

BY-LAW 90 OF 2017

THE CORPORATION OF THE TOWN OF ST. MARYS

Being a By-law to regulate open air burning, including establishing the times during which open air burning may be set and to repeal By-law 17-2012 and all amendments thereto.

WHEREAS: Section 7.1(1)(b) of the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c. 4, as amended, provides that the Council of a municipality may pass by-laws regulating fire prevention, including the prevention of the spreading of fires, and regulating the setting of open air fires, including establishing the times during which open air fires may be set, and that the 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 425 of the *Municipal Act, 2001* provides that 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 15 of the *Police Services Act, R.S.O. 1990, c.P.15* authorizes the municipality to appoint persons to enforce the by-laws of a municipality and that Municipal Law Enforcement Officers are Peace Officers for the purpose of enforcing municipal by-laws;

AND WHEREAS: The Corporation of the Town of St. Marys deems it advisable to regulate the setting of fires within the municipality;

AND WHEREAS: The Town has a Town-wide leaf and yard waste collection program in which waste is collected and composted, which decreases the need to burn yard waste;

NOW THEREFORE: The Council of The Corporation of the Town of St. Marys hereby enacts as follows;

1.0. DEFINITIONS

1.1. For the purpose of this By-law:

“Air Quality Health Index” means a scale designed to understand the impact of air quality on a person’s health;

“Barbeque” means a manufactured device or structure with a grill which is designed, intended and used solely for the purpose of cooking food outdoors, and includes a hibachi, but does not include devices or structures designed for personal warmth, fire pits, or Outdoor Fire Containers;

“Cooking Fire” means an Open Air Burn used for the purpose of cooking food;

“Fire Ban” means a restriction or prohibition on Open Air Burning issued by the Fire Chief;

“Fire Chief” means the person appointed by Council to act as Fire Chief for the Town of St. Marys as defined in the *Fire Protection and Prevention Act, 1997* or designate;

“Flying Lantern” means a small, hot air balloon made of paper, with an opening at the bottom where a small fire is suspended. Also known as a “sky lantern”;

“Noxious Materials” includes but is not limited to tires, plastics, rubber products, drywall, demolition waste, construction waste, paint, animal organic waste, vegetable waste, food waste, biomedical waste, tar, asphalt products, battery boxes, pressure-treated wood, creosote-treated wood, and painted wood;

“Nuisance” means excessive smoke, smell, airborne sparks or embers that is likely to disturb others, or that is likely to reduce visibility on roads in the vicinity of the Open Air Burning;

“Officer” means the Fire Chief or designate, Town of St. Marys by-law enforcement officers, and Police officers;

“Open Air Burning” means a fire set outside of a building;

“Outdoor Fire Container” means a non-combustible container used to hold a small fire, and includes, but is not limited to, chimineas, metal tubs, fire pits, and outdoor brick fireplaces;

“Owner” means any person, firm or corporation having control over 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 set a fire in the Open Air for a specified time period;

“Permit Holder” means a person to whom a Permit has been issued by the Fire Chief;

“Person” means an individual or a corporation;

“Strike” means a strike as defined in the *Labour Relations Act, 1995*, S.O. 1995, c.1, Sched. A;

2.0. GENERAL PROVISIONS

2.1. No person shall set, maintain, or permit to be set or maintained, an Open Air Burning except as authorized under this By-law.

2.2. This By-law shall not apply to:

- a) a person using a Barbeque to cook food;

- b) a person using a fire in a device installed outside of a building that is used as a source of heat or power for the building or that is ancillary to a manufacturing process, and provided that such device is certified for the purpose by a recognized agency;
- c) a person using a natural gas or propane fueled fire pit for recreational purposes;
- d) a person using a device designated to heat pitch or asphalt;
- e) a person using welding equipment;
- f) a person setting or maintaining a fire at a Strike site in a metal 45 gallon drum;
- g) the Fire Chief for the purposes of education and training individuals;
- h) a person conducting fire extinguisher training who has obtained prior written approval of the Fire Chief or designate.

3.0. OPEN AIR BURNING

3.1. Outdoor Fire Container (Fires Smaller than 46cm x 46cm x 30cm)

- (1) A person may conduct an Open Air Burning in an Outdoor Fire Container if the person has been issued a Permit, and if the person complies with all of the conditions set out in this section.
 - a) An application for a Permit must be completed on the forms provided by The Corporation of the Town of St. Marys.
 - b) The Permit shall only be valid for the date(s) indicated on the Permit.
 - c) The Officer may refuse to issue a Permit:
 - i. if the proposed Open Air Burning would contravene this by-law;
 - ii. if the Owner or Permit Holder has previously contravened any Permit conditions or other provisions of this by-law, or an Order under this by-law; or
 - iii. furnishes false information in the application for a permit under this By-law.
- (2) Every Permit is subject to and every applicant and permit holder shall perform and observe the conditions in this section with respect to obtaining and continuing to hold a Permit:
 - a) shall pay the permit fee, as set out in the applicable Fee By-law, if the application is approved;

- b) the Permit Holder shall produce the Permit on demand to an Officer conducting an inspection of the Open Air Burning.
- c) shall only conduct the Open Air Burning in an Outdoor Fire Container between 4:00pm and midnight;
- d) shall only burn clean, dry wood;
- e) shall not have a fire larger than 46 centimetres wide by 46 centimetres long by 30 centimetres high in an Outdoor Fire Container;
- f) shall locate the Outdoor Fire Container at least 3 metres from any building, structure, property line, tree, hedge, fence, roadway, overhead wire or other combustible article; and,
- g) shall locate the Outdoor Fire Container on a non-combustible surface extending beyond the unit to a dimension equal to the height of the Outdoor Fire Container.
- h) any additional requirements or exemptions the Officer 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.

3.2. Cooking Fires

(1) A person may conduct an Open Air Burning for the purpose of a Cooking Fire, subject to the conditions set out in this section and in subsection 3.1(2), save and except subsection 3.1.(2)(a)(b)(c). An Open Air Burning for the purpose of a Cooking Fire does not require a Permit.

(2) A person conducting an Open Air Burning shall comply with the following conditions for a Cooking Fire:

- a) shall only conduct the Open Air Burning between 11:00am and 7:00pm;
- b) shall only burn combustible material consisting of clean, dry wood, charcoal or briquettes;
- c) shall locate the Cooking Fire at least 3 metres from any building, structure, property line, tree, hedge, fence, roadway, overhead wire or other combustible article; and,
- d) shall be commensurate to the type and quantity of food being cooked

3.3. Open Air Burning – (Fires Greater than 46cm x 46cm x 30cm)

(1) A person may conduct an Open Air Burning if the person has been issued a Permit, and if the person complies with all of the conditions set out in this section:

- a) An application for a Permit must be completed on the forms provided by The Corporation of the Town of St. Marys.

- b) The Permit shall only be valid for the date(s) indicated on the Permit.
- c) The Officer may refuse to issue a Permit:
 - i. if the proposed Open Air Burning would contravene this by-law;
 - ii. if the Owner or Permit Holder has previously contravened any Permit conditions or other provisions of this by-law, or an Order under this by-law; or
 - iii. furnishes false information in the application for a permit under this By-law.

(2) Every Permit is subject to and every applicant and permit holder shall perform and observe the conditions in this Part with respect to obtaining and continuing to hold a Permit:

- a) the applicant shall pay the permit fee, as set out in the applicable Fee By-law, if the application is approved;
- b) the Permit Holder shall produce the Permit on demand to an Officer conducting an inspection of the Open Air Burning;
- c) shall only conduct the Open Air Burning between 8:00am and 8:00pm;
- d) shall only burn clean, dry, wood;
- e) shall not have a fire larger than 1 metre in length, by 1 metre in width, by 1 metre in height;
- f) shall locate the Open Air Burning at least 10 metres from any building, structure, property line, tree, hedge, fence, roadway, overhead wire or other combustible article;
- g) shall locate the Open Air Burning at least 5 metres from any combustible ground cover; and,
- h) any additional requirements or exemptions the Officer 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.

Conditions of All Authorized Open Air Burning

3.4. Every person setting, permitting to be set, maintaining, or permitting to be maintained, an authorized Open Air Burning shall comply with the following conditions:

- a) shall allow, at any reasonable time, an Officer to inspect the location or proposed location of the Open Air Burning;

- b) shall have legal title to the property at which the Open Air Burning is to occur, or the person, or Permit Holder, as the case may be, shall obtain the prior written consent of the person having legal title to the property;
- c) shall ensure a person at least eighteen years of age attend, control and supervise the Open Air Burning at all times;
- d) shall only use a non-combustible container, and shall contain the fire within it at all times;
- e) shall not burn Noxious Materials;
- f) shall have an effective extinguishing agent of sufficient size and with the capacity of extinguishing the Open Air Burning immediately available to use;
- g) shall attend, control and supervise the Open Air Burning at all times;
- h) shall completely extinguish the Open Air Burning before the site is vacated;
- i) shall not set or maintain an Open Air Burning during strong wind;
- j) shall not burn if it is raining or foggy;
- k) shall not burn if an Air Quality Health Index High Risk has been issued;
- l) shall comply with the provisions of the *Environmental Protection Act*, R.S.O. 1990, c.E.19, as amended;
- m) shall protect adjacent properties from the potential spread of fire;
- n) shall ensure that all dwelling units on the property have working smoke alarms;
- o) shall ensure the Open Air Burning does not create a Nuisance; and,
- p) the Permit Holder shall indemnify and save harmless The Corporation of the Town of St. Marys and its employees from any and all claims, demands, causes of action, costs or damages that the Town 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, directions, contractors, and agents.

4.0. FIRE BAN

- 4.1. Notwithstanding the provisions of this By-law, the Fire Chief may institute a Fire Ban at any time, as may be deemed necessary in the opinion of the Fire Chief and it is in the interests of public safety. No person, organization, partnership, company or group shall be entitled to a Permit during a Fire Ban.

4.2. No person shall conduct or allow an Open Air Burning at any time during a Fire Ban.

5.0. ORDER TO DISCONTINUE ACTIVITY

5.1. If an Officer determines that this by-law has been contravened, the Officer may issue an Order to Discontinue Activity requiring the person contravening the by-law to immediately extinguish the fire.

6.0. ORDER TO EXTINGUISH

6.1. If an Officer determines that this by-law has been contravened, the Officer may issue an Order to Extinguish requiring the person contravening the by-law to immediately extinguish the fire.

7.0. REMEDIAL ACTION – COSTS

7.1. (1) Should a person default in complying with an Order to Discontinue Activity or an Order to Extinguish, the fire may be extinguished at the person's expense.

(2) The Town may enter on land at any reasonable time for the purpose of extinguishing a fire under subsection (1).

(3) The power of entry under this section shall be exercised by an employee, Officer or agent of the Town.

(4) The Town may recover the costs of extinguishing the fire from the person directed to extinguish the fire by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes. The costs include interest calculated at a rate of 1.25% per month, calculated for the period commencing on the day the Town incurs the costs and ending on the day the costs, including interest are paid in full. The amount of the costs, including interest, constitutes a lien on the land upon the registration of a notice of lien in the Land Registry Office.

8.0. INSPECTION AND INSPECTION FEES

8.1. An Officer may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether this By-law, an Order to Discontinue Activity, an Order to Extinguish, or an order under section 431 of the Municipal Act, 2001 is being complied with.

9.0. PROHIBITIONS

9.1. No person shall set or maintain Open Air Burning, or permit Open Air Burning to be set or maintained, contrary to any provision of this by-law.

9.2. No person shall contravene any condition of a Permit issued under this by-law.

9.3. No person shall contravene any condition of setting or maintaining an Open Air Burning under this by-law.

9.4. No person shall contravene an Order to Discontinue Activity.

9.5. No person shall contravene an Order to Extinguish.

9.6. No person shall hinder, obstruct or interfere with a person duly appointed to enforce this by-law in the exercise of his or her powers and duties.

9.7. No person shall ignite or use a Flying Lantern.

10.0. PENALTY

10.1. Any person who contravenes any provision of this by-law is guilty of an offence and:

- a) upon a first conviction is subject to a maximum fine of five thousand dollars (\$5,000.00);
- b) upon a subsequent conviction is subject to a maximum fine of ten thousand dollars (\$10,000.00);

10.2. Despite section 10.1, where the person convicted is a corporation, the corporation is liable;

- a) on a first conviction, to a maximum fine of not more than ten thousand dollars (\$10,000.00); and
- b) on any subsequent conviction, to a maximum fine of not more than twenty-five thousand dollars (\$25,000.00).

10.3. Nothing in this by-law shall prevent the Fire Chief from bringing charges under the Fire Protection and Prevention Act.

10.4. Every person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to a fine as provided for by the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33, as amended.

11.0. SHORT TITLE

This By-law may be referred to as the “Open Air Burning By-law”.

12.0. REPEAL

The Corporation of the Town of St. Marys By-law 17-2012, all amendments thereto, and any by-law of similar topic, is repealed on the day this by-law comes into force and effect.

Any penalty incurred, any investigation, legal proceedings or remedy under By-law 61-2017, as amended, may be continued to be enforced as if By-law 17-2012, as amended, had not been repealed.

13.0. ENACTMENT

This By-Law comes into force and takes effect on July 25, 2017.

Read a first and second time this 25th day of July, 2017.

Read a third and final time and passed this 25th day of July, 2017.

Mayor Al Strathee

Brent Kittmer, CAO / Clerk