

CORPORATION OF THE TOWN OF PLYMPTON-WYOMING

BY-LAW NUMBER 73 OF 2011

BEING a By-law to Regulate the Setting of Fires in the Open Air and Identify the Precautions and Conditions to be observed for Such Fires in the Municipality of Plympton-Wyoming

WHEREAS Council considers excess smoke, smell, airborne sparks or embers to be or could become or cause public nuisances by creating negative health effects on neighbouring residents, increasing fire exposure hazards, infringing on the enjoyment of the use of neighbouring properties and generating false or nuisance alarms;

AND WHEREAS Council is empowered under Section 128 of the *Municipal Act* 2001, S.O. 2001, c. 25 as amended, to pass bylaws to prohibit and regulate public nuisances, including matters that, in the opinion of Council are, or could become or cause public nuisances; and in Section 425 a Municipality may pass by-laws providing that a person who contravenes a by-law of the Municipality passed under this Act is guilty of an offence; and in Section 444 if a Municipality is satisfied that a contravention of a by-law of the Municipality passed under this Act has occurred, the Municipality may make an order requiring the person who contravened the by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity; and in Section 446(1) when a Municipality has the authority under this or any other Act or under a by-law under this or any other Act to direct or require a person to do a matter or thing, the Municipality may:

- provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person's expense;
- enter upon land at any reasonable time;
- recover the costs of doing a matter or thing from the person directed or 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; and
- that costs include interest calculated at a rate of 15 per cent or such lesser rate commencing on the day the Municipality incurs the cost;
- the costs, including interest, constitutes a lien of the land upon the registration in the proper land registry office of a notice of lien;

and in Section 390 that a "person" includes a Municipality and a local board and the Crown; and in Section 426 that no person shall hinder or obstruct, or attempt to hinder or obstruct any person exercising a power or performing a duty under this Act or a by-law under this Act and that any person who contravenes this subsection is guilty of an offence;

AND WHEREAS The Fire Protection and Prevention Act, 1997, S.O. 197, c 4 as amended provides in subsection 7.1(1)(a) that a Council of a Municipality may pass by-laws regulating fire prevention, including the prevention of spreading of fires; and in subsection 7.1(1)(b) that a Council may pass by-laws regulating the setting of open air fires, including establishing the times during which open air fires may be set; and in subsection 7.1(3) that a by-law passed under section 7.1 may deal with different areas of the Municipality differently, and in subsection 7.1(4) 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 complied with;

AND WHEREAS Division B, Article 2.6.3.4. Sentence (1) and (2) of the Fire Code, Ontario Regulation 213/07 provides that open air burning shall not be permitted, unless approved by the Fire Chief, or unless burning consists of a small, contained fire, supervised at all times, and used to cook food on a grill or a barbeque; or is undertaken 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.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF Plympton Wyoming ENACTS AS FOLLOWS:

1. DEFINITIONS

In this By-law:

“Burning Appliance” means a C.S.A. approved device, designed or engineered to have a fire set within a contained area and is totally enclosed by various means of screening and/or other methods.

“Campsite” means a site designated for camping purposes.

“Competent Adult” means any person (18 years of age or older) who, in the opinion of those charged with enforcement of this By-law, is capable of exercising the required judgment and capable of performing the necessary actions to control and prevent its unwanted spread.

“Farmer” means the owner or operator of an agricultural operation pursuant to the *Farming & Food Protection Act*, 1998 and within an area zoned for agricultural in the Municipality of Plympton-Wyoming Zoning By-law.

“Farmlands” means land designated “agricultural” in the Municipality of Plympton-Wyoming Zoning By-law.

“Fire Chief” means a person appointed by the Municipality of Plympton-Wyoming to act as Fire Chief of one of the Municipal Fire Departments or his appointed designate(s).

“Full Cost Recovery Basis” includes any and all charges and costs howsoever incurred by the Municipality directly or indirectly in controlling and extinguishing an Open Air burn.

“Municipality” means The Corporation of the Municipality of Plympton-Wyoming.

“Noxious Materials” includes, but is not limited to, tires, plastics, rubber products, drywall, demolition waste, construction waste, paint, animal organic waste, vegetable waste, food waste, biomedical waste, tar, asphalt products, battery boxes, pressure-treated wood, creosote-treated wood, and painted wood.

“Nuisance” includes excessive smoke, smell, airborne sparks or embers that is likely to disturb others, or that is likely to reduce visibility on roads and/or railways in the vicinity of the Open Air Burning;

“Open Air” means any open place, yard, field, lot, part lot or construction area which is not enclosed by a building or structure.

“Open Air Burning” means any fire set in the Open Air, producing heat or smoke.

“Outdoor Fire Container” means a non-combustible container used to hold a small fire, and includes, but is not limited to, chimeneas, metal tubs, fire pits, and outdoor brick fireplaces;

“Owner” means the registered owner or any person, firm or corporation having control over, or possession, of any portion of the building or property under consideration and includes the persons in the building or on the property.

“Permit” means a permit issued by the Municipality to set a fire in the Open Air for a specified date and period of time.

“Permit Holder” means a person to whom a Permit has been issued by the Municipality.

“Person” means an individual, business, a partnership or a corporation.

“Pit” means an area dug into the ground and/or surrounded by materials designed to contain the fire and prevent its spread to areas beyond the Pit.

“Regular Agricultural Burning” means brush, residues, stumps etc. which is normal and incidental for farming purposes but does not include structures, household garbage, petroleum products, plastics, rubber, vegetable or animal waste or other materials that create excessive or toxic smoke or excessive odours.

“Restricted Areas” means Areas of the Municipality where Open Air Burning Permits will NOT be issued.

“Social Campfire” means a controlled outdoor fire less than .5 metres in diameter and .5 metres in height and used in conjunction with a social gathering.

“Smog Alert/ Poor Air Quality Day means, an alert issued by the Ministry of the Environment with respect to air quality anywhere within the County of Lambton.

“Tenant” means the occupant having possession or Person having control of a property or premises.

“Wind Speed” means the wind speed for Plympton-Wyoming or anywhere within the County of Lambton as reported on the Environment Canada website.

2. ADMINISTRATION AND ENFORCEMENT

2.1 The Municipality shall be responsible for the administration of this by-law.

2.2 Enforcement of this by-law is the responsibility of the Plympton-Wyoming Fire Chiefs and/ or designate(s).

2.3 The Municipality may refuse to issue a Permit and the Fire Chief may revoke any or all issued Permits.

2.4 The Fire Chief / designate(s) may, at all times, enter and inspect any property or premises In order to ascertain whether the provisions of this by-law are complied with and to enforce or carry into effect the by-law.

2.5 Approval of the Application to conduct an Open Air Burn, does not absolve the applicant of complying with other Provincial Statues.

2.6 Fires other than Cooking Fires and Recreational Fires shall not be permitted in Restricted Areas as identified in Schedule “A” of this By-law.

3. ENVIRONMENTAL AND SAFETY ISSUES

3.1 No person shall start or maintain an Open Air Burn when a Smog alert/ Poor Air Quality Day has been issued for an area that includes the Municipality or any part of Lambton County.

3.2 No person shall start or maintain any Open Air Burn or fire when wind condition is in such direction or intensity so as to cause any or all of the following:

- (a) decrease in visibility on any highway or roadway or railway;
- (b) threaten a rapid spread of fire through a grass or brush area;
- (c) smoke which causes annoyance or irritation to adjacent persons, properties or premises.

4. WHEN PERMITS ARE NOT REQUIRED

4.1 A permit will not be required for:

- (a) An outdoor fire container, or a Burning Appliance as long as the installation and location of the Burning Appliance meets the manufacturer’s specifications;
- (b) a Pit or contained area used for a “Social Campfire” between the hours of 7:00 p.m. and 12:30 a.m.;

- (c) a person setting or maintaining a social fire at a camp site within a commercial trailer park or campground that is in compliance with all rules and regulations of the park owner, as long as the size conforms to the maximum size for a social campfire;
- (d) Fire Department personnel for the purposes of education and training.

5. GENERAL PROVISIONS

5.1 No person being the Owner or Tenant in possession of lands within the Municipality shall allow a fire to be set or burn in excess of 0.5 metre in diameter on such lands unless a permit has been obtained.

5.2 No person shall set, permit to be set, maintain, or permit to be maintained, any Open Air Burning, either with a permit, or of a size that does not require a permit, unless he or she complies with the following provisions. He/She shall:

- (a) have legal title to the property at which the Open Air Burn is to occur, or the person, or Permit Holder, as the case may be, has obtained the prior written consent of the person having legal title to the property;
- (b) only burn commercially produced charcoal, briquettes, or clean, dry, seasoned wood, or branches and leaves from the property where the burn will take place;
- (c) not burn Noxious Materials;
- (d) have an effective extinguishing agent of sufficient size and with the capability of extinguishing the Open Air Burning immediately available for use;
- (e) attend, control and supervise the Open Air Burning at all times;
- (f) completely extinguish the Open Air Burning before the site is vacated;
- (g) ensure the Wind Speed does not exceed 15 km per hour during the Open Air Burning;
- (h) not burn if it is rainy or foggy;
- (i) not burn if a Smog Alert/ Poor Air Quality Day has been declared;
- (j) protect adjacent properties from the potential spread of fire;
- (k) ensure the Open Air Burning does not create a Nuisance; and
- (l) allow, at any reasonable time, the Fire Chief to inspect the location or proposed location of the Open Air Burning.

5.3 No person shall permit a fire, other than a small social camp fire, to be located:

- (a) within 15 metres of any building, structure or overhead wire.
- (b) within 7.5 metres of any flammable vegetation or material.

5.4 No person shall locate a fire less than 1 metre from Municipal property, including roads and sidewalks, unless otherwise authorized.

5.5 Notwithstanding any provisions herein, no Person shall set or maintain an Open Air Burn, where the consumption of material or size and area of the fire will exceed the limits set by this by-law in Sections 5.1, unless an Open Air Burn permit has been issued.

- 5.6 No person shall set any fire in the Open Air to burn asphalt products, tires, treated wood, construction materials or rubble, kitchen garbage or any garbage or trash, rubber plastics or like items.
- 5.7 No person shall set any fire in the Open Air except where permitted and only in the presence of a Competent Adult. The Competent Adult shall not leave the burning operation until such time as the fire has been completely extinguished and there is no smoke or threat of re-ignition or spreading of the fire.
- 5.8 Every person that starts a fire in the Open Air shall ensure that there are adequate tools and/or water on hand to contain or extinguish the fire.
- 5.9 No person shall set a fire to dispose of commercial, industrial or construction waste or other like materials in areas zoned for commercial or industrial occupancies and such aforementioned materials shall not be transported to residential or agricultural areas for burning purposes.
- 5.10 No person shall set a fire at construction and/or demolition sites for the purpose of disposing of waste, building material or rubble.
- 5.11 The time frame between the proposed date of burn and the alternative shall not exceed a 7 day period.

6. AGRICULTURAL OPEN AIR BURNING

- 6.1 A farmer who intends to set or maintain a fire in the Open Air on a specified day for regular agricultural burning purposes which are normal and incidental for farming purposes, and are for the disposal of remnant vegetable matter or vegetation on Farmlands, shall obtain a Permit to cover the period of the proposed Open Air fire, and will be required to notify the Municipality each day that the proposed Open Air fire will take place;
- 6.2 An Agricultural Open Air Burn shall:
- (a) be supervised by a Competent Adult equipped with sufficient equipment to control and contain the Open Air fire to prevent the spread of the Open Air fire that would endanger or put at risk the other properties or premises;
 - (b) be restricted to daylight hours only, unless otherwise authorized;
 - (c) be surrounded by a tilled area wide enough to prevent an Open Air fire from jumping across the tilled area;
 - (d) not be larger than 10 metres in length, by 10 metres in width, by 10 metres in height; unless a larger size is approved in advance by the Fire Chief;
 - (e) not consist of more than 1 pile burning at any one time, unless otherwise approved.
 - (f) be located at least 50 metres away from any building, structure, property line, tree, hedge, fence, roadway, overhead wire or other combustible article.
 - (g) follow all General Provisions, unless otherwise exempted by Section 6.2
- 6.3 The conditions in subsection 6.2 (d) and 6.2 (f) shall not apply to an agricultural Open Air Burn that is used to burn off dried vegetation along fence lines.

7. FIRES REQUIRING PERMITS AND PERMIT INFORMATION

- 7.1 Except as provided in Sections 4. and 5.1 of this by-law, no Person shall set, maintain or cause to be set or maintained a fire in the Open Air unless a Permit has been issued by the Municipality.

7.2 Notwithstanding the aforementioned sections, the Municipality may issue a permit upon application and approve the setting of a fire not exceeding 3 metres in length, by 3 metres in width, by 3 metres in height subject to the fire being adequately supervised and controlled through any special conditions required by the Municipality.

7.3 An application for a permit must be completed on the form provided by the Municipality, such forms available at the Plympton-Wyoming Municipal Office on Monday to Friday from 08:30 a.m. and 4:30 p.m. Fully complete permit applications, with Municipal 911 addressing and location of Fire Department access, must be delivered in person to the Municipality of Plympton-Wyoming a **MINIMUM** of two business days prior to the date of the proposed burn. The permit will only be valid for the dates specified in the application form.

7.4 In issuing a Permit under this part for an Open Air Burning, the Municipality may impose any additional requirements or conditions as may be deemed necessary.

8. RESPONSIBLE FOR ACTIONS

8.1 Every person who sets any Open Air fire in the Municipality of Plympton-Wyoming shall be responsible and liable for any damage to property or injury to person resulting from said fire;

8.2 Any person who fails to comply with the provision of this by-law or fails to extinguish a fire once notification to do so has been given to him by the Chief Fire Official, shall, in addition to any penalty provided herein, be liable to the Municipality for all expenses incurred for the purposes of controlling and extinguishing of any fire so set or left to burn.

8.3 If the Fire Department is dispatched or attends for any reason, and it is determined that The fire's size has exceeded that allowed by the permit, or any of the other conditions of The permit have been contravened, the Fire Chief of the Municipality will revoke the permit, extinguish the fire, and the permit holder will be liable for all costs incurred to the Municipality of Plympton-Wyoming on a Full Cost Recovery Basis, including but not limited to, the Fire Response, including personnel and other agencies called to control and extinguish said fire. All fees and charges to be paid under this subsection shall be payable in the manner and subject to any interest and penalties permitted to be charged under the Municipal Act 2001, and such expenses may be recovered by court action or in a like manner as municipal taxes.

9. ORDER TO DISCONTINUE ACTIVITY

9.1 If the Fire Chief is satisfied that this by-law has been contravened, he may make an order requiring the person who contravened the by-law, or who caused or permitted the contravention, or the owner or occupier of the land on which the contravention occurred, to discontinue the contravention. An order under this Part shall be known as an "Order to Discontinue Activity", and such an Order can require a person not to conduct an Open Air Burning for a certain period of time.

9.2 An "Order to Discontinue Activity" shall include:

- (a) the municipal address of the property on which the contravention occurred;
- (b) the date of the contravention;
- (c) the contravention of the by-law;
- (d) the date by which there must be compliance with the order;
- (e) the date on which the order expires.

9.3 The Order to Discontinue Activity may be served personally on the person to whom it is directed or by regular mail to the last known address of that person, in which case it shall be deemed to have been given on the third day after it is mailed.

10. ORDER TO EXTINGUISH

10.1 If the Fire Chief is satisfied that this by-law has been contravened, he may issue an “Order to Extinguish” requiring the person contravening the bylaw to immediately extinguish the fire.

10.2 An Order to Extinguish shall set out:

- (a) the Municipal 911 address of the property on which the fire is located;
- (b) the date of the inspection;
- (c) the contravention of the by-law;
- (d) that the fire is to be extinguished immediately
- (e) a notice that if the fire is not extinguished immediately, the Municipality may extinguish the fire at the expense of the owner and the cost of the work may be recovered by the methods listed in Section 11.4 of this by-law.

10.3 The Order to Extinguish will be served personally on the person to whom it is directed or the permit holder or the competent person in charge on the site.

10.4 In the event that there is not a person on site as required in Sections 5.7 and 6.2(b) of this bylaw at the time the Department is required to extinguish the fire, the notice will be sent by mail to the property owner, however, the failure of the property owner to have supervision on site does not negate the Municipality’s right to extinguish the fire or burn.

11. INSPECTIONS

11.1 The Fire Chief, and anyone under the Officer’s direction, may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether this By-law, an Order to Discontinue Activity, an Order to Extinguish, or an order under Section 431 of the *Municipal Act, 2001* is being complied with.

12. DEFAULT AND RESULTING COSTS

12.1 Should a person default in complying with an “Order to Discontinue Activity” or an “Order to Extinguish”, the fire may be extinguished immediately at the person’s expense.

12.2 The Municipality may enter on land at any reasonable time for the purpose of extinguishing a fire under 11.1.

12.3 The power of entry under this Part shall be exercised by the Fire Chief. The person exercising the power of entry must on request display or produce proper identification. The person exercising the power of entry may be accompanied by a person or persons under his or her direction.

12.4 The Municipality may recover the costs of extinguishing the fire from the person directed to extinguish the fire by action, and/or by invoicing, and/or by adding the costs to the tax roll and collecting them in the same manner as property taxes.

All fees and charges invoiced under this by-law and not paid by the due date shall be become payable in the manner and subject to any interest and penalties permitted to be charged under the *Municipal Act 2001*, and such expenses may be recovered by court action or in a like manner as municipal taxes.

13. PROHIBITIONS

13.1 No person shall set or maintain Open Air Burn, or permit an Open Air Burn to be set or maintained that is contrary to any provision of this by-law.

13.2 No person shall contravene any conditions of a Permit issued under this by-law.

13.3 No person shall contravene any conditions of setting or maintaining an Open Air Burning under this by-law.

13.4 No person shall contravene an “Order to Discontinue Activity”.

13.5 No person shall contravene an “Order to Extinguish”.

14. OFFENCES AND PENALTY

14.1 Any person who contravenes any of the provisions of this by-law is guilty of an Offence.

14.2 Any person who hinders or obstructs a person lawfully carrying out the enforcement of this by-law is guilty of an Offence.

14.3 Every person who is convicted of an offence under this by-law is liable to a fine as provided under the “Provincial Offences Act”.

14.4 If this by-law is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the by-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order,

- (a) prohibiting the continuation or repetition of the offence by the person convicted; and;
- (b) requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate. In addition to any other remedy or penalty imposed under this by-law, the Court in which a 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.

15. SEVERABILITY

15.1 If any section or sections of this by-law or parts thereof are found in any court to be illegal or beyond the power of Council to enact, such section or sections or parts thereof shall be deemed severable and all other sections or parts of this by-law shall be deemed separate and independent there from and enacted as such.

16. SHORT TITLE

16.1 The short title of this by-law shall be “Plympton-Wyoming Open Air Burning By-law”.

17. EFFECTIVE DATE

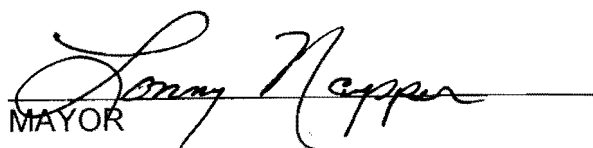
17.1 This by-law shall come into full force and take effect upon the final passing thereof.

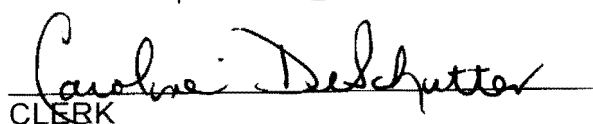
18. REPEAL

18.1 By-law Number 88 of 2007 is hereby repealed.

18.2 All existing permits become null and void on the day this By-law comes into effect. Existing permit holders will be contacted to re-apply.

TAKEN AS READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 14th DAY OF SEPTEMBER, 2011


MAYOR


CLERK