



Township of Horton COUNCIL / COMMITTEE REPORT

Title: Report of Ad-Hoc Committee on Open Air Burning By-law	Date:	April 5, 2016
	Council/Committee:	Fire Committee & Council
	Author:	Mackie McLaren, CAO/Clerk
	Department:	Administration

RECOMMENDATIONS:

That Council accepts this Report from the Ad-Hoc Committee on Open Air Burning By-law and agrees to consider the recommended new Open Air Burning By-law 2016-23. Further that purpose of the Committee has been achieved Council therefore disbands the Committee.

BACKGROUND:

The Fire Committee appointed a Sub-Committee on July 16, 2015 to review our Open Air Burning By-law. Information was gathered by the Chief and Deputy Chief and Office Staff. The Committee met on December 9, 2015, January 7, 2016, February 4, 2016, February 11, 2016 and March 23, 2016. In addition to the Meetings, the Committee held an Open House public meeting on Wednesday March 2, 2016 between 4 pm and 8 pm.

During the Open House and afterwards, the Committee received 25 responses from the public on the draft by-law. These comments were reviewed during the March 23 meeting and a minor change was made to the draft by-law as a result of the comments.

At the March 23 meeting the Committee Members approved the following recommendation:

Moved by Dave Bennett, Seconded by Robert Kingsbury that the Ad-Hoc Committee on Open Air Burning By-law recommend to Council that they enact the Open Air Burning By-Law that has been drafted by the Ad-Hoc Committee. Carried

This draft by-law includes the following changes from the current by-law:

- The concept of a Fire Season which runs from April 1 to October 31 each has been established. No bonfires are permitted during this time anywhere in the Township.
- Bonfires are not permitted in the Residential One (R-1), Limited Service Residential (LSR) and Mobile Home Park (MHP) zones in the Township at any time during the year. Bonfires (Open Air Fires) are permitted with a fire permit in the other zones between November 1 and March 31.
- Campfires are permitted in any zone during Fire Season – April 1 to October 31 without a permit providing the fire pit meets the definition in the by-law.
- No burn barrels are permitted in the above residential zones. They are only permitted in the Rural zone between November 1 and March 31 if the burn barrel is placed a minimum of 100 metres from any lot line.
- Strengthened wording for cost recovery, and
- List of fines under the Provincial Offenses Act that would be issued by a ticket.

This by-law has been reviewed by our solicitor and several changes were made at her recommendation.

ALTERNATIVES:

n/a

FINANCIAL IMPLICATIONS:


This by-law provides legal authority to recover costs to fight fires that get away as a result of improper fire practices. There is also an improved penalty section for not abiding with the by-law requirements.

ATTACHMENTS:

- Attached is a copy of the draft Open Air Fire By-law 2016-23; and
- A copy of the March 23, 2016 Committee Meeting Minutes which reviewed the public comments.

CONSULTATIONS:

The Ad-Hoc Committee consulted with recently passed Open Air Burning By-laws from McNab-Braeside and Admaston/Bromley. The Committee also received input from the Township's Solicitor and from the general public.

Author:  _____
signature

Other: _____
signature

Treasurer  _____
signature

C.A.O. _____
signature

**CORPORATION OF THE TOWNSHIP OF HORTON
BY-LAW NO. 2016-23**

**BEING A BY-LAW FOR ESTABLISHING REQUIRMENTS FOR OPEN AIR BURNING IN
THE TOWNSHIP OF HORTON**

WHEREAS the Fire Code, (Ontario Regulation 213/07) Division B, Part 2, Section 2.4.4, Article 2.4.4.4 provides that open air burning shall not be permitted unless approved by the Fire Chief, or designate, 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 the Fire Protection and Prevention Act, 1997, S.O. 1997, c. 4, as amended, provides:

In section 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 section 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 section 7.1(3) that a by-law passed under section 7.1 may deal with different areas of the municipality differently;

In section 7.1(4) 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 in accordance with this section are being complied with;

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

In section 10 (2) 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 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 (1) 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 being done by the person directed or required to do it, the matter or thing shall be done at the person's expense;

In section 446 (2) for the purposes of subsection (1), the municipality may enter upon land at any reasonable time;

In section 446 (3) 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;

AND WHEREAS the Forest Fires Prevention Act, R.S.O. 1990 Chapter F.24, as amended and Ontario Regulation 207/96 Outdoor Fires provides:

In section 10 that the period from the 1st day of April to the 31st day of October in each year shall be a fire season;

In section 18.(1) that if an officer finds on any lands, building, structure or equipment a condition or activity that, in his or her opinion, may cause danger to life or property from fire, the officer may make an order requiring the owner or person in control of the land, building, structure or equipment, the person who caused the condition, or any person engaged in or responsible for the activity to take such action, within the time specific by the order, as the officer considers necessary to eliminate or reduce the danger;

In section 18.(2) that if the person against whom an order is made under subsection (1) does not comply with the order, the officer, with such assistants as he or she requires, may take such action as the officer considers necessary to eliminate or reduce the danger;

In section 18. (3) that the cost and expenses of any action taken by an officer and his or her assistants under subsection (23) are payable by the person against whom the order was made to the Minister of Finance, on the date specified in the request for payment, and are recoverable as a debt due the Crown in right of Ontario by any remedy or procedure available to the Crown by law.

NOW THEREFORE, the Council of the Township of Horton enacts as follows:

1.0 DEFINITIONS

In this by-law,

"**Approved Pit**" means an area of ground that has been completely cleared of combustible material and lined with a minimum thickness of 15 cm (6 inches) of sand or mineral soil that will extend a minimum of 30 cm (12 inches) beyond the limit of the fuel used for a Campfire.

"**Authorized Agent**" means any person authorized by the Fire Chief or the Council of the Township to carry out those duties.

"**By-law Enforcement Officer**" means a person appointed by Council of the Township as a by-law enforcement officer for the Township.

"**Burn Barrel**" means any container regardless of size or construction, covered with a screen having a mesh size of not more than 5 mm in which a fire can be set or maintained for the burning of materials.

"**Campfire**" means a contained fire, having a maximum fuel volume of .6 metres x .6 metres x .6 metres (2 feet x 2 feet x 2 feet), that is set or contained in an approved pit or outdoor fireplace or brazier and is used solely for the purposes of cooking food, providing warmth or recreational enjoyment.

"**Fire Season**" means the period from the 1st day of April to 31st day of October in each year shall be a Fire Season.

"**Household Waste**" means any Solid waste, composed of garbage and rubbish, which normally originates in a private home or apartment house.

"**Incinerator**" Means any enclosed chamber constructed for the purpose of burning materials but not an outdoor furnace.

"**Investigator**" Means the Fire Chief, Deputy Fire Chief, Fire Captains or By-Law Enforcement Officer of the Township.

"**Open Air Fire/Bonfire**" means a fire set in the open air for the purpose of burning brush or other approved combustible material, and includes fires in incinerators and pits, but does not include Campfires, barbeques or braziers.

"**Outdoor furnace**" means, but is not limited to, any enclosed device, appliance, equipment apparatus or structure that is designed, intended and/or used to provide heat and/or hot water to any associated structure, that operates by burning wood or any other fuel, including, but not limited to, paper pellets and agricultural products, is not located within the structure to be heated, and includes, but is not limited to, devices referred to as wood furnaces, outdoor boilers and outdoor stoves covered with a screen having a mesh size of not more than 5mm.

"**Permit**" means a permit issued by the Fire Chief, or Deputy Fire Chief signifying permission to set or maintain or allow being set or maintained an Open Air Fire and establishing the conditions under which the permission is granted.

"**Person**" includes an association, firm partnership, or corporation.

"Prohibited Materials" Shall mean any materials such as but not limited to household waste, petroleum products, plastics, rubber, painted lumber, tires, furniture, carpeting, styrofoam or any other item that could cause noxious or toxic smoke or fumes.

"Township" means the Corporation of the Township of HORTON

2.0 GENERAL REGULATIONS

2.1 No Person shall at any time:

(a) Set, maintain or allow being set or maintain any Open Air Fire/Bonfire during the Fire Season.

(b) Set, maintain or allow being set or maintained any Open Air Fire/Bonfire that is not a Campfire maintained within an Approved Pit without first obtaining a Permit from the Fire Chief or Deputy Fire Chief.

(c) Burn any Prohibited Materials such as but not limited to Household Waste, petroleum products, plastics, rubber, painted lumber, tires, furniture, carpeting, styrofoam or any other item that could cause noxious or toxic smoke or fumes.

(d) Burn any materials where the smoke from such fire impedes visibility on any public thoroughfare, or has a negative impact on neighbouring person's or properties.

(e) Set, maintain or cause to be set or maintained any Open Air Fire/Bonfire:

(i) That is not a Campfire at any time within the geographical confines of the Residential One (R-1), Limited Service Residential (LSR) and Mobile Home Park (MHP) zones as described in the current approved Township of Horton Comprehensive Zoning By-law, except at a location approved by the Fire Chief or a firefighter designated by the Fire Chief. These zones are described generally as any built up residential area including water front areas in the Township of Horton.

(ii) That is oversize having a maximum fuel volume greater than 2 metres in diameter and 1 meter high except at a location approved by the Fire Chief or a firefighter designated by the Fire Chief.

(iii) Within 10 metres (app. 30 feet) of a building or wooded area.

(iv) Within 5 metres (app. 15 feet) of any other flammable material.

(f) Without special permission issued by the Fire Chief, burn any restricted material such as but not limited to:

(i) A building or structure of any kind.

(ii) Any hay, straw or standing material.

(iii) Any green brush or wood.

2.2 No person shall at any time burn grass or leaf litter.

2.3 No person shall at any time use or allow being used a Burn Barrel, Incinerator or any similar device to burn any materials.

(a) Further to 2.3 above, a Burn Barrel, Incinerator or similar device may be permitted in the Rural zone provided the barrel, incinerator or similar device meets a minimum setback of 100 metres (328 feet) from the property lot line and this use is only permitted between the dates of November 1 to March 31.

2.4 Outdoor Furnaces

- (a) No person shall at any time burn or allow to be burned any household waste or prohibited materials in any Outdoor Furnace.
- (b) Dry non-glossy paper, cardboard and natural vegetation may be used to start a fire in an Outdoor Furnace only.

2.5 The application for a fire Permit is made available on the Township of Horton's website or at the Municipal Office. An investigation of the premises and material to be burnt will be carried by the Fire Department prior to the issuance of the fire Permit. A fire Permit will be issued within 10 calendar days of application.

3.0 SAFETY

3.1 No person shall at any time set, maintain or allow to be set or maintained an Open Air Fire/Bonfire:

- (a) Unless a person over the age of 18 is in attendance and shall supervise all Open Air Fires/Bonfires until they are fully extinguished.
- (b) Unless equipment and other resources capable of controlling and extinguishing an Open Air Fire/Bonfire are available and maintained at the site until the fire is fully extinguished.
- (c) Except a Campfire in an Approved Pit, no earlier than two (2) hours before sunset and extinguished no later than two (2) hours after sunrise.
- (d) In the presence of any wind or wind gusts in excess of 11 Km/h or any other adverse burning conditions. i.e. dry weather

3.2 Every person setting or maintaining a Campfire shall ensure that such campfire is set or maintained in an Approved Pit and totally extinguished before leaving.

4.0 FIRE BANS

4.1 The Fire Chief may, at any time, and in the exercise of his or her sole discretion, issue a fire ban, effective for a specified period of time, prohibiting the setting of any and all Open Air Fires/Bonfires within any area of the Township based on MNR Guidelines, MNR indices rating or local conditions.

4.2 No person shall at any time while a level one (1) (yellow rating) fire ban is in effect set, maintain or allow any Open Air Fire/Bonfire other than a Campfire.

4.3 No person shall at any time while a level two (2) (red rating) fire ban is in effect:

- (a) Set, maintain or allow any Open Air Fire/Bonfire.
- (b) Set maintain or allow any Open Air Fire/Bonfire including but not limited to Campfires, outdoor fireplaces or other outdoor appliances that burn any fuel producing an open flame.
- (c) Enclosed barbeques fueled by propane or briquettes are exempt from section 4.3 (b) of this by-law

4.4 The Fire Chief will assess the need for a total or partial fire ban on a daily basis and will downgrade or cancel the fire ban as soon as possible based on MNR indices rating and local conditions.

4.5 Revocation of Permits

- (a) Notwithstanding any other provision of this by-law, the Fire Chief or Deputy Fire Chief may revoke any or all Permits, or refuse to issue Permits where one or more of the following conditions exist in respect of, or in proximity to, the proposed Open Air Fire/Bonfire Site:

- (i) A lack of precipitation that, in the opinion of the Fire Chief or Deputy Fire Chief, increases the risk of the spread of fire;
- (ii) Winds that, in the opinion of the Fire Chief or Deputy Fire Chief, increase the risk of the spread of fire;
- (iii) The issuance, by the Fire Chief, Fire Marshall, or other fire officials in the exercise of their statutory powers, of a fire ban or prohibition against any and all Open Air Fires; or
- (iv) Any other condition that in the opinion of the Fire Chief or Deputy Fire Chief will increase the risk of the spread of fire.

5.0 ADMINISTRATION AND ENFORCEMENT

This by-law shall be administered and enforced by the Fire Chief, Deputy Fire Chief, Fire Captains and By-law Enforcement Officer.

6.0 INSPECTION POWERS

- 6.1 An Investigator may at any time inspect any Open Air Fire/Bonfire to ensure that the provisions of this by-law have been and are being complied with and the person who has the care and control of such fire shall provide the Investigator with free and unobstructed access to the Open Air Fire.
- 6.2 Upon inspection under section 5 above, the Investigator:
 - a) Is entitled to request and have produced any relevant Permits issued in respect of the Open Air Fire/Bonfire that is being inspected; and;
 - b) May, where there are reasonable and probable grounds that any offence under this by-law has been committed, request any person believed to have committed such offence to provide suitable identification and information, and
 - c) May, where there are reasonable and probable grounds that any offence under this by-law has been committed, order the person or persons to immediately extinguish the fire.

7.0 REMEDIAL ACTION - COSTS

- 7.1 Should the Township, through the Fire Department, or its authorized agent extinguish, demolish or repair property or, take any or all measures to terminate the danger of unauthorized activity, the Township shall recover all of the expenses incurred in respect thereof by any or all of the methods provided for in Section 446 of the Municipal Act, 2001 in addition to any other fees or charges prescribed. The person or persons responsible for setting, maintaining, or permitting to be set or maintained an Open Air Fire/Bonfire shall be liable to the Township by way of a fee or charge, in accordance with Schedule "B" to this by-law, on account of those costs and expenses incurred by the Township in:
 - a. Investigating and responding to a complaint made to the Township or the Fire Department by any person acting reasonably and in good faith of a possible contravention of section 2 of this by-law.
 - b. The dispatching of Fire Department vehicles and fire-fighting personnel for the purpose of extinguishing the Open Air Fire/Bonfire.
 - c. Investigating any complaint from any person acting reasonably and in good faith, which complaint results from setting and/or maintenance of an Open Air Fire/Bonfire and, in the opinion of the Fire Chief or the Fire Chief's designate smoke or emissions from such Open Air Fire are contrary to the guidelines that are detailed in section 3 of this by-law.

- 7.2 All fees and charges payable under this by-law are due and owing to the Township within thirty (30) days of the date of an invoice rendered to the person liable to pay them.
- 7.3 All overdue accounts shall accrue interest at the rate of 1.25% per month (15% per annum), calculated monthly, from the due date until paid in full.
- 7.4 All fees and charges payable under this by-law constitute a debt of the person liable for payment of them to the Township and, in the case of owners of a property being responsible for payment of the fees and charges, the Township shall add the amount owing to the tax roll for the owner(s) real property and collect them in like manner as municipal taxes.
- 7.5 If a person who sets or maintains an Open Air Fire/Bonfire in contravention of this by-law is not the owner of the property but occupies or is using the property with the owners consent, the owner and the person conducting the Open Air Fire/Bonfire shall be jointly and severally liable to pay any fees and charges imposed by this by-law.

8.0 PENALTY PROVISIONS

Every person who contravenes or causes or permits the contravention of any provision of this by-law is guilty of an offence and upon conviction is liable to a fine, pursuant to the provisions of the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended as laid out in Schedule "A" to this by-Law.

9.0 SEVERABILITY

A decision of a competent court that one or more provisions of this by-Law are invalid in whole or in part does not affect the validity, effectiveness or enforce ability of the other provisions or part of provisions of this by-Law.

10.0 BY-LAW NO. 2007-51 is hereby repealed effective May 5th, 2016.

11.0 BY-LAW COMING INTO EFFECT

This by-law shall come into force thirty (30) days after the passing of this by-law, at which time By-law No. 2007-51 shall not longer be in effect.

Read a first and second time this 05th day of April 2016.

Read a third time and passed this 05th day of April 2016.


MAYOR


CAO/Clerk

TOWNSHIP OF HORTON
Part 1 Provincial Offences Act
By-Law No. 2016-23 Open Air Burning
Schedule "A"
Schedule of Fines

Item	Column 1 Short Form Wording	Column 2 Provision creating or defining offence	Column 3 Set fine
1	Set, Maintain or allow an Open Air Fire during Fire Season	2.1 (a)	\$450.00
2	Set, Maintain or allow an Open Air Fire without a Permit	2.1 (b)	\$450.00
3	Burn Prohibited Materials	2.1 (c)	\$250.00
4	Impede visibility public thoroughfare	2.1 (d)	\$250.00
5	Set or maintain Open Air Fire R1 Zone	2.1 (e) (i)	\$250.00
6	Set or maintain Open Air Fire MHP Zone	2.1 (e) (i)	\$250.00
7	Set or maintain Open Air Fire LSR Zone	2.1 (e) (i)	\$250.00
8	Set or maintain an oversize Open Air Fire	2.1 (e) (ii)	\$250.00
9	Set or maintain an Open Air Fire within 10 meters of a building or wooded area	2.1 (e)(iii)	\$250.00
10	Set or maintain an Open Air Fire within 5 meters of flammable material	2.1 (e)(iv)	\$250.00
11	Burn restricted materials, no special permission	2.1 (f)	\$450.00
12	Burn grass or leaf litter	2.2	\$250.00
13	Burn Household Waste or Prohibited Materials in a Burn Barrel or Incinerator	2.3	\$250.00
14	Burn materials in a Burn Barrel or Incinerator in Fire Season	2.3 (a)	\$250.00
15	Burn Household Waste or Prohibited Materials in an Outdoor Furnace	2.4 (a)	\$450.00
16	Set or maintain Open Air Fire underage supervision	3.1 (a)	\$250.00
17	Set or maintain Open Air Fire no fire control measures on site	3.1 (b)	\$250.00
18	Set or maintain Open Air Fire non approved times	3.1 (c)	\$250.00
19	Set or maintain Open Air Fire adverse burning conditions	3.1 (d)	\$250.00
20	Campfire not set or maintained in an Approved Pit	3.2	\$250.00
21	Set or maintain an Open Air Fire during a level 1 (yellow rating) fire ban	4.2	\$450.00
22	Set or maintain an Open Air Fire during a level 2 (red rating) fire ban	4.3 (a)	\$450.00
23	Set, maintain or allow any Campfires during a level 2 (red rating) fire ban	4.3 (b)	\$450.00
24	Set, maintain or allow any fire in any Burn Barrel or Incinerator during a level 2 (red rating) fire ban.	4.3 (c)	\$450.00

NOTE: The general penalty provisions for the offences listed above is section 8 of By-Law 2016-23, a certified copy of which is on file.

SCHEDULE "B" TO BY-LAW NO. 2016-23

Schedule of Fees

1. Fees to respond to and investigate a complaint in regards to a possible violation under Section 2.0 about Open Air Fire/Bonfire

- a. Fee of \$75.00 per response payable by the permit holder or person setting, maintaining or allowing such fire to be lit if the complaint is substantiated
- b. Fee of \$75.00 per response payable by the complainant if the complaint is not substantiated
 - (i) Fee may be waived at the discretion of the investigator if in their opinion the complaint was reasonable and made in good faith but investigation showed no violation under any section of this by-law had occurred.

2. Cost Recovery Fees:

- a. Dispatch of Fire-fighters - (to be calculated at \$25 per hour for a minimum of 2 hours per fire fighter responding to the scene and calculated on one half hour increments thereafter).
- b. Dispatch of Fire Response vehicles actively involved in fighting the fire. - First hour (or part thereof) \$450.00 per vehicle, each additional half hour \$225.00 per vehicle.
- c. Actual costs incurred by the Township for additional firefighting support from other outside agencies.
- d. Actual costs incurred by the Township to replace or repair damaged equipment.
- e. A 15% Administration charge shall be added to the Cost Recovery Fees calculated in clauses 2 a., 2 b., 2 c. and 2 d. set out above.

SCHEDULE "C" TO BY-LAW NO. 2016-23

Open Air Burning Permit

- (a) A person over the age of 18 is in attendance and shall supervise all Open Air Fires until they are fully extinguished.
- (b) Equipment and other resources capable of controlling and quickly extinguishing Open Air Fires shall be available and maintained at the site of the fire at all times. Equipment and other resources shall include as a minimum:
 - Fire extinguisher (Optional for approved camp fire)
 - Shovels
 - Water hose/source of water
 - Sufficient personnel on site to manage the size of fire set.
- (c) Hours of all fires set outdoors shall be no earlier than two (2) hours before sunset and extinguished no later than two (2) hours after sunrise, or earlier except a campfire in an approved pit.
- (d) No Open Air Fires be set in the presence of any wind or wind gusts in excess of 11 Km/h or any other adverse burning conditions.