

THE CORPORATION OF THE TOWN OF PRESCOTT

BY-LAW NO. 11-2008

**“A BY-LAW TO PRESCRIBE THE PRECAUTIONS AND CONDITIONS
UNDER WHICH FIRES MAY BE SET IN OPEN AIR”
(OPEN BURNING BY-LAW)**

WHEREAS Section 8(1) of the Municipal Act, S.O. 2001, c. 25, confers authority to municipalities to govern their affairs as they consider appropriate;

AND WHEREAS Section 8(3) of the Municipal Act, S.O. 2001, c.25, permits a municipality to pass by-laws to regulate or prohibit and to provide for a system of licenses, permits, approvals or registrations and impose conditions;

AND WHEREAS Section 128 of the Municipal Act, S.O. 2001, c. 25, authorizes a local municipality to prohibit and regulate with respect to public nuisances;

AND WHEREAS Section 129 of the Municipal Act, S.O. 2001, c. 25, authorizes a local municipality to prohibit and regulate with respect to odours;

AND WHEREAS Section 425 of the Municipal Act, S.O. 2001, c. 25, authorizes the municipality to create offences and Section 429 of the Municipal Act, S.O. 2001, c. 25, authorizes the municipality to establish fines;

AND WHEREAS Section 446 of the Municipal Act, S.O. 2001, c. 25, permits the municipality to cause remedial action and recover the costs of so doing;

AND WHEREAS Section 2.6.3.4 of the Ontario Fire Code (O.Reg.388/97) reaffirms 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 a barbeque;

NOW THEREFORE the Council of the Corporation of the Town of Prescott hereby enacts as follows:

1. DEFINITIONS

For the purpose of this by-law,

- a) “Adverse Effect” means one or more of:
 - i) impairment of the quality of the natural environment for any use that can be made of it,
 - ii) injury or damage to property or to plant or animal life,
 - iii) harm or material discomfort to any person,
 - iv) an adverse effect on the health of any person,
 - v) impairment of the safety of any person,
 - vi) rendering any property or plant or animal life unfit for human use,
 - vii) loss of enjoyment of normal use of property, and
 - viii) interference with the normal conduct of business;
- b) “By-law Enforcement Officer” shall mean an individual designated by Council to enforce the by-laws of the Corporation of the Town of Prescott
- c) “Council” shall mean the elected Council of the Corporation of the Town of Prescott;
- d) “Dangerous Condition” means:
 - i) a lack of precipitation which, in the opinion of the Fire Chief increases the risk of the spread of fire;
 - ii) winds which in the opinion of the Fire Chief increases the risk of spread of fire; or
 - iii) any other condition declared by the Fire Chief to be a dangerous condition from time to time, which increases the risk of the spread of fire;

- e) “Household Waste” 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 and hazardous wastes 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;
 - f) “Fire Chief” means the Fire Chief of the Prescott Fire Department or his/her designate;
 - g) “Municipality” shall mean the Corporation of the Town of Prescott;
 - h) “No Open Burning Area” includes all properties other than Town-owned land as identified in Schedule ‘A’ of this by-law;
 - i) “Open Burning” shall mean the ignition and incineration by fire of combustible materials except that related to barbeque cooking and small, contained heating appliances as further defined in Schedule ‘B’ to this by-law;
 - j) “Open Burning With Permission Area” includes all properties as identified in Schedule ‘A’ of this by-law;
 - k) “Permission” shall mean the explicit approval, verbally or in writing, provided in advance by the Fire Chief of the Prescott Fire Department or his/her designate;
 - l) “Person” means any individual, association, firm, partnership, corporation, agent or trustee and their heirs, executors, or other legal representatives thereof;
 - m) “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, Chapter E.19, as amended.
 - n) “Small” shall generally mean of no greater size than required for cooking or the immediate enjoyment for heat and this relative term shall be defined at the scene by the By-law Officer, Fire Chief or OPP Officer attending using his/her discretion with regard to relative location and safety factors.
 - o) “Yard Waste” includes branches, brush, leaves or grass.
2. That this by-law shall apply to the whole of the lands within the municipal boundaries of the Town of Prescott; further divided into a “No Burning Area” and a “Burning With Permission Area” as identified in Schedule ‘A’ to this by-law.
 3. That no fire shall be deliberately set for the purposes of burning yard waste or any other materials without the owner or occupant of the lands on which the grass, brush or other materials are to be burned first obtaining permission from the Fire Chief.
 4. No Burning Area
 - a) Notwithstanding Section 3, **no permission will be provided** for any property within the area defined as a “No Open Burning Area” in Schedule ‘A’ to this by-law.
 - b) Only small, confined fires used for the purpose of cooking, and supervised at all times, or small approved containers as further defined in Schedule ‘B’ of this by-law shall be permitted within the area defined as a “No Open Burning Area” may occur without the permission of the Fire Chief.

- c) No fires referred to in Section 4.b) shall burn any Prohibited Materials.
 - d) No permission shall be required for domestic barbeques or permanent outdoor fireplaces used solely for the purpose of cooking of food on a grill and extinguished immediately upon completion of the cooking process.
5. Properties in the “Open Burning With Permission Area” must obtain the permission of the Fire Chief prior to burning and no person shall set or maintain a fire:
- a) in contravention of the Ontario Fire Code, the *Environmental Protection Act*, or any other statutory requirements of the Province of Ontario or the Government of Canada;
 - b) containing Prohibited Materials;
 - c) in any park or other property owned or operated by the Municipality without the written permission of the Municipality;
 - d) in the front or side yard of any Commercially or Industrially Zoned property within the Municipality;
 - e) at a distance less than fifteen (15) metres (49.2 feet) from any building, structure, hedge, fence, vehicular roadway of any kind or nature, or overhead wiring or any property line;
 - f) at a distance of less than five (5) metres (16.4 feet) from any object or material which has the potential to ignite;
 - g) unless the Person to whom the permission has been issued or such other Person as may be designated, is in attendance at the fire in a responsible and supervisory capacity at all times until such fire has been completely extinguished;
6. The Fire Chief may deny any request for permission or revoke permission for open burning if:
- a) the site of the fire does not conform with Section 4 of this by-law
 - b) the property owner or occupant has violated this by-law in the past and/or if the Fire Chief has reasonable cause to believe the conditions of Section 4 of this by-law will not be respected
 - c) the Fire Chief believes that a Dangerous Condition exists
7. Notwithstanding permission of the Fire Chief, open burning shall be extinguished when:
- a) the wind is in such a direction or intensity to cause any or all of the following:
 - the possible spread of the fire beyond the approved burn site;
 - a decrease in the visibility on any highway or roadway;
 - any odour to such an extent or degree so as to cause discomfort to the persons in the immediate areas;
 - excessive smoke or any other Adverse Effect.
 - b) rain or fog is present or weather conditions prevent the ready dispersion of smoke.
8. Administration and Enforcement:
- a) This by-law shall be administered and enforced by the By-Law Enforcement Officer of the Town of Prescott, the Ontario Provincial Police as per their contract with the Municipality, or the Fire Chief.

- b) Every person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to a fine of not more than \$5,000 pursuant to the provisions of the Provincial Offences Act, R.S.O. 1990, c. P.33 as amended.
 - c) In the event that a fire started in grass, brush or other materials burns out of control and requires the assistance of fire fighting or fire protection services of the Town of Prescott or any other municipality, then all costs in connection with providing this assistance shall be borne by the assessed owner of the property subject to the fire either deliberately set or otherwise ignited.
 - d) The Municipality may, in default of the owner failing to pay the costs described in Section 8.c) of this by-law, pay the cost on his or her behalf and may recover the costs incurred in like manner as municipal taxes.
9. That this by-law shall come into force and effect immediately upon the day of final passing thereof.

Read a first and second time this 5th day of May, 2008.

Deputy Mayor

Clerk

Read a third and final time and passed this 20th day of May, 2008.

Mayor

Clerk

Schedule 'A'
to By-law 11-2008

Schedule 'B'
to By-law 11-2008

APPROVED CONTAINER REGULATIONS

1. An approved container shall be constructed of non-combustible materials such as a metal container, a steel barrel or a wood burning stove.
2. The container shall have a wire mesh or expanded sheet metal screen with a maximum mesh size of 1 inch (25 mm) covering the open top of the container.
3. The container shall be placed on base mineral soil, bare rock, cement or non-combustible material.
4. The container shall be placed a minimum of 16.4 feet (5 m) from any combustible material.