

**The Municipal Corporation of the
Town of Fort Erie**

BY-LAW NO. 167-03

**BEING A BY-LAW TO REGULATE OPEN AIR BURNING
IN THE TOWN OF FORT ERIE AND TO REPEAL
BY-LAW NO. 237-2002**

WHEREAS Section 7.1(1) of the *Fire Protection and Prevention Act, 1997*, as amended by Section 475 of the *Municipal Act, 2001* provides inter alia 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 which open air fires may be set, and

WHEREAS Section 7.1(3) of the *Fire Protection and Prevention Act, 1997*, as amended by Section 475 of the *Municipal Act, 2001* 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*, as amended by Section 475 of the said *Municipal Act* 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*, as amended by Section 475 of the said *Municipal Act* 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*, as amended by Section 475 of the *Municipal Act, 2001* provides a firefighter 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 of the *Municipal Act, 2001* provides by-laws may be passed by all municipalities for providing that any person who contravenes any by-law of the municipality, passed under this Act, is guilty of an offence, and

WHEREAS Section 427 of the *Municipal Act, 2001* provides inter alia that where a municipality has authority by by-law or otherwise to direct or require that a matter or thing be done, the municipality may in the same or another by-law direct that, in default of it being

done by the person directed or required to do it, such matter or thing shall be done at the persons expense and the municipality may recover the costs of doing a thing or matter from the person directed or required to do it and the municipality may recover the costs by action or by adding the costs to the tax roll and collecting them in the same manner as taxes, and

WHEREAS Section 2.6.3.4 of the *Ontario Fire Code* provides that open air burning shall not be permitted unless approved, or unless such burning consists of a small confined fire, supervised at all times, and used to cook food on a grill or a barbecue, and

WHEREAS Section 19(2) of the *Fire Protection and Prevention Act*, 1997, S.O., Chapter 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 Town of Fort Erie;

WHEREAS By-law No. 237-2002 was passed by the Municipal Council of the Town of Fort Erie on the 25th day of November, 2002, to regulate open air burning in the Town of Fort Erie, and

WHEREAS a number of minor housekeeping wording changes have been recommended by the Ministry of the Attorney General to By-law No. 237-2002 and the set fine schedule, and

WHEREAS it is deemed desirable to incorporate the wording changes into a new by-law and to repeal By-law No. 237-2002;

NOW THEREFORE the Municipal Council of The Corporation of the Town of Fort Erie hereby enacts as follows:

PART 1 – DEFINITIONS AND ADMINISTRATION

1.1 Definitions

For the purposes of this By-law:

- (a) "Applicant" shall mean the person, organization, company or group that makes application to the Fire Chief for permission to hold an open air burning and includes such persons who contact the Fire Chief with notification of an intention to hold an open air burning of brush in the rural area;
- (b) "Barbecue" appliances include a hibachi, a 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;

- (c) "Open Air Burning" shall mean the burning of any material, including without limiting the generality of the foregoing, wood, cardboard, brush or garden waste where the flame is not wholly contained and is, thereby, open to the air;
- (d) "Open Burning Device" shall mean a commercially manufactured or homemade device for the purpose of containing a recreational fire;
- (e) "Town" shall mean The Corporation of the Town of Fort Erie;
- (f) "Fire Chief" shall mean the Fire Chief for the Town of Fort Erie Fire Department or designate including members of the Town of Fort Erie Fire Department;
- (g) "Rural Area" shall mean all areas outside the urban boundaries as defined in the Town's Official Plan.
- (h) "Recreational Open Air Burning" shall mean a small contained fire used for recreational purposes in accordance with the provisions of Section 2.3 herein.
- (i) "Non-Recreational Open Air Burning" shall mean any open air burning that is not a recreational open air burning.

1.2 Administration

The Fire Chief shall administer this By-law.

1.3 Fire Services – Exempt

The Town of Fort Erie 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 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 Town of Fort Erie unless permission has first been granted by the Fire Chief.

2.2 Non-recreational open air burning shall be prohibited in the urban areas of the Town of Fort Erie as defined by the Town's Official Plan.

2.3 Exception – Recreational Open Air Burning

Notwithstanding Section 2.1 herein, the following regulations shall apply to recreational open air burning associated with the use of open burning devices or fire burn areas specifically designed for open air burnings:

- (a) Every person conducting a recreational open air burning associated with the use of open burning devices or fire burn areas specifically designed for open air burnings must confine the same to open burning devices or to a fire burn area with a burn area no larger than two (2) feet (61 cm) by two (2) feet (61 cm) by two (2) feet (61 cm) or 8 cubic feet (0.26 cubic metres) in size. Open burning devices shall be:
 - (i) designed of a non-combustible material;
 - (ii) of a size not larger than described in Section 2.2 (a) herein; and
 - (iii) shall be installed in accordance with the Manufacturer's recommendation.
- (b) Every person must take steps to ensure that adjacent properties and individuals are protected from any fire hazard and are not adversely affected by the products of combustion;
- (c) No person shall burn materials other than commercially produced charcoal, briquettes or clean, dry seasoned wood, but not including painted wood, pressure treated wood or creosote treated wood;
- (d) No person shall burn wood having dimensions greater than the size of the open burning device or fire burn area and the wood shall be totally confined within the open burning device or fire burn area at all times;
- (e) Every person must confine an open air burning to a location that provides for a minimum distance of 13 feet (4 m) in all directions from adjacent properties;
- (f) Every person must confine open air burning to an area that is a minimum of 10 feet (3 m) from permanent combustible structures or objects;
- (g) Every person must have immediately available for use an effective extinguishing agent of sufficient size and with the capability of extinguishing the fire;
- (h) Every person conducting open air burnings must attend, control and supervise the same at all times and shall completely extinguish the open air burn site before it is vacated;
- (i) No person shall conduct open air burnings when the wind speed exceeds 20 km per hour or during rainy or foggy weather or at times when a smog alert has been

declared by the Ministry of the Environment and Energy for Ontario or any successor and relevant Ministry;

- (j) Every person conducting an open air burning may be permitted to do so on Town property in appliances approved and provided by the Town when first authorized, in writing, by the Director of Parks and Leisure Services and the Fire Chief;
- (k) Every person is permitted to conduct a campfire in a campground approved pursuant to Section 22.2 of the Town of Fort Erie Comprehensive Zoning By-law 129-90 (as amended);

2.4 Response to Complaints

- (a) Should the Fort Erie Fire Department be dispatched to a complaint regarding public safety due to a fire hazard created by a recreational open air burning, or upon notification of a prohibited open air burning not authorized under this by-law, the Fire Chief can order the landowner or occupant to immediately extinguish the fire.
- (b) Should any landowner or occupant fail to extinguish a recreational open air burning or a prohibited open air burning when ordered to do so by the Fire Chief, the Fire Chief may take action to have the fire extinguished, and the person who owns or occupies the land on which the recreational open air burning or prohibited open air burning is located shall be responsible for any and all costs incurred by the Town of Fort Erie Fire Department in its efforts to extinguish the fire.

2.5 Exception - Barbecues

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

- (a) Every person must place the barbecue on non-flammable material and in a location other than on a balcony, porch or verandah 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 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.

PART 3 – SPECIAL REGULATIONS FOR RURAL AREA NON RECREATIONAL OPEN AIR BURNING
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3.1 Permit – Non Recreational Open Air Burning

- (a) Any person intending to conduct a non-recreational open air burning shall make application at least one week prior to the proposed date of the non-recreational open air burning on the form supplied by the Fire Chief and shall comply with Section 3.2 herein and the Fire Chief shall have the authority to issue such permit.
- (b) The Fire Chief may issue a permit to allow a non-recreational open air burning to re-occur over an extended period of time.

3.2 Regulations – Non Recreational Open Air Burning

The following regulations shall apply to non-recreational open air burnings in any rural area:

- (a) Any person conducting a rural non recreational open air burning shall have the permit readily available on site, if requested to produce same by the Fire Chief;
- (b) No person or persons shall light or cause to be kindled any non recreational open air burning in a rural area before sunrise or after sunset;
- (c) No materials other than dry clean brush or other clean dry natural vegetation may be burned;
- (d) Non recreational open air burnings shall be attended, controlled and supervised at all times and shall be completely extinguished before the burn site is vacated;
- (e) Non recreational open air burnings are not permitted during rainy or foggy weather or on smog alert days as declared by the Ministry of Environment for Ontario or any successor and relevant Ministry;
- (f) Non recreational open air burnings are not permitted when the wind speed exceeds 20 km per hour;
- (g) A non recreational open air burning shall be confined to an area which is at least 200 feet (60 m) from any building, highway, road or wooded area and shall be clear of any over-head objects (i.e. wires);
- (h) The burn area shall be of a manageable size not exceeding 10 feet by 10 feet (3 m by 3 m);
- (i) Steps shall be taken to ensure that smoke caused by a non recreational open air burning does not have a negative impact on the visibility of motorists using highways in the vicinity of the non recreational open air burning or upon the owner(s) or occupant(s) of the surrounding properties.

3.3 Permission – Open Air Burning – Telephone Notification – Non Recreational Open Air Burning

Upon receipt of a permit, as described in 3.1 of this by-law, no person shall conduct or permit to be conducted a non recreational open air burning in the rural area without first

notifying the Fort Erie Fire Department in person or by telephone and complying with the provisions of Section 3.1 and Section 3.2 of this by-law.

3.4 Notification at Conclusion of Burning -Rural Area

Any person who has given notification pursuant to section 3.3 above, shall notify the Fort Erie Fire Department in person or by telephone at the conclusion of the non recreational open air burning.

3.5 Notification to Extinguish

Any person conducting a non recreational open air burning in any rural area shall immediately extinguish the fire upon notification by the Fire Chief, that in the Fire Chief's opinion,

- (a) the said fire presents a fire hazard, or
- (b) the fire is having a negative impact on persons using a highway adjacent to the burn site, or
- (c) the regulations of this by-law are being contravened, or
- (d) any combination of these matters exists or applies.

3.6 Failure to Extinguish - Liable for Costs

Should any landowner or occupant fail to extinguish a prohibited open air burning in a rural area when ordered to do so by the Fire Chief, the Fire Chief may take action to have the fire extinguished. 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 Town of Fort Erie Fire Department in its efforts to extinguish the fire.

PART 4 – ENFORCEMENT

4.1 Regulations – Offence

- (a) Every person who contravenes any provision of this by-law is guilty of an offence and is liable upon conviction and at the discretion of the Presiding Justice of the Peace or Judge of the Ontario Court (Provincial Division) or other relevant Justice or Judge or Court, to a fine pursuant to the provisions of the *Provincial Offences Act*, R.S.O. 1990 Chapter P.33.
- (b) The set fines for an offence under this by-law are set out in Schedule "A" attached hereto and forming part of this By-law.

- (c) The set fines described herein shall come into force and effect upon receipt of a Judge's Order from the Ministry of the Attorney General approving the set fines herein.

4.2 Prohibited Open Air Burning – Repeated

Should any land owner or occupant repeat the offence of conducting a prohibited open air burning, 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 Town of Fort Erie Fire Department in responding to the prohibited open air burning.

4.3 Causing False Response

Should it be determined that the landowner or occupant of adjacent property(s) falsely notified the Fort Erie Fire Department of an open air burning contrary to Section 2.1, 3.1 and 3.2; the person who owns or occupies the property in which the false call originated, shall on a repeated offence be responsible for any and all cost incurred by the Fort Erie Fire Department response.

4.4 Continuation - Repetition - Prohibition by Order

The court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offence by the person convicted, and such order shall be in addition to any other penalty imposed on the person convicted.

4.5 Default - Collection of Costs

The Town shall have the right to collect any unpaid costs as authorized by this by-law by adding such charges to the tax roll where they may be collected in like manner as municipal taxes, all of which is in accordance with Section 326 of the *Municipal Act*, R.S.O. 1990, Chapter M.45, as amended.

PART 5 – ENACTMENT

5.1 Severability

If any section or sections of this by-law or parts thereof shall be found by any court to be illegal or beyond the power of Municipal Council of the Town of Fort Erie to enact, such section or sections or parts thereof shall be deemed to be severable and all other sections or parts of this by-law shall be deemed to be separate and independent therefrom and shall continue in full force and effect unless and until similarly found and this by-law shall be enacted as such.

5.2 Short Title

The short title of this by-law shall be "The Open Air Burning By-law".

5.3 Clerk's Authority

In the event the Ministry of Attorney General directs or recommends housekeeping modifications or corrections to this by-law or its schedules then pursuant to the provisions of Section 102.1 of the *Municipal Act*, the Clerk of the Town of Fort Erie is hereby authorized to effect any such modifications or corrections of a numerical, semantical, grammatical or descriptive nature or kind.

5.4 Effective date

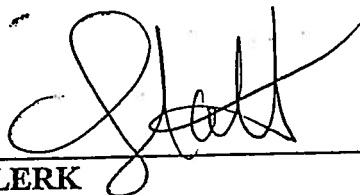
This by-law shall come into force and effect on its final passage thereof.

PART 6 – REPEAL FORMER BY-LAW

6.1 By-law No. 237-2002 be and it is hereby repealed.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 25th DAY OF AUGUST, 2003

MAYOR



CLERK

I, the Clerk, Carolyn J. Kett, of The Corporation of the Town of Fort Erie hereby certify the foregoing to be a true certified copy of By-law No. 167-2003 of the said Town. Given under my hand and the seal of the said Corporation this _____ day of _____, 2003.

The Corporation of The Town of Fort Erie
PART 1 Provincial Offences Act

By-law 167-2003
A By-law to Regulate Open Air Burning

ITEM	COLUMN 1 Short Form Wording	COLUMN 2 Provision creating or defining offence	COLUMN 3 Set Fine (includes costs)
1	Conduct open air burn without permission	Section 2.1	\$100.00
2	Permit open air burn without permission	Section 2.1	\$100.00
3	Conduct non-recreational burn in urban area	Section 2.2	\$100.00
4	Conduct open air burn in oversized device	Section 2.3(a)	\$100.00
5	Burning device made of combustible material	Section 2.3(a) (i)	\$100.00
6	Burning device incorrectly installed	Section 2.3(a) (iii)	\$100.00
7	Fail to protect adjacent properties from fire hazard	Section 2.3(b)	\$100.00
8	Fail to protect adjacent individuals from fire hazard	Section 2.3(b)	\$100.00
9	Burn prohibited materials	Section 2.3(c)	\$100.00
10	Fail to confine materials to fire burn area	Section 2.3(d)	\$100.00
11	Fail to confine open air burn to minimum distance from adjacent properties	Section 2.3(e)	\$100.00
12	Fail to confine open air burn from structures or objects	Section 2.3(f)	\$100.00
13	Fail to provide extinguishing agent	Section 2.3(g)	\$100.00
14	Fail to supervise open air burning	Section 2.3(h)	\$100.00

The Corporation of Town of Fort Erie
PART 1 Provincial Offences Act
By-law 167-03
A By-law to Regulate Open Air Burning

ITEM	COLUMN 1 Short Form Wording	COLUMN 2 Provision creating or defining offence	COLUMN 3 Set Fine (includes costs)
15	Conduct open air burning on prohibited weather day	Section 2.3(f)	\$100.00
16	Locate barbeque in prohibited area	Section 2.5 (a)	\$100.00
17	Fail to supervise barbeque	Section 2.5(b)	\$100.00
18	Fail to use clean flammable materials	Section 2.5 (c)	\$100.00
19	Conduct non recreational open air burn between sunset and sunrise	Section 3.2 (b)	\$100.00
20	Non recreational open air burning of prohibited materials	Section 3.2 (c)	\$100.00
21	Fail to supervise non recreational open air burn	Section 3.2 (d)	\$100.00
22	Permit non recreational open air burn on prohibited weather day.	Section 3.2 (e)	\$100.00
23	Conduct a non recreational open air burn when wind speeds exceed 20km per hour	Section 3.2 (f)	\$100.00
24	Fail to confine non recreational open air burn to designated area	Section 3.2 (g)	\$100.00
25	Non recreational open air burn exceed permitted size	Section 3.2 (h)	\$100.00

ITEM	COLUMN 1 Short Form Wording	COLUMN 2 Provision creating or defining offence	COLUMN 3 Set Fine (includes costs)
26	Non recreational open air burn impacting on surrounding area	3.2 (i)	\$100.00

Note: The general penalty section for the offences created above is section 4.1 of the Town of Fort Erie Open Air Burning Bylaw 167-03 and section 61 of the Provincial Offences Act, R.S.O. 1999, c.P.33.