

THE CORPORATION OF THE CITY OF WELLAND

BY-LAW NUMBER 2011-85

BEING A BY-LAW TO REGULATE THE SETTING
OF OPEN-AIR FIRES AND SOME OTHER ASPECTS
OF FIRE PREVENTION IN THE CITY OF WELLAND

WHEREAS Section 7.1 (1) of the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c.4, 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-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*, S.O. 1997, c.4, as amended, provides that a by-law under this section may deal with different areas of the municipality differently;

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 consists of a small, confined fire, supervised at all times, and used to cook food on a grill or barbeque or such burning take place in an appliance that is in conformance with the *Technical Standards and Safety Act, 2000*, is for outdoor use and is installed in accordance with the manufacturer's instructions;

AND WHEREAS Section 128 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that a municipality may pass by-laws to prohibit and regulate public nuisances, including matters that, in the opinion of Council, are or could become or cause public nuisance;

AND WHEREAS Section 7.1 (4) of the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c.4, as amended, provides that 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 391 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that despite any Act, a municipality and a local board may pass by-laws imposing fees or charges on any class of person, for services or activities provided or done by or on behalf of it or for costs payable by it for services or activities provided or done by or on behalf of any other municipality or local board;

AND WHEREAS Section 442 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that where the municipality has the authority by any Act or by-law to direct or require a person to do a matter or thing, the municipality may also provide that, in default or it being done by the person directed or required to do so, the matter or thing shall be done at the person's expense and the municipality may recover the costs of doing the matter or thing from the person required to do it, by action or by adding the costs to the tax roll and collecting them in the same manner as taxes;

AND WHEREAS the Council of the Corporation of The City of Welland is desirous of enacting a by-law to regulate the setting of open-air fires, including the provision of conditions for the purposes of ensuring fire safety from the risks of open-air fires and reducing the public nuisance arising from such fires;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF WELLAND HEREBY ENACTS AS FOLLOWS:

SECTION 1 **SHORT TITLE**

1.1 This By-law may be cited as the "Open-Air Fire By-law."

SECTION 2 **SCOPE**

- 2.1 The provisions of this By-law shall be applicable on all lands and properties within the corporate and geographic limits of the Corporation of the City of Welland.
- 2.2 Nothing in this By-law shall be construed as limiting, restraining, superseding, impeding or otherwise conflicting with the authority of the Medical Officer of Health, the Fire Marshal or the *Fire Protection and Prevention Act, 1997*, or any Provincial or Federal Minister and his/her powers as set out in any Act, By-law or regulation.
- 2.3 Any **Open-Air Fires** under the direct and constant supervision and control of the City of Welland Fire and Emergency Services Department are exempt from the provisions of this By-law.
- 2.4 Despite the provisions of this By-law the Council of the City of Welland may direct the **Fire Chief** to issue a **Burning Permit** for a specific event in the City, under such fire safety conditions as may be appropriate.

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SECTION 3 DEFINITIONS

For the purposes of this By-law the following Definitions shall apply;

- 3.1 Definitions in the *Fire Protection and Prevention Act, 1997*, as amended, shall be used with respect to matters pertaining to fire prevention and fire safety and which are undefined in this By-law.
- 3.2 “**Applicant**” means the applicant for a **Burning Permit**, being an **Owner** or person who is the **Authorized Agent** for an **Owner**.
- 3.3 “**Approved**” means approved by the **Fire Chief** or his designate;
- 3.4 “**Approved Camp Ground**” means an established and organized campground which has in place an **Approved Burning Safety Plan** that contains procedures and specifies facilities provided by the camp ground operator for the safety of the occupants of the campground; and has been issued a seasonal **Burning Permit**.
- 3.5 “**Authorized Agent**” means any **Responsible Person** who can provide reasonable evidence that they are authorized to act for the **Owner** of a particular property.
- 3.6 “**Back-Yard**” means the space on the property behind a building, on the side opposite from the street address side.
- 3.7 “**Ban**” on **Open-Air Fires** means a restriction or prohibition on **Open-Air Fires** issued by the **Fire Chief**.
- 3.8 “**Building**” means any **Structure** used or intended for supporting or sheltering any use or **Occupancy**, but does not include a non-enclosing open-sided **Structure**.
- 3.9 “**Barbeque**” means any fuel fired **Cooking** device that is commercially manufactured, completely contains the fire, and expressly designed for the purpose of **Cooking**.
- 3.10 “**Burning Permit**” means a written, conditional, authorization issued and administered by the **Fire Chief** to set or maintain an **Open-Air Fire** that is not an **Exempt** fire and as per any restrictions and conditions contained in this By-law or as may be specified on the **Burning Permit** itself.
- 3.11 “**Burning Safety Plan**” means a formal statement of procedures and facilities provided by the **Applicant** and/or **Owner**, and shall include provisions for facilitating emergency vehicle access and response, and **Open-Air Fire** safety and control, and protection of the environment.
- 3.12 “**Chiminea**” means a device largely made from pottery or metal and which is equipped with a chimney and an enclosed **Hearth** in which a recreational fire may be set.
- 3.13 “**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 burning materials.
- 3.14 “**Cooking**” means the activity of preparing food for human consumption by placing it over a fire until such time as it is ready to eat, and includes fire pre-burn time before the **Cooking** commences but only as is reasonably necessary.
- 3.15 “**Deputy Fire Chief**” means a deputy fire chief in the City of Welland.
- 3.16 “**Director of Fire Prevention**” means the director of fire prevention in the City of Welland.
- 3.17 “**Exempt**” means that, under specified conditions, a particular type or configuration of **Open-Air Fire** does not require a **Burning Permit**.
- 3.18 “**Fire Chief**” means the appointed fire chief in the City of Welland and, whether stated or not, also means his/her designate which may include a **Deputy Fire Chief**, a **Fire Prevention Officer** or the **Director of Fire Prevention**, or a **Firefighter**; unless it is stated as Fire Chief only in which case there is no designate.
- 3.19 “**Firefighter**” means a firefighter in the City of Welland.
- 3.20 “**Fire Prevention Officer**” means a fire prevention officer in the City of Welland.
- 3.21 “**Grill**” means any custom designed fuel-fired **Cooking** device that is constructed of metal, ceramic, stone, or masonry, that completely contains the fire, and that has been **Approved** for use as a **Cooking** device.
- 3.22 “**Hearth**” means that part of a device in which a fire is set and maintained and which is fully enclosed by the device and screens.
- 3.23 “**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 requirements of this By-law.

- 3.24 “**Made Safe**” means that all reasonable and prudent steps are taken to guard against injury to persons due to a fire deteriorated condition of a **Structure** or property or the residue from a fire; including steps for the erecting of safety barriers and signs, grading of property, demolition of unstable **Structures** or materials, removal of residue left from the burning process, and/or ensuring that the fire is fully and completely extinguished.
- 3.25 “**Multi-Unit Residential Building**” means any **Building** in which there are three or more residential dwelling units as defined by the Ontario Building Code.
- 3.26 “**Nuisance**” means the travel of the products of a fire, including but not limited to, smoke, odour, ash, and hot embers, which products in the opinion of the **Fire Chief** may cause unreasonable discomfort to persons, loss of enjoyment or normal use of property, interference with normal conduction of business, or damage to property.
- 3.27 “**Occupancy**” means the use or intended use of a **Building** or part thereof as defined in the Ontario Building Code.
- 3.28 “**Occupant**” means that person or persons who legally or otherwise are present on a property.
- 3.29 “**Open-Air Fire**” means:
- 3.29.1 any fire set outdoors, i.e. not in a **Building**, or
- 3.29.2 any fire set in a device or appliance located outside of a **Building**;
- 3.29.3 but does not include
- 3.29.3.1 fires in **Incinerators**; or
- 3.29.3.2 fires in devices installed outside of a **Building** and that are used as a 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 purpose by a recognized and appropriate agency.
- 3.30 “**Owner**” means the person registered on title as the owner of a property or **Structure** or **Building**.
- 3.31 “**Responsible Person**” means any adult person (18 years of age or older) who, in the opinion of the **Fire Chief**, or his designate, is capable of exercising the required judgment and is capable of performing the necessary actions to control a fire and prevent its unwanted spread, and does not include persons impaired by alcohol or drugs.
- 3.32 “**Smog Day**” means any day or portion of a day when a smog advisory or alert has been issued by the Ontario Ministry of Environment and Energy for Welland.
- 3.33 “**Structure**” means anything constructed or erected, the use of which requires location on or in the ground.

SECTION 4 RESTRICTION ON BURNING

- 4.1 No person shall set or maintain an **Open-Air Fire** except
- 4.1.1 an **Exempt** fire as described in “*Section 5, Exempt Fires*”, or
- 4.1.2 as is permitted under the conditions of a **Burning Permit** as defined in “*Section 7, Burning Permits*” or “*Section 8, Seasonal or Vocational Burning Permits*” of this By-law.

SECTION 5 EXEMPT FIRES

- 5.1 The types of **Open-Air Fires** listed in this *Section* are **Exempt** and such fires may be set and maintained anywhere in the City of Welland provided that the restrictions in this *Section* and the conditions in “*Section 6, Conditions on Exempt Fires*” are fully met.
- 5.2 Cooking Fires
A fire that is confined within a **Barbeque** or **Approved Grill** being used for the purposes of **Cooking** provided
- 5.2.1 the fire is only large enough for the purpose,
- 5.2.2 such fire is not in or near dry vegetation,
- 5.2.3 such fire is not in any other place conducive to the development or the spread of fire or explosion, and
- 5.2.4 the fire is attended at all times by a **Responsible Person** to supervise it.
- 5.2.5 Except such fire shall not be on a **Combustible** porch, balcony, roof, or verandah that is attached to or part of a **Multi-Unit Residential Building**.

- 5.3 Construction or Maintenance Activities
An appliance of a portable nature which requires an open flame for the heating of a material during a construction or maintenance process provided
- 5.3.1 such appliance is safe to operate,
 - 5.3.2 such appliance is not operated in such a manner as to create a fire hazard, and
 - 5.3.3 that the fire is attended at all times by a **Responsible Person** to supervise it.
- 5.4 Other Flaming Devices
- 5.4.1 Patio torches and candles provided
 - 5.4.1.1 such devices are not operated in or near dry vegetation, and
 - 5.4.1.2 such devices are not operated in any other place conducive to the development or the spread of fire or explosion.
 - 5.4.2 Consumer (family) fireworks and licensed fireworks displays where and when permitted by "The Fireworks By-law" of the City of Welland..
 - 5.4.3 A compressed natural or propane gas fired appliance that is in conformance with the *Technical Standards and Safety Act, 2000*, is for outdoor use, and is installed and used in accordance with the manufacturer's instructions
- 5.5 Campfires and Chimineas
With the permission of the property **Owner** a **Chiminea** or campfire on privately owned lands, except those lands being used as an **Approved Camp Ground**, provided
- 5.5.1 the fire is completely contained within a metal, masonry, or ceramic enclosure device with no openings of any kind that are not completely covered at all times, except when charging the device with fuel, by tight fitting and suitable metal spark screen(s) in which no opening is larger than 6 mm in any dimension,
 - 5.5.2 the **Hearth** area designated for the fire is not more than 66 centimeters in any horizontal dimension,
 - 5.5.3 the pile of materials to be burned is not more than 66 centimeters in height,
 - 5.5.4 all solid fuels are completely contained at all times within the fire device and screens,
 - 5.5.5 the device is not located on any **Combustible** surface,
 - 5.5.6 the fire is controlled such that flames and hot embers do not pose an undue risk of fire to nearby **Combustible** materials,
 - 5.5.7 the fire is not burned on any **Smog Day**,
 - 5.5.8 the fire is located in a **Back-Yard**,
 - 5.5.9 the fire is no closer than 3 meters to the property line, and
 - 5.5.10 the fire is attended at all times by a **Responsible Person** to supervise it.

SECTION 6 CONDITIONS ON EXEMPT FIRES

- 6.1 Any person who sets or maintains an **Exempt** fire as in "Section 5, Exempt Fires" shall be responsible to take all necessary steps to ensure that all of the conditions in this Section are fully met.
- 6.2 Smoke
The smoke or other emissions from the fire
- 6.2.1 shall not travel to a neighboring property to such an extent or degree that it is a **Nuisance**, and
 - 6.2.2 shall not travel across any public roadway to the extent or degree that in the opinion of the **Fire Chief** it may cause a public safety hazard to any person traveling on the roadway.
- 6.3 Clearances
To prevent the spread of fire from heat, flame, and sparks, all **Exempt** fire devices shall be a minimum horizontal and vertical distance from any **Combustible Structure** or accumulation of **Combustible** materials, as measured from the nearest point on the device
- 6.3.1 for campfires and **Chimineas**: no less than 3 meters horizontally and 5 meters below,
 - 6.3.2 for a barbeque: no less than 1 meter horizontally and 3 meters below,
 - 6.3.3 for a custom **Grill** no less than 3 meters horizontally and 4 meters below, and
 - 6.3.4 despite meeting the minimum distances specified in this *Sub-section* burning is prohibited at any location or under conditions where there is a reasonable

probability of such fire spreading to a **Building, Structure**, grass, or other **Combustible** vegetation or material.

- 6.4 Materials Burned Restricted
 Except as may be more specifically restricted elsewhere in this By-law, only the following materials may be burned
- 6.4.1 dry wood that has not been chemically treated, painted, stained,
 - 6.4.2 unprinted paper and cardboard but only for the purposes and to the extent reasonably required for starting the fire,
 - 6.4.3 natural or petroleum gases or liquids used as appliance fuels in an appliance that is in conformance with the *Technical Standards and Safety Act, 2000*, and
 - 6.4.4 commercial charcoal products, and such commercial lighter fuels only as is required to start a charcoal fire.
- 6.5 Extinguishment
 Any person supervising the fire shall ensure that
- 6.5.1 at all times that the fire is burning there shall be readily to hand at the site of the fire an adequate means in which the fire may be controlled and extinguished; such means shall include a garden hose charged with water, or a minimum 10-A rated dry-chemical fire extinguisher, or a minimum 15 liter pail full of water, or additional and alternate means as the circumstances may require,
 - 6.5.2 at all times that the fire is burning there shall be readily to hand at the site of the fire an adequate means for calling the Welland Fire & Emergency Services to assist if such fire should get out of control, and
 - 6.5.3 at the completion of the burn the fire shall be fully and completely extinguished and the burn site shall be **Made Safe** before it is left unattended.
- 6.6 Time Restrictions
 Exempt fires may be started and maintained during the following periods
- 6.6.1 **Cooking** fires at any time,
 - 6.6.2 construction and maintenance activity fires only between the hours of 7:30 am and 7:30 pm Monday to Saturday inclusive, and
 - 6.6.3 all other **Exempt** fires only between the hours of 4:00 pm and 11:00 pm daily, except
 - 6.6.4 where the provisions of a **Burning Permit** for an **Approved Camp Ground** allow an extension to the time restrictions in this *Sub-section*.

SECTION 7 BURNING PERMITS

The City Of Welland may issue a **Burning Permit** to an **Owner** or **Authorized Agent** of the **Owner**, permitting a **Responsible Person** to set and maintain an **Open-Air Fire** on private property or on municipal property.

- 7.1 General Restrictions
 All of the "Section 6, Conditions on Exempt fires", except as may be modified in this Section, shall apply equally to **Burning Permit** fires, and further that
- 7.1.1 continuous supervision of the fire shall be maintained by a **Responsible Person** with the adequate means immediately available to extinguish the fire or limit its spread in proportion to the size of the fire and the fire risk,
 - 7.1.2 the property **Owner** shall be responsible and shall be liable individually and severally for the actions of their **Authorized Agent** with respect to the provisions, conditions, restrictions and penalties contained in this By-law,
 - 7.1.3 burning is prohibited on any public road allowance or municipal property unless such burning is being conducted by authorized employees of an **Authorized Agent** of the City of Welland or of Niagara Region,
 - 7.1.4 fires must be located at least 30 meters 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 burned will emit sparks and embers such as to create a fire hazard,
 - 7.1.5 fires must be located at least 250 meters away from any 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**, and
 - 7.1.6 notwithstanding any of the above restrictions in this *Sub-section*, greater or lesser restrictions may be imposed through the conditions in a **Burning Permit**.

7.2

Material To Be Burned

- 7.2.1 Any pile of materials to be burned
- 7.2.1.1 shall not exceed 9 square meters in area and 2 meters in height unless specifically **Approved** under application of a **Burning Safety Plan**,
- 7.2.1.2 in the case of an area zoned Agricultural, shall not exceed 36 square meters in area and 2 meters in height unless specifically **Approved** under application of a **Burning Safety Plan**,
- 7.2.1.3 all adjacent piles of materials to be burned shall be at least 15 meters apart from each other, and
- 7.2.1.4 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.
- 7.2.2 In addition to the materials allowed to be burned under "Section 6, Conditions on Exempt Fires", permit holders may also burn other natural materials as specifically **Approved** on the **Burning Permit** including dry brush, stumps, hay, straw, grass and other dry yard or natural agricultural materials, but not including animal wastes and parts of animals unless such animals are diseased and special provisions are made and are stipulated on the **Burning Permit**.

7.3

Time, Day and Conditional Restrictions

- 7.3.1 Except in the case of special provisions that might be contained in a **Burning Safety Plan**, a fire established and maintained under a **Burning Permit** shall only be **Approved** and the permit remain valid if
- 7.3.1.1 burning does not occur between ½ hour after sunset and ½ hour before sunrise (i.e. not at night),
- 7.3.1.2 the permit has not expired,
- 7.3.1.3 the permit has not been suspended,
- 7.3.1.4 the permit has not been revoked, and
- 7.3.1.5 the **Fire Chief** has not declared a **Ban on Open-Air Fires**.
- 7.3.2 A **Burning Permit** shall have an expiry date of no later than needed by the **Applicant** to complete his burn, but in any case no later than six (6) months after the date of issue, except that
- 7.3.2.1 a **Burning Permit** issued to an operator of an **Approved Camp Ground** may have an expiry date of no later than twelve (12) months; and
- 7.3.2.2 a **Burning Permit** issued to the **Owner** of property zoned Agricultural may have an expiry date of no later than twelve (12) months.
- 7.3.3 The expiry date on a **Burning Permit** shall not be extended due to any suspension of the permit for whatever reason.

7.4

Fees

- 7.4.1 Permit fees are outlined on "Schedule A" attached to and forming part of this By-law.
- 7.4.2 The fee collected for each **Burning Permit** is non-refundable regardless of whether or not the privileges granted under the permit have been exercised.
- 7.4.3 No adjustment or refund of fees shall be provided due to suspension or revocation of any **Burning Permit**.

7.5

Permit General Conditions

- 7.5.1 **Applicants** for a **Burning Permit** must apply at least 14 calendar days before the permit may be issued to allow time for the **Fire Chief** to inspect the site of the proposed burn. No **Burning Permits** will be issued without a site inspection. All required application form information must be available at the time of application.
- 7.5.2 The **Fire Chief** may refuse to **Approve** or issue a **Burning Permit** if;
- 7.5.2.1 the proposed **Open-Air Fire** would be in contravention of this By-law,
- 7.5.2.2 if the **Applicant** or **Owner** or permit holder has in the past contravened the provisions of this By-law or has not complied with any conditions attached to the previous **Burning Permit** issued pursuant to this By-law, or
- 7.5.2.3 has outstanding costs owing to the City from a previous Order issued against him.
- 7.5.3 All **Burning Permits** are automatically suspended on any **Smog Day** and holders of **Burning Permits** are responsible for keeping informed of such days.
- 7.5.4 Except for **Approved Camp Grounds**, all valid **Burning Permits** are automatically suspended during such periods and in such areas where gusting or sustained wind speeds exceed 15 kilometers per hour or where wind directions are changing frequently.

- 7.5.5 Except for **Approved Camp Grounds** unless specified, all valid **Burning Permits** are automatically suspended during such periods and in such areas where the **Fire Chief** has determined that there exists hazardous conditions and has imposed a **Ban on Open-Air Fires**.
- 7.5.6 A **Burning Permit** shall specify as precisely as possible the civic address of the location of the intended fire. Separate **Burning Permits** will be required for properties at different addresses.
- 7.5.7 Except for **Approved Camp Grounds** unless specified, the holder of a **Burning Permit** will be required to advise Fire Dispatch each day that he will be burning at the telephone number indicated on the **Burning Permit** approximately ½ hour before any burning commences and again when the fire is being extinguished.
- 7.5.8 The holder of a **Burning Permit** shall keep it or a legible copy of it at the location of the fire specified on the permit.
- 7.5.9 Any **Burning Permit** holder who is in violation of this By-law or of any provision on their **Burning permit** or in their **Burning Safety Plan** may have their **Burning Permit** summarily revoked.
- 7.5.10 **Burning Permits** are non-transferable meaning the permit is only valid for the persons authorized on the permit and at the location indicated on the permit.

SECTION 8

SEASONAL AND VOCATIONAL BURNING PERMITS

- 8.1 Approved Camp Grounds
A seasonal **Burning Permit** for the setting of camp fires and other recreational fires at designated locations within an established or temporary camp ground may be issued to operators of facilities to be designated for the purposes of this By-law as **Approved Camp Grounds**, provided that
 - 8.1.1 the **Applicant** submits for review a **Burning Safety Plan** to the **Fire Chief**,
 - 8.1.2 the **Burning Safety Plan** is **Approved**, and
 - 8.1.3 any conditions or specific requirements contained in the **Burning Safety Plan**, as submitted or as modified and **Approved**, shall be put into place by the **Applicant** before the **Burning Permit** shall be issued.
- 8.2 Vocational Permits
A vocational **Burning Permit** for **Open-Air Burning** larger than that specified in *Section 7, Burning Permits*, or that will burn outside of the hours specified in that section, may be issued to the **Owner** of private property, or to his **Authorized Agent**, provided that
 - 8.2.1 the **Applicant** does reasonably demonstrate such a permit is required and necessary for the operation of his agricultural business or is for the purposes of public safety or is for the purposes of preserving the natural environmental or the control of disease,
 - 8.2.2 the **Applicant** does submit for review a **Burning Safety Plan** to the **Fire Chief**.
 - 8.2.3 the **Burning Safety Plan** is **Approved**, and
 - 8.2.4 any conditions or specific requirements contained in the **Burning Safety Plan**, as submitted or as modified and **Approved**, shall be put into place by the **Applicant** before the **Burning Permit** shall be issued.

SECTION 9

COMBUSTIBLE MATERIAL ACCUMULATION

- 9.1 This *Section* shall apply to all properties except those that
 - 9.1.1 contain a residential **Occupancy** but not including a **Multi-Unit Residential Building**,
 - 9.1.2 contain an industrial **Occupancy**, and
 - 9.1.3 contain an agricultural **Occupancy**, but not including one that is being used for public assembly.
- 9.2 No **Owner** of property shall permit an excessive accumulation of **Combustible** materials, rubbish, or debris on that property and that is within 15 meters
 - 9.2.1 of any portion of a **Building**,
 - 9.2.2 of any portion of a **Combustible Structure** or **Combustible** vegetation,
 - 9.2.3 as measured on the ground horizontally from any overhead wires carrying electricity or communications, and
 - 9.2.4 to the extent that in the opinion of the **Fire Chief** such materials pose a risk of fire spread, or damage, to exposed **Buildings**, **Structures** or other **Combustible** materials or infrastructure if such accumulated materials were to be ignited.

SECTION 10 BURNING OF RUBBISH PROHIBITED

- 10.1 No one shall install, use, and maintain an unlicensed incineration device for the burning of garbage, yard wastes, or other refuse in any class or classes of **Building** that was erected after September, 1966.

SECTION 11 FIRE BAN

- 11.1 Despite the existence of any valid **Burning Permit** the **Fire Chief** may issue a **Ban** on any or all **Open-Air Fires** or may suspend without recourse any or all **Burning Permits** and cause to be extinguished any or all **Open-Air Fires** (whether permitted or **Exempt**) until such conditions as the **Fire Chief** may indicate are met.

SECTION 12 ADMINISTRATION, ENFORCEMENT AND RIGHT OF ACCESS

- 12.1 This By-law shall be administered and enforced by the **Fire Chief** who is hereby authorized to enforce the provisions of this By-law.
- 12.2 The **Fire Chief** only may formally delegate the enforcement of any portion of this By-law to a **Deputy Fire Chief**, a **Fire Prevention Officer**, the **Director of Fire Prevention**, or to a **Firefighter**.
- 12.3 The **Fire Chief** may enter upon and within, and inspect any land, property, building or structure at any time to determine if every *Section* of this by-law is being complied with, or to determine if any direction, notice or order issued pursuant to this By-law or the *Municipal Act, 2001*, or the *Fire Protection and Prevention Act, 1997*, or any court has been complied with, or to perform any remedial work authorized in "*Section 13, Orders and Cost Recovery*" of this By-law.
- 12.4 Notwithstanding *Subsection 12.3* of this By-law the **Fire Chief** shall not enter or remain in any room or place actually used as a dwelling unless the provisions of Section 437 of the *Municipal Act, 2001* are complied with.
- 12.5 The **Fire Chief** shall have inspection powers described in Section 436 of the *Municipal Act, 2001*.
- 12.6 Where an **Owner** or **Occupant** is in contravention of any provision of this By-law the **Fire Chief**, in addition to any other action, may send a notice in the form of a letter or email to the **Owner** or **Occupant** describing the contravention.
- 12.7 Any notice, order or direction given under this by-law may be given personally to the person to whom it is directed, or may be mailed by ordinary or registered mail, or by hand delivery to the mailing address of the **Owner** or the **Occupant** of the property and any such delivery or posting shall be deemed good and sufficient service.
- 12.8 No person shall obstruct or hinder, or attempt to obstruct or hinder, the **Fire Chief** in the exercise of a power or the performance of a duty under this By-law.
- 12.9 No person shall refuse to produce any documents or things required by the **Fire Chief** under this By-law, and every person shall assist any entry, inspection, examination, or inquiry by the **Fire Chief**.
- 12.10 No person shall knowingly furnish false or misleading information to the City or to the **Fire Chief** with respect to this By-law.

SECTION 13 ORDERS AND COST RECOVERY

- 13.1 If the **Fire Chief** believes that this By-law has been contravened he may issue an Order directing compliance with this By-law, and may require the work specified in the Order be carried out immediately, or within the time frame or other conditions specified in the Order.
- 13.2 The **Fire Chief** may Order at any time that any **Open-Air Fire** be immediately extinguished and the site of the fire **Made Safe**.
- 13.3 An Order may contain requirements by an agency, that may provide emergency services or hydro or natural gas or other utility services to the property location, necessary for the safety of its employees.
- 13.4 No **Owner** of a property, or **Authorized Agent** of such **Owner**, or **Occupant** of a property shall fail to comply with any Order, as confirmed or modified, issued under this By-law.
- 13.5 Should the **Owner** or **Occupant** of the property, or **Authorized Agent**, fail to rectify the condition in accordance with the Order, The City of Welland in addition to other remedies, shall have the right to correct the situation and, for this purpose, with its servants and agents from time to time enter in and upon the property at any reasonable time without a warrant.

- 13.6 Anything done or removed, under the direction of an Order, by the City, its employees or agent or contractor, may be deposited elsewhere on the property or may be removed from the property and forthwith destroyed, or otherwise disposed of by the City, its employees, agent or contractor.
- 13.7 The City Of Welland shall not be liable to compensate such **Owners, Occupants**, or another person having interest in the property by reason of anything done by or on behalf of The City of Welland in a reasonable exercise of its power under the provisions of this *Section*.
- 13.8 The **Fire Chief** may cause a prosecution to be brought against any person who is in breach of an Order and upon conviction, such person shall forfeit and pay at the discretion of the convicting Provincial Judge or Justice of the Peace acting within his/her territorial jurisdiction, a penalty in accordance with the provisions of Part VII of the *Ontario Fire Protection and Prevention Act, 1997*, as amended.
- 13.9 If the **Owner** fails to pay the cost of any work done by or for the City, under an Order issued under the provisions of this By-law, within thirty calendar days of issuance of an invoice by the City then the outstanding amount shall be added to the tax roll of the subject property and collected in the same manner as property taxes.

SECTION 14 OFFENCES AND PENALTIES

- 14.1 A person is guilty of an offence if the person,
- 14.1.1 fails to comply with an order, notice, direction, or other requirement under this By-law, or
- 14.1.2 contravenes any portion of this By-law.
- 14.2 A director or officer of a corporation who knowingly concurs in the contravention of this By-law by the corporation is guilty of an offence.
- 14.3 Any person who knowingly and falsely reports a violation of this By-law shall upon the second and any subsequent false reports be guilty of an offence.
- 14.4 If the contravention of this By-law results in fire suppression or fire prevention personnel and vehicles being dispatched to respond to the property, 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 to the rates attached as "*Schedule A*" to this By-Law. However, nothing in any schedule of rates shall be construed as limiting the rights of the City of Welland to seek restitution for other direct or consequential damages or costs incurred beyond those listed.
- 14.5 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**.
- 14.6 Every holder of a Burning Permit and who is in contravention of any Section of this By-law may have his permit summarily revoked or suspended for a period of time. Any person who has had his/her **Burning Permit** revoked shall not be eligible to apply for a new **Burning Permit** for a period of not less than 60 days from the date the permit was revoked.
- 14.7 Every person who is convicted of an offence of this By-law by any court of competent jurisdiction is liable to a fine plus costs as provided for in the *Provincial Offences Act, 1990*, as amended from time to time, and regulations thereof.
- 14.8 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.

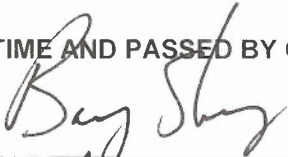
SECTION 15 VALIDITY

15.1 Should any *Section* or part of this By-law be declared by a court of competent jurisdiction to be ultra-vires or illegal for any reason, the remaining parts shall nevertheless remain valid and binding, and shall be read as if the offending *Section* or part had been struck out.

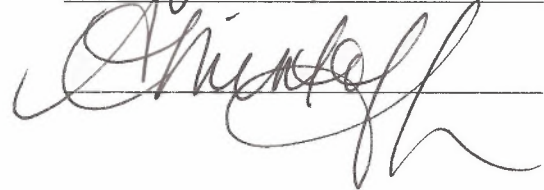
SECTION 16 EFFECTIVE DATE

16.1 This By-Law shall come into force and effect on the date of passing thereof.

**READ A FIRST, SECOND AND THIRD TIME AND PASSED BY COUNCIL THIS 28th
DAY OF JUNE, 2011.**



Mayor



Clerk

SCHEDULE "A"

**Fees that May be Collected or Charged Under the Provisions Contained in
By-law No. 2011-____ "Open Air Fire By-law"**

1. **Burning Permit** with a 6 month or less expiration date: \$30.00 including HST
2. **Burning Permit** with a 12 month expiration date: \$30.00 including HST
3. Review of **Burning Safety Plan:** \$35.00 including HST
(Burning Permit additional)
4. Response rates for fire vehicles: per fire vehicle for the first hour \$410
plus HST per fire vehicle for each additional ½
hour \$205 plus HST
5. All other costs: wages and materials as expended plus 15%
administration costs