

The Corporation of the City of Burlington

City of Burlington By-Law 65-2019

A by-law to regulate the setting of open-air fires and the times when open-air fires may be set. File: 755-04 (BFD-04-19)

Whereas section 2.4.4.4. (1) of the Fire Code, Ontario Regulation 213/07, as amended, prohibits open air burning unless approved, or unless such burning consists of a small, confined fire, supervised at all times, and used to cook food on a grill, barbeque or spit and is commensurate with the type and quantity of food being cooked; and

Whereas section 7.1 (1) (b) of the Fire Protection and Prevention Act, 1997, S.O. 1997, c.4, as amended, provides that Council of the Corporation of the City of Burlington (“Council”) may pass by-laws regulating the prevention of spreading of fires, regulating setting of open-air fires, including establishing the times during which open air fires may be set; 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 128 (1) of the Municipal Act, 2001, S.O. 2001, c.25, as amended, provides that, without limiting sections 9, 10 and 11, a local municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council, are or could become or cause public nuisances; and

Whereas section 425 (1) of the Municipal Act, 2001, S.O. 2001, c.25, as amended, permits Council to pass by-laws providing that any person who contravenes any by-law of the municipality is guilty of an offence; and

Whereas Council considers excessive smoke or odour from open air burning as having the potential to cause public nuisance by creating negative health effects on neighboring residents, increasing fire hazards and infringing on the enjoyment of the use of neighboring properties.

Now therefore the Council of the Corporation of the City of Burlington hereby enacts as follows:

Definitions

1. In this By-Law,

(a) “barbeque” means an appliance or structure designed and intended solely for the cooking of food, where the heat and/or flame is imparted or produced by charcoal, natural gas or propane.

- (b) “burning ban” means a prohibition on all burning issued by the Fire Department of the Corporation of the City of Burlington.
- (c) “burning permit” means a permit issued by the Fire Department of the Corporation of the City of Burlington to allow open-air burning for a specified time period.
- (d) “campfire” means a fire lit at a campsite to serve the following functions: light, warmth, insect deterrent and to cook.
- (e) “chimenea” means a free-standing, front-loading fireplace, with a bulbous body and a vertical smoke vent or chimney.
- (f) “City” means the Corporation of the City of Burlington.
- (g) “Chief Fire Official” means the Chief of the Fire Department of the Corporation of the City of Burlington, or his or her designate.
- (h) “Council” means the Council of the Corporation of the City of Burlington.
- (i) “Fire Department” means the Corporation of the City of Burlington Fire Department and any member thereof.
- (j) “Nuisance” means excessive smoke or odour that is likely to interfere with the enjoyment of neighboring properties.
- (k) “OpenAir Burning” means the burning of any materials outside of a building, including, but not limited to, fire pits, chimineas and outdoor fireplaces, wherein the flame is not wholly contained, and is thereby, open to the air.
- (l) “Owner” means the registered owner of property.
- (m) “Special Air Quality Statement or Smog and Air Advisory” means an alert issued by Environment Canada and the Ministry of the Environment, Conservation and Parks
- (n) “Urban Area” means the urban area as denoted by the non-shaded area on the map of the City, attached as Schedule A to this by-law.

Administration

2. The Chief Fire Official shall be responsible for the administration and enforcement of this by-law. For the purposes of sections 11, 12 and 13 of this bylaw, all members of the Fire Department, attending in response to open air burning, are appointed as designates of the Chief Fire Official, acting under direction of the Chief Fire Official.

General Provisions

3. Any person eighteen years of age or over, who is the owner of a property within the City, or who has been authorized in writing by the owner of such property, may apply to the Chief Fire Official for a burning permit to conduct an open-air burning.
4. No person shall set, permit to be set, maintain or cause to be maintained, an open-air burning in the City of Burlington unless:
 - a) a burning permit has been issued from the Chief Fire Official;
 - b) that person complies with the conditions set out in the burning permit; and
 - c) that person complies with all applicable provisions of this by-law.
5. No burning permit shall be issued for an open-air burning within the urban area of the City.
6. The Chief Fire Official may refuse to issue a burning permit if he or she determines that:
 - a) the proposed open-air burning would be in contravention of this by-law;
 - b) the person applying for the burning permit has contravened the provisions of this by-law in the past;
 - c) the person applying for the burning permit has not complied with any conditions attached to a burning permit for an open-air burning that may have been imposed on a previous occasion;
7. A burning permit issued pursuant to this by-law is valid for the life of the permit from the date of issue until such time as;
 - a) The property changes ownership;
 - b) The location of the approved burning is changed,
 - c) Designated burn areas allowed in the city no longer allows for burning in the area,
 - d) Property or area development,
 - e) Changes to legislation,
 - f) The permit has been rescinded by the Chief Fire Official for non-compliance or any other reason.
8. A person who has obtained a burning permit pursuant to this by-law:
 - a) shall be limited to open-air burning of wood, wood by-products, leaves or brush;

b) shall not permit the open-air burning of garbage or petroleum-based products, including but not limited to, tires, shingles and/or plastics;

c) shall maintain, in person, constant supervision and control over the open-air burning from the time the open-air burning commences until the open-air burning is completely extinguished;

d) shall ensure that a suitable means of extinguishing the open-air burning is available at the site during the open-air burning, including, but not limited to, a fire extinguisher or a garden hose.

9. Except for otherwise provided for in a burning permit, a burning permit holder shall not set or maintain open-air burning, or permit open-air burning to be set or maintained, or cause open-air burning to be set or maintained:

a) between sunset and 7a.m.

b) that consists of more than one (1) cubic metre of material to be burned;

c) that exceeds one (1) metre in height;

d) when the wind speed is greater than twenty-five (25) kilometers per hour;

e) within twenty (20) metres of a building or roadway;

f) if there is a Special Air Quality Statement and/or Smog and Air Health Advisory issued by Environment Canada and the Ontario Ministry of the Environment;

g) if there is a burning ban;

h) if it creates a nuisance.

10. Every person that sets, permits to be set, or causes to be set, open-air burning in the City shall:

a) be responsible for any damage to property or injury to persons occasioned by the said open-air burning; and

b) be liable for costs incurred by the fire department, including personnel, equipment and apparatus necessary and called in to extinguish the said open-air burning.

Enforcement

11. The Chief Fire Official shall be permitted to enter upon land to inspect an area for which a burning permit has been issued to ensure compliance with the provisions of this by-law.

12. A holder of a burning permit pursuant to this by-law shall produce the burning permit on a demand from the Chief Fire Official conducting an inspection of the open-air burning.

13. A burning permit may be cancelled or suspended at any time by the Chief Fire Official and immediately upon receiving notice of such cancellation or suspension, the burning permit holder shall extinguish any open-air burning commenced pursuant to the burning permit.

Exemptions

14. Permission of the Chief Fire Official is not required for open-air burning that consists of a small, confined fire, supervised at all times, and used to cook food on a grill, barbeque or spit that is commensurate with the type and quantity of food being cooked.

15. Backyard fire pits, chimineas, and outdoor burning devices that utilize propane or natural gas as fuel supply are permitted in all areas of the City, except apartment building balconies and where prohibited by condominium corporation rules.

16. The Fire Department shall be exempt from the provisions of this by-law with respect to open-air burning set for the purposes of educating and training of staff and individuals.

17. The Fire Department has the authority to approve the setting of any open-air burning, based on individual needs and circumstances, subject to restrictions and conditions listed on the permit as specified by the Chief Fire Official.

Headings

18. The headings of each section of this by-law are inserted for convenience of reference only and do not form part of this by-law.

Penalty

19. Every person who contravenes any provision of this by-law is guilty of an offence and on conviction is liable to a fine as provided for in the Provincial Offences Act, R.S.O. 1990, c. P. 33, as amended and any successor thereto.

Severability

20. Should any provision of this by-law be declared by a Court of competent jurisdiction to be invalid, or of no force and effect, or beyond the power of Council to enact, such provision shall be deemed to be severable from this by-law, and it is the intention of Council that the remaining provisions will nevertheless continue in full force and effect without being impaired or invalidated in any way.

Short Title

21. This by-law may be cited as “Open Air Burning By-Law”

Effect

22. This by-law shall come into force and effect upon the final passing and that By-Law 63-2014 be hereby repealed.

Enacted and passed this 16th day of December 2019

Mayor Marianne Meed Ward _____

City Clerk Angela Morgan _____