

Authority: Item 8, Committee of the Whole
Report 02-33, (CS02082)
CM: October 9, 2002

Bill No. 283

CITY OF HAMILTON

BY-LAW NO. 02-283

To Regulate Open Air Burning

WHEREAS at present there are six different procedures in effect across the City to regulate open air burning;

AND WHEREAS it is in the interests of the City to adopt a uniform scheme of regulation with respect to open air burning;

AND WHEREAS the *Ontario Fire Code O. Reg. 388/97*, as promulgated under the *Fire Protection and Prevention Act*, provides the basis for a satisfactory scheme of uniform regulation.

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. Interpretation

1.1 In this By-law

- (a) “City” means the City of Hamilton;
- (b) “conduct” means with respect to a fire to burn, or to set a fire for burning;
- (c) “Fire Chief” means the City’s Director of Emergency Services;
- (d) “Fire Department” means Hamilton Emergency Services-Fire;

- (e) “open air burning” means any fire that is conducted outside a building,
 - (i) including a fire conducted in a garden, yard, alley, field, park, industrial site, construction site, building lot, parking lot, street, or other open place, but
 - (ii) excluding the operation of welding or similar equipment, the operation of a coal or wood fired locomotive or boat, or a controlled burn that is part of a manufacturing process;
- (f) “Permit” means permission to conduct open air burning granted by the City issued under section 2 of this By-law;
- (g) “occupant” means the person having effective control over or apparent possession of any property or the relevant portion thereof, and for the purposes of this by-law, a mortgagee-in-possession of property, or a receiver and manager, personal representative or trustee in bankruptcy who has taken possession of that property shall be deemed to have effective control over the property
- (h) “owner” means the registered owner of property;
- (i) “property” means any public or private land, building, structure or other real property within the City.

1.2 In this By-law,

- (a) a word importing the masculine, feminine or neuter gender only includes members of the other genders;
- (b) a word defined in or importing the singular number has the same meaning when used in the plural number, and vice versa;
- (c) a reference to any Act, bylaw, rule or regulation or to a provision thereof shall be deemed to include a reference to any Act, bylaw, rule or regulation or provision enacted in substitution therefor or amendment thereof;

- (d) the headings to each section are inserted for convenience of reference only and do not form part of the By-law;
- (e) words and abbreviations which have well-known technical or trade meanings are used in the By-law in accordance with those recognized meanings; and
- (f) where an officer of the City is named, or a reference is made to an office of the City, that reference shall be deemed to include a reference to the designate of that person, as appointed in accordance with policies and procedures of the City in force from time to time.

2. Permit Procedure

- 2.1 Any person eighteen years of age or over, who is the owner or occupant of a property within the City, or who has been authorized in writing by the owner or occupant of such property, may apply to the Fire Department for a Permit to conduct an open air burning.
- 2.2 The person to whom a Permit is granted shall be present in person at all times during which the burn is being conducted and cleaned up, and shall be responsible for the manner in which the same are carried out.
- 2.3 The Fire Department shall not issue a Permit under this section where it is of the opinion that the proposed site at which the open air burning is to be conducted is not suitable for that purpose.
- 2.4 Where the proposed site at which an open air burning is to be conducted is within the urban boundary of the City as defined in the Regional Official Plan, no Permit shall be issued unless the Fire Department has carried out an inspection of the proposed site to determine whether the burn can be safely conducted without nuisance or risk to neighboring properties, the proof of which shall lie on the applicant.
- 2.5 An applicant for a Permit under this section shall provide, together with his or her application,
 - (a) such information or authorization as is required under this By-law;

- (b) where required by the City, evidence of insurance on such terms and in such amount as the City's Manager of Risk Management may prescribe from time to time;
 - (c) a description of the site to be used for the open air burning, sufficient to identify each site for which application is made;
 - (d) such further information as the Fire Department may reasonably require.
- 2.6 A Permit issued under this section is valid on the date of issue and for the balance of the calendar year in which the permit is issued.
- 2.7 A Permit issued under this section may be made subject to such terms and conditions as the Fire Department may consider to be necessary in the interests 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, and every Permit holder shall comply with those terms and conditions.
- 2.9 From time to time, the Fire Chief may promulgate guidelines respecting the conduct of open air burning within the City, and where such guidelines are promulgated,
 - (a) all such guidelines shall be deemed to constitute terms and conditions applicable to any Permit subsequently issued, so long as they remain in force; and
 - (b) the Fire Department shall give a copy of the current guidelines to any person to whom a Permit is issued under this By-law.
- 2.10 A Permit issued under this By-law is not transferable.
- 2.11 Where any holder of a Permit fails or refuses to comply with a term or condition to which the Permit is subject, the Fire Department shall immediately revoke the Permit and shall forthwith send a written notice of that revocation to the Permit holder and of the occupant of the site at which the fire was to be conducted, if not the same person.
- 2.12 The Fire Department may require an applicant for a Permit under this By-law to provide such information as the Fire Chief considers necessary or advisable in

his or her reasonable discretion to allow the Fire Department to make an informed decision as to whether or not to grant a Permit under this By-law, and where that information is not provided in the form and manner required, the Fire Department may refuse to issue that Permit.

3. Conduct of Open air burning

3.1 Every person to whom a Permit is issued under section 1 shall:

- (a) produce the Permit on demand to any person authorized to enforce this By-law;
- (b) permit the inspection by the Fire Department of any site where the fire is being, is proposed to be, or has been conducted, and
- (c) comply with all guidelines governing the conduct of the open air burning, and such directions as may be given by a member of the Fire Department with respect to the fire.

3.2 Every person to whom a Permit is issued under this section shall, immediately after the fire is conducted and extinguished, carry out a site inspection and shall

- (a) remove all unburned flammable material from the site of the fire;
- (b) gather together and remove all ash and other debris remaining into a fire resistant receptacle;
- (c) return the site to the condition it was in prior to the conduct of the fire.

3.3 So long as an open air burning is burning, the site of that fire shall be kept under continual surveillance by a person eighteen years of age or older, until the final site inspection has been completed by Permit-holder identified under section 3.2.

3.4 No person shall conduct an open air burning in a manner that creates a nuisance, taking into account all associated noise, smoke, sparks and other dangers relating to the spread of fire, the risk of explosion, and risk of death, injury and damage to property inherent in the conduct of a fire.

3.5 A person who conducts an open air burning shall use reasonable care to ensure that the site of the fire is not accessible to children.

4. Offenses

- 4.1 No person shall carry out, or permit a person to carry out on property of which he or she is the owner or occupant, any open air burning unless that person is the holder of a current Permit authorizing that burning to take place.
- 4.2 Section 4.1 does not apply where the open air burning consists of a small, confined fire, supervised at all times, and used to cook food on a grill or a barbecue.
- 4.3 No open air burning shall be carried out at a time when a smog alert or smog advisory is in effect within the City or any part of the City, other than an open air burning within the scope of section 4.2.
- 4.4 No person shall carry out open air burning in an unsafe manner, or in a manner inconsistent with any terms and conditions applicable to the Permit issued under this By-law.
- 4.5 Every person who contravenes any provision of this By-law is guilty of an offence, and upon conviction, is liable to the penalties specified by Section 61 of the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33.

5. **Enforcement**

- 5.1 The Fire Chief, the Chief Fire Prevention Officer, and every member of the Fire Department designated as an Assistant to the Fire Marshall are authorized to enforce this by-law.
- 4.2 From time to time, the Fire Chief may approve all such forms as may be contemplated under this By-law, including forms of Permit and applications for Permit, and an applicant for any Permit under this By-law shall use the appropriate form of application and provide all information required thereon.

6. **Repeals**

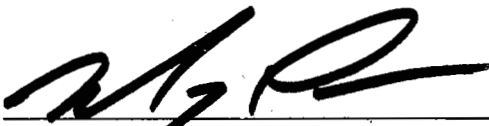
- 6.1 The following By-laws are repealed:
 - (a) the *Open Air Burning By-law* of the former City of Stoney Creek, being By-law No. 4583-97 of that City;


- (b) the *By-law to Regulate the Setting of Fires* of the former Township of Glanbrook, being By-law No. 510-94 of that Township;
 - (c) the *By-law to Regulate the Setting of Bonfires* of the former Township of Ancaster, being By-law no 1360 of that Town,
- and all amendments to those By-laws.

6.2 This by-law comes into force and effect on January 1, 2003.

6.3 This by-law may be cited as the *Open Air Burning By-law*.

PASSED and ENACTED this 9th day of October, 2002.


A/MAYOR - Murray Ferguson


CLERK



HAMILTON EMERGENCY SERVICES FIRE



DATE: _____
(Permit valid for the calendar year)

OPEN AIR BURNING PERMIT	
LOCATION OF BURN SITE:	EXTINGUISHER TRAINING: <input type="checkbox"/> (no fee applicable) STRIKE/PICKET LINE: <input type="checkbox"/>
NAME OF APPLICANT: (include names of others over 18yrs of age who may conduct open air burning)	
MAILING ADDRESS:	
POSTAL CODE:	TELEPHONE:
APPLICATION FEE: \$-- (RURAL) INSPECTION FEE: \$---- (URBAN)	TOTAL PAID: \$ _____ CASH <input type="checkbox"/> CHEQUE <input type="checkbox"/>
PERMIT APPROVED: <input type="checkbox"/>	MAX. PILE SIZE: STANDARD 2m x 2m x1m in height: <input type="checkbox"/>
PERMIT DENIED: <input type="checkbox"/>	: OTHERWISE APPROVED – Size: _____
PERMIT APPLICATION REVIEWED BY: _____	
APPLICANTS SIGNATURE: _____	
BY SIGNING THIS PERMIT, THE APPLICANT AGREE'S TO COMPLY WITH ALL GUIDELINES SHOWN ON THE REVERSE SIDE OF THIS FORM.	

OPEN AIR BURNING WILL BE PERMITTED IN AREAS DESIGNATED AS RURAL. OPEN AIR BURNING IN URBAN DESIGNATED AREAS WILL NOT BE PERMITTED, UNLESS APPROVED BY THE CHIEF FIRE OFFICIAL. ANY APPROVAL IS SUBJECT TO AN INSPECTION AND ASSOCIATED FEE BY THE HAMILTON FIRE SERVICE.

URBAN AND RURAL AREAS ARE AS DESIGNATED IN THE OFFICIAL PLAN FOR THE CITY OF HAMILTON

FAILURE TO COMPLY WITH ANY OF THE GUIDELINES NOTED ON THE REVERSE SIDE OF THIS PERMIT WILL NEGATE THE APPROVAL FOR BURNING. FURTHER, THIS DEPARTMENT WILL PROCEED TO PROSECUTION AGAINST YOU AS OWNER FOR NON-COMPLIANCE WITH EITHER ARTICLE 26.3.4. OF THE ONTARIO FIRE CODE OR THE FIRE PROTECTION AND PREVENTION ACT. THOSE FOUND TO BE IN VIOLATION OF THE GUIDELINES AS SET OUT IN THIS PERMIT OR CONDUCTING OPEN AIR BURNING WITHOUT A PERMIT SHALL BE HELD LIABLE FOR COSTS INCURRED BY THE HAMILTON FIRE SERVICE FOR ANY EMERGENCY RESPONSE. THOSE COSTS ARE IDENTIFIED IN ITEM #14 ON THE REVERSE SIDE OF THIS PERMIT.

IN THE INTEREST OF PUBLIC SAFETY, THE HAMILTON FIRE SERVICE RESERVE THE RIGHT TO ISSUE A BAN OR TEMPORARILY SUSPEND ALL APPROVALS FOR OPEN AIR BURNING SHOULD CONDITIONS AS DETERMINED BY THE HAMILTON FIRE SERVICE WARRANT SUCH ACTION. ANY PERSON FOUND TO BE CONDUCTING OPEN AIR BURNING IN CONTRAVENTION OF SUCH A BAN IS GUILTY OF AN OFFENCE UNDER EITHER THE ONTARIO FIRE CODE OR THE FIRE PROTECTION AND PREVENTION ACT.

APPROVAL GUIDELINES FOR OPEN AIR BURNING

1. Permits are required for each site and are valid for the calendar year for which it was issued. Permits must be available for viewing at the burn site upon request.
2. The fire is to be attended and supervised at all times.
3. All fires are to be completely extinguished at the end of each working/burning day.
4. Complaints received regarding problems associated with smoke may be cause for an approval to be rescinded. Burning is not to take place when winds will cause smoke to be an annoyance to nearby properties or roadways.
5. All fires must be kept to a maximum size of 2m x 2m x 1m in height, unless otherwise approved by the Chief Fire Official. Recreational campfires must be kept to a maximum size of 0.6m in diameter and must be confined (i.e. steel tire rim, bricks, stone).
6. With the exception of recreational campfires and outdoor fireplaces, open air burning within 30m of any building or other combustible material shall not be permitted. Recreational campfires and outdoor fireplaces must have a minimum 3m clearance to any building or combustible material.
7. Only the burning of clean wood and brush is permitted. As an alternative, it is recommended that wood and brush be disposed of in accordance with the City's Leaf and Yard Waste Collection Program – details included in Permit Package.
8. Equipment capable of extinguishing the fire at any time conditions warrant is to be on site at all times burning is carried out. (ie: portable fire extinguishers, garden hose, portable pump and hose, bobcat etc.)
9. The permit holder must contact The Ministry of the Environment, (905) 521-7640, and comply with the Environmental Protection Act.
10. Open air burning shall not be carried out on **Smog Alert** days as declared by the City of Hamilton. Smog Alert days are declared when the Air Quality Index is expected to reach 50, a level that can impact the health of citizens. Citizens should call the City of Hamilton at (905) 546-CITY for information pertaining to days designated as Smog Alert days. Information can also be obtained by calling the Ontario Ministry of the Environment Air Quality Index Reporting System at 1-800-387-7768
11. The use of outdoor fireplaces is deemed to be open air burning and requires the issuance of a permit. This permit is only available for rural designated locations. The attached sheet lists guidelines for the use of outdoor fireplaces.
12. Open air burning during a strike shall comply with items 2, 3, 4, 6, 7, 8, 9 and 10 and also be subjected to the following additional requirements:
 - only one drum shall be used at each location/s
 - fires to be confined to the drums
 - storage of wood is to be kept a minimum of 1m away from barrel
 - the drums shall be kept away from any buildings, vehicles and any combustible material adjacent to the property
 - the approval is only for the duration of the strike.
13. Open air burning for live fire extinguisher training requires an issuance of a permit however will not be subjected to a permit fee. Extinguisher training must comply with items 2, 3, 4, 6, 8, 9 and 12. The pan is to be limited to a maximum size of 60cm x 90cm x 15cm in depth. (24" x 36" x 6" in depth). All relevant safety requirements as identified in the fuel source's MSDS sheet, are to be adhered to.
14. All persons setting an open fire shall be liable for costs incurred by the Hamilton Emergency Services - Fire for an emergency response to any address in violation of the guidelines or investigations of burning complaints of illegal burning. These costs include \$350 per hour for each responding vehicle for the 1st hour and \$175 per ½ hour for each responding vehicle thereafter.



GUIDELINES FOR THE SAFE USE OF OUTDOOR FIREPLACES



Outdoor style fireplaces, currently sold in the Hamilton area, including but not limited to the "Back-Yard Max and "Chiminea's", are deemed to constitute open air burning and are not permitted in the urban areas of The City of Hamilton. The use of these outdoor fireplaces will be permitted in the areas of the City designated as rural, with the issuance of a permit. The following pictures, show some of the common type's of outdoor fireplaces available.



The use of outdoor fireplaces is to comply with the manufacturer's safety guidelines and operating instructions. In the absence of manufacturer's safety guidelines, the following guidelines are to be complied with:

1. The outdoor fireplace must be installed on a non-combustible surface.
2. Maintain a minimum three-metre clearance between the fireplace and combustible objects and surfaces to prevent ignition from radiant heat.
3. Burn wood products only. Petroleum products, rubbish, grass, plastics, rubber or any other material that may cause excessive heat or smoke is not permitted.
4. The amount of material being burnt is to be limited to ensure that the flames are confined to the unit and do not extend into the chimney.
5. Permits are required for each site and are valid for the calendar year for which it was issued. Permits must be available for viewing at the burn site upon request.
6. The fire is to be attended and supervised at all times.
7. All fires are to be completely extinguished at the end of each use.
8. Complaints received regarding problems associated with smoke may be cause for an approval to be rescinded. Burning is not to take place when winds will cause smoke to be a safety hazard or an annoyance to nearby properties or roadways.
9. Equipment capable of extinguishing the fire at any time conditions warrant is to be on site at all times burning is carried out. (ie: portable fire extinguishers, garden hose, sand).

ADDITIONAL SAFETY GUIDELINES:

1. Check the unit regularly for the appearance of cracks or other physical deterioration.
2. The fireplace must not be touched while there is a fire burning. Wait at least 30 minutes after the fire is out before touching the fireplace, use gloves if necessary.