

THE CORPORATION OF THE TOWN OF MILTON

BY-LAW NO. 048-2011

BEING A BY-LAW TO REGULATE OPEN AIR FIRES IN THE TOWN OF MILTON

WHEREAS Section 8 of the Municipal Act, S.O. 2001, c. 25, provides that powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues.

AND WHEREAS Section 9 of the Municipal Act, 2001 provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purposes of exercising its authority under the Act;

AND WHEREAS Section 7.1 of the Fire Protection and Prevention Act, 1997, S.O. 1997, c. 4, provides that a municipality may pass a by-law to regulate fire prevention and the setting of open air fires, including establishing the times during which open air fires may be set and the precautions to be observed by persons setting such fires;

NOW THEREFORE the Council of the Corporation of the Town of Milton hereby enacts as follows:

1. DEFINITIONS

1. In this By-law:

- (a) *"Approved"* means approved by the Chief Fire Official.
- (b) *"Barrel or Drum"* means a large container, usually cylindrical, made of non-combustible material of various capacity.
- (c) *"Chief Fire Official"* shall mean the Assistant to the Fire Marshal who is the Municipal Fire Chief or a member or members of the Fire Department appointed by the Municipal Fire Chief under the FPPA or a person appointed by the Fire Marshal under the FPPA;
- (d) *"Camp Fire"* means an open fire area where the size of the fire is limited to the size of the device/area provided by the "campground" and is maintained solely for the purposes of cooking food, warmth and recreational enjoyment.

- (e) “*Camp Site*” means a public or private park area designated for camping purposes.
- (f) “*Campground*” means an area of land owned or operated by a person and that contains camp sites for the purpose of providing overnight accommodation for tents and trailers;
- (g) “*Council*” means the Council of the Corporation of the Town of Milton;
- (h) “*Dangerous Condition*” means:
 - (i) a lack of precipitation which increases the risk of the spread of fire,
 - (ii) wind speeds which, in the opinion of the *Chief Fire Official*, increase the spread of fire, or
 - (iii) any other condition declared by the *Chief Fire Official* to be a dangerous condition, from time to time, which increases the risk of the spread of fire;
- (i) “*Equipment and Resources*” means sufficient personnel and equipment such as rakes, shovels, backhoes, bulldozers, front-end loaders, and/or water on-site required to control a fire;
- (j) “*Fire*” means any fire set in the open air by any person within the boundaries of the Municipality;
- (k) “*Fire Department*” means the Town of Milton Fire Department (also referred to as Fire and Emergency Services, or Fire and Rescue);
- (l) “*Municipality*” means the Corporation of the Town of Milton;
- (m) “*Ontario Fire Code*” means O. Reg. 213/07 made under the Fire Protection and Prevention Act 1997, S.O. 1997.c.4, as amended;
- (n) “*Open Air Burn*” means the burning of such materials such as wood, cardboard, tree limbs, brush and garden waste where the flame is not wholly contained and includes campfires, brush fires, burn drums and outdoor fire container, and “open air burning” shall have the same meaning;
- (o) “*Outdoor Fire Container*” means a small non-combustible container used to contain a small fire and includes, but is not limited to, chimineas, metal tubs, fire pits and outdoor brick fireplaces;

- (p) "Owner" means any person, firm or corporation having control over any portion of the building or property under consideration and includes the persons in the building or property;
- (q) "Permit" means the permit issued by the *Chief Fire Official* signifying permission to set a fire and establishing the conditions under which the permit is granted;
- (r) "Person" means any individual, association, firm, partnership, corporation, agent or trustee and their heirs, executors, or other legal representation of a person;
- (s) "Smog Alert" means an alert issued by the Ministry of the Environment with respect to air quality in the Region of Halton;
- (t) "User Fee By-law" means the schedule of rates and fees approved by Milton Council, as amended from time to time;
- (u) "Wind Speed" means the wind speed for Milton as reported on the Weather Network website.
(www.theweathernetwork.com/weather/caon0434)

2. GENERAL PROVISIONS (ALL FIRES)

- 2.1 No person shall set a *fire* or allow a *fire* to burn without first having obtained a *permit* from the *Chief Fire Official*.
- 2.2 No person being the owner or tenant in possession of lands within the *Municipality* shall cause or permit a *fire* to be set on such lands unless a *permit* has been issued by the *Chief Fire Official* in respect of that *fire*.
- 2.3 In the absence of being issued a *permit*, an owner shall be deemed to have permitted a *fire* to burn and the owner assumes all responsibility and liability where a *fire* has been set or permitted to burn in the open air;
- 2.4 Every person setting, permitting to be set, maintaining, or permitting to be maintained, an *open air burn* authorized under this part shall have legal title to the property to which the *open air burn* is to occur, or the *person*, or permit holder, shall obtain the prior written consent of the *person* having legal title to the property.
- 2.5 Every *person* setting, permitting to be set, maintaining, or permitting to be maintained, an *open air burn* authorized under this part shall allow, at reasonable times, *Fire Department* staff to inspect the location or proposed location of the *open air burn*.

- 2.6 Notwithstanding any provisions herein, no *person* shall cause or permit a *fire* to be set:
- (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 other public property within the *Municipality*;
 - (c) in any park owned or operated by the *Municipality* without the written permission of the *Municipality*;
 - (d) in the front or side yard of any residentially, commercially or industrially zoned property within the *Municipality* unless otherwise approved by the *Chief Fire Official*;
 - (e) where the consumption of material will exceed the limit set by the *Chief Fire Official*;
 - (f) unless the *equipment and resources* designated on the *permit* are available at the fire site at all times during the *fire*;
 - (g) with the aid of flammable or combustible liquids or accelerants of any kind;
 - (h) unless the *person* to whom the *permit* has been issued or such other *person* as may be designated in the *permit* is at least eighteen (18) years of age, and is in attendance at the *fire* in a responsible and supervisory capacity at all times until such time as the *fire* has been completely extinguished;
 - (i) on any site, or in the vicinity of any site, where construction or related activities are carried on;
 - (j) in any outdoor fireplace or any other burning appliance unless same is approved by the *Chief Fire Official*;
 - (k) that uses prohibited materials, which include garbage, pressure treated or creosote treated wood, or any combustibles that produce toxic fumes other than those produced by the burning of wood, tree limbs or branches;
 - (l) at times when a *Smog Alert* has been declared;
 - (m) when a *fire* ban has been issued by the *Chief Fire Official*.
- 2.7 No *person* shall cause or permit a *fire* to cause or increase the likelihood of any of the following:
- (a) smoke or *fire* damage to property;
 - (b) a decrease in visibility on any highway or roadway;

- (c) odour or smoke to cause discomfort to persons, hazards to health, or loss of enjoyment of normal use of property in the immediate area. Obtaining authorization to have an open air *fire* does not relieve an owner from his/her obligation to ensure that smoke does not interfere with the ability of neighbours to enjoy their properties or conduct their business without disruption; and
 - (d) a spread of *fire* through grass or brush area beyond its intended limits.
- 2.8 All *persons* approved to conduct open air burning shall ensure that all *fires* are completely extinguished before the site is vacated.
- 2.9 No *fire* in the open air shall be started or maintained when the *wind speed* is in excess of thirty (30) kilometers per hour.

3. EXEMPTIONS

- 3.1 The *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.
- 3.2 The *Municipality* shall be exempt from the provisions of this By-law with respect to open air fires related to municipal works.
- 3.3 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 Ontario Fire Code.
- 3.4 No *permit* shall be required if the burning consists of a small confined *fire* supervised at all times and used to cook food on a grille or barbeque.
- 3.5 No *permit* shall be required for commercially produced gas fired appliances conforming to the applicable Canadian Standards Association (CSA) codes and standards.

4. OUTDOOR FIRE CONTAINERS

- 4.1 No *person* shall conduct, permit or allow an *open air burn* in an *outdoor fire container* except between the hours of dawn to 1:00 a.m.
- 4.2 No *person* shall burn, attempt to burn or permit the burning of a volume of combustible materials in an *outdoor fire container* greater than 2 feet (61 cm) in length by 2 feet (61 cm) in width by 2 feet (61 cm) in height.
- 4.3 *Persons* shall contain the *fire* within the *outdoor fire container* at all times.
- 4.4 Dry fire wood shall be the only material that is to be burned in an *outdoor fire container*.

- 4.5 No *person* shall permit or allow *outdoor fire containers* to be located:
- (i) less than 5 meters (16.4 feet) from any building, structure, property line, tree, hedge, fence, roadway, overhead wire or other combustible article;
 - (ii) on a combustible surface extending beyond the container in all directions to a dimension equal to the diameter of the outdoor fire container.
- 4.6 Open air burning shall be confined to a location that provides for a safe distance clearance from combustible structures or objects when used in a licensed *campground*.

5. REQUIREMENTS FOR OPEN AIR BURNING - BRUSH FIRES

- 5.1 No *person* shall burn, attempt to burn or permit the burning of material in an open fire, fire pit or barrel/drum that is greater than 1.2 meters (4 feet) in length, width and height or in a burning barrel/drum;
- 5.2 No *person* shall locate, permit or allow an open air *fire* to be located less than 15 meters (50 feet) from any building, structure, property line, tree, hedge, fence, roadway, overhead wire or other combustible article.
- 5.3 *Persons* shall:
- (i) ignite and extinguish the *fire* between sunrise and sunset of the same day.
 - (ii) notify the *Fire Department* in person or by telephone prior to the *open air burn* and at the conclusion of the *open air burn*, and shall provide their permit number and municipal address to the *Fire Department*.
- 5.4 Failure to notify the *Fire Department* prior to, or at the conclusion of, any *open air burn* which results in response to the incident by the *Fire Department* shall result in fines set out in the *User Fee By-law - Burning Permit Violations* (per truck response).
- 5.5 Open air burning shall be attended, controlled and supervised by the permit holder or their representative at all times and the *fire* shall be completely extinguished before the burn site is vacated.

6. REQUIREMENTS FOR OPEN AIR BURNING - AGRICULTURAL LANDS

- 6.1 A *person* may conduct an *open air burn* if it is part of a normal farm practice carried on as part of an agricultural operation, as those defined in the Farming and Food Production Act, 1998, S.O. 1998, c.1, on lands zoned for agricultural use, and subject to the conditions set out in this part.
- 6.2 No *person* shall burn, attempt to burn or permit the burning of material in an *open air burn* on agricultural lands that is greater than 3 meters (10 feet) or in length, width and height.

- 6.3 No *person* shall locate, permit or allow the *open air burn* to be located less than 30 meters (100 feet) away from any building, structure, property line, tree, hedge, fence, roadway, overhead wire or combustible article;
- 6.4 *Persons* shall:
- (i) ignite and extinguish the *fire* between sunrise and sunset of the same day; and
 - (ii) notify the *Fire Department* in person or by telephone prior to the *open air burn* and at the conclusion of the *open air burn*, and shall provide their permit number and municipal address to the *Fire Department*.
- 6.5 Failure to notify the *Fire Department* prior to, or at the conclusion of, any *open air burn* which results in response to the incident by the *Fire Department* shall result in fines set out in the *User Fee By-law - Burning Permit Violations* (per truck response).
- 6.6 Open air burning shall be attended, controlled and supervised by the permit holder or their representative at all times and the *fire* shall be completely extinguished before the burn site is vacated.

7. REQUIREMENTS FOR CAMPGROUNDS / CAMP SITES

- 7.1 Camp fires shall be confined to a location that provides for a safe distance clearance from combustible structures or objects. A person setting or maintaining a camp fire at a Camp Ground / Camp Site shall do so in the provided location and in compliance with all the rules and regulations of the owner which have been "approved" by the Milton Fire Department.

8. SPECIFIC EVENTS OR CONTROLLED BURNS

- 8.1 All *persons* seeking permission to hold a special event or controlled *fire* involving an *open air burn* that is not governed within Sections 4, 5 and 6 shall apply in writing to the *Chief Fire Official*. A "burn plan" which contains an assessment of the risks and safety precautions that will be taken shall be included with the request.

9. APPLICATION FOR AN OPEN AIR BURN PERMIT

- 9.1 Any person eighteen (18) years of age or older may make written application for an *open air burn permit* to the *Chief Fire Official* prior to the proposed date of the first *open air burn*.
- 9.2 The application shall include:
- (a) the name, address and phone number of the applicant;
 - (b) the property owner's written consent to the *open air burn*, if the applicant is not the owner of the property;

- (c) the municipal address of the location of the proposed *open air burn* if it differs from the address of the applicant;
- (d) the municipal address number posted as required by House Numbering By-law No. 026-2010;
- (e) a signed Release and Indemnity form; and
- (f) the applicable *permit* fee as set out in the *User Fee By-law*.

9.3 A *permit* issued under this By-law is valid on the date of issue and for the balance of the calendar year in which the *permit* was issued.

10. REVOCATION

10.1 Permits issued under this By-law may be revoked by the *Chief Fire Official* if, in the opinion of the *Chief Fire Official*, a *dangerous condition* exists in or near the site of the open air *fire*.

10.2 Permits issued under this By-law may be revoked by the *Chief Fire Official* if the permit holder fails to comply with the requirements of the *permit* and any other provisions of this By-law.

10.3 Permits that have been revoked by the *Chief Fire Official* for failure to comply with the requirements of the *permit* and any other provisions of this By-law will be subject to an inspection of the site at the owner's expense before the *permit* can be re-instated.

11. ADMINISTRATION AND ENFORCEMENT

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

12. INDEMNIFICATION

12.1 The applicant for a *permit* as required under this By-law shall indemnify and save harmless the *Municipality* from any and all claims, demands, causes of action, loss, costs or damages that the *Municipality* may suffer, incur or be liable for resulting from the performance of the applicant as set out in this By-law, whether with or without negligence on the part of the applicant, the applicant's employees, directors, contractors and agents.

13. SEVERABILITY

13.1 If a court or any tribunal of competent jurisdiction declares any section or part of this By-law invalid, the remainder of this By-law shall continue in force unless the court or tribunal makes an order to the contrary.

14. SHORT TITLE

14.1 This By-law shall be known as the Open Air Burning By-law.

15. PENALTY

- 15.1 Any person who violates any provisions of this By-law is, upon conviction, guilty of an offence and shall be liable to a fine, subject to the provisions of the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended, and be subjected to any other penalties permitted by law for each offence. Each day such violation continues, shall constitute a separate offence and shall be punishable as such.
- 15.2 Any person who violates any provisions of this By-law is, upon conviction, guilty of an offence under the Fire Protection and Prevention Act, 1997, and if convicted is liable to a fine of not more than \$50,000 or imprisonment for a term of not more than one year, or both.
- 15.3 In the event the *Fire Department* responds to a open air burning incident being conducted without a *permit*, or in violation of the conditions of the *permit*, or when a *person* has failed to call back to acknowledge the *fire* has been extinguished, or who fails to extinguish a *fire* once notification to do so has been given to him/her by the *Chief Fire Official*, the full costs of extinguishment, including labour costs and equipment costs as determined by the *Chief Fire Official*, may be charged to the property owner and/or permit holder pursuant to the *Town's User Fee By-law*, as amended from time to time.

16. ENFORCEMENT

- 16.1 This By-law shall be enforced by the *Fire Department*, Municipal Law Enforcement Officers, Assistants to the Fire Marshall, or such other persons as *Council* may designate.
- 16.2 No *person* shall hinder or obstruct, or attempt to hinder or obstruct those individuals charged with the enforcement of this By-law under section 16.1 from carrying out their duties under this By-law.

17. REPEALS

- 17.1 Town Policy No. 076 Permit – Open Air Burning is hereby repealed.

18. EFFECT

18.1 This By-law shall come into force and effect on the day it is passed.

READ A FIRST, SECOND AND THIRD TIME and **FINALLY PASSED** this 30th day of May, 2011.



Gordon A. Krantz

Mayor



Troy McHarg

Town Clerk