

THE CORPORATION OF THE MUNICIPALITY OF EAST FERRIS

BY-LAW NO. 2020-18

BEING A BY-LAW TO PROVIDE FOR THE REGULATION OF OPEN AIR BURNING IN THE MUNICIPALITY OF EAST FERRIS

WHEREAS Council of the Corporation of the Municipality of East Ferris is empowered under section 7.1(1) (a) of the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c. 4, as amended, to pass by-laws regulating fire prevention, including the prevention of the spreading of fires;

AND WHEREAS Council of the Corporation of the Municipality of East Ferris is empowered under section 7.1(1) (b) of the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c. 4, as amended, to pass by-laws regulating the setting of open air fires, including establishing the times during which open air fires may be set;

AND WHEREAS O. Reg 213/07: Fire Code, under the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c. 4, as amended, Division B Part 2 section 2.4.4.4. (1)(a) and (1)(b) defines regulations for Open Air Burning;

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

AND WHEREAS section 446 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, authorizes Council to recover the costs incurred in doing any such matter or thing as required by by-law, in default of it not being done by the person directed or required to do it;

AND WHEREAS section 391(1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, authorizes Council to pass by-laws for the imposition and collection of fees or charges for services or activities provided by the municipality;

NOW THEREFORE the Council of the Corporation of the Municipality of East Ferris enacts as follows:

1. **Definitions** for the purpose of this By-Law:

1.0 **Adverse Effect** includes:

- a) impairment of the quality of the natural environment for any use that can be made of it,
- b) injury or damage to property or to plant or animal life,
- c) harm or material discomfort to any person,
- d) an adverse effect on the health of any person,
- e) impairment of the safety of any person,
- f) rendering any property or plant or animal life unfit for human use,
- g) loss of enjoyment of normal use of property,
- h) interference with the normal conduct of business, and
- i) nuisances including, but not limited to, excessive smoke, odour, dust, airborne sparks, embers or reduced visibility on roadways, railways.

1.1 Barbeque means a portable or fixed device designed and intended solely for the cooking of food in the open air, including a wood burning barbeque, or a smoker, but does not include burn barrels, fire pits, outdoor fireplaces or campfires;

1.2 Brush Pile Fire shall mean an Open Air Fire, having a maximum fuel size of 1.8 metres x 1.8 metres x 1.8 metres in height (6' feet x 6' feet x 6' feet), that is set and maintained for the sole purpose of burning piled wood, brush or leaves.

1.3 Burn Barrel or Solid Waste Barrel Burner means a steel drum or barrel used for burning wood waste and paper product.

- 1.4 Campfire** shall mean an “Open Air Burn”, where the size of burn area (containing all burning and burnt materials) does not exceed a maximum fuel volume of 1 metre x 1 metre x 1 metre height (3.3 feet x 3.3 feet x 3.3 feet), that is set and maintained solely for the purposes of cooking food, providing warmth or recreational enjoyment and where:
- a) The site of the fire is bare rock or sand or other non-combustible material;
 - b) The fire is at least 4 meters (12’ feet) from any flammable material;
 - c) The space above the fire is at least 4 meters (12’ feet) from vegetation;
 - d) The flame length does not exceed 1 meter (3.3 feet) in height and 1 meter (3.3 feet) in diameter and;
 - e) Supervised by a competent person at all times.
- 1.5 Chief Fire Official** means the local municipal Chief Fire Official as defined in the Ontario Fire Code (O. Reg. 213/07).
- 1.6 Clean Dry Wood** means firewood and wood waste that has been allowed to dry. *Note: “dry” refers to moisture content less than 20 per cent.*
- 1.7 Cooking Fire** shall mean any open air fire that is used for the purpose of cooking food.
- 1.8 Council** shall mean the elected Council of The Corporation of The Municipality of East Ferris.
- 1.9 Dangerous Condition means:**
- a) A lack of precipitation which, in the opinion of the Fire Chief or his/her “Designate”, increases the risk of the spread of fire;
 - b) Winds which in the opinion of the Fire Chief or his/her “Designate” increases the risk of spread of fire;
 - c) 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,
 - d) Any other condition declared by the Fire Chief or his/her designate to be a dangerous condition from time to time, which increases the risk of the spread of fire.
- 1.10 Designate** means an individual acting in place of the “Fire Chief” in the event that he/she is unavailable.
- 1.11 Fire Chief** means the Fire Chief of East Ferris Fire & Emergency Services appointed as such by municipal by-law and includes his or her designate.
- 1.12 Fire Department** means East Ferris Fire & Emergency Services or any fire department under contract or agreement to provide service to The Municipality of East Ferris.
- 1.13 Fire Season** means the period from the 1st day of April through the 31st day of October as defined in the Forest Fires Prevention Act.
- 1.14 Household Waste** for the purposes of this by-law means combustible material such as plastics, polyethylene terephthalate (PET), paints, oils, solvents, rubber, insulation, batteries, acids, polystyrenes (Styrofoam), pressure treated or painted lumber, tires, upholstered furniture, synthetic fabrics, diapers, hazardous wastes and other materials as defined in the Environmental Protection Act and all other similar and like materials but ***shall not include*** untreated wood and wood fibre products such as unlaminated paper and cardboard and boxboard, brush and leaves.
- 1.15 Incinerator Fire** shall mean a fire set in a container designed for Incineration purposes and constructed completely of non-combustible material that is placed atop not less than 4 cm. (2 inches) of sand or mineral soil extending not less than 60 cm (24 inches) beyond its perimeter, and having a maximum volume of 202 litres (55 gallon) and an outlet or exhaust opening covered by a screen having a mesh of not more than 7 mm (1/4 inch).

- 1.16 Municipality** shall mean The Corporation of The Municipality of East Ferris.
- 1.17 Municipal Authority** means the local municipality, Municipal By-Law Enforcement Officer, or a person designated by the local municipality to issue permits and authorizations for enforcement of Open Air Burning, Wood-Burning Appliances, or Outdoor Fireplace Units.
- 1.18 Off Season** means that period from the 1st day of November of one year to the 31st day of March the following year with no time restrictions for open air burning, unless designated by the Fire Chief or his/her Designate.
- 1.19 Ontario Fire Code** shall mean O.Reg. 213/07 made under the Fire Protection and Prevention Act, S.O. 1997, C.4, as amended.
- 1.20 Open Burning or Open-Air Burning** means any fire or burning practice that is conducted outside a building including but not limited to bonfires, fires in burn barrels, outdoor recreational fireplaces, construction site and demolition site fires, but does not include the following:
- a) an appliance which is fueled by natural gas, propane, charcoal, briquettes, including but not limited to a manufactured or non-manufactured barbeque, fireplace or fire pit
 - b) campfires for the purpose of essential cooking or warmth;
 - c) burning of materials for fire suppression training, testing of fire fighting equipment or law enforcement purposes.
- 1.21 Outdoor Fireplace Unit or Recreational Fireplace Unit** means a: manufactured wood-burning appliance, site-built masonry fireplace, fire pit, chimeneas, clay or metal fireplaces, portable wood-burning devices used for outdoor recreation or heating, or other enclosed containers that are used outdoors and that are not fueled by natural gas or propane and are designed to hold a small fire, not exceeding one metre (3.2 feet) in any direction; but does not include pellet fuelled barbeques or 'wood-waste' combustors defined under O. Reg. 347/90.
- 1.22 Owner** means the person who owns the property on which an Outdoor Fireplace Unit is installed, or the person who owns the property on which Open Air Burning is conducted or the person responsible for conducting the Open Air Burning.
- 1.23 Permit** shall mean a permit issued by the Municipal office or Municipality selected agencies, the Fire Chief or his/her designates, signifying permission to set, maintain or allow to be set an "Open Air Burn" and establishing the conditions under which the permission is granted from the 1st day of January to the 31st day of December in the same year in the form attached as Schedule "A" hereto.
- 1.24 Person** shall mean any individual, association, firm, partnership, corporation, agent or trustee and their heirs, executors, or other legal representatives thereof.
- 1.25 Prescribed Burning** is the deliberate, planned and knowledgeable application of fire by authorized personnel and only in accordance with Ministry of Natural Resources legislation, policy and guidelines to a specific land area to accomplish pre-determined forest management or other land use objectives.
- 1.26 Prohibited Materials** includes "Household Waste", rubber or rubber products, plastic or plastic products, and waste petroleum products and any material or materials which are prohibited by the Environmental Protection Act, R.S.O. 1990, as amended.
- 1.27 Restricted Fire Zone or RFZ** is an Order made by the Ministry of Natural Resources under the Forest Fires Prevention Act that restricts the use of open air fires in a specific area of the province. It is used when the fire hazard is extreme and/or when firefighting resources are stretched to capacity.
- 1.28 Restricted Fire Zones** are regions defined by O. Reg. 207/96, where the Ontario Ministry of Natural Resources retains the right to restrict all fires.
- 1.29 Sensitive Receptor** may include a childcare facility, healthcare facility, a senior citizens' residence, long-term care facility, educational facility, environmentally sensitive area, or other place where smoke may have a greater risk to health or the environment.

1.30 Total Burn Ban shall mean absolutely no open burning within the municipality put in place by the Fire Chief or designate which shall prohibit the setting or maintaining of any type of fire, including open air fires, burn barrels, wood burning barbeques, fire pits, and outdoor fireplaces.

1.31 Waste includes garbage or refuse materials from residential, commercial, agricultural, industrial or institutional establishment.

1.32 Windrow means “open air burning” where the size of the material to be burned does not exceed 15m in length, 5m in width and 1.5 m in height and that is set and maintained solely for the purposes of burning wood, tree limbs and branches as part of normal farm practices or for clearing land.

1.33 Wood waste means, tree trunks, tree branches, brush, or wood products that do not contain:

- a) chromated copper arsenate, ammoniacal copper arsenate, pentachlorophenol, creosote, pesticides, or paint,
- b) easily removable hardware, fittings and attachments, unless they are predominantly wood or cellulose, or
- c) plywood or composite wood products containing varnish or glue;
- d) an upholstered article, or
- e) an article to which a rigid surface treatment is affixed or adhered, unless the rigid surface treatment is predominantly wood or cellulose.

2. GENERAL PROVISIONS

2.0 No “Person” being the owner or tenant in possession of lands within the “Municipality” shall conduct “Open Air Burning” on such lands unless a “Permit” has been issued in respect of such “Open Air Burning”.

2.1 Notwithstanding any provisions herein, no “Person” shall set or maintain a fire:

- a) In contravention of the “Ontario Fire Code”, the Environmental Protection Act, the Forest Fire Prevention Act, or any other statutory requirements of the Province of Ontario or the Government of Canada;
- b) Containing “Prohibited Materials”;
- c) In any park owned or operated by the “Municipality” without the written permission of the “Municipality”;
- d) At a distance less than seven and one half (7.5) metres (25 feet) from any building, structure, hedge, fence, vehicular roadway of any kind or nature, or overhead wiring or any property line unless otherwise defined under this section;
- e) At a distance of less than seven and one half (7.5) metres (25 feet) from any object or material which has the potential to ignite unless otherwise defined under this section;
- f) Unless the “Person” to whom the “Permit” has been issued or such other “Person” as may be designated in the “Permit”, is in attendance at the fire in a responsible and supervisory capacity at all times until such fire has been completely extinguished;
- g) In any outdoor fireplace or any other burning appliance or container unless same complies with the requirements contained within Schedule “A” attached hereto;
- h) Burn any allowed material without obtaining and having on their person a valid “Open Air Burning Permit” for those types of “Open Air Burning” requiring one;
- i) Which does not meet the description and distances as defined for a “Campfire” or “Cooking Fire” and without having obtained an “Open Air Burn Permit”; and,
- j) When a “Total Burn Ban” or Restricted Fire Zone” has been declared and put in place by the “Fire Chief” or his/her “Designate” or the Province of Ontario.

- 2.2** No “Open Air Burning” shall be commenced or maintained when the wind is in such a direction or intensity to cause any or all of the following:
- a) The possible spread of the fire beyond the approved burn site;
 - b) A decrease in the visibility on any highway or roadway;
 - c) Any odour to such an extent or degree so as to cause discomfort to the persons in the immediate areas;
 - d) Excessive smoke or any other “Adverse Effect”; or,
 - e) Any “Dangerous Condition” Amendment.
- 2.3** No “Open Air Burning” shall be commenced or maintained when weather conditions prevent the ready dispersion of smoke.
- 2.4** No “Open Air Burning” shall be commenced or maintained without the presence of sufficient suppression or extinguishing equipment.
- 2.5** No “Permit” shall be required for domestic barbeques used for the purpose of cooking food on a grill and extinguished immediately upon completion of its use to cook.
- 2.6** No “Person” shall set fire to, ignite, or otherwise burn any materials in a “Brush Pile Fire” with a combined size of greater than 1.8 metres x 1.8 metres x 1.8 metres (6' wide x 6' long x 6' high) without written approval of the “Fire Chief” or his/her “Designate”.
- 2.7** No “Person” shall set fire or cause to be burned more than one “Open Air Burn” at any one time, without the written approval of the “Fire Chief” or his/her “Designate”.
- 2.8** No “Person” shall burn any grass, hay, straw or standing material where such “Open Air Burning” or “Windrow” has a leading edge greater than 15 metres (49.5 feet) in length, 5m (16 feet) in width and 1.5 m (5 feet) in height and where sufficient persons and other resources are not available to contain the said fire to a leading edge of 15 metres (49.5 feet).
- 2.9** No “Person” shall indemnify and save harmless The Corporation of The Municipality of East Ferris and its employees from any and all claims, demands, causes of action, costs or damages that the Municipality may suffer, incur or be liable for resulting from the “Open Air Burning” as set out in this by-law, whether with or without negligence on the part of the “Permit Holder”, the “Permit Holder’s” employees, directors, contractors and agents.
- 2.10** No “Person” shall burn any “Windrow” during the off season, during any dangerous conditions, or if advised by the “Fire Chief” or his/her “Designate”.

3. ISSUANCE OF PERMIT

- 3.0** The issuance of a “Permit” may require the prior inspection of the proposed burn site by the “Fire Chief” or his/her “Designate”.
- 3.1** In applying for a “Permit”, no “Person” shall furnish false or misleading information.
- 3.2** “Permit(s)” may be obtained from the “Municipality” of East Ferris office or designated Municipality locations or the “Fire Chief”.
- 3.3** No “Permit” shall be considered valid until the “Person” granted the “Permit” has validated the “Permit” by reading the terms and conditions of the permit.
- 3.4** No “Permit” is required for “Open Air Burning” consisting of a “Camp Fire” or “Cooking Fire” as defined and maintained by definition is in an organized campground and only if the campground owner/operator decides it is safe to do so. In these situations, strict campfire rules must be adhered to. Your campground owner/operator will provide you with the rules when campfires are allowed.

- 3.5** It is the responsibility of the “Person” granted a “Permit” to check and monitor burning conditions; this can be done in part by contacting the Fire Department, or the Municipal Office.
- 3.6** It is the responsibility of the “Person” who is burning to have easily accessible to them the “Permit” which they were issued for inspection by the “Fire Chief” or his/her “Designate”, “By-law Enforcement” or the Police.
- 3.7** In any prosecution under a provision of this by-law that requires a “Permit”, the onus is on the “Person” charged to prove that the “Person” had a “Permit” at the time the offense is alleged to have been committed.

4. FIRE SEASON and OFF SEASON

- 4.0** During the “Fire Season”, “Open Air Burning” shall only be permitted 2 hours before sunset until 2 hours after sunrise, seven (7) days a week, between the 1st day of April to the 31st day of October.
- 4.1** During the “Off Season” all burning shall be in compliance with this by-law with the exception of Section 4.0.
- 4.2** The “Fire Season” and “Off Season” are subject to change at the discretion of the Fire Chief or his/her “Designate” in the event of “Dangerous Conditions”, in the event of “Adverse Effects” or otherwise stated by the Ministry of Natural Resources in the event of a “Total Burn Ban”.
- 4.3** The time indicated for no burning does not apply to a “Cooking Fire” as defined.

5. LEVELS OF FIRE BAN OR RESTRICTED FIRE ZONE

- 5.0** “Total Burn Ban” or “Restricted Fire Zone” shall mean absolutely no “Open Air Burning” including “Campfires” or “Cooking Fires” or charcoal barbecues, but does not include the use of cooking equipment which is equipped with a shut off mechanism.
- 5.1** “Total Burn Ban” status, the need for a “Total Burn Ban”, will be assessed on a daily basis by the Fire Chief or his/her designate.
- 5.2** When the “Fire Chief” or his/her “Designate” orders a “Total Burn Ban” be put in effect, they will notify the Clerk who will then notify Council and the media.

6. ADMINISTRATION AND ENFORCEMENT

- 6.0** This by-law shall be administered and enforced by the “By-Law Enforcement Officer” and/or the “Fire Chief” or his/her “Designate” of the “Municipality” of East Ferris.
- 6.1** The “Fire Chief” or his/her “Designate” may, at any time, and in the exercise of his or her sole discretion, issue a “Total Burn Ban”, effective for a specified period of time, prohibiting the setting of any and all “Open Air Burns” within any area of the entire “Municipality”.
- 6.2** Notwithstanding section 2 of this by-law, the “Fire Chief” or his/her “Designate” may revoke any or all “Permits”, or refuse to issue “Permits” where, in the opinion of the “Fire Chief” or his/her “Designate”, that:
- a) The ability to control the fire is hampered by the existence of a “Dangerous Condition”, which exists on or in the proximity of the proposed “Open Air Burning” site; or,
 - b) A “Person” fails to comply with any part of this by-law.

- 6.3** Any “Person” who fails to comply with the provisions of this By-law, or who fails to properly supervise and maintain a fire, or who fails to extinguish a fire once notification to do so has been given to him by the Fire Chief” or his/her “Designate” may, in addition to any penalty provided for herein, be liable to the “Municipality” for all expenses incurred for the purposes of controlling and extinguishing of any fire so set or left to burn and such expenses may be recovered by court action or in a like manner as municipal taxes. The expenses for which the “Person” may be liable to cover the cost of sufficient personnel and equipment required to control a fire, as set out within Schedule “B” hereof.
- 6.4** Such expenses shall be equally chargeable in the event that a deliberately set fire burns out of control, such that the services of East Ferris Fire & Emergency Services are necessary.
- 6.5** Any costs chargeable to any “Person” pursuant to section 6.4 hereof shall be invoiced to the “Person” and paid to the “Municipality” within sixty (60) days of the date of such invoice, failing which the costs may be deemed to be municipal taxes and added by the Clerk of the “Municipality” to the collector’s roll and collected in the same manner and with the same priority as municipal taxes.

7. OFFENCES

- 7.0** In addition to any other penalty prescribed by this by-law, any “Person” who contravenes any provision of this by-law is guilty of an offence and is liable to a fine or penalty for each offence established pursuant to the *Provincial Offences Act* and is set out on Schedule “C” forming an integral part of this by-law.

8. SCHEDULES AND SEVERABILITY

- 8.0** Schedule “A” Permit for “Open Air Burning” attached to this by-law shall form an integral part of this by-law.
- 8.1** Schedule “B” Cost of Fire Department Services, attached to this by-law shall form an integral part of this by-law.
- 8.2** Schedule “C” Set Fines, attached to this by-law shall form an integral part of this by-law upon approval from the Senior Regional Justice of the Ontario Court of Justice.
- 8.3** If any provision, section or word is held to be invalid or illegal, such invalidity or illegality shall not affect or impair any of the remaining provisions, sections or words.
- 8.4** Any “Person” billed for services as a result of violation of the provisions of this by-law may make submissions to “Council” with respect to having the costs invoice reduced or rescinded.
- 8.5** This by-law may be referred to as the “Open Air Burning By-Law”.

9. REPEALS

- 9.0** The Council of the Corporation of the Municipality of East Ferris hereby repeals By-law No. 1832.

10. EFFECTIVE DATE

10.0 This by-law shall come into effect upon receipt of approval of Schedule “C”, Short Form Wording/Set Fines by the Ontario Court of Justice.

READ A FIRST AND SECOND TIME this 26th day of May, 2020.

READ A THIRD TIME AND FINALLY PASSED this _____ of _____, 2020.

Mayor
Pauline Rochefort

Clerk
Monica L. Hawkins