

CORPORATION OF THE TOWNSHIP OF BONFIELD

BY-LAW NO. 2012-19

Being a By-law to Regulate "Open Air Burning" in the Township of Bonfield

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

AND WHEREAS Section 7.1.(4) of the *Fire Protection and Prevention Act S.O. 1997* as amended empowers a municipality to 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. 2001, c. 25, s. 475 (3);

AND WHEREAS Section 2.6.3.4. of the *Ontario Fire Code* states 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 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 public nuisances, and the opinion of Council if arrived at in good faith is not subject to review by any court; AND Council is of the opinion that the setting of open air fires are or could become or cause public nuisances by creating negative health effects on neighbouring residents, increasing fire exposure hazards, infringing the enjoyment of the use of neighbouring properties, and generating false fire alarms;

AND WHEREAS Section 391 (1) (a) and (b) of the *Municipal Act 2001*, S.O. 2001, provides that, without limiting sections 9, 10 and 11, those sections authorize a municipality to impose fees or charges on persons, for services or activities provided or done by or on behalf of it, for costs payable by it for services or activities provided or done by or on behalf of any other municipality or any local board; and) for the use of its property including property under its control. 2006, c. 32, Sched. A, s. 163 (1).

AND WHEREAS Section 446 (1) of the *Municipal Act 2001*, S.O. 2001, as amended, provides that if a municipality has the authority under this or any other Act or under a by-law under this or any other Act 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. 2006, c. 32, Sched. A, s. 184;

AND WHEREAS Section 446 (2) of the *Municipal Act 2001*, S.O. 2001, as amended, provides that for the purposes of subsection (1), the municipality may enter upon land at any reasonable time. 2006, c. 32, Sched. A, s. 184.

AND WHEREAS Section 446 (3) of the *Municipal Act 2001*, S.O. 2001, as amended, provides that the municipality may recover the costs of doing a matter or thing under subsection (1) from the person directed or 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. 2006, c. 32, Sched. A, s. 184;

THEREFORE the Corporation of the Township of Bonfield enacts the following:

1. DEFINITIONS

In this By-law:

"Approved" means approved by the **Chief Fire Official**.

"Barbeque" mean appliances including a hibachi, a permanent structure designed and intended solely for the cooking of food in the open air and other similar devices 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 camp fires.

"Campfire" means a small fire set for the purpose of cooking; can best be described as a fire no greater than 1 metre by 1 metre by 1 metre high.

"Chief Fire Official" means the assistant to the Fire Marshal who is the Municipal Fire Chief or a member or member of the Fire Department appointed by the Municipal Fire Chief under Article 1.1.1.2 of Division C or a person appointed by the Fire Marshal under Article 1.1.1.1 of Division C.

"Extinguish" means to put out or quench a fire completely, no smoke, hot or glowing embers are to remain.

"False Fire Alarm" means an alarm signal where the fire department response, in the opinion of the Chief Fire Official, is not required.

"Firefighter" means the Chief Fire Official and any other member employed in, or appointed to the Bonfield Fire and Emergency Services of the Corporation of the Township of Bonfield, and assigned to undertake fire protection services.

"Fire Ban" means a complete ban of all open fires. A Fire Ban is enacted by the Chief Fire Official or Designate within the Municipality by the authority of the Fire Protection and Prevention Act.

"Fire Hazard, Low, Moderate, High or Extreme" means a Low, Moderate, High or Extreme Fire Hazard as declared by the Chief Fire Official or designate.

"Fire Season" means April 1 to October 31 of each year.

"Municipality" means the Corporation of the Township of Bonfield.

"Municipal Employee" means an officer, servant, or other employee of the municipality, including a volunteer fire fighter.

"Nuisance" means excessive smoke, smell, airborne sparks or embers that are likely to disturb others.

"Officer" means a Municipal Law Enforcement Officer, Police Officer, Chief Fire Official or Designate.

"Ontario Fire Code" means *O. Reg. 388/97* made under the *Fire Protection and Prevention Act*, S.O. 1997, c.4, as amended.

"Open Air Burning" means fires that are set outdoors and are not contained in the confines of a cooking device; fires that are set for the purpose of disposing of clean wood debris, including fires set in outside incinerators; Open Air Fires cannot be more than 2 metres in diameter by 2 metres high; an Open Air Fire does not include a campfire set for the purpose of cooking.

"Person" includes an individual, sole proprietor, a firm, a partnership, a co-partnership, an association, a corporation, and the heirs, executors, administrators, or other legal representatives of a Person.

2. ADMINISTRATION

2.1 An Officer as defined in this By-law is hereby vested with the authority of enforcing the provisions of this By-law.

2.2 This By-law shall apply to all lands within the geographical limits of the Corporation of the Township of Bonfield and to the setting of open air fires on any such land.

3. FIRE SERVICES – EXEMPT

3.1 The Bonfield Fire Department and Emergency Services shall be exempt from the provisions of this By-law with respect to open air burnings set for the purposes of educating and training individuals.

4. GENERAL BURNING RESTRICTIONS

4.1 No person shall set or maintain a fire in contravention of *Ontario Fire Code*, the *Environmental Protection Act*, R.S.O. 1990 c. E. 19 or any other statutory requirements of the Province of Ontario or the Government of Canada;

4.2 No person shall start a fire outdoors unless conditions will allow the fire to burn safely from ignition to extinguishment

4.3 No person shall leave the fire without leaving a competent person in charge of the fire;

4.4 No person shall start any fire to burn, or shall burn outdoors, any household kitchen garbage or construction materials or other materials made of or containing rubber, plastic, paint, petroleum, tar, chemical wastes, pressure treated wood, synthetic or man-made materials or any other materials considered to create excessive smoke or smell;

4.5 No person shall start or tend a fire outdoors during a period of Extreme Fire Hazard or during a municipal fire ban or a restricted fire zone;

4.6 No person shall start or tend any fire outdoors when the wind or conditions are such that it may cause any of the following:

- (a) a decrease in visibility on any highway or road;
- (b) The rapid spread of fire through grass, brush, forested area or other property that was not intended to be burned;
- (c) an adverse impact on other people or property;
- (d) the contravention of any municipal law, provincial or federal legislation.

4.7 No person shall set or maintain a fire in the open air on days where rain, fog, or any other weather condition prevents proper dispersion of smoke;

4.8 Notwithstanding any provisions herein, no person shall set or maintain a fire:

- (a) in contravention of the Ontario Fire Code, the Environmental Protection Act, or any other statutory requirements of the Province of Ontario, or the Government of Canada;
- (b) on any highway, or municipal property within the Municipality;
- (c) on any asphalt surface;
- (d) in any park owned or operated by the Municipality without the written permission of the Municipality;

4.9 No person shall set or maintain an open air fire if it creates a Nuisance.

5. CONDITIONS FOR OPEN AIR BURNING

5.1 Except as provided in Section 6 of this By-law, no person shall start or tend a fire outdoors during Fire Season (April 1 - October 31) unless all of the following conditions are met:

- (a) the person is burning clean wood, brush, leaves or discarded wood by-products;
 - (b) a responsible person is available to tend and supervise the fire until it is completely extinguished;
 - (c) the amount to be burnt at any one time is not to exceed two piles in one and half acres and that piles be separated by a distance of at least 15 metres;
 - (d) piles shall be less than 4 metres in diameter and less than 2 metres high;
 - (e) the fire is started not earlier than 7:00 p.m. in the evening and extinguished not later than 6:00 a.m. the following day or earlier;
 - (f) the fire is not less than fifteen (15) metres from any building, structure, property line, tree, hedge, fence, roadway, overhead wire or other combustible article, or a distance as determined by a Fire Prevention Officer;
 - (g) the person tending the fire has tools and water adequate to contain the fire within the fire site;
 - (h) the Chief Fire Official has declared that there is a Low Fire Hazard or Moderate Fire Hazard;
- 5.2 No person shall start or tend to an Open Air Fire if the Chief Fire Official has declared a High or Extreme Fire Hazard;

6. CAMPFIRES FOR COOKING

6.1 No person shall start or tend a campfire outdoors for the purpose of cooking unless all of the following conditions are met:

- (a) the fire does not exceed 1 metre in diameter and 1 metre in height;
- (b) a responsible person is available to tend the fire until the fire is extinguished;
- (c) the person tending the fire has tools and/or water adequate to contain the fire within the fire site;
- (d) the fire must be surrounded by at least 1 metre of non-combustible material; and be at least 2 metres from any combustible material; and
- (e) a municipal fire ban or a restricted fire zone is not in effect.

7. ENFORCEMENT

7.1 Any police officer, provincial offences officer, Fire Prevention, or Municipal employee whose duties include the enforcement of this By-law, is authorized to enforce this By-law pursuant to the provisions hereof, the *Municipal Act*, 2001, S.O. 2001, c.25 as amended or any successor thereof, and the *Provincial Offences Act*, R.S.O. 1990, c. p.33 as amended or any successor thereof, Fire Chief, Deputy Chief or designated person in charge.

8. RIGHT OF ENTRY

8.1 Pursuant to Section 7.1 an Officer may at any time, enter onto land to determine whether this By-law is being complied with.

8.2 Pursuant to Section 446 (2) of the *Municipal Act 2001*, S.O. 2001, as amended, provides that for the purposes of subsection (1), the municipality may enter upon land at any reasonable time. 2006, c. 32, Sched. A, s. 184.

8.3 Every owner shall permit the Officer to inspect any land for the purposes of determining compliance with this By-law.

8.4 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;

8.5 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.

8.6 A warrant issued under the Provincial Offences Act, R.S.O.1990, as amended is obtained.

9. OFFENCES, PENALTY AND RECOVERY COSTS

9.1 Any person who contravenes any provisions of this By-law is guilty of an offence and on conviction is liable to a fine, penalty or order as provided for in the *Provincial Offences Act*, R.S.O. 1990, c.P.33, as amended, or any successor thereof, or in the *Municipal Act, 2001* S.O. 2001, c.25, as amended or any successor thereof.

9.2 Every person who contravenes or fails to comply with any of the provisions of this By-law is guilty of an offence and on conviction is liable to the fines as calculated in accordance with Schedule 'B' and other penalties prescribed by the *Provincial Offences Act*.

9.3 In addition to any fines or penalties established elsewhere in accordance with this By-law, the person or persons responsible for setting or maintaining, or permitting to be set or maintained, an Open Air Fire shall be liable to the Township by way of a fee or charge, as calculated in accordance with Schedule 'A' to this By-law, on account of those costs and expenses incurred by the Township in:

(a) investigating and responding to a complaint made to the Township or the Fire Department by any person acting reasonably and in good faith, which complaint results from setting and/or maintenance of the Open Air Fire and, in the opinion of the Chief Fire Official or the Chief Fire Official's designate, smoke or emissions from such Open Air Fire were causing or had caused actual discomfort to the complainant; and

(b) the dispatching of Fire Department vehicles and fire-fighting personnel for the purpose of controlling or extinguishing the Open Air Fire.

9.4 All fees and charges payable under this By-law are due and owing to the Municipality within thirty (30) days of the date of an invoice rendered to the person liable to pay them.

9.5 All overdue accounts shall accrue interest at the rate of 1.25% per month (15% per annum), calculated monthly, from the due date until paid in full.

9.6 Pursuant to Section 446. (3) of the *Municipal Act 2001*, S.O. 2001 c. 25 as amended, the Municipality may recover the costs of doing a matter or thing under subsection (1) from the person directed or required to do it by acting or by adding the costs to the tax roll and collecting them in the same manner as property taxes. 2006, c. 32, Sched. A, s. 184

9.7 If a person who sets or maintains an Open Air Fire contrary to this By-law is not the owner of the property but occupies or is using the property with the owner's consent, the owner and the person conducting the Open Air burning shall be jointly and severally liable to pay any fees and charges imposed by this By-law.

9.8 The Chief Fire Official or designate may at their discretion, issue a first time warning if the person or persons setting out the fire agrees to immediately extinguish the fire.

10. TOWNSHIP NOT LIABLE

10.1 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.

11. VALIDITY AND SEVERABILITY

11.1 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.

12. SEPARATE OFFENCE

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

13. REPEAL

13.1 This by-law comes into force and effect upon the approval of the set fines by the Ontario Provincial Courts.

13.2 That By-law No. 97-07 is hereby repealed.

**READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 29TH
DAY OF MAY, 2012**



MAYOR RANDALL MCLAREN



CLERK LISE MCMILLAN

Certified to be a true copy

Township of Bonfield,
Administrator/Clerk-Treasurer

SCHEDULE 'A' TO BY-LAW 2012-19

COST OF FIRE DEPARTMENT SERVICES AND FEES

1. The expenses for which the Person may be liable cover the cost of sufficient personnel and equipment required to control a fire, as referred to in Section 9 of this By-law and such costs have been deemed as being:

- a) \$410.00 for each Fire Department vehicle attending for the first hour or part thereof.
- b) \$205.00 for each Fire Department vehicles attending for every additional half hour or part thereof.
- c) \$410.00 for responding to a call where services are not required.

This shall be calculated from the initial dispatch of the Fire Department or any Fire Department under contract or agreement, until such time as each vehicle is back in service (defined as when the vehicle is back at the hall and has been replenished with the requirements for the unit to respond to the next activation).

These fees are in addition to any fines or penalties established elsewhere, in accordance with this By-law.

Costs will be invoiced by the Municipality and will be due thirty days from the date of the invoice and interest shall accrue and be added to the amount at the rate of 1.25% per month commencing 30 days following the delivery or sending of the invoice.

The above cost and fee schedule may be amended at any time at the discretion of the Council of the Township of Bonfield.

SCHEDULE 'B' TO BY-LAW NO. 2012-19
CORPORATION OF THE TOWNSHIP OF BONFIELD
OPEN BURNING BY-LAW - SET FINE SCHEDULE

Part I Provincial Offences Act

<u>ITEM</u>	<u>COLUMN 1</u> Short Form Wording	<u>COLUMN 2</u> Provision Creating or Defining Offence	<u>COLUMN 3</u> Set Fine
1.	Fail to supervise/control fire	Section 5.1 (b)	\$210.00
2.	Burn prohibited material(s)	Section 4.4	\$210.00
3.	Burn during windy conditions	Section 4.6	\$210.00
4.	Burn during Extreme Fire Hazard	Section 5.2	\$210.00
5.	Burn on highway/public property	Section 4.8(b)	\$210.00
6.	Burn pile in excess of 4 m in diameter	Section 5.1 (d)	\$210.00
7.	Burn pile in excess of 2 m in height	Section 5.1 (d)	\$210.00
8.	Burn after 6 a.m. and before 7 p.m.	Section 5.1(e)	\$210.00
9.	Campfire in excess of 1 m in diameter	Section 6.1(a)	\$210.00
10.	Campfire in excess of 1 m in height	Section 6.1 (a)	\$210.00
11.	Campfire during fire ban	Section 6.1(e)	\$210.00

NOTE:

The Penalty Provision for the offences indicated above is Section 9 of By-law No. 2012-19, a certified copy of which has been filed.

NOTE: Set fine schedule subject to the approval of the Ministry of the Attorney General.