

**THE CORPORATION OF THE MUNICIPALITY OF SOUTH DUNDAS**

**BY-LAW NO. 2022-80**

**A By-Law to Prescribe the Precautions and Conditions Under Which Fires May be Set in Open Air.**

**WHEREAS** the *Municipal Act, 2001*, as amended, provides that the powers of the Municipality shall be exercised by By-law;

**AND WHEREAS** the *Municipal Act, 2001*, as amended, authorizes a lower-tier Municipality to pass by-laws respecting health, safety and well-being of persons;

**AND WHEREAS** the *Fire Protection and Prevention Act, 1997*, as amended, provides: that a Council of a Municipality may pass By-laws regulating fire prevention, including the prevention of spreading of fires; regulating the setting of open air fires, including establishing the times during which open air fires may be set; that may deal with different areas of the Municipality differently; and, may appoint an officer to enter upon land and into structures at any reasonable time to inspect the land and structures to determine whether By-laws enacted in accordance with this section are being complied with;

**AND WHEREAS** the *Municipal Act, 2001*, as amended, authorizes Council to recover the expense incurred in doing any such matter or thing as required by By-law, in default of its being done by the person directed or required to do it, by action, or in like manner as Municipal taxes;

**AND WHEREAS** the *Municipal Act, 2001*, as amended, authorizes appointed officers to ascertain whether the By-law is obeyed, and to enforce or carry into effect the By-law;

**AND WHEREAS** the Council of the Municipality of South Dundas deems it expedient to pass a by-law to regulate conditions where fire may be set in the open air.

**NOW THEREFORE** the Council of the Corporation of the Municipality of South Dundas enacts as follows:

**DEFINITIONS**

**1.** In this By-law,

“adverse effect” means an effect which does, or is likely to, impair the safety of any person and/or which does, or is likely to cause damage to property.

“barbecue” means a portable or fixed device designed and intended solely for the cooking of food in the open air but does not include recreational fire or outdoor fireplaces.

“building” means any structure used or intended for supporting or sheltering any use or occupancy.

**DEFINITIONS (Cont'd)**

"By-law Officer" means a person appointed by the Municipality of South Dundas as a Municipal Law Enforcement Officer to enforce the provisions of the By-law.

"brush fire" means an open air fire where the material to be burned does not exceed 3 meters (9.84 feet) in height, width and length and where the open air fire is set and maintained solely for the purposes of burning wood, tree limbs, leaves and branches.

"burn drum fire" means an open air fire set and maintained in an open top steel barrel that does not exceed 1.5 meters (4.92 feet) in diameter and 1.22 meters (4 feet) in height and where the open air fire is set and maintained for the purposes of burning wood, tree limbs, branches, leaves and non-compostable material limited to paper and sisal twine.

"campground" means an area of land owned and operated by a person and or owner that contains campsites for the purpose of overnight accommodations for tents, trailers and motorhomes in exchange for monetary payment.

"dangerous condition" means any condition which causes an uncontrolled spread of a fire, increases the risk of the spread of a fire or is adverse to public safety.

"farming business" means a farming business as defined in the *Farming and Food Production Protection Act Registration and Farm Organizations Funding Act*, 1993, as amended.

"fire ban" means a period of time during which the Fire Chief declares a total ban on open air fires.

"Fire Chief" means the Director of Fire & Emergency Services of the Municipality or authorized designates and includes a By-Law Officer.

"FPPA" means the *Fire Protection and Prevention Act*, 1997, as amended, and the regulations enacted thereunder as amended from time to time, or any Act or Regulation enacted in substitution therefor.

"household waste" means combustible material such as plastics, polyethylene terephthalate, paints, oils, solvents, rubber, insulation, batteries, acids, polystyrenes (Styrofoam), pressure treated or painted lumber, tires, upholstered furniture, synthetic fabrics, diapers and hazardous waste as defined in the *Environmental Protection Act* and all other similar and like materials but shall not include untreated wood and wood fiber products such as non-laminated paper and cardboard and boxboard, brush, tree branches/limbs and leaves.

"highway" means 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; and, except as otherwise provided, includes a portion of a highway.

**DEFINITIONS (Cont'd)**

"maintain" means to allow an open air fire to continue to burn and "maintained" and "maintaining" have a corresponding meaning.

"material" means likely to have an adverse impact which is important or significant to a reasonable person.

"material to be burned" means the total volume of the materials contained in the fire.

"Municipality/Corporation" means the Corporation of the Municipality of South Dundas or the geographic area of the Municipality of South Dundas as the context requires.

"normal farming practice" means a practice that:

- a) is conducted in a manner consistent with the proper and acceptable customs and standards as established and followed by similar agricultural operations under similar circumstances, or,
- b) makes use of innovative technology in a matter consistent with proper advanced farm management practices.

"nuisance" means smoke, smell and/or airborne sparks or embers, alone or in combination, that is likely to, or does, disturb others, that produces material annoyance, inconvenience, or discomfort to others, and/or that is likely to, or does, reduce visibility on highways in the vicinity of the open air burning.

"open air fire" means the burning of material such as untreated wood and wood fiber products where the flame is not wholly contained and includes recreational fire, brush fires, burn drums and outdoor fireplaces, but does not include barbecues.

"organic soil" means a soil composed primarily of decomposed or partly decomposed plant and animal materials. As such it contains more than 30% organic matter by dry weight. The total depth of the organic material must exceed 40 centimeters (16 inches) if the soil is moderately to well decomposed (mesic or humic), or 60 centimeters (24 inches) if the material is poorly decomposed (fabric).

"outdoor fireplace" means an open air fire where the burning of clean dry seasoned firewood solely for the purposes of cooking food, providing warmth and recreational enjoyment. The outdoor fireplace can be manufactured, non-combustible, enclosed container designed to hold a small fire for decorative purposes and the size of which does not exceed 1 meter (3.28 feet) in diameter and includes, but is not limited to a chiminea.

"owner" shall mean a person or persons who is in legal possession of a property and also includes a person for the time being who manages the property or receives rent for it, or who pays municipal taxes on the property, whether on his own account or as an agent or trustee of any other person, who would carry out the aforementioned duties if the property were let, and shall also include a lessee or occupant of the property who under the terms of the lease is required to repair and maintain the property.

**DEFINITIONS (Cont'd)**

"recreational fire" means an open air fire where the burning of clean dry seasoned firewood solely for the purposes of cooking food, providing warmth and recreational enjoyment. Burning must be contained with-in a non-combustible container or fire pit that must not exceed 61 centimeters (24 inches). The material to be burned does not exceed 45 centimeters (18 inches) in diameter and 45 centimeters (18 inches) in height.

"reduce visibility" means any interference of any kind and for any length of time, with the ability of operators of motor vehicles to see people, objects, or other vehicles on a highway.

"person" means any individual, association, firm, partnership, corporation, agent or trustee and the heirs, executors, or other legal representatives of a person to whom the context can apply according to law.

"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*, as amended.

"property" means a parcel of land located within the Municipality and described on the last revised assessment roll with a separate roll number.

"set" means to light an open air fire and "setting" has a corresponding meaning.

**INTERPRETATION**

2. (1) In this By-law, a word interpreted in the singular number has a corresponding meaning when used in the plural.
- (2) This By-law includes the Schedules attached hereto and the Schedules are hereby declared to form part of this By-law.
- (3) It is declared that if any Section, Subsection or part or parts thereof, be declared by any Court of Law to be bad, illegal, or ultra vires, such Section, Subsection or part or parts shall be deemed to be severable and all parts hereof are declared to be separate and independent and enacted as such.

**PROHIBITIONS**

3. (1) No person, including the owner of a property, shall set, maintain or allow to continue burning an open air fire unless that person has obtained the necessary permit from the Municipality and any fire complies in all respects with any rules or limits included in such permit.
- (2) Despite Subsection (1), no person shall set, maintain or allow to continue burning an open air fire other than a "recreational fire" or outdoor fireplace in any shaded area shown on Schedules "A" to "C".

**PROHIBITIONS (Cont'd)**

- (3) No person shall set, maintain, or allow to continue burning an open air fire when a fire ban on open air fires has been issued by the Fire Chief.
- (4) No person shall set, maintain or allow to continue burning, an open air fire 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) reduced visibility on any highway;
  - c) excessive smoke; and/or,
  - d) a nuisance.

**APPLICATION FOR AN OPEN AIR FIRE PERMIT**

- 4. (1) Any person eighteen (18) years of age or older may apply for an open air fire permit prior to the proposed date of the first open air fire. The Permit Holder is responsible to ensure that the conditions outlined in this By-law are adhered to at all times. South Dundas and its employees or agents thereof, in issuing this application, do not assume any responsibility or liability for any hazardous condition(s) created by the applicant which result in damage to the person or property of any third person. South Dundas Fire & Emergency Services and employees or agents thereof shall have the final authority for issuing or denying this permit. Notwithstanding any matters included in a permit any fire must comply with all applicable municipal and provincial laws and regulations.
- (2) Any application for a permit shall include:
  - a) the name, address and phone number of the applicant;
  - b) the owner's written consent to the open air fire, if the applicant is not the owner of the property;
  - c) the municipal address of the location of the proposed open air fire if it differs from the address of the applicant. A farming business may offer multiple locations to reflect their agricultural property but need to specify a cross road nearby or another civic number nearby;
  - d) the applicable open air fire permit fee, if applicable;
  - e) an indemnification in writing or electronically in accordance with the terms of Section 11; and,
  - f) such other information as may be required by the Fire Chief.
- (3) Subject to Subsections (1) and (2), a person who operates a farming business may apply for an agricultural open air fire permit that includes permission to set and maintain a brush fire and burn drum fire.
- (4) An open air fire permit will not be issued if:
  - a) the application is incomplete;
  - b) there are reasonable grounds to believe that the open air fire may cause adverse effects; or,

**APPLICATION FOR AN OPEN AIR FIRE PERMIT (Cont'd)**

- c) there are reasonable grounds to believe that the open air fire will result in a breach of this By-law, the FPPA, or any other Provincial or Federal Statute.
- (5) An agricultural open air fire permit is required for each property that requires burning.

**CONDITIONS FOR APPLICATION PERMIT ISSUANCE**

- 5.**
- (1) No permit holder shall undertake to set or maintain any open air fire except in accordance with the conditions of the permit.
  - (2) The permit holder shall comply at all times with the FPPA, and with all other applicable Municipal By-laws and Provincial and Federal laws.
  - (3) A permit issued under this Section is valid on the date of issue and for the balance of the calendar year in which the permit is issued.
  - (4) An Agricultural Fire permit is required, with an activation number each time a resident wants to burn. A permit can be activated for up to fourteen consecutive days by calling the Municipal Office on the business day prior to the setting of a fire between the hours of 8:30 a.m. and 4:30 p.m. Monday to Friday except holidays, and providing the permit holder's name, address, permit number, and the times and dates of intention to burn.
    - 4.1 Residents cannot activate burning permits by leaving messages on the telephone answering machine. They must speak to a Staff member personally and must receive an activation number prior to any fire being set.
  - (5) No holder of a permit issued under this By-law shall set or maintain an open air fire unless the permit holder:
    - a) is a person eighteen (18) years of age or older that maintains constant watch and control over the open air fire at all times from the time of the setting of the fire until the fire is totally extinguished;
    - b) produces his or her permit upon being so directed by the Fire Chief;
    - c) immediately extinguishes the fire upon being so ordered by the Fire Chief;
    - d) complies at all times with the requirements of Section 5 and, where applicable, Sections 6, 7, 8 or 9; and,
    - e) has equipment capable of controlling the fire such as rakes, shovels, or water immediately available for use at the site of the open air fire.
  - (6) Recreational Fires and Outdoor Fireplace require a permit available on the Municipal Website or by phoning the Municipal Office.
  - (7) The Fire Chief may attach such additional conditions to a permit as deemed necessary to ensure public safety.

**CONDITIONS FOR APPLICATION PERMIT ISSUANCE (Cont'd)**

- (8) A permit for an open air fire is not transferable to another person or to a new location.

**GENERAL REQUIREMENTS FOR OPEN AIR FIRES**

**BRUSH FIRES AND BURN DRUM FIRES - Open Air Fire Permit**

6. (1) Where the material to be burned in an open air fire is 3 meters (9.84 feet) or less in length, width and height or is in a burn drum, no permit holder shall set or maintain a brush fire or burn drum fire:
- a) at a distance of less than 25 meters (82.02 feet) from any building, hedge, fence, overhead wiring, highway, or other combustible material;
  - b) where the size of the open air fire will exceed the limits set by this By-law or in any permit;
  - c) that is set or maintained with the aid of flammable or combustible liquids of any kind;
  - d) that uses fuel other than untreated wood and wood fiber products such as non-laminated paper and cardboard and boxboard, brush, tree branches/limbs, leaves, paper, and sisal twine;
  - e) that uses prohibited materials, which 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*, as amended;
  - f) before sunrise and after sunset on any day; or,
  - g) that contravenes any additional conditions specified on the permit.

**AGRICULTURAL AND LAND CLEARING**

7. Notwithstanding anything else contained herein, in any area zoned "Agricultural" the Fire Chief may grant a permit to set a fire if it is considered to be a normal farming practice. The Fire Chief may issue an application for burning in the open air of cut and piled brush, slash, grass and other organic agricultural materials resulting from the clearing of land and for the destruction of agricultural waste materials originating on that property, provided that:
- (1) every person who starts a fire under the provisions of this subsection shall cause a watch to be kept on such fire until it is completely extinguished and shall provide sufficient personnel, appliances, and equipment to prevent the fire from becoming dangerous to life or property;
  - (2) such burning shall not be carried out within 75 meters (250 feet) from any buildings, structures, standing timber or any other flammable or combustible material;
  - (3) burning shall not be carried out within 30 meters (100 feet) of the owner's property line;
  - (4) no pile of burning material shall exceed 5 meters (16 feet) in diameter or 5 meters (16 feet) in height;

**AGRICULTURAL AND LAND CLEARING (Cont'd)**

- (5) the minimum distance between burn piles shall be not less than 9 meters (28 feet);
- (6) windrows are not permitted for burning purposes;
- (7) no substance which produces heavy black smoke when burned, such as rubber tires or petroleum products, shall be burned in connection with such burning;
- (8) no such burning shall be carried out where, due to climatic conditions or other hazards, including organic soil, it would be unsafe to do so; and,
- (9) a fire shall not be started within 200 meters (650 feet) adjacent of any residence not owned by the applicant, and not withstanding Section 7(2) unless advance written permission is obtained from the owner of such residence.

**RECREATIONAL AND OUTDOOR FIREPLACES**

- 8.** (1) A permit is required for a recreational or outdoor fireplace or any such fire shall be set and maintained in accordance with the following:
- a) the material burned in the fire consists only as defined in "Recreational Fires".
  - b) any fire shall be completely surrounded on all sides and underneath by non-combustible material.
  - c) only use seasoned dry firewood and does not include Household Waste as defined.
  - d) unless the recreational fire or outdoor fireplace is located a distance of not less than 3.66 meters (12 feet) from any building, hedge, fence, overhead wiring or other combustible material or 5 meters (16.4 feet) of a highway or sidewalk.
  - e) a copy of the printed permit is available and on site when the recreational or outdoor fireplace has been set.
  - f) shall only conduct a recreational or outdoor fireplace between 5:00pm and midnight;
  - g) has equipment capable of controlling the fire such as rakes, shovels, or water immediately available for use at the site of the open air fire.
  - h) shall not be set when a Municipal fire ban is in place.
- (2) Only recreational fires or outdoor fireplaces will be allowed in the areas defined in Schedules "A to C".
- (3) A campground owner is responsible for:
- a) any and all violations of this By-law which occur on property owned by the campground owner and is liable for recovery of any fees for response to or extinguishment of any open air burn or any fires caused by an open air burn.
  - b) All recreational fires within the campground must meet all requirements contained in Section 8 Recreational Fires and Outdoor Fireplaces" with the exception of Section 8 (1) .f) of this By-law and the provisions of any applicable Provincial law or regulation.



**DELEGATION OF AUTHORITY - UPDATING MAP(S) (SCHEDULES)**

- 9.** (1) Amendments may be suggested by the Fire Chief to Council to the Schedules to this By-law to amend the boundaries of areas in which open air fires may be set or maintained provided that the amendment is a result of a change in one (1) or more of the following factors:
- a) population density;
  - b) building density; and/or,
  - c) risk management issues, including but not limited to incidence of false alarms and proximity to forested areas.

**INDEMNIFICATION**

- 10.** The owner shall indemnify and save harmless the Municipality from any and all claims, demands, causes of action, losses, costs or damages that the Municipality may suffer, incur or be liable for resulting from the open air fires whether with or without negligence on the part of the applicant, the applicant's employees, directors, contractors and agents.

**REVOCACTION**

- 11.** (1) Permits issued to a permit holder under this By-law may be revoked immediately by the Fire Chief if, in the opinion of the Fire Chief, an adverse effect exists in or near the site of the open air fire. Revocation shall be effective upon the Fire Chief providing verbal notice to the permit holder or his or her agent.
- (2) Permits issued to a permit holder under this By-law may be revoked by the Fire Chief if the permit holder fails to comply with the requirements of the permit or permits and any other provisions of this By-law. Revocation shall be effective upon the Fire Chief providing verbal notice to the permit holder or his or her agent.

**EXEMPTIONS**

- 12.** (1) Any person serving as part of the South Dundas Fire & Emergency Services, or as their agent or employee shall be exempt from the provisions of this By-law with respect to open air fires provided any fire is set for the purposes of training, educating individuals in fire safety, or for research purposes.
- (2) Professional fire prevention and suppression trainers shall be exempt from the provisions of this By-law with respect to open air fires set for the purposes of fire safety training.

**OFFENCES AND PENALTIES**

- 13.** (1) Every person who contravenes any of the provisions of this By-law is guilty of an offence.
- (2) Every person who is convicted of an offence under this By-law is liable to a fine as provided for in the *Provincial Offences Act*.

**OFFENCES AND PENALTIES (Cont'd)**

- (3) Where a person has been convicted of an offence under this By-law:
  - a) the Ontario Court of Justice, or
  - b) 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.

**14.** Every person who sets a fire in contravention of this By-law or who fails to extinguish a fire once ordered to do so by the Fire Chief shall, in addition to any penalty provided for herein, be liable to the Municipality for all expenses incurred for the purpose of investigating, controlling and extinguishing any fire set or left to burn as per Schedule "D". Any costs chargeable to any person pursuant to this section 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 Treasurer of the Municipality to the Collector's Roll and collected in the same manner and with the same priority as municipal taxes.

**REPEAL**

**15.** That By-law No. 2019-70 be repealed in its entirety.

**SHORT TITLE**

**16.** This By-law may be referred to as the "Open Air Fire By-Law".

**EFFECTIVE DATE**

**17.** This By-law shall come into force on the date of passing.

**READ** and passed in open Council, signed, and sealed this 27<sup>th</sup> day of June, 2022.

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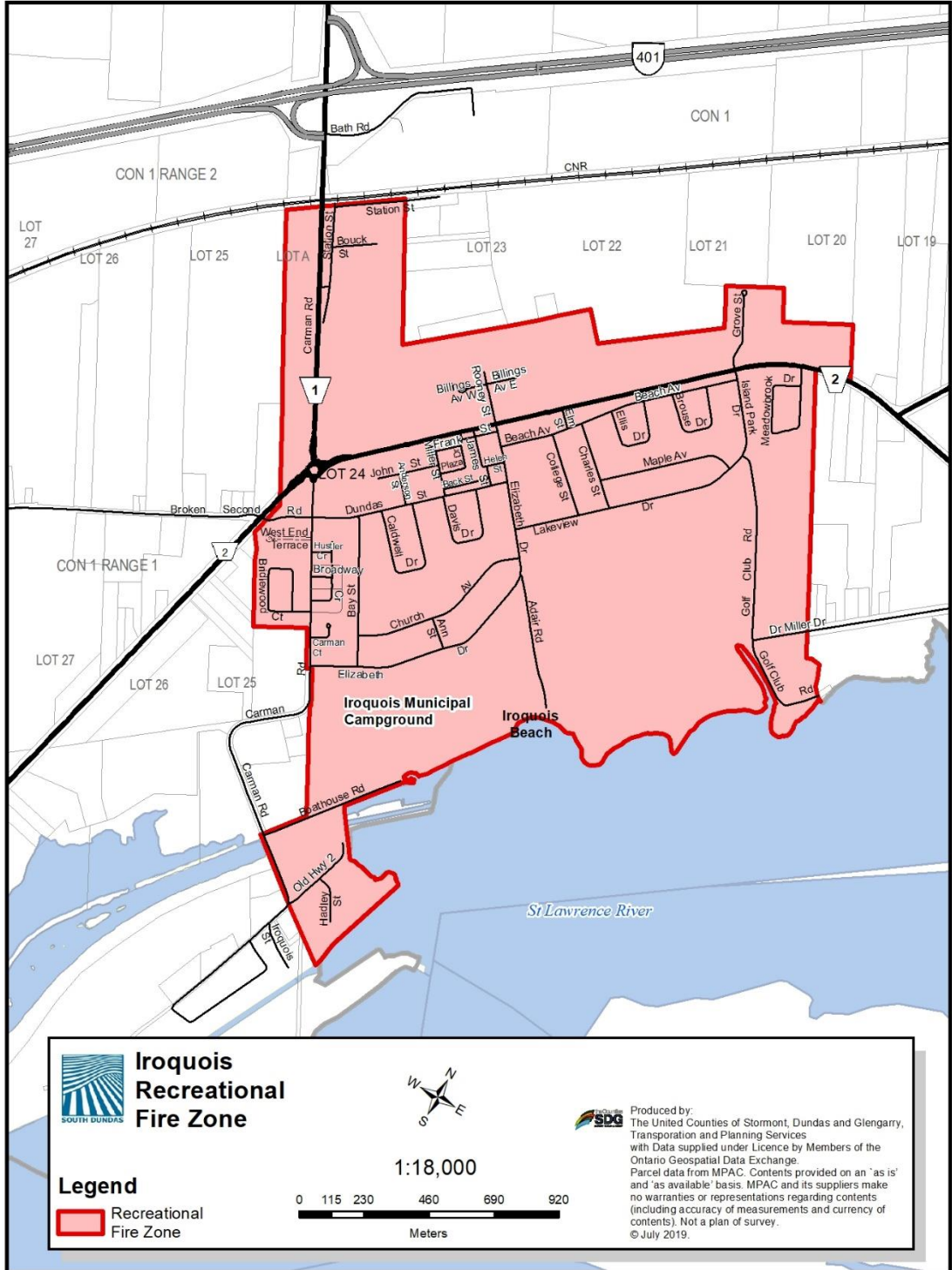
**MAYOR**

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**CLERK**

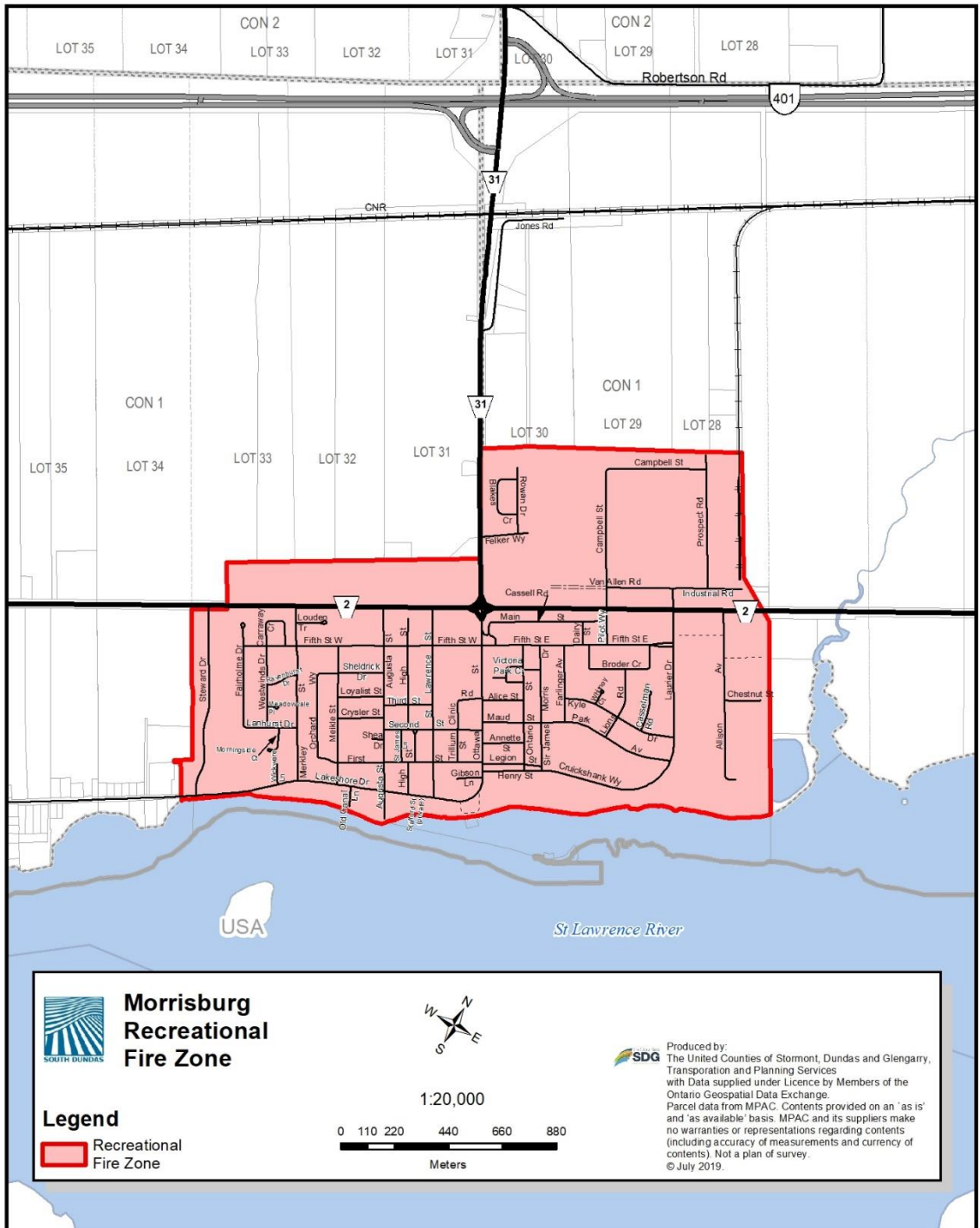
**Schedule "A"**  
**To By-law 2022-80**


**Open Air Fire permitted**




# Schedule "B" To By-law 2022-80

Open Air Fire permitted

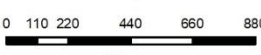




**Morrisburg  
Recreational  
Fire Zone**



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Meters

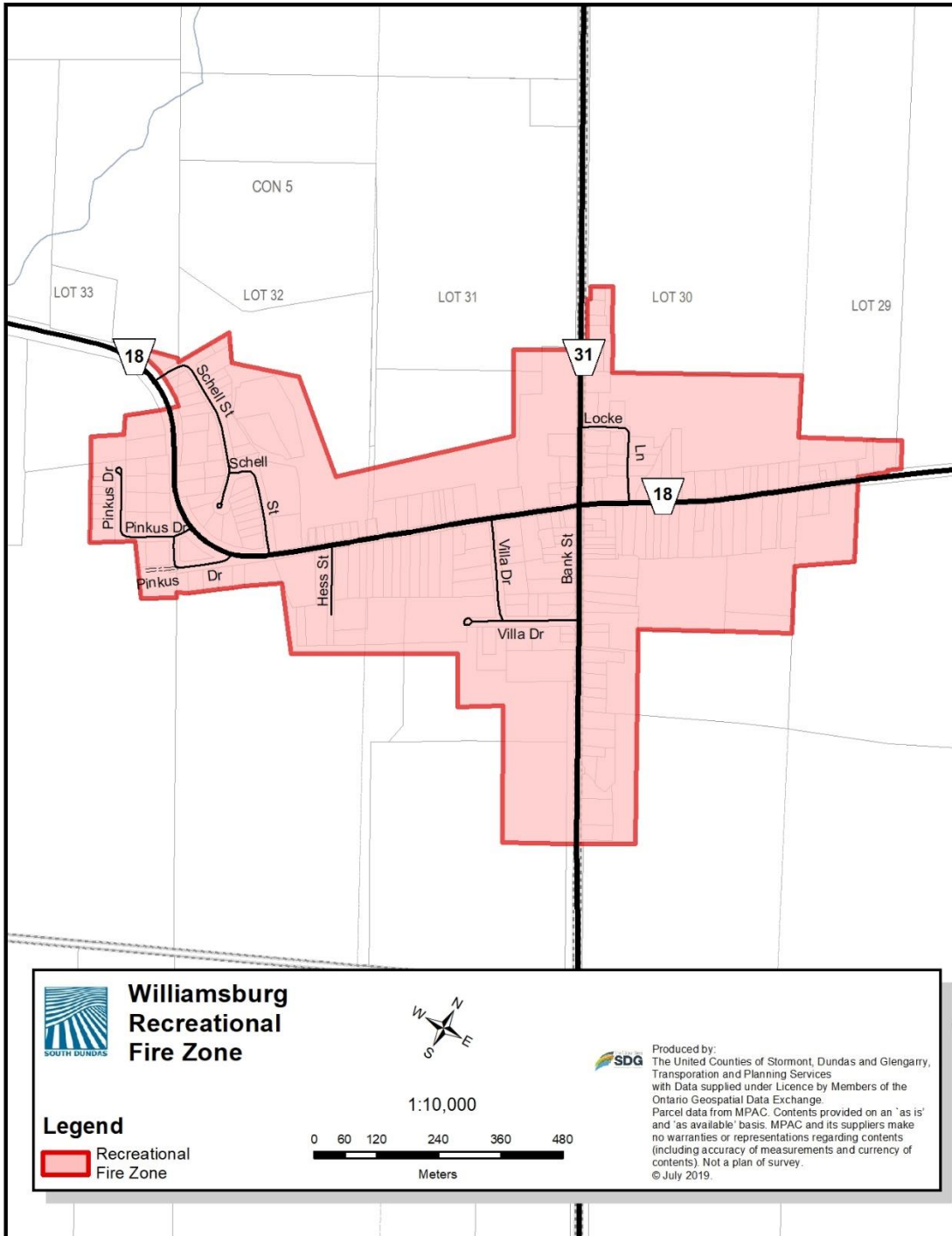
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**Legend**

Recreational Fire Zone

**Schedule "C"**  
**To By-law 2022-80**

**Open Air Fire permitted**



**Schedule "D"**  
**To By-Law No. 2022-80**

**Cost Recovery Schedule**

| <b>Description</b>  | <b>Amount of Fee</b>  |
|---|---|
| Activated response  | MTO rate for the first hour or part thereof per vehicle or part thereof per vehicle after the 1 <sup>st</sup> hour. |
| Investigation with By-law contraventions (by Fire Chief or designate) | \$150.00  |