

MUNICIPALITY OF WEST ELGIN

BY-LAW NO. 2014-69

REGULATE OPEN AIR BURNING

AS AMENDED BY:

By-law No. 2015-65

September 10, 2015

THE CORPORATION OF THE MUNICIPALITY OF WEST ELGIN

BY-LAW NO. 2014-69

A BY-LAW TO REGULATE OPEN BURNING

WHEREAS the Fire Protection and Prevention Act, 1997, S.O. 1997, c.4, Section 7.1 as amended, states that a 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 fires, including establishing the times during which open air fires may be set.

AND WHEREAS Part 2 of the Ontario Fire Code, O.Reg 388/97, provides that open air burning shall not be permitted unless approved, or unless such burning consist of a small, confined fire, supervised at all times, and used to cook food on a grill or barbeque,

AND WHEREAS the Council of the Municipality of West Elgin is desirous of enacting a by-law to regulate the setting of fires;

NOW THEREFORE the Council of the Corporation of the Municipality of West Elgin enacts as follows:

1. Definitions:

For the purposes of this by-law:

- a) Approved means approved by the Fire Chief or his/her designate
- b) Authorized Agent means any Responsible Person who can provide reasonable evidence that they are authorized to act for the owner of a particular property
- c) Ban on Open Air fires means a restriction or prohibition on Open Air fires issued by the Fire Chief or his/her designate
- d) Built-Up Area means :
 - a. The former Village of Rodney and adjacent lands as shown on Schedule "A" of this by-law
 - b. The former Village of West Lorne and adjacent lands as shown on Schedule "B" to this by-law
 - c. Lands zoned Hamlet Residential (HR), Rural Residential, Lakeshore Residential (LR) less than 5 acres in the West Elgin Zoning By-law No. 2015-36 as amended from time to time. (By-law No. 2015-65)
- e) Building means any structure used or intended for supporting or sheltering any use or occupancy, but does not include non-enclosing open-sided structure
- f) Chiminea means a device largely made from pottery and which is equipped with a chimney and a substantially enclosed hearth, approved by CSA and in which a recreation fire may be set
- g) Combustible means any material, combination of materials, or arrangement of materials in which any portion thereof is susceptible to catch fire when exposed to heat, flame, or other burning materials
- h) Effective Barrier means an enclosure on the ground with a complete perimeter of metal, masonry, stone or earth, with the enclosure walls being a minimum height of 1/3 the diameter or width of the enclosure
- i) Exempt means that, under specified conditions, a particular type or configuration of Open Air fire does not need a Notification of Open Burn form to be completed.
- j) Fire Chief means the Rodney Fire Chief or West Lorne Fire Chief
- k) Incinerator means a device that is operated and regulated (licensed) under a Certificate of Approval from the Ontario Ministry of the Environment and is not subject to the requirement of this By-law
- l) Made Safe means that all reasonable and prudent steps are taken to guard against injury to persons due to the fire deteriorated condition of a structure or property and may include, but not be limited to erecting

- barriers and signs; grading of property; demolition of unstable structures, and the removal of residue left from the burning process
- m) Municipality means the Municipality of West Elgin
 - n) Multi-Unit Residential Building means any building in which there are three or more residential dwelling units as defined by the Ontario Building Code Act
 - o) Notification of Open Burn means the completion of the form Notification of Open Burn (Appendix A), submitted to the Municipality of West Elgin to set or maintain an Open Air fire, as per any restrictions or conditions contained in this by-law or as may be specified on the Notification of Open Burn form
 - p) Occupancies means the use or intended use of a building or part thereof as defined in the Ontario Building Code
 - q) Open Air Fire means:
 - a. Any fire set outdoors, i.e. not in an enclosed building; or
 - b. Any fire set in a device or appliance located outside of a building
 - c. But does not include:
 - i. Fires in incinerators, or
 - ii. Fires in devices installed outside of a building and the are used as source of heat or power for the building or that are ancillary to a manufacturing process, and provided that such device is certified for the purposed by a recognized and appropriate agency
 - r) Responsible Person means any adult person (18 years of age or older) who is capable of exercising the required judgment and capable of performing the necessary actions to control a fire and prevent its unwanted spread
 - s) Rural Area means any lands not designated as Built-Up Area or Trailer Park
 - t) Structure means anything constructed or erected, the use of which requires location on or in the ground
 - u) Trailer Park means those lands zoned Trailer Park (TP) in the former Township of Aldborough Zoning By-law No. 90-50, as amended from time to time or subsequently replaced by a new zoning by-law

2. Restriction on Burning

No person shall set or maintain an Open Air fire except:

- a) An exempt fire as described in Sections 3 and 4 of this by-law ; or
- b) As permitted under the conditions specified in the Notification of Open Burn form, as defined in Section 6 of this by-law

3. Exempt Fires in Entire Municipality

The following types of Open Air fires are exempt and such fires may be set and maintained anywhere in the municipality provided that the conditions in this by-law are fully met:

a) Cooking Fires

A charcoal, compressed gas, or wood fire, that is only large enough for the purpose, and is confined within a barbeque or grill that is constructed of metal, ceramic, stone, or masonry, and that is exclusively designed for and being used for the cooking of food for human consumption, and is continuously supervised by a Responsible Person, and provided that all of the following conditions are met:

- i. Such fire is not on a porch, balcony, or verandah that is roofed and is attached to a multi-unit residential building
- ii. Such fire is not in or near dry vegetation; and
- iii. Such fire is not in any other place conducive to the development or the spread of fire or explosion

b) Construction or Maintenance Activities

An appliance of a portable nature which requires an open flame for the heating of material during a construction or maintenance process, provided that such appliance is safe to operate, and provided that it is not

operated in such a manner as to create a fire hazard, and provided that the fire is attended at all times by a responsible person to supervise it

c) Other Flaming Devices

Other flaming devices such as patio torches, fireworks, and candles provided that all of the following conditions are met:

- i. Such devices are not operated in or near dry vegetation
- ii. Such devices are not operated in any other place conducive to the development or the spread of fire or explosion; and
- iii. Consumer (family) fireworks where permitted by by-law

d) Campfires

With the permission of the property owner, a campfire on privately owned lands provided that such campfire meets all of the following:

- i. That the fire is for provision of warmth or for cooking
- ii. That, except in the case of a Trailer Park, the areas designated for the fire is not more than 66 centimeters (26 inches in any horizontal dimension
- iii. That all materials to be burned are contained around the complete perimeter of the designated area by an Effective Barrier of metal, masonry, ceramic, or stone; or are within a like-dimensioned pit in the ground that has a non-combustible wall and is intended to burn wood safely
- iv. That the pile of materials to be burned is not more than 66 centimeters (26 inches) in height, and 66 centimeters (26 inches) in width and length
- v. That, except in the case of a Trailer Park, the fire is located at least 4 metres (13.1 feet) from any building, structure, property line, tree, canopy, hedge, fence, roadway, overhead wire or other Combustible material
- vi. That the fire is controlled such that flames and hot embers do not pose an undue risk of fire to nearby Combustible materials
- vii. A means to extinguish the fire are readily accessible
- viii. That the fire is attended at all times by a Responsible Person to supervise it; and
- ix. That at the completion of the burn the fire shall be completely extinguished and the burn site shall be made safe before it is left unattended.

e) Chiminea

A fire in a Chiminea on any privately-owned lands provided that such fire meets all of the following:

- i. That in a Built-Up Area no portion of the hearth of the Chiminea is more than 61 centimeters (24 inches) in diameter
- ii. That only clean and dry wood or charcoal be burned
- iii. That the Chiminea is not located on any Combustible surface
- iv. That the fire is controlled such that flames and hot embers do not pose an undue risk of fire to nearby Combustible materials, and
- v. That the fire is attended at all times by a Responsible Person to supervise it

4. Burn Barrels

a) No person shall have a burn barrel in areas other than a Rural Area

b) An enclosed fire in a burn barrel on privately owned lands that are located in the Rural Area provided all of the following are met:

- i. That the burn barrel is situated securely on level ground
- ii. That the burn barrel is in good condition
- iii. That all openings in the burn barrel are covered at all times by a suitable metal wire mesh with a grid opening of not more than 6 mm (1/4 inch) in diameter; and
- iv. That the fire is attended at all times by a Responsible Person to supervise it

5. Conditions on Exempt Fires

Any person who sets or maintains an Exempt fire as in Sections 3 or 4 of this by-law shall be responsible to take all necessary steps to ensure that all of the following conditions are met;

- a) Smoke
 - a. The smoke or other emissions from the fire shall not travel to a neighbouring property to such an extent or degree that, in the opinion of the Fire Chief or his/her designate, it may cause discomfort to persons, loss of enjoyment or normal use of property, interference with normal conduction of business, or damage to property
 - b. The smoke or other emissions from the fire shall not travel across any public roadway to the extent or degree that, in the opinion of the Fire Chief or his/her designate, it may cause a public safety hazard to any person travelling on the roadway.
- b) Clearances
 - a. An Open Fire shall be located a distance of at least 10 meters (32.8 feet) horizontally and 10 meters (32.8 feet) below any portion of a Combustible structure or accumulation of Combustible materials; except that the lesser clearance shall apply as follows:
 - i. That a barbeque or grill fire shall be located at least 1.5 meters (59 inches) horizontally and 3 meters (118 inches) below; and
 - ii. That a Chiminea shall be located at least 3 meters (118 inches) and 6 meters (236 inches) below; and
 - b. Despite meeting the minimum distances specified in this section, burning is prohibited at any location where the conditions exist such that there is a reasonable probability of such fire spreading to a Building, structure, grass, or other Combustible vegetation or material.
- c) Material Restricted

Except as may be more specifically restrictions elsewhere in this by-law, only the materials listed on Schedule "C" may be burned
- d) Extinguishment

At the completion of the burn, the fire shall be completely extinguished and the burn site shall be made safe before it is left unattended.

6. Notification of Open Burn

- a) No person shall burn without submitting a completed Notification of Open Burn form
- b) The Property Owner or Authorized Agent shall submit a completed Notification of Open Burn form (Appendix A) to the Municipality of West Elgin
 - a. That only the items listed in Schedule "C" shall be burnt
 - b. All of the conditions of Section 5 of this by-law shall apply equally to all fires
 - c. Constant supervision of the fire shall be maintained by a Responsible Person, with the necessary means immediately available to extinguish
 - d. The property owner shall be held responsible and shall be liable individually and severally for the actions of their Authorized Agent with respect to the provisions, conditions, and penalties contained in this by-law
 - e. No person shall conduct an open air burn on any public road allowance or municipal property unless such burning is being conducted by authorized employees or Authorized Agents of the Municipality
 - f. Fires must be located at least 30 meters (98.43 feet) away from any Building, Combustible structure, Combustible vegetation, accumulation of Combustible materials, or as measured on the ground horizontally from any overhead wires carrying electricity, but in any case, longer distances may be required, if in the opinion of the Fire Chief, the

material being burned will emit sparks and embers such as to create a fire hazard

- g. Fires must be located at least 150 meters (492.15 feet) away from an occupied Building when the wind direction is such that at any time during the course of the fire, smoke from the fire is likely to pass in the vicinity of the occupied Building
- h. The size of any pile of materials to be burned:
 - i. Shall not exceed 9 square meters (96.84 square feet) in area and 2 meters (78.75 inches) in height
 - ii. In the case of an area zoned Agricultural, shall not exceed 36 square meters (387.36 square feet) in area and 2 meters (78.75 inches) in height; and
 - iii. In any case, the fire size or materials burned shall be controlled such that flames and hot embers do not pose an undue risk of fire to nearby Combustible materials
- i. Burning will not be permitted between ½ hour after sunset and ½ hour before sunrise (i.e. at night)
- j. No burns shall occur during such periods and in such areas where gusting or sustained wind speed exceed 20 kilometers per hour (12.43 miles per hour) or where wind directions are changing frequently
- k. All burning will be suspended during such periods and in such areas where the Fire Chief, or his/her designate has determined that there exists a high or extreme fire weather index (FWI) or other hazardous conditions
- l. The Notification to Open Burn form shall specify as precisely as possible the civic or street address of the location of the intended fires. Separate forms are required for properties at different addresses
- m. The person who submitted the Notification for Open Burn form is required to advise Fire Dispatch before any burning commenced and again when the burning is completed and the fire is extinguished
- n. A copy of the Notification to Open Burn shall be kept at the location of the fire as specified.

7. Burning of Rubbish Prohibited

No person shall install, use, and/or maintain any unlicensed incineration device for the burning of garbage or other refuse in any class or classes of Building

8. Fire Ban

- a) The Fire Chief, or designate, may issue a ban on any or all Open Air fires or cause to be extinguished any of all Open Air fires (including Exempt) until such conditions as the Fire Chief may indicate are met
- b) No person shall set or maintain a fire during a fire ban.

9. Right to Enter and Enforce

Any fires under the direct and constant supervision and control of the Municipality are exempt from the provisions of this by-law

10. Fire Department Exempt

Any fires under the direct and constant supervision and control of the Municipality are exempt from the provisions of this by-law

11. Penalty

- a) Every person who knowingly provides false or misleading information or who contravenes any provisions of this by-law is guilty of an offence and upon conviction is liable to a fine provided for in the Provincial Offences Act

- b) If the contravention of this by-law result in fire suppression or fire safety personnel and vehicles being dispatched to respond, the person in control of the fire and/or the property owner may be charged, at the discretion of the Fire Chief, for the cost of such response according the Fees and Charges By-law as amended from time to time. However, noting in any schedule of rates shall be construed as limiting the rights of the Municipality to seek restitution for other direct or consequential damages or costs incurred beyond those listed
- c) The quantity and type of fire vehicles and personnel dispatched to respond for the purposes of extinguishing, controlling or investigating any Open Air fire are at the discretion of the Fire Chief or his/her designate

12. Validity

In the event that any of the provisions of this by-law are deemed ultra vires by any Court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

13. Repeal

That By-law No. 2013-59 is hereby repealed.

14. Effective Date

That the effective date of this by-law shall be the date of final passage thereof.

Read a first and second time this 23rd day of October, 2014.

Read a third time and finally passed this 23rd day of October, 2014.

"Bernie Wiehle"
MAYOR

"Norma I. Bryant"
CLERK

SCHEDULE C

Authorized Materials That May be Burned Under By-law No. 2014- 69

Only those materials listed below may be burned. All other materials are specifically prohibited from being burned.

- Wood and wood by-products that have not been chemically treated or painted or stained
- White or brown paper and cardboard for the purposes of starting an authorized fire
- Dry brush, stumps, hay, straw, and grass and other dry yard or natural agricultural materials, but not including animal wastes and parts of animals unless such animals are diseased
- Natural or petroleum gasses or liquids used as appliance fuels
- Charcoal materials intended by BBQ use
- Paper seed bags, and
- Other clean burning Combustible materials that may be specifically Approved by the Fire Chief or his/her designate