

THE CORPORATION OF THE TOWNSHIP OF MONTAGUE

BY-LAW NO. 3635-2018

BEING a bylaw to regulate the setting and maintaining of Open Air Burning for the Corporation of the Township of Montague;

WHEREAS Section 2.4.4.4. (1)(a) of the Fire Code, Ontario Regulation 213/07, prohibits Open Air Burning unless approved;

AND WHEREAS Section 128 of the Municipal Act, 2001, S.O. 2001, c. 25, as amended, provides that 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, a public nuisance;

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 Section 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 391(1) of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended, provides that despite any Act, a Municipality and a local board may impose fees or charges on any person for services or activities provided or done by, or on behalf of it, or for costs payable by it, for services or activities provided or done by or on behalf of any other Municipality or local board;

AND WHEREAS Section 446(1) of the *Municipal Act*, 2001, S.O. 2001, c. 25, as amended, provides that if a Municipality has the authority by any Act, or under a by-law, 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 and Section 446(3) provides that the Municipality may recover the costs of doing a matter or thing from the person required to do it by action or by adding the costs to the tax roll and collecting them in the same manner as Property taxes;

NOW THEREFORE, the Council of the Corporation of the Township of Montague enacts as follows:

SHORT TITLE

1. This bylaw may be referred to as the “Open Air Burning” Bylaw.

DEFINITIONS

1. In this by-law, the following terms have the specified meanings:
 - a) “**Adverse effect**” means one or more of:
 - i. impairment of the quality of the natural environment for any use that can be made of it;
 - ii. injury or damage to property or to plant or animal life;
 - iii. harm or material discomfort to any person;
 - iv. an adverse effect on the health of any person;
 - v. impairment of the safety of any person;
 - vi. loss of enjoyment of normal use of property;
 - b) “**Barbeque**” means an appliance or structure designed and intended solely for the cooking of food and fueled by charcoal, natural gas or propane.
 - c) “**Building**” means any structure used or intended for supporting or sheltering any use of occupancy
 - d) “**Brush Fire**” means an open air fire where the material to be burned does not exceed 3m (9.84ft) in height, width and length and where the open air fire is set and maintained solely for the purposes of burning wood, tree limbs and branches.
 - e) “**Burn drum**” means an open air fire set and maintained in an open top steel barrel that does not exceed 1.5 m (4.92 ft) in diameter and 1.5 m (4.92 ft) in height and where the open air fire is set and maintained for the purposes of burning wood, tree limbs, branches and non-compostable material limited to paper and sisal twine.
 - f) “**Campfire**” means an open fire area where the material to be burned does not exceed 60cm (23.62 inches) in width and 60cm (23.62 inches) in height that is set and maintained solely for the purposes of cooking food, providing warmth or recreational enjoyment.
 - g) “**Campground**” means an area of Property owned or operated by a person and that contains Camp Sites for the purpose of providing overnight accommodations for tents and trailers in exchange for monetary payment.
 - h) “**Council**” means the Council of the Corporation of the Township of Montague.

- i) **“Dangerous conditions”** mean any condition as determined by the Fire Chief that increases the risk of the spread of a fire or is adverse to public safety.
- j) **“Farming business”** means a farming business as defined in the Farm Registration and Farm Organizations Funding Act, 1993,c.21 as amended.
- k) **“Fire Ban”** means a prohibition on all burning issued by the Fire Department of Township of Montague
- l) **“Fire Break”** means open space that surrounds an open air fire and serves as a non-combustible obstacle to the spread of fire.
- m) **“Fire Chief”** means a Fire Chief appointed under subsection 6 (1), (2) or (4) of the *Fire Protection and Prevention Act*, 1997, S.O. 1997, c. 4, as amended, for the Township of Montague, or designate
- n) **“Fire Department”** means the Township of Montague Fire Department and any member thereof.
- o) **“FPPA”** means *the Fire Protection and Prevention Act, 1997*, as amended, and the regulations enacted thereunder as amended from time to time, or any Act or Regulation enacted in substitution thereof.
- p) **“Household Waste”** means combustible material such as plastics, polyethylene terephthalate, paints, oils, solvents, rubber, insulation, batteries, acids, polystyrenes (Styrofoam), pressure treated or painted lumber, tires, upholstered furniture, synthetic fabrics, diapers and hazardous waste as defined in the *Environmental Protection Act* and all other similar and like materials but shall not include untreated wood and wood fiber products such as non-laminated paper and cardboard and boxboard, brush, tree branches/limbs and leaves.
- q) **“Highway”** means a common and public highway and includes any bridge or other structure forming part of the highway and, except as otherwise provided, includes a portion of a highway.
- r) **“Listed”** means equipment included in a list published by a certification organization accredited by the Standards Council of Canada (i.e. ULC, CSA).
- s) **“Maintain”** means to allow an open air fire to continue to burn and “maintained” and “maintaining” have a corresponding meaning.
- t) **“Material to be burned”** means the total volume of the materials contained in the fire.
- u) **“Municipality”** means the Township of Montague or the geographic area of the Township of Montague as the context requires.
- v) **“Normal farm practice”** means a practice that:
 - i. is conducted in a manner consistent with proper and acceptable customs and standards as established and followed by similar agricultural operations under similar circumstances, or

- ii. makes use of innovative technology in a manner consistent with proper advanced farm management practices.
- w) **“Nuisance”** means smoke or odour that interferes with the enjoyment of neighbouring Properties.
- x) **“Open Air Fire”** means the burning of material such as untreated wood and wood fiber products like non-laminated paper and cardboard and boxboard, brush, tree branches/limbs and leaves where the flame is not wholly contained and includes campfires, brush fires, burn drums, windrows and outdoor fireplaces, but does not include barbecues.
- y) **“Outdoor fireplace”** means a manufactured, non-combustible, enclosed container designed to hold a small fire for decorative purposes and the size of which does not exceed 1 m (3.28ft) in any direction and includes, but is not limited, to a chiminea.
- z) **“Owner”** includes any person, firm or corporation having control over any portion of buildings, Property or premises and may include landlords, building managers, rental agents, agents, tenants, trustee, a representative of the Owner, superintendents and, includes, any other person to whom rent is payable.
- aa) **“Permit”** means a Permit issued by the Township of Montague Fire Chief for the purpose of allowing Open Air Burning, subject to compliance with a set of rules and guidelines,
- bb) **“Person”** means any individual, association, firm, partnership, corporation, agent or trustee and the heirs, executors, or other legal representatives of a person to whom the context can apply according to law.
- cc) **“Prohibited material”** includes household waste, rubber or rubber products, plastic or plastic products, and waste petroleum products and any material or materials which are prohibited by the *Environmental Protection Act*, R.S.O 1990, *Chapter E. 19* as amended.
- dd) **“Set”** means to light an open fire and “setting” has a corresponding meaning.
- ee) **“Windrow”** means an open air fire where the material to be burned does not exceed 50m (164.04ft) in length, 5m (16,40ft) in height and that is set and maintained solely for the purposes of burning wood, tree limbs and branches as part of normal farm practices for clearing agricultural land.

Definitions of words and phrases used in this by-law that are not included in this list of definitions have the definitions assigned by the Ontario Fire Code, or, where not defined, the meaning commonly assigned.

PROHIBITIONS

2. No person shall set or maintain an open air fire without first having obtained the necessary permit from the Fire Chief.
3. Despite Section 2, no person shall set or maintain an open air fire within built up areas that cannot meet the setback provisions outlined in Sections 15, 16, 17, 18 and 19 of this by-law, as determined by the Fire Chief .
4. No person shall set or maintain an open air fire when a fire ban on open air fire has been issued by the Fire Chief or designate.
5. No person shall set or maintain an open air fire when the wind is in such a direction or intensity to cause any or all of the following:
 - a) the possible spread of the fire beyond the approved burn site;
 - b) a decreased in visibility on any highway;
 - c) excessive smoke.

APPLICATION FOR AN OPEN AIR FIRE PERMIT

6. Any person eighteen (18) years of age or older may apply for an open air fire permit to the Fire Chief prior to the proposed date of the first open air fire.
7. The application shall include:
 - a) the name, address and phone number of the applicant;
 - b) the owner's written consent to the open air fire, if the applicant is not the owner of the property;
 - c) the municipal address of the location of the proposed open air if it differs from the address of the applicant. A farming business may offer multiple locations to reflect their agricultural property;
 - d) an indemnification in writing or electronically in accordance with the terms of Section 35; and
 - e) such other information as may be required by the Fire Chief
8. The Fire Chief shall issue an open air fire permit unless,
 - a) the application is incomplete;
 - b) there are reasonable grounds to believe that the open air fire may cause adverse effects;
 - c) here are reasonable grounds to believe that the open air fire will result in a breach of this by-law, the FPPA, or any other provincial or federal statute.

CONDITIONS FOR PERMIT ISSUANCE

9. No permit holder shall undertake to set or maintain any open air fire except in accordance with the conditions of the permit.
10. The permit holder shall comply at all times with the FPPA and with all other applicable municipal by-laws and provincial and federal laws

11. A permit issued under this section is valid on the date of issue and for the balance of the calendar year in which the permit is issued.
12. No holder of a permit issued under this by-law shall set or maintain an open air fire unless the permit holder,
- a) Notifies the Township office during regular business hours prior to burning in accordance with this bylaw;
 - b) ensures that a person eighteen (18) years of age or older maintains constant watch and control over the open air fire at all times from the time of the setting of the fire until the fire is totally extinguished;
 - c) produces his or her permit upon being so directed by the Fire Chief or designate;
 - d) immediately extinguishes the fire upon being so ordered by the Fire Chief or designate;
 - e) complies at all times with the requirements of Sections 15 and 16 and, where applicable, Sections 17, 18 and 19; and
 - f) has equipment capable of extinguishing the fire such as rakes, shovels, or water immediately available for use at the site of the open air fire.
13. The Fire Chief may attach such additional conditions to a permit as he or she deems necessary to ensure public safety.
14. A permit for an open air fire is not transferable to another person or to a new location.

GENERAL REQUIREMENTS FOR OPEN AIR FIRES

15. Where the material to be burned in an open air fire is 2m or less in length (Medium Open Air Fire), width and height or is in a burn drum, no permit holder shall set or maintain an open air fire,
- a) at a distance of less than 25m (82ft) from any building, hedge, fence, overhead wiring or a highway and at a distance of less than 25m (82ft) from another open air fire;
 - b) where combustible material, other than a building, hedge, fence, or overhead wiring or a highway is present within a radius of 15m from the open air fire;
 - c) where the size of the open air fire will exceed the limits set by this by-law;
 - d) that is set or maintained with the aid of flammable or combustible liquids of any kind;
 - e) that uses fuel other than untreated wood and wood fiber products like non-laminated paper and cardboard and boxboard, brush, tree branches / limbs and leaves or, if in a burn drum, fuel other than that permitted in a burn drum;
 - f) that uses prohibited materials, which includes Household Waste, rubber or rubber products, plastic or plastic products, and waste petroleum products and any material or materials which are prohibited by the Environmental Protection Act, R.S.O 1990, Chapter E.19, as amended,
 - g) between the hour of 6:00pm and 6:00am, with the exception of campfires and outdoor fireplaces that comply with the requirements of this by-law; or

- h) unless the additional conditions specified on the permit deemed necessary by the Fire Chief have been met.
16. Where the material to be burned in an open air fire is between 2m and 3m in length (Large Open Air Fire), width and height, no permit holder shall set or maintain an open air fire,
- a) at a distance of less than 60m from any building, hedge, fence, overhead wiring or a highway and at a distance of less than 25m (82ft) from another open air fire;
 - b) where combustible material other than a building, hedge, fence, or overhead wiring or a highway is present within a radius of 25m(82ft) from the open air fire; and
 - c) unless the permit holder complies with the conditions of Section 19, clauses (c) to (h) inclusive.

Additional Requirements for Campfires

17. Despite clauses (a), (b) and (g) of Section 15, no permit holder shall set or maintain any campfire,
- a) where the material to be burned exceeds 60cm (23.62 inches) in width at the largest point or is piled higher than 60 cm(23.62 inches) in height;
 - b) that uses material other than dry firewood;
 - c) unless in compliance with the requirements of Section 15 clauses (c) to (f) inclusive and clause (h); and
 - d) unless the campfire is located a distance of not less than 5m(16ft) from any building, hedge, fence, overhead wiring or other combustible material or a highway where the campfire is not surrounded by non-combustible material;

Additional Requirements for Outdoor Fireplaces

18. Despite clauses (a), (b) and (g) of Section 15, no permit holder shall set or maintain an open air fire in an outdoor fireplace unless,
- a) the outdoor fireplace is located a distance of not less than 5 m (16ft) from any building, hedge, fence, overhead wiring or other combustible material or a highway and is equipped with a spark arrester;
 - b) the outdoor fireplace is located on a non-combustible surface extending beyond the outdoor fireplace to a dimension equal to the height of the outdoor fireplace;
 - c) the outdoor fireplace uses only dry firewood; and
 - d) in compliance with the requirements of Section 15, clauses (c) to (f) inclusive and clause (h).

Additional Requirements for Windrows

19. No permit holder shall set or maintain an open air fire that is a windrow unless,
- a) the windrow does not exceed the size limits set out in this by-law;
 - b) the windrow is located a distance of not less than 90m(295ft) from a building, overhead wiring or highway;

- c) the windrow is located a distance of not less than 60m from a wooden fence rail, hedge or standing timber;
- d) subject to Section 19 (b) and (c), the windrow is located a distance of not less than 30m (98ft) from any other combustible material;
- e) a firebreak of 5m (16ft) in width surrounds the windrow until the open air fire is extinguished;
- f) the windrow is constructed at right angles to the prevailing wind direction;
- g) the windrow is constructed on soil other than peat soil types;
- h) there is a separation distance of at least 15m (49ft) between the ends of the windrows and at least 25m(82ft) between parallel windrows, if more than one windrow is set and maintained at the same time at the same location;
- i) the windrow is set first at its centre;
- j) the permit holder notifies the Fire Chief each day that the windrow is set and maintained until the windrow is extinguished;
- k) the permit holder ceases to add material to the windrow if a fire ban comes into effect;
- l) the permit holder uses best efforts to aerate and separate any soil from wood, tree limbs and branches in the windrow;
- m) a suitable means to control or extinguish the agricultural fire with a earth moving equipment is on site (i.e. backhoe, front end loader, bobcat, etc.)
- n) the permit holder ensures that a person eighteen (18) years of age or older maintains constant watch and control over the windrow from the time of the setting of the windrow until there is no visible open flame; and
- o) the permit holder complies with conditions of clauses (d) to (f) inclusive and clause (h) of Section 15.

DELEGATION OF AUTHORITY – FIRE CHIEF

20. The Fire Chief is authorized to amend the boundaries of areas in which open air fires may be set or maintained provided that the amendment is a result of a change in one (1) or more of the following factors:

- a) population density;
- b) building density;
- c) risk management issues, including but not limited to incidence of false alarms and proximity to forested areas.

EXCEPTIONS

21. The Township of Montague Fire Department shall be exempt from the provisions of this by-law with respect to open air fires for the purposes of training, educating individuals in fire safety or for research purposes.
22. Professional fire prevention trainers shall be exempt from the provisions of this by-law with respect to open air fires set for the purposes of fire safety training pursuant to Section 2.8.2.1 of the Fire Code.
23. The Municipality shall be exempt from the provisions of this by-law with respect to open air fires related to municipal works.

ENFORCEMENT

Extinguishment

24. A member of the Fire Department or the Fire Chief may direct a person to extinguish any fire when, in their opinion, the fire creates a hazard or nuisance.
25. A person who fails to comply with the direction of a member of the Fire Department or the Fire Chief is guilty of an offence under this bylaw
26. A member of the Fire Department or Fire Chief , as the case may be, may extinguish a fire if a person fails to extinguish a fire on the request of a member of the Fire Department or Fire Chief

Revocation

27. 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, an adverse effect exists in or near the site of the open air fire.
28. 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 permit or permits and any other provisions of this by-law.

Offences and Penalties

29. Every person who contravenes any of the provisions of this by-law is guilty of an offence.
30. Every person who is convicted of an offence under this by-law is liable to a fine as provided for in the *Provincial Offences Act*.
31. Where a person has been convicted of an offence under this by-law,
 - a) the Ontario Court of Justice, or
 - b) any court of competent jurisdiction thereafter may, in addition to
 - c) any other penalty imposed on the person convicted, issue an order prohibiting the continuation or repetition of the offence or the doing of any

act or thing by the person convicted directed towards the continuation or repetition of the offence.

32. Every person who sets a fire in contravention of this by-law or who fails to extinguish a fire once ordered to do so by the Fire Chief shall, in addition to any penalty provided for herein, be liable to the Municipality for all expenses incurred for the purpose of investigating, controlling and extinguishing any fire set or left to burn as approved by Council. Any costs chargeable to any person pursuant to this section shall be invoiced to the person and paid to the Municipality within thirty (30) days of the date of such invoice, failing which the costs may be deemed to be municipal taxes and added by the Treasurer of the Municipality to the Collector's Roll and collected in the same manner and with the same priority as municipal taxes.

INDEMNIFICATION

33. The applicant shall indemnify and save harmless the Township of Montague from any and all claims, demands, causes of actions, losses, costs or damages that the Municipality may suffer, incur or be liable for resulting from the open air fires as set out in the by-law whether with or without negligence on the part of the applicant, the applicant's employee, directors, contractors and agents.

SEVERABILITY

34. Should any part, section, subsection or portion of this by-law be repealed or declared by a court of competent jurisdiction to be illegal, the same shall not affect the validity of the by-law as a whole or in part thereof, except for that which was declared to be invalid.

35. Where any by-law, passed prior to this by-law, conflicts with the terms of this by-law, this by-law shall prevail.

36. That this by-law comes into force on March 1st, 2018.

READ A FIRST, SECOND & THIRD TIME & PASSED, SIGNED & SEALED THIS 16th DAY OF JANUARY 2017.

REEVE

CLERK