

THE CORPORATION OF THE CITY OF SAULT STE. MARIE

BY-LAW 2024-147

OPEN AIR BURNING FIRE SERVICES: A By-law governing open-air burning within the City of Sault Ste. Marie

WHEREAS Subsection 7.1(1)(a) of the *Fire Protection and Prevention Act*, 1997, S.O. 1997, c. 4, as amended, provides that a council of a municipality may pass By-laws regulating fire prevention, including the prevention of spreading of fires;

AND WHEREAS Subsection 7.1(1)(b) of the *Fire Protection and Prevention Act*, 1997, S. O. 1997, c. 4, as amended, provides 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;

AND WHEREAS Subsection 7.1(4) of the *Fire Protection and Prevention Act*, 1997, S. O. 1997, c. 4, as amended, provides 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 section 128(1) of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended, provides that, without limiting sections 9, 10, and 11, a local municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council, are or could become public nuisances;

AND WHEREAS section 129(a) of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended, provides that a local municipality may prohibit and regulate with respect to noise, vibration, odour, dust and outdoor illumination;

AND WHEREAS section 10 and section 391 of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended, provides 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 the behalf of it, and for the use of its property including property under its control;

AND WHEREAS section 425(1) of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended, permits Council to pass By-laws providing that any person who contravenes any By-law of the municipality is guilty of an offence;

AND WHEREAS in section 446 of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended, provides that if a municipality has authority under the Act or under a bylaw 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 it being done by the person directed or required to do it, the matter or thing shall be done at the person's expense;

NOW THEREFORE, the Corporation of the City of Sault Ste. Marie enacts as follows:

PART 1 - DEFINITIONS

1.1 The terms set out below shall have the following meanings:

"APPROVE" means approved by the Fire Chief or their designate;

"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;

"BUILDING" means the definition of building as defined in the *Building Code Act*, 1992, S.O. 1992, c. 23, as amended;

"BURN BAN" means a period of time by which the Chief Fire Official or Ministry of Natural Resources and Forestry (MNR) determines that open-air burning is prohibited;

"CITY" means the Corporation of the City of Sault Ste. Marie;

"COMBUSTIBLE" means able to catch fire and burn easily;

"CHIEF FIRE OFFICIAL" means the assistant to the Fire Marshal who is the Municipal Fire Chief or a member or members of the fire department appointed by the Municipal Fire Chief as defined in the *Fire Protection and Prevention Act*, 1997, S.O. 1997, c. 4;

"FIRE CHIEF" means the Chief Fire Official at Sault Ste. Marie Fire Services;

"NOXIOUS MATERIALS" includes 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 FIRE" means excessive smoke, smell, airborne sparks or embers that disturbs others, or that is likely to reduce visibility on roads in the vicinity of the open-air burning;

"OFFICER" means the Fire Chief, any officer of the Sault Ste. Marie Fire Department within the Fire Suppression and Fire Prevention Divisions, City of Sault Ste. Marie By-law enforcement officers, and Police officers;

"OPEN-AIR BURNING or OPEN-AIR FIRE" means a wood-burning fire set outside of a building;

"OPEN-AIR BURNING PERMIT" means a permit issued by the Fire Chief to set an open-air fire for a specified period of time;

"OUTDOOR FIRE CONTAINER" means a non-combustible container used to hold a small fire, and includes, but is not limited to, chimneys, 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;

"PERMIT HOLDER" means a person to whom an open-air burning permit has been issued;

"PERSON" means an individual or a corporation;

"PROHIBITED" means that, for the purposes of this By-law, the Fire Chief does not approve of any open-air burning as contemplated by clause 2.4.4.4(1)(a) of O. Reg. 213/07 (*Fire Code*), as amended from time to time, including that for which permission has otherwise been granted under this By-law;

PART 2 - GENERAL

2.1 No person shall set, maintain, or permit to be set or maintained, open-air fires except as authorized under this By-law.

2.2 Notwithstanding the conditions in this By-law in which open-air burning is approved, the Fire Chief or the M.N.R.F shall have the authority to issue a burn ban which would supersede all approvals to conduct open-air burning in accordance with this By-law.

PART 3 - EXEMPTIONS

3.3 This By-law does 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;
- c) A person using a gas or propane fueled fire pit, table or bowl;
- d) A person utilizing an approved outdoor wood-burning sauna or hot-tub;
- e) A person utilizing an approved outdoor wood-burning pizza oven enclosed on all sides;
- f) A person using an appliance that meets the requirements of the Technical Standards and Safety Act, 2000;
- g) A person using a device designed to heat pitch or asphalt;
- h) A person using welding equipment;
- i) The City or City Officers for the purposes of education and training individuals; or
- j) A person setting or maintaining a ceremonial or sacred fire.

PART 4 - OPEN AIR BURNING PERMITS

4.1 A person may only conduct open-air burning if the person has been issued an open-air burning permit or unless otherwise approved by the Fire Chief.

4.2 The applicant shall pay the open-air burning permit fee as set out in the applicable User Fees and Charges By-law.

- 4.3 The applicant shall have legal title to the property at which the open-air burning is to occur or shall obtain the prior written consent of the person having legal title to the property.
- 4.4 An open-air burning permit shall only be valid for the dates indicated on the permit.
- 4.5 Open-air burning permits will not be issued to industrial or commercial occupancies.
- 4.6 The Fire Chief may require an inspection of any property prior to issuing an open-air burning permit.
- 4.7 The Fire Chief may refuse to issue an open-air burning permit if:
- a) The application is incomplete;
 - b) The Fire Chief has reasonable grounds to believe that issuing an open-air burning permit may cause or result in a dangerous condition;
 - c) The applicant has an outstanding debt owing to the City as a result of unpaid fees or charges or fines issued pursuant to this By-law; or
 - d) The Fire Chief has reasonable grounds to believe that issuing an open-air burning permit will result in a breach of this By-law, *the Fire Protection and Prevention Act*, or any other provincial or federal statute.
- 4.8 Where the Fire Chief refuses to issue an open-air burning permit, the Fire Chief shall advise the applicant that the application has been denied and shall provide reasons for the denial.

PART 5 - CONDITIONS OF ALL OPEN-AIR BURNING

- 5.1 Every person setting, permitting to be set, maintaining, or permitting to be maintained, an open-air fire authorized under this Part shall comply with the following conditions:
- a) Open-air burning shall be contained within:
 - i. A non-combustible fire container (i.e. fire bowl, fire table, fireplace, chiminea, barrel or wood stove); or
 - ii. A pit in or on the ground surrounded by a non-combustible barrier of metal, masonry, ceramic or stone.
 - b) The permit holder shall only conduct the open air burning between 7:00 a.m. and 11:00 p.m.;
 - c) The permit holder shall not burn or attempt to burn a volume of combustible material greater than 0.5 cubic metres of material;
 - d) The permit holder shall use only clean, dry firewood, charcoal or briquettes and, without limiting the generality of the foregoing, shall not burn grass, leaves or other noxious materials;
 - e) The permit holder shall maintain 5 metres of clearance to all buildings, structures, decks, property lines, trees, hedges, fences, roadways, overhead wires or other combustible articles;

- f) The permit holder shall ensure there is constant supervision and control over the open-air fire by a competent adult from start to extinguishment;
- g) The permit holder shall not conduct open-air burning on days where rain, fog, smog, high winds or any other weather condition prevents the proper dispersion of smoke;
- h) The permit holder shall have an adequate water supply to contain or extinguish the open-air fire;
- i) The permit holder shall be courteous to neighbours at all times and shall not cause or permit a nuisance fire;
- j) The permit holder shall not open-air burn where open-air burning may cause a risk to human health; and
- k) The permit holder shall completely extinguish the open-air fire before the site is vacated.

PART 6 - REVOCATION OF OPEN-AIR BURNING PERMIT

- 6.1 Open-air burning permits issued to a permit holder under this By-law may be revoked by the Fire Chief if, in the opinion of the Fire Chief, a dangerous condition exists in or near the site of the open-air fire.
- 6.2 Open-air burning permits issued to a permit holder under this By-law may be revoked by the Fire Chief if the permit holder fails to comply with the requirements of the open-air burning permit and any other provisions of this By-law.

PART 7- ENFORCEMENT

- 7.1 The provisions of this By-law may be enforced by an Officer, or other authorized employee or agent of the City.
- 7.2 No person shall obstruct or hinder or attempt to obstruct or hinder an Officer or other authorized employee or agent of the City in the exercise of a power or the performance of a duty under this By-law.

PART 8- RIGHT OF ENTRY

- 8.1 Upon producing proper identification, an Officer or the Fire Chief may, at any reasonable time, 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 provisions of this By-law.

PART 9 - EXTINGUISHING ANY FIRE

- 9.1 An Officer may direct any person to extinguish an open-air fire where there are reasonable grounds to believe that the open-air fire is in contravention of this By-law.
- 9.2 Where the action taken by such person is, in the opinion of the Officer not adequate, the Officer may take such action as he or she considers necessary to control and extinguish the fire.

PART 10 - REMEDIAL ACTION - COSTS

- 10.1** An owner may be responsible for any and all extraordinary costs and expenses of any actions taken by an Officer under this By-law with respect to responding to, controlling or extinguishing an open-air fire that is caused by, or results from, a contravention of this By-law, or is caused by or results from the failure to comply with any of the provisions of this By-law or the terms and conditions of an open-air fire permit pursuant to this By-law.
- 10.2** For the purposes of section 10.1 of this By-law, extraordinary costs and expenses include, but are not limited to: the costs and expenses related to any actions related to the burning of prohibited materials or in prohibited conditions; the costs and expenses of multiple responses to the same address due to contraventions of this By-law; the costs and expenses related to the spread of an open-air fire onto property owned by the City, including to repair, secure, or replace damaged property.
- 10.3** The costs and expenses in section 10.1 of this By-law shall be assessed in accordance with the City's User Fees and Charges By-law and are payable to the City.
- 10.4** If costs or expenses are assessed against an Owner under this By-law, the City shall deliver an invoice to each such Owner and the Owner shall pay the fee within thirty (30) days of receipt of the invoice or as may be otherwise specified on the invoice. The City may deliver such invoice personally, by registered mail, or by regular mail to the Owner(s)'s last known address.
- 10.5** Receipt of the invoice shall be deemed to have occurred:
- a) on the date of delivery, if delivered personally;
 - b) three (3) business days after the date of mailing, if delivered by registered mail to an address within the City;
 - c) five (5) days after the date of mailing, if delivered by registered mail to an address outside of the City;
 - d) five (5) days after the date of mailing if delivered by regular mail to an address within the City;
 - e) seven (7) days after the date of mailing if delivered by regular mail to an address outside of the City.
- 10.6** If any amount payable under this By-law remains unpaid after ninety (90) days of receipt of the invoice, the City may add such amount to the tax roll for any property for which all the owners are responsible and may collect the amount in the same manner as municipal taxes or through the use of other legal means as deemed appropriate. 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.

PART 11 - OFFENCE AND PENALTY PROVISIONS

11.1 Any person who contravenes any provision of this By-law is guilty of an offence and is liable to a fine and penalty pursuant to the provisions of Section 61 of the *Provincial Offences Act*, R.S.O. 1990, c.P.33., as amended.

11.2 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.

PART12-ENACTMENT

12.1 This By-law shall come into force and take effect immediately upon the final day of its passing.

12.2 All approved open air burning permits issued prior to the enactment of this By-law shall continue to be valid until the expiration date of the permit or the permit being revoked.

PASSED in open Council this 21st day of October, 2024.



MAYOR - MATTHEW SHOEMAKER



CITY CLERK - RACHEL TYCZINSKI