

Town of Amherstburg

Economic and Community Development Department

Licensing and By-Law Enforcement Division

To: Mayor Hurst and Members of Council

From: Nicole Rubli, Manager of Licensing and Enforcement

Date: November 3, 2014

Meeting: November 17, 2014

Subject: Emissions from Solid Fuel Burning Appliances By-law

Recommendation:

It is recommended that:

1. The report from the Manager of Licensing and Enforcement dated November 3, 2014 regarding Emissions from Solid Fuel Burning Appliances By-law be received; and,
2. By-law 2014-109 being a by-law to regulate Emissions from Solid Fuel Burning Appliances be taken as having been read three times and finally passed and the Mayor and Clerk be authorized to sign same.

Background:

As a result of a civil action between two neighbours, Administration was instructed in October 2011, to investigate the possibility of regulating emissions emanating from solid fuel burning appliances installed in buildings.

At the March 3, 2014, Council meeting, Council received a proposed Nuisance Smoke By-law and directed Administration to hold a public meeting.

Administration held a public meeting on September 3, 2014, to allow residents an opportunity to provide feedback on the proposed Nuisance Smoke By-law. Three members of the public and a number of Council were in attendance. Administration provided an overview of the by-law and provided a forum for a question and answer period.

Administration reviewed and discussed comments that arose from the meeting and have recommended changes to the Nuisance Smoke By-law.

Comments:

Administration has made changes to the Nuisance Smoke By-law now referred to as the Emissions from Solid Fuel Burning Appliances By-law, to ensure it meets Section 128 of the Municipal Act as it relates to public nuisances. The changes to the By-law impose a requirement that more than one complaint must be received in respect to an emission which constitutes a public nuisance.

If one or more complaints are received with regards to emissions that have had a detrimental impact on the use and enjoyment of that property the Enforcement Officer will post a notice to cease and desist from all further emissions. If the offence continues the owner or occupant shall be liable to a fine as provided for by the Provincial Offences Act, R.S.O. 1990, c.P. 33, as amended.

Others Consulted:

The Chief Building Official and the By-law Enforcement Officer were consulted and agree with the changes to the Emissions from Solid Fuel Burning Appliances By-law.

The Town Solicitor was consulted and concurs with the Emissions from Solid Burning Appliances By-law as attached.

Financial Implications:

There are no financial implications to the Town as it relates to this report.

Prepared by:

Nicole Rubli Tony DeThomasis
Manager of Licensing and Enforcement Director of Economic and Community
Development

Submitted by:

Giovanni Miceli
Chief Administrative Officer

BY-LAW 2014 - 109

A By-law to regulate Emissions from Solid Fuel Burning Appliances

WHEREAS pursuant to Section 128 of the Municipal Act, 2001, c. 25 as amended, (the “Act”), a municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council, are or could become or cause public nuisances.

AND WHEREAS Section 425 of the Act authorizes the Town of Amherstburg to pass by-laws providing that a person who contravenes a by-law of the Town of Amherstburg is guilty of an offence.

NOW THEREFORE the Council of the Town of Amherstburg **ENACTS AS FOLLOWS:**

1. DEFINITIONS

In this By-Law:

“**Building**” means any structure having a roof supported by walls and/or columns which is used or intended to be used for the shelter accommodation or enclosure of persons animals or chattels but does not include any vehicle as defined herein;

“**Complaint**” means a written notice by the Owner and/or Occupant of a property in the vicinity of the premises describing an Emission that has had a detrimental impact on the use and enjoyment of that property;

“**Council**” means the Council of the Corporation of the Town of Amherstburg;

“**Enforcement Officer**” means

- i) Municipal Law Enforcement Officer, or other law enforcement officer as appointed by Council,
- ii) Police Officer appointed pursuant to Police Services Act, R.S.O. 1990, c.P.15; or

“**Emission**” means the products of combustion emitted into the atmosphere when a substance or material, other than Solid Fuel is burned in a solid fuel burning appliance including, but not limited to, dust, gas, sparks, ash, soot, cinders, fumes or particulate;

“**Occupant**” shall include:

- i) the person who is in physical possession of a building or land; or

ii) the person who has responsibility for and control over the condition of a building or the activities carried on therein or control over persons allowed to enter the building;

“Owner” shall include any person who is an owner of land either jointly or in common with any other person or persons and shall include any or all of such persons;

“Person” means an individual, business, firm, corporation, association, partnership, or any combination thereof;

“Premises” shall include the entire lot on which a building is situated;

“Public Nuisance” means an activity or activities intentional or negligent in origin causing an emission, which have a detrimental impact on the use and enjoyment of more than one property within 100 metre radius of the premises and for which the Enforcement Officer receives complaints from the Occupants or Owners of properties in the vicinity;

“Solid fuel” means wood of any species, which is untreated, seasoned and dry, but does not include leaves, plant material or other forms of vegetation;

“Solid Fuel Burning Appliance” means a device installed in a building designed for the combustion of Solid Fuel including, but not limited to, stoves, fireplaces and other similar devices; does not include domestic portable barbeques or commercial wood-fired pizza ovens installed in a commercial kitchen.

“Town” means The Municipality of the Town of Amherstburg;

2. REGULATION

2.1 Where the Enforcement Officer receives more than one Complaint in relation to an Emission from a building from the Owners and /or Occupants of properties within the Town, the Enforcement Officer shall give notice, by posting written notice on the Premises, for the Owner and/or Occupant of the Premises to cease and to desist from all further Emission in contravention of this By-law.

3. PROHIBITION

3.1 No Person shall cause or permit the operation of a Solid Fuel Burning Appliance from a Building which creates an Emission that is a Public Nuisance within the Town.

4. DUE DILIGENCE

4.1 No person shall be convicted of an offence under this By-law if the Person establishes that they exercised all due diligence to prevent the Emission prohibited under Section 3 of this By-law.

5. OFFENCE

5.1 Every Person, Owner or Occupant who contravenes Section 3 of this By-law is guilty of an offence.

6. PENALTY

6.1 Every person who contravenes any section of the by-law is, upon conviction, guilty of an offence and shall be liable to a fine as provided for by the Provincial Offences Act, R.S.O. 1990, c.P. 33, as amended, and be subjected to any other penalties permitted by-law for each offence. Each day such violation continues, shall constitute a separate offence may be punishable as such.

6.2 In the case of a continuing nature, a contravention constitutes a separate offence in respect of each day, or party of a day, on which the offence continues and any person guilty of such an offence is liable to a fine in an amount of not less than that established by this by-law for each such day.

7. ENFORCEMENT

7.1 The provisions of this By-law may be enforced by an Enforcement Officer.

7.2 Where the Enforcement Officer has received a Complaint pursuant to Section 2 of this By-law, the Enforcement Officer may enter on the Premises at any reasonable time for the purposes of determining whether or not this By-law is being complied with or the Notice given under Section 2 of this By-law is being complied with by the Owner and/or the Occupant of the Premises.

7.3 For the purposes of enforcing this By-law, the Enforcement Officer shall have the powers to enter Premises, to inspect, to require the production of any information or thing from the Owner and/or Occupant of the Premises, or to seek an Order of a justice of the peace, as permitted under Part XIV of the Act.

195

7.4 In addition to any penalty imposed by an offence under this By-law, the municipality or any taxpayer of the municipality may apply to a court of competent jurisdiction to restrain further contraventions of this By-law.

8. SEVERABILITY

8.1 Should any paragraph, clause or provision of the By-law be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of the Bylaw as a whole or any part of thereof, other than the part which was declared to be invalid.

9. SHORT TITLE

9.1 This By-law may be cited as the Emissions from Solid Fuel Burning Appliances By-law.

Read a first, second and third time and finally passed this 18th day of November, 2014.

MAYOR- WAYNE HURST

CLERK- PAULA PARKER