

# The Corporation of the Town of Tecumseh

## By-Law Number 2021-50

A by-law to regulate open air fires within the Town of Tecumseh

**Whereas** Council deems it necessary to regulate by By-Law the setting of fire within the Town of Tecumseh for the protection of persons and property in accordance with the authority set out in subsection 10(2)8. of the *Municipal Act, 2001*, S.O. 2001, c. 25;

**And Whereas** Subsection 7.1(1) (b) of the *Fire Protection and Prevention Act*, S.O. 1997, c.4, as amended, provides that a Council of a municipality 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** Subsection 7.1(4) of the *Fire Protection and Prevention Act*, 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 under this section are being complied with;

**And Whereas** Subsection 7.1(5) of the *Fire Protection and Prevention Act*, S.O. 1997, c.4, as amended, provides that the exercise of powers by an officer appointed under this section shall be carried out in accordance with Part XIV of the *Municipal Act, 2001*, S.O. 2001, c. 25 as amended ("Act") other than clause 431 (a) of that Act

**And Whereas** in accordance with Section 425 of the Act, a municipality may pass by-laws providing that a person who contravenes a by-law of the municipality passed under the Act is guilty of an offence;

**And Whereas** in accordance with Section 429 of the Act, a municipality may establish a system of fines for offences under a by-law of the municipality passed under this Act.

**And Whereas** Section 444 of the Act states if a municipality is satisfied that a contravention of a by-law of the municipality passed under this Act has occurred, the municipality may make an order requiring the person who contravened the by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity;

**And Whereas** Section 426(1) of the Act provides that 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 a by-law passed under this Act and that any person who contravenes subsection (1) is guilty of an offence;

**And Whereas** Section 426(4) of the Act states that any person who contravenes subsection (1) is guilty of an offence;

**And Whereas** Section 446(1) of the Act states 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.

**And Whereas** Section 446(3) of the Act states 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.

**Now Therefore the Council of The Corporation of The Town of Tecumseh enacts as follows:**

## **1. Definitions**

In this By-law:

- 1 (1) "burning appliance" means any device designed or engineered to contain a fire within an enclosed or partially enclosed portion of the device.
- 1 (2) "business day" means any day, other than a Saturday, Sunday, statutory holiday within the Province of Ontario or any other day on which the municipal offices of the Town are open for business during normal work hours of 8:30 am to 4:30 pm.
- 1 (3) "competent adult" means any person (18 years of age or older) who is capable of exercising the required judgement and capable of performing the necessary actions to control and prevent its unwanted spread.
- 1 (4) "Deputy Fire Chief" means the Deputy Fire Chief of the Tecumseh Fire and Rescue Services or designate.
- 1 (5) "fire break" means open space that surrounds an open-air fire and serves as a non combustible obstacle to the spread of the fire.
- 1 (6) "Fire Chief" means the Fire Chief of the Tecumseh Fire and Rescue Services or designate.
- 1 (7) "farmer" means the owner or operator of an agricultural operation within an area zoned for agricultural pursuant to the Farming and Food Production Protection Act, 1998.
- 1 (8) "Firefighter" means any person or any rank of person employed in, or appointed to the Tecumseh Fire and Rescue Services and assigned to undertake fire protection or fire prevention services.
- 1 (9) "Fire Prevention Officer" means the Fire Prevention Officer of the Tecumseh Fire and Rescue Services or designate.

- 1 (10) "Full Cost Recovery Basis" means recovery of any and all charges and costs howsoever incurred by the Town directly or indirectly in controlling and extinguishing the open-air fire or attending the location of an open air fire that contravenes this By-law whether or not services are provided.
- 1 (11) "Officer" means the Fire Chief, Deputy Fire Chief or Fire Prevention Officer of the Tecumseh Fire and Rescue Services.
- 1 (12) "open air" means any open place, yard, field, lot, part lot or construction area which is not enclosed by a building or structure.
- 1 (13) "open air fire" means any fire set in the open air.
- 1 (14) "owner" means the registered owner or any person, firm or corporation having control over, or possession, of any portion of the building or property under consideration.
- 1 (15) "permit" means a permit issued by the Fire Chief under this By-law to set a fire in the open air for a specified date and period of time.
- 1 (16) "person" means an individual, business, a partnership or a corporation.
- 1 (17) "prohibited materials" means grass, leaves, garbage, any plastic materials, treated or painted wood, construction or demolition waste, tires or rubber materials, furniture, and hazardous substances including but not limited to batteries, household chemicals, pesticides, solvents, oil, and paint, or any other such material as deemed prohibited by the Fire Chief.
- 1 (18) "tenant" means the occupant having possession or person having control of a property or premises and are not otherwise the owner.
- 1 (19) "Town" means The Corporation of the Town of Tecumseh.

## **2. Administration and Enforcement**

- 2 (1) The **Fire Chief** shall be responsible for the administration of this By-law.
- 2 (2) Enforcement of this By-law is the responsibility of the Fire Chief, Deputy Fire Chief, and Fire Prevention Officer of the Tecumseh Fire and Rescue Services.
- 2 (3) The **Fire Chief** may refuse to issue a **permit**, revoke any or all issued permits or attach any such conditions or requirements to the **permit** as may be deemed necessary.
- 2 (4) Any **Officer** or **Firefighter** may, at all times enter and inspect any property or premises in order to ascertain whether the provisions of this By-law are complied with and to enforce or carry into effect the By-law.

- 2 (5) Any **person** who fails to comply with the provisions of this By-law or fails to extinguish a fire once notification to do so has been given to him by an **Officer** or a **Firefighter** shall, in addition to any penalty provided herein, be liable to the **Town** for all expenses incurred for the purposes of controlling and extinguishing of any fire so set or left to burn, at the then current rate referenced in **Schedule A**, and such expenses may be recovered by court action or in a like manner as municipal taxes.

### 3. General Requirements and Prohibitions

- 3 (1) No person shall set or maintain an open-air fire without first having obtained a **permit** from the **Fire Chief**.
- 3 (2) Notwithstanding Section 3 (1), no permit shall be required for:
- (a) **open-air fires** located on residential properties between the hours of 11:00 am and midnight with an overall size having no dimension greater than one (1) metre measured in any direction, including the height of the flames; or
  - (b) fires set in a **burning appliance** with an overall size having no dimension greater than one and one-half (1.5) metres measured in any direction, including the height of the flames; or
  - (c) operation of domestic barbeques, cooking appliances or permanent outdoor fireplaces used solely for the cooking of food on a grill and extinguished immediately upon completion of the cooking process; or
  - (d) a fire set and maintained by the Tecumseh Fire and Rescue Services.
- 3 (3) 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; or
  - (b) contrary to any condition attached to a permit issued under this By-law; or
  - (c) with an overall size having any dimension greater than four (4) metres, measured in any direction, including the height of the flames; or
  - (d) for a period of time during which an air quality health index value forecasted or reported by Environment Canada for the Windsor Region is greater than seven (7); or
  - (e) for a period of time during which a municipal burn ban has been issued by the **Fire Chief**; or

- (f) that is not supervised continuously by a **competent adult**; or
- (g) within four (4) metres of a structure, fence or property line; or
- (h) to burn **prohibited materials**; or
- (i) in areas zoned for commercial or industrial occupancies except as permitted by Section 3 (2) (c); or
- (j) to burn commercial, industrial or construction waste materials transported to residential or agricultural areas for burning purposes; or
- (k) located on any public highway or on any property owned or maintained by the **Town**; or
- (l) without adequate tools and/or water immediately available to contain or extinguish the fire; or
- (m) after being ordered to extinguish the fire by an **Officer** or **Firefighter**; or
- (n) where the fire poses a hazard, in the opinion of the **Fire Chief**; or
- (o) any location other than in a domestic barbeque or cooking appliance when wind conditions are such that they would likely cause,
  - i. a decrease in visibility on any highway; or
  - ii. the spread of the fire to adjacent brush, grassed area, structure or other combustible materials.

#### **4. Permit Requirements**

- 4 (1) Any **competent adult** may make written application to the **Fire Chief** for a **permit** for an open air fire.
- 4 (2) The application under Section 3 (1) must be submitted to the **Fire Chief** a minimum of one full **business day** prior to the date of the proposed **open-air fire** being set.
- 4 (3) The application for a **permit** must contain,
  - (a) the full name, address and telephone number of the applicant; and
  - (b) the name and written consent of the owner of the property where the **open air fire** is proposed to be set, if the applicant is a tenant; and
  - (c) the municipal address of the location of the proposed **open-air fire**; and
  - (d) the date or dates for which the applicant is requesting to set the **open air fire**; and

- (e) a description of the location within the property where the proposed **open air fire** will be set; and
  - (f) a description of the materials proposed to be burned; and
  - (g) a description of the method(s) of extinguishment immediately available at the site of the proposed **open-air fire**; and
  - (h) any other such information as may be required by the **Fire Chief**.
- 4 (4) The **permit** required by Section 3 (1) shall be kept at the location of the **open air fire** and be produced for inspection when requested by any **Officer** or **Firefighter**.
- 4 (5) **Permits** issued under this By-law are valid only for the location, date and time period listed on the **permit**.
- 5. Agricultural Open-Air Fires**
- 5 (1) Notwithstanding Section 3 (3) c, upon written application by a farmer the **Fire Chief** may issue a **permit** for an **open air fire** on agricultural lands where, in addition to the requirements of Section 3 of this by-law, the fire shall,
- (a) be in accordance with normal farm practices as set out in the *Farming and Food Production Protection Act*; and
  - (b) be set no earlier than sunrise and completely extinguished no later than sunset of the same day; and
  - (c) be supervised by a **competent adult** equipped with sufficient equipment to control and contain the **open-air fire** to prevent the uncontrolled spread of the fire; and
  - (d) be surrounded by a tilled area serving as a fire break that is wide enough to prevent the **open-air fire** from crossing the tilled area and to maintain the area of the burning materials to be no greater than thirty (30) metres in length, five (5) metres in width and three (3) metres in height, constructed with the length at right angles to the prevailing wind direction.
- 6. Offences**
- 6 (1) Any person who contravenes any of the provisions of this by-law is guilty of an Offence;
- 6 (2) Any person who hinders or obstructs a person lawfully carrying out the enforcement of this by-law is guilty of an Offence.

**7. Fines**

- 7 (1) Every person who is convicted of an Offence is liable to a fine or penalty as provided for in the *Provincial Offences Act*, R.S.O. 1990, Chap. P.33.
- 7 (2) Every person who sets an **open-air fire** within the Town of Tecumseh shall be liable for all costs incurred by the Town, including but not limited to the costs of equipment and personnel required for response by Tecumseh Fire and Rescue Services, including personnel and other agencies called to control and extinguish said fire on a Full Cost Recovery Basis. All fees and charges to be paid under this subsection shall be payable in the manner and subject to any interest and penalties set forth in paragraph 5 and 6 of the Administrative Fees and Charges By-law 2020-75, as may be amended or repealed from time to time.

**8. Severability**

- 8 (1) If any section or sections of this by-law or parts thereof are found in any court to be illegal or beyond the power of Council to enact, such section or sections or parts thereof shall be deemed severable and all other sections or parts of this by-law shall be deemed separate and independent there from and enacted as such.

**9. Short Title**

- 9 (1) The short title of this by-law shall be Tecumseh Open-Air Burning By-Law.

**10. Effective Date**

10 (1) This by-law shall come into full force and take effect on the 22nd day of June, 2021.

**11. Repeal**

11 (1) By-law No. 2007-41 and By-law No. 2007-51 are hereby repealed.

**Read a first, second, third time and finally passed this 22nd day of June, 2021.**

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Gary McNamara, Mayor

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Laura Moy, Clerk



## **Schedule "A"**

### **By-law Number 2021-50**

A by-law to regulate open air fires within the Town of Tecumseh.

#### **The Corporation of The Town Of Tecumseh Fire Services Equipment And Personnel Rates**

##### **Emergency Services Rendered:**

- a) Ontario Ministry of Transportation rate for highway response charged per apparatus attending

##### **No Emergency Response:**

- b) Ontario Ministry of Transportation rate for highway response charged per apparatus attending

## Schedule "B"

### By-law Number 2021-50

A by-law to regulate open-air fires within the Town of Tecumseh.

#### Set Fines under Part I – Provincial Offences Act

| Item | Short Form Wording                                | Provision Creating or Defining Offence | Set Fine |
|------|---|--|----------|
| 1    | Burn without a permit                             | 3 (1)                                  | \$100.00 |
| 2    | Fail to follow condition of permit                | 3 (3) (b)                              | \$100.00 |
| 3    | Fire exceeds permitted size                       | 3 (3) (c)                              | \$100.00 |
| 4    | Burn during smog alert                            | 3 (3) (d)                              | \$250.00 |
| 5    | Burn during burn ban                              | 3 (3) (e)                              | \$100.00 |
| 6    | Fail to have fire supervised by competent adult   | 3 (3) (f)                              | \$100.00 |
| 7    | Fire within 4m of structure /fence /property line | 3 (3) (g)                              | \$100.00 |
| 8    | Burning prohibited materials                      | 3 (3) (h)                              | \$300.00 |
| 9    | Burning in commercial or industrial area          | 3 (3) (i)                              | \$200.00 |
| 10   | Burning materials not generated on property       | 3 (3) (j)                              | \$300.00 |
| 11   | Burning on public highway or property             | 3 (3) (k)                              | \$100.00 |
| 12   | Burn with no means of extinguishment              | 3 (3) (l)                              | \$100.00 |
| 13   | Fail to extinguish fire                           | 3 (3) (m)                              | \$100.00 |
| 14   | Fire causing a hazard                             | 3 (3) (n)                              | \$200.00 |
| 15   | Smoke or debris causing a hazard                  | 3 (3) (o)                              | \$200.00 |
| 16   | Burn outside of daylight hours                    | 5 (1) (b)                              | \$100.00 |
| 17   | Failure to supervise fire by competent adult      | 5 (1) (c )                             | \$100.00 |
| 18   | Burn without fire break                           | 5 (1) (d)                              | \$100.00 |

Table 1: Set Fines under Part I - Provincial Offences Act

Note: The penalty provision for the offences noted above is section 61 of the Provincial Offences Act, R.S.O. 1990, c. P.33.