



# The Municipal Corporation of the Town of Fort Erie

## By-law No. 93-2020

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### Being A By-law to Regulate Open Air Burning in the Town of Fort Erie and to Repeal By-law No. 167-03

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**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;

**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;

**Whereas** Article 2.4.4.4. of the *Ontario Fire Code O. Reg. 213/07*, as amended, 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, barbeque or spit, or such burning takes place in an appliance that is in conformance with the *Technical Standards and Safety Act, 2000*, S.O. 2000, c.16, is for outdoor use, and is assembled and/or installed in accordance with the manufacturer's instructions;

**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 Section 7.1 are being complied with;

**Whereas** Section 19(2) of the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c. 4, provides an inspector may, without a warrant, enter and inspect land and premises for the purposes of assessing fire safety, and

**Whereas** Section 128 of the *Municipal Act, 2001*, S.O. 2001, c. 25, 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;

**Whereas** Section 391 of the *Municipal Act, 2001*, S.O. 2001, c. 25, provides that a municipality and a local board may pass by-laws imposing fees or charges 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 425 of the *Municipal Act, 2001*, S.O. 2001, c. 25, 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 446 of the *Municipal Act, 2001*, S.O. 2001, c. 25, provides that where the municipality has the authority by any Act or under a 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 it, 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 property taxes;

**Now therefore** the Municipal Council of The Corporation of The Town of Fort Erie enacts as follows:

## **SECTION 1 DEFINITIONS**

For the purposes of this By-law, definitions in the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c. 4., shall be used with respect to matters pertaining to fire prevention and fire safety and which are undefined in this By-law, otherwise the following definitions will apply:

- 1.1 "**Applicant**" means an **Owner** or person who is the **Authorized Agent** for an **Owner** applying for a **Burning Permit**.
- 1.2 "**Approved**" means approved by the **Fire Chief** or his designate.
- 1.3 "**Authorized Agent**" means any **Responsible Person** who can provide evidence that they are authorized to act for the **Owner** of a particular property.
- 1.4 "**Back-Yard**" means the space on the property behind a **Building**, on the side opposite from the street address side.
- 1.5 "**Ban**" on **Open-Air Fires** means a restriction or prohibition on **Open-Air Fires** issued by the **Fire Chief**.
- 1.6 "**Building**" means any **Structure** used or intended for supporting or sheltering any use or **Occupancy**, but does not include a non-enclosed open-sided **Structure**.
- 1.7 "**Barbeque**" means any fuel-fired **Cooking** device that is commercially manufactured, completely contains the fire, and expressly designed for the purpose of **Cooking**.
- 1.8 "**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 pursuant to any restrictions and conditions contained in this By-law or as may be specified on the **Burning Permit** itself.
- 1.9 "**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.

- 1.10 "**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.
- 1.11 "**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.
- 1.12 "**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.
- 1.13 "**Deputy Fire Chief**" means a Town of Fort Erie Deputy Fire Chief.
- 1.14 "**Exempt**" means that, under specified conditions, a particular type or configuration of **Open-Air Fire** that does not require a **Burning Permit**.
- 1.15 "**Fire Chief**" means the appointed Fire Chief in the Town of Fort Erie and, whether stated or not, also means his/her designates which may include a **Deputy Fire Chief**, a **Fire Prevention Officer** or a **Firefighter**; unless it is stated as Fire Chief only, in which case there is no designate.
- 1.16 "**Firefighter**" means a Town of Fort Erie firefighter.
- 1.17 "**Fire Prevention Officer**" means a Town of Fort Erie Fire Prevention Officer or Fire Prevention Inspector.
- 1.18 "**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.
- 1.19 "**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.
- 1.20 "**Heat Alert**" means any day or portion of a day when a heat advisory or alert has been issued by the Ministry of the Environment and Climate Change, for the Town of Fort Erie.
- 1.21 "**Incinerator**" means a device that is operated and regulated (licensed) under a Certificate of Approval from the Ministry of the Environment and Climate Change and is not subject to the requirements of this By-law.
- 1.22 "**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.
- 1.23 "**Multi-Unit Residential Building**" means any **Building** in which there are three or more residential dwelling units as defined by the Ontario Building Code.

- 1.24 "**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 of normal use of property, interference with normal conduction of business, or damage to property.
- 1.25 "**Occupancy**" means the use or intended use of a **Building** or part thereof as defined in the Ontario Building Code.
- 1.26 "**Occupant**" means that person or persons who is present on a property.
- 1.27 "**Open-Air Fire**" means:
- 1.27.1 any fire set outdoors, i.e. not in a **Building**, or
  - 1.27.2 any fire set in a device or appliance located outside of a **Building**,
  - 1.27.3 but does not include:
    - 1.27.3.1 fires in **Incinerators**; or
    - 1.27.3.2 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.
- 1.28 "**Owner**" means the person registered on title as the owner of a property or **Structure** or **Building**.
- 1.29 "**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.
- 1.30 "**Smog Day**" means any day or portion of a day when a smog advisory or alert has been issued by the Ministry of the Environment and Climate Change, for the Town of Fort Erie.
- 1.31 "**Structure**" means anything constructed or erected, the use of which requires location on or in the ground.
- 1.32 "**Town**" means The Corporation of the Town of Fort Erie.

## **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 **Town**.
- 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, the *Fire Protection and Prevention Act, 1997, S.O.*

1997, c. 4, as amended, 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 **Town** Fire Department are exempt from the provisions of this By-law.
- 2.4 Despite the provisions of this By-law, the Council of the **Town** may direct the **Fire Chief** to issue a **Burning Permit** for a specific event in the **Town**, under such fire safety conditions as may be appropriate.

### **SECTION 3 RESTRICTIONS ON BURNING**

- 3.1 No person shall set or maintain an **Open-Air Fire** except an **Exempt** fire as described in "Section 4, Exempt Fires".

### **SECTION 4 EXEMPT FIRES**

- 4.1 The types of **Open-Air Fires** listed in this Section are **Exempt** and such fires may be set and maintained anywhere in the **Town** provided that the restrictions in this Section and the conditions in "Section 5, Conditions on Exempt Fires" are fully met.

#### **4.2 Cooking Fires**

A fire that is confined within a **Barbeque** or **Approved Grill** being used for the purposes of **Cooking** provided that:

- 4.2.1 the fire is only large enough for the purpose,
- 4.2.2 such fire is not in or near dry vegetation,
- 4.2.3 such fire is not in any other place conducive to the development or the spread of fire or explosion, and
- 4.2.4 the fire is attended at all times by a **Responsible Person** to supervise it,

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**.

#### **4.3 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 that:

- 4.3.1 such appliance is safe to operate,
- 4.3.2 such appliance is not operated in such a manner as to create a fire hazard, and
- 4.3.3 the fire is attended at all times by a **Responsible Person**.

#### 4.4 Other Flaming Devices

- 4.4.1 Patio torches and candles provided that:
- 4.4.1.1 such devices are not operated in or near dry vegetation, and
  - 4.4.1.2 such devices are not operated in any place conducive to the development or the spread of fire or explosion.
- 4.4.2 Consumer (family) fireworks and licensed fireworks displays where and when permitted by the "Fireworks By-law" of the **Town**.
- 4.4.3 A compressed natural or propane gas-fired appliance that is in conformance with the *Technical Standards and Safety Act, 2000*, S.O. 2000, c. 16, is for outdoor use and is installed and used in accordance with the manufacturer's instructions.

#### 4.5 Campfires and Chimineas

With the permission of the **Owner**, a **Chimineas** or campfire on privately owned lands are permitted, provided that:

- 4.5.1 for a **Chimineas**, 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 millimetres in any dimension,
- 4.5.2 the **Hearth** area designated for the fire is not more than 66 centimetres in any horizontal dimension,
- 4.5.3 the pile of materials to be burned is not more than 66 centimetres in height,
- 4.5.4 all solid fuels are completely contained at all times within the fire device and screens,
- 4.5.5 the device is not located on any **Combustible** surface,
- 4.5.6 the fire is controlled such that flames and hot embers do not pose an undue risk of fire to nearby **Combustible** materials,
- 4.5.7 the fire is not burned on any **Smog Day**, during a **Heat Alert**, rainy or foggy weather, or when the winds exceed 20 kilometres per hour,
- 4.5.8 the fire is located in a **Back-Yard**,
- 4.5.9 the fire is no closer than 4 metres to the property line, and no closer than 3 metres to any **Combustible Structure**, and
- 4.5.10 the fire is attended at all times by a **Responsible Person** to supervise it.

**SECTION 5 CONDITIONS ON EXEMPT FIRES**

5.1 Any person who sets or maintains an **Exempt** fire listed in "Section 4, Exempt Fires" shall be responsible to take all necessary steps to ensure that all of the conditions in this Section are fully met.

5.2 Smoke

5.2.1 shall not travel to a neighbouring property to such an extent or degree that it is a **Nuisance**, and

5.2.2 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 travelling on the roadway.

5.3 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 as follows:

5.3.1 for campfires and **Chimineea**: no less than 3 metres horizontally and 5 metres below,

5.3.2 for a **Barbeque**: no less than 1 metre horizontally and 3 metres below,

5.3.3 for a **Grill**: no less than 3 metres horizontally and 4 metres below, and

5.3.4 despite meeting the minimum distances specified in this Subsection 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.

5.4 Permitted Burned Materials

Except as may be more specifically restricted elsewhere in this By-law, only the following materials may be burned:

5.4.1 dry wood that has not been chemically treated, painted, stained,

5.4.2 unprinted paper and cardboard, but only for the purposes and to the extent reasonably required for starting the fire,

5.4.3 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*, S.O. 2000, c. 16, and

5.4.4 commercial charcoal products, and such commercial lighter fuels only as is required to start a charcoal fire.

5.5 Extinguishment

Any person supervising a fire shall ensure that:

- 5.5.1 at all times that the fire is burning, there shall be ready to hand at the site of the fire an adequate means in which the fire may be controlled and extinguished. Such means may include a garden hose charged with water, a minimum 10-A rated dry-chemical fire extinguisher, a minimum 15 litre pail full of water, or additional and alternate means as the circumstances may require, and
- 5.5.2 at all times the fire is burning, there shall be ready to hand at the site of the fire an adequate means for calling the Fort Erie Fire Department to assist if such fire should get out of control, and
- 5.5.3 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.

5.6 Time Restrictions

**Exempt** fires may be started and maintained during the following periods of time:

- 5.6.1 **Cooking** fires at any time,
- 5.6.2 construction and maintenance activity fires only between the hours of 7:30 AM and 7:30 PM Monday to Saturday inclusive, and
- 5.6.3 all other **Exempt** fires only between the hours of 4:00 PM and 11:00 PM daily except, where the provisions of a **Burning Permit** for a campground approved according to Section 24.2 of the Town of Fort Erie Comprehensive Zoning By-law 129-90, as amended, will allow an extension to the time restrictions in this Subsection as **Approved**.

**SECTION 6 BURNING PERMITS**

The **Town** 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, subject to the following:

6.1 General Restrictions

All of the "Section 5, Conditions on Exempt fires" shall apply to **Burning Permit** fires, and in addition:

- 6.1.1 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, and



- 6.1.2. the **Owner** shall be responsible and shall be liable personally and for the actions of their **Authorized Agent** with respect to any contravention of the provisions, conditions, restrictions and penalties contained in this By-law, and
  - 6.1.3. 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 **Town** or of the Niagara Region, and
  - 6.1.4. fires must be located at least 30 metres 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, or any longer distances that 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, and
  - 6.1.5. fires must be located at least 250 metres 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
  - 6.1.6. notwithstanding any of the above restrictions in this Section, greater or lesser restrictions may be imposed through the conditions in a **Burning Permit**.
- 6.2. Material To Be Burned
- 6.2.1. Any piles of materials to be burned:
    - 6.2.1.1. shall not exceed 9 square metres in area and 2 metres in height unless specifically **Approved** under application of a **Burning Safety Plan**,
    - 6.2.1.2. all adjacent piles of materials to be burned shall be at least 15 metres apart from each other, and
    - 6.2.1.3. 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.
  - 6.2.2. In addition to the materials allowed to be burned under "Section 5, 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 stipulated on the **Burning Permit** authorized by the **Fire Chief**.

### 6.3. Time, Day and Conditional Restrictions

- 6.3.1. 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 shall only remain valid if:
- 6.3.1.1. burning does not occur between 30 minutes after sunset and 30 minutes before sunrise (i.e. not at night),
  - 6.3.1.2. the permit has not expired,
  - 6.3.1.3. the permit has not been suspended,
  - 6.3.1.4. the permit has not been revoked, and
  - 6.3.1.5. the **Fire Chief** has not declared a **Ban on Open-Air Fires**.
- 6.3.2. A **Burning Permit** shall have an expiry date of no later than needed by the **Applicant** to complete the burn, but in any case, no later than six (6) months after the date of issue.
- 6.3.3. The expiry date on a **Burning Permit** shall not be extended due to any suspension of the **Burning Permit** for whatever reason.

### 6.4. Fees

- 6.4.1. Fees and charges associated with this by-law are as established by Fees and Charges By-law No. 40-09, as amended.
- 6.4.2. The fee collected for each **Burning Permit** is non-refundable regardless of whether or not the privileges granted under the permit have been exercised.
- 6.4.3. No adjustment or refund of fees shall be provided due to suspension or revocation of any **Burning Permit**.

### 6.5. Burning Permit General Conditions

- 6.5.1. **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 Permit** will be issued without a site inspection. All required application form information must be provided at the time of application.
- 6.5.2. The **Fire Chief** shall refuse to **Approve** or issue a **Burning Permit** if:
- 6.5.2.1. the proposed **Open-Air Fire** would be in contravention of this By-law, or

- 6.5.2.2. the **Applicant** or **Owner** or permit holder has outstanding costs owing to the **Town** from a previous Order.
- 6.5.3. The **Fire Chief** may refuse to **Approve** or issue a **Burning Permit** if:
- 6.5.3.1. 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 of a previous **Burning Permit** issued pursuant to this By-law.
- 6.5.4. All **Burning Permits** are automatically suspended on any **Smog Day** and holders of **Burning Permits** are responsible for keeping informed of such days.
- 6.5.5. All **Burning Permits** are automatically suspended during such periods and in such areas where gusting or sustained wind speeds exceed 20 kilometres per hour or where wind directions are changing frequently.
- 6.5.6. All **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**.
- 6.5.7. 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.
- 6.5.8. Unless specified, the holder of a **Burning Permit** will be required to advise Fire Dispatch each day that the holder will be burning at the telephone number indicated on the **Burning Permit** approximately 30 minutes before any burning commences and again when the fire is being extinguished.
- 6.5.9. The holder of a **Burning Permit** shall keep it or a legible copy of it at the location of the fire specified on the **Burning Permit**.
- 6.5.10. Any **Burning Permit** holder who is in violation of this By-law or of any provision of their **Burning Permit** or their **Burning Safety Plan** may have their **Burning Permit** summarily revoked by the **Fire Chief**.
- 6.5.11. **Burning Permits** are non-transferable, meaning the **Burning Permit** is only valid for the person(s) authorized on the **Burning Permit** and at the location indicated on the **Burning Permit**.

**SECTION 7 COMBUSTIBLE MATERIAL ACCUMULATION**

- 7.1 This Section shall apply to all properties except those that:
- 7.1.1 contain a residential **Occupancy** but not including a **Multi-Unit Residential Building**, and
  - 7.1.2 contain an industrial **Occupancy**, and
  - 7.1.3 contain an agricultural **Occupancy**, but not including one that is being used for public assembly.
- 7.2 No **Owner** shall permit an excessive accumulation of **Combustible** materials, rubbish, or debris on the property that is within five (5) metres
- 7.2.1 of any portion of a **Building**,
  - 7.2.2 of any portion of a **Combustible Structure** or **Combustible** vegetation, and
  - 7.2.3 as measured on the ground horizontally from any overhead wires carrying electricity or communications,
- or 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 8 BURNING OF RUBBISH PROHIBITED**

- 8.1 No one shall install, use, or maintain an unlicensed incineration device for the burning of garbage, yard wastes, or other refuse in any class or classes of a **Building**.

**SECTION 9 FIRE BAN**

- 9.1 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 10 ADMINISTRATION, ENFORCEMENT AND RIGHT OF ENTRY**

- 10.1 This By-law shall be administered and enforced by the **Fire Chief** who is hereby authorized to enforce the provisions of this By-law.
- 10.2 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** or to a **Firefighter**.
- 10.3 The **Fire Chief** may enter upon and within, and inspect any land, property, **Building** or **Structure** at any reasonable time to determine if any 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*, S.O. 1997, c. 4, or any court has been complied with, or to perform any remedial work authorized in "Section 11, Orders and Cost Recovery" of this By-law.

- 10.4 Notwithstanding Subsection 10.3 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.
- 10.5 The **Fire Chief** shall have the inspection powers provided in Subsection 436(b) of the *Municipal Act, 2001* and Section 19 of the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c. 4.
- 10.6 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.
- 10.7 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.
- 10.8 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.
- 10.9 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**.
- 10.10 No person shall knowingly furnish false or misleading information to the Town of Fort Erie or to the **Fire Chief** with respect to this By-law.

## **SECTION 11 ORDERS AND COST RECOVERY**

- 11.1 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.
- 11.2 The **Fire Chief** may Order at any time that any **Open-Air Fire** be immediately extinguished and the site of the fire **Made Safe**.
- 11.3 An Order may contain requirements by an agency that may provide emergency services or electricity or natural gas or other utility services to the property location, necessary for the safety of its employees.
- 11.4 No **Owner** or **Authorized Agent** of such **Owner**, or **Occupant** of a property shall fail to comply with any Order issued under this By-law.

- 11.5 Should the **Owner** or **Occupant**, or **Authorized Agent**, fail to rectify the non-compliance in accordance with the Order, the **Town** in addition to other remedies shall have the right to correct the situation and, for this purpose, its servants and agents may from time to time enter in and upon the property at any reasonable time without a warrant.
- 11.6 Anything done or removed, under the direction of an Order, by the **Town**, 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 **Town**, its employees, agent or contractor.
- 11.7 The **Town** shall not be liable to compensate such **Owners, Occupants**, or any another person having an interest in the property, by reason of anything done by or on behalf of the **Town** in a reasonable exercise of its power under the provisions of this *Section*.
- 11.8 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 *Fire Protection and Prevention Act, 1997*, as amended.
- 11.9 If the **Owner** fails to pay the cost of any work done by or for the **Town** under an Order issued under the provisions of this By-law, within thirty (30) calendar days of issuance of an invoice by the **Town**, 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 12 OFFENCES AND PENALTIES**

- 12.1 A person is guilty of an offence if the person:
- 12.1.1 fails to comply with an order, notice, direction or other requirement under this By-law, or
  - 12.1.2 contravenes any provision of this By-law.
- 12.2 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.
- 12.3 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.
- 12.4 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 **Owner** may be charged, at the discretion of the **Fire Chief**, for the cost of such response according to the rates established by Fees and Charges By-law No. 40-09, as amended. However, nothing in any schedule of rates shall be construed as limiting the rights of the **Town** to seek restitution for other direct or consequential damages or costs incurred beyond those listed.

- 12.5 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**.
- 12.6 Every holder of a **Burning Permit** who is in contravention of any Section of this By-law may have the **Burning Permit** summarily revoked or suspended. Any person who has had a **Burning Permit** revoked shall not be eligible to apply for a new **Burning Permit** for a period of not less than 90 days from the date the **Burning Permit** was revoked.
- 12.7 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.
- 12.8 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 13 ENACTMENT**

### 13.1 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** 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.

### 13.2 Short Title

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

### 13.3 Clerk's Correcting Clause

The Clerk of the **Town** is authorized to effect any minor modifications, corrections, or omissions, solely of an administrative, numerical, grammatical, semantical or descriptive nature, to this by-law or its schedules of the passage of this by-law.

### 13.4 Effective Date

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

**SECTION 14 REPEAL FORMER BY-LAW**

14.1 By-law No. 167-03 is repealed.

**Read a first, second and third time and finally passed this 14<sup>th</sup> day of September, 2020.**

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Clerk

I, Carol Schofield, the Clerk, of The Corporation of the Town of Fort Erie certify the foregoing to be a true copy of By-law No. 93-2020 of the said Town. Given under my hand and the seal of the said Corporation, this     day of                     , 20     .