



<b>DEPARTMENT: Ingersoll Fire &amp; Emergency Services</b> <b>DATE PREPARED: August 2, 2013</b> <b>COUNCIL MEETING DATE: August 12, 2013</b>	<b>PAGE 1 OF 2</b> <b>REPORT NO. F-091/13</b>
<b>SUBJECT: OPEN AIR BURNING BY-LAW COMMENTS</b>	
[ ] Approved [ ] Approved with Amendments [ ] Other	
Resolution #	

### **PURPOSE**

The Fire Department has presented the attached proposed draft Open Air Burning By-Law as information to Council and residents for a two week review and commenting period. Comments have been received and reviewed. Council is now being made aware of the comments and the response through a final report on the Open Air Burning By-law.

### **BACKGROUND**

The Fire Protection and Prevention Act do not permit open air burning unless approved by the Chief Fire Official. Presently the Fire Chief has approved a set of regulations which permits residents of the Town of Ingersoll to enjoy a recreational fire on their property.

Article 2.6.3.4. is found in Part 2, Building and Occupant Fire Safety, of the Ontario Fire Code and must therefore be interpreted within the scope and application of Part 2, which includes providing for the safety of occupants of buildings “through the elimination or control of fire hazards in and around buildings”, as stated in Subsection 2.1.1.

The intent of the Open Air Burning Bylaw is to further provide for public safety by establishing conditions under which an Open Air Fire that is not regulated under section 2.6.4.3. of the Ontario Fire Code may be set.

### **DISCUSSION/ANALYSIS**

The draft by-law has been created by the Ingersoll Fire & Emergency Services and was submitted to the By-law Committee for review. The By-law Committee is compiled of several municipal employees with a wide range of knowledge and skills that have given their expert opinions, considerations and input to the draft Open Air Burning By-law over the last year. Members of the committee include the Director of Engineering, Fire Chief, Fire and Emergency Services personnel, By-law Enforcement Officer, OPP Community Sergeant, Clerk/Deputy CAO, Deputy Clerk, Town Engineer, a member of Council and the President of the BIA. The draft by-law was posted on the town website for public review and comments. There are no changes to be made to the by-law at this time.

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**FINANCIAL IMPLICATIONS**

None

**INTERDEPARTMENTAL IMPLICATIONS**

None

**RECOMMENDATION**

THAT the Council for the Town of Ingersoll receive the Ingersoll Fire & Emergency Services Report F-091/13 entitled Open Air Burning By-Law Comments and the attached public comments as information;

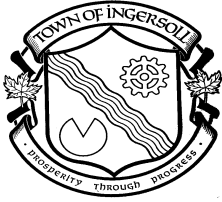
**ATTACHMENTS**

Attachment 1: Proposed Ingersoll Open Air Burn Bylaw.  
Attachment 2: Public comments received

Prepared by:



John Holmes  
Fire Chief



**CORPORATION OF THE TOWN OF INGERSOLL  
BY-LAW NO. 13-4726**

**A by-law to provide for the regulation of Open Air Burning in the  
Town of Ingersoll.**

**WHEREAS** Div. B article 2.6.3.4. of the *Ontario Fire Code* regulates open air burning in proximity to buildings;

**AND WHEREAS** the municipal council of the Town of Ingersoll wishes to regulate open air burning in all areas within the Town of Ingersoll;

**AND WHEREAS** the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c. 4, as amended, provides:

- In article 7.1(1)(a) that a council of a municipality may pass by-laws regulating fire prevention, including the prevention of spreading of fires;
- In article 7.1(1)(b) that a council of a municipality may pass by-laws regulating the setting of open air fires, including establishing the times during which open air fires may be set;
- In subsection 7.1(3) that a by-law passed under section 7.1 may deal with different areas of the municipality differently;
- 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 being complied with;

**AND WHEREAS** Div. B article 2.6.3.4 of the *Fire Code* provides that open air burning shall not be permitted unless approved by the Fire Chief, or unless such burning consists of a small, confined fire, supervised at all times, and used to cook food on a grill or a *barbeque*;

**AND WHEREAS** of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides:

- In section 125 that a municipality may regulate the use and installation of heating and cooking appliances, and the storage of fuel for use in heating and cooking appliances;
- In section 128 that a municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of council, are or could become or cause public nuisances, and the opinion of Council if arrived at in good faith is not subject to review by any court; AND Council is of the opinion that the setting of open air fires are or could become or cause public nuisances by creating negative health effects on neighbouring residents, increasing fire exposure hazards, infringing the enjoyment of the use of neighbouring properties, and generating false fire alarms;
- In section 129 that a municipality may prohibit and regulate with respect to odour, dust and outdoor illumination, and may prohibit those matters unless a permit is obtained from the municipality for those matters and may impose conditions for obtaining, continuing to hold and renewing the permit;
- In sub-section 10 (2) that a municipality may pass by-laws respecting: 5. Economic, social and environmental well-being of the municipality; 6. Health safety and well-being of persons; 8. Protection of persons and property; 10. Structures, including fences and signs;
- In section 10 and section 391 that a municipality is authorized to pass by-laws imposing fees or charges on persons for services or activities provided or done by it or on behalf of it, and for the use of its property including property under its control;
- In section 446 that if a municipality has authority under the 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 also provide that, in default of being done by the person directed or required to do it, the matter or thing shall be done at the person's expense;

**THEREFORE** the Municipal Council of The Corporation of the Town of Ingersoll enacts as follows:

## **SHORT TITLE**

“Open Air Burning By-law”

## **1.0 DEFINITIONS AND INTERPRETATIONS**

**1.1** In this by-law:

**“Approved”** approved by the Fire Chief;

**“Barbeque”** means a manufactured device or structure with a grill which is designed, intended and used solely for the purpose of cooking food outdoors, and includes a hibachi, but does not include devices or structures designed for personal warmth, fire pits, or *Outdoor Fire Containers*;

**“Town”** means The Corporation of the *Town* of Ingersoll;

**“Cooking Fire”** means an Open Air Fire used for the purpose of cooking food;

**“Fire Chief”** means the person appointed by Town Council to act as Fire Chief for the Town as defined in the *Fire Protection and Prevention Act, 1997* or designate;

**“Noxious Materials”** includes but is not limited to tires, plastics, rubber products, hydrocarbons, 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, wire insulation, and painted wood;

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

**“Officer”** means the Fire Chief, any member of the Town of Ingersoll Fire and Emergency Services.

**“Open Air Burning”** means a fire set outside of a building;

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

**“Owner”** means any person, firm or corporation having control over any portion of the building or property under consideration and includes the *persons* in the building or property;

**“Person”** means an individual or a corporation;

**“Smog Alert”** means an alert issued by the Ministry of the Environment with respect to air quality;

**“Strike”** means a *strike* as defined in the *Labour Relations Act, 1995*, S.O. 1995, c. 1, Schedule A;

**“Wind Speed”** means the wind speed for The Town of Ingersoll as reported on the Environment Canada website.

In this By-Law, shall is mandatory and not directory; words in the singular include the plural; words in the plural include the singular; words in the present tense include future or past tense; whenever a word imparts the masculine gender is deemed to include feminine gender.

## 2.0 GENERAL PROVISIONS

2.1 No person shall set, maintain, or permit to be set or maintained, an Open Air Burning except as authorized under this By-law or unless approved by the Fire Chief or his designate.

2.2 This By-law shall not apply to:

- (a) a person using a Barbeque to cook food;
- (b) a person using a fire in a device installed outside of a building that is used as a source of heat or power for the building or that is ancillary to a manufacturing process, and provided that such device is certified for the purpose by a recognized agency and is in compliance with all applicable By-Laws;
- (c) a person using a device designed to heat pitch or asphalt;
- (d) a person using welding equipment;
- (e) a person setting or maintaining a recreational fire as outlined in this By-law and approved;
- (f) a person setting or maintaining a fire at a Strike site in a metal 45 gallon (170 litre) drum provided that fire department guidelines are being followed and that the person setting the fire shall have legal title to the property or shall obtain the prior written consent of the person having legal title to the property at which the metal 45 gallon (170 litre) drum is to be used for burning;
- (g) emergency services for the purposes of education and training of individuals and fire department personnel;
- (h) a person conducting fire extinguisher training who has obtained prior written approval of the Fire Chief or designate.

### 3.0 WHEN OPEN AIR BURNING ALLOWED

#### **Open Air Burning Allowed – Outdoor Fire Container**

- 3.1 (1) A person may conduct an Open Air Burning in an Outdoor Fire Container for recreational purposes, subject to the conditions set out in this Part.
- (2) A person conducting an Open Air Burning shall comply with the following conditions for an Open Air Burning in an Outdoor Fire Container:
- a) shall only conduct the Open Air Burning between 4:00 p.m. and Midnight;
  - b) shall be supervised at all times;
  - c) shall have an approved method of extinguishment readily available;
  - d) shall only use an Outdoor Fire Container that is constructed from non-combustible material and approved;
  - e) shall not burn or attempt to burn a volume of combustible material greater than 61 centimetres (24 inches) wide by 61 centimetres (24 inches) long by 61 centimetres (24 inches) high;
  - f) shall contain the fire within the Outdoor Fire Container at all times;
  - g) shall locate Outdoor Fire Container at least 4.5 metres (14.75 feet) from any building, structure, property line, tree, hedge, fence, roadway, overhead wires or other combustible articles and;
  - h) shall locate the Outdoor Fire Container on a non-combustible surface extending beyond the unit to a dimension equal to the height of the Outdoor Fire Container.

#### **Open Air Burning Allowed – Cooking Fires**

- 3.2 (1) A person may conduct an Open Air Burning for a Cooking Fire, subject to the conditions set out in this Part and in subsection 3.1(2), save and except article 3.1(2)(a).
- (2) A person conducting an Open Air Burning shall comply with the following condition for a Cooking Fire:

- a) shall only conduct the Open Air Burning between 06:00 a.m. and Midnight.
- b) shall be commensurate to the type and quantity of food being cooked

### **Conditions of All Open Air Burning Under this Part**

3.3 Every person setting, permitting to be set, maintaining, or permitting to be maintained, an Open Air Burning authorized under this Part shall comply with the following conditions:

- (a) shall allow, at any reasonable time, an Officer to inspect the location or proposed location of the Open Air Burning;
- (b) shall have legal title to the property at which the Open Air Burning is to occur, or the person, or Permit Holder, as the case may be, shall obtain the prior written consent of the person having legal title to the property;
- (c) shall only burn commercially produced charcoal, briquettes, or clean, dry, seasoned wood;
- (d) shall not burn Noxious Materials;
- (e) shall have an effective extinguishing agent of sufficient size and with the capability of extinguishing the Open Air Burning immediately available for use;
- (f) shall attend, control and supervise the Open Air Burning at all times;
- (g) shall completely extinguish the Open Air Burning before the site is vacated;
- (h) shall ensure the Wind Speed does not exceed 15 km per hour (9 miles per hour) during the Open Air Burning;
- (i) shall not burn if it is rainy or foggy;
- (j) shall not burn if a Smog Alert has been declared;
- (k) shall comply with the provisions of the *Environmental Protection Act*, R.S.O. 1990, c.E.19, as amended;
- (l) shall protect adjacent properties from the potential spread of fire; and



(m) shall ensure the *Open Air Burning* does not create a *Nuisance*.

#### 4.0 ORDER TO DISCONTINUE ACTIVITY

- 4.1 If the Fire Chief is satisfied that this by-law has been contravened, the Fire Chief or his designate may order 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. Such an Order shall require a person not to conduct an Open Air Burning for a certain period of time or prohibit such fires. The Order to Discontinue Activity may be served verbally or in writing on the person to whom it is directed.

#### 5.0 ORDER TO EXTINGUISH

- 5.1 If an Officer is satisfied that this by-law has been contravened, the Officer may issue an Order to Extinguish requiring the person contravening the by-law to immediately extinguish the fire. The Order to Extinguish may be served verbally or in writing on the person to whom it is directed. If the fire is not extinguished immediately by the party being served, the municipality may extinguish the fire.

#### 6.0 REMEDIAL ACTION – COSTS

- 6.1 (1) Should a *person* default in complying with an order to Discontinue Activity or an Order to Extinguish, the fire may be extinguished at the *person's* expense.
- (2) The *Town* may enter on land at any reasonable time for the purpose of extinguishing a fire under subsection (1).
- (3) The power of entry under this Part shall be exercised by an *officer*.
- (4) The Town may recover the costs of extinguishing the fire from the person directed to extinguish the fire by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes. The costs include interest calculated at a rate of fifteen percent (15%), calculated for the period commencing on the day the municipality incurs the costs and ending on the day the costs, including interest are paid in full. The amount of the costs, including interest, constitutes a lien on the land upon the registration of a notice of lien in the Land Registry Office.

#### 7.0 INSPECTIONS & INSPECTION FEES

7.1 An Officer, 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.

## 8.0 PROHIBITIONS

8.1 No person shall set or maintain Open Air Burning, or permit Open Air Burning to be set or maintained, contrary to any provision of this by-law.

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

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

8.4 No person shall contravene an Order to Discontinue Activity.

8.5 No person shall contravene an Order to Extinguish.

8.6 No person shall hinder obstruct or interfere with a person duly appointed to enforce this by-law in the exercise of his or her powers and duties.

## 9.0 PENALTY

9.1 Any person who contravenes any provision of this by-law is guilty of an offence and:

(a) upon a first conviction is subject to a minimum fine of two hundred fifty (\$250) and a maximum fine of five thousand (\$5,000);

(b) upon a subsequent conviction is subject to a minimum fine of one thousand (\$1,000) and a maximum fine of ten thousand (\$10,000);

9.2 Despite section 9.1, where the person convicted is a corporation, the corporation is liable;

(a) on a first conviction, to a minimum fine of Five Hundred Dollars (\$500) and a maximum fine of not more than Five Thousand Dollars (\$5,000); and

(b) on any subsequent conviction, to a minimum fine Two Thousand Dollars (\$2,000) and a maximum fine of not more than Five Thousand Dollars (\$5,000).

9.3 Nothing in this By-Law shall prevent the Fire Chief or his designate from bringing charges under the Fire Protection and Prevention Act.

**SEVERABILITY**

If any provision of this by-law is declared invalid for any reason by a Court of competent jurisdiction, it is intended that such a provision shall be severed from the by-law and that the remainder of the by-law shall continue in full force and effect.

10.0 **SHORT TITLE**

10.1 This By-law may be referred to as the "Open Air Burning By-law".

11.0 **ENACTMENT**

11.1 This by-law shall come into effect on the day it is passed.

**READ** a first and second time in Open Council this 12th day of August, 2013.

**READ** a third time in Open Council and passed this 12th day of August, 2013.

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**Edward (Ted) J. Comiskey, Mayor**

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**Marsha Paley, Clerk/ Deputy CAO**

July 21, 2013

Comment #1

Comments and questions regarding the Town of Ingersoll proposed open air burning bylaw. I have enclosed pictures to better illustrate my questions/concerns. I would suggest that the bylaw be presented to the public and council again with pictures and diagrams and a more extensive description of the requirements to conform under the bylaw. As I read this bylaw – unless you have a 30 foot circle of space in your yard devoid of combustibles you can't even cook a marshmallow.



1: A) Masonry Outdoor Fireplace on edge of property? – OK?

1: B) If an existing Masonry Fireplace is located less than 14.75 feet from a property line will it have to remain unused? Will it be required to be removed?



2: Commercially designed fire container – Wood burning – OK?



3: Natural Gas or propane fire – OK? \_\_\_\_\_



4: Small clay Chimnea with BBQ grill – OK? \_\_\_\_\_



OK? \_\_\_\_\_

5: Small Clay Chimnea – No cooking surface –



6: Outdoor wood burning fireplaces – OK? \_\_\_\_\_



7: Small campfire grill on dirt – OK? \_\_\_\_\_



8: Fire Ring with cooking Grill – OK? \_\_\_\_\_



9: Enclosed Firepit on non-combustible surface 5 feet from garden - Is this OK? \_\_\_\_\_



10: Gas powered cooking units – Do they have to be 14.75 feet from combustibles, ie: Fence – building – trees etc. ? \_\_\_\_\_



11: How about outdoor flame producing light and heaters fired by a fuel other than wood? OK? \_\_\_\_\_

12: Also is Grass or shrubbery considered a combustible material? How about a wood picnic table or plastic lawn chairs? \_\_\_\_\_

13: I am also curious, how many fires have occurred in the last decade (estimate) due to outdoor burning by homeowners and what were the estimated costs of the property lost in the same period for this same reason?

Thank You  
Tim Lobzun

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Ingersoll, Ontario  
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519-485-4382  
[mitnuzbol@yahoo.com](mailto:mitnuzbol@yahoo.com)

Comment #2

July 22, 2013

RE : Public feedback of an  
open air fire

Our family safely enjoy  
having the ability to have an  
open fire in our backyard.  
Safety is always our concern  
+ we manage these safely  
when weather conditions permit  
in a contained area.

Thankyou,

D. Silvers - (519) 532-4967  
L. Page

RECEIVED

JUL 23 2013

TOWN OF INGERSOLL  
CLERK'S DEPARTMENT