

THE CORPORATION OF THE TOWNSHIP OF PERRY

By-Law No. 2017-13

Being a By-law to prescribe the parameters for outdoor burning within the Township of Perry

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

AND WHEREAS pursuant to Part XII, Section 391 of the *Municipal Act*, 2001 without limiting Sections 9, 10 and 11, those sections authorize a municipality to impose fees or charges on person,

- a) For services or activities provided or done by or on behalf of it;
- b) 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
- c) for the use of its property including property under its control. 2006, c. 32, Sched. A, s. 163 (1).

AND WHEREAS Section 436, of the *Municipal Act*, 2001, S.O. 2001, c.25, a municipality has the power to enter onto lands at any reasonable time for the purpose of carrying out an inspection to determine compliance with this by-law.

AND WHEREAS Section 446, of the *Municipal Act*, 2001 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 2 of the *Trespass to Property Act*, R.S.O. 1990, c. T.21, as amended, makes it an offence for every person who is not acting under right or authority conferred by law and who, without the express permission of the occupier, the proof of which rests on the defendant, enters on premises when entry is prohibited under the Act or engages in an activity on the premises when the activity is prohibited under the Act or does not leave the premises immediately after he or she is directed to do so by the occupier of the premises or a person authorized by the occupier;

NOW THEREFORE the Council of the Corporation of the Township of Perry hereby enacts as follows:

PART 1. DEFINITIONS

1.1. In this By-law:

"Applicant" means a person, organization, company or group that makes application to the Fire Chief for permission to set or conduct an open air burning;

"Barbeque" means an appliance or structure designed and intended solely for the cooking of food in the open air, including a hibachi, and any other similar commercially manufactured device 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 campfires;

"By-Law Enforcement Officer" means the Township's By-Law Enforcement Officer and/or his or her designate, and includes any other

employee of the Township designated by Council to carry out duties specified in this By-law;

“Chief Fire Official” means the Township’s Fire Chief and/or his or her designate;

“Dwelling Unit” means a building, structure or suite operated as a housekeeping unit, used or intended to be used as a domicile by one or more persons and usually containing cooking, eating, living, sleeping and sanitary facilities;

“Fire Pit” means a fire burn area specifically designed for open air burning;

“Non-recreational Open Air Burning” means any open air burning that is not recreational;

“Open Air Burning” means the burning of any material outside of a building, including without limiting the generality of the foregoing, wood, cardboard, brush or garden waste where the flame is not wholly contained and is, thereby, open to the air;

“Open Air Burning Device” means any commercially manufactured device for the purpose of containing a recreational fire which is made of a non-combustible material and installed in accordance with the manufacturer’s recommendations;

“Owner” means the registered owner of the land on which open air burning occurs, and includes a trustee acting on behalf of the registered owner, the estate of a registered owner and a person with a leasehold interest in the land;

“Recreational Open Air Burning” means a small, controlled and contained fire for the purpose of cooking, warmth or personal enjoyment;

“Township” means the Corporation of the Township of Perry;

“Yard Waste” includes but is not limited to grass, leaves, trees, brush trimmings, spent flowers, garden plants, weeds, pine needles, hay, straw and sawdust.

PART 2. GENERAL PROHIBITIONS

- 2.1. No person shall conduct or engage in open air burning in the Township between the hours of ten o’clock in the morning and six o’clock in the evening during the months of April, May, June, July, August, September and October in each year, except as permitted under Parts 3 and 4 of this By-law.
- 2.2. No person shall set/permit more than one fire per lot unless authorized by the Chief Fire Official or if the lot is located at a recognized/established camp ground, resort, etc.
- 2.3. No person shall conduct or engage in open air burning in the Township at any other time except as permitted under Parts 3, 4, 5 and 6 of this By-law.
- 2.4. Notwithstanding the exceptions set out in Parts 3, 4, 5 and 6 of this By-law, the Chief Fire Official may declare a total ban against open air burning when atmospheric conditions or local circumstances make such fires hazardous. Bans against burning shall be advertised through the local media, posted on the municipal website and fire rating signs throughout the municipality. No person shall set or maintain an outdoor open air fire during a fire ban.

PART 3. GENERAL EXCEPTIONS

- 3.1. Barbecues used to cook food shall be exempt from this By-law provided the following conditions are followed:
- a) the barbeque shall be supervised at all times;
 - b) the barbeque shall be placed on non-flammable material; and
 - c) the fuel used is a commercially produced charcoal, briquette, or a flammable liquid commercially produced for the purpose of cooking, such as natural gas and propane gas.
- 3.2. The Fire Department is exempt from the provisions of this By-law with respect to open air burning set or conducted for the purpose of educating and training individuals.

PART 4. APPROVAL

- 4.1. Notwithstanding any other provisions of this By-law, the Chief Fire Official may approve any open air burning subject to the fire being adequately supervised, and to any special conditions the Chief Fire Official may direct.
- 4.2. An applicant setting, conducting or permitting an outdoor burning authorized by approval issued under this By-law shall comply with all conditions of such approval and the provisions of this By-law.
- 4.3. Approval under this Part is required:
- a) if the pile is greater than two metres in diameter and two metres in height; and
 - b) for burning during prohibited times.
- 4.4. A farmer who intends to set or conduct an open air burning for the disposal of vegetable matter or vegetation on farm lands that is a normal farm practice within the meaning of the Farming and Food Production Protection Act, S.O. 1998, c. 1 shall be issued approval for the specific date or dates of the proposed fire. The conditions of such approval will require that the farmer setting or conducting the fire:
- a) conduct it in accordance with the Outdoor Fires Regulation, O. Reg. 207/96 as amended;
 - b) comply with any conditions attached to the approval; and
 - c) notify the Fire Department at the start of each day on which the proposed fire is being conducted.
- 4.5. The Chief Fire Official may withdraw permission for and/or stop an open air burning if, in his or her opinion, the fire presents a fire hazard, smoke produced by the fire is causing visibility concerns on roads in the area of the burn, the weather has deteriorated and has become unfavorable for an open air burning, conditions attached to the granting of permission are not being adhered to, or if this By-law is being contravened. All persons shall extinguish a fire when ordered to do so.
- 4.6. Upon the notification of the withdrawal of permission by the Chief Fire Official, the applicant or the owner shall immediately extinguish the fire. If the applicant or the owner fails to immediately extinguish the fire upon such notification, the Chief Fire Official may

take action to have the fire extinguished, and the applicant and/or the owner may be held liable for any and all costs incurred by the Fire Department to extinguish the fire. Where applicable, such additional costs shall be calculated in accordance with Schedule 'B' attached to this By-law.

PART 5. RECREATIONAL OPEN AIR BURNING (campfires)

- 5.1. Every person conducting a recreational open air burning shall confine the fire to either an open air burning device or to a fire pit with a burn area no larger than two (2) feet (61 cm) by two (2) feet (61 cm) or 8 cubic feet (0.26 cubic metres) in size.
- 5.2. Every person conducting a recreational open air burning shall take all reasonable steps to ensure that adjacent properties and individuals are protected from any fire hazard and are not adversely affected by the products of combustion.
- 5.3. No person conducting a recreational open air burning shall burn materials other than commercially produced charcoal, briquettes or clean, dry, seasoned wood, and in particular no painted wood, pressure treated wood or creosote treated wood, or any type of yard waste may be burned.
- 5.4. No person conducting a recreational open air burning shall burn wood having a dimension greater than the size of the open air burning device or burn pit. All such fires shall be totally confined within the open burning device or fire pit at all times.
- 5.5. Every person conducting a recreational open air burning shall confine the fire to a location that provides for a minimum distance of 6 metres (19.7 feet) in all directions from adjacent properties.
- 5.6. Every person conducting a recreational open air burning shall confine the fire to a location that provides for a minimum distance of 6 metres (19.7 feet) from combustible structures or objects.
- 5.7. Every person conducting a recreational open air burning shall have immediately available for use an effective extinguishing agent or device of sufficient size and with the capability of extinguishing the fire.
- 5.8. Every person conducting a recreational open air burning shall ensure the fire is attended, controlled and supervised at all times by a competent adult and that the fire is completely extinguished before the open air burn site is vacated.
- 5.9. No person shall conduct a recreational open air burning when the wind speed exceeds 30 kilometres per hour, or at times when a smog alert for an area including the Township has been declared by the Ministry of the Environment and Climate Change for Ontario.
- 5.10. Every person conducting a recreational open air burning shall take any other precautions as may be reasonably necessary to prevent the fire from getting beyond control, causing damage, or becoming a danger to life and/or property.
- 5.11. If the Fire Department attends at a recreational open air burning to respond to public safety concerns due to fire hazard, whether in response to a complaint or otherwise, the Chief Fire Official has the discretion to order the fire extinguished and/or brought into compliance with this By-law and this order shall be final. Any person conducting such fire and the owner shall comply with the

order of the Chief Fire Official. If the person conducting the fire or the owner fails to comply as directed, the Chief Fire Official may take action to have the fire extinguished or otherwise brought into compliance, and that person and/or the owner may be held liable for any and all costs incurred by the Fire Department to extinguish the fire or bring it into compliance. Where applicable, such additional costs shall be calculated in accordance with Schedule "B" attached to this By-law.

- 5.12. Every owner shall ensure that all recreational open air burning on his or her land complies with sections 5.1 through 5.11 of this By-law.

PART 6. NON-RECREATIONAL OPEN AIR BURNING

- 6.1. No person shall conduct any non-recreational open air burning if the burn pile is greater than two (2) metres (6.5 ft.) in diameter and two (2) metres (6.5 ft.) in height.
- 6.2. No person shall conduct any non-recreational open air burning in which any kitchen garbage, construction materials or materials made of/or containing rubber, plastic or tar are burned.
- 6.3. Every person conducting a non-recreational open air burning shall burn only clean, dry seasoned wood or yard waste as defined in this By-law.
- 6.4. Every person conducting a non-recreational open air burning shall confine the fire to a location that provides for a minimum distance of (100) one hundred metres (328 ft.) from any adjacent dwelling units.
- 6.5. Every person conducting a non-recreational open air burning shall take all reasonable steps to ensure that adjacent properties and individuals are protected from any fire hazard and are not adversely affected by the products of combustion.
- 6.6. Every person conducting a non-recreational open air burning shall ensure the fire is attended, controlled and supervised at all times by a competent adult and that the fire is completely extinguished before the open air burn site is vacated.
- 6.7. Every person conducting a non-recreational open air burning shall have immediately available for use an effective extinguishing agent or device of sufficient size and with the capability of extinguishing the fire.
- 6.8. No person shall conduct a non-recreational open air burning when the wind speed exceeds 30 kilometres per hour, or at times when a smog alert for an area including the Town has been declared by the Ministry of the Environment and Climate Change for Ontario.
- 6.9. Every person conducting a non-recreational open air burning shall take any other precautions as may be reasonably necessary to prevent the fire from getting beyond control, causing damage, or becoming a danger to life and/or property.
- 6.10. If the Fire Department attends at a non-recreational open air burning to respond to public safety concerns due to fire hazard, whether in response to a complaint or otherwise, the Chief Fire Official has the discretion to order the fire extinguished and/or brought into compliance with this By-law and this order shall be final. Any person conducting such fire and the owner shall comply

with the order of the Chief Fire Official. If the person conducting the fire or the owner fails to comply as directed, the Chief Fire Official may take action to have the fire extinguished or otherwise brought into compliance, and that person and/or the owner may be held liable for any and all costs incurred by the Fire Department to extinguish the fire or bring it into compliance. Where applicable, such additional costs shall be calculated in accordance with Schedule 'B' attached to this By-law.

- 6.11. Every owner shall ensure that all non-recreational open air burning on their land complies with sections 6.1 through 6.10 of this By-law.

PART 7. RESPONSE TO COMPLAINTS

- 7.1. The Chief Fire Official or the By-law Enforcement Officer may give an owner and or a person conducting an open air burn a verbal notice of remedy and require immediate action or other means of remediation, where in the sole discretion of either there is an immediate risk to public health or safety.
- 7.2. When a Fire Department is dispatched to a fire due to a fire hazard created by an open air burning, whether upon a complaint or notification of a prohibited open air burning not authorized under this By-law or otherwise, the Chief Fire Official can order the owner or person conducting the burn to immediately extinguish the fire.
- 7.3. Any owner or person conducting an open air burning shall extinguish the fire when ordered to do so by the Chief Fire Official. If such owner or person fails to immediately extinguish the fire upon such notification, the Chief Fire Official may take action to have the fire extinguished, and the owner and/or the person conducting the fire may be held liable for any and all costs incurred by the Fire Department to extinguish the fire. Where applicable, such additional costs shall be calculated in accordance with Schedule "B' attached to this By-law.

PART 8. RIGHT OF ENTRY

- 8.1. The Chief Fire Official or the By-law Enforcement Officer or their designate may enter upon lands or into structures at any reasonable time to inspect the land to determine whether an open air burning is being conducted in accordance with this By-law.
- 8.2. The Chief Fire Official or the By-law Enforcement Officer or their designate may enter upon lands or into structures at any reasonable time to inspect barbecues, fire pits or open air burning devices that are being used or can be used for open air burning to determine whether such things are in compliance with this By-law.
- 8.3. The Chief Fire Official or the By-law Enforcement Officer or their designate may enter upon lands or into structures at any reasonable time to direct or require that a matter or thing be done, and in default of that matter or thing being done, to do such matter or thing in accordance with this By-law.
- 8.4. A person exercising a power of entry on behalf of the Township under this By-law may be accompanied by any person under his or her direction.
- 8.5. A person exercising a power of entry on behalf of the Township under this By-Law must, on request, display or produce proper identification.

PART 9. REMEDIATION

- 9.1. The Chief Fire Official 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.
- 9.2. Where an owner is in default of doing any matter or thing directed or required to be done under this By-law, The Chief Fire Official or the By-law Enforcement Officer may direct such matter or thing to be done at the owner's expense.
- 9.3. The Township may recover the remedial action costs incurred under sections 4.5, 5.10, 6.9, 7.3 or 9.2 by action, or by adding them to the tax roll and collecting them in the same manner as taxes in accordance with section 446 of the Municipal Act.
- 9.4. Prior to recovering remedial costs under section 9.3, the Township may invoice owners requesting voluntary payment of those remedial costs.

PART 10. OFFENCES AND PENALTIES

- 10.1. Every person who contravenes any of the provisions of this By-law is guilty of an offence.
- 10.2. Every person who is convicted of an offence under this By-law shall be subject to a fine of not more than Five Thousand Dollars (\$5,000.00) for each offence. Such fines shall be recoverable under the *Provincial Offences Act*, R.S.O. 1990, c. P.22, as amended.
- 10.3. The provisions of this By-law may be enforced pursuant to the provisions of the Provincial Offences Act, R.S.O. 1990, c. P.33 as amended, and where any provision of this By-law is contravened and a conviction entered, in addition to any other remedy and to any other penalty the person convicted may also be prohibited from continuing or repeating the offence in accordance with the provisions of section 442 of the *Municipal Act*.
- 10.4. Every person who is guilty of an offence under this By-law may, if permitted under the *Provincial Offences Act*, R.S.O. 1990, c. P.33, as amended, pay a set fine, and the Chief Judge of the Ontario Court of Justice shall be requested to establish set fines as set out in Schedule 'A' to this By-Law.
- 10.5. No part of this by-law shall come into force and take effect until Schedule 'A' is approved and filed by the Regional Senior Justice, pursuant to *Provincial Offences Act*, Part 1. A copy of this approval is attached and forms part of this by-law.

PART 11. OBSTRUCTION

- 11.1. No person shall hinder or obstruct, or attempt to hinder or obstruct, any person exercising a power or performing a duty under this By-law.

PART 12. TOWNSHIP NOT LIABLE

- 12.1. 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.

PART 13. VALIDITY AND SEVERABILITY

13.1. Should any section, subsection, clause, paragraph or provision of this By-law be declared by a Court of competent jurisdiction to be invalid or unenforceable, the same shall not affect the validity of the enforceability of any other provision of this By-law, or of the By-law as a whole.

PART 14. SEPARATE OFFENCE

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

PART 15. SHORT TITLE

15.1. The short title of this By-law is the Outdoor Burning By-law.

PART 16. REPEALED

16.1. By-law No. 2007-29 is hereby repealed.

PART 17. FORCE AND EFFECT

17.1. This By-law comes into effect on the date of its passing.

Read a first and second time this 15th day of February, 2017.

Original Signed by Norm Hofstetter
Norm Hofstetter, *Mayor*

Original Signed by Beth Morton
Beth Morton, *Clerk-Administrator*

Read a third and final time and enacted in open Council this 15th day of February, 2017.

Original Signed by Norm Hofstetter
Norm Hofstetter, *Mayor*

Original Signed by Beth Morton
Beth Morton, *Clerk-Administrator*

SCHEDULE 'A'

The Corporation of the Township of Perry Part I Provincial Offences Act By-law No. 2017-13: Outdoor Burning

Item	Column 1 Short form wording	Column 2 Provision creating or defining offence	Column 3 Set fine
1.	Burning outside during prohibited hours	2.1	\$300.00
2.	Burning more than one fire per lot	2.2	\$300.00
3.	Burning contrary to general prohibition	2.3	\$300.00
4.	Burning during fire ban	2.4	\$300.00
5.	Failure to comply with approval conditions	4.2	\$500.00
6.	Failure to extinguish fire otherwise allowed under approval when ordered to do so	4.5	\$500.00
7.	Recreational burning in fire pit larger than permitted	5.1	\$300.00
8.	Recreational burning adversely affecting other persons	5.2	\$300.00
9.	Recreational burning of materials not permitted	5.3	\$300.00
10.	Recreational burning of oversized wood	5.4	\$300.00
11.	Recreational burning within 6 metres (19.7 ft.) of adjacent property	5.5	\$300.00
12.	Recreational burning within 6 metres (19.7 ft.) of combustible structure	5.6	\$300.00
13.	Recreational burning without extinguishing device	5.7	\$300.00
14.	Failure to supervise recreational burning	5.8	\$300.00
15.	Recreational burning during high winds or during a smog alert	5.9	\$300.00
16.	Failure to take reasonable precautions during recreational burning	5.10	\$300.00
17.	Failure to extinguish fire or comply when ordered during recreational burning	5.11	\$500.00
18.	Failure by owner to ensure compliance during recreational burning	5.12	\$300.00
19.	Non-recreational burning of burn pile larger than permitted	6.1	\$300.00
20.	Non-recreational burning of materials not permitted	6.2	\$300.00

21.	Non-recreational burning of materials other than dry wood or permitted yard waste	6.3	\$300.00
22.	Non-recreational burning within 100 metres (328 ft.) of any adjacent dwelling unit	6.4	\$300.00
23.	Non-recreational burning adversely affecting other persons	6.5	\$300.00
24.	Failure to supervise non-recreational burning	6.6	\$300.00
25.	Non-recreational burning without fire extinguishing agent or device	6.7	\$300.00
26.	Non-recreational burning during high winds or smog alert	6.8	\$300.00
27.	Failure to take reasonable precautions during non-recreational burning	6.9	\$300.00
28.	Failure to extinguish fire or comply when ordered during non-recreational burning	6.10	\$500.00
29.	Failure by owner to ensure compliance during non-recreational burning	6.11	\$500.00
30.	Failure to extinguish fire creating hazard when ordered to do so	7.3	\$500.00

NOTE: The general penalty provision for the offences listed above is Section 10 of By-law No. 2017-13, a certified copy of which has been filed.

SCHEDULE 'B'
to By-law No. 2017-13

Any additional costs associated with the Fire Department attending at an Owners land who fails to comply with the provisions of this By-law, or who fails to properly supervise and maintain a fire and/or the fire burns out of control, or who fails to extinguish a fire once notification to do so has been given to him by the Fire Chief or his/her designate shall, in addition to any penalty provided for herein, may also be subject to additional costs as set out herein:

The hourly rate for fire department personnel and fire department vehicles that responds to an Owners land in contravention of this By-law will be subject to any hourly rate at \$459.45 an hour;

The half rate for fire department personnel and fire department vehicles that responds to an Owners land in contravention of this By-law will be subject to a half hour rate at \$229.73.