

The Corporation of the Township of Prince BY-LAW 2011-06

Being a By-Law to provide for the Regulation of Open Air Burning in the Township of Prince.

WHEREAS the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c. 4, as amended, provides:

- in subsection 7.1(1)(a) that a council of a municipality may pass by-laws regulating fire prevention, including the prevention of spreading of fires;
- in subsection 7.1(1)(b) 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;
- in subsection 7.1(3) that a by-law passed under section 7.1 may deal with different areas of the municipality differently;
- in subsection 7.1(4) that a municipality may appoint the Fire Chief or Fire Prevention officer to enter upon land and into structures at any reasonable time to inspect the land and structures to determine whether by-laws enacted in accordance with this section are being complied with;

AND WHEREAS paragraph 2.6.3.4 of the Fire Code provides that open air burning shall not be permitted unless approved by the Fire Chief, or unless such burning consists of a small, confined fire, supervised at all times, and used to cook food on a grill or a barbeque;

AND WHEREAS of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, provides:

- in section 125 that a municipality may regulate the use and installation of heating and cooking appliances, and the storage of fuel for use in heating and cooking appliances;
- in section 128 that a municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of council, are or could become or cause public nuisances, and the opinion of Council if arrived at in good faith is not subject to review by any court; AND Council is of the opinion that the setting of open air fires are or could become or cause public nuisances by creating negative health effects on neighbouring residents, increasing fire exposure hazards, infringing the enjoyment of the use of neighbouring properties, and generating false fire alarms;
- in section 129 that a municipality may prohibit and regulate with respect to odour, dust and outdoor illumination, and may prohibit those matters unless a permit is obtained from the municipality for those matters and may impose conditions for obtaining, continuing to hold and renewing the permit;
- in section 10 that a municipality may pass by-laws respecting:
 5. Economic, social and environmental well-being of the municipality;
 6. Health safety and well-being of persons;
 8. Protection of persons and property;
 10. Structures, including fences and signs;
- in section 10 and section 391 that a municipality is authorized to pass by-laws imposing fees or charges on persons for services or activities provided or done by it or on behalf of it, and for the use of its property including property under its control;

• in section 446 that if a municipality has authority under the 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 6 of the *Farming and Food Production Protection Act*, 1998, S.O. 1998, c. 1 provides that no municipal by-law applies to restrict a normal farm practice carried on as part of an agricultural operation;

NOW THEREFORE the Council of The Corporation of the Township of Prince enacts as follows:

PART 1 - DEFINITIONS

1. In this by-law:

"Barbeque" means a manufactured device or structure with a grill which is designed, intended and used solely for the purpose of cooking food outdoors, and includes a hibachi, but does not include devices or structures designed for personal warmth, fire pits, or Outdoor Fire Containers;

"Cooking Fire/Campfire" means an Open Air Fire used for the purpose of cooking food;

"Fire Chief" means the person appointed by Township Council to act as Fire Chief for the Township as defined in the *Fire Protection and Prevention Act*, 1997 or designate;

"Noxious Materials" includes tires, plastics, rubber products, drywall, demolition waste, construction waste, paint, animal organic waste, vegetable waste, food waste, biomedical waste, tar, asphalt products, battery boxes, pressure-treated wood, creosote-treated wood, and painted wood;

"Nuisance" means excessive smoke, smell, airborne sparks or embers that is likely to disturb others, or that is likely to reduce visibility on roads in the vicinity of the Open Air Burning;

"Officer" means the Fire Chief, any officer of the Prince Township Volunteer Fire Department, Township of Prince by-law enforcement officers, and Police officers;

"Open Air Burning" means a fire set outside of a building;

"Outdoor Fire Container" means a non-combustible container used to hold a small fire, and includes, but is not limited to, chimneys, metal tubs, fire pits, and outdoor brick fireplaces;

"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;

“Permit” means a permit issued by the Municipal Office to set a fire in the Open Air for a specified time period;

“Permit Holder” means a person to whom a Permit has been issued;

“Person” means an individual or a corporation;

“Smog Alert” means an alert issued by the Ministry of the Environment with respect to air quality;

“Township” means The Corporation of the Township of Prince;

“Wind Speed” means the wind speed for the Township of Prince as reported on the Environment Canada website.

PART 2 - GENERAL

2.1 No person shall set, maintain, or permit to be set or maintained, an Open Air Burning except as authorized under this By-law.

2.2 This By-law shall not apply to:

- (a) a person using a Barbeque to cook food;
- (b) a person using a fire in a device installed outside of a building that is used as a source of heat or power for the building or that is ancillary to a manufacturing process, and provided that such device is certified for the purpose by a recognized agency;
- (c) a person using a device designed to heat pitch or asphalt;
- (d) a person using welding equipment;
- (e) a person setting or maintaining a camp fire at a Camp Site in compliance with all rules and regulations of the owner;
- (f) the Township or Township Officers for the purposes of education and training individuals;
- (g) a person conducting fire extinguisher training who has obtained prior written approval of the Fire Chief or designate.

PART 3 – WHEN OPEN AIR BURNING ALLOWED

Open Air Burning Allowed - Outdoor Fire Container

- 3.1 (1) A person may conduct an Open Air Burning in an Outdoor Fire Container, subject to the conditions set out in this Part.
- (2) A person conducting an Open Air Burning shall comply with the following conditions for an Open Air Burning in an Outdoor Fire Container:
 - (a) shall only conduct the Open Air Burning between 4:00 p.m. and 9 a.m.;
 - (b) shall only use an Outdoor Fire Container that is constructed from non-combustible material and must be inspected annually by the Fire Chief or Fire Prevention officer;

- (c) shall not burn or attempt to burn a volume of combustible material greater than 46 centimetres wide by 46 centimetres long by 30 centimetres high;
- (d) shall contain the fire within the Outdoor Fire Container at all times;
- (e) shall locate the Outdoor Fire Container at least 4 metres from any building, structure, property line, tree, hedge, fence, roadway, overhead wire or other combustible article; and
- (f) shall locate the Outdoor Fire Container on a non-combustible surface extending beyond the unit to a dimension equal to the height of the Outdoor Fire Container.

Open Air Burning Allowed - Cooking Fires/Camp Fires (up to council, may or may not require a permit)

- 3.2
- (1) A person may conduct an Open Air Burning for a Cooking Fire/Camp Fire, subject to the conditions set out in this Part and in subsection 3.1(2), save and except subsection 3.1(2)(a).
 - (2) A person conducting an Open Air Burning shall comply with the following condition for a Cooking Fire/Camp Fire:
 - (a) shall only conduct the Open Air Burning between 4:00 p.m. and 9 a.m.

Open Air Burning Allowed - With a Permit (Fires Greater than 46cm x 46cm x 30cm)

- 3.3
- (1) A person may conduct an Open Air Burning if the person has been issued a Permit, and if the person complies with all of the conditions set out in this Part.
 - (2) Every Permit is subject to the conditions in this Part of obtaining and continuing to hold a Permit, all of which shall be performed and observed by the applicant or the holder of the Permit:
 - (a) the Permit Holder shall produce the Permit on demand to an Officer conducting an inspection of the Open Air Burning;
 - (b) shall only conduct the Open Air Burning between 4:00 p.m. and 9 a.m.;
 - (c) shall only use a non-combustible container and must be inspected annually by the Fire Chief or Fire Prevention officer, and shall contain the fire within it at all times;
 - (d) shall not have a fire larger than 1 metre in length, by 1 metre in width, by 1 metre in height;
 - (e) shall locate the Open Air Burning at least 15 metres away from any building, structure, property line, tree, hedge, fence, roadway, overhead wire or other combustible article;
 - (f) shall locate the Open Air Burning at least 5 metres from any combustible ground cover;
 - (g) any additional requirements or exemptions the Fire Chief considers necessary in the interest of public safety, or to minimize inconvenience

to the general public, or advisable in the circumstances, or to give effect to the objects of this by-law; and
(h) the Permit Holder shall indemnify and save harmless The Corporation of the Township of Prince and its employees from any and all claims, demands, causes of action, costs or damages that the Township may suffer, incur or be liable for resulting from the Open Air Burning as set out in this by-law, whether with or without negligence on the part of the Permit Holder, the Permit Holder's employees, directors, contractors and agents.

- (3) An application for a permit must be completed on the forms provided by the Township of Prince.
- (4) A Permit shall only be valid for the dates indicated on the Permit.
- (5) Township Officers may refuse to issue a Permit:
 - (a) if the proposed Open Air Burning would contravene this by-law; or
 - (b) if the Owner or Permit Holder for the specified property has previously contravened any Permit conditions or other provisions of this by-law, or an Order under this by-law.
- (6) Fires larger than those prescribed in section 3.3(2)(d) may be allowed from November 1st to March 31st each year, provided that the estimated size of the fire is written on the permit and has been deemed safe by the Fire Chief or designate.

Conditions of All Open Air Burning Under this Part

- 3.4 Every person setting, permitting to be set, maintaining, or permitting to be maintained, an Open Air Burning authorized under this Part shall comply with the following conditions:
 - (a) shall allow, at any reasonable time, an Officer to inspect the location or proposed location of the Open Air Burning;
 - (b) shall have legal title to the property at which the Open Air Burning is to occur, or the person, or Permit Holder, as the case may be, shall obtain the prior written consent of the person having legal title to the property;
 - (c) shall only burn commercially produced charcoal, briquettes, or clean, dry, seasoned wood products;
 - (d) shall not burn Noxious Materials;
 - (e) shall have an effective extinguishing agent of sufficient size and with the capability of extinguishing the Open Air Burning immediately available for use;
 - (f) shall attend, control and supervise the Open Air Burning at all times;
 - (g) shall completely extinguish the Open Air Burning before the site is vacated;
 - (h) shall completely extinguish the Open Air Burning should the Wind Speed exceed 15 km per hour during the Open Air Burning;
 - (i) shall not burn if it is rainy or foggy;

- (j) shall not burn if a Smog Alert has been declared;
- (k) shall comply with the provisions of the *Environmental Protection Act*, R.S.O. 1990, c.E.19, as amended;
- (l) shall protect adjacent properties from the potential spread of fire; and
- (m) shall ensure the Open Air Burning does not create a Nuisance.

PART 4 – OPEN AIR BURNING ALLOWED - NORMAL FARM PRACTICE

- 4.1 (1) A person may conduct an Open Air Burning if it is part of a normal farm practice carried on as part of an agricultural operation, as those terms are defined in the *Farming and Food Production Protection Act*, 1998, S.O. 1998, c.1, on lands zoned for agricultural use, and subject to the conditions set out in this Part.
- (2) A person conducting an Open Air Burning under subsection (1) shall comply with the following conditions:
- (a) notify the Municipal Office in person or by telephone prior to the Open Air Burning and at the conclusion of the Open Air Burning, and shall provide the Municipal Office with their municipal address;
 - (b) not have a fire larger than 2 metres in length, by 2 metres in width, by 2 metres in height; and
 - (c) locate the Open Air Burning at least 50 metres away from any building, structure, property line, tree, hedge, fence, roadway, overhead wire or other combustible article.

(3) The conditions in subsection 4.1(2) shall not apply to fires under subsection 4.1(1) that are used to burn off dried vegetation along fence lines and in culverts.

(4) Fires larger than those prescribed in section 4.1(2)(c) may be allowed from November 1st to March 31st each year, provided that the estimated size of the fire is written on the permit and has been deemed safe by the Fire Chief or designate.

PART 5 – BURNING OF LEAVES

5.1 The burning of leaves is expressly forbidden throughout the year, with the exception of the months of May and October.

5.2 All other provisions of this by-law, including size and time restrictions, shall apply when burning leaves under section 5.1.

PART 6 – ORDER TO DISCONTINUE ACTIVITY

6.1 If the Fire Chief is satisfied that this by-law has been contravened, the Fire Chief 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 contravention. An order under this Part shall be known as an Order to Discontinue Activity, and such an Order can require a person not to conduct an Open Air Burning for a certain period of time.

- 6.2 An Order to Discontinue Activity shall set out:
- (a) the municipal address of the property on which the contravention occurred;
 - (b) the date of the contravention;
 - (c) the contravention of the by-law;
 - (d) the date by which there must be compliance with the order;
 - (e) the date on which the order expires.

- 6.3 The Order to Discontinue Activity may be served personally on the person to whom it is directed or by regular mail to the last known address of that person, in which case it shall be deemed to have been given on the third day after it is mailed.

PART 7 - ORDER TO EXTINGUISH

- 7.1 If an Officer is satisfied that this by-law has been contravened, the Officer may issue an Order to Extinguish requiring the person contravening the by-law to immediately extinguish the fire.

- 7.2 An Order to Extinguish shall set out:
- (a) the municipal address of the property on which the fire is located;
 - (b) the date of the inspection;
 - (c) the contravention of the by-law;
 - (d) that the fire is to be extinguished immediately
 - (e) a notice that if the fire is not extinguished immediately, the municipality may extinguish the fire at the expense of the owner and the cost of the work may be recovered by adding the amount to the owner's tax roll.

- 7.3 The Order to Extinguish may be served personally on the person to whom it is directed or by regular mail to the last known address of that person, in which case it shall be deemed to have been given on the third day after it is mailed.

PART 8 - REMEDIAL ACTION - COSTS

- 8.1 (1) Should a person default in complying with an Order to Discontinue Activity or an Order to Extinguish, the fire may be extinguished at the person's expense, in accordance with Schedule A of this By-Law.
- (2) The Township officers may enter on land at all times, as defined in the FPPA under Right of Entry, for the purpose of extinguishing a fire under subsection (1).

- (3) The power of entry under this Part shall be exercised by an employee, officer or agent of the Township, or a member of the Sault Ste. Marie Police Services. The person exercising the power of entry must on request display or produce proper identification. The person exercising the power of entry may be accompanied by a person under his or her direction.
- (4) The Township may recover the costs of extinguishing the fire from the person directed to extinguish the fire by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes. The amount of the costs, including interest, constitutes a lien on the land upon the registration of a notice of lien in the Land Registry Office.

PART 9 – INSPECTIONS & INSPECTION FEES

- 9.1 An Officer, and anyone under the Officer's direction, may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether this By-law, an Order to Discontinue Activity, an Order to Extinguish, or an order under section 431 of the *Municipal Act, 2001* is being complied with.
- 9.2 For the purposes of an inspection, the Officer may:
- (a) require the production for inspection of documents relevant to the inspection;
 - (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - (c) require information from any person concerning a matter related to the inspection; and,
 - (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take photographs necessary for the purposes of the inspection.
- 9.3 A receipt shall be provided for any document or thing removed under clause 9.2(b) and the document or thing shall be promptly returned after the copies or extracts are made.
- 9.4 A person exercising a power of entry shall not enter or remain in any room or place actually being used as a dwelling unless the consent of the occupier is obtained, the occupier first having been informed that the right of entry may be refused, and if refused, may only be made under the authority of an order issued under section 438 of the *Municipal Act, 2001*, a warrant issued under section 439 of the *Municipal Act, 2001*, or a warrant under section 386.3 of the *Municipal Act, 2001*.
- 9.5 The following conditions apply to a power of entry during an inspection:
- (a) shall only be exercised by an employee, officer or agent of the Township or a member of Sault Ste. Marie Police Services:

- (b) the person with the power of entry must on request display or produce proper identification;
- (c) the person exercising the power may be accompanied by a person under his or her direction.

Inspection Fee

9.6 (1) Where the Officer determines that an Open Air Burning is not in compliance with this by-law or with an Order, the fee or charge set out in the applicable Fees and Charges By-law for inspecting the Open Air Burning may be imposed on the Owner, person responsible for the Open Air Burning, or Permit Holder.

(2) The fees imposed constitute a debt of the person to the Township. The Township Treasurer may add fees to the tax roll and collect them in the same manner as municipal taxes on any property for which all the owners are responsible for paying the fees.

PART 10 – PROHIBITIONS

10.1 No person shall set or maintain Open Air Burning, or permit Open Air Burning to be set or maintained, contrary to any provision of this by-law.

10.2 No person shall contravene any conditions of a Permit issued under this by-law.

10.3 No person shall contravene any conditions of setting or maintaining an Open Air Burning under this by-law.

10.4 No person shall contravene an Order to Discontinue Activity.

10.5 No person shall contravene an Order to Extinguish.

PART 11 – PENALTY

11.1 Any person who contravenes any provision of this by-law is guilty of an offence and is liable to a fine and penalty pursuant to the provisions of the Provincial Offences Act R.S.O. 1990, c.P.33., as amended and as set out in Schedule A and Schedule B to this by-law.

11.2 If this by-law is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by the by-law, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order,

- (a) prohibiting the continuation or repetition of the offence by the person convicted; and
- (b) requiring the person convicted to correct the contravention in the manner and within the period that the court considers appropriate.

PART 12 – MISCELLANEOUS

SHORT TITLE

12.1 This By-law may be referred to as the Open Air Burning By-law.

REPEAL

12.2 All by-laws and/or resolutions that are inconsistent with the provisions of this by-law are hereby repealed or rescinded insofar as it is necessary to give effect to the provisions of this by-law.

12.3 This by-law shall come into force and take effect immediately upon the final passing thereof.

READ THREE TIMES AND PASSED in open Council this 26 day of April 2011.



Reeve, Ken Lamming



CAO/Administrator, Peggy Greco

SCHEDULE A

COST OF FIRE DEPARTMENT SERVICES AND FEES

The expenses for which the Person may be liable cover the cost of sufficient personnel and equipment require to control a fire, as referred to in Section 7.1 of this By-law and such costs have been deemed as being:

- a) \$350.00 for each Fire Department vehicle attending for the first hour or part thereof.
- b) \$175.00 for each Fire Department vehicle attending for every additional half hour or part thereof.
- c) \$350.00 for responding to a call where services are not required.

This shall be calculated from the initial dispatch of the Fire Department and any Fire Department under contract or agreement, until such time as each vehicle is back in service (defined as when the vehicle is back at the hall and has been replenished with the requirements for the unit to respond to the next activation).

These fees are in addition to any fines of penalties established elsewhere in accordance with this By-Law.

Costs will be invoiced by the municipality and will be due thirty days from the date of the invoice and interest shall accrue and be added to the amount at the rate of 1.25% per month commencing 30 days following the delivery or sending the invoice.

The above cost and fee schedule may be amended at any time at the discretion of the Council of the Township of Prince.

SCHEDULE B

Corporation of the Township of Prince

OPEN AIR BURNING BY-LAW – SET FINE SCHEDULE
Part I Provincial Offences Act

ITEM	COLUMN 1 Description of Offence	COLUMN 2 Provision Creating of Defining Offence	COLUMN 3 Set Fine (includes costs)
1	Fail to supervise/control fire	Section	\$125.00
2	Burn prohibited material(s)		\$125.00
3	Burn during windy conditions		\$125.00
4	Burn during fire ban		\$125.00
5	Burn on highway/public property		\$125.00
6	Burn pile in excess of 2m in diameter		\$125.00
7	Burn pile in excess of 2m in height		\$125.00
8	Burn after 9 a.m. and before 4 p.m.	Section 3.1(2)(a)	\$125.00
9	Cook Fire/Camp Fire in excess of 1m in diameter		\$125.00
10	Cook Fire/Camp Fire in excess of 1m in height		\$125.00
11	Cook Fire/Camp Fire during fire ban		\$125.00
12	Creating a Nuisance fire		\$125.00