

**BY-LAW 2009-132**

**A BY-LAW OF THE CITY OF GREATER SUDBURY  
TO REGULATE OPEN AIR BURNING**

**WHEREAS** Subsection 7.1(1) of the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c. 4, as amended, allows the council of a municipality to pass by-laws regulating the setting of open air fires, including establishing the times during which open air fires may be set;

**AND WHEREAS** Section 130 of the *Municipal Act, 2001*, S.O. 2001, c. 25, allows the municipality to regulated matters related to the health, safety and well-being of the inhabitants of the municipality;

**AND WHEREAS** the regulation of open air burning is important for the health, safety and well-being of the inhabitants of the municipality;

**AND WHEREAS** the Council of the City of Greater Sudbury deems it advisable to enact such a By-law;

**NOW THEREFORE THE COUNCIL OF THE CITY OF GREATER SUDBURY  
HEREBY ENACTS AS FOLLOWS:**

**PART 1 - INTERPRETATION**

**Definitions**

1. In this Bylaw,

“balcony” means a platform projecting from a wall of a multiple dwelling, surrounded by a railing or balustrade;

“brush fire” means a fire set for the purposes of burning brush, grass, vegetation or leaf type material only;

"burn permit" means a burn permit which is issued in accordance with this By-law, authorizing a brush fire or a crop residue fire;

"burn barrel" means a steel container similar in construction to a 45 gallon drum and with a volume no greater than that of 45 gallon drum;

"By-law Enforcement Officer" means a person duly appointed by the Council of the City of Greater Sudbury to enforce City By-laws;

"campfire" means a fire intended for and used for the purposes of recreation cooking or warmth only and for no other purpose;

"City" means the City of Greater Sudbury;

"cooking device" means a non-combustible device designed for and used for the cooking of food and fuelled only by commercial charcoal, compressed gas or wood;

"crop fire" means a fire set for the purpose of burning agricultural crop residue or similar vegetation, only;

"dwelling unit" means a suite of one or more inter-connected habitable rooms which:

- (i) is occupied and used in common by one or more persons as a single, distinct and self-contained housekeeping establishment; and
- (ii) contains cooking and toilet facilities for the exclusive common use of the occupants thereof;

"fire" means a fire in the open air, whether or not the fire is contained within a device or appliance;

"Fire Chief" means the Fire Chief of the City of Greater Sudbury and includes his or her duly authorized designate;

"multiple dwelling" means a building containing two or more dwelling units, with or without non-residential uses in the same building, and includes any such dwelling

wherein furnished dwelling unit accommodation is provided on a weekly or monthly basis, but does not include a row dwelling;

“property” includes a building or structure or part of a building or structure, and includes the lands appurtenant thereto and all mobile homes, mobile buildings or mobile structures and vacant land;

“registered owner” includes the person who is shown as owner of a property in the records of the Land Registry Office, a trustee acting on behalf of the registered owner, the estate trustee of a registered owner, a person with a leasehold interest in the land and an authorized representative of a corporate registered owner;

“row dwelling” means a building which contains two or more dwelling units divided vertically from each other by common walls, which extend at least one story above finished grade and having private independent entrances to each dwelling unit directly from a yard, and

“winter lake fire” means a daytime fire set for warmth or cooking on the frozen surface of a lake in accordance with the terms of this By-law.

#### Short Title

2. This By-law shall be known as the “Open Air Burning By-law”.

### **PART 2 - APPLICATION**

#### Application

3. This by-law applies within the geographic limits of the City of Greater Sudbury.

#### Non-application

4. This By-law does not apply to a person who sets a fire:
  - (a) in an incinerator operated in accordance with the Certificate of Approval issued pursuant to the *Environmental Protection Act*, R.S.O. 1990, c. E.19 and regulations thereunder; or

- (b) in a device which has been installed outside of a building which meets each of the following conditions:
  - (i) the device is designed for and used as a source of heat or power for the building or is designed for and used for a purpose ancillary to a manufacturing process,
  - (ii) the device is certified for use for a purpose described in paragraph 4(b)(i) by a recognized agency mandated in part for that purpose;
  - (iii) the certification of the device is produced upon request by a By-law Enforcement Officer or the Fire Chief; and
  - (iv) the device is in good working order.

#### Effect of Other Legislation

5. (1) Nothing in this By-law shall be deemed to authorize any fire, burning or other act which is in contravention of the *Environmental Protection Act*, R.S.O. 1990, c. E. 19, the *Forest Fires Protection Act*, R.S.O. 1990, c. F.24, the *Fire Protection and Prevention Act*, 1997, S.O. 1997, c. 4 or any other federal or provincial statute, or any regulation made thereunder.

(2) In the event of any conflict between the provisions of this By-law and any of the said Acts or Regulations, the provisions of the said Act or Acts or the Regulations thereunder shall govern.

(3) In the event of any conflict between the provisions of this By-law and any other municipal by-law, the provision that establishes the higher standard to protect the health, safety and welfare of the general public shall prevail.

### **PART 3 - GENERAL PROHIBITIONS - PERMITTED FIRES**

#### Prohibition - Setting Fires

6. Except as provided in Section 4, no person shall set a fire in the City unless the fire:

- (a) has been approved by the Fire Chief in accordance with Section 7; or
- (b) is a permitted fire;

and is otherwise compliant with the requirements of this By-law.

Fire Approved by the Fire Chief

7. (1) For the purpose of this By-law, a training or demonstration fire is a fire which is set in the City for the purpose of demonstrating fire fighting equipment or as a training exercise.

(2) On receipt and review of a written application, signed by the Applicant and supported by written consent of the registered owner of the property on which the fire is proposed to be set, the Fire Chief is authorized to refuse or to approve on conditions, for the setting of:

- (a) a demonstration or training fire;
- (b) a fire for ceremonial purposes; or
- (c) a bonfire sponsored by an organization or group of persons.

(3) The Fire Chief shall provide his decision in writing and shall include in his or her written consent:

- (a) the particulars of the fire which is to be set;
- (b) the location at which the fire can be set;
- (c) the size of the fire which is to be set;
- (d) the day and time at which the fire is authorized to be set;
- (e) the person authorized to set the fire;
- (f) in the case of a demonstration or training fire, the requirement that the fire be set in the presence of such members of the City's Fire Services and such equipment as may be reasonably necessary to be able to control and extinguish the demonstration or training fire;

- (g) the right of the Fire Services to inspect the site of the fire; and
- (h) any restrictions, regulations or conditions to which the consent is subject.

(3) No person shall set a demonstration or training fire, a fire for ceremonial purposes or a bonfire sponsored by an organization or group of persons unless all of the following conditions are met:

- (a) the person has the prior written consent of the Fire Chief to set the fire;
- (b) the fire is set and maintained in accordance with the written consent of the Fire Chief; and
- (c) the person does not leave the site of the fire until the fire is fully extinguished.

#### Permitted Fires

8. For the purposes of this By-law, a permitted fire
- (a) is a fire set in a burn barrel and otherwise in accordance with Section 13;
  - (b) is a campfire and otherwise in accordance with Section 14;
  - (c) is a fire set in a cooking device and otherwise in accordance with Section 15;
  - (d) is a fire set in a chiminea and otherwise in accordance with Section 16;
  - (e) is a fire set in a portable device and otherwise in accordance with Section 17;
  - (f) is a brush fire, authorized by a burn permit and otherwise in accordance with Section 18;
  - (g) is a crop residue fire, authorized by a burn permit and otherwise in accordance with Section 19, or
  - (h) is a winter lake fire, in accordance with Sections 10, 11, 12 and 20.

Consent of Registered Owner

9. (1) No person shall set or maintain a permitted fire on any property in the City unless:

- (a) the person setting or maintaining the fire is the registered owner of the property on which the fire is set;
- (b) at least one registered owner of the property or his or her authorized designate is present at the site of the fire from the time fire is set until the fire is fully extinguished; or
- (c) the person setting or maintaining the fire has the written consent of at least one registered owner of the property on which the fire is set, to the setting of a fire of that type on the property.

(2) No person shall authorize or permit a person to set or maintain a fire on his or her property unless such person is a responsible person and has the ability to control the fire and prevent its spread.

(3) No person, having the written consent of a registered owner to setting a permitted fire on the property of the registered owner, shall fail to:

- (a) keep the written consent at the location of the fire; or
- (b) produce the written consent upon request by a By-law Enforcement Officer or the Fire Chief.

Person in Charge

10. (1) No person having started a permitted fire, and, if the person who started the permitted fire is not present, no person in charge of a fire, shall fail to take all necessary steps to control the fire, prevent its spread and fully extinguish the fire before leaving the site.

(2) No person, having set a permitted fire, or being left in charge of a permitted fire, shall leave another person in charge of the fire unless such person is a responsible person, able to control the fire and comply with the requirements of this By-law.

Prohibited Materials for Burning

11. No person shall burn or permit to be burned in a permitted fire in the City any:
- (a) kitchen garbage;
  - (b) construction material;
  - (c) materials made of or containing rubber;
  - (d) plastic;
  - (e) tar; or
  - (f) wet material.

Prohibited Conditions

12. No person shall set or maintain a permitted fire in the City in a location or in conditions likely to cause or result in:
- (a) a decrease in visibility on any highway or roadway from smoke;
  - (b) inconvenience or irritation to others from smoke or fumes;
  - (c) the spread of the fire due to grass or other vegetation, proximity of any combustible material or other reason;
  - (d) a spread of fire through adjacent grass, brush, or forested area; or
  - (e) the endangerment of his or her own property or the endangerment of property of any other person.

**PART 4 - PROHIBITIONS - SPECIFIC TYPES OF PERMITTED FIRES**

Fire in a Burn Barrel

13. No person shall set a fire in a burn barrel unless such person ensures all of the following conditions are met:



- (a) the burn barrel:
  - (i) is in good condition;
  - (ii) is situated securely on level ground;
  - (iii) is located at least 6 metres from any building or structure; and
  - (iv) is located at least 5 metres from any forest or woodland;
- (b) all openings in the burn barrel are entirely covered by metal wire mesh with grid openings of not more than 12 mm in diameter;
- (c) the person burns only grass, leaves, brush, wood or wood by-products in the burn barrel; and
- (d) the person sets and maintains the fire in the burn barrel only during the time falling between one half hour before sunset and one half hour after sunrise of the next following day, unless such person has the prior written consent of the Fire Chief to set or maintain the fire in the burn barrel during any other time.

#### Campfire

**14. (1)** No person shall set or maintain a campfire unless the person ensures all of the following conditions are met:

- (a) the campfire fire is contained within an area completely surrounded by a non-combustible barrier of metal, masonry, ceramic or stone or is contained within a pit in the ground;
- (b) the diameter of the campfire area in paragraph 14(a) does not exceed 66 centimetres;
- (c) the campfire is located at least:
  - (i) 6 metres from any structure; and
  - (ii) 5 metres from any forest or woodland;

- (d) the material burned in the campfire is in a single pile that is less than 66 centimetres in height;
- (e) the person tending the campfire has tools or water adequate to contain the fire within the campfire area; and
- (f) in the case of a campfire set in a location which is not within an approved camp ground, the person sets and maintains the campfire only during the time falling between one half hour before sunset and one half hour after sunrise of the next following day.

(2) For the purposes of this Section, an approved camp ground is a provincial park, or a tourist camp or trailer camp which has been duly licenced by the City of Greater Sudbury.

#### Fire in a Cooking Device

**15.** No person shall set or maintain a fire in a cooking device unless he or she ensures all of the following conditions are met:

- (a) the cooking device:
  - (i) is not located on a balcony;
  - (ii) is not located on a combustible surface;
  - (iii) is located at least 1 metre from any structure; and
  - (iv) is in good working order;
- (b) the fire in the cooking device is no larger than reasonably necessary to cook the food;
- (c) the fire is contained within the cooking device; and
- (d) the person burns only commercial charcoal, compressed gas or wood in the cooking device, as is appropriate for that cooking device.

### Fire in a Chiminea

**16.** No person shall set a fire in a chiminea unless he or she ensures all of the following conditions are met:

- (a) the chiminea:
  - (i) is not located on a balcony;
  - (ii) is not located on any combustible surface;
  - (iii) is in good working order; and
  - (iv) is located at least 6 metres from any structure;
- (b) all openings in the chiminea are completely covered by metal wire mesh with grid openings no larger than 12 millimetres in diameter;
- (c) the fire is confined to the chiminea; and
- (d) the person burns only clean dry wood or charcoal in the chiminea.

### Heating during Construction

**17.** No person may set or maintain a fire in a portable appliance during a construction or maintenance process unless he or he ensures the following conditions are met:

- (a) the portable appliance is designed for the heating of a material during a construction or maintenance process;
- (b) the portable appliance is used only for the heating of a material during a construction or maintenance process;
- (c) the portable appliance is used in accordance with manufacturer's instructions; and
- (d) the portable appliance is in good working order.

### Brush Fire - Permit

**18. (1)** No person shall set or maintain a brush fire without a valid burn permit issued in accordance with this By-law.

(2) No person holding a valid burn permit for a brush fire shall set or maintain a brush fire unless he or she ensures:

- (a) the fire is set and maintained at a distance of no less than 30 metres or such greater distance as may be specified in the burn permit, from:
  - (i) the nearest building or other combustible structure; and
  - (ii) any overhead wires;
- (b) the materials to be burned in the fire do not exceed 2 metres in length, 2 metres in width and 2 metres in height;
- (c) the fire is not set or maintained except during the time between one half hour before sunset and one half hour after sunrise of the next following day;
- (d) he or she has the necessary means immediately available at the site of the fire to permit him or her:
  - (i) to extinguish the fire;
  - (ii) to limit its spread; and
  - (iii) if necessary, to summon the City fire department; and
- (e) the fire is compliant with all conditions and restrictions imposed by the burn permit or imposed as a result of a Fire Prevention inspection conducted by the Fire Chief.

### Crop Residue Fire - Permit

**19. (1)** No person shall set or maintain a crop residue fire without a valid burn permit issued in accordance with this By-law.

(2) No person holding a valid burn permit for a crop residue fire shall set or maintain a crop residue fire unless he or she ensures each of the following conditions is met:

- (a) the total burn area does not exceed one hectare;
- (b) the flaming edge of the fire does not exceed 30 metres at any time;
- (c) the fire is not set or maintained except during the time between one half hour before sunset and one half hour after sunrise of the next following date;
- (d) the person setting the fire has the necessary means immediately available at the site of the fire to permit him or her:
  - (i) to extinguish the fire;
  - (ii) limit its spread; and
  - (iii) if necessary, summon the City fire department.
- (e) the fire is compliant with all conditions and restrictions imposed by the burn permit or imposed as a result of a Fire Prevention inspection conducted by the Fire Chief.

Winter Lake Fire

**20.** No person shall set or maintain a winter lake fire unless the person ensures all of the following conditions are met:

- (a) the fire is not set or maintained except during the time between one half hour before sunrise and one half hour after sunset;
- (b) the fire is not set or maintained except during the period between November 1<sup>st</sup> to April 30<sup>th</sup> of the following year, inclusive
- (c) the fire is located on the frozen surface of a lake, and
- (d) the fire is located at least:
  - (i) 6 metres from any structure; and
  - (ii) 5 metres from any forest or woodland.

## **PART 5 - BURN PERMITS**

### Issuer of Permits

**21.** The Fire Chief is authorized to issue burn permits for brush fires and for crop residue fires.

### Application for Burn Permit

**22.** (1) Any person in the City who wishes to obtain a burn permit for a brush fire or a crop residue fire shall apply in writing to the Fire Chief three full working days prior to the day or earliest day on which the applicant wishes to set the fire.

(2) For the purposes of this Section 'working day' shall mean a day that City offices at Tom Davies Square are open for business.

(3) The applicant for a burn permit shall submit an application in the form established by the Fire Chief from time to time, and signed by the applicant.

(4) The applicant for a burn permit shall provide in full at the time the application is submitted all of the information and such other documentation or materials as may be requested on the application form.

### Issuing a Burn Permit

**23.** (1) The Fire Chief shall review the application for a burn permit and the documentation or materials filed with the application, and shall:

- (a) approve the application and issue the burn permit to the applicant;
- (b) conditionally approve the application subject to such restrictions, regulations or conditions as the Fire Chief in his or her sole discretion considers advisable; or
- (c) refuse to approve the application.

(2) Where the Fire Chief refuses an application for a burn permit, he or she shall advise the applicant in writing that the application has been refused, by way of written

notice served personally or mailed to the applicant at the address shown on the application.

(3) Before issuing a burn permit, the Fire Chief shall record on the face of the burn permit:

- (i) the name of the applicant authorized to set the fire;
- (ii) the expiry date of the burn permit;
- (iii) any restrictions on the hours during which the fire may be set or maintained;
- (iv) the municipal address of the property at which the fire may be set and if there is no municipal address for the property, a description for the purposes of identifying the property at which the fire may be set;
- (v) whether the fire authorized by the burn permit is a brush fire or a crop residue fire;
- (vi) the restrictions, regulations or conditions to which that burn permit is subject; and
- (vii) a statement that the burn permit is conditional upon compliance with the terms set out in the burn permit, this By-law, and applicable legislation.

(4) The Fire Chief shall issue a burn permit by signing it and releasing it to the applicant.

#### Burn Permit

**24.** (1) Any burn permit issued under this By-law is personal to the permit holder, and shall not be transferred or assigned.

(2) No person shall enjoy a vested right in the continuance of any burn permit.

(3) A burn permit remains the property of the City at all times.

(4) A burn permit shall be valid only for the period of time for which it was issued and shall expire on the date or in the manner specified in the burn permit.

Permit Holder

25. (1) No person holding a burn permit shall set or maintain a fire under the authority of the burn permit, except in accordance with the terms and conditions of burn permit and this By-law.

(2) The holder of a burn permit shall keep the burn permit at the site of the fire authorized by the burn permit.

(3) The holder of the burn permit shall produce the burn permit for examination upon request by the Fire Chief or a By-law Enforcement Officer.

Revocation of Permit

26. (1) The Fire Chief may, at any time, in his or her sole discretion, revoke any burn permit if he or she reasonably believes that:

- (a) any of the information in the application or supporting documentation or materials is not accurate;
- (b) a term or condition of the burn permit is not being observed;
- (c) the fire will not be or is not being conducted in a fashion which observes all reasonable safety precautions or is otherwise a risk to person or property; or
- (d) there are any other grounds to terminate the burn permit which the Fire Chief in his or her sole discretion considers sufficient in the circumstances.

(2) Every burn permit shall be automatically revoked without further action by the Fire Chief in the event that:

- (a) a restricted fire zone is declared under the *Forest Fire Prevention Act*, R.S.O. 1990, c. F.24, which affects the City; or



(b) the Fire Chief declares a fire ban in the City or the part of the City to which the burn permit applies, pursuant to the *Fire Protection and Prevention Act, 1997, S.O. 1997, c. 4.*

(3) Any person who holds a burn permit which has been revoked, shall surrender the same to the Fire Chief or a By-law Enforcement Officer upon request.

## **PART 6 - ENFORCEMENT AND RECOVERY OF COSTS**

### Enforcement - Limitation

27. No person shall obstruct, hinder or in any way interfere with any person designated to enforce this By-law.

### Right of Entry

28. Upon producing proper identification, a By-law Enforcement Officer or the Fire Chief may, at all reasonable times enter upon and inspect any property to determine if there is a contravention of this By-law and to enforce or carry into effect the By-law.

### Extinguishing any Fire

29. (1) The Fire Chief may direct a person to extinguish any fire where, in his or her opinion, there is a contravention of this By-law.

(2) Where the action taken by such person in extinguishing any such fire pursuant to 29(1) is, in the opinion of the Fire Chief not adequate, the Fire Chief may take such action as he or she considers necessary to control and extinguish the fire.

### Cost of Action re Fire

30. (1) Any costs and expenses of any action by the City with respect to controlling or extinguishing a fire that is caused by or results from the conduct of a person acting contrary to this By-law or is caused by or results from a person disobeying or refusing or

neglecting to carry out any of the provisions of this By-law, are payable by that person to the City on the date specified in the request for payment and if not paid on the date specified, such costs and expenses together with costs of collection, including legal fees and disbursements, are recoverable as a debt due to the City by any remedy or procedure available to the City by law.

(2) In the event that the City has paid or is liable to pay the Crown in right of Ontario, represented by the Minister of Natural Resources or any other body for costs and expenses incurred by that body for controlling or extinguishing a fire that is caused by or results from the conduct of a person acting contrary to this By-law or that is caused by or results from a person disobeying or refusing or neglecting to carry out, any of the provisions of this By-law, such cost and expenses are payable by that person to the City on the date specified in the request for payment and if not paid, such costs and expenses together with costs of collection, including legal fees and disbursements, are recoverable as a debt due to the City by any remedy or procedure available to the City by law.

#### Civil Action

**31.** Nothing in this By-law affects or shall be held to limit or interfere with the right of any person to bring and maintain a civil action for damages occasioned by fire.

#### Offence

**32.** Every person who contravenes any of the provisions of this By-law or fails to comply with a direction to extinguish a fire as set out herein is guilty of an offence and on conviction is liable to a fine as provided in the *Provincial Offences Act*, R.S.O. 1990, c. P.33 as amended.

Administration

33. The Fire Chief shall be responsible for the administration of this By-law and persons who are employed or appointed as By-law Enforcement Officers and the Fire Chief or his or her designates are all deemed appointed and entitled to enforce the provisions of this By-law.

Severability

34. Should a court of competent jurisdiction declare a part or whole of any provision of this By-law to be invalid or of no force and effect, the provision or part is deemed severable from this By-law and it is the intention of Council that the remainder survive and be applied and enforced in accordance with its terms to the extent possible under law.

Repeal

35. By-law 2004-160 is hereby repealed.

Effective

36. This By-law shall come into effect and take force immediately upon final passage.

**READ A FIRST AND SECOND TIME IN OPEN COUNCIL** this 27th day of May, 2009.

Rodriguez Mayor  
A. Hache Clerk

**READ A THIRD TIME AND PASSED IN OPEN COUNCIL** this 27th day of May, 2009.

Rodriguez Mayor  
A. Hache Clerk