

## THE TOWN OF MIDLAND

### BY-LAW 2005-61

A By-law to regulate open air burning in the Town of Midland and to repeal By-laws 90-57 and 99-72.

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**WHEREAS** *The Fire Protection and Prevention Act, 1997, S.O. 1997, c.4, s.7.1. (1) (b)* authorizes a Council of a Municipality to pass By-laws regulating the setting of open air fires.

**AND WHEREAS** the *FPPA, 1997, S.O. 1997, c.4, s.7.1 (1) (a)* provides that a Council of a Municipality may pass By-laws regulating fire prevention, including the prevention of the spreading of fires;

**AND WHEREAS** *The Municipal Act, 2001, S.O. 2001, c25, s.128. (1)* permits a municipality to prohibit and regulate public nuisances including matters which are, could become or cause public nuisances.

**AND WHEREAS** *The Municipal Act, 2001, S.O. 2001, c25, s.129. (1)* permits a municipality to prohibit and regulate with respect to noise, vibration, odour, dust and illumination.

**AND WHEREAS** *The Municipal Act, 2001, S.O. 2001, c25, s.130.* permits a municipality to regulate matters for purposes related to the health, safety and well-being of the inhabitants of the municipality.

**AND WHEREAS** the Ontario Fire Code prohibits open air burning unless approved or unless such burning consists of a small, confined fire, supervised at all times, and used to cook food on a grill or barbeque;

**AND WHEREAS** the Council of the Corporation of the Town of Midland deems it essential to regulate the setting of open air fires.

**NOW THEREFORE** the Municipal Council of the Corporation of the Town of Midland enacts as follows:

#### 1. Definitions

For the purpose of this By-law the following words shall have the meaning given herein. Whenever the singular or masculine are used the same shall be construed as meaning the plural or the feminine where the context requires and vice versa.

Agricultural Waste – Shall mean any animal fecal deposits or manure and animal carcasses.

Cooking Fire – Shall mean a small contained fire, no greater than 18 inches (50 centimeters) in diameter and used to cook food on a grill. The fire shall be in a pit or a permanent structure designed and intended for the cooking of food on a grill.

Construction and Demolition Wastes – Shall mean materials used in the construction of a serviceable unit such as drywall, wood, plywood, shingles, asphalt and plastic.

Extinguish – Put out or quenched completely with no smoke, hot or growing embers remaining.

Fire Chief – Shall mean the Fire Chief for the Town of Midland Fire Department and members of the Town of Midland Fire Department acting under the Fire Chief's direction.

Household Wastes – Shall mean garbage, rubbish, discarded materials, paper products, plastic products, and other such articles as would normally accumulate at a serviceable unit.

Yard Wastes – Shall mean organic material from a household yard, such as leaves and grass cuttings and any organic materials characterized by their ability to compost.

## **2. General Provisions**

- 2.1 No person shall light, ignite, or allow the burning or combustion of any material in the open air within the boundaries of the Town of Midland except as set out in section 2.2.
- 2.2 The following regulations shall apply with respect to open air burning;
- 2.2.1 Any responsible person may set or cause to be set or maintained a cooking fire provided that:
- (a) Burning may be conducted between 0600 hours and 2359 hours only.
  - (b) No materials other than commercially produced charcoal, briquettes, or clean dry seasoned wood shall be burned. The use of yard waste, agricultural waste, construction and demolition waste, household waste, petroleum products, or any other material which could cause excessive heat or smoke as a fuel shall not be permitted.
  - (c) The fire must be supervised at all times by a responsible person until the fire is extinguished.
  - (d) Dimensions of the fuel to be burned shall not be greater than the size of the chamber or pit in which it is being burned and shall be totally confined within the chamber or pit at all times.
  - (e) Sufficient equipment and resources capable of controlling and extinguishing the fire must be readily available near the fire.
  - (f) A minimum clearance of 3 metres (10 feet) shall be maintained between the fire and any dwelling, building, or other structure, trees, shrubs, hedge, fence, overhead wires, flammable materials and property line. The area under the fire shall also be non-combustible and shall extend a minimum of 30 cm (1 foot) beyond the edge of the appliance or pit.
  - (g) Burning shall not be permitted in rainy or foggy weather, at times when a smog alert or air quality advisory has been issued, or when wind speed is reported to exceed 19 km/hr. The appropriate Federal and/or Provincial Government Agency shall be used as the source for this information.
  - (h) In the event combustion gases or smoke as a result of any open air burning creates reduced visibility on any road the fire must be extinguished immediately.

- 2.3 No action or other proceeding for damages shall be brought against the Town or any employee of the Town, as a result of any act done in good faith in the issuance of approval, permission, or authorization under this By-law. Notwithstanding the above, the person who receives approval, permission or authorization under this By-law, shall indemnify and hold the Town harmless from any damages, causes of action, claims or costs of any kind arising from or resulting from any damages or injuries caused by fire, smoke, or other causes.
- 2.4 It shall be the responsibility of the owner or occupant to ensure that no damage is done to any property or injury caused to any person while setting a fire or permitting a fire to burn, and shall otherwise jointly and severally be responsible for any damage or injury to persons or property as a result of setting the fire or permitting the fire to burn.
- 2.5 Upon notification by the Fire Chief to extinguish an open air fire the owner or occupant shall immediately extinguish the fire. Should the owner, or occupant fail to immediately extinguish the fire the owner or occupant may be held liable for the costs incurred by the Midland Fire Department in its efforts to extinguish the fire.
- 2.6 When made aware of unapproved open air burning, the Fire Chief shall order the owner or occupant of the land to immediately extinguish the fire. Should the owner or occupant fail to extinguish the fire when ordered to do so, the Fire Chief shall take action to have the fire extinguished, and the registered owner or occupant of the property on which the open air fire is located shall be responsible for any and all costs incurred by the Midland Fire Department in its efforts to extinguish the fire.

### **3. Restrictions**

- 3.1 The Fire Chief may revoke approval for open air burning if the provisions of this By-law are not being adhered to.
- 3.2 The Fire Chief may prohibit open air burning if the applicant, occupant or owner has contravened the provisions of this By-law in the past, or any conditions for open air burning on a previous occasion.
- 3.3 (a) Notwithstanding the provisions of this By-law, the Fire Chief may institute a burning ban at any time, as may be deemed necessary to reduce the threat of fire to the area.  
(b) No person shall set an open fire at any time when a burning ban is in effect.  
(c) No person shall be entitled to special approval for open air burning when a burning ban is in effect.

### **4. Exceptions and Variations**

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

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

- 4.2 The Midland Fire Department for the purposes of educating and training individuals.
- 4.3 The Fire Chief may grant special approval for a variance to the open air burning regulations contained in 2.2.
  - 4.3.1. Any person may make application in writing to the Fire Chief 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.
  - 4.3.2. 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.
  - 4.3.3. The Fire Chief may attach such conditions as deemed appropriate to any approval. In considering the application for the variance the Fire Chief 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 Fire Chief.

**5. Enforcement and Penalty**

- 5.3. This By-law shall be enforced by the Town of Midland Fire Department personnel, Police Officers, and Municipal Law Enforcement Officers appointed for the purpose of enforcing the Municipality's By-laws.
- 5.4. No person shall prohibit the entry of an individual noted in 5.3 above from entering upon any property in order to ascertain whether the By-law is obeyed and to enforce or carry into effect the By-law.
- 5.5. Every person who contravenes any provision of this By-law is guilty of an offence and on conviction is liable to a fine as provided for in the *Provincial Offences Act*.

**6. Severability**

Should any section of this By-law be declared by a court of competent jurisdiction to be invalid for any reason, the remaining parts shall nevertheless remain valid and binding, and shall be read as if the offending section or part has been struck out.

7. **Enactment and Repeal**

- 7.1 This By-law shall come into force on the date of the order approving the set fines.
- 7.2 By-laws 90-57 and 99-72 shall be repealed on the coming into force of this By-law.

By-law read a first, second and third time and finally passed at a meeting of the Open Council held this twenty-sixth day of September, 2005.

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Mayor

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Clerk