

# THE CORPORATION OF TAY VALLEY TOWNSHIP

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## BY-LAW NO. 2024-039

### OPEN AIR BURNING BY-LAW

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**WHEREAS**, Section 2.4.4.4 (1) (a) of *Ontario Regulation 213/07: FIRE CODE*, as amended, provides open air burning shall not take place unless it has been approved;

**AND WHEREAS**, Section 7.1 of the *Fire Protection and Prevention Act, 1997, S.O. 1997, c. 4*, as amended, provides that a council of a municipality may pass by-laws regulating fire prevention, including the prevention of the spreading of fires and regulating the setting of open air fires, including establishing the times during which open air fires may be set;

**AND WHEREAS**, Section 425 (1) of the *Municipal Act, 2001*, as amended, provides that a municipality may pass by-laws providing that a person who contravenes a by-law of the municipality passed under the *Municipal Act, 2001*, as amended, is guilty of an offence;

**AND WHEREAS**, Section 429 (1) of the *Municipal Act, 2001*, as amended, provides that a municipality may establish a system of fines for offences under a by-law of the municipality passed under the *Municipal Act, 2001*, as amended;

**NOW THEREFORE BE IT RESOLVED THAT**, the Council of the Corporation of Tay Valley Township enacts as follows:

#### 1. DEFINITIONS

- 1.1 **“Activate (Activated)”** – shall mean when a fire permit is obtained, and the permit holder calls the required phone number to notify that they plan to have an Open Air Burn.
- 1.2 **“Campground”** – shall mean any property approved for the use of temporary accommodation by persons in tents, recreational vehicles, camping trailers and that usually has a toilet and showers for campers to use, and includes a tent/trailer park.
- 1.3 **“Fire Ban”** – shall mean restrictions or a prohibition on all Open Air Burning established under this By-Law.
- 1.4 **“Fire Chief”** – shall mean the Fire Chief or designate duly appointed by the Municipality as prescribed under Section 6 of the *Fire Protection and Prevention Act, 1997, S.O. 1997, c. 4*.
- 1.5 **“Fire Department”** – shall mean the Drummond North Elmsley Tay Valley Fire Rescue.

- 1.6 **“Fireworks”** – shall mean a device containing gunpowder and or other combustible chemicals that causes a spectacular explosion when ignited, used typically for display or celebrations.
- 1.7 **“Flying Lantern (Floating Lantern, Sky Lantern, Chinese Lantern, Japanese Lantern, Kongming Lantern or Wish Lantern)”** – shall mean a small hot air balloon or similar device made of treated paper or any other material, with an opening at the bottom, which is propelled by an open flame generated by a small candle or fuel cell, allowing the balloon or similar device to rise and float in the air, uncontrollably, while ignited.
- 1.8 **“FPPA”** – shall mean the *Fire Protection and Prevention Act, 1997, S.O. 1997, c. 4*, as amended, and the regulations enacted thereunder, as amended from time to time, or any Act or Regulation enacted in substitution thereof.
- 1.9 **“Highway”** - includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof.
- 1.10 **“Municipality”** – means The Corporation of Tay Valley Township and/or the Corporation of the Township of Drummond/North Elmsley.
- 1.11 **“Open Air Burning”** – shall mean the burning of any material, including without limiting the generality of the forgoing, wood, carboard, brush, leaves or garden waste where the flame is not wholly contained and is, thereby, open to the air outdoors, and includes campfires, brush fires, burn barrels, and outdoor fireplaces, but does not include barbecues.
- 1.12 **“Noxious Materials/Household Waste”** – shall mean combustible material such as plastics, polyethylene terephalate (PET), paints, oils, solvents, rubber, insulation, batteries, acids, polystyrenes (styrofoam), pressure treated or painted lumber, construction/demolition waste, drywall, tires, upholstered furniture, synthetic fabrics, diapers, hazardous waste and all other similar and like materials, but shall not include clean and untreated wood/lumber and wood fibre products such as unlaminated paper, cardboard and boxboard, brush, tree branches/limbs and leaves.
- 1.13 **“Property Owner”** – shall mean any person, firm or corporation having control over any portion of buildings, property or premises and may include landlords, building managers, rental agents, agents, tenants, trustees, a representative of the owner, superintendents and, includes, any other person to whom rent is payable.
- 1.14 **“Rental Property”** – shall mean a building, portion thereof, or group of buildings which is rented, leased, let, or made available for occupation for compensation.

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**2. GENERAL REGULATIONS**

**2.1** No person shall conduct Open Air Burning:

- 2.1.1** unless a proper permit is obtained; or
- 2.1.2** unless such Open Air Burning consists of a small, confined fire that is supervised at all times, and is used to cook food on a grill, or spit, and is proportionate with the type and quantity of food being cooked; or
- 2.1.3** unless the use of an appliance that meets the requirements of the *Technical Standards and Safety Act, 2000*, is for outdoor use, and if assembled and installed in accordance with the manufacturer's instructions.

**2.2** No person shall set or maintain a fire:

- 2.2.1** In contravention of any of the provisions of this by-law;
- 2.2.2** in contravention of *Ontario Regulation 213/07: FIRE CODE, FPPA* or any other applicable municipal, provincial or federal laws;
- 2.2.3** with the aid of flammable or combustible liquids of any kind;
- 2.2.4** that exceeds the available human resources, equipment, and water on site to control the fire.

**2.3** No person shall set or maintain Open Air Burning when the wind is in such a direction or intensity to cause any or all of the following:

- 2.3.1** the possible spread of fire beyond the approved burn site;
- 2.3.2** a decrease in visibility on any Highway;
- 2.3.3** excessive smoke;
- 2.3.4** issues with visibility for others;
- 2.3.5** a discomfort to others.

**2.4** No person shall burn:

- 2.4.1** Noxious Materials/Household Waste;
- 2.4.2** recyclable items or products;
- 2.4.3** windrows (cleared land) or buildings, unless pre-approved by the Fire Chief;
- 2.4.4** on any road allowance, unopened road allowance or in a location that would interfere with traffic, unless pre-approved by the Fire Chief.

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- 2.5** Open Air Burning that does not meet the requirements of this by-law shall be extinguished immediately.

**3. TYPES OF OPEN AIR BURNING**

**3.1 Residential Open Air Burning**

- 3.1.1** Residential Open Air Burning shall be no larger than 0.7 m (2.5 ft) in diameter.
- 3.1.2** The location of the fire must be located on a non-combustible surface that extends a minimum of 0.3 m (1 ft) beyond the fire barrier.
- 3.1.3** Notwithstanding Section 3.1.2 above of this by-law, chimeneas shall be located on a non-combustible surface that extends a minimum of 0.3 m (1 ft) beyond the diameter of the device.
- 3.1.4** The fire must be located at least 5.0 m (16.4 ft) from any combustible material, property line or structure.
- 3.1.5** The fire must be at least 15.0 m (49.2 ft) from any utility line (gas, hydro, or telecommunications).
- 3.1.6** The space above the fire must be at least 3.0 m (10 ft) from vegetation, combustible material or object.
- 3.1.7** The flame must not exceed 1.0 m (3.3 ft) in height and diameter.
- 3.1.8** The fire must always be supervised by a competent person to prevent the fire from spreading to or endangering other property.
- 3.1.9** The fire must be completely extinguished when the burn is finished, or no one wants to or is able to be in constant attendance of the fire.
- 3.1.10** A Rental Property is subject to Section 3.1.
- 3.1.11** Campgrounds shall be subject to Section 3.1, with the following exceptions:
- 3.1.11.1** The diameter of the fire shall not exceed 0.6 m (2.0 ft)
- 3.1.11.2** The fire must be located at least 3.0 m (10 ft) from any combustible material, property line or structure.
- 3.1.11.3** Exceptions can be made if approved by the owner of the Campground.

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**3.2 Agricultural Open Air Burning**

- 3.2.1** Agricultural Open Air Burning may be larger than 0.7 m (2.5 ft) in height and diameter.
- 3.2.2** Agricultural Open Air Burning may only be comprised of dry timber, stumps, grass and dry brush, agricultural waste from farming operations on that property and any other organic material resulting from the clearing of land.
- 3.2.3** Materials cannot be added to the fire between sunset and sunrise.
- 3.2.4** The fire shall be a minimum of 5 m (16.4 ft) from the property line and be a minimum of 50 m (164 ft) from any neighbouring residence.
- 3.2.5** The fire shall be a minimum of 15 m (50 ft) from forest, woodland, or buildings.
- 3.2.6** In the case of multiple fires, each shall be sufficiently spaced and have sufficient resources on hand to prevent the fire from spreading to or endangering other property.

**4. FIRE PERMITS**

- 4.1** A fire permit shall be obtained by the Property Owner prior to the proposed date of the first Open Air Burn.
- 4.2** In applying for a fire permit, no person shall provide false or misleading information.
- 4.3** Types of fire permits:
  - 4.3.1** Residential Fire Permit
  - 4.3.2** Campground Fire Permit
  - 4.3.3** Agricultural Fire Permit
- 4.4** Agricultural fire permits may be used for a Residential Open Air Burn, in accordance with 3.1.
- 4.5** Campground fire permits shall be obtained by the Property Owner and will serve as one overall permit for the Campground as long as each Open Air Burn meets the requirements of 3.1.
- 4.6** Residential and Campground fire permits do not have to be activated before an Open Air Burn.

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- 4.7** Agricultural fire permits shall be activated before an Agricultural Open Air Burn.
- 4.8** A fire permit shall be approved unless:
- 4.8.1** the application is incomplete;
  - 4.8.2** there are reasonable grounds to believe that the Open Air Burn may cause adverse effects;
  - 4.8.3** there are reasonable grounds to believe that the Open Air Burn will result in a breach of this by-law, the FPPA, or any other municipal, provincial or federal law.
- 4.9** No person shall transfer a fire permit to another person or another location.
- 4.10** The Fire Chief may attach such additional conditions to a fire permit as deemed necessary to ensure public safety.
- 4.11** No person shall permit, set or maintain any Open Air Burn, except in accordance with the conditions of the Fire Permit.
- 4.12** The Property Owner, as a condition of the fire permit, shall indemnify and save harmless the Fire Department and the Municipality from any and all claims, demands, causes of action, losses, costs or damages that the Fire Department and/or Municipality may suffer, incur, or be liable for resulting from Open Air Burning as set out in the by-law whether with or without negligence on the part of the Property Owner, the Property Owner's employees, directors, contracts and agents.
- 4.13** A new fire permit shall be obtained when the Property Owner for the property changes.
- 4.14** A new fire permit shall be obtained when the location for which the fire permit was issued changes.
- 4.15** All fire permits expire annually on November 30.
- 4.16** A fire permit may be revoked or suspended at any time by the Fire Chief.
- 4.17** In any prosecution under a provision of this by-law that requires a fire permit, the onus is on the person charged to prove that the person has a fire permit at the time the offence is alleged to have been committed.

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**5. REQUIREMENTS FOR SPECIFIC EVENTS**

- 5.1** Despite Section 2.1.3 and Section 6 of this by-law, a community not-for-profit organization, school or a religious institution may apply in writing to the Fire Chief for a fire permit to conduct Open Air Burning in an outdoor fireplace or for a campfire for cultural, religious or recreational specific events.
- 5.2** A site inspection of the proposed site of the Open Air Burning may be required by the Fire Chief prior to issuing a fire permit.
- 5.3** The Fire Chief may attach such additional conditions to a fire permit as deemed necessary to ensure public safety.
- 5.4** No person for a specific event Open Air Burn shall set or maintain a recreational fire or an outdoor fireplace that is not in compliance with the requirements of Section 2 of this by-law, with the exception of Section 2.1.3.

**6. FIRE BANS**

- 6.1** The Fire Chief, at his/her discretion, may restrict or ban all Open Air Burning depending on climatic conditions.
- 6.2** No person shall permit, set or maintain Open Air Burning when a Fire Ban has been issued by the Fire Chief.
- 6.3** Levels of a Fire Ban shall be as follows:
  - 6.3.1** No Fire Ban: The fire risk is low. Residents are permitted to have an Open Air Burn if they obtain, activate and meet the requirements of this By-Law.
  - 6.3.2** LEVEL 1: PARTIAL FIRE BAN: The fire risk is moderate. Residents are permitted to have a Residential Open Air Burn if they obtain, activate and meet the requirements of this By-Law and during the Residential Open Air Burn but extreme caution must be taken. No other Open Air Burning is permitted.
  - 6.3.3** LEVEL 2: TOTAL FIRE BAN: No Open Air Burning of any kind is permitted during a total Fire Ban.

**7. FIREWORKS AND FLYING LANTERNS**

- 7.1** No person shall use Fireworks when a Level 2: Total Fire Ban is in place.
- 7.2** No person shall use Flying Lanterns at any time.



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**8. EXEMPTIONS**

- 8.1** The Fire Department shall be exempt from the provisions of this by-law with respect to Open Air Burning for the purposes of training, educating individuals in fire safety or for research purposes.
- 8.2** The Municipality shall be exempt from the provisions of this by-law with respect to Open Air Burning related to municipal activities.

**9. ENFORCEMENT**

- 9.1** The Fire Chief is authorized to enforce this By-Law on behalf of the Municipality.
- 9.2** No person shall obstruct the Fire Chief from conducting an inspection and/or investigating a possible contravention of this by-law, or withhold, destroy or refuse to supply any information or thing required for the purpose of inspection or investigation.

**10. OFFENCES AND PENALTIES**

- 10.1** Every person who contravenes any provision of this By-Law shall be guilty of an offence and shall be liable, upon conviction, to a fine for each offence in accordance with Section "A" of this By-Law.
- 10.2** Every day or part of a day on which the offence occurs or continues shall constitute a separate offence.
- 10.3** Where a person has been convicted of an offence under this By-Law, the Ontario court of Justice, or 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.
- 10.4** In addition to any other penalty, a person is liable to the Municipality for all expenses incurred for the purposes of enforcing this By-Law as outlined in the Drummond/North Elmsley Tay Valley Fire Rescue - Fees and Charges By-Law.



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**11. BY-LAWS REPEALED**

11.1 By-Law No. 2006-053 is hereby repealed.

11.2 All by-laws or parts thereof and resolutions passed prior to this by-law which are in contravention of any terms of this by-law are hereby rescinded.

**12. ULTRA VIRES**

12.1 Should any sections of this by-law, including any section or part of any schedules attached hereto, be declared by a court of competent jurisdiction to be ultra vires, the remaining sections shall nevertheless remain valid and binding.

**13. EFFECTIVE DATE**

13.1 ENACTED AND PASSED this 22<sup>nd</sup> day of October, 2024.



**Rob Rainer, Reeve**



**Amanda Mabo, Clerk**

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**SCHEDULE "A"**

**SET FINES**

<b>ITEM</b>	<b>Column 1 Short Form Wording</b>	<b>Column 2 Offence Creating Provision</b>	<b>Column 3 Set Fine (includes costs)</b>
1.	Conduct Open Air Burning without a permit	Section 2.1	\$500
2.	Conduct Open Air Burning within settlement areas where setbacks are not met	Section 2.2	\$250
3.	Set or maintain a fire in contravention of <i>Ontario Regulation 213/07: FIRE CODE</i> , as amended or any other municipal, provincial and federal laws	Section 2.3.2	\$250
4.	Set or maintain a fire with aid of flammable or combustible liquids of any kind	Section 2.3.3	\$250
5.	Set or maintain a fire that exceeds available human resources, equipment, and water on site to control the fire	Section 2.3.4	\$250
6.	Set or maintain Open Air Burning when wind is in such a direction or intensity to cause possible spread of fire beyond approved burn site	Section 2.4.1	\$250
7.	Set or maintain Open Air Burning when wind is in such a direction or intensity to cause a decrease in visibility on any Highway	Section 2.4.2	\$250
8.	Set or maintain Open Air Burning when wind is in such a direction or intensity to cause excessive smoke	Section 2.4.3	\$250
9.	Set or maintain Open Air Burning when wind is in such a direction or intensity to cause issues with visibility for others	Section 2.4.4	\$250
10.	Set or maintain Open Air Burning when wind is in such a direction or intensity to cause a discomfort to others	Section 2.4.5	\$250
11.	Burn Noxious Materials/Household Waste	Section 2.5.1	\$250
12.	Burn recyclable items or products	Section 2.5.2	\$250
13.	Burn windrows (cleared land) or buildings, unless pre-approved by the Fire Chief	Section 2.5.3	\$250
14.	Burn on any road allowance, unopened road allowance or in a location that would interfere with traffic, unless pre-approved by Fire Chief	Section 2.5.4	\$250

15.	Residential burn larger than 0.7 m (2.5 ft) in diameter	Section 3.1.1	\$250
16.	Residential burn not located on a non-combustible surface that extends a minimum of 0.3 m (1 ft) beyond the fire barrier	Section 3.1.2	\$250
17.	Chimeneas not located on a non-combustible surface that extends a minimum of 0.3 m (1 ft) beyond the diameter of the device	Section 3.1.3	\$250
18.	Residential burn not located at least 5.0 m (16.4 ft) from any combustible material, property line or structure	Section 3.1.4	\$250
19.	Residential burn not located at least 15.0 m (49.2 ft) from any utility line (gas, hydro, or telecommunications)	Section 3.1.5	\$250
20.	Space above a Residential burn is not at least 3.0 m (10 ft) from vegetation, combustible material or object	Section 3.1.6	\$250
21.	The flame of Residential burn exceeds 1.0 m (3.3 ft) in height and diameter	Section 3.1.7	\$250
22.	Residential burn not supervised by a competent person to prevent the fire from spreading to or endangering other property	Section 3.1.8	\$350
23.	Residential burn not completely extinguished when the burn is finished, or no one wants to/able to be in constant attendance of the fire	Section 3.1.9	\$350
24.	Materials added to an Agricultural burn between sunset and sunrise	Section 3.2.3	\$250
25.	Agricultural burn not 5 m (16.4 ft) from the property line and be at least 50 m (164 ft) from any neighbouring residence	Section 3.2.4	\$250
26.	Agricultural burn not at least 15 m (50 ft) from forest, woodland, or buildings	Section 3.2.5	\$250
27.	Multiple agricultural burn not sufficiently spaced and having sufficient resources on hand	Section 3.2.6	\$350
28.	Obtain fire permit after the proposed date of the first Open Air Burn	Sections 4.1, 4.7	\$350
29.	Providing false or misleading information for a fire permit	Section 4.2	\$250
30.	Transfer fire permit to another person or location	Section 4.9	\$250
31.	Set or maintain Open Air Burn not in accordance with fire permit conditions	Section 4.11	\$500

<b>32.</b>	For a specific event set or maintain a recreational fire or an outdoor fireplace not in compliance	Section 5.4	\$500
<b>33.</b>	Set or maintain fire during Fire Ban	Section 6.2	\$500
<b>34.</b>	Use Fireworks during Level 2: Total Fire Ban	Section 7.1	\$350
<b>35.</b>	Use Flying Lanterns	Section 7.2	\$350
<b>36.</b>	Obstruction of Fire Chief	Section 9.2	\$500

Note: The penalty provisions for the offences indicated above is Section 10 of By-Law No. 2024-039, a certified copy of which has been filed.