

THE CORPORATION OF THE
TOWN OF PELHAM
BY-LAW # 4223(2020)

Being a By-law to regulate Open Air Burning in the Town of Pelham, and to Repeal and Replace By-law # 3160(2010).

WHEREAS Section 7.1(1) of the *Fire Protection & Prevention Act, 1997, S.O. 1997, c. 4*, provides that the council of a municipality may pass By-laws regulating fire prevention, including the prevention of the spreading of fires; regulating the setting of open air fires, including establishing the times during which open air fires may be set and designating public and private roads as fire routes along which no parking of vehicles shall be permitted and providing for the removal and impounding of any vehicle parked or left along any of the fire routes at the expense of the owner of the vehicle;

AND WHEREAS Section 7.1(3) of the *Fire Protection & Prevention Act, 1997, S.O. 1997, c. 4*, states that a By-law passed under Section 7.1 (1) may deal with different areas of the municipality differently;

AND WHEREAS Section 7.1(4) of the *Fire Protection & Prevention Act, 1997, S.O. 1997, c. 4* 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 13(1.1) of the *Fire Protection & Prevention Act, 1997, S.O. 1997, c. 4* provides that 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 the fire;

AND WHEREAS Sections 390 to 400 of the *Municipal Act, S.O. 2001, c. 25* provides that despite any Act, a municipality and a local board may pass By-laws imposing fees or charges on any class of persons:

- (A) for services or activities provided or done by or on behalf of it;
- (B) for costs payable by it for services or activities provided or done by or on behalf of any other municipality or local board; and,
- (C) for the use of its property including property under its control;

AND WHEREAS Section 398(1) of the *Municipal Act 2001, S.O. 2001, c. 25*, provides that fees and charges imposed by a municipality constitute a debt of the person to the municipality;

AND WHEREAS Section 398(2) provides that the treasurer of a local municipality may add fees and charges imposed by the municipality to the tax roll for any property for which all of the owners are responsible for paying the fees and charges, and collect them in the same manner as municipal 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 it is deemed desirable to regulate Open Air Burning in the Town of Pelham;

**NOW THEREFORE THE CORPORATION OF THE TOWN OF PELHAM 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 a fire in any open place, yard, field or area which is not contained or enclosed by a building or structure, and includes agricultural fires, chimineas, and campfires;

(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 Pelham;

(F) "Fire Chief" shall mean the Fire Chief for the Town of Pelham Fire Department or designate;

(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.

(J) "Clean, dry seasoned wood" shall mean wood that has been seasoned by stacking and storing to reduce its moisture content.

1.2 Administration:

The Fire Chief or his designate shall administer this By-law.

1.3 Fire Services - Exempt:

The Town of Pelham 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 Short Title:

The short title of this By-law shall be "THE OPEN AIR BURNING BY-LAW".

2.2 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 Pelham unless permission has first been granted by the Fire Chief or designate.

2.3 Non-recreational Open Air Burning shall be prohibited in the urban areas of the Town of Pelham as defined by the Town's Official Plan.

- 2.4 The use of flying lantern, sky lanterns or traditional Chinese style lanterns shall be prohibited in all areas of the Town of Pelham.
- 2.5 Exception – Open Air-Burning

Notwithstanding Section 2.1 herein, permission to conduct recreational open-air burning associated with the use of open burning devices or fire burn areas specifically designed for Open Air Burnings may be granted by obtaining written permission from the Fire Chief or designate for a given calendar year. If written permission is being obtained for the first time, an inspection will be conducted by the Fire Chief or designate to ensure the regulations detailed in this Section have been complied with. The following regulations shall be complied with before recreational Open Air Burning is attempted:

- (A) Open Air Burning shall be confined to open burning devices or to a fire burn area with a burn area no larger than two (2) feet (61cm) by two (2) feet (61cm) by two (2) feet (61cm) 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 2.3 herein;
- and,
- (iii) shall be installed in accordance with the manufacturer's recommendation.
- (B) Steps shall be taken 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 materials other than commercially produced charcoal, briquettes or clean, dry seasoned wood, but not including painted wood, pressure treated wood or creosote treated wood, may be burned;
- (D) The dimensions of the wood being burnt shall not be greater than the size of the open burning device or fire burn area and shall be totally confined within the open burning device or fire burn areas at all times;
- (E) An Open Air Burning shall be confined to a location that provides for a minimum distance of 13 feet (4m) in all directions from adjacent properties;
- (F) Open Air Burnings shall be confined to an area that is a minimum of 10 feet (3m) from combustible structures or objects;
- (G) An effective extinguishing agent of sufficient size and with the capability of extinguishing the fire shall be immediately available for use;
- (H) Open Air Burnings shall be attended, controlled and supervised at all times and shall be completely extinguished before the open air burn site is vacated;
- (I) Open Air Burnings shall not be permitted 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 Ontario Ministry of the Environment, Conservation Parks, or any successor and relevant Ministry;
- (J) Open Air Burning may be permitted on Town property in appliances approved and provided by the Town when first authorized, in writing, by the Fire Chief;
- (K) A campfire in a campground approved pursuant to the Town of Pelham Comprehensive Zoning By-law #1136 (1987), as amended, is permitted.
- (L) Open Air Burning shall only be permitted between the hours of 1200 hrs. and 2400 hrs.

(M) An Open Air Burning permit shall be secured, the fee for which shall be in accordance with the Town of Pelham Fee for Services By-law.

(N) An "open air burn ban" has not been declared by the Fire Chief

2.6 Response to Complaints:

(A) Should the Pelham 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 the Pelham Fire Department rescind a recreational open burning permit, it shall be rescinded from the time of the incident for one (1) calendar year from that date, after which the resident may then apply for a new permit renewal.

(C) 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 Pelham Fire Department in its efforts to extinguish the fire.

2.7 Exception - Barbecues:

Despite Section 2.1 herein, permission is not required from the Fire Chief for the use of Barbecues to cook food, provided the following regulations are complied with:

(A) The Barbecue shall be placed on non-flammable material and not be located or placed on a 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) The Barbecue shall be supervised at all times;

(C) The fuel used shall be clean dry natural wood or a commercially produced fuel for the purpose of cooking such as charcoal or briquette, natural gas or propane.

(D) The Barbecue shall not be placed on a balcony unless the following are complied with:

- 1) The barbeque is propane-fired, electric, or infrared,
- 2) The propane cylinder used does not exceed a net weight of greater than 1.02 pounds (465 grams),
- 3) The propane cylinder must be stored outdoors,
- 4) A maximum of one propane cylinder may be stored outdoors at any given time provided it is securely attached to the Barbecue,
- 5) The Barbecue must be clear of all combustible materials,
- 6) No walls or closures have been erected on the balcony, and
- 7) The barbeque must be at least 3ft (1m) horizontally from any building opening, and 10ft (3m) from a building air intake.

PART 3 - SPECIAL REGULATIONS FOR RURAL AREA NON-RECREATIONAL OPEN AIR BURNING:

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 24 hours prior to the proposed date of the non-recreational open air burning on either verbal or written permission from

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 permission 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 authorization to conduct this activity, verifiable 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 the Environment, Climate Change and Parks 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 (60m) from any building, highway, road or wooded area and shall be clear of any overhead objects (i.e. wires);

(H) The burn area shall be of a manageable size not exceeding 10 feet by 10 feet (3m by 3m);

(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 Section 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 Pelham Fire Department in person or by telephone and complying with the provisions of Section 3.1 and Section 3.2 of the 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 Pelham 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 Pelham Fire Department in its efforts to extinguish the fire.
- 3.7 An Emergency Response resulting from an authorized burn by an owner or occupant is subject to charges under the Town of Pelham Fees and Charges Schedule.

PART 4 - ENFORCEMENT:

- 4.1 Regulation - Offence
The set fines, charges or fees for an offence under this By-law are set out in "User Fees and Charges" regulated by the Town of Pelham as appointed by Council.
- 4.2 Prohibited Open Air Burning - Repeated:
Should any landowner 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 Pelham 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 Pelham Fire Department of an Open Air Burning contrary to Sections 2.1, 3.1 and 3.2, the person who owns or occupies the property in which the false call originated, shall be responsible for any and all costs incurred by the Pelham Fire Department response.
- 4.4 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 427 of the *Municipal Act 2001*, S.O. 2001, c.25, 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 beyond the power of Municipal Council of the Town of Pelham 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 Clerk's Authority:
In the event the Ministry of the Attorney General directs or recommends housekeeping modifications or corrections to this By-law or its schedules then pursuant to the provisions of Section 227 of the *Municipal Act 2001*, the Clerk of the Town of Pelham is hereby authorized to effect any such modifications or corrections of a numerical, semantically, grammatical or descriptive nature or kind.
- 5.3 Effective Date:
This By-law shall come into force and effect on its final passage thereof.

5.4 Repeal:
That By-law# 3160 (2010) be and is hereby repealed.

READ A FIRST, SECOND AND THIRD TIME
AND FINALLY PASSED BY COUNCIL THIS
6th DAY OF April 2020 A.D.

Marvin Junkin, Mayor

Town Clerk, Nancy J. Bozzato