

THE CORPORATION OF THE TOWNSHIP OF MALAHIDE

BY-LAW NO. 12-96

Being a By-law to regulate the setting of fires in the Township of Malahide.

**WHEREAS** the *Fire Protection and Prevention Act, 1997, S.O. 1997, c.4, Section 7.1*, as amended, states 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** Part 2 of the *Ontario Fire Code, O.Reg. 388/97*, provides that open air burning shall not be permitted 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 barbecue;

**AND WHEREAS** the Council of The Corporation of the Township of Malahide is desirous of enacting a by-law to regulate the setting of fires;

**NOW THEREFORE THE COUNCIL OF THE TOWNSHIP OF MALAHIDE HEREBY ENACTS AS FOLLOWS:**

1) **Definitions:**

For the purpose of this By-law:

Approved	means approved by the Fire Chief or his/her designate
Authorized Agent	means any Responsible Person who can provide reasonable evidence that they are authorized to act for the owner of a particular property
Ban	on Open Air fires means a restriction or prohibition on Open Air fires issued by the Fire Chief or his/her designate
Building	means any structure used or intended for supporting or sheltering any use or occupancy, but does not include a non-enclosing open-sided structure
Burn Permit	means a written conditional authorization in the form of Form 1 – Burn Permit (Schedule "A"), issued and administered by the Township to set or maintain an Open Air fire, as per any restrictions and conditions contained in this By-law or as may be specified on the Burn Permit itself
Burning Safety Plan	means procedures and facilities provided by the Applicant and/or Owner, and shall include provisions for facilitating emergency vehicle access and response, and Open Air fire safety and control, and protection of the environment
Chimineea	means a device largely made from pottery and which is equipped with a chimney and a substantially enclosed hearth; and in which a recreational fire may be set

Combustible	means any material, combination of materials, or arrangement of materials in which any portion thereof is susceptible to catch fire when exposed to heat, flame, or other burning materials
Council	means the Council of The Corporation of the Township of Malahide
Effective Barrier	means an enclosure on the ground with a complete perimeter of metal, masonry, stone or earth, with the enclosure walls being a minimum height of 1/3 the diameter or width of the enclosure
Exempt	means that, under specified conditions, a particular type or configuration of Open Air fire does not require a Burning Permit.
Incinerator	means a device that is operated and Regulated (licensed) under a <i>Certificate of Approval</i> from the Ontario Ministry of the Environment and is not subject to the requirements of this By-law.
Made Safe	means that all reasonable and prudent steps are taken to guard against injury to persons due to the fire deteriorated condition of a structure or property and may include, but not be limited to erecting barriers and signs; grading of property; demolition of unstable structures; and the removal of residue left from the burning process
Multi-Unit Residential Building	means any Building in which there are three or more residential dwelling units as defined by the <i>Ontario Building Code</i>
Municipal Law Enforcement Officer	means that person, or persons, appointed by the Council of the Township of Malahide for the purpose of enforcing Municipal By-laws; such as the Fire Chief, or the Director of Fire and Emergency Services
Occupancies	means the use or intended use of a Building or part thereof as defined in the <i>Ontario Building Code</i>
Open Air Fire	means: <ul style="list-style-type: none"> <li>- any fire set outdoors, i.e. not in an enclosed Building; or</li> <li>- any fire set in a device or appliance located outside of a Building;</li> <li>- but does not include: <ol style="list-style-type: none"> <li>1. fires in Incinerators; or</li> <li>2. fires in devices installed outside of a Building and that are used as a source of heat or power for the Building or that are ancillary to a manufacturing process, and provided that such device is certified for the purpose by a recognized and appropriate agency</li> </ol> </li> </ul>

Responsible Person	means any adult person (16 years of age or older) who, in the opinion of a Municipal Law Enforcement Officer, is capable of exercising the required judgment and capable of performing the necessary actions to control a fire and prevent its unwanted spread
Rural Area	means any lands located outside of the Urban Areas as designated in the Township's Zoning By-law schedules detailed in <i>Schedule C</i> attached to this By-law. Notwithstanding the boundaries listed in <i>Schedule C</i> , any particular property falling within a designated Urban Area boundary that meets the following zoning categories is considered a Rural Area for the purposes of this By-law: <ul style="list-style-type: none"> <li>- Highway Commercial (HC);</li> <li>- Industrial (M);</li> <li>- Institutional (I);</li> <li>- Open Space (OS)</li> </ul>
Structure	means anything constructed or erected, the use of which requires location on or in the ground
Township	means The Corporation of the Township of Malahide
Urban Area	means, for the purpose of this By-law, an area that is not a Rural Area as defined in above

## 2) Restriction on Burning

No person shall set or maintain an Open Air fire except:

- a) an Exempt fire as described in Section 3 of this By-law; or
- b) as permitted under the conditions of a Burn Permit as defined in Section 5 of this By-law.

## 3) Exempt Fires

The following types of Open Air fires are Exempt and such fires may be set and maintained anywhere in the Township provided that the conditions in this By-law are fully met:

- a) **Cooking Fires**  
A charcoal, compressed gas, or wood fire, that is only large enough for the purpose, and is confined within a barbecue or grill that is constructed of metal, ceramic, stone, or masonry, and that is exclusively designed for and being used for the cooking of food for human consumption, and is continuously supervised by a Responsible Person, and provided that all of the following conditions are met:
  - i. Such fire is not on a porch, balcony, or verandah that is roofed and is attached to a multi-unit residential Building;
  - ii. Such fire is not in or near dry vegetation; and
  - iii. Such fire is not in any other place conducive to the development or the spread of fire or explosion.

- b) **Construction or Maintenance Activities**  
An appliance of a portable nature which requires an open flame for the heating of material during a construction or maintenance process, provided that such appliance is safe to operate, and provided that it is not operated in such a manner as to create a fire hazard, and provided that the fire is attended at all times by a responsible person to supervise it.
- c) **Other Flaming Devices**  
Other flaming devices such as patio torches, fireworks, and candles provided that all of the following conditions are met:
- i. Such devices are not operated in or near dry vegetation;
  - ii. Such devices are not operated in any other place conducive to the development or the spread of fire or explosion; and
  - iii. Consumer (family) fireworks and licensed fireworks displays where permitted by By-law.
- d) **Recreational Fire**  
With the permission of the property owner, a recreational fire on privately owned lands provided that such recreational fire meets all of the following:
- i. That the fire is for the provision of warmth, recreation or cooking;
  - ii. That all materials to be burned are contained around the complete perimeter of the designated area by an Effective Barrier of metal, masonry, ceramic, or stone; or are within a like-dimensioned pit in the ground that has a non-combustible wall and is intended to burn wood safely;
  - iii. That the pile of materials to be burned is not more than 66 centimeters (26 inches) in height, and 66 centimeters (26 inches) in width and length;
  - iv. That the fire is located at least 4 meters (13.1 feet) from any building, structure, property line, tree, canopy, hedge, fence, roadway, overhead wire or other combustible material;
  - v. That the fire is controlled such that flames and hot embers do not pose an undue risk of fire to nearby combustible materials;
  - vi. A means to extinguish the fire are readily accessible;
  - vii. That the fire is attended at all times by a Responsible Person to supervise it; and
  - viii. That at the completion of the burn the fire shall be completely extinguished and the burn site shall be made safe before it is left unattended.
- e) **Chiminea**  
A fire in a Chiminea on any privately-owned lands provided that such fire meets all of the following:
- i. That, in an Urban Area, no portion of the hearth of the Chiminea is more than 61 centimeters (24 inches) in diameter;
  - ii. That only clean and dry wood or charcoal be burned;
  - iii. That the Chiminea is not located on any Combustible surface;
  - iv. That the fire is controlled such that flames and hot embers do not pose an undue risk of fire to nearby Combustible materials; and
  - v. That the fire is attended at all times by a Responsible Person to supervise it.
- f) **Burn Barrels**  
An enclosed fire in a Burn Barrel on privately owned lands provided that all of the following are met:

- i. That the volume of the Burn Barrel is a maximum of 204.5 litres (45 impg); and
- ii. That the Burn Barrel is situated securely on level ground; and
- iii. That the Burn Barrel is in good condition so that the fire and contents are contained within the Burn Barrel; and
- iv. That the fire is controlled such that flames and hot embers do not pose an undue risk of fire to nearby Combustible materials; and
- v. That the fire is attended at all times by a Responsible Person to supervise it.

#### 4) Conditions on Exempt Fires

Any person who sets or maintains an Exempt fire as in Section 3 of this By-law shall be responsible to take all necessary steps to ensure that all of the following conditions are met:

- a) Smoke
  - a. The smoke or other emissions from the fire shall not travel to a neighboring property to such an extent or degree that, in the opinion of a Municipal Law Enforcement Officer, it may cause discomfort to persons, loss of enjoyment or normal use of the property, interference with normal conduction of business, or damage to property; and
  - b. The smoke or other emissions from the fire shall not travel across any public roadway to the extent or degree that, in the opinion of a Municipal Law Enforcement Officer, it may cause a public safety hazard to any person traveling on the roadway.
- b) Clearances
  - a. A Open Air fire shall be located a distance of at least 10 meters (32.8 feet) horizontally and 10 meters (32.8 feet) below any portion of any Combustible structure or accumulation of Combustible materials; except that lesser clearances shall apply as follows:
    - i. That a barbeque or grill fire shall be located at least 1.5 meters (59 inches) horizontally and 3 meters (118 inches) below; and
    - ii. That a Chinimea shall be located at least 3 meters (118 inches) horizontally and 6 meters (236 inches) below; and
  - b. Despite meeting the minimum distances specified in this Section, burning is prohibited at any location where the conditions exist such that there is a reasonable probability of such fire spreading to a Building, structure, grass, or other Combustible vegetation or material.
- c) Materials Restricted
  - a. Except as may be more specifically restricted elsewhere in this By-law, only the materials listed on Schedule "B" may be burned.
- d) Extinguishment
  - a. At the completion of the burn, the fire shall be completely extinguished and the burn site shall be made safe before it is left unattended.

#### 5) Burn Permits

The Township shall issue written Burn Permits to owners of property in a Rural Area, or to the Authorized Agent of the owner of such property,

permitting a Responsible Person to burn Schedule "B" materials, under all of the following conditions:

- a. All the conditions of Section 4 of this By-law shall apply equally to Burn Permitted fires;
- b. Constant supervision of the fire shall be maintained by a Responsible Person; with the necessary means immediately available to extinguish the fire or limit its spread; and having the means readily at hand to summon the fire department;
- c. The property owner shall be held responsible and shall be liable individually and severally for the actions of their Authorized Agent with respect to the provisions, conditions, and penalties contained in this By-law;
- d. No person shall conduct an open air burn on any public road allowance or Township property unless such Burning is being conducted by authorized employees or Authorized Agents of the Township;
- e. Fires must be located at least 30 meters (98.43 feet) away from any Building, Combustible structure, Combustible vegetation, accumulation of Combustible materials, or as measured on the ground horizontally from any overhead wires carrying electricity, but in any case, longer distances may be required, if in the opinion of a Municipal Law Enforcement Officer, the material being burned will emit sparks and embers such as to create a fire hazard;
- f. Fires must be located at least 150 meters (492.15 feet) away from any occupied Building when the wind direction is such that at any time during the course of the fire, smoke from the fire is likely to pass in the vicinity of the occupied Building;
- g. The size of any pile of materials to be burned;
  - i. Shall not exceed 9 square meters (96.84 square feet) in area and 2 meters (78.75 inches) in height unless specifically approved under application of a Burning Safety Plan;
  - ii. In the case of an area zoned Agricultural, shall not exceed 36 square meters (387.36 square feet) in area and 2 meters (78.75 inches) in height unless specifically Approved under application of a Burning Safety Plan; and
  - iii. In any case, the fire size or materials burned shall be controlled such that flames and hot embers do not pose an undue risk of fire to nearby Combustible materials;
- h. Burning will not be permitted between ½ hour after sunset and ½ hour before sunrise (i.e. at night) unless specifically Approved under application of a Burning Safety Plan; and
- i. The date of authorization and the expiry date shall be indicated on the Burn Permit. In no case shall a Burn Permit have an expiry date of longer than twelve (12) months after the date of issue. The expiry date on a Burn Permit shall not be extended due to any suspension of the permit;
- j. All valid Burn Permits are automatically suspended during such periods and in such areas where gusting or sustained wind speeds exceed 20 kilometers per hour (12.43 miles per hour) or where wind directions are changing frequently;
- k. All valid Burn Permits are automatically suspended during such periods and in such areas where the Fire Chief, or his or her designate, has determined that there exists a High or Extreme Fire Weather Index (FWI) or other hazardous conditions;
- l. The Burn Permit shall specify as precisely as possible the civic or street address of the location of the intended fire. Separate Burn Permits will be required for properties at different addresses;
- m. The holder of a Burn Permit will be required to advise Fire Dispatch before any burning commences and again when the burning is completed and the fire is extinguished;
- n. The holder of a Burn Permit shall keep it or a legible copy of it at the location of the fire specified on the permit;





- the Fire Chief, for the cost of such response according to the fees set by the Council from time to time. However, nothing in any Schedule of Rates shall be construed as limiting the rights of the Township to seek restitution for other direct or consequential damages or costs incurred beyond those listed.
- c) The quantity and type of fire vehicles and personnel dispatched to respond for the purposes of extinguishing, controlling, or investigating any Open Air fire are at the discretion of the Fire Chief or his/her designate.
  - d) Every person who has had his/her Burn Permit revoked for cause shall not be eligible to renew said Burn Permit for a period of not less than 60 days from the date the permit was revoked.
  - e) Any person may appeal such refusal to issue a Burn Permit to the Council;
    - a. Any person filing an appeal shall do so in writing, stating the reasons for the appeal. Such appeal shall be addressed to the Municipal Clerk at 87 John Street South, Aylmer, Ontario N5H 2C3. The Clerk shall inform the applicant in writing within 7 days of receiving the written appeal, of the date of the scheduled hearing;
    - b. The Council shall meet in public to hear the appeal not later than 30 days from the receipt of the written appeal from the applicant. Representation shall be heard from the applicant and from any other person that the Council feels is necessary;
    - c. When a hearing date before the Council has been fixed and the applicant, or authorized agent, who has been given notice of the hearing does not attend at the appointed time and place, the Council may proceed in the absence of the applicant, or authorized agent, and the applicant will not be entitled to any further notice in the proceedings;
    - d. At the conclusion of a hearing, the Council shall, as soon as practicable make a written response to the applicant, which response shall:
      - i. Summarize the evidence and the arguments presented by the parties;
      - ii. Set out the findings of fact made by the Council and the recommendation; and
      - iii. Set out the reasons for the recommendation;
    - e. The Council's decision is final and the applicant shall not be entitled to a further hearing on the matter before.
  - f) No owner of a property, or Authorized Agent of such owner, shall fail to comply with any Order, as confirmed or modified, issued under this By-law. Should the owner of the property, or agent, fail to rectify the condition in accordance with the Order, the Township in addition to other remedies:
    - a. Shall have the right to correct the situation and, for this purpose, with its servants and agents from time to time enter in and upon the property at any reasonable time without a warrant;
    - b. Shall not be liable to compensate such owners, occupants, or another person having interest in the property by reason of anything done by or on behalf of the Township in a reasonable exercise of its power under the provisions of this *Section*;
    - c. May cause a prosecution to be brought against any person who is in breach of such an Order and upon conviction, such person shall forfeit and pay at the discretion of the convicting Provincial Judge or Justice of the Peace acting within his/her territorial jurisdiction, a penalty in accordance with the provisions of Part VII of the *Ontario Fire Protection and Prevention Act, S.O. 1997, c3, as amended*; and
    - d. Shall have a lien on the land for the amount spent on correcting the situation found and the amount shall be deemed to be municipal real taxes and shall be added to the Collector's Roll and shall be



collected in the same manner and with the same priorities as municipal real property taxes.

**11) Validity**

In the event that any of the provisions of this By-law are deemed ultra vires by any Court of competent jurisdiction, the remaining terms and provisions shall remain in full force and effect.

**12) Repeal**

Any By-law or By-laws, or parts of any By-law or By-laws that are inconsistent with this By-law are hereby repealed.

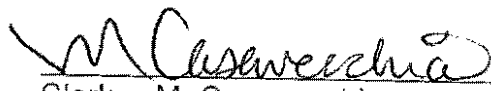
**13) Effective Date**

That the effective date of this By-law shall be the date of final passage thereof.

**READ** a **FIRST** and **SECOND** time this 20<sup>th</sup> day of December, 2012.

**READ** a **THIRD** time and **FINALLY PASSED** this 20<sup>th</sup> day of December, 2012.

  
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Mayor - D. Mennill

  
\_\_\_\_\_  
Clerk - M. Casavecchia

# SCHEDULE A

MALAHIDE FIRES SERVICES  
87 John Street South  
Aylmer, Ontario N5H 2C3  
Phone: 519-773-5344 Fax: 519-773-5334

## OPEN AIR BURN PERMIT

Permit #: 12-XXXX

Date of Authorization:  
Expiry Date:

Address of Fire:  
(Civic Address)

Response Area:  
Applicant Name:  
Applicant Phone No.:  
Issued by: Fire Chief Paul Groeneveld

Property Contact:  
(Property Owner Name)  
(Property Owner Address)  
(Town, Province, PC)

\_\_\_\_\_  
Signature (Fire Chief)

### NOTIFICATION TO FIRE DEPARTMENT

The Burn Permit holder or Agent must call 1-800-511-9911 before setting a fire. Be prepared to provide Tillsonburg Fire Dispatch your 911 address and Burn Permit number.

A Burn Permit may be revoked and the applicant and/or property owner charged under By-law 12-XX for all costs as outlined under the By-law, or fined under the *Ontario Fire Code*, if convicted.

NOTE: The Requirements listed below provide a brief description of your responsibilities when conducting an open air fire. The Burn Permit Holder or Agent should review By-law 12-47 to ensure compliance with the By-law at all times. A copy of the By-Law is available by contacting 519-773-5344 or by visiting the Township's website at [www.malahide.ca](http://www.malahide.ca).

### REQUIREMENTS:

1. Smoke must not travel to a neighboring property to cause discomfort or loss of enjoyment or normal use of property, normal conduction of business or damage to property, or travel across any public road to the extent that it may cause a public safety hazard.
2. The fire shall be located at least 30 meters (98.4 feet) horizontally and below any portion of a combustible structure, vegetation, or materials. Fire must be located at least 150 meters (492.1 feet) from any occupied building.
3. The fire must be fully extinguished and burn site made safe at the completion of the burn.
4. The fire must be supervised at all times – NO EXCEPTIONS
5. Burn Pile shall not exceed 9 square meters in area and 2 meters in height while burning. Fires in an Agricultural zone are limited to 36 square meters and 2 meters in height.
6. Fires not permitted between ½ hour after sunset and ½ hour before sunrise.
7. All permits are suspended during periods where gusting or sustained wind speeds exceed 20 Kph.
8. You must have a means to call the fire department (cell phone) while the fire is burning and have tools and water available and on site to control the fire.
9. Burning on municipal property is prohibited, including roadways and ditches.
10. Complaints from neighbours or other contraventions will terminate this Permit.
11. Burning is automatically suspended when the Malahide Fire Chief issues a burning ban, or when a smog advisory or alert is issued.
12. Only "Authorized Materials" prescribed in the By-law are permitted to be burned.
  - a. Wood and wood by-products that have not been chemically treated, painted or stained.
  - b. White or brown paper and cardboard for the purpose of starting a fire.
  - c. Dry brush, stumps, hay, straw, and grass or other dry yard or natural agricultural materials.
  - d. Natural petroleum gases or liquids used as appliance fuels.
  - e. Charcoal materials in a BBQ.
13. Burning of petroleum products, such as roofing materials, tires, oil, rubber, or plastics is strictly prohibited.

## SCHEDULE B

### Authorized Materials That May be Burned Under By-law No. 12-96

All materials, other than those listed below, are specifically prohibited from being burned:

- wood and wood by-products that have not been chemically treated or painted or stained;
- white or brown paper and cardboard for the purposes of starting an authorized fire;
- dry brush, stumps, hay, straw, and grass and other dry yard or natural agricultural materials, but not including animal wastes and parts of animals unless such animals are diseased;
- natural or petroleum gasses or liquids used as appliance fuels;
- charcoal materials intended by BBQ use;
- paper seed bags; and
- other clean burning Combustible materials that may be specifically Approved by the Fire Chief or his/her designate.

## SCHEDULE C

### DEFINED URBAN AREAS UNDER BY-LAW NO. 12-96

*Explanatory note: "Urban Areas" include all areas shown on the following zoning-by-law schedules except those portions of these areas that are considered a Rural Area according to Section 1.19 of this By-law.*

By-law	Schedule	Land Designation
#01-34	A (Township of Malahide)	All lands designated as <ul style="list-style-type: none"><li>• Suburban Areas</li><li>• Hamlets</li><li>• Natural Heritage</li><li>• Institutional</li><li>• Natural Gas Reservoirs</li><li>• Conservation Lands</li><li>• Hazard Lands</li></ul>
#01-34	B (Springfield)	All lands
#01-34	C (Port Bruce)	All lands