



Town of Whitby

By-law # 7776-21

By-law to Regulate the Setting of Fires

Being a By-law to regulate the setting of fires in the Town of Whitby.

Whereas section 11 (2) of the Municipal Act 2001, SO. 2001, c.25, provides that a Council of a lower-tier municipality may pass by-laws with respect to the economic, social and environmental well-being of the municipality and the health, safety and well-being of persons;

And whereas section 7.1 (1) of the Fire Prevention and Protection Act SO. 1997, c.4, provides that a Council of a municipality may pass by-laws regulating fire prevention, including the prevention of the spreading of fires, and regulating the setting of open air fires, including establishing the times during which open air fires may be set;

And whereas, part 2 of the Ontario Fire Code, O. Reg. 213/07, subsection 2.4.4.4(1), 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, used to cook food on a grill, spit, or barbecue, and commensurate with the type and quantity of food being cooked.

Now therefore, the Council of The Corporation of the Town of Whitby hereby enacts as follows:

1. Definitions

- 1.1 "adult person" means a person who is at least 18 years of age;
- 1.2 "agricultural waste" means any organic material gathered through normal farm practice in a rural area;
- 1.3 "barbeque" means an appliance designed and approved by a recognized testing agency for the intended use of cooking food over an open flame;
- 1.4 "Fire Chief" means the WFES Fire Chief and includes his or her delegate(s);
- 1.5 "fire services personnel" means any member of Whitby Fire and Emergency Services;
- 1.6 "forested area" means any space where there is the growth of trees, plants and underbrush;
- 1.7 "nuisance" includes quantities of smoke, smell, sparks, ash or other airborne particulates that disturb or prevent any person from the full enjoyment of a public or private indoor or outdoor space;
- 1.8 "outdoor cooking appliance" means a device designed and approved by a recognized testing agency for the exclusive purpose of cooking that is constructed of non combustible material. There shall be no other openings in the appliance other than that required for the placing of food on a grill or spit. During normal use the appliance is designed to be fully closed;
- 1.9 "outdoor fire place" means a device built for the burning of a fuel that is factory

built or built on site and is constructed of non combustible material with a burn box that is completely enclosed on 3 sides and surrounded at ground level by non combustible material extending a minimum of 600mm beyond the front edge of the device. The fire area must not exceed a 600mm x 600mm area and maximum 900mm high;

- 1.10 “recognized testing agency” means Underwriters Laboratories of Canada, Canadian Standards Association, Warnock Hersey or similar agencies that test, approve and certify products for use;
- 1.11 “roadway” means any common, private or public highway, street, bridge, railway, sidewalk, path or the like, that is utilized by the public;
- 1.12 “WFES” means Whitby Fire and Emergency Services; and
- 1.13 “yard waste” means any organic material gathered through the maintenance of an outdoor space in an urban, suburban or rural area.

2. General

- 2.1 This by-law does not apply to an outdoor cooking appliance, outdoor fire place, barbeque, fire table or fire pit that uses natural gas or propane as a fuel source.
- 2.2 This by-law does not apply to an outdoor fire place constructed with a building permit.
- 2.3 This by-law does not apply to a factory built outdoor cooking appliance that is being used in accordance with the manufacturer’s specifications.
- 2.4 Subject to section 2.7, open-air fires are only permitted for the purposes of cooking food, burning rural yard waste, or burning agricultural waste, and only if such fires are in accordance with the provisions of the Ontario Fire Code, O. Reg. 213/07, and this by-law.
- 2.5 No person shall light, ignite or start or cause to be lighted, ignited or started a fire of any kind whatsoever outside of the walls of a building, for the purpose of burning yard waste or agricultural waste, without having first obtained a permit to do so from the Fire Chief.
- 2.6 Any person to whom a permit has been issued pursuant to section 2.5 shall place and keep a competent adult person, who is not under the influence of alcohol or drugs, in charge of the fire at all times until it is fully extinguished and shall provide such person with such appliances and equipment as may reasonably be required, having regard to the nature and location of the fire, by the Fire Chief in the permit to control the fire and to prevent it from causing damage or becoming dangerous to persons or property.
- 2.7 The burning of dry wood in enclosed fire pits for recreational purposes is

permitted at 4015 Cochrane Street as part of the operation of a spa, if the following fire safety conditions are met:

- 2.7.1 Any fire must be attended to and supervised at all times by qualified and trained staff with adequate on site fire extinguishing equipment as approved by WFES;
 - 2.7.2 A dry hydrant connection must be installed for use by WFES to allow firefighting water to be relayed from the fire route to the lower ravine area;
 - 2.7.3 Any fire must be at least 9 metres away from any combustible material and in an enclosure approved by WFES;
 - 2.7.4 No accelerants may be used; and
 - 2.7.5 All fires will be extinguished and there will be no burning if: winds exceed 25 km/h; smoke is a hazard on any roadway; fire causes a nuisance to neighbouring properties; or WFES has instituted a burn ban due to unsafe conditions.
- 2.8 WFES may order that there be no further burning at 4015 Cochrane Street for such period of time as WFES deems appropriate in the circumstances.
- 2.9 In accordance with Part VI of the Fire Protection and Prevention Act, 1997, S.O. 1997, c. 4, WFES may enter and inspect the land and premises at 4015 Cochrane Street at all reasonable times for the purposes of assessing fire safety.
- 2.10 The owner(s), occupant(s), and/or the person(s) having control of, the land or premises at 4015 Cochrane Street are fully responsible for the spa's fires and are responsible to pay the costs incurred by the Town of Whitby associated with WFES responding to a fire associated with or resulting from a fire, pursuant to the provisions of Part VIII of the Fire Protection and Prevention Act, 1997, S.O. 1997, c. 4.

3. Fire Safety Requirements for all Open-Air Fires

- 3.1. In addition to any requirements set out in a permit issued under s. 2.5 for the burning of yard or agricultural waste, all open-air fires must be conducted in accordance with the following fire safety requirements:
- 3.1.1. No fires are permitted when wind speed exceeds 25 km/h;
 - 3.1.2. No fires are permitted during a smog advisory;
 - 3.1.3. No fires are permitted during a burn ban ordered by the Fire Chief;
 - 3.1.4. The fire must be contained and controlled at all times;

- 3.1.5. An adult person must be responsible for the fire at all times;
- 3.1.6. The adult person responsible for the fire must not be under the influence of alcohol or drugs; and
- 3.1.7. The adult person responsible for the fire shall have a means to extinguish the fire readily available at all times.

4. Fire Safety Requirements for Open-Air Cooking Fires

- 4.1. All open-air cooking fires must comply with subsection 2.4.4.4(1) of the Ontario Fire Code, O. Reg. 213/07 and, in addition to any other requirement under this by-law, are only permitted in accordance with the following fire safety requirements:
 - 4.1.1. The fire must be within a non-combustible area that extends a minimum 0.6 metres beyond the appliance on all sides;
 - 4.1.2. Only charcoal, briquettes or fully seasoned wood may be burned. No yard waste or other debris is permitted;
 - 4.1.3. The burn area is not to exceed 0.6 metres diameter and 0.9 metres high;
 - 4.1.4. All burning is to be in the rear yard;
 - 4.1.5. No fire shall be located within or below any structure or canopy unless the Town of Whitby has issued a building permit for the construction of them both;
 - 4.1.6. Any fire that is deemed a nuisance by WFES personnel shall be immediately extinguished and remain that way for a minimum of 24 hours. Attendance by fire services personnel more than twice in a 12 month period for nuisance will result in fees in accordance with the fees for services by-law as a preventable alarm;
 - 4.1.7. Must be a minimum of 6 metres from any dwelling unit, accessory structure, property line, overhanging item or other combustible material;
 - 4.1.8. Must be a minimum of 7.5 metres from any forested area;
 - 4.1.9. Pre-manufactured cooking appliances must be placed in accordance with the manufacturer's requirements or this by-law, whichever is more restrictive. Chimineas, fire bowls, and other appliances that are not specifically designed as cooking appliances are not permitted; and
 - 4.1.10. Custom built cooking appliances and outdoor fireplaces:
 - 4.1.10.1 Must be a minimum of 6 metres from any dwelling unit, accessory structure, property line, overhanging item or other combustible material;

- 4.1.10.2 Must be a minimum of 7.5 metres from any forested area;
- 4.1.10.3 Must meet the requirements of CAN/ULC B365, and be installed and certified by a person having successfully completed Wood Energy Technical Training (WETT); and
- 4.1.10.4 If to be built without a building permit, plans must be submitted to WFES for review and approval prior to construction.

5. Scope

- 5.1. This by-law shall apply to all lands and premises located within the geographical boundaries of the Town of Whitby and the setting of fires in the open air on such lands and premises.

6. Enforcement

- 6.1. This by-law shall be enforced by a Municipal Law Enforcement Officer, Police Officer, WFES Personnel or any other duly appointed individual.

7. Penalties

- 7.1. Anyone contravening the provisions of this By-law shall be guilty of an offence and shall be liable to a fine of not more than \$5,000.00, exclusive of costs, the amount of such fine to be recoverable under the Provincial Offences Act.

8. Repeal of Existing By-law

- 8.1. By-law # 6991-15 is hereby repealed in its entirety

9. Effective Date

- 9.1. This by-law comes in to force and effect on the date that it is passed.

By-law read and passed this 21st day of June, 2021.

Don Mitchell, Mayor

Christopher Harris, Town Clerk