

**THE CORPORATION OF THE
TOWNSHIP OF MATACHEWAN**

BY – LAW 2018-12

A by-law to regulate open air burning fires in the Township of Matachewan.

Whereas S.7.1 of the Fire Protection and Prevention Act, 1997, S.O. 1997, c.4 as amended, authorizes the Council of a Municipality to pass by-laws regulating the setting of open air fires including establishing the times during which open air fires may be set and regulating fire prevention including the prevention of the spreading of fires;

And Whereas the Ontario Fire Code, O Reg. 213/07, Division B, Article 2.4.4.4. provides that open air burning shall not be permitted unless approved. Unapproved fires must be small, confined, supervised and used to cook food on a grill or barbecue;

And Whereas the Municipal Act, 2001, Section 10 (2) (6) authorizes a municipality to pass By-laws respecting the health, safety and well-being of Persons and the protection of Persons and property;

And Whereas the Municipal Act, 2001, Section 391 states that a municipality may pass by-laws imposing fees or charges on any class of Persons for services or activities provided or done by or on behalf of it;

And Whereas it is deemed advisable to exercise the authority conferred by the Act within the Municipality;

And Whereas Council considers that excessive smoke, smell, airborne sparks with embers to be or could become or cause negative public nuisance by creating negative health effects on neighbouring residents, increasing fire exposure hazards and infringing on the use and enjoyment of neighbouring properties:

Therefore the Municipal Council of the Corporation of the Township of Matachewan enacts as follows:

1. Definitions

In this By-law:

1.1 **“Approved”** means approved by the Chief Fire Official or designate.

1.2 **“Approved Burning Device”** means a device in which a recreational fire may be set, made from pottery, metal or masonry, with a firebox that is no larger than 60 centimetres or 24 inches in diameter, located in an area that will not pose a risk for fire spread and that is equipped with an enclosed hearth with a 6 millimetres or ¼” inch mesh screen completely covering the top, or a hearth that is enclosed on all sides that has a 6 millimetres or ¼” inch mesh screen completely covering the top. It may also include an Approved outdoor fireplace. Continued use of any device that has been created prior to the passing of this bylaw will be allowed provided it is equipped or retrofitted with an approved “Spark Arrester”.

1.3 **“Authorized Agent”** means any Responsible Person who can provide reasonable evidence such as a written letter of permission, that they are authorized to act for the owner of a particular property.

1.4 **“Barbecue”** means an appliance designed and intended solely for the cooking of food in the open air but does not include devices predominantly designed for personal warmth.

1.5 **“Building”** means any structure used or intended for supporting or sheltering any occupancy or acceptable use, but does not include a non-enclosing open-sided structure.

1.6 **“Burn Ban”** means a restriction or prohibition on Open-Air Fires issued by the Chief Fire Official or designate, resulting from a high or extreme fire weather index (FWI) or other hazardous conditions.

1.7 **“Campfire”** means a fire area no larger than 1 metre x 1 metre in diameter, and contained within a non-combustible barrier.

1.8 **“Chief Fire Official”** means the Fire Chief for the Municipality, or his/her designate.

1.9 **“Combustible Material”** means any material, combination of materials, or arrangement of materials in which any portion thereof is susceptible to ignition when exposed to radiant heat, direct flame, or exposure to other burning materials.

1.10 **“Council”** means the Council for the Township of Matachewan.

1.11 **“Dangerous Conditions”** means:

- (a) A lack of precipitation which, as identified by Environment Canada for the area of Matachewan, increases the risk for the spread of fire; or
- (b) Wind speeds which, in the opinion of the Chief Fire Official, increases the risk of the spread of fire; or
- (c) 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.

1.12 **“Effective Barrier”** means an enclosure on the ground with a complete perimeter of metal, masonry, stone or earth, with the enclosure walls being a minimum height of 1/3 the diameter of the enclosure.

1.13 **"Fires in Pits"** means a small fire on the ground either at grade or below grade that is contained within a non-combustible enclosure and equipped with an approved "Spark Arrester".

1.14 **"Incineration"** means the burning of material that is other than material that is permitted to be burned under the provisions of this By-law.

1.15 **"Licensed Recreational Camp"** means any summer camp, tourist camp or trailer camp licensed by the Municipality.

1.20 **"MVFD"** means the Matachewan Volunteer Fire Department.

1.21 **"Multi-unit Residential Building"** means any buildings in which there are three (3) or more residential dwelling units as defined by the Ontario Building Code.

1.22 **"Municipality"** means the Township of Matachewan.

1.23 **"Municipal Law Enforcement Officer"** means that Person or Persons appointed by Council for the purpose of enforcing By-laws or a Police Officer.

1.24 **"Ontario Fire Code"** means O.Reg. 213/07 made under the provisions of the Fire Protection and Prevention Act 1997, S.O.1997.c.4, as amended.

1.25 **"Open-Air Fire"** means any fire set outdoors, i.e. not in an enclosed building or any fire set in a device or appliance located outside of a building; but does not include: fires in devices installed outside of a Building that are used as a source of heat or power for the building provided that such devices are certified for this purpose by a recognized agency, fires set in Buildings for the purposes of drying agricultural products or smoking food products, and fires that are ancillary to a manufacturing process.

1.26 **"Person"** means any individual, association, firm, partnership, corporation or trustee and their heirs, executors, or other legal representation of a person.

1.27 **"Recreational Fires"** shall mean a small, contained fire not exceeding 1 metre squared associated with the use of an Approved Burning Device or an Open-Air Fire burn area that complies with the provisions of this By-law.

1.28 **"Responsible Person"** means any adult person (18 years of age or older) who, in the opinion of the Municipal Law Enforcement Officer is capable of exercising the required judgment and who is capable of performing the necessary actions to control a fire and prevent its unwanted spread.

1.29 **"Spark Arrester"** means a screen as described in Item 1.2 of this By-law.

1.30 **"Strike or Lockout"** means a strike or lockout as defined in the Labour Relations Act, 1995, S.O. 1995, c.1. as amended.

2. Prohibitions

2.1 No Person shall set or maintain a fire for the purpose of burning brush, grass, bark or other debris. All debris shall be taken to the dump for proper disposal.

2.2 No Person shall leave an Open-Air Fire unattended for any length of time.

2.3 No Person shall set or maintain an Open-Air Fire on any roadway, highway, park, easement, beach, or other public property owned or operated by the Municipality without permission.

2.4 Any property where a Multi-Residential Building is located is prohibited from having multiple open-air burning appliances.

2.5 No Person shall set or maintain an Open-Air Fire when a Burn Ban has been declared by the Chief Fire Official or designate or when Dangerous Conditions exist that would propagate the spread of a fire.

2.6 No Person shall set or maintain an Open-Air Fire that burns any materials other than the following:

- a) Clean wood or wood by-products without treatments or other contaminants;
- b) Paper or cardboard to be ignited only to start the fire;
- c) Dry brush, stumps, hay, straw, grass, leaves and other dry yard or natural agricultural materials, but not including animal waste or parts;
- d) Natural gas or other hydrocarbon gases or liquids used as appliance fuels;
- e) Charcoal or briquette materials intended for Barbeque use; or
- f) Other clean burning Combustible Materials that have been Approved by the Chief Fire Official or designate.

2.7 No Person shall set or maintain an Open-Air Fire unless equipped with an appropriate means to extinguish the fire when necessary and the Person has a means to immediately summon the MVFD to the location.

2.8 No Person shall set an Open-Air Fire within a distance less than 5 meters (16.4 feet) from any bush or tree line and forested area.

2.9 No Person shall set or maintain an Open-Air Fire where the following conditions exist: Burn Bans, and winds exceeding 30 kilometres (20 miles) per hour or winds blowing in a direction that will have a negative impact on neighbours or on the safety of motorists on roadways and/or highways.

2.10 No Person shall set or maintain an Open-Air Fire that is less than 2 metres (6 feet) from a tent structure. Open flames are not permitted within tent structures without permission from the Chief Fire Official or designate.

2.11 No person shall set or maintain an Open-Air Fire where:

- a) The smoke or other emissions travel to a neighbouring property to such an extent or degree that, in the opinion of a Municipal Law Enforcement Officer it may cause discomfort to Persons, loss of enjoyment or interference with the normal use of property or interference with the normal operation of a business.
- b) The smoke or other emissions that travel across any public roadway to the extent or degree that, in the opinion of a Municipal Law Enforcement Officer, it may cause a public safety hazard to any Person traveling on the roadway; or
- c) The fire, smoke or other emissions may elicit a response from the MVFD.

2.12 No Person shall set or maintain an Open-Air Fire for the purpose of Incineration.

2.13 All Open-Air Fires must be completely extinguished before the burn site is vacated.

3. Recreational Fires, Campfires, Fires in Pits

3.1 Recreational Fires, Campfires and Fires in pits may be set and maintained within the Municipality provided that:

- a) Permission is obtained from the property owner or the fire is located in a Licensed Recreational Campground;
- b) There is compliance with all of the provisions contained within Part 2 of this By-law.
- c) The fire is for the provision of warmth, recreation or cooking;
- d) The area designated for the fire is not more than one (1) square metre (39.37² inches) in any horizontal dimension and the flame is not more than 92 centimetres (36.22 inches) in height or contained within a pit specifically designed for Open-Air burning and has an Effective Barrier to prevent the spread of fire surrounding the container or pit. The dimensions of the fuel shall be no greater than the dimensions of the container or pit and shall be totally confined within the container or pit at all times;
- e) The fire is controlled such that flames and hot embers do not pose a risk of fire to nearby Combustible Materials and that the fire is attended/supervised at all times by a Responsible Person; and

4. By-law Exemptions

The following types of Open-Air Fires may be set and maintained within the Municipality:

4.1 Cooking Fires

a) A charcoal, gas, briquette or wood fire, that is limited in size to 1 metre squared, and is confined within a barbecue, grill or other enclosure that is constructed of metal, ceramic, stone, or masonry, and that is continuously supervised by a Responsible Person, and provided the fire is in compliance with all of the provisions contained within Part 2 of this By-law.

4.2 Construction or Maintenance Activities

a) An appliance of a portable nature (e.g.-salamander) which requires an open flame for the heating of a material during a construction or maintenance process, provided such appliance is safe to operate, and provided that it is not operated in such a manner as to create a fire hazard.

4.3 Other Flaming Devices

a) Approved Burning Devices provided such devices are not operated in or near dry vegetation; and such devices are not operated in any other place conducive to the development or the spread of a fire or explosion.

4.4 Approved Burning Devices

4.4.1 A fire in an Approved Burning Device on any privately owned lands is permitted provided that:

- a) Only clean and dry wood, charcoal or briquettes shall be burned;
- b) The Approved Burning Device is not located on or near any combustible surface;
- c) The fire is controlled such that flames and hot embers do not pose an undue risk of fire to nearby Combustible Materials; and
- d) The Approved Burning Device must provide an Effective Barrier to the spread of a fire.

4.5 Wood Fueled Boilers

4.5.1 Wood fueled boilers utilized as a heat source are exempt from the provisions of this By-law.

4.6 Strikes, Lock Outs, Demonstrations

a) Open-Air burning for the purposes of maintaining warmth during a Strike or Lockout or a demonstration.

4.7 Prescribed Burns

a) Burns conducted by a government agency or their designate for the purposes of maintaining grassland or forest ecology are exempt from the provisions of this By-law.

4.8 Other Conditions for Exempt Fires

a) Any Person who sets or maintains an exempt Open-Air Fire shall be responsible to take all necessary steps to ensure that all of the conditions specified in this By-law are met.

b) At the discretion of the property owner, Barbeques may be permitted on a porch, balcony, or veranda of a Multi-unit Residential Building. Barbeques shall be not less than 1.5 meters (5 feet) away from any combustible surface and smoke or emissions shall not interfere with the common enjoyment of neighbouring suites.

c) Approved Burning Devices other than a **Barbecue** on a porch or balcony shall not be located within 1 metre (3.28 feet) of any roof and shall be located at least 1.5 metres (approximately 4.92 feet) horizontally away from any Combustible Material or the wall of a structure.

d) Burning is prohibited at any location where the conditions exist such that there is a reasonable probability of such fire spreading to any Combustible Material.

5. Burn Ban

5.1 The Chief Fire Official or designate may issue a Burn Ban on any or all Open-Air Fires and cause to be extinguished all Open-Air Fires.

5.2 All Burn Bans shall be posted on the Municipal website.

6. Right to Enter and Enforce

6.1 Members of the MVFD or Municipal By-Law Enforcement Officers shall have the right to enter at all times upon any property to inspect an Open-Air Fire and to enforce this By-law.

6.2 A member of the MVFD shall have the right to enter at all times upon any property to inspect an Open-Air Fire, and if found to be in contravention of the By-law, order the immediate extinguishment of the fire or extinguish the fire themselves utilizing MVFD resources.

7. Fire and Emergency Services are Exempt

7.1 Any fires under the direct and constant supervision and control of the MVFD are exempt from the provisions of this By-law.

8. Offences

8.1 Every Person who contravenes any provisions of this By-law is guilty of an offence and upon conviction is liable to a fine as provided for in the *Ontario Provincial Offences Act* R.S.O. 1990, as amended.

8.2 Municipal Law Enforcement Officers shall have the discretion to take one or more of the following actions for contraventions of this By-law:

b. Require the offender to attend a MVFD training session at their expense.

c. Issue a Certificate of Offence under the provisions of the *Ontario Provincial Offences Act* R.S.O. 1990, Part 1, as amended; and

d. Issue a Summons to Appear under the provisions of the *Ontario Provincial Offences Act* R.S.O. 1990, Part 3, as amended.

8.3 If a contravention of this By-law results in MVFD personnel and vehicles being dispatched to the property, the property owner may be invoiced at the discretion of the Chief Fire Official or designate for the cost of the response in accordance with the Municipality's User Fee By-law.

8.4 An invoice received under Section 8.3 of this By-law may be appealed to the By-law Appeals Committee appointed by Council for the review, confirmation, adjustment of the amount or the withdrawal of the invoice. In all cases the decision of the By-law Appeals Committee shall be final.

8.5 The quantity and type of MVFD vehicles and personnel dispatched for the purposes of extinguishing, controlling, or investigating any Open-air Fire is at the discretion of the Chief Fire Official or his/her designate.

8.6 No owner of a property, or Authorized Agent of such owner, shall fail to comply with any order to comply issued under this By-law. Should the owner of the property, or agent, fail to rectify the condition in accordance with the Order, the Municipality, in addition to other remedies:

a) Shall have the right to enter in or upon the property at any reasonable time without a warrant to correct the non-compliance;

b) Shall not be liable to compensate such owners, occupants, or any other Person having interest in the property by reason of anything done by or on behalf of the Municipality in a reasonable exercise of its power under the provisions of this By-law;

c) May cause a prosecution to be brought against any Person who is in breach of such an order; and

d) May place a lien on the land for the amount spent on the work taken by the Municipality to correct non-compliance with this By-law and this amount shall be deemed to be municipal

real property taxes and shall be collected in the same manner and with the same priorities as municipal real property taxes.

9. Validity

9.1 In the event that any of the provisions of this By-law are deemed ultra-vires by any Court or Board having jurisdiction, the remaining terms and provisions shall remain in full force and effect.

9.2 Schedule "A" attached hereto forms part of this By-law.

READ a first and second and third time, and finally enacted and passed in open Council this 14th day of June, 2018. Signed, sealed and numbered 2018-12

Signature on File

Cheryl Drummond
Mayor

Signature on File

Anne Kmyta
CAO-Clerk-Treasurer

Schedule A
Part I: Provincial Offences Act
Township of Matachewan
BY-LAW 2018-12 TITLE: OPEN AIR BURN BY-LAW

Column 1 Item	Column 2 Short Form Wording	Column 3 Offence Creating Provision	Column 4 Set Fine
1.	Set an Open Air Fire for the purpose of burning brush, grass, bark or other debris.	2.1	\$250.00
2.	Leave an Open Air Fire burn location unattended	2.2	\$250.00
3.	Set an Open-Air Fire on a roadway, highway, park, easement, beach or other public property without permission	2.3	\$250.00
4.	Set an Open-Air Fire during a declared Burn Ban or when Dangerous Conditions exist	2.5 & 2.9	\$250.00
5.	Set an Open-Air Fire within 5.0 metres (16.4 feet) of any bush line, tree line or forested area.	2.8	\$250.00
6.	Set an Open-Air Fire to burn materials that are not permitted to be burned in the By-law	2.6	\$250.00
7.	Set an Open-Air Fire where there is not the appropriate means present at the burn site to extinguish the fire	2.7	\$250.00