

THE CORPORATION OF THE TOWNSHIP OF TAY

BY-LAW NO. 2019-51

Being a By-law regulating the setting of open air fires, including establishing the times during which open air fires may be set and to repeal By-law No. 2010-23

WHEREAS Part 7.1(1)(b) of the Fire Protection and Prevention Act, 1997, as amended provides that the Council of a local municipality may pass by-laws regulating the setting of open air fires, including establishing the times during which open air fires may be set;

NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF TAY ENACTS AS FOLLOWS:

1.0 DEFINITIONS:

In this By-law:

- 1.1 **"Applicant"** means a person, organization, company or group that makes application to the Fire Chief for permission to set or conduct an **Open Air Burn**;
- 1.2 **"Chief Fire Official"** means the Fire Chief and/or their designate;
- 1.3 **"Chiminea"** means a clay, porcelain or metal receptacle used for the purposes of burning and constitutes as an open air fire under this by-law;
- 1.4 **"Extinguish"** means to put out a fire completely, no smoke, hot or glowing embers are to remain;
- 1.5 **"Fire Pit"** means a clearly delineated fire burn area specifically designed for **Open Air Burning**;
- 1.6 **"Flying Lantern"** means a small hot air balloon made of treated paper or any other material, with an opening at the bottom, which is propelled by an open flame generated by a small candle or fuel cell, allowing the balloon to rise and float in the air, uncontrollably, while ignited;
- 1.7 **"Hazardous Materials"** means hazardous wastes and hazardous recyclable materials with properties such as flammability, corrosiveness, inherent toxicity, or hazardous to human health or the environment;
- 1.8 **"Open Air Burning"** means the burning of any material outside of a building, 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;
- 1.9 **"Open Air Burning Permit"** means an application accepted by the **Township** of Tay and issued to the **Owner**/agent outlining the regulations for an open air burn;
- 1.10 **"Officer"** means a Municipal Law Enforcement **Officer**, Police **Officer**, **Chief Fire Official** or Designate;
- 1.11 **"Owner"** means the registered **Owner** of the land on which **Open Air Burning** occurs, and includes a trustee acting on

behalf of the registered **Owner**, the estate of a registered **Owner** and a person with a leasehold interest in the land;

- 1.12 **"Pallet or skid"** means a flat transport structure made of wood, plastic or any other material that could be used for transporting, storing or moving of goods or other items;
- 1.13 **"Township"** means the Corporation of the **Township** of Tay;
- 1.14 **"Yard Waste"** includes but is not limited to grass, leaves, trees, brush trimmings, spent flowers, garden plants, weeds, pine needles, hay, straw and sawdust.

2.0 GENERAL PROVISIONS

- 2.1 No person shall set or maintain a fire in open air without first having obtained a permit from the **Township** under this by-law.
- 2.2 Only the property **Owner** or agent shall apply for a fire permit. The agent must have written permission from the property **Owner** to apply for a fire permit.
- 2.3 The **Chief Fire Official** may declare a total ban against **Open Air Burning** when the atmospheric conditions or local circumstances make such fires hazardous. Bans against burning shall be advertised through the local media.
- 2.4 No person shall set or maintain an open air burn at any time during a fire ban.
- 2.5 No person shall ignite or release into the air, an ignited **Flying Lantern** within the **Township** of Tay.
- 2.6 No person shall burn any **yard waste** in any area that is located on the Georgian Bay side of Highway 12 in the **Township** of Tay, the village of Waverley, Bramhall Park, Candlelight Village, Windermere Estates or Nielsen Road subdivision and any other area as set out in Schedule B of this By-law.

3.0 PERMITS

- 3.1 Notwithstanding any other provisions of this By-law, the **Chief Fire Official** may issue a fire permit to an **applicant** and approve any **Open Air Burning** subject to the fire being adequately supervised, and to any special conditions the **Chief Fire Official** may direct.
- 3.2 An **applicant** setting, conducting or permitting an outdoor burning authorized by a permit issued under this By-law shall comply with all conditions of such permit and the provisions of this By-law.
- 3.3 The **Chief Fire Official** may withdraw permission for and/or stop an open air burn if, in their 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 burn, conditions attached to the granting of permission are not being adhered to, or if this By-law is being contravened.
- 3.4 Upon the notification of the withdrawal of permission by the **Chief Fire Official**, the **applicant** or the **owner** shall immediately **extinguish** the fire. If the **applicant** or the **owner** fails to immediately **extinguish** the fire upon such notification, the **Chief Fire Official** may take action to have the fire extinguished, and the **applicant** and/or the **owner** may be

held liable for any and all costs incurred by the Fire Department to **extinguish** the fire. Where applicable, such costs shall be calculated in accordance with the Fee By-law.

- 3.5 An **Open Air Burning Permit** is valid from the time of issuance to December 31 of the current year.
- 3.6 Any permit holder who wishes to conduct an open air burn which exceeds any prohibition in this by-law must be approved by the **Chief Fire Official**.

4.0 OPEN AIR BURNING

- 4.1 Every person conducting an open air burn shall confine the fire to either an **Open Air Burning** device or to a **fire pit** with a burn area no larger than one cubic metre in size.
- 4.2 Every person conducting an open air burn shall take all reasonable steps to ensure that adjacent properties and individuals are protected from any fire hazard and are not adversely affected by the products of combustion.
- 4.3 No person conducting an open air burn shall burn materials other than commercially produced charcoal, briquettes or clean, dry, seasoned wood, and in particular no painted wood, pressure treated wood or creosote treated wood. **Yard waste** may be burned as per Schedule B of this By-law.
- 4.4 Every person conducting an open air burn shall confine the fire to a location that provides for a minimum distance of twenty (20) feet from combustible structures or objects.
- 4.5 Every person conducting an open air burn shall have immediately available for use an effective extinguishing agent or device of sufficient size and with the capability of extinguishing the fire.
- 4.6 Every person conducting an open air burn shall ensure the fire is attended, controlled and supervised at all times by a competent adult and that the fire is completely extinguished before the open air burn site is vacated.
- 4.7 No person shall conduct an open air burn when the wind speed exceeds twenty (20) kilometers per hour, or at times when a smog alert for an area including the **Township** has been declared by the Ministry of the Environment, Conservation and Parks for Ontario.
- 4.8 No person shall conduct an open air burn when rain is present.
- 4.9 No person shall conduct more than one open air burn (fire) per residence.
- 4.10 No person shall conduct an open air burn upon any land owned by the **Township** without having first obtained permission to do so from the Fire Chief.
- 4.11 No person shall conduct an open air burn between the hours of 2:00 a.m. and 8:00 a.m.
- 4.12 Every person conducting an open air burn shall take any other precautions as may be reasonably necessary to prevent the fire from getting beyond control, causing damage, or becoming a danger to life and/or property.

- 4.13 No person shall conduct an open air burn in which any kitchen garbage, construction materials or materials made of/or containing rubber, plastic, tar or other **hazardous materials** are burned.
- 4.14 If the Fire Department attends at an open air burn to respond to public safety concerns due to fire hazard, whether in response to a complaint or otherwise, the most senior firefighter has the discretion to order the fire extinguished and/or brought into compliance with this By-law and this order shall be final.
- (a) Every person conducting the fire or the property owner shall comply with such an order. If they fail to do so as directed, the most senior firefighter may take action to have the fire extinguished or otherwise brought into compliance
 - (b) The person conducting the fire and/or the property **owner** may be held liable for any and all costs incurred by the Fire Department to **extinguish** the fire or bring it into compliance. Where applicable, such costs shall be calculated in accordance with the User Fees and Service Charges By-law.
- 4.15 No person shall conduct an open air burn in which a **pallet or skid** or parts thereof are burned.

5.0 REVOCATION OR SUSPENSION OF FIRE PERMIT

- 5.1 The Fire Chief may suspend or revoke a Fire Permit of any property **owner**.
- 5.2 Upon the suspension or revocation of the Fire Permit, the Fire Chief shall give notice in writing to the property **owner** by registered mail or personal delivery or by posting it in a conspicuous place on the property.
- 5.3 A suspended or revoked Fire Permit results in the surrender of all fees associated with the Fire Permit.
- 5.4 No person shall engage in, or continue to conduct, or permit any person to engage in or continue to conduct **Open Air Burning** where a fire permit has been suspended or revoked under the provisions of this By-law.

6.0 RIGHT OF ENTRY

- 6.1 An **Officer** may at any time, enter onto land to determine whether this By-law is being complied with.
- 6.2 Every **owner** shall permit the **Officer** to inspect any land for the purposes of determining compliance with this By-law.
- 6.3 Notwithstanding any provision of this By-law, an **Officer** shall not enter or remain in any room or place actually being used as a dwelling, unless;
- (a) the consent of the occupier is obtained, the occupier first having been informed that the right of entry may be refused and, if refused, may only be made under the authority of a warrant issued under the Provincial Offences Act, R.S.O.1990, as amended.
 - (b) a warrant issued under the Provincial Offences Act, R.S.O.1990, as amended is obtained.

7.0 REMEDIATION

- 7.1 The **Chief Fire Official** is authorized to order any person to **extinguish** any fire or to cause such a fire to be extinguished when there is a breach of any of the provisions of this By-law or where, in his sole discretion, there is a danger of such fire spreading or otherwise endangering life or property and the person shall comply with any such order.
- 7.2 Where an **owner** is in default of doing any matter or thing directed or required to be done under this By-law, The **Chief Fire Official** or the Municipal By-law Enforcement **Officer** may direct such matter or thing to be done at the **owner's** expense.
- 7.3 The **Township** may recover the remedial action costs incurred under any section of this by-law by action, or by adding them to the tax roll and collecting them in the same manner as taxes in accordance with section 446 of the Municipal Act.

8.0 OBSTRUCTION

- 8.1 No person shall hinder or obstruct, or attempt to hinder or obstruct, any **Officer** exercising a power or performing a duty under this By-law.
- 8.2 Any person who has been alleged to have contravened any of the provisions of the By-law, shall identify themselves to the **Officer** upon request, failure to do so shall be deemed to have obstructed or hindered the **Officer** in the execution of their duties.

9.0 OFFENCES AND PENALTIES

- 9.1 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.

10.0 ADMINISTRATION AND ENFORCEMENT

- 10.1 An **Officer** is hereby vested with the authority of enforcing the provisions of this By-law.
- 10.2 Any permit issued under this By-law may be revoked if in the opinion of the **Chief Fire Official** or their designate the user is in contravention of this By-law.

11.0 TOWNSHIP NOT LIABLE

- 11.1 The **Township** assumes no liability for property damage or personal injury resulting from remedial action or remedial work undertaken with respect to any person or property that is subject of this By-law.

12.0 VALIDITY AND SEVERABILITY

- 12.1 Should any section, subsection, clause, paragraph or provision of this By-law be declared by a Court of competent jurisdiction to be invalid, the same 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.

13.0 SEPARATE OFFENCE

- 13.1 For the purpose of this By-law, each day of a continued offence shall be deemed to be a separate offence.

14.0 SHORT TITLE

- 14.1 The short title of this By-law is the **Open Air Burning** By-law.

15.0 REPEALED

15.1 By-law No. 2010-23 is hereby repealed.

16.0 EFFECTIVE DATE

16.1 This By-law shall come into force and take effect on January 1, 2020.

BY-LAW READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 26th DAY OF JUNE, 2019.

THE CORPORATION OF THE TOWNSHIP OF TAY

MAYOR, Ted Walker

CLERK, Alison Gray

PART 1 Provincial Offences Act-Set Fines Schedule
THE CORPORATION OF THE TOWNSHIP OF TAY
By-law No. 2019-51: Open Air Burning By-law

SCHEDULE "A"

ITEM	Column 1 Short Form Wording	Column 2 Provision Creating or Defining Offence	Column 3 Set Fine
1	Failure to obtain fire permit	2.1	\$150.00
2	Burning during a fire ban	2.4	\$500.00
3	Ignite/ Release flying lantern	2.5	\$150.00
4	Burn yard waste in prohibited area	2.6	\$150.00
5	Failure to comply with permit conditions	3.2	\$150.00
6	Fail to extinguish permitted fire when ordered to do so	3.4	\$300.00
7	Burning in fire pit larger than permitted	4.1	\$150.00
8	Burning adversely affecting other person/property	4.2	\$150.00
9	Burn prohibited materials	4.3	\$150.00
10	Burning within 20 feet of combustible structure	4.4	\$150.00
11	Burning without extinguishing device	4.5	\$150.00
12	Failure to supervise burning	4.6	\$150.00
13	Burning during high winds or during a smog alert	4.7	\$150.00
14	Burning when rain is present	4.8	\$150.00
15	Burning exceeding one fire	4.9	\$150.00
16	Burn on Township property without permit	4.10	\$150.00
17	Burning during prohibited hours.	4.11	\$150.00
18	Failure to take reasonable precautions during burning	4.12	\$150.00
19	Burning of kitchen garbage/construction materials/materials made of/or containing rubber/ plastic/tar	4.13	\$150.00
20	Burning of hazardous materials	4.13	\$300.00
21	Failure to extinguish fire or comply when ordered during burning	4.14	\$300.00
22	Burning of pallet/skid or parts thereof	4.15	\$150.00
23	Engage/conduct Open Air Burning where fire permit has been suspended/revoked	5.4	\$500.00
24	Hinder or Obstruct an Officer	8.1	\$300.00

Note: The penalty provision(s) for the offences indicated above is Section 9 of By-Law No. 2019-51, as amended, a certified Copy of which has been filed.

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24	Hinder or Obstruct an Officer	8.1	

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