

# THE CORPORATION OF THE TOWN OF MIDLAND

## BY-LAW 2015-52

### **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 2005-61**

**WHEREAS** pursuant to section 9 of the Municipal Act, 2001 S.O. 2001, chapter 25 a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

**AND WHEREAS** section 128 of the Municipal Act, 2001 S.O. 2001, chapter 25 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 public nuisances;

**AND WHEREAS** sections 425, 426 and 429 of the Municipal Act, 2001 S.O. 2001, chapter 25, states a municipality may pass By-laws providing that a person who contravenes a By-law of the municipality passed under this Act is guilty of an offence, no person shall hinder or obstruct, or attempt to hinder or obstruct, any person who is exercising a power or performing a duty under this Act or under a By-law passed under this Act and a municipality may establish a system of fines for offences under a By-law of the municipality passed under this Act;

**AND WHEREAS** pursuant to section 7.1 (1) of the Fire Protection and Prevention Act, 1997, c.4, as amended a council of a municipality may pass By-laws regulating fire prevention, including the prevention of the spreading of fires and to regulate the setting of open air fires, including establishing the times during which open air fires may be set;

**AND WHEREAS** the Fire Protection and Prevention Act 1997, and the Ontario Fire Code, O. Reg. 213/07, as amended Div. B s.2.4.4.4.(1) 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, used to cook food or a grill, barbecue or spit, commensurate with the type and quantity of food being cooked;

**AND WHEREAS** Council now deems it expedient to enact a by-law for regulating the setting of open air fire, including establishing the times during which open air fires may be set;

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWN OF MIDLAND HEREBY ENACTS AS FOLLOWS:**

#### **1. DEFINITIONS**

In this By-law:

- 1.1 **“Applicant”** means an owner of the property in which the permit is being issued for or other such persons authorized by the owner in writing.
- 1.2 **“Approved”** means by the Chief Fire Official, Designate or Officer.

- 1.3 **“Barbeque”** includes any portable appliance, hibachi or grill intended for cooking over an open air fire.
- 1.4 **“Chief Fire Official”** means 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 Subsection 1.1.8. of the Ontario Fire Code, 1997.
- 1.5 **“Chimineea”** means a clay, porcelain or metal receptacle used for the purposes of burning and constitutes as an open air fire under this by-law.
- 1.6 **“Fire”** means a fire that may be extinguished using on site resources, contains not more than 0.6 cubic metre of material burning at any one time and does not exceeding 0.6 metre in diameter.
- 1.7 **“Extinguish”** means to put out or quench a fire completely, no smoke, hot or glowing embers are to remain.
- 1.8 **“Gas-fired outdoor campfire devices”** means listed ULC or CSA gas (natural, propane) appliances, which shall not constitute open air burning under this by-law.
- 1.9 **“Humidex”** means the level of relative humidity as calculated by Environment Canada within the geographical region of Midland, usually reported in the warmer months from May to September.
- 1.10 **“Officer”** means a Municipal Law Enforcement Officer, Police Officer, Chief Fire Official or Designate.
- 1.11 **“Open Air”** means any open place, yard, field or construction area which is not enclosed by a building or structure.
- 1.12 **“Owner”** means the owner registered on title for lands, buildings or premise subject to the provisions of this by-law.
- 1.13 **“Permit”** means a fire permit issued by the Town for the provisions of permitting open air burning in accordance with the terms and conditions contained within this by-law.
- 1.14 **“Person”** means all transients, owners, tenants, and occupiers of lands within the Town and shall include any individual, association, firm, partnership, incorporated company, corporation, agent or trustee and the heirs, executors or other legal representatives of a person to who the context can apply according to law.
- 1.15 **“Property”** means any ground, yard, lot, land or other real property whether or not occupied by a building or structure that is located within the Town.
- 1.16 **“Shall”** mean imperative or must.

- 1.17 “**Smoke**” means the visible vapor and gases given off by a burning or smoldering substance where clean combustion has not occurred.
- 1.18 “**Town**” means The Corporation of the Town of Midland and includes, where the context permits, its duly authorized officers, contractors, employees and agents.

## **2. WORD USAGE**

- 2.1 As used in this by-law, words used in the present tense include the future; words used in the masculine gender include the feminine and neuter; and the singular number includes the plural and the plural the singular.
- 2.2 The headings and subheadings used in this by-Law shall not form a part of the by-law, but shall be deemed to be inserted for convenience of reference only.

## **3. GENERAL PROHIBITIONS**

- 3.1 No person shall set or maintain a fire in open air unless a permit has been issued by the Town under this by-law.
- 3.2 No person shall set a fire or permit a fire to burn when the wind speed exceeds twenty-four (24) kilometers per hour.
- 3.3 No person shall set a fire or permit a fire to burn when the Ministry of the Environment has issued a “Smog Alert” or Humidex advisory for South-Central Ontario.
- 3.4 No person shall set a fire or permit a fire to burn when rain or fog is present.
- 3.5 No person shall set a fire or permit a fire to burn other than between the hours of 4:00 p.m. through 12 midnight, unless otherwise expressly permitted by the Officer.
- 3.6 No person shall burn any material other than clean dry wood which is free and clear from any finishes, preservatives or other material that may be affixed to the wood in accordance with the Environmental Protection Act, R.S.O. 1990, c. E.19, as amended.
- 3.7 No person shall set or maintain a fire that is creating a nuisance or has an adverse effect on a neighbouring property(s) or property owners.
- 3.8 No person shall set or maintain a fire in a manner that creates excessive smoke.
- 3.9 No person shall set or maintain a fire that contains more than 0.6 cubic metre of material burning at any one time and exceeds 0.6 metres in diameter.

- 3.10 No person shall set or maintain a fire that is within 3 metres of any structure, hedge, fence, vehicular roadway, property line or overhead wire or obstruction of any kind or nature whatsoever.
- 3.11 No person shall set or maintain a fire without first ensuring a person able to supervise such fire and who is equipped with adequate tools and/or water to extinguish it promptly in the event of danger of the spread of such fire and is in constant immediate attendance at the specific place where the fire is burning.
- 3.12 No person shall leave the specific place where the fire is burning without first ensuring such fire is completely extinguished.
- 3.13 No person shall set a fire or permit a fire when a fire ban is in effect.
- 3.14 No person shall set or maintain a fire in a chiminea/outdoor fireplace unless it is located on a non-combustible surface extending beyond the unit to a dimension equal to the height of the unit.

#### **4. PERMIT NOT REQUIRED**

- 4.1 A permit shall not be required for the purpose of actively cooking food on a grill or a barbecue, gas-fired outdoor campfire devices for which is supervised at all times, shall not be deemed to be an “open air” fire for the purposes of this by-law. This provision shall be at the discretion of the Officer.
- 4.2 A permit shall not be required for the purpose of an “open air” fire that is located in a lawfully zoned campground. All other provisions of this by-law shall apply.

#### **5. REQUIREMENTS TO OBTAIN A PERMIT**

- 5.1 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. The Town reserves the right to withhold said permit in order to contact the owner to confirm said written permission.
- 5.2 The prescribed fee for the issuance of a fire permit shall be set out in within the Towns User Fees By-law.
- 5.3 Permits shall be issued on an annual basis. Annual shall mean from the date of purchase until December 31 of that given year.

#### **6. TERMS AND CONDITIONS OF PERMIT**

- 6.1 No person shall set or maintain a fire in open air in accordance with the general prohibitions outlined in section 3 of this by-law.
- 6.2 Every person who applies for, receives, and signs a fire permit acknowledges an understanding of the provisions contained within this by-law and assumes all

responsibility and liability including any damage or injury to persons or property with respect to the setting of a fire or permitting the fire to burn.

- 6.3 The person supervising the fire shall take every reasonable precaution to prevent smoke being generated or becoming a nuisance. In order to avoid excessive smoke, persons shall:
- a) Ensure that all material is dried to greatest extent practicable.
  - b) Material is loosely stacked to eliminate dirt from the pile and to promote an adequate air supply to the burning.
  - c) Build piles that are at least as tall as they are wide.
  - d) Not include wood larger than six inches in diameter or stumps in the pile as these materials are likely to smolder and produce large amounts of smoke.
  - e) As a pile burns down, move unburned and smoldering material from the perimeter of the pile into the center of the fire.
- 6.4 Permits are issued to the person, who is deemed to be the permit holder, for the specified property as noted on the permit. Permits are not transferable or refundable between persons and/or properties.
- 6.5 It shall be the responsibility of the permit holder to, prior to setting an open air fire, to ensure that a fire ban or elevated humidex is not in effect.
- 6.6 A permit may be revoked or denied by the Officer if the permit holder fails to or has previously failed to comply with the requirements of the permit and/or any other provision of this by-law.
- 6.7 The Officer 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.
- 6.8 Where an owner is in default of doing any matter or thing directed or required to be done under this by-law, the Officer may direct such matter or thing to be done at the owner's expense. The Town shall recover the related expenses due to remedial action taken, by action, or in the same manner as municipal taxes.
- 6.9 For the purpose of this by-law, the owner of a property on which a fire has been set or permitted to burn in the open air shall be deemed to have permitted the fire to burn and is deemed responsible for such.

## **7. EXCEPTIONS AND VARIATIONS**

The following are exempt from the provisions of this by-law.

- 7.1 Barbeques and outdoor gas appliances installed and operated according to the manufacturer's specifications using commercial fuels such as propane and natural gas.

- 7.2 The Midland Fire Department for the purposes of educating and training individuals.
- 7.3 The Chief Fire Official may grant special approval for a variance to the open air burning regulations contained in section 3.
- 7.4 Any person may make application in writing to the Chief Fire Official for special approval of open air burning with religious, cultural or environmental significance, as an exception to the provisions of this by-law. Any such application shall include statement(s) to describe the purpose, reason and intent of the request, location and size of the fire, date and time of the fire, safety measures and supervision arrangements. The application shall also include a site diagram showing the fire location relative to buildings / structures, trees, shrubs, hedges, fences, overhead obstructions, flammable materials and property lines.
- 7.5 Where the applicant is not the owner of the land on which the fire is to occur, the applicant shall together with his application and at the time of application, provide written permission of the property owner to submit application for open air burning. Such permission shall be evidence by the signature of the registered owner of the land on the application pursuant to this by-law.
- 7.6 The Chief Fire Official may attach such conditions as deemed appropriate to any approval. In considering the application for the variance the Chief Fire Official shall consider the purpose, reason, and intent for the variance, location of the fire, size of the fire, safety measures, supervision arrangements, time of year, time of day, and the anticipated weather conditions. The authority for approval rests solely with the Chief Fire Official.

## **8. SEVERABILITY**

- 8.1 If a court of competent jurisdiction should declare any section or part of a section of this by-Law to be invalid such section or part of a section shall not be construed as having persuaded or influenced Council to pass the remainder of this by-law and it is hereby declared that the remainder of this by-law shall be valid and shall remain in force.
- 8.2 Where the provisions of this by-law conflict with the provisions of any other by-law or Act, the more restrictive provisions shall apply.

## **9. ADMINISTRATION/ENFORCEMENT**

- 9.1 This By-law shall be administered by the Chief Fire Official and shall be enforced by an Officer.

**10. PENALTY PROVISIONS**

- 10.1 Any owner or person who contravenes any provisions of this by-law is guilty of an offence and upon conviction is liable to a fine as provided in the Provincial Offences Act, R.S.O. 1990, c. P.33, as may be amended from time to time.
- 10.2 Every owner or person who knowingly concurs in the contravention of any provision of this by-law is guilty of an offence.
- 10.3 It shall be an offence for a person to hinder or obstruct, or attempt to hinder or obstruct, an Officer who is exercising a power or performing a duty under the *Municipal Act, 2001*, as amended, or under a by-law passed under the *Municipal Act, 2001*, as amended,.
- 10.4 Any Person who has been alleged to have contravened any of the provisions of a by-law passed under the *Municipal Act, 2001*, as amended, 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 the Officer's duties.
- 10.5 It shall be an offence to furnish false information in the Application for a Permit.

**11. REPEAL**

- 11.1 That by-law 2005-61 is hereby repealed.

**12. SHORT FORM TITLE**

- 12.1 This by-law shall be referred to as the "Open Air Burning By-law".

**13. EFFECTIVE DATE**

- 13.1 This by-law shall come into force and effect upon approval of the set fines appended hereto, from the Ontario Court of Justice (Provincial Division).

**BY-LAW READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 27<sup>TH</sup> DAY OF JULY, 2015.**

**THE CORPORATION OF THE TOWN OF MIDLAND**

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**MAYOR**

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**CLERK**

## THE CORPORATION OF THE TOWN OF MIDLAND

### Part 1 Provincial Offences Act

By-law 2015-52 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 2005-61.

<b>Item</b>	<b>Column 1 Short Form Wording</b>	<b>Column 2 Provision Creating or Defining Offence</b>	<b>Column 3 Set Fine</b>
1.	Set or maintain fire without permit.	Section 3.1	\$160.00
2.	Set or permit fire during high winds.	Section 3.2	\$160.00
3.	Set or permit fire during smog or humidex advisory.	Section 3.3	\$160.00
4.	Set or permit fire during rain or fog.	Section 3.4	\$160.00
5.	Set or permit fire outside of permitted hours.	Section 3.5	\$160.00
6.	Burn other than clean dry wood.	Section 3.6	\$300.00
7.	Set or maintain fire that creates a nuisance.	Section 3.7	\$160.00
8.	Set or maintain fire that creates excessive smoke.	Section 3.8	\$160.00
9.	Set or maintain fire larger than 0.6 metres.	Section 3.9	\$160.00
10.	Set or maintain fire within 3 metres of structure.	Section 3.10	\$160.00
11.	Set or maintain fire within 3 metres of hedge.	Section 3.10	\$160.00
12.	Set or maintain fire within 3 metres of fence.	Section 3.10	\$160.00
13.	Set or maintain fire within 3 metres of vehicular roadway.	Section 3.10	\$160.00
14.	Set or maintain fire within 3 metres of property line.	Section 3.10	\$160.00
15.	Set or maintain fire within 3 metres of overhead wire.	Section 3.10	\$160.00
16.	Set or maintain fire within 3 metres of obstruction.	Section 3.10	\$160.00
17.	Set or maintain unsupervised fire.	Section 3.11	\$300.00
18.	Fail to have adequate tools/water.	Section 3.11	\$300.00
19.	Leave fire without extinguishing.	Section 3.12	\$300.00
20.	Set or permit fire during fire ban.	Section 3.13	\$500.00
21.	Set or maintain fire on combustible surface.	Section 3.14	\$160.00

Note: the penalty provision(s) for the offences indicated above is Section 10 of By-law 2015-52, a certified copy of which has been filed and Section 61 of the *Provincial Offences Act*, R.S.O. 1990, c.P.33.