

The Corporation of the Town Of Essex

By-Law Number 1399

**Being a by-law to regulate the setting of
open air burning and identify the
precautions observed for such fires within
the Town of Essex**

Whereas the Municipal Act 2001, S.O. 2001, c.25, as amended and the Fire Protection and Prevention Act, 1997, S.O. 1997, c.4, as amended, authorizes a Council of a municipality to pass by-laws regulating fire prevention, including the prevention of the spreading of fires and regulating the setting of open air burning, as well as the establishing of the times during which open air burns may be set;

Now therefore the Council of The Corporation of the Town of Essex enacts as follows:

Interpretation

1. In this by-law:

"Camp Fire" means a fire that is confined within a container having a maximum burn area of 24 inches, or 61 centimeters, in any horizontal and vertical direction;

"Campground" means a parcel of land used or maintained as an overnight tenting or camping area, where people are temporarily accommodated in tents, trailers or similar facilities, whether or not a fee or charge is paid for the rental thereof, but does not include a mobile home or a mobile park;

"Container" means any earth pit, structure or enclosure of brick, cement, metal or other similar material in which a Fire may be set;

"Council" means the council for The Corporation of the Town of Essex;

"Domestic" means by design and intention to be used in or around the home or household and is rated by Underwriters Lab Canada (ULC) or Canadian Standards Association (CSA);

"Enclosed Fire" takes place within a burn barrel or container of similar construction and size such as a 45 gallon drum and covered at all times;

"Environmental Protection Act" means the Environmental Protection Act, R.S.O. 1990, c.E.19, as amended;

“Equipment and Resources” means a water supply at the burn site to control and /or extinguish the size of the fire if required and/or sufficient personnel and equipment such as rakes, shovels, backhoes, bulldozers or front-end loaders;

“Farmer” means an individual whose primary occupation is farming that consists of lands and buildings used to grow crops and/or rearing of animals within an areas zoned agricultural;

“Fire” means Camp Fire, Enclosed Fire and Open Air Fire;

“Fire Chief” means the Fire Chief for the Town of Essex or designate;

“Fire Department” means the Fire Department of the Town of Essex;

“Open Air Fire” is set in the Open Air by any person within the boundaries of the Town, but does not include an Enclosed Fire or Camp Fire;

“Ontario Fire Code” means Ontario Regulation 213/07 as amended made under the Fire Protection and Prevention Act, S.O. 1997, c.4, as amended;

“Open Air” means any open place, yard, field, lot, part lot, or construction area which is not enclosed by a building or structure;

“Owner” means the registered owner or any person having control over any portion of the building or property under consideration;

“Permit” means permission from the Fire Chief to set a Fire;

“Tenant” means the occupant having possession or person having control of a property or premises;

“Town” means The Corporation of the Town of Essex;

“Vegetation” means plants collectively.

General Provisions

- 2.1 No person under 18 years of age shall set, maintain or supervise any fire.
- 2.2 No person shall set any fire on highways, associated ditches, commercial or industrial properties or municipal property with the Town of Essex.
- 2.3 No person shall set or allow any fire to burn:
 - a) with the aid of flammable or combustible liquids or accelerants of any kind;
 - b) unless the equipment and resources to extinguish the fire, as defined within this by-law, are available at the fire site at all times during the fire;

- c) on any site, or in the vicinity of any site, where construction or related activities are carried out.
- 2.4 No person shall maintain any fire when the wind is in such direction or force to cause any or all of the following:
- a) smoke which causes annoyance or irritation or interferes with the natural enjoyment of persons on adjacent properties or decreases the visibility on any highway;
 - b) spread of the fire through any grass, leaves, brush, ditch banks or any other vegetated areas.
- 2.5 No person shall set or maintain any fire when rain or fog is present, or at times that are deemed by the Ministry of the Environment and Climate Change as Smog Alert Days or when other adverse atmospheric conditions or local circumstances warrant.
- 2.6 No person shall set fire to dispose of materials or waste from commercial, industrial, construction or demolition sites. These materials or wastes shall not be transported to residential or agricultural areas for burning purposes.
- 2.7 No person shall set fire to dispose of kitchen garbage or materials made of or containing rubber, plastic or tar.
- 2.8 No person who has set a fire shall leave the site of a fire set in the open air without fully extinguishing the said fire.
- 2.9 No person shall set or allow an open air fire to burn without first having obtained a permit from the Fire Chief of Designate.
- 2.10 Notwithstanding the issuance of a permit in accordance with this by-law, no person shall set or maintain an open air fire:
- a) unless the person to whom the permit has been issued or such other person as may be designated in the permit, is in attendance at the fire until such fire has been completely extinguished;
 - b) when the material to be burned is greater than 3 feet (91 centimeters) by 3 feet (91 centimeters) by 3 feet (91 centimeters) or the limit set by the Fire Chief or Designate;
 - c) when the distance is less than 21 feet (7 meters) or the limit set by the Fire Chief or Designate from any building, structure, hedge, fence, roadway of any kind or nature, overhead wiring or property line;
 - d) after sunset and prior to sunrise on the day or days as specified by the permit;
 - e) in contravention of the Ontario Fire Code, the Environmental Protection Act, or any other regulatory requirements of the Province of Ontario or the Government of Canada.

- 2.11 A farmer who intends to set or maintain an open air fire on a specified day for disposal of vegetable matter or vegetation on farm lands that is normal and incidental for farming purposes shall apply for a permit to cover the time period of the proposed fire. The farmer shall ensure that the smoke does not adversely affect neighbouring property owners.

Exceptions

- 3.1 The provisions of this by-law shall not apply to the Town's officers and employees while in the discharge of their duties.
- 3.2 Domestic barbecues and permanent outdoor fireplaces used solely for the cooking of food on a grill and domestic personal warmth devices where the fuel used is natural gas, propane, charcoal or clean dry wood do not require a permit.
- 3.3 Camp fires do not require a permit provided that:
- a) the provisions contained in Sections 2.1 through to and including 2.6 above are met;
 - b) all materials to be burned are contained within the perimeter of the container;
 - c) the size of the burn area is no larger than 2 feet (61 centimeters) by 2 feet (61 centimeters) by 2 feet (61 centimeters);
 - d) the perimeter of the camp fire is to be a minimum of 15 feet (4.5 meters) away from any property line and a minimum of 10 feet (3 meters) from permanent combustible structures or objects or the limit set by the Fire Chief or Designate. Campgrounds, as permitted under the zoning by-law, are exempt from paragraph 3.3 d) and paragraph 2.4 a) provided the size of the burn area is smaller than 18 inches (46 centimeters) by 18 inches (46 centimeters) by 18 inches (46 centimeters);
 - e) only clean dry wood or charcoal is being burned.
- 3.4 Unless otherwise prohibited by the landlord of the property.
- 3.5 Enclosed fires do not require a permit provided:
- a) the provisions contained in Sections 2.1 through to and including 2.6 above are met;
 - b) the fire is contained and covered at all times by a suitable metal wire mesh;
 - c) the metal wire mesh being used to cover the fire has grid openings not exceeding .25 inches (6 millimeters) in size;
 - d) the perimeter of the enclosed fire is a minimum of 15 feet (4.5 meters) away from any property line and a minimum of 10 feet (3 meters) from permanent combustible structures or objects or the limit set by the Fire Chief or designate;
 - e) only clean dry wood is being burned.

Enforcement

- 4.1 The Fire Chief or Designate shall administer this by-law.
- 4.2 Enforcement of this by-law is the responsibility of the Fire Chief or Designate, any Police Officer or any By-Law Enforcement Officer.
- 4.3 Permission for a fire may be revoked at any time by the Fire Chief or Designate when there is a breach of any of the provisions of this by-law or where, in the Fire Chief or Designate's opinion there is a danger of such fire spreading or otherwise endangering life or property. Immediately upon receiving notice of cancellation or suspension, the owner shall extinguish the fire.
- 4.4 Any person who fails to comply with the provisions of the by-law or who fails to extinguish a fire once notification to do so has been given by the Fire Chief or Designate shall be liable to the municipality for all expenses incurred for the purpose of controlling and extinguishing the fire.
- 4.5 The Fire Chief or Designate may refuse to issue or may revoke any or all permits; or where in the opinion of the Fire Chief or Designate a situation exists that is not appropriate for burning, a fire ban may be issued for any or all areas within the Town of Essex.
- 4.6 Permits may be issued by calling the Town of Essex Fire Department Administration at 519-776-7132 on Monday, Thursday and Friday and at 519-776-6476 on Tuesday and Wednesday from 8:30 AM to 4:00 PM. Weekend permits must be requested during regular business hours.

Cost Recovery

- 5.1 Notwithstanding any other provisions of this by-law and in addition to any other remedy the Town may have, pursuant to the Municipal Act, 2001, S.O. 2001, c. 25, as amended, the Town shall be entitled to recover all costs incurred by the Fire Department in extinguishing a fire set in contravention of this by-law. The rates to be charged for extinguishing a fire set in contravention of this by-law are attached as Schedule "A" to this by-law.

Severability

- 6.1 Should any section, subsection, clause or provision of this by-law be declared by a court of competent jurisdiction to be invalid, the said section shall not affect the validity of this by-law as a whole or any part thereof, other than the part so declared to be invalid.

Repeals

7.1 By-Law Number 285 is hereby repealed.


Penalty Provision

8.1 Every person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to a fine as provided for by the Provincial Offences Act, R.S.O. 1990, Chapter P.33, as amended.

Effective Date

9.1 This by-law shall be deemed to have come into full force and effect on the date of the final passing thereof.

Read a first and a second time and provisionally adopted on March 16, 2015.



Mayor



Clerk

Read a third time and finally passed on April 7, 2015.



Mayor



Clerk

Schedule "A" to By-Law Number 1399

Open Air Burning By-Law Cost Recovery Formula

Fire Administration only attends location	Half the current Ministry of Transportation Rate for a single manned fire apparatus
Camp Fire extinguishment only	Half the current Ministry of Transportation rate for a single manned fire apparatus
Fire Extinguishment using less than 6 Firefighters	Current Ministry of Transportation rate for a single manned fire apparatus
Fire Extinguishment using greater than 6 Firefighters and less than 12 Firefighters	Current Ministry of Transportation rate for 2 manned fire apparatus
Fire Extinguishment requiring a 2 station response	Current Ministry of Transportation rate for 4 manned fire apparatus
Ontario Provincial Police attends location	Current Ontario Provincial Police rate
Municipal By-law Enforcement Officer attends location	Current By-Law Enforcement Office rate

Schedule "B"

**By-Law Number 1399: Regulating the Setting of Open Air Burning
in the Town of Essex**

Set Fine Schedule – Part 1 Provincial Offences Act

ITEM	Column 1 Short Form Wording	Column 2 Provision Creating or Defining Offence	Column 3 Set Fine
1.	Setting an open-air fire without a permit.	Section 2.9	\$150.00
2.	Setting an open-air fire, under 18 years of age.	Section 2.1	\$150.00
3.	Burning more than three (3) cubic feet of material at one time.	Section 2.10 b)	\$150.00
4.	Setting an open-air fire with no means of extinguisher available.	Section 2.3 b)	\$150.00
5.	Setting an open-air fire to permit the burning of kitchen garbage or materials made of or containing rubber, plastic or tar.	Section 2.7	\$150.00
6.	Setting an open-air fire and smoke causing annoyance or irritation to adjacent properties.	Section 2.4 a)	\$150.00
7.	Setting an open-air fire, which decreased visibility on a highway or roadway.	Section 2.4 a)	\$150.00
8.	Setting an open-air fire, which spread through grass.	Section 2.4 b)	\$150.00
9.	Setting an open-air fire, which spread through leaves.	Section 2.4 b)	\$150.00
10.	Setting an open-air fire, which spread through a brush area(s).	Section 2.4 b)	\$150.00
11.	Setting an open-air fire, which spread through a ditch bank(s).	Section 2.4 b)	\$150.00
12.	Setting an open-air fire, which spread through vegetation area(s).	Section 2.4 b)	\$150.00
13.	Fail to fully extinguish an open-air fire.	Section 2.8	\$150.00

ITEM	Column 1 Short Form Wording	Column 2 Provision Creating or Defining Offence	Column 3 Set Fine
14.	Farmer, maintaining an open-air fire for vegetation without permit.	Section 2.11	\$150.00
15.	Farmer, maintaining an open-air fire for vegetable matter without permit.	Section 2.11	\$150.00

Note: The general penalty provision for the offences listed above is section 8.1. of By-Law Number 1399, a certified copy of which has been filed.

ONTARIO COURT OF JUSTICE
PROVINCIAL OFFENCES ACT
PART I

IT IS ORDERED pursuant to the provisions of the Provincial Offences Act and the rules for the Ontario Court of Justice that the amount set opposite each of the offences in the schedule of offences under the Provincial Statutes and Regulations thereunder and Municipal By-law No. 1399, of the Town of Essex, attached hereto are the set fines for those offences. This Order is to take effect June 25, 2015.

Dated at London this 25th day of June 2015.



Stephen J. Fuerth
Regional Senior Justice
West Region

OFFICE OF THE REGIONAL SENIOR JUSTICE
ONTARIO COURT OF JUSTICE
WEST REGION

80 DUNDAS STREET, 10th FLOOR, UNIT L
LONDON, ONTARIO N6A 6A8



CABINET DU JUGE PRINCIPAL RÉGIONAL
COUR DE JUSTICE DE L'ONTARIO
RÉGION DE L'OUEST

80, RUE DUNDAS, 10^e ÉTAGE, UNITÉ L
LONDON (ONTARIO) N6A 6A8

TELEPHONE/TÉLÉPHONE (519) 660-2292
FAX/TÉLÉCOPIEUR (519) 660-3138

June 25, 2015

Ms. Cheryl Bondy
Manager of Legislative Services and Clerk
Town of Essex
33 Talbot Street South
Essex, Ontario N8M 1A8

Dear Ms. Bondy:

**Re: Set Fines - Provincial Offences Act - Part I
By-law Number 1399 of the Town of Essex**

Enclosed herewith is the Order, and the schedule of set fines for the above referenced By-Law, the By-law indicated in the schedule.

The setting of the fines does not constitute my approval of the short form of wording used to describe the offences.

I have forwarded copies of the Order and the schedule of set fines to the Provincial Offences Court in Windsor, together with a certified copy of the By-law.

Yours truly,

A handwritten signature in black ink, appearing to read 'S. Fuerth'.

Stephen J. Fuerth
Regional Senior Justice
West Region

Enclosures
/jg

Schedule "B"

**By-Law Number 1399: Regulating the Setting of Open Air Burning
in the Town of Essex**

Set Fine Schedule – Part 1 Provincial Offences Act

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4.	Setting an open-air fire with no means of extinguisher available.	Section 2.3 b)	\$150.00
5.	Setting an open-air fire to permit the burning of kitchen garbage or materials made of or containing rubber, plastic or tar.	Section 2.7	\$150.00
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Note: The general penalty provision for the offences listed above is section 8.1. of By-Law Number 1399, a certified copy of which has been filed.

The Corporation of the Town of Essex

By-Law Number 2287

Being a by-law to amend By-Law 1399 a by-law to regulate the setting of open air burning and identify the precautions observed for such fires within the Town of Essex

WHEREAS the Municipal Act 2001, S.O. 2001, c.25, as amended and the Fire Protection and Prevention Act, 1997, S.O. 1997, c.4, as amended, authorizes a Council of a municipality to pass by-laws regulating fire prevention, including the prevention of the spreading of fires and regulating the setting of open air burning, as well as the establishing of the times during which open air burns may be set;

AND WHEREAS the Council of the Corporation of the Town of Essex deems it expedient to amend the Open Air Burning By-Law to repeal Section 4.6;

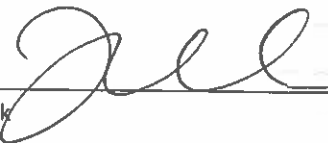
NOW THEREFORE be it resolved that the Council of The Corporation of the Town of Essex hereby enacts as follows:

1. **That** Section 4.6 of By-Law 1399 that states "Permits may be issued by calling the Town of Essex Fire Department Administration at 519-776-7132 on Monday, Thursday and Friday and at 519-776-6476 on Tuesday and Wednesday from 8:30 AM to 4:00 PM. Weekend permits must be requested during regular business hours" be repealed.
2. **That** this By-Law shall come into full force and effect upon the final passing thereof.

Read a first, a second and a third time and finally passed on December 4, 2023.



Mayor



Clerk