

THE CORPORATION OF THE TOWNSHIP OF SOUTH STORMONT

BY-LAW No. 2009-40

BEING a by-law to regulate conditions where fires may be set in the open air in the Township of South Stormont.

WHEREAS the *Municipal Act, 2001*, S. 5 (1) provides that the powers of a municipal corporation are to be exercised by its council;

AND WHEREAS the *Municipal Act, 2001*, S. 5 (3) provides that the powers of every council are to be exercised by by-law;

AND WHEREAS the *Fire Protection and Prevention Act 1997*, as amended, Section 7.1 (a) and (b) authorizes Council to pass by-laws regulating fire prevention, including the prevention of the spreading of fires and regulating the setting of open air fires, including the times during which open fires may be set;

AND WHEREAS the *Fire Protection and Prevention Act 1997*, as amended, Section 7 (4) authorizes Council to appoint Officers 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 *Fire Code*, paragraph 2.6.3.4, 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;

AND WHEREAS the *Farming and Food Protection Act, 1998*, c. 1 Section 6, provides that no municipal by-law applies to restrict a normal farm practice carried on as part of an agricultural operation;

AND WHEREAS Section 446 of the *Municipal Act 2001* authorizes Council to recover the costs of terminating a danger under this by-law by any or all of the methods as provided for;

AND WHEREAS Council of the Township of South Stormont deems it expedient to pass a by-law to regulate conditions where fire may be set in the open air in the Township of South Stormont;

NOW THEREFORE the Council of the Corporation of the Township of South Stormont enacts as follows:

Part 1 – Definitions

1. In this by-law:

"Barbeque" shall mean a portable or fixed device designed and intended solely for the cooking of food in the Open air but does not include outdoor fireplaces and Recreational fires;

"Built up area" shall mean an area where more than 20 dwellings fronting on either side of a section of rural road not greater than 1 kilometre in length.

"Chief Fire Official" shall mean the Fire Chief of the Fire Department of the Corporation of the Township of South Stormont;

"Cooking fire" shall mean an Open air fire used for the purpose of cooking food;

"Corporation" shall mean the Corporation of the Township of South Stormont;

"Council" shall mean the Council of the Corporation of the Township of South Stormont;

"Dangerous condition" shall mean any condition as determined by the Fire Chief that increases the risk of the spread of a fire or is adverse to public safety;

"Farming business" shall mean a Farming business as defined in the *Farm Registration and Farm Organizations Funds Act, 1993*;

"Fire ban" shall mean a period of time during which the Fire Chief or designate, declares a total ban on Open air fires;

"Noxious materials" shall include 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" shall mean excessive smoke, smell, airborne sparks or embers of the Open air fire that are likely to disturb others, or that is likely to reduce visibility;

"Officer" shall mean the Chief Fire Official or By-law Enforcement Officer or other Fire Official designated by the Chief Fire Official to administer and enforce the provisions of this By-law;

"Open air fire" shall mean the burning of material such as wood, tree limbs and branches where the flame is not wholly contained and includes Recreational fires, brush fires, Windrows

and outdoor fireplaces, but does not include Barbeques;

"Outdoor fire container" shall mean a non-combustible container used to hold a small fire and includes, but is not limited to, chimineas, fire pits and outdoor brick fireplaces;

"Owner" means the registered Owner of lands as designated in the latest revised assessment roll prepared by the Municipal Property Assessment Corporation;

"Permit" shall mean a Permit issued by the Chief Fire Official, or designate, to set a fire in the Open air for a specified time period;

"Permit holder" shall mean the Owner or the Person to whom a Permit has been issued by the Chief Fire Official, or designate;

"Person" includes any physical or corporate entity, partnership or any association and the heirs, executors, administrators, successors and assigns or other legal representation thereof to whom the context may apply;

"Recreational fire" shall mean the burning of clean dry seasoned firewood for cooking, heating, enjoyment or similar purposes. Burning must be contained within a non-combustible container or fire pit that must not exceed 46 centimeters wide by 46 centimeters long by 46 centimeters high (approximately 18 inches wide, by 18 inches long, by 18 inches high);

"Windrow" shall mean an Open air fire where the size of the material to be burned does not exceed 50 metres in length, 5 metres in width, and 3 metres in height (approximately 150 feet in length, 15 feet in width and 10 feet in height) and that is set and maintained solely for the purpose of burning wood, tree limbs and branches as part of normal farm practices for the clearing of agricultural land.

Part 2 – General

2.1 No Person shall set, maintain, or permit to be set or maintained an Open air fire except as authorized under this By-law.

2.2 No Person shall receive an Open air burn Permit in the Township of South Stormont in those areas being hamlets, villages, subdivisions, or any other Built up areas at the discretion of the

Chief Fire Official and as defined in the *Municipal Act, 2001, Planning Act, R.S.O. 1990* or any other applicable Municipal By-laws, Provincial legislation or statutes.

- 2.3 The Chief Fire Official may, at any time and in the exercise of his / her sole discretion, issue a Fire ban effective until the Chief Fire Official rescinds the Fire ban.
- 2.4 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 Recreational fire at a camp site in compliance with all rules and regulations or the Owner;
 - f) officials for the purpose of education and training individuals;
 - g) a Person conducting fire extinguisher training who has obtained prior written approval of the Fire Chief, or designate; or
 - h) any other event or requirement as approved by Council.
- 2.5 The headings in this by-law are solely for convenience and are not to be used as an aid in the interpretation of this by-law.
- 2.6 When required under this by-law, an application for a Permit must be completed on the forms provided by the Township of South Stormont, attached hereto as Schedule "A" and forming part of this by-law.
- 2.7 Where a Permit is required under this by-law, the Person must pay the Permit fee, as set out in Schedule "B" attached hereto and forming part of this by-law.
- 2.8 A Permit shall only be valid for the date indicated on the Permit, however, there may be provisions for extended dates for the Open air burn Permit, provided the Person advises the Chief Fire Official, or designate, and receives approval for the extension.
- 2.9 The Chief Fire Official may impose any additional requirements or exemptions with the issuance of a Permit that is considered necessary and in the interest of public safety,

or to minimize inconvenience to the general public, or is advisable in the circumstances, or to give effect to the objects of this by-law.

2.10 The Chief Fire Official may refuse to issue a Permit:

- a) if the proposed Open air fire would contravene this by-law; or
- b) if the Owner or Permit holder has previously contravened any Permit conditions or other provisions of this by-law.

Part 3 – When an Open air fire is Allowed

3.1 Conditions of All Open air fires Under this Part

1. Every Person setting, permitting to be set, maintaining, or permitting to be maintained, an Open air fire, 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 fire;
 - b) shall have legal title to the property where the Open air fire 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;
 - d) shall not burn Noxious materials;
 - e) shall have an effective extinguishing agent of sufficient size and the capability to extinguish the Open air fire immediately available for use;
 - f) shall ensure the Open air fire is controlled and supervised by a competent Person, having an age of at least 18 years;
 - g) shall completely extinguish the Open air fire before the site is vacated;
 - h) shall ensure the wind speed does not exceed 8 kilometres (approximately 5 miles) per hour during the Open air fire;
 - 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;
 - l) shall protect adjacent properties from the potential spread of fire;
 - m) shall ensure the Open air fire does not create a Nuisance;
 - n) shall ensure the materials being burned are not received by the Owner of the lands where the Open air fire is located in exchange for a fee; and

- o) shall ensure the Open air fire is not otherwise in contravention of the provisions of this by-law, the regulations passed thereunder or any other by-law of the Corporation.

3.2 Open air fire Allowed Without a Permit – Cooking / Recreational Fire

1. A Person may conduct an Open air fire in an Outdoor fire container subject to the conditions set out in this Part.
2. A Person conducting an Open air fire shall comply with the following conditions for an Open air fire in an Outdoor fire container:
 - a) shall only conduct an Open air fire between 8:00 a.m. and midnight;
 - b) shall only use an Outdoor fire container that is constructed from non-combustible material;
 - c) shall not burn or attempt to burn a volume of combustible material greater than 46 centimeters wide by 46 centimeters long by 46 centimeters high (approximately 18 inches wide, by 18 inches long, by 18 inches high);
 - d) shall contain the fire within the Outdoor fire container at all times;
 - e) shall locate the Outdoor fire container at least 5 metres (approximately 15 feet) 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.

3.3 Open air fire Allowed – With a Permit (not greater than 1 cubic metre)

1. A Person may conduct an Open air fire 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, to obtain and continue to hold a Permit, all of which shall be performed and observed by the applicant or the Permit holder:
 - a) the applicant shall apply for a Permit and pay the required fee as set out in Schedule "B" attached hereto and forming part of this by-law;
 - b) the Permit holder shall produce the Permit on demand to an Officer conducting an inspection of the Open air fire, if required;

- c) shall only conduct the Open air fire between dawn and dusk (daylight hours);
- d) shall only use a non-combustible container, and shall contain the fire within it at all times;
- e) shall not have a fire larger than 1 metre in length, by 1 metre in width, by 1 metre in height (approximately 39 inches in width, 39 inches in length and 39 inches in height);
- f) shall locate the Open air fire at least 30 metres (approximately 100 feet) away from any building, structure, property line, tree, hedge, fence, roadway, overhead wire or other combustible article;
- g) shall locate the Open air fire at least 5 metres (approximately 15 feet) from any combustible ground cover;
- h) any additional requirements or exemptions the Chief Fire Official considers necessary in the interest of public safety, or minimize inconvenience to the general public, or advisable in the circumstances, or deemed to be a Dangerous condition, or to give effect to the objects of this by-law.

Part 4 – An Open air fire is Allowed With a Permit – Normal Farm / Rural Practice

4.1 Open air fire Allowed – Normal Farm / Rural Practice

1. A Person may conduct an Open air fire for Normal Farm / Rural Practices if it is part of a normal farm practice carried on as part of an agricultural operation, as terms defined in the *Farming and Food Production Protection Act, 1998*, on lands zoned for agricultural use, and subject to the conditions set out in this Part.
2. A Person conducting an Open air fire under subsection 4.1.1 shall comply with the following conditions:
 - a) shall not have a fire larger than 6.5 metres in length, by 6.5 metres in width, by 2.5 metres in height (approximately 20 feet in length, 20 feet in width and 8 feet in height); and
 - b) the Open air fire must be located at least 50 metres (approximately 150 feet) 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.

4.2 Open air fire Allowed – Windrows

1. A Person may conduct an Open air fire to burn Windrows if they have been issued a Permit, paid the required fee as set out in Schedule “B” attached hereto, and if the Person complies with all of the conditions set out in this Part.
2. No Permit holder shall set or maintain an Open air fire that is a Windrow, unless:
 - a) the Windrow does not exceed the size limits set out in this by-law;
 - b) the Windrow shall be no longer than 50 metres in length, 5 metres in width, and 3 metres in height (approximately 150 feet in length, 15 feet in width and 10 feet in height);
 - c) the Windrow is located a distance of not less than 90 metres (approximately 300 feet) from a building, overhead wiring or highway;
 - d) the Windrow is located a distance of not less than 60 metres (approximately 200 feet) from a wooden fence rail, hedge or standing timber;
 - e) subject to clauses, b) and c), the Windrow is located a distance of not less than 30 metres (approximately 100 feet) from any other combustible material;
 - f) the Windrow is constructed at right angles to the prevailing wind direction;
 - g) the Windrow is constructed on soil other than peat soil types;
 - h) there is a separation distance of at least 30 metres (approximately 100 feet) between the ends of the Windrows and at least 30 metres (approximately 100 feet) between parallel Windrows, if more than one Windrow is set and maintained at the same time at the same location;
 - i) the Windrow is set at its centre first;
 - j) the Windrow is set and maintained only between Monday and Friday, inclusive;
 - k) the Permit holder ceases to add material to the Windrow if a Fire ban comes into effect; and
 - l) the Permit holder uses best efforts to aerate and separate any soil from wood, tree limbs and branches in the Windrow.

Part 5 – Indemnification

- 5.1 The Permit holder shall indemnify and save harmless the Township of South Stormont 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 negligence on the part of the Permit holder, the Permit holder's employees, directors, contractors and agents.

Part 6 – Order to Discontinue Activity

- 6.1 If the Fire Chief is satisfied that this by-law has been contravened, or in the opinion of the Fire Chief, a Dangerous condition exists in or near the site of the Open air fire, the Fire Chief may make an order requiring the Person who contravened the by-law, or who caused, or permitted 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 fire for a certain period of time.
- 6.2 An Order to Discontinue Activity shall set out:
- a) the municipal address of the property where 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, and
 - e) the date when 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 – Appoint Officers

- 7.1 The Corporation may from time to time appoint Officers and such other staff as may be necessary to carry out the functions of this By-law, including the enforcement thereof.

Part 8 – Severability

- 8.1 It is hereby declared that each of the foregoing provisions of this By-law is severable and that, if any of the provisions of this By-law should for any reason be declared invalid by any Court, it is the intention and desire of this Council that each of the then remaining provisions hereof shall remain in full force and effect.

Part 9 – Offences and Penalties

- 9.1 Every Person who contravenes any of the provisions of this by-law is guilty of an offence.
- 9.2 Every Person who is convicted of an offence under this by-law is liable to a fine up to \$5,000 exclusive of cost under the *Provincial Offences Act, R.S.O. 1990*.

- 9.3 Where a Person has been convicted of an offence under this by-law,
- a) the Ontario Court of Justice, or
 - b) any court of competent jurisdiction thereafter may in addition to any other penalty imposed on the Person convicted, issue an order prohibiting the continuation or repetition of the offence or the doing of any act or thing by the Person convicted directed towards the continuation or repetition of the offence
- 9.4 The Corporation hereby authorizes the attendance of such Officers as may be required to control or extinguish fires not in accordance with this by-law. Should the Corporation extinguish, demolish or repair property or, take any or all measures to terminate the danger or unauthorized activity, the Corporation may 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 penalty prescribed in Schedule "B" attached hereto and forming part of this by-law.

Part 10 – Repeal

- 10.1 That By-law No. 2007-93, or any by-law inconsistent to this by-law, is hereby repealed.

READ AND PASSED in open Council, signed and sealed this 10th day of June, 2009.

Original signed by Deputy Mayor Ray Beauregard

Mayor

Original signed by Betty de Haan, CAO/Clerk

Clerk

Fee Schedule

1. Permit \$10.00

Cost Recovery Fees:

2. First hour (or part thereof) \$350.00 per vehicle
Each additional half hour \$175.00 per vehicle
3. Fees to be made payable to the Township of South Stormont
4. Fees to be charged to a maximum of \$2,000.00 per incident.
5. Council or the Fire Chief has the authority to waive, reduce, or otherwise vary a fee or charge, in accordance with the general criteria of this by-law.