

THE CORPORATION OF THE MUNICIPALITY OF SOUTHWEST MIDDLESEX

BY-LAW NO. 2021/081

(OPEN AIR BURNING REGULATION)

Being a by-law for prescribing the time during which fires may be set in the open air and the precautions to be observed by persons setting out fires.

WHEREAS Section 210(35)R.S.O. 1990, Chap.M.45, as amended, provides that Councils of municipalities may pass by-laws for prescribing the times that fires may be set and the precautions to be observed by persons setting fires.

AND WHEREAS Section 210(49) R.S.O. 1990, Chap.M.45, provides that Council may make such other regulations for preventing fires and the spread of fires as is considered necessary.

AND WHEREAS Section 220.1 of the Municipal Act authorizes a municipality to pass a by-law imposing a fee or charge on any class of persons for services or activities provided or done by on behalf of it.

AND WHEREAS Section 326, R.S.O., 1990 Chap.M.45, provides that where a council has authority to direct or require by by-law or otherwise that any matter or thing be done, the council may by the same or by another by-law direct that, in default of its being done by the person directed or required to do it, such matter or thing shall be done at the person's expense, and the corporation may recover the expense incurred in doing it by action, or the same may be recovered in like manner as municipal taxes.

AND WHEREAS Section 2.6.3.4 of the Ontario Fire Code provides for the prohibition of open air burning unless approved or unless such open air burning consists of the use of a barbecue to cook food, provided such devices contain a small contained fire which is supervised at all time.

AND WHEREAS the Fire Protection and Prevention Act, Chap.4, R.S.O., 1990, as amended, authorizes the municipality to recover costs.

AND WHEREAS the Amalgamation Order made under the Municipal Act states that the new Municipality may have more than one fire department and may have a fire chief for each department.

NOW THEREFORE the Municipal Council of the Municipality of Southwest Middlesex ENACTS as follows:

DEFINITIONS

1. **"Barbecue"** appliances include a hibachi, a permanent structure designed and intended solely for the cooking of food in the open air and other similar devices designed and intended solely for the cooking of food in the open air, but does not include devices predominantly designed for personal warmth, fire pits or campfires.
2. **"Fire Chief"** means one of the Chiefs of the designated fire areas.
3. **"Open Air"** means any open place, yard, field or construction area which is not enclosed by a building or structure.
4. **"Open Air Burning"** means the burning of any material, including without limiting the generality of the foregoing, wood, cardboard, brush or garden waste where the flame is not wholly contained and is, thereby, open to the air.
5. **"Open Burning Device"** shall mean any commercially manufactured device for the purpose of containing a recreational fire.
6. **"Restricted Areas"** shall mean any areas which are designated on Schedule "A" attached to this by-law indicated as Villages - Southwest Middlesex.
7. **"Rural Area"** shall mean any area which is outside the hamlets of Appin, Glencoe, Melbourne, Middlemiss and Wardsville.

ADMINISTRATION

The Fire Chief for each fire area shall be responsible for administration and enforcement of this by-law.

GENERAL PROVISIONS

1.1 Open Air Burning - Regulations

No person shall conduct, or permit to be conducted, an open air burning within the boundaries of the Municipality of Southwest Middlesex unless permission has been given by the Fire Chief for the applicable area.

1.2 Exception - Recreational Burning

Despite Section 1.1 above, permission is not required from the Fire Chief for open air

burnings associated with the use of open burning devices or pits specifically designed for open air burnings, provided that each of the following regulations are complied with:

- a)** open air burning may only be conducted between the hours of 10:00 a.m. and 12:00 a.m. (midnight);
- b)** open burnings shall be confined to open burning devices or a pit no larger than two (2) feet (61 centimeters) by two (2) feet (61 centimetres) in size. When in use, the open burning device or pit shall be covered with a heavy gauge metal screen having a mesh size no larger than one (1) inch (26 millimetres) and which is positioned in such a manner as to preclude the escape of combustible materials including ash;
- c)** the dimensions of the wood being burnt shall not be greater than the size of the appliance or fire pit and shall be totally confined within the appliance or pit at all times;
- d)** no materials other than commercially produced charcoal, briquettes or clean, dry seasoned wood, not including pressure treated wood or creosote treated wood, may be burned;
- e)** an open air burning shall be confined to a location that provides for a minimum distance of 3 metres in all directions from adjacent properties.
- f)** open air burnings shall be confined to an area that is a minimum of 8 metres (26 feet) from combustible structures or objects;
- g)** No person shall kindle or maintain any fires or rubbish fire or authorize any such fire to be kindled or maintained on or in any public street, ally, road or other public ground;
- h)** No person shall kindle or maintain a fire upon the land of another without permission of the owner or agent and or Fire Chief or By-law Officer;
- i)** No person shall throw down or drop any lighted match, cigar, cigarette or other burning substance or device in any combustible material or close proximity thereof;
- j)** open air burnings shall be attended, controlled and supervised at all times and shall be completely extinguished before the open air burn site is vacated;
- k)** an effective extinguishing agent of sufficient size and with the capability of extinguishing the fire shall be immediately available for use;
- l)** open air burnings are not permitted when the wind speed exceeds 25 kilometres per hour or during rainy or foggy weather or at times when a smog alert has been declared by the Ministry of the Environment for Ontario; and

- m) steps must be taken to ensure that smoke caused by an open burn does not have a negative impact on the adjacent properties and are protected from fire hazard.

1.3 Exception - Barbecues

Despite Section 1.1 above, permission is not required from the Fire Chief for the use of barbecues to cook food, provided the following regulations are complied with:

- a) the barbeque is placed on a non-flammable material;
- b) the barbecue is supervised at all times and such appliance complies with the regulations of size found in Section 1.2(b);
- c) the fuel used is a commercially produced charcoal or briquette, or a flammable liquid commercially produced for the purpose of cooking such as natural gas and propane gas.

1.4 Permit - Special Events

- a) All persons seeking permission to hold a special event involving an open air burning that is not a recreational burning as per Section 1.2 and does not employ the use of a barbecue as per Section 1.3 shall apply to the Fire Chief for a permit to have an open fire at such event;
- b) Application shall be made a least one week prior to the proposed date of the event on a form supplied by the Fire Chief and such application should be accompanied by the applicable fee as set out in Schedule "B" to this by-law. The Fire Chief may issue permits to allow a special event to reoccur over an extended period of time. Registered not-for-profit charitable organizations may make application to the Fire Chief requesting a permit fee exemption;
- c) Prior to granting a permit to hold an open air burning for a special event, the Fire Chief will give consideration to the location of the proposed event, the size of the proposed fire, the safety measures proposed, the supervision arrangements;
- d) proposed, the time of year, the time of day and the anticipated weather conditions;
- e) The Fire Chief may refuse to grant a permit to hold open-air burnings at special events which are proposed to take place on land that is zoned for residential uses;
- e) The Fire Chief may refuse to grant a permit for an open air burning if the proposed open air burning would be in contravention of this by-law, if the

applicant has contravened the provisions of this by-law in the past or if the applicant has not complied with any conditions attached to a permit for an open air burning that may have been imposed by the Fire Chief on a previous occasion;

- f) The Fire Chief shall not give permission for open air burning of any non-wood combustible material, pressure treated wood or creosote treated wood. Permissible fuels include clean dry seasoned wood, commercially produced charcoal, briquettes and flammable liquids such as natural gas and propane gas intended for cooking;
- g) The Fire Chief may attach such conditions as deemed appropriate to any permit granted for an open air burning at a special event;
- h) The Fire Chief may withdraw permission for and/or stop an open air burning if, in the Fire Chiefs opinion, the fire presents a fire hazard, smoke produced by the fire is causing visibility concerns on roads in the area of the burn, the weather has deteriorated and has become unfavorable for an open air burning, conditions attached to the granting of permission are not being adhered to or if this by-law is being contravened;
- i) Upon the notification of the withdrawal of permission by the Fire Chief, the applicant shall immediately extinguish the fire;
- j) Should the applicant fail to immediately extinguish the fire upon notification from the Fire Chief, the applicant may be held liable for any and all costs incurred by the Municipality to extinguish the fire.

SPECIAL REGULATIONS FOR BURNING BRUSH RURAL AREA

2.1 Permission – Burning Brush - Website or Telephone

No person shall conduct, or permit to be conducted an open air burning in the rural area which is not authorized under Section 1.2, 1.3 or 1.4 without first notifying the Chief (24 Hrs. Prior) or his/her designate in person or by website/telephone and complying with the provisions of Section 2.3 below.

2.2 Notification at Conclusion of Burning - Rural Area

All persons who have given notification pursuant to Section 2.1 above, shall notify the Fire Chief or his/her designate in person or via telephone at the conclusion of the burning.

2.3 Regulations Re: Open Air Burning - Rural Area

The following regulations shall apply with respect to open air burnings in the rural areas.

- a) open air burnings may be conducted between ½ hour after sunrise and ½ hour prior to sunset;
- b) fire must be limited to the burning of dry, untreated wood. Under no circumstances are the following items to be burned and this list is not limited to; household waste, toxic waste, leaves, grass, asphalt shingles, construction materials, tires, rubber, plastic, styrofoam or insulation to be burned;
- c) open air burnings shall be attended, controlled and supervised at all times and shall be completely extinguished before the burn site is vacated;
- d) open air burnings are not permitted during rain, foggy weather or on smog alert days as declared by the Ministry of Environment of Ontario;
- e) an open air burning shall be confined to an area which is at least 45 metres (150 feet) from any building, highway, road, or a wooded area;
- f) steps must be taken to ensure that smoke caused by an open burn does not have a negative impact on the visibility of motorists using roads in the vicinity of the burn.

2.4 Notification to Extinguish

All persons conducting an open air burning in the rural area shall immediately extinguish the fire upon notification that in the Fire Chief's opinion, the said fire presents a fire hazard, the fire is having a negative impact on persons using a road or highway adjacent to the burn site or the regulations of this by-law are being contravened.

2.5 Failure to Extinguish - Liable For Costs

Should any land owner or occupant fail to extinguish a prohibited open air burning in a rural area when ordered to do so by the Fire Chief, the Fire Chief may take action to have the fire extinguished, and the person who owns or occupies the land on which the open burning is located shall be responsible for any and all cost incurred by the Municipality of Southwest Middlesex in its efforts to extinguish the fire.

ENFORCEMENT

3.1 Regulations - Offence

No person shall fail to comply with regulations as set out in this by-law and any person

who contravenes this by-law is guilty of an offence and is liable to any penalty as provided in the Provincial Offences Act in Schedule "A". Also for costs as set out in Schedule "B" attached to this by-law.

3.2 Continuation- Repetition- Prohibited By Order

The court in which the conviction has been entered, and any court of competent jurisdiction thereafter, may make an order prohibiting the continuation or repetition of the offense by the person convicted, such order shall be in addition to any penalty imposed on the person convicted.

3.3 Default - Collection of Costs

The Municipality of Southwest Middlesex has the right to collect any unpaid costs associated with Section 2.5 and 3.1 of this by-law by action, in a like manner as municipal taxes, or the municipality may provide that the expense incurred, with interest, shall be payable in annual instalments not exceeding ten years.

3.4 Enforcement Officers and Powers

The Municipality of Southwest Middlesex for the purpose of enforcement of this by-law has appointed the following persons to do enforcement

- Municipality of Southwest Middlesex, Fire Chief
- Municipality of Southwest Middlesex Fire Department Appointees
- Ontario Provincial Police Officer
- By-law / Provincial Offences Officers appointed by the Municipality of Southwest Middlesex
- Any person appointed by the Municipality of Southwest Middlesex

3.5 Investigation

Anyone who is appointed for the purposes of enforcement can enter onto private property to determine if a violation of regulation is taking place and or to inspect to ensure a prohibited fire is not burning.

3.6 Headings

The headings in the body of this regulation form no part of the regulation but are inserted for convenience of reference.

3.7 Severability

If any section of this regulation or parts thereof are found by the court to be illegal or beyond the power of council to enact, such sections or parts thereof shall be deemed to be severable and all other sections or parts of this regulation shall be deemed to be separate and independent there from and continue in full force and effect unless and until similarly found and this regulation shall be enacted as such.

3.8 Short Title

The short title of this regulation is “Open Burning Regulation”, a schedule with set fines and offences is attached as Schedule “A”.

3.9 Fines

Short word titles for offences can be found in Schedule “A”.


FORM III AND COURT DATES ON THIRD OCCATION AND FINE UP TO AND NOT TO EXCEED \$10,000.

4.0 That By-law No.75/2001 is hereby rescinded.


Effective Date

This By-law comes into force on the date it was passed by Council.

Read a first and second time this 29th day of September, 2021.

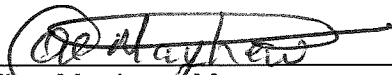


Allan Mayhew, Mayor

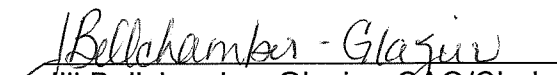


Jill Bellchamber-Glazier, CAO/Clerk

Read a third time and finally adopted this 29th day of September, 2021.



Allan Mayhew, Mayor



Jill Bellchamber-Glazier, CAO/Clerk

MUNICIPALITY OF SOUTHWEST MIDDLESEX
PART I - Provincial Offences Act

SET FINE SCHEDULE "A" to BY-LAW NO. 2021/081

OPEN BURNING REGULATION

Item	Short Form Wording	Provision Creating or Defining Offence	Set fine
1	Burning after Midnight to 10:00 am	1.2a	\$350.00
2	Improper device or pit	1.2b	\$350.00
3	Fire larger than regulation	1.2b	\$350.00
4	Burning material larger than device	1.2c	\$350.00
5	Burning of Non-Regulated Material	1.2d	\$350.00
6	Burning too close to adjacent property	1.2e	\$350.00
7	Burning too close to structure of objects	1.2f	\$350.00
8	Burning in unauthorized area	1.2g	\$350.00
9	Having fire without permission	1.2h	\$350.00
10	Discarding of a fire	1.2i	\$350.00
11	Open burn not attended	1.2k	\$350.00
12	Extinguishing agent or device not available	1.2j	\$350.00
13	Open burning in violation of Environment Ministry Warning or weather	1.2l	\$350.00
14	Fail to protect properties/person from fire and or smoke hazards	1.2m	\$350.00

- NOTE: The general penalty provision for offences listed above is Section 3.1 of By-law 2021/081. A certified copy of which has been filed.

MUNICIPALITY OF SOUTHWEST MIDDLESEX
PART II - Provincial Offences Act

RECOVERY OF COSTS SCHEDULE "B" to BY-LAW NO. 2021/081

Fire Protection and Prevention Act

ITEM	COLUMN 1 Short Form Wording	Column 2 Offence Creating Provision	Recovery of costs
1.	Recovery of Costs	1.4(j)	All costs incurred by the municipality to extinguish the fire. (i.e. firefighters actual costs and equipment at the current MTO rate per piece of equipment attending fire per hour or part thereof for each unit
2.	Failure to Extinguish	2.5	All costs incurred by the municipality to extinguish the fire. (i.e. firefighters actual costs and equipment at the current MTO rate per piece of equipment attending fire per hour or part thereof for each unit
3.	Permit Special Events	1.4	\$20.00