

# THE CORPORATION OF THE TOWNSHIP OF TAY

## BY-LAW NO. 2010-23

**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. 2000-40**

**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 Corporation of the Township of Tay hereby enacts as follows:

### **1.0 DEFINITIONS:**

In this By-law:

**“Applicant”** means a person, organization, company or group that makes application to the Fire Chief for permission to set or conduct an open air burning;

**“Barbeque”** means an appliance or structure designed and intended solely for the cooking for food in the open air, including a hibachi, and any other similar commercially manufactured device 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 campfires;

**“Chief Fire Official”** means the Fire Chief and/or his or her designate;

**“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;

**“Extinguish”** means to put out or quench a fire completely, no smoke, hot or glowing embers are to remain;

**“Fire Pit”** means a fire burn area specifically designed for open air burning;

**“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;

**“Officer”** means a Municipal Law Enforcement Officer, Police Officer, Chief Fire Official or Designate;

**“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;

**“Recreational Open Air Burning”** means a small, controlled and contained fire for the purpose of cooking, warmth or personal enjoyment;

**“Township”** means the Corporation of the Township of Tay;

**“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 PROHIBITIONS**

- 2.1 No person shall set or maintain a fire in open air unless a permit has been issued by 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.

**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 burning if, in his or her 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.
- 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 A fire permit shall not be issued unless the emergency number or street number is posted and clearly visible from the road.
- 3.6 A recreational and non-recreational open burning permit is valid from the time of issuance to December 31 of the current year.
- 3.7 A non-recreational open air burning which the fire pit is larger than three (3) feet by three (3) feet in size, the permit is valid for a time period no longer than 7 days in duration and must be approved by the Chief Fire Official.

**4.0 RECREATIONAL OPEN AIR BURNING(campfires)**

- 4.1 Every person conducting a recreational open air burning shall confine the fire to either an open air burning device or to a fire pit with a burn area no larger than three (3) feet by three (3) feet in size.

- 4.2 Every person conducting a recreation open air burning 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 a recreational open air burning 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, or any type of yard waste may be burned.
- 4.4 No person conducting a recreational open air burning shall burn wood having a dimension greater than the size of the open air burning device or burn pit. All such fires shall be totally confined within the open burning device or fire pit at all times.
- 4.5 Every person conducting a recreational open air burning shall confine the fire to a location that provides for a minimum distance of twenty (20) feet from combustible structures or objects.
- 4.6 Every person conducting a recreational open air burning shall have immediately available for use an effective extinguishing agent or device of sufficient size and with the capability of extinguishing the fire.
- 4.7 Every person conducting a recreational open air burning 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.
- 4.8 No person shall conduct a recreational open air burning when the wind speed exceeds twenty-four (24) 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 for Ontario.
- 4.9 No person shall conduct a recreational open air burning when rain is present.
- 4.10 No person shall conduct more than one recreational open air burn (fire) per residence.
- 4.11 No person shall conduct a recreational open air burning upon any land owned by the Township without having first obtained permission to do so from the Chief Fire Official.
- 4.12 No person shall conduct a recreational open air burning between the hours of 12:00 a.m. and 8 a.m.
- 4.13 Every person conducting a recreational open air burning 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.
- 4.14 No person shall conduct a recreational open air burning in which any kitchen garbage, construction materials or materials made of/or containing rubber, plastic or tar are burned.

- 4.15 If the Fire Department attends at a recreational open air burning to respond to public safety concerns due to fire hazard, whether in response to a complaint or otherwise, the Chief Fire Official has the discretion to order the fire extinguished and/or brought into compliance with this By-law and this order shall be final. Any person conducting such fire and the owner shall comply with the order of the Chief Fire Official. If the person conducting the fire or the owner fails to comply as directed, the Chief Fire Official may take action to have the fire extinguished or otherwise brought into compliance, and that person and/or the 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 Fee By-law.
- 4.16 Every owner shall ensure that all recreational open air burning on his or her land complies with sections 4.1 through 4.15 of this By-law.

## **5.0 NON-RECREATIONAL OPEN AIR BURNING**

- 5.1 Every person conducting a non-recreational open air burning shall confine the fire to either an open air burning device or to a fire pit with a burn area no larger than three (3) feet by three (3) feet in size, unless approved by the Chief Fire Official.
- 5.2 No person shall conduct any non-recreational open air burning in which any kitchen garbage, construction materials or materials made of/or containing rubber, plastic or tar are burned.
- 5.3 Every person conducting a non-recreational open air burning shall burn only clean, dry seasoned wood or yard waste as defined in this By-law.
- 5.4 Every person conducting a non-recreational open air burning shall take all reasonable steps to ensure that adjacent properties and individuals are protected from any hazard and are not adversely affected by the products of combustion.
- 5.5 Every person conducting a non-recreational open air burning shall confine the fire to a location that provides for a minimum distance of twenty (20) feet from combustible structures or objects.
- 5.6 Every person conducting a non-recreational open air burning 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.
- 5.7 Every person conducting a non-recreational open air burning shall have immediately available for use an effective extinguishing agent or device of sufficient size and with the capability of extinguishing the fire.
- 5.8 No person shall conduct a non-recreational open air burning when the wind speed exceeds twenty-four (24) 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 for Ontario.
- 5.9 No person shall conduct a non-recreational open air burning when rain is present.

- 5.10 Every person conducting a non-recreational open air burning 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.
- 5.11 No person shall conduct more than one non-recreational open air burn (fire) per residence.
- 5.12 No person shall conduct a non-recreational open air burning during the period from one half hour before sunset and one half hour after sunrise.
- 5.13 If the Fire Department attends at a non-recreational open air burning to respond to public safety concerns due to fire hazard, whether in response to a complaint or otherwise, the Chief Fire Official has the discretion to order the fire extinguished and/or brought into compliance with this By-law and this order shall be final. Any person conducting such fire and the owner shall comply with the order of the Chief Fire Official. If the person conducting the fire or the owner fails to comply as directed, the Chief Fire Official may take action to have the fire extinguished or otherwise brought into compliance, and that person and/or the 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 Fee By-law.
- 5.14 Every owner shall ensure that all non-recreational open air burning on their land complies with sections 5.1 through 5.13 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 sections 3.4, 4.13, 5.10 or 7.2 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.
- 7.4 Prior to recovering remedial costs under section 7.3, the Township may invoice owners requesting voluntary payment of those remedial costs.

## **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 his or her duties.

## **9.0 OFFENCES AND PENALTIES**

- 9.1 Every person who contravenes any of the provisions of this By-law is guilty of an offence.
- 9.2 Every person who is convicted of an offence under this By-law shall be subject to a fine of not more than Five Thousands Dollars (\$5,000.00) for each offence. Such fines shall be recoverable under the Provincial Offences Act, R.S.O. 1990, c. P.22, as amended.
- 9.3 The provisions of this By-law may be enforced pursuant to the provisions of the Provincial Offences Act, R.S.O. 1990, c. P.33 as amended, and where any provision of this By-law is contravened and a conviction entered, in addition to any other remedy and to any other penalty the person convicted may also be prohibited from continuing or repeating the offence in accordance with the provisions of section 442 of the Municipal Act.
- 9.4 Every person who is guilty of an offence under this By-law may, if permitted under the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended pay a set fine and the Chief Judge of the Ontario Court of Justice shall be requested to establish set fines as set out in Schedule "A" to this By-law.

## **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 on the opinion of the Chief Fire Official or his or her 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 effect 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 Outdoor Burning By-law.

**15.0 REPEALED**

15.1 By-law No. 2000-40 is hereby repealed.

**16.0 EFFECTIVE DATE**

16.1 This By-law shall come into force and take effect immediately upon the final passing thereof.

**BY-LAW READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 14<sup>TH</sup> DAY OF APRIL, 2010.**

**THE CORPORATION OF THE TOWNSHIP OF TAY**

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**MAYOR**

\_\_\_\_\_  
**CLERK**

**JN/rd**

**PART 1 Provincial Offences Act-Set Fines Schedule**  
**THE CORPORATION OF THE TOWNSHIP OF TAY**  
**By-law No. 2010-23:Outdoor Burning By-law**

**SCHEDULE “A”**

ITEM	Column 1 Short Form Wording	Column 2 Offence Creating Provision	Column 3 Set Fine
1	Failure to comply with permit conditions	3.2	\$150.00
2	Failure to extinguish fire otherwise allowed under permit when ordered to do so	3.4	\$150.00
3	Recreational burning in fire pit larger than permitted	4.1	\$150.00
4	Recreational burning adversely affecting other person	4.2	\$150.00
5	Recreational burning of materials not permitted	4.3	\$150.00
6	Recreational burning of oversized wood	4.4	\$150.00
7	Recreational burning within 20 feet of combustible structure	4.5	\$150.00
8	Recreational burning without extinguishing device	4.6	\$150.00
9	Failure to supervise recreational burning	4.7	\$150.00
10	Recreational burning during high winds or during a smog alert	4.8	\$150.00
11	Recreational burning when rain is present	4.9	\$150.00
12	Recreational burning exceeding one fire	4.10	\$150.00
13	Recreational burning on Township property	4.11	\$150.00
14	Recreational burning during prohibited hours.	4.12	\$150.00
15	Failure to take reasonable precautions during recreational burning	4.13	\$150.00
16	Recreational burning of materials not permitted	4.14	\$150.00
17	Failure to extinguish fire or comply when ordered during recreational burning	4.15	\$150.00
18	Failure by owner to ensure compliance during recreational burning	4.16	\$150.00
19	Non-recreational burning of burn pile larger than permitted	5.1	\$150.00
20	Non-recreational burning of materials not permitted	5.2	\$150.00
21	Non-recreational burning of materials other than dry wood or permitted yard waste	5.3	\$150.00
22	Non-recreational burning adversely affecting other persons	5.4	\$150.00
23	Non-recreational burning within 20 feet of combustible structure	5.5	\$150.00
24	Failure to supervise non-recreational burning	5.6	\$150.00
25	Non-recreational burning without extinguishing device	5.7	\$150.00
26	Non-recreational burning during high winds or smog alert	5.8	\$150.00
27	Non-recreational burning when rain is present	5.9	\$150.00
28	Failure to take reasonable precautions during non-recreational burning	5.10	\$150.00
29	Non-recreational burning exceeding one fire	5.11	\$150.00
30	Non-recreational burning during prohibited time	5.12	\$150.00
31	Failure to extinguish fire or comply when ordered during non-recreational burning	5.13	\$150.00
32	Failure by owner to ensure compliance during non-recreational burning	5.14	\$150.00

Note: The penalty provision(s) for the offences indicated above is Section 9 of By-Law No. 2010-23 a certified Copy of which has been filed.