

THE CORPORATION OF THE TOWNSHIP OF ESSA

BY-LAW 2015-92

A By-law to regulate the setting of open air fires and to prevent the spread of fires in the Township of Essa and to repeal By-law 2005-88.

WHEREAS subsection 7.1 (1) of the *Fire Prevention and Protection Act*, 1997, S.O. 1997, c.4, as amended, provides that a council of a municipality may pass by-laws regulating fire prevention, including the prevention of spreading of fires and regulating the setting of open air fires, including establishing the times during which open air fires may be set; and

WHEREAS the Ontario Fire Code (Ontario Regulation 388/97), Article 2.6.3.4 provides that open air burning shall not be permitted unless approved, or unless such burning consists of a small, confined fire, supervised at all times, and used to cook food on a grill or a barbecue; and

WHEREAS subsection 7.1 (4) of the *Fire Prevention and Protection 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 subsection 7.1 (3) of the *Fire Prevention and Protection Act*, 1997, S.O. 1997, c.4, as amended, provides that a municipality may deal with different areas of the municipality differently; and

WHEREAS the Council of the Corporation of the Township of Essa deems it necessary and expedient to pass such a by-law;

NOW THEREFORE the Council of the Corporation of the Township of Essa hereby enacts as follows:

1. TITLE

This By-law shall be cited as the "Open Air Burning By-law" and shall apply to the entire Municipality.

2. DEFINITIONS

2.1 **Agricultural Waste** shall be deemed to be animal fecal deposits or manure and animal carcasses.

2.2 **Approved** shall mean approved by the Chief Fire Official.

2.3 **Chief Fire Official** shall mean the Chief of the fire department of the Township of Essa, or designate.

2.3.1 **Commercial Recreation (C4)** designation under the Township's Zoning By-law includes those existing campgrounds which are intended to provide overnight recreational accommodation including municipal and public campgrounds.

- 2.4 **Domestic Waste** shall be deemed to include kitchen waste, food scraps, cloths, rags, clothing, plastics and any other materials whose contents include any of the aforementioned.
- 2.5 **Dwelling** shall mean house.
- 2.6 **Industrial Waste** shall be deemed to include used automobile and truck bodies, oil, grease, paint, cloth, rags, plastics or other materials whose contents include any of the aforementioned.
- 2.7 **Nuisance** shall mean excessive smoke, smell, airborne sparks or embers that is likely to disturb others.
- 2.8 **Open Air Burn in a Settlement Area** shall be for the burning of clean dry wood, brush, branches and twigs; but not leaves, grass, industrial waste, agricultural waste, petroleum products, plastics, rubber, painted lumber or garbage, with a dimensional size of 3 feet/1 metre X 3 feet/1 metre in a fire pit or non-commercial/non-combustible outdoor fire container. Fires shall only be allowed down until dusk.
- 2.9 **Open Air Burn in a Non-Settlement Area** that are not recreational/camp fires or are larger in size or complexity than those outlined in 2.8 above, a site inspection and approval from the Chief Fire Official or designate is required. Approval may be subject to additional restrictions and safety requirements as determined by the Chief Fire Official or designate, as well as additional fees.
- 2.10 **Owner** shall mean the registered owner or agent of the land on which open air burning occurs, or the trustee acting on behalf of the registered owner, or the trustee acting on behalf of the estate of the registered owner, or a person with a leasehold interest in the land.
- 2.11 **Outdoor Fire Container** shall mean a commercially manufactured or non-commercially manufactured, non-combustible, enclosed container that is not fueled by natural gas or propane and may include but is not limited to chimineas, metal drums or tubs.
- 2.12 **Responsible Person** shall mean a person, over the age of eighteen, who is capable of making sound decisions and shall be responsible for the fires that are set in accordance with the authorized burn permits.
- 2.13 **Recreational Burn/Camp Fire** shall mean a fire no larger than 1.5 feet x 1.5 feet/0.5 metre x 0.5 metre in area with flames no higher than 1.5 feet/0.5 metre from base of fire; and can burn from noon to midnight.
- 2.14 **Settlement Areas** are residential areas, and for burn permit purposes, clearances from combustibles shall be categorized as follows: a) less than 15 feet/5 metre clearance from nearest dwelling or structure (deck, shed, fence); b) greater than 15 feet/5 metre clearance from nearest dwelling or structure (deck, shed, hedge, tree, fence, vehicular roadway or overhead wire); or, c) greater than 33 feet/10 metre clearance from nearest dwelling or structure (deck, shed, hedge, tree, fence, vehicular roadway or overhead wire). Non-settlement areas are rural in nature and have clearances greater than 33 feet/10 metre

2.15 **Township** shall mean the Corporation of the Township of Essa.

3. REQUIREMENT FOR PERMIT

- 3.1 No person(s), lessee(s) or owner(s) of land shall set a fire or permit the setting of a fire without first having obtained an authorized burn permit.
- 3.2 Only the property owner, lessee or agent shall apply for a fire permit. The agent must have written permission from the property owner or lessee to apply for a fire permit. In the case of a Municipal campground leased to another party, the lessee shall provide such written permission.
- 3.3 All applicants obtaining or applying for a fire permit shall be a responsible person, that being a person over the age of eighteen who is capable of making sound decisions and who shall be responsible for the fires that are set in accordance with the authorized burn permit.
- 3.4 The permit shall expire at the end of each calendar year.
- 3.5 Notwithstanding any other provision of this By-law, the Chief Fire Official may permit an open air burn:
 - a) for the purpose of training or testing fire equipment;
 - b) by the Township or any of its officials, employees, contractors or agents or any other persons for whom the Township is liable at law who are carrying out any operations of the Township, operating, maintaining or installing municipally-owned infrastructure and/or facilities;
 - c) or any extraordinary reason as deemed expedient by the Chief Fire Official.

4. BURN TYPES AND CONDITIONS

4.1 Recreational/Camp Fire - Burn Permit

Every person setting, permitting to be set, maintaining, or permitting to be maintained, an open air fire authorized under this section, including those properties that the Township has designated as Commercial Recreation (C4) under the Township's Zoning By-law which are intended to provide overnight recreational accommodation, shall comply with the following specific conditions:

- a) shall only burn clean, dry seasoned wood.
- b) shall ensure the fire is no larger than 1.5 feet x 1.5 feet/0.5 metre x 0.5 metre with flames no higher than 1.5 feet/0.5 metre from the base of the fire.
- c) shall not be issued in a settlement area with clearances of less than 15 feet/5 metre from any structure.
- d) shall be issued in settlement or non-settlement areas where clearances exceed 15 feet/5 metre from any dwelling or structure, deck, shed, hedge, tree, fence, vehicular roadway or overhead wire.

e) shall ensure that the general conditions set out in Section 5 have also been met.

4.2 Open Air – Burn Permit

Every person setting, permitting to be set, maintaining, or permitting to be maintained, an Open Air Burn authorized under this section shall comply with the following specific conditions:

- a) shall only burn clean, dry seasoned wood or brush, branches or twigs.
- b) shall not set a fire that is larger than 3 feet x 3 feet/1 metre x 1 metre in area with flames no higher than 3 feet/1 metre from the base of the fire,
- c) shall ensure that the fire is not set within 33 feet/10 metre clearance from nearest dwelling or structure (deck, shed, hedge, tree, fence, vehicular roadway or overhead wire).
- d) shall ensure that the general conditions set out in Section 5 have also been met.

4.3 Open Air Burn Inspection Required – Burn Permit

Every person setting, permitting to be set, maintaining, or permitting to be maintained, an Open Air Burn authorized under this section shall comply with the following specific conditions:

- a) shall only burn untreated wood, trees, brush, trimmings, hay, or straw.
- b) fire sizes greater than noted in 4.2 (b) require an inspection by the fire department.
- c) fire sizes greater than noted in 4.2 (b) shall not be set within 300 feet/91 metre of a dwelling and a minimum of 300 feet/91 metre from any other structure, hedge, tree, fence, vehicular roadway or overhead wire.
- d) shall ensure that the general conditions set out in Section 5 have also been met.
- e) shall not set fire during the night hours between dusk and dawn.

5. GENERAL CONDITIONS OF ALL OPEN AIR BURNING

Every person setting, permitting to be set, maintaining, or permitting to be maintained, an Open Air Burn authorized under any section of this by-law shall also comply with the following general conditions:

- 5.1 Ensure that they have read and understand the provisions of this By-law and if the person setting the fire is not the owner of the land, the owner shall ensure that the person setting the fire or is responsible for the fire has read and understands the provisions of this By-law.
- 5.2 Be responsible for any damage to property or injury to persons affected by the fire.
- 5.3 Ensure that no more than one fire is lit at any one time unless the property is designated Commercial Recreation (C4) under the Township's Zoning By-law, in which case, more campsite fires may be lit.

- 5.4 Ensure sufficient equipment and resources are available at the burn site to extinguish the fire at any time; or any other thing requested by the Chief Fire Official or designate at the time of permit issuance.
- 5.5 Not set a fire under hazardous conditions of any kind.
- 5.6 Have a responsible person present at the burn site at all times and until the fire is completely extinguished.
- 5.7 Not set fire on any street, lane or public property.
- 5.8 Not set fire when rain or fog is present.
- 5.9 Not set fire when wind is in such a direction or of such intensity so as to reduce the visibility on any roadway, cause danger to any person or structure or cause a nuisance.
- 5.10 Ensure that industrial waste, agricultural waste, domestic waste, petroleum products, rubber, painted lumber, mixed demolition debris or anything else that will cause excessive smoke or fumes is not burnt.
- 5.11 Not set fire when smog alerts have been issued for Simcoe County.
- 5.12 Ensure that the burn complies with the provisions of the *Environmental Protection Act*, R.S.O. 1990, and c.E.19, as amended.
- 5.13 Not set fire during a burn ban within the Township.
- 5.14 Ensure that the fire does not in any way cause discomfort, danger, irritation, hazard or nuisance for other residents of the township.

6. FEES

- 6.1 The fee for a permit issued under this By-law shall be in accordance with the Township of Essa's Schedule of Fees and Charges By-law, as amended. Should the Fire Department attend to extinguish an open air fire that is not being carried out in accordance with the provisions of this By-law, any person being found responsible for setting the fire or in the alternative, the owner, lessee(s), or person(s) with care, custody and control of the land on which the fire was lit, shall be responsible for any damage to property or injury to persons occasioned by said open air fire and shall be liable to pay any fees together with costs including, but not limited to, personnel, equipment and apparatus necessary called in to extinguish said open air fire, as may be set out in the Township of Essa's Schedule of Fees and Charges By-law, as amended.
- 6.2 In the event any person fails to pay the costs on demand, referred to in 6.1 above, or the amount in default may be recovered by the Township through a collection agency, or in a like manner as municipal taxes in accordance with the *Municipal Act, 2001*.

7. ENFORCEMENT AND PENALTIES

- 7.1 The Chief Fire Official shall be responsible for the administration and enforcement of this By-law.

- 7.2 Any person who contravenes the provisions of this By-law is guilty of an offence and upon conviction shall be liable to the penalties imposed pursuant to the Fire Protection Act, 1997, S.O. 1997, c. 4, as amended for each offence, exclusive of costs.
- 7.3 A permit may be revoked by the Chief Fire Official or designate if the permit holder fails to comply with the requirements of the permit and any other provision of this By-law.
- 7.4 The Chief Fire Official or designate may, at any reasonable time, enter and inspect any land or premises to determine whether the provisions of this By-law or any direction or order made thereunder is being complied with.
- 7.5 An owner shall permit an officer to inspect any land, property or premises for the purposes of determining compliance with this By-law.
- 7.6 The Chief Fire Official or designate may be accompanied by a person under his or her direction.
- 7.7 The Chief Fire Official or designate may order a fire to be extinguished immediately if the fire:
- a) Is not set in compliance with this By-law; or
 - b) Is determined upon inspection by the Chief Fire Official or designates to constitute a safety hazard or concern.

8. SEVERABILITY

Should any section, paragraph, clause or provision of this By-law be held by a court of competent jurisdiction to be ultra vires or invalid, such provision shall be deemed to be severable and shall not invalidate any of the other provisions of the By-law which shall remain in full force and effect.

9. REPEAL

THAT By-law 2005-88 be and is hereby repealed.

10. EFFECTIVE DATE

THAT this By-law shall come into force and effect on the final passing thereof.

READ A FIRST, AND TAKEN AS READ A SECOND AND THIRD TIME AND FINALLY PASSED on this the 16th day of December, 2015.

Terry Dowdall, Mayor

Bonnie Sander, Clerk

**Township of Essa By-law 2015 - 92
Open Air Burning By-law
Part I Provincial Offences Act
Set Fine Schedule**

ITEM	COLUMN 1 Short Form Wording	COLUMN 2 Provision Creating Offence	COLUMN 3 Set Fine
1.	Burning without a permit	3.1	\$125.00
2.	Failing to comply with Permit Conditions – Recreational/Camp Fire	4.1	\$125.00
3.	Failing to comply with Permit Conditions – Open Air Burn	4.2	\$125.00
4.	Burning without Inspection – Open Air Burn	4.3	\$125.00
5.	Failing to comply with General Permit conditions	5	\$125.00
6.	Failing to have a responsible person attend the fire	5.6	\$125.00
7.	Setting a fire on a street, lane or other public property	5.7	\$125.00
8.	Setting a fire in rain or fog	5.8	\$125.00
9.	Setting a fire which causes discomfort, danger, irritation, hazard or nuisance for others	5.14	\$125.00
10.	Burning products which are detrimental to the environment	5.12	\$125.00

The penalty provision for the offences indicated above is Section 61 of the Provincial Offences Act, R.S.O. 1990, c. P. 33.