

THE CORPORATION OF THE TOWN OF LINCOLN

BY-LAW NO. 2013-03

A BY-LAW TO PROHIBIT AND REGULATE THE
SETTING OF OPEN AIR FIRES WITHIN THE TOWN OF
LINCOLN.

WHEREAS subsection 7.1(1) of the *Fire Protection and Prevention Act*, S.O. 1997, c. 4, as amended, provides that the council of a municipality may pass by-laws to regulate fire prevention, including the prevention of spreading of fires, and to regulate the setting of open air fires, including establishing the times during which open air fires may be set;

AND WHEREAS section 10 of the *Municipal Act*, S.O. 2001, c. 25, as amended, provides that the council of a municipality may pass by-laws respecting the health, safety and well-being of persons, and the protection of persons and property;

AND WHEREAS section 128 of the *Municipal Act*, S.O. 2001, c. 25, as amended, provides that a municipality may prohibit and regulate matters that, in the opinion of council, are or could become public nuisances;

AND WHEREAS section 425 of the *Municipal Act*, S.O. 2001, c. 25, as amended, provides that the council of a municipality may pass by-laws providing that a person who contravenes a by-law of the municipality passed under this Act is guilty of an offence;

AND WHEREAS section 446 of the *Municipal Act*, S.O. 2001, c. 25, as amended, provides that if a municipality has the authority under that or any other Act or under a by-law under that or any other Act to direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person's expense, and the municipality may recover the costs of doing a matter or thing from the person directed or required to do it by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes;

AND WHEREAS the Council of the Town of Lincoln deems it necessary and desirable to amend, consolidate, revise and update its by-law to prohibit and regulate the setting of open air fires for the prevention of the spreading of fires, to aid in the protection of the natural environment, and for the safety and well being of the community;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE
TOWN OF LINCOLN HEREBY ENACTS AS FOLLOWS:

DEFINITIONS

1. In this By-law:

- (a) "**adverse effect**" means adverse effect as defined in the *Environmental Protection Act*, R.S.O. 1990, c. E. 19, as amended.
- (b) "**burning safety plan**" means written procedures provided to the Fire Chief which specify provisions and means for facilitating open air fire safety, including the means of confinement and control of the open air fire to prevent the spread of fire and for the protection of the environment, and including specific provisions for extinguishment of the fire, and provisions for fire department notification and emergency vehicle access.

- (c) "**campground**" means a place that contains camp sites for the purpose of providing overnight accommodation for tents, trailers, and/or motor homes in exchange for monetary payment or other consideration.
- (d) "**Campground Fire Permit**" means an open air fire permit issued by the Fire Chief, upon payment of the prescribed application fee and on the condition of compliance with the provisions of this By-law, to set and maintain fires in the open air within a campground from time to time.
- (e) "**Farm Fire Permit**" means an open air fire permit issued by the Fire Chief to any Farmer to set and maintain a fire in the open air from time to time on lands zoned for agricultural use for the disposal of clean wood, natural vegetation and agricultural materials incidental to and consistent with normal farm practice, on the condition of compliance with the provisions of this By-law, within a specified period per day.
- (f) "**Farmer**" means the owner or operator of an agricultural operation as defined in the *Farming & Food Protection Act*, S.O. 1998, c. 1, as amended.
- (g) "**Fire Chief**" means the chief of the fire department of the Town, or any person designated to act on his or her behalf.
- (h) "**Non-Recreational Fire Permit**" means an open air fire permit issued by the Fire Chief, upon payment of the prescribed application fee and on the condition of compliance with the provisions of this By-law, to set and maintain an occasional fire in the open air from time to time for the purpose of disposal of clean wood, natural vegetation and agricultural materials within a specified period per day.
- (i) "**nuisance**" means an act or condition that causes unreasonable discomfort to persons, loss of enjoyment or normal use of property, interference with the normal conduct of business, or damage to property.
- (j) "**open air fire**" means a fire in any open place, yard, field or area which is not contained or enclosed by a building or structure, but does not include a gas fired appliance regulated by the *Technical Standards and Safety Act*, S.O. 2000, c. 16, as amended.
- (k) "**Recreational Fire Permit**" means an open air fire permit issued by the Fire Chief, upon payment of the prescribed application fee and on the condition of compliance with the provisions of this By-law, to set and maintain a fire in the open air for recreational purposes from time to time, within a specified period per day.
- (l) "**Town**" means the Corporation of the Town of Lincoln.

ADMINISTRATION

- 2. The provisions of this By-law apply to all lands and property within the corporate limits of the Town of Lincoln.
- 3. The Fire Chief shall be responsible for the administration and enforcement of this By-law and is hereby authorized to issue open air fire permits in accordance with this By-law.

FIRE DEPARTMENT EXEMPTION

- 4. The fire department of the Town shall be exempt from the provisions of this By-law with respect to open air fires that are set or maintained for fire department training or education purposes.

PROHIBITIONS

5. No person shall set or maintain, or cause or permit to set or maintain, a fire in contravention of the *Fire Protection and Prevention Act*, S.O. 1997, c. 4, and the regulations enacted thereunder, or the *Environmental Protection Act*, R.S.O. 1990, c. E. 19, as amended.
6. No person shall set or maintain an open air fire without a valid permit issued by the Fire Chief.
7. No person being the owner of a property shall allow an open air fire to be set or maintained on such property without a permit issued by the Fire Chief.
8. No person shall set or maintain an open air fire involving prohibited materials, as set out in Section 10 of this By-law.
9. No person shall set or maintain an open air fire:
 - (a) on any highway, road allowance, or public property;
 - (b) on any commercial or industrial property, without the approval of the Fire Chief;
 - (c) that is not confined to a pit, pile, or non-combustible container, such as a grass fire;
 - (d) that causes smoke to blow across a public road or highway thereby decreasing visibility to motorists;
 - (e) that causes smoke, odour, ashes, or embers to invade a neighbouring property thereby creating a nuisance;
 - (f) when the wind velocity is 20 kilometres per hour or greater,
 - (g) that spreads through any grass, brush or wooded area, or to any adjacent building, structure, property or roadway;
 - (h) during rainy or foggy weather, or when a smog alert or an air quality advisory has been issued by the appropriate Federal or Provincial agency;
 - (i) without a competent person 18 years of age or older in attendance at the fire site to supervise the fire during the entire time it is burning;
 - (j) without having adequate means to control and extinguish the fire on hand and ready for immediate use at the fire site during the entire time the fire is burning;
 - (k) at times other than allowed by the provisions of an open air fire permit as set out in this By-law;
 - (l) of greater size than allowed by the provisions of an open air fire permit as set out in this By-law;
 - (m) unless the minimum distance is maintained from the fire to any building, structure, fence, property line, roadway, overhead wire, or combustible material as prescribed by the provisions of an open air fire permit as set out in this By-law; or
 - (n) during a ban on open air burning declared by the Fire Chief.

PROHIBITED MATERIALS

10. No open air fire shall be used to burn, or otherwise involve prohibited materials, which include:

- (a) any rubbish, demolition materials, metal, tires, rubber, plastic, fiberglass, cloth, asphalt products, shingles, insulation, electrical wiring, painted or treated wood, and other materials that contain any of the aforementioned;
- (b) any animal fecal deposits, manure, and animal carcasses;
- (c) any residential waste, such as food scraps and household trash;
- (d) any commercial, industrial, manufacturing, or construction waste;
- (e) any flammable or combustible liquids, oil, paint, solvents, chemicals, explosives, radioactive, infectious and other hazardous materials; and
- (f) any paper and cardboard, except for reasonable minimal amounts used solely for the purpose of starting an open air fire, and any recyclable material that may be collected through the waste management program of Niagara Region.

OPEN AIR FIRE PERMIT

11. A permit for an open air fire shall:

- (a) be in a form as approved by the Fire Chief;
- (b) bear the signature of the applicant acknowledging his or her agreement to comply with all conditions and provisions of this By-law;
- (c) be valid only for the addresses or locations specified in the permit;
- (d) be valid only in the calendar year for which it is issued.

12. A permit may be issued to a person upon application and payment of any fee prescribed by the applicable fees and charges By-law of the Town, and on the condition of compliance with all provisions of this By-law.

13. Every applicant for a permit shall have permission of the property owner consenting to the use of the lands for the purpose of setting or maintaining an open air fire, and the Fire Chief may demand proof of such permission from the property owner for any open air fire permit.

14. The Fire Chief, or any other person authorized to enforce the provisions of this By-law, shall be permitted to enter upon lands and property at any reasonable time to inspect any location or place for which an application for a permit has been made, or for which a permit has been issued.

15. The Fire Chief may deny or withhold a permit for any person who, in the opinion of the Fire Chief, is not able to meet the requirements of this By-law, or has previously failed to comply with any provision of this By-law.

16. Every issued permit may be subject to verification of compliance with the provisions of this By-law by the Fire Chief at any reasonable time, and the Fire Chief may revoke a permit for any person who, in the opinion of the Fire Chief, is not able to or has failed to meet the requirements of this By-law.

17. Any fee paid for a permit in accordance with this By-law shall not be refundable where the permit is not approved by the Fire Chief, or where an issued permit is revoked under the provisions of this By-law.

18. Any person who is supervising an open air fire that has been set under the authority of a permit issued under this By-law shall produce a copy of the permit for inspection upon demand by any person authorized to enforce this By-law.

BAN ON OPEN AIR BURNING

19. The Fire Chief may declare a ban on all open air fires while, in the opinion of the Fire Chief, a lack of precipitation or other conditions within the geographical boundaries of the Town increases the risk of the spread of fire or would otherwise endanger the health and safety of any person or the quality of the natural environment.

PROVISIONS FOR FIRES FOR THE PURPOSE OF COOKING

20. Notwithstanding the prohibition prescribed by Section 6, an open air fire may be set or maintained without obtaining a permit if the fire is to be used for the purpose of cooking, on the condition that:

- (a) the fire shall be contained entirely within a fixed or portable barbecue intended for cooking food, or within a metal or masonry enclosure with a metal grill or screen on top;
- (b) the fire shall not be more than 0.5 square metres in area and shall not be more than 0.5 metres in height; and
- (c) no solid fuel other than commercially produced charcoal, briquettes or clean, dry, seasoned wood shall be used.

FARM FIRE PERMIT PROVISIONS

21. The Fire Chief may issue a Farm Fire Permit without charge to a Farmer to set or maintain an open air fire on lands zoned for agricultural use from time to time for the purpose of disposing of natural vegetation and agricultural material incidental to and consistent with normal farm practice.

22. Every person who sets or maintains an open air fire under the authority of a Farm Fire Permit shall:

- (a) restrict the time the open air fire is set or maintained to between sunrise and sunset on any day;
- (b) confine the open air fire to a pit or pile that does not exceed 36 squares metre in area and the material being burned shall not exceed 2 metres in height, unless specifically approved by the Fire Chief under application of a Burning Safety Plan; and
- (c) maintain a distance of not less than 30 metres from the open air fire to any building, structure, fence, property line, roadway, railway, overhead wire, or combustible material.

23. The Fire Chief may approve a specific exemption from one or more provisions prescribed herein for an open air fire for farming purposes where, in his or her sole opinion, the exemption does not increase the risk of the spread of fire, or pose an increased threat to the health or safety of any person.

24. Notwithstanding the issuance of a Farm Fire Permit for a location, no person shall set or maintain an open air fire for recreational purposes at that location without also first obtaining a Recreational Fire Permit as set out herein.

NON-RECREATIONAL FIRE PERMIT PROVISIONS

25. The Fire Chief may issue a Non-Recreational Fire Permit to set or maintain an open air fire from time to time for the purpose of disposing of natural vegetation and agricultural material.

26. Every person who sets or maintains an open air fire under the authority of a Non-Recreational Fire Permit shall:

(a) restrict the time the open air fire is set or maintained to between sunrise and sunset on any day;

(b) confine the open air fire to a pit, pile, or non-combustible container that does not exceed one square metre in area, and the material being burned shall not exceed one metre in height; and

(c) maintain a distance of not less than 10 metres from the open air fire to any building, structure, fence, property line, roadway, railway, overhead wire, or combustible material.

RECREATIONAL FIRE PERMIT PROVISIONS

27. The Fire Chief may issue a Recreational Fire Permit to set or maintain an open air fire from time to time for recreational purposes.

28. A fire in a steel fire box or barrel, chiminea, clay or ceramic fire pot, or other similar outdoor burning equipment or device shall be deemed to be a recreational open air fire.

29. Every person who sets or maintains an open air fire under the authority of a Recreational Fire Permit shall:

(a) restrict the time the open air fire is set or maintained to between the hours of 4 p.m. on any one day and 1 a.m. on the following day;

(b) confine the open air fire to a pit or a non-combustible container no larger than 61 square centimetres in area, and the material being burned shall not exceed 61 centimetres in height;

(c) maintain a distance of not less than 5 metres from the open air fire to any building, structure, fence, property line, roadway, overhead wire, or combustible material; and

(d) not set or maintain a recreational open air fire on a combustible surface or deck, or on or near dry grass or vegetation.

CAMPGROUND FIRE PERMIT PROVISIONS

30. The Fire Chief may issue a Campground Fire Permit to set or maintain open air fires at a campground from time to time for recreational purposes.

31. A Burning Safety Plan shall be submitted with every Campground Fire Permit application, and shall be approved by the Fire Chief.

32. Every person in a campground who sets or maintains an open air fire under the authority of a Campground Fire Permit shall:

(a) confine each open air fire in a campground to a pit or a non-combustible container no larger than 61 square centimetres in area, and the material being burned shall not exceed 61 centimetres in height; and

(b) maintain a distance of not less than 5 metres from each open air fire in a campground to any building, structure, fence, property line, roadway, overhead wire, or combustible material.

ENFORCEMENT

33. The following persons shall be authorized to enforce this By-law:

(a) the Fire Chief, and every member of the fire department designated as an Assistant to the Fire Marshal under the provisions of the *Fire Protection and Prevention Act*, S.O. 1997, c. 4; and

(b) every person appointed under the *Police Services Act*, R.S.O. 1990, c. P.15, as amended, to enforce the by-laws of the Town.

DEMAND TO EXTINGUISH

34. Any person who sets or maintains an open air fire in contravention of any provision of this By-law shall extinguish such fire immediately upon the demand of the Fire Chief or other person authorized to enforce this By-law.

35. The Fire Chief, or any other person authorized to enforce this By-law, may summon whatever fire department personnel, vehicles, apparatus, and equipment is necessary to extinguish an open air burn that contravenes any provision herein, or where the person who set or maintained the open air fire fails to, or is unable to, comply with a demand to extinguish the fire.

LIABILITY AND RECOVERY OF COSTS

36. Any person who sets or maintains a fire in the open air which contravenes any provision of this By-law, and any owner of the lands or property on which such an open air fire is set or maintained, shall be responsible to extinguish such fire and shall be jointly and severally liable for any damage to property and/or injury to persons caused by the fire.

37. In addition to any fines or penalties established herein, any person who sets or maintains a fire in the open air which contravenes any provision of this By-law, and any owner of the lands or property on which such an open air fire is set or maintained, shall be jointly and severally liable to the Town for:

(a) all fees prescribed by the Town fees and charges By-law for all fire department personnel, vehicles, apparatus, and equipment that respond to investigate and/or to extinguish the fire; and

(b) all costs incurred by the fire department in extinguishing the fire, including water usage, supplies, mutual aid or other reciprocal agreement fees, costs associated with the procurement of specialized equipment or contractors necessary for the extinguishment of the fire, or other incidental expenses in connection with extinguishing the fire.

38. All fees and charges payable under this By-law are due and owing to the Town within thirty (30) days after the mailing or delivery of the invoice, and any fees or charges not paid by the due date shall bear interest thereon at the prescribed rate, calculated monthly from the due date until paid in full.

39. All fees and charges payable under this By-law constitute a debt to the Town which may be added to the collector's roll under the name of the owner of the lands upon which the fire was set or maintained, and the amount owing may be collected in a like manner as municipal taxes.

OFFENCE

40. Every person who contravenes any provision of this By-law is guilty of an offence.

41. Every person who is convicted of an offence shall be liable to a fine in accordance with the provisions of the *Provincial Offences Act*, R.S.O. 1990, c.P.33 as amended, for each offence committed.

42. The set fines for an offence under this By-law are set out in Schedule "A" attached hereto and forming part of this By-law.

SEVERABILITY

43. If a court of competent jurisdiction declares any provision or part of a provision of this By-law to be invalid or to be of no force and effect, it is the intention of Council in enacting this By-law, that each and every other provision of this By-law authorized by law, be applied and enforced in accordance with its terms to the extent possible according to law.

EFFECTIVE DATE

44. This By-law shall come into force and effect on the day on which it is passed.

SHORT TITLE

45. This By-law may be referred to as the Open Air Fire By-law.

REPEAL


46. By-law No. 07-78 of the Corporation of the Town of Lincoln be and is hereby repealed.

BY-LAW read a FIRST time this 7th day of January, 2013.

BY-LAW read a SECOND time this 7th day of January, 2013.

BY-LAW read a THIRD time and FINALLY PASSED this 7th day of January, 2013.


MAYOR: BILL HODGSON


CLERK: WILLIAM J. KOLASA

THE CORPORATION OF THE TOWN OF LINCOLN

**Schedule "A" to
BY-LAW NO. 2013-03
BEING A BY-LAW TO PROHIBIT AND REGULATE THE SETTING OF OPEN
AIR FIRES WITHIN THE TOWN OF LINCOLN**

PART I PROVINCIAL OFFENCES ACT – SET FINE SCHEDULE

Item	Column 1 Short Form Wording	Column 2 Provision Creating or Defining Offence	Column 3 Set Fine
1	Set or maintain an open air fire without a valid permit.	Section 6	\$235
2	Set or maintain an open air fire involving prohibited materials.	Section 8	\$500
3	Set or maintain an open air fire on a highway, road allowance, or public property.	Section 9(a)	\$235
4	Set or maintain an open air fire that is not confined to a pit, pile, or non-combustible container.	Section 9(c)	\$235
5	Set or maintain an open air fire that causes smoke to blow across a public highway decreasing visibility to motorists.	Section 9(d)	\$235
6	Set or maintain an open air fire where smoke, odour, ashes, or embers create a nuisance.	Section 9(e)	\$235
7	Set or maintain an open air fire that spreads through grass, brush or wooded area, or to adjacent building, structure, property or roadway.	Section 9(g)	\$500
8	Set or maintain an open air fire during rainy or foggy weather, smog alert, or air quality advisory.	Section 9(h)	\$235
9	Fail to supervise an open air fire by a competent person 18 years of age or older.	Section 9(i)	\$235
10	Fail to have adequate means to extinguish an open air fire on site and ready for immediate use.	Section 9(j)	\$235
11	Set or maintain an open air fire at time other than allowed by permit.	Section 9(k)	\$235
12	Set or maintain an open air fire of greater size than allowed by permit.	Section 9(l)	\$235
13	Fail to maintain minimum distance prescribed by permit from an open air fire to a building, structure, property line, roadway, railway, overhead wire, or combustible material.	Section 9(m)	\$235
14	Set or maintain a fire during an open air burning ban.	Section 9(n)	\$235

Note: The penalty provision for the offences listed above is Section 41 of By-law No. 2013-03, a certified copy of which has been filed.