) of the *Fire Protection and Prevention Act, 1997, S.O. 1997, c.4*, provides an inspector may, without a warrant, enter and inspect land and premises for the purposes of assessing fire safety; and

Whereas it is deemed desirable to regulate open air burning in the City of Port Colborne;

Now therefore the Council of The Corporation of the City of Port Colborne enacts as follows:

Part 1 – Definitions and Administration

1.1 Definitions

For the purpose of this By-law:

- (a) "Appliance" means a device which meets the requirements of the *Technical Standards and Safety Act 2000*;
 - (i) is for outdoor use;
 - (ii) if assembled, has been assembled in accordance with the manufacturer's instructions, and;
 - (iii) if installed, has been installed in accordance with the Manufacturer's instructions.

Note: Meaning propane or natural gas fuel.
- (b) "Approved" shall mean the Fire Chief or his/her designate.
- (c) "Barbecue/Pizza Oven" means an appliance, including a hibachi or 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 burn areas or camp fires.
- (d) "Chiminea/Fireplace" means a free standing device, with a vertical smoke vent or chimney, with an enclosed hearth in which a fire may be set.
- (e) "City" shall mean The Corporation of the City of Port Colborne.
- (f) "Cooking Fire" shall mean a small confined fire that is:
 - (i) used to cook food on a grill, barbecue or spit;
 - (ii) commensurate with the type and quantity of food being cooked;
 - (iii) minimum distance from buildings or part thereof and property lines shall be 3 m (10').
 - (iv) supervised at all times.
- (g) "Seasoned Wood" shall mean the moisture content in the wood has been reduced to an appropriate level for the intended use of the wood (this excludes painted, treated, stained wood).

- (h) "Camp Fire" shall mean a small open air fire not larger than 1 m by 1 m and height of .6 metres
- (i) "Fire Chief" shall mean the Fire Chief for the City of Port Colborne or designate including members of the Port Colborne Fire and Emergency Services Department.
- (j) "Fire and Emergency Services Department" means the Fire and Emergency Services Department for The Corporation of the City of Port Colborne, and any member thereof.
- (k) "Officer" means a person commissioned or authorized to fill a public situation or to perform any public duty: appointed for the purpose of enforcing by-laws of the Municipality, and it includes any Municipal Law Enforcement Officer appointed by the City of Port Colborne, Fire Chief, Deputy Fire Chief, and any police constable who is a member of the Niagara Regional Police Service or the Ontario Provincial Police Service.
- (l) "Open Air Burning" means any fire that is approved by the Fire Chief or their designate.
- (m) "Recreational Fires" means any fire that meets the requirements of the Open Air Burning and Recreational Fires By-law as identified herein.

1.2 Administration

The Fire Chief shall administer this By-law.

1.3 Fire Services – Exempt

The Port Colborne Fire and Emergency Services Department shall be exempt from the provisions of this By-law with respect to open air burning set for the purposes of education and training individuals.

Part 2 – General Provisions

2.1 Open Air Burning – Regulations

Subject to Sections 2.2 and 2.3 herein, no person shall conduct or permit to be conducted, an Open Air Burning within the boundaries of the City of Port Colborne unless permission has first been granted by the Fire Chief or their designate.

2.2 (a) Exception – Recreational Fires

Every person is permitted to conduct a camp fire providing it meets the following criteria:

- i) Minimum distance from buildings, property lines and combustible materials of not less than 3 m (10').
- ii) Minimum of 5 m (16.5') vertical clearance from the top of the fire pit to combustibles.
- iii) Not be larger than 1 m (3') in diameter and a height of .6 m (2').
- iv) Shall be contained at all times.
- v) Shall be supervised by a person at least eighteen (18) years of age at all times.
- vi) Shall be totally extinguished by 11 p.m.
- vii) Only clean seasoned wood can be burned (this excludes painted, treated, stained wood).

- viii) Shall have means to extinguish the fire readily available.
 - ix) Wind direction and intensity shall be taken into consideration.
- b) Every person is permitted to conduct a camp fire in a campground zoned as Vacation Residential Zone (VR) in the City of Port Colborne's Zoning By-law, as amended.

2.3 Response to Complaints

- (a) Should the Fire and Emergency Services Department be dispatched to a complaint regarding public safety due to a hazard created by a cooking fire, camp fire or upon notification of prohibited open air burning not authorized under this by-law within Sections 2.1 or 2.2 (a), the Fire Chief or their designate will take action to have the fire extinguished, and the person who owns or occupies the land on which burning or prohibited Open Air Burning is located shall be responsible for any and all costs incurred by the City of Port Colborne in its efforts to extinguish the fire, as provided for within the City's Fee Schedule.
- (b) Should the Fire and Emergency Services Department be called to the same property more than once within a twelve (12) month period and the owner/occupant is found to be burning outside of the requirements of this by-law, they will be charged, as provided for within the City's Fee Schedule.
- (c) Should the Fire and Emergency Services Department respond to a fire and the Fire Chief or their designate determine that a fire possess a risk to life or property they can immediately take all necessary action to control and extinguish the fire. Section "(c)" of Section 2.3. of this By-law will supersede Sections (a) and (b) of this Section.

2.4 Exception – Barbecues/Pizza Ovens

Despite Section 2.1 herein the following regulations shall apply for the use of barbecues/pizza ovens to cook food:

- (a) Every person must place the barbecue/pizza oven on non-flammable material and in a location other than on a balcony, porch or veranda of a building, inside any garage, tent, vehicle or structure, in or near dry vegetation that is conducive to the development or spread of fire or explosion;
- (b) Every person must supervise the barbecue/pizza oven at all times;
- (c) Every person must use fuel that is clean dry natural wood or a commercially produced fuel for the purpose of cooking such as charcoal or briquette, natural gas or propane.

2.5 Failure to Extinguish – Liable for Costs

Should any landowner or occupant fail to extinguish a prohibited Open Air Burning in a rural area and the Fire Department invokes (c) of Section 2.3. The person who owns or occupies the land on which the Open Air Burning is located shall be responsible for any and all costs incurred by the Fire and Emergency Services Department in its efforts to extinguish the fire, as set out in the City's Fee Schedule.

Part 3 – Fire Bans

- 3.1 Notwithstanding any provision in this or any other By-law, the Fire Chief may declare a complete ban of any burning of any kind in the City.

- 3.2 When determining whether to declare a complete ban on burning, the Fire Chief may take into consideration any or all of the following factors:
- (a) the air quality index;
 - (b) levels of recent precipitation;
 - (c) water shortages or restrictions;
 - (d) availability of fire fighters and firefighting equipment; and
 - (e) the overall fire danger.
- 3.3 No person shall build, ignite or allow any kind of fire when a complete ban on burning has been declared by the Fire Chief and is in effect.
- 3.4 A member of the Fire and Emergency Services Department or an Officer shall direct a person to extinguish any fire when a fire ban is in place.
- 3.5 A person who fails to comply with the direction of the Fire Chief or designate to extinguish a fire during a fire ban commits an offence Fire and Emergency Services shall extinguish the fire.
- 3.6 The property owner or tenant shall be liable for all costs incurred by the City of Port Colborne in its efforts to extinguish the fire, as provided for within the City's Fee Schedule.

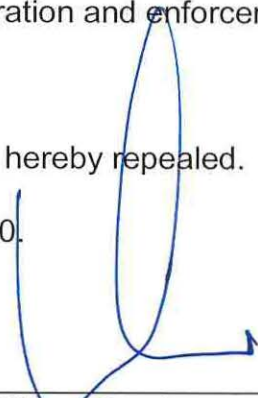
Part 4 – Administration, Enforcement, and Right of Access

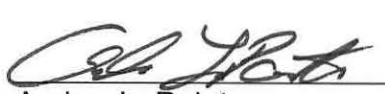
- 4.1 This By-law shall be administered and enforced by the City, the Municipal By-law Enforcement Officer, Fire Chief or any person appointed or otherwise delegated the authority of administration and enforcement.

Part 5 – Repeal Former By-law

- 5.1 By-law No. 6280/106/15 be and it is hereby repealed.

Enacted and passed this 8th day of June, 2020.



William Steele
Mayor

Amber LaPointe
City Clerk