

The Corporation of the Municipality of West Perth

By-law No. 038-2012

Being a by-law to amend By-law No. 83-08, being a By-law to regulate open air burning in the Municipality of West Perth

WHEREAS Section 475(3) of the Municipal Act, 2001 amends the Fire Protection and Prevention Act, 1997 by providing that council of a municipality may pass by-laws for regulating the setting of open air fires, including establishing the times during which open air fires may be set;

AND WHEREAS Section 391 (1)(a) of the Municipal Act, 2001 authorizes a municipality to impose fees or charges on persons for services or activities provided or done by or on behalf of it;

AND WHEREAS the Council of the Corporation of the Municipality of West Perth deems it necessary to set regulations for open air fires and to set fees for fire equipment and services in certain situations;

NOW THERE FORE the Council of the Corporation of the Municipality of West Perth enacts as follows;

1. That Schedule "A" attached to this by-law shall be the schedule of set fines for any contravention of the by-law No. 83-08 and this by-law.
2. That this by-law shall come into force and takes effect on the date of its final passing.
3. That the Mayor and the Clerk are hereby authorized to sign this By-law;

Read a first and second time this 23rd day of April 2012.

Mayor Walter McKenzie

Clerk Susan Cronin

Read a third and final time and finally passed this 23rd day of April 2012.

Mayor Walter McKenzie

Clerk Susan Cronin

**Corporation of the Municipality of West Perth
By-law No. 038-2012
Schedule "A"**

Open Air Burning –By-law No. 83-08 and By-law No. 038-2012

Special Event Permit Fee	\$20.00
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Part 1 Provincial Offences Act

By-Law 038-2012 being a by-law to regulate open burning.

Item	Column 1 Short form wording	Column 2 Offence creating Province or defining Offence	Column 3 Set fine
1	Burning without a permit	Section 2.1	\$285.00
2	Failing to supervise a fire	Section 2.2(h)	\$85.00
3	Burning within stated limits of a building	Open Air Burning Section 2.2(f)	\$85.00
4	Burning within stated limits of a building	Rural Area Section 3.3 (e)	\$85.00
5	Burning on balconies	Section 2.2(k)	\$150.00
6	Burning imported materials	Section 3.3(g)	\$285.00

The general penalty for the offences listed above is Section 4.1 of By-Law 83-08, a certified copy of which has been filed.

The Corporation of the Municipality of West Perth

By-law No. 83-08

Being a by-law to regulate open air burning in the Municipality of West Perth

Whereas Section 210, Paragraph 35 of the *Municipal Act*, provides that Council may prescribe for the whole or any part of the municipality the times during which fires may be set in the open air, and the precautions to be observed by persons setting such open air fires;

And whereas Section 210, Paragraph 49 of the *Municipal Act*, provides that Council may make such other regulations for preventing fires and the spread of fires as is considered necessary;

And whereas Section 326 of the *Municipal Act* authorizes where a municipal council has the authority to direct or require by by-law or otherwise that any matter or thing be done, the council may by by-law direct that, in default of its being done by the person directed or required to do it, such matter or thing shall be done at the person's expense and the corporation may recover the expense incurred in doing it by action or the same may be recovered in like manner as municipal taxes or council may provide that the expense incurred by it, with interest, shall be payable by such person in annual installments not exceeding ten years;

And whereas Section 220.1 of the *Municipal Act* authorizes a municipality to pass a by-law imposing a fee or charge on any class of persons for services or activities provided or done by or on behalf of it;

And whereas Section 2.6.3.4 of the *Ontario Fire Code* provides for the prohibition of open air burning unless approved or unless such open air burning consists of the use of a barbecue to cook food, provided such devices contain a small contained fire which is supervised at all times;

Now therefore be it resolved that the Council of the Municipality of West Perth enacts as follows:

1. That the Mayor and the Clerk are hereby authorized to sign the attached as Schedule A to this By-law;
2. This By-law shall come into force and takes effect on the date of its final passing.

Read a first and second time this 28th day of July 2008.

Seal

Mayor John Van Bakel

Clerk Hazel Soady-Easton

Read a third and final time and finally passed this 28th, day of July 2008.

Seal

Mayor John Van Bakel

Clerk Hazel Soady-Easton

Schedule A to By-law No. 83-08**Part 1****Definitions and Administration****1.1 Definitions**

For the purposes of this by-law:

- (a) **“Agricultural Waste”** all waste generated on a farm except sewage. This includes clean lumber from a barn or other farm building but does not include a residence or the materials from a residence.
- (b) **“Applicant”** shall mean the person, organization, company or group that makes application to the Fire Chief for permission to hold an open air burning and includes such persons who contact the Fire Chief with notification of an intention to hold an open air burning of brush in the rural area.
- (c) **“Barbecue”** appliances include a hibachi, a permanent structure designed and intended solely for the cooking of food in the open air and other similar devices designed and intended solely for the cooking of food in the open air, but does not include devices predominantly designed for personal warmth, fire pits or camp fires.
- (d) **“Open Air Burning”** shall mean the burning of any material, including without limiting the generality of the foregoing, wood, cardboard, brush or garden waste where the flame is not wholly contained and is, thereby, open to the air.
- (e) **“Open Burning Device”** shall mean any manufactured or altered device for the purpose of containing a recreational fire.
- (f) **“Municipality”** shall mean The Corporation of the Municipality of West Perth
- (g) **“Fire Chief”** shall mean the Fire Chief for the Municipality of West Perth Fire Department and members of the West Perth Fire Department acting under the Fire Chief’s direction.
- (h) **“Imported Materials”** shall mean material such as brush, construction or landscaping materials brought into the Municipality of West Perth for the purpose of being disposed of by burning
- (i) **“Supervised”** – a person over the age of 16 that will be on the property where the fire is located and takes responsibility for the fire.

1.2 Administration

This by-law shall be administered by the Fire Chief.

1.3 Fire Services - Exempt

The West Perth Fire Department shall be exempt from the provisions of this by-law with respect to open air burnings set for the purposes of educating and training individuals.

Part 2**General Provisions****2.1 Open air burning - Regulations**

No person shall conduct, or permit to be conducted, an open air burning within the boundaries of the Municipality of West Perth unless permission has been given by the Fire Chief hereunder.

2.2 Exception - Recreational Burning

Despite Section 2.1 above, permission is not required from the Fire Chief for open air burnings associated with the use of open burning devices or pits specifically designed for open air burnings, provided that each of the following regulations are complied with:

- (a) open air burning may only be conducted between the hours of 7:00 a.m. and 12:00 midnight;

- (b) open burnings shall be confined to open burning devices or to a pit no larger than three (3) feet (91 centimetres) by three (3) feet (91 centimetres) in size not including decorative edging;
- (c) no materials other than commercially produced charcoal, briquettes or clean, dry seasoned wood, not including pressure treated wood or creosote treated wood, may be burned;
- (d) the dimensions of the wood being burnt shall not be greater than the size of the appliance or fire pit and shall be totally confined within the appliance or pit at all times;
- (e) an open air burning shall be confined to a location that provides for a minimum distance of 3 metres in all directions from adjacent properties with the exception of campgrounds that shall be 1.5 metres
- (f) open air burnings shall be confined to an area that is a minimum of 3 metres from combustible structures or objects;
- (g) an effective extinguishing agent of sufficient size and with the capability of extinguishing the fire shall be immediately available for use;
- (h) open air burnings shall be attended, controlled and supervised at all times and shall be completely extinguished before the open air burn site is vacated;
- (i) open air burnings are not permitted when the wind speed exceeds 30 kilometres per hour or during rainy or foggy weather or at times when a smog alert has been declared by the Ministry of the Environment for Ontario; and
- (j) steps are to be taken to ensure that adjacent properties are protected from fire hazard. Should the West Perth Fire Department be dispatched to such a complaint regarding public safety due to fire hazard, the Fire Officer will have the discretion to determine compliance and this decision will be final.
- (k) no person shall use or cause to be used a gas or solid fuel burning barbecue or open burning of any kind on balconies of multi unit residential units.

2.3 Exception - barbecues

Despite Section 2.1, permission is not required from the Fire Chief for the use of barbecues to cook food, provided the following regulations are complied with:

- (a) is supervised at all times.
- (b) the fuel used is a commercially produced charcoal or briquette, or a flammable liquid commercially produced for the purpose of cooking such as natural gas and propane gas.

2.4 Permit - special events

- (a) All persons seeking permission to hold a special event involving an open air burning that is not a recreational burning as per section 2.2 and does not employ the use of a barbecue as per section 2.3 shall apply to the Fire Chief for a permit to have an open fire at such event.
- (b) Application shall be made a least one week prior to the proposed date of the event on a form supplied by the Fire Chief and such application should be accompanied by the applicable fee as set out in Schedule "A" to this by-law. The Fire Chief may issue permits to allow a special event to reoccur over an extended period of time. Registered not-for-profit charitable organizations may make application to the Fire Chief requesting a permit fee exemption.
- (c) Prior to granting a permit to hold an open air burning for a special event, the Fire Chief will give consideration to the location of the proposed event, the size of the proposed fire, the safety measures proposed, the supervision arrangements proposed, the time of year, the time of day and the anticipated weather conditions.
- (d) The Fire Chief may refuse to grant a permit to hold open air burnings at special events which are proposed to take place on land that is zoned for residential uses.
- (e) The Fire Chief may refuse to grant a permit for an open air burning if the proposed open air burning would be in contravention of this by-law, if the applicant has contravened the provisions of this by-law in the past or if the applicant has not complied with any conditions attached to a permit for an open air burning that may have been imposed by the Fire Chief on a previous occasion.
- (f) The Fire Chief shall not give permission for open air burning of any non wood combustible material, pressure treated wood or creosote treated wood. Permissible fuels include clean dry seasoned wood, commercially produced charcoal,

briquettes and flammable liquids such as natural gas and propane gas intended for cooking.

- (g) The Fire Chief may attach such conditions as deemed appropriate to any permit granted for an open air burning at a special event.
- (h) The Fire Chief may withdraw permission for and/or stop an open air burning if, in the Fire Chief's opinion, the fire presents a fire hazard, smoke produced by the fire is causing visibility concerns on roads in the area of the burn, the weather has deteriorated and has become unfavorable for an open air burning, conditions attached to the granting of permission are not being adhered to or if this by-law is being contravened.
- (i) Upon the notification of the withdrawal of permission by the Fire Chief, the applicant shall immediately extinguish the fire.
- (j) Should the applicant fail to immediately extinguish the fire upon notification from the Fire Chief, the applicant may be held liable for any and all costs incurred by the Municipality of West Perth Fire Department in its efforts to extinguish the fire.

2.5 Order to extinguish unapproved fires

- (a) When made aware of a prohibited open air burning not authorized under this By-Law, the Fire Chief shall order the land owner or occupant to immediately extinguish the fire.
- (b) The owner or occupant of land on which a prohibited open air burning is located, shall immediately extinguish the fire upon being ordered to do so by the Fire Chief.
- (c) Should any land owner or occupant fail to extinguish a prohibited open air burning when ordered to do so by the Fire Chief, the Fire Chief may take action to have the fire extinguished, and the person who owns or occupies the land on which the open burning is located shall be responsible for any and all costs incurred by the municipality of West Perth Fire Department in its efforts to extinguish the fire.
- (d) Notwithstanding subsection 2.5(a), on the second attendance in any calendar year to a particular municipal address, the Municipality of West Perth Fire Department shall immediately take whatever steps are necessary to extinguish a fire that is an open air burning found not to be in compliance with this By-Law. Upon verbal verification by the Municipality of West Perth Fire Department that the fire is extinguished, the person who owns or occupies the property shall pay the fee in accordance with the fees set out in this by-law "Open Burning - No permit where a permit is required".

Part 3

Special Regulations for Rural Area

3.1 Permission - brush burning

No person shall conduct, or permit to be conducted an open air burning in the rural areas larger than 6 feet by 6 feet [1.8m x1.8m] and not authorized under Section 2.2, 2.3 or 2.4 without first notifying the West Perth Fire Department by calling the Fire Department Office or the Municipal Office and complying with the provisions of Section 3.3 below.

3.2 Notification at conclusion of burning -rural area

All persons who have given notification pursuant to section 3.1 above shall notify West Perth Fire Department in person or by telephone at the conclusion of the burning.

3.3 Regulations re open air burning - rural area

The following regulations shall apply with respect to open air burnings in the rural area:

- (a) open air burnings may be conducted between the hours of 8:00 AM and 9:00 PM only.

- (b) no materials other than dry brush and agricultural waste that does not have an adverse effect on the environment may be burned with exception of burning grass along the roadway.
- (c) open air burnings shall be attended, controlled and supervised at all times and shall be completely extinguished before the burn site is vacated.
- (d) open air burnings are not permitted during rainy, foggy weather or on smog alert days as declared by the Ministry of Environment for Ontario.
- (e) an open air burning shall be confined to an area which is at least 100 feet [30 metres] from any building, highway, road, or a wooded area with the exception of burning grass along a road way or ditch.
- (f) steps must be taken to ensure that smoke caused by an open burn does not have a negative impact on neighbours or the visibility of motorists using roads in the vicinity of the burn.
- (g) no person shall burn materials “imported” into the Municipality of West Perth for the sole purpose of disposing of this material by burning.

3.4 Notification to extinguish

All persons conducting an open air burning in the rural area shall immediately extinguish the fire upon notification that in the Fire Chief’s opinion, the said fire presents a fire hazard or the fire is having an adverse effect on the environment, neighbours or roadway adjacent to the burn site or the regulations of this by-law are being contravened.

3.5 Failure to extinguish - liable for costs

Should any land owner or occupant fail to extinguish a prohibited open air burning in a rural area when ordered to do so by the Fire Chief, the Fire Chief may take action to have the fire extinguished, and the person who owns or occupies the land on which the open burning is located shall be responsible for any and all costs incurred by the Municipality of West Perth Fire Department in its efforts to extinguish the fire.

Part 4

Enforcement

4.1 Regulations - offence

No person shall fail to comply with regulations as set out in this by-law and any person who contravenes this by-law is, upon conviction, guilty of an offence and is liable to any penalty as provided in the *Provincial Offences Act*. Any person who contravenes any provision of this by law is guilty of an offence and shall be liable, on conviction, to a penalty not exceeding \$5000 (five thousand dollars) exclusive of costs, and the provisions of the *Provincial Offences Act*, R.S.O. 1990 Chapter P. 33, as may be amended from time to time, shall apply to the said fire.

4.2 Continuation - repetition - prohibition by order

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.

4.3 Default - collection of costs

The Municipality has the right to collect any unpaid costs as authorized by this by-law by adding such charges to the tax roll where they may be collected in a like manner as municipal taxes, all in accordance with Section 326 of the *Municipal Act*.

Part 5

Enactment

5.1 Headings

The headings in the body of this by-law form no part of the by-law but are inserted for convenience of reference only.

5.2 Severability

If any section or sections of this by-law or parts thereof be found by any court to be illegal or beyond the power of Council 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 there from and continue in full force and effect unless and until similarly found and this by-law shall be enacted as such.

5.3 Short Title

The short title of this by-law is “Open Burning By-Law”

5.4 Effective date

This by-law comes into force on the day it is passed by Council.

Schedule "A" – Fines

Special Event Permit Fee	\$20.00
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Part 1 Provincial Offences Act

BypLaw 09-08 being a by-law to regulate open burning.

	COLUMN 1 SHORT FORM WORDING	COLUMN 2 OFFENCE CREATING PROVINCE OR DEFINING OFFENCE	COLUMN 3 SET FINE
1	Burning without a permit	Section 2.1	\$85.00
2	Failing to supervise a fire	Section 2.2 (h)	\$85.00
3	Burning within stated limits of a building	Open Air Burning 2.2 (f)	\$85.00
4	Burning within stated limits of a building	Rural Area 3.3 (e)	\$85.00
5	Burning on balconies	Section 2.2 (k)	\$150.00
6	Burning imported materials	Section 3.3 (g)	\$85.00

The general penalty for the offences listed above is Section 4.1 of By-Law 09-08, a certified copy of which has been filed