

THE CORPORATION OF THE TOWNSHIP OF MACHAR

BY-LAW NO. 39-12

**Being a by-law to regulate the setting
of open air fires and to repeal By-Law 16-12.**

WHEREAS Council of the Corporation of the Township of Machar (“**Council**”) is empowered under *Section 7.1(1) of the Fire Protection and Prevention Act, 1997, S.O. 1997,c.4*, as amended, (the “**FPPA**”) to pass by-laws regulating fire prevention, including the prevention and the spreading of fires;

AND WHEREAS Council is empowered under *Section 7.1(1) of the FPPA* to pass by-laws regulating the setting of open air fires, including establishing the times during which open air fires may be set;

AND WHEREAS Council is empowered under *Section 128 of the Municipal Act, 2001, S.O. c.25*, as amended, to pass by-laws to prohibit and regulate public nuisances, including matters that, in the opinion of **Council**, are, or could become or cause public nuisances;

AND WHEREAS Council considers excessive smoke, smell, airborne sparks or embers to be or could become or cause public nuisances by creating negative health effects on neighboring residents, increasing fire exposure hazards, infringing on the enjoyment of the use of neighboring properties and generating false fire alarms;

NOW THEREFORE, the **Council** of the Corporation of the Township of Machar enacts as follows:

PART I: DEFINITIONS, ADMINISTRATION, ENVIRONMENT

1.1. In this By-law,

“**Camp Fire**” means an open air fire for the purpose of cooking food but does not include a manufactured barbeque or a fire for the purpose of entertainment not more than .3m³.

“**Fire Chief**” means the Fire Chief of the South River Machar Fire Department, or his/her designate.

“**Firefighter**” means the Fire Chief and any other person employed in, or appointed to, the South River Machar Fire Department.

“**Fireworks**” means device consisting of a combination of explosives and combustibles, set off to generate colored lights, smoke, and noise for amusement.

“**Ground Cover**” includes but is not limited to, leaves, grasses, weeds, tree needles or wood chips on the ground.

“**Nuisance**” means excessive smoke, smell, airborne sparks or embers that is likely to disturb others.

“**Open Air**” means any open place, yard, field or construction area which is not enclosed by a building or structure.

“**Open Air Burning**” means fire set in the Open Air.

“**Outdoor Fireplace**” means a manufactured non-combustible enclosed container designed to hold a small fire for decorative purposes and the size is not larger than one (1) meter in any direction, and may include, but is not limited to, chimneys.

“**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 and includes the persons in the building or property.

“**Partial Fire Ban**” is declared by the Fire Chief or his/her designate for the Township of Machar. During a Partial Fire Ban, no permits for open fire burning will be issued and no discharge of fireworks is permitted. Camp Fires and the use of an Outdoor Fireplace are still permitted during a Partial Fire Ban.

“**Permit**” means a permit issued by the Fire Chief to set a fire in the Open Air for a specified time period.

“**Person**” means an individual, business, a partnership or a corporation.

“**Restricted Burn Zone**” may be identified by the municipality restricting areas and types of open air burning permitted in the identified area.

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

“**Total Fire Ban**” is declared by the Fire Chief or his/her designate for the Township of Machar.

Administration

1.2. The **Fire Chief** shall be responsible for the administration and enforcement of this By-law.

Environment

1.3. All **Open Air Burning** shall comply with the provisions of the *Environmental Protection Act, R.S.O. 1990, c.E.19*, as amended.

1.4. No **Open Air Burning** shall be permitted when a **Total Fire Ban** has been declared for the Township of Machar.

1.5. No **Open Air Burning** shall be permitted when a **Smog Alert** has been issued for the District of Parry Sound and/or the District of Nipissing.

1.6. No **Fireworks** shall be discharged when a **Total Fire Ban** or a **Partial Fire Ban** has been declared for the Township of Machar.

PART II: FIRES REQUIRING PERMITS

2.1. Except as provided in **Part III** of this By-law, no person shall set, maintain, or cause to be set, a fire in the Open Air unless a Permit has been issued by the **Fire Chief**.

2.2. (1) An application for a **Permit** must be completed on a form provided by the South River Machar Department.

(2) Each completed **Permit** must be submitted to The South River Machar Fire Department, any applicable fees must be submitted to the Township of Machar.

2.3. The fees for issuing a Fire Permit are as follows:

(1) Fee for an Evening Fire Permit is \$5.00.

(2) Fee for a Day Use/Exemption Permit is \$10.00.

2.4. (1) Except as otherwise permitted in the **Permit** issued under this Part, a **Permit** holder shall not set or maintain **Open Air Burning**, or cause **Open Air Burning** to be set or maintained:

- (a) between 12am midnight and 6pm;
- (b) at a distance of less than thirty (30) meters from any building or structure;
- (c) if the wind velocity is greater than twenty (20) kilometers per hour;
- (d) that exceeds one (1) cubic meter in size;
- (e) within five (5) meters of combustible **Ground Cover**;
- (f) without a suitable means of extinguishment available while the fire is burning;
- (g) if it creates a **Nuisance**;
- (h) of any material other than wood or wood products.

(2) In issuing a **Permit** under this Part for the **Opening Air Burning**, the **Fire Chief** may impose any additional requirements or exempt any conditions under this section 2.3, of this By-law as the **Fire Chief** considers necessary in the interest of public safety, or to minimize the inconvenience to the general public, or advisable in the circumstances, or to give effect to the objectives of this By-law.

2.5. The holder of a **Permit** issued under this Part shall:

- (1) maintain constant watch and control over the **Open Air Burning** from the time of the setting of the fire until the fire is totally extinguished; and
- (2) produce the **Permit** on demand to a **Firefighter** conducting an inspection of the **Open Air Burning**.

PART III: CAMP FIRES AND OUTDOOR FIREPLACES

3.1. An **Outdoor Fire Place** may be operated without a **Permit** if:

- (a) it is located at a distance of not less than five (5) meters between the fireplace and any building, structure, property line, tree, hedge, fence, roadway, overhead wire or other combustible article;
- (b) it is located on a non-combustible surface extending beyond the unit to an equal dimension to the height of the unit;
- (c) it does not create a **Nuisance**;
- (d) a portable extinguisher or operable garden hose is available while the unit is in operation; and
- (e) the **Owner** maintains constant watch and control over the Outdoor Fireplace from the time of setting the fire until it is totally extinguished.

3.2. A person may set or cause to be set or maintained a **Camp Fire** without obtaining a **Permit** provided that:

- (a) the fire is not more than 0.3m³ in size;
- (b) the fire is located at a distance of not less than five (5) meters between the fireplace and any building, structure, property line, tree, hedge, fence, roadway, overhead wire or other combustible article;
- (c) the wind velocity is not greater than twenty (20) kilometers per hour;
- (d) the fire does not create a **Nuisance**;
- (e) a suitable means of extinguishment is available while the fire is burning; and
- (f) the **Owner** maintains constant watch and control over the **Camp Fire** from the time of setting the fire until it is totally extinguished.

PART IV: OFFENCE AND ENFORCEMENT

4.1. (1) A person is guilty of an offence if the person:

- (a) furnishes false information on the Permit under this By-law;
- (b) contravenes any provisions of this By-law; or
- (c) contravenes an order issued under Section 4.3

- (2) A person who is convicted of an offence under this By-law is liable to a fine and penalty as pursuant to the provisions of the *Provincial Offences Act, R.S.O. 1990, c.P.33*, as amended and Schedule “A” attached hereto.
- (3) All persons setting an open fire in the Township of Machar shall:
 - (a) be responsible for any damage to property or injury to persons occasioned by the said fire;
 - (b) be liable for costs incurred by the Fire Department including personnel, equipment and apparatus necessary and called in to extinguish the said fire.

4.2 A **Permit** under this By-law may be revoked by the **Fire Chief** if the **Permit** holder fails to comply with the requirements of the **Permit** and/or any other provisions of this By-law.

4.3 A **Firefighter** may order a fire to be extinguished immediately if the fire:

- (1) is not set in compliance with this By-law; or
- (2) is determined upon inspection by the **Firefighter** to constitute a safety hazard or concern.

4.4 If a court of competent jurisdiction declares any provision or part of a provision of this By-law to be invalid or to be of no force and effect, it is the intention of Council that the remainder of this By-law shall continue to be in force.

PART V: SHORT TITLE

5.1 This By-law shall be known as the Open Air Burning By-law.

PART VI: REPEAL

6.1 The Township of Machar By-law 16-12, as amended, is repealed.

(1) Notwithstanding subsection 6.1, all permits issued pursuant to By-law 16-12, as amended, shall remain in full force and effect during the period for which they have been issued, unless the Permit is revoked, forfeited, or suspended for any other reason aside from the repeal of By-law 16-12.

(2) Any penalty incurred, any investigation, legal proceeding or remedy under By-law 16-12, as amended, may be continued to be enforced as if By-law 16-12, as amended, had not been repealed.

ENACTED and PASSED this 26th day of November, 2012.

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Mayor Doug Maeck

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Clerk-Administrator Brenda Paul, AMCT

SCHEDULE OF OFFENCES

<u>WORDING</u>	<u>SECTION</u>	<u>SET FINES</u>
Set fire during a total fire ban	1.4	\$200.00
Discharge fireworks during a total fire ban	1.6	\$200.00
Set fire greater than .3m3 without a fire permit	2.1	\$200.00
Set fire when wind velocity is greater than 20kmh	2.4(1)(c)	\$200.00
Set fire great than 1 m3	2.4(1)(d)	\$200.00
Fail to have suitable means of extinguishment available	2.4(1)(f)	\$200.00
Set fire that causes a nuisance	2.4(1)(g)	\$200.00
Burn material other than wood or wood products	2.4(1)(h)	\$200.00
Fail to maintain constant watch over fire	2.5(1)	\$200.00
Set fire when wind velocity is greater than 20kmh	3.2(c)	\$200.00
Fail to have suitable means of extinguishment available	3.2(e)	\$200.00
Fail to maintain constant watch over fire	3.2(f)	\$200.00

The penalty provision above for the offences indicated above is Section 4 of By-Law No. _____, a certified copy of which has been filed.