

THE CORPORATION OF THE TOWN OF LINCOLN

BY-LAW NO. 2017-110

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 and 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 Article 2.6.3.4 of the *Fire Code*, being Ontario Regulation 213/07, provides that open air burning shall not take place unless approved;

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, 2001*, provides that a municipality may prohibit and regulate matters that, in the opinion of Council, are or could become public nuisances;

AND WHEREAS it is the opinion of Council that smoke, odour, ash, and embers from an Open Air Fire that enter onto or affect a neighbouring property are or could become a public nuisance;

AND WHEREAS Section 434.1 of the *Municipal Act, 2001*, provides that a municipality may require a person, subject to such conditions as the municipality considers appropriate, to pay an administrative penalty if the municipality is satisfied that the person has failed to comply with a by-law of the municipality passed under that Act;

AND WHEREAS Section 446 of the *Municipal Act, 2001*, 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 and update its by-law to prohibit and regulate the setting of open air fires for the prevention of spreading of fires, to promote public health and safety, and to protect the welfare of the inhabitants of the municipality from air pollution, nuisances, and fire hazards associated with open air fires;

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** has the same meaning as in the *Environmental Protection Act*, R.S.O. 1990, c. E. 19, and includes one or more of the following:

- 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 a 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) **Burning Safety Plan** means written procedures, which specify means and provisions for safely facilitating Open Air Fires, including the means of confinement and control of fires to prevent unwanted spread, specific provisions for extinguishment of Open Air Fires, and provisions for fire department notification and emergency vehicle access.
- (c) **Campground** means a place that contains campsites 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 a permit issued, subject to compliance with this by-law, to set and maintain Open Air Fires in a Campground.
- (e) **Competent Person** means a person 18 years of age or older who is capable of exercising reasonable judgement and performing the actions necessary to control an Open Air Fire and prevent its unwanted spread, and who is equipped and able to summon the fire department in case of emergency.
- (f) **Council** means the elected municipal council of the Town.
- (g) **Director** means the Director designated by the Administrative Penalty By-Law of the Town.
- (h) **Farm Fire Permit** means a permit issued to a Farmer, subject to compliance with the provisions of this by-law, to set and maintain an Open Air Fire from time to time on lands zoned for Agricultural use for the disposal of clean Woodwaste materials incidental to and consistent with normal farm practice.
- (i) **Farmer** means the owner or operator of an agricultural operation as defined in the *Farming & Food Protection Act*, S.O. 1998, c. 1.
- (j) **Fire Chief** means the chief of the fire department of the Town, or any Person designated to act on his or her behalf.
- (k) **Fire Pit** means a pit dug into the ground, or a place with a non-combustible base and confined within a stone, masonry, metal or other non-combustible perimeter for the purpose of containing an Open Air Fire.
- (l) **Flying Lantern** means a device known as a Flying Lantern, Chinese Lantern, Sky Lantern, Wish Lantern, or other similar device made of paper or other material with an opening at the bottom under which an open flame is suspended that, when lit, causes the lantern to rise and float in the air.

- (m) **Listed** means included in a list published by a certification organization accredited by the Standards Council of Canada, such as Underwriters Laboratories of Canada (ULC) and the Canadian Standards Association (CSA), indicating conformance with applicable safety standards.
- (n) **Nuisance** means an act or condition that causes unreasonable discomfort to any Person, loss of enjoyment or normal use of property, damage to property, or an Adverse Effect, and includes smoke, odour, ash, and embers from an Open Air Fire that enter onto or affect a neighbouring property.
- (o) **Open Air Fire** means a fire that is not contained or enclosed by a building including, but not limited to a bonfire, Fire Pit, burn barrel, and Outdoor Fireplace, but does not include a gas-fired appliance regulated by the *Technical Standards and Safety Act*, S.O. 2000, c. 16, as amended.
- (p) **Outdoor Fireplace** means a manufactured wood-burning appliance, masonry fireplace, chimenea, ceramic or clay fire pot, clay or metal fireplace, portable wood-burning device used for outdoor recreation or heating, or other enclosed container that is used outdoors and designed to hold a small fire, but does not include a gas-fired appliance regulated by the *Technical Standards and Safety Act*, S.O. 2000, c. 16, as amended.
- (q) **Person** includes a person, a corporation, a partnership, and a limited partnership.
- (r) **Prohibited Materials** means:
- i. garbage, trash, and residential, commercial, or industrial waste;
 - ii. construction or demolition waste materials including asphalt products, shingles, metals, electrical wiring, and fiberglass;
 - iii. hazardous substances including chemicals, pesticides, flammable liquids, batteries, used oil, paints, solvents, tires, and rubber materials;
 - iv. plastic materials including, but not limited to nylon, PVC or ABS plastics, polystyrene, urethane foam, synthetic fabrics, plastic films, and plastic containers;
 - v. furniture, appliances and upholstered items;
 - vi. treated or painted wood including but not limited to plywood, composite wood products or other wood products that are painted, varnished or treated with preservatives;
 - vii. leaves, unless attached to Woodwaste, and grass clippings;
 - viii. animal fecal deposits, manure, and animal carcasses; and
 - ix. paper and cardboard, except for reasonable minimal amounts used solely for the purpose of starting an Open Air Fire.
- (s) **Rural Fire Permit** means a permit issued by the Fire Chief, subject to compliance with the provisions of this by-law, to set and maintain an Open Air Fire from time to time for the purpose of disposing of clean Woodwaste materials and/or recreational purposes in areas other than an Urban Area.

- (t) **Sensitive Receptor** means a place where exposure to smoke may pose a greater risk to the health of an individual or group, or to the environment, including, but not limited to schools, child care facilities, health care facilities, retirement homes, long-term care facilities, and residences of Persons with a health condition aggravated by smoke or an increased sensitivity to air pollution or environmental contaminants.
- (u) **Town** means the Corporation of the Town of Lincoln.
- (v) **Urban Area** means lands located within an Urban Area Boundary as set out in the Town of Lincoln Zoning By-Law.
- (w) **Urban Fire Permit** means a permit issued by the Fire Chief, subject to compliance with the provisions of this by-law, to set and maintain an Open Air Fire from time to time in an Urban Area for recreational purposes.
- (x) **Woodwaste** means tree trunks, stumps, branches and limbs, brush, natural vegetation, logs, and wood products that do not include or contain creosote, chromated copper arsenate, ammoniacal copper arsenate, pentachlorophenol, pesticides, paint, plywood or composite wood products containing varnish or glue.

APPLICABILITY

2. The provisions of this by-law apply to all lands and property within the corporate limits of the Town of Lincoln.

EXEMPTION FOR FIRE DEPARTMENT TRAINING

3. Open Air Fires that are set for training purposes by the fire department of the Town shall be exempt from the provisions of this by-law.

EXEMPTION FOR GAS-FIRED APPLIANCES

4. The outdoor use of a gas-fired appliance shall be exempt from the provisions of this by-law on the condition that the appliance is:

- (a) Listed and meets the requirements of the *Technical Standards and Safety Act*, S.O. 2000, c. 16, as amended; and
- (b) Intended for outdoor use, and has been assembled and installed and is used in accordance with the manufacturer's instructions.

EXEMPTION FOR COOKING FOOD

5. Open Air Fires that are set or maintained for the purpose of cooking food shall be exempt from the provisions of this by-law 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 size of the fire is reasonable for the quantity of food being cooked;
- (c) No solid fuel other than commercially produced charcoal, briquettes or clean, dry, seasoned wood shall be used; and
- (d) The fire is supervised at all times by a Competent Person.

OPEN AIR FIRE PERMITS

6. Unless otherwise subject to a specific exemption in this by-law, the setting or maintaining of any Open Air Fire within the geographical limits of the Town is prohibited without first obtaining an Open Air Fire Permit issued by the Fire Chief.
7. 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 location(s) specified in the permit; and
 - (d) Be valid only in the calendar year for which it is issued.
8. A permit may be issued to a Person upon application and payment of the fee set out in Schedule "F" attached hereto and forming part of this by-law, as may be amended from time to time by the applicable Fees and Charges By-Law of the Town, and on the condition of compliance with all provisions of this by-law.
9. Every applicant for a permit shall have permission of the legal owner of the property 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 in writing of such permission from the property owner for any Open Air Fire permit.
10. 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.
11. Every issued permit may be subject to verification of compliance with the provisions of this by-law by the Fire Chief or designate 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.
12. 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, or where an issued permit is suspended due to a ban on Open Air Fires declared by the Fire Chief.
13. Any Person who is supervising an Open Air Fire 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.

FARM FIRE PERMIT PROVISIONS

14. The Fire Chief may issue a Farm Fire Permit 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 clean Woodwaste materials incidental to and consistent with normal farm practice.
15. Every Person who sets or maintains an Open Air Fire under the authority of a Farm Fire Permit shall comply with the regulations set out in Schedule "A" attached hereto and forming part of this by-law.

URBAN FIRE PERMIT PROVISIONS

16. The Fire Chief may issue an Urban Fire Permit to set or maintain an Open Air Fire from time to time for recreational purposes within an Urban Area.

17. Every Person who sets or maintains an Open Air Fire under the authority of an Urban Fire Permit shall comply with the regulations set out in Schedule "B" attached hereto and forming part of this by-law.

RURAL FIRE PERMIT PROVISIONS

18. The Fire Chief may issue a Rural Fire Permit to set or maintain an Open Air Fire from time to time for recreational purposes and for the purpose of disposing of clean Woodwaste materials in an area other than an Urban Area.

19. Every Person who sets or maintains an Open Air Fire under the authority of a Rural Fire Permit shall comply with the regulations set out in Schedule "C" attached hereto and forming part of this by-law.

CAMPGROUND FIRE PERMIT PROVISIONS

20. 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.

21. Every Person who sets or maintains an Open Air Fire under the authority of a Campground Fire Permit shall comply with the regulations set out in Schedule "D" attached hereto and forming part of this by-law.

SPECIFIC EVENT OPEN AIR FIRE PERMIT

22. A not-for-profit community organization, school, or religious institution may apply in writing to the Fire Chief for a permit to conduct an Open Air Fire in an Outdoor Fireplace for a specific cultural, religious, or recreational event.

23. The Fire Chief may issue, without charge, a Specific Event Open Air Fire Permit subject to compliance with this by-law, and any additional conditions imposed by the Fire Chief.

24. A site inspection of the proposed site of the Open Air Fire for a specific event may be required by the Fire Chief prior to issuing the permit.

25. A Specific Event Open Air Fire Permit shall be valid only for the day or days of the event.

26. Despite Section 25, the Fire Chief may issue an Open Air Fire Permit that is valid for up to one calendar year to a community organization or institution to set and maintain an Open Air Fire at the same location on more than one occasion.

PROVISIONS FOR OTHER FLAMING DEVICES

27. A Person may, without an Open Air Fire permit, set or maintain Open Air Fires which are supervised at all times by a Competent Person that are:

- (a) Within containers designed to hold individual gel fuel pots, provided that any gel fuel pot capacity does not exceed 473 millilitres;
- (b) Tiki torches with a fuel capacity of not more than 355 millilitres; or
- (c) Candles.

SENSITIVE RECEPTOR REGISTRY

28. The Fire Chief shall keep a registry of Sensitive Receptor locations.

29. Any facility at which exposure to smoke, air pollution, or environmental contaminants would pose a greater risk to the health of the occupants, including,

but not limited to schools, childcare facilities, health care facilities, retirement homes, and long-term care facilities, may register the applicable location on the Sensitive Receptor Registry.

30. Any individual with a health condition aggravated by smoke, or with an increased sensitivity to air pollution or environmental contaminants, may register the location of their residence on the Sensitive Receptor Registry by providing a report from a physician licenced to practice in the Province of Ontario, or a notarized affidavit from the resident, to the Fire Chief attesting to the presence of a health condition that is aggravated by smoke, or to an increased sensitivity to air pollution or environmental contaminants.

31. Personal health information provided to the Fire Chief pursuant to Section 30 shall not be disclosed without the knowledgeable consent of the affected individual, and all such disclosed information shall be protected in accordance with the *Personal Health Information Protection Act, 2004*, S.O. 2004, c. 3, Sched. A.

32. There shall be no fee for registering a location on the Sensitive Receptor Registry.

33. An Urban Fire Permit or a Rural Fire Permit shall not be issued for any property within 75 metres of a location registered on the Sensitive Receptor Registry.

34. All Urban Fire Permits and Rural Fire Permits that have already been issued for properties within 75 metres of a location that is subsequently listed on the Sensitive Receptor Registry shall be revoked and deemed to be null and void.

35. Any fees paid for Open Air Fire Permits that are revoked due to the subsequent registration of a nearby property on the Sensitive Receptor Registry shall be refunded in full.

36. Any location listed on the Sensitive Receptor Registry shall be required to renew its registration from time to time as determined by the Fire Chief.

37. The Fire Chief shall remove from the Sensitive Receptor Registry any location that is no longer deemed to be a Sensitive Receptor.

BAN ON OPEN AIR FIRES

38. The Fire Chief may declare a ban on all Open Air Fires whenever, in the opinion of the Fire Chief, a lack of precipitation or other condition within 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.

39. A ban on Open Air Fires declared by the Fire Chief shall cause all issued Open Air Fire Permits to be suspended while the fire ban is in effect.

40. The Fire Chief shall cause notice to be posted on the Town website to communicate the declaration and revocation of any ban on Open Air Fires.

GENERAL PROHIBITIONS

41. 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, 1997*.

42. No Person shall set or maintain an Open Air Fire without first obtaining an Open Air Fire Permit issued by the Fire Chief.

43. No Person being the owner of lands or property shall allow an Open Air Fire to be set or maintained on such lands or property unless an Open Air Fire Permit has been issued by the Fire Chief.

44. No Person shall set or maintain, or allow to be set or maintained on a property owned by the Person, an Open Air Fire:

- (a) On any highway, road allowance, or public property;
- (b) On any commercial or industrial property;
- (c) That is not confined to a Fire Pit or Outdoor Fireplace, including an unconfined grass fire;
- (d) That causes smoke to travel across a public road or highway;
- (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 beyond the Fire Pit or Outdoor Fireplace that confines it;
- (h) During rainy or foggy weather, or when a smog alert or an air quality advisory has been issued by an appropriate provincial or federal agency;
- (i) Without a Competent Person being continuously in attendance at the fire site to supervise the Open Air Fire during the entire time it is burning to control the fire and prevent its unwanted spread, and to summon the fire department in case of emergency;
- (j) Without having adequate means on hand and ready for immediate use to control and extinguish the fire at the fire site;
- (k) Without ensuring the fire is completely extinguished before leaving the site where the fire was burning;
- (l) At a time other than allowed by the Open Air Fire Permit regulations as set out in this by-law;
- (m) Of a greater size than allowed by the Open Air Fire Permit regulations as set out in this by-law;
- (n) Without maintaining the minimum distance from the Open Air Fire to an adjacent property or roadway in accordance with the Open Air Fire Permit regulations as set out in this by-law;
- (o) Without maintaining the minimum distance from the Open Air Fire to a building, structure, fence, overhead wire, railway, or combustible material in accordance with the Open Air Fire Permit regulations as set out in this by-law;
- (p) During a ban on Open Air Fires declared by the Fire Chief;
- (q) That contains or involves Prohibited Materials; or
- (r) Within 75 metres of a location listed on the Sensitive Receptor Registry.

CONSENT OF REGISTERED OWNER

45. No Person shall set or maintain an Open Air Fire on any property unless:
- (a) The Person setting or maintaining the fire is the registered owner of the property on which the fire is set;
 - (b) The registered owner of the property, or an authorized designate, is present at the site of the fire until the fire is fully extinguished; or
 - (c) The Person setting or maintaining the fire has the express consent of the registered owner of the property to the setting of an Open Air Fire on the property.

FLYING LANTERNS PROHIBITED

46. No Person shall ignite a Flying Lantern, or release an ignited Flying Lantern into the air within, or that flies over, the geographical boundaries of the Town.

BURN BARRELS AND WASTE INCINERATORS PROHIBITED

47. No Person shall set or maintain a fire in a burn barrel, waste incinerator or similar device.

ADMINISTRATION

48. The Fire Chief shall be responsible for the administration and enforcement of this by-law and is hereby authorized to issue permits to set and maintain Open Air Fires in accordance with the provisions of this by-law.

ENFORCEMENT

49. 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;
 - (b) A police officer, and every person appointed under the *Police Services Act*, R.S.O. 1990, c. P.15, to enforce by-laws of the Town, including a municipal By-Law Enforcement Officer appointed by Council.

ADMINISTRATIVE PENALTY

50. Every Person who contravenes a provision of the by-law shall, when given a Penalty Notice, be liable to pay an Administrative Penalty to the Town in accordance with the provisions of Section 434.1 of the *Municipal Act, 2001*.
51. Schedule "E" attached hereto and forming part of this by-law hereby sets out the provisions that are designated as infractions of this by-law, the short form wording to be used in a Penalty Notice for an infraction of this by-law, and the Administrative Penalty amounts imposed for infractions of this by-law.
52. The administration of the Administrative Penalty provisions of this by-law, including review of Penalty Notices, shall be governed by the Administrative Penalty By-Law of the Town as may be amended from time to time.

PENALTY NOTICE

53. The Fire Chief, or any other person authorized to enforce this by-law, who has reason to believe that a Person has contravened a provision of this by-law may issue a Penalty Notice to that Person.

54. A Penalty Notice shall include the following information:

- (a) The name of the Person who has contravened this by-law;
- (b) The Penalty Notice date;
- (c) A number that is unique to the Penalty Notice;
- (d) The short form wording listed in Schedule "E" which describes the contravention;
- (e) The amount of the Administrative Penalty;
- (f) Such information as the Director determines is appropriate respecting the process by which the Person may exercise the Person's right to request a review of the Administrative Penalty; and
- (g) A statement advising that an Administrative Penalty, including any administrative fee, will, unless cancelled or reduced pursuant to a review, constitute a debt of the Person to the Town.

SERVICE OF NOTICE

55. Service of a Penalty Notice may be given in any of the following ways, and shall be effective:

- (a) By delivering it personally to the Person who has contravened the by-law at the time of the contravention;
- (b) By delivering a copy to the Person's last known address, effective as of the time of delivery;
- (d) By mailing a copy to the Person's last known address, effective on the fifth day after a copy is sent by registered mail or by regular letter mail to the last known address;
- (c) By sending a copy by facsimile transmission to the Person's last known facsimile number, effective upon the conclusion of the facsimile transmission; or
- (f) By sending a copy by e-mail transmission to the Person's last known email address, effective upon sending the e-mail.

56. For the purposes of Section 55, a Person's last known address, facsimile number, and e-mail address may include an address, facsimile number and e-mail provided by the Person to the Town as may be required by a form, practice or policy developed under this By-law.

INSPECTION

57. 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.

ORDER TO EXTINGUISH

58. The Fire Chief, fire department officer in charge of a response to investigate a complaint in respect of an Open Air Fire, or other person authorized to enforce this by-law may issue an Order to Extinguish a fire to any Person who sets or maintains an Open Air Fire in contravention of this by-law.

59. Any Person who sets or maintains an Open Air Fire shall immediately extinguish such fire upon receipt of a verbal or written Order to Extinguish duly issued by the Fire Chief, fire department officer in charge, or other person authorized to enforce this by-law.

60. No Person shall fail to comply with an Order to Extinguish a fire as duly issued, confirmed or modified under this by-law.

61. Where a Person who has set or is maintaining an Open Air Fire fails to, or is unable to, comply with an Order to Extinguish the fire, the Town, in addition to other remedies:

(a) May take all reasonable actions to extinguish the fire and, for this purpose, with its servants and agents from time to time, enter in and upon the property at any reasonable time without a warrant;

(b) May summon whatever personnel, vehicles, apparatus, and equipment necessary to extinguish a fire; and

(c) Shall not be liable to compensate any owner, occupant, or another Person having interest in the property by reason of anything done by or on behalf of the Town in a reasonable exercise of its power under the provisions of this Section.

FALSE AND FRIVOLOUS COMPLAINTS

62. No Person shall make a complaint about an Open Air Fire that is false, frivolous or vexatious in nature.

63. Any Person who falsely reports a violation of this by-law shall, when given a Penalty Notice upon the second and any subsequent false reports within a 12-month period, be liable to pay an Administrative Penalty to the Town.

64. Any Person who falsely reports a violation of this by-law shall, upon the second and any subsequent false reports within a 12-month period, be liable for any and all costs incurred by the fire department to respond to the complaint.

LIABILITY AND RECOVERY OF COSTS

65. Any Person who sets or maintains an Open Air Fire 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 for any damage to property and/or injury to Persons caused by the fire.

66. Any Person who sets or maintains an Open Air Fire that contravenes any provision of this by-law, and any owner of the lands or property on which such a 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 fire department personnel, vehicles, apparatus, and equipment that respond to investigate and/or to extinguish the fire; and

(b) All costs incurred by the Town to extinguish the fire, including supplies, mutual aid or other agreement fees, specialized equipment or contractors, or other associated incidental expenses.

67. The quantity and type of fire apparatus necessary to respond for the purposes of extinguishing, controlling, or investigating any Open Air Fire shall be at the discretion of the Fire Chief or his/her designate.

68. Nothing in the Schedule of Fees prescribed by the Town Fees and Charges By-Law shall be construed as limiting the rights of the Town to seek restitution for other direct or consequential damages or costs incurred beyond those listed.

69. The Town shall not be required to notify the owner of lands or property in advance of its intention to charge for services or costs associated with the extinguishment of any Open Air Fire.

70. 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.

71. 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.

APPEAL OF FEES OR CHARGES

72. Any Person being assessed a fee or charge under this by-law shall have the right to appeal such assessment to Council by filing a written Notice of Appeal, stating the reasons for the appeal, with the Clerk of the Town.

73. Council hereby delegates to the Chief Administrative Officer the authority to hear, and adjudicate with prejudice, any appeal of a fee or charge assessed under this by-law, and the power to waive, revoke, amend, or confirm the assessment of any such fee or charge under appeal.

74. The Clerk shall inform the appellant in writing within 7 days of receiving a Notice of Appeal of the time and place of the scheduled hearing.

75. A public hearing shall be held not later than 30 days from receipt of the Notice of Appeal to hear the appeal.

76. Where a hearing date has been set and the appellant or authorized agent, having been given due notice of the hearing, does not attend at the appointed time and place, the hearing may proceed in the absence of the appellant, and the appeal may be dismissed with prejudice.

77. Upon adjudication of the appeal, the decision of Council or its delegate shall be deemed final.

78. Council shall retain the right to exercise the delegated powers set out in this by-law, and may restrict, amend, or withdraw such delegation at any time without notice.

RIGHT TO CIVIL ACTION

79. Nothing in this by-law affects or shall be held to limit or interfere with the right of any Person to bring and maintain a civil action for damages occasioned by fire, or the smoke, odours, embers, or ash therefrom.

INDEMNIFICATION

80. The applicant for a permit as required under this by-law shall indemnify and save harmless the Town from any and all claims, demands, causes of action, losses, costs or damages that the Town may suffer, incur or be liable for resulting from the performance of the applicant as set out in this by-law, whether with or without negligence on the part of the applicant, the applicant's employees, directors, contractors and agents.

SEVERABILITY

81. 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.

SHORT TITLE

82. This by-law may be referred to as the Open Air Fire By-Law.

EFFECTIVE DATE

83. This by-law shall come into force and effect on the day on the 1st day of January, 2018.

REPEAL

84. On the date upon which this by-law comes into force and effect, By-Law No. 2013-03 of the Corporation of the Town of Lincoln shall hereby be repealed.

BY-LAW read a FIRST time this 18th day of December, 2017.

BY-LAW read a SECOND time this 18th day of December, 2017.

BY-LAW read a THIRD time and FINALLY PASSED this 18th day of December, 2017.


MAYOR: SANDRA EASTON


CLERK: WILLIAM J. KOLASA

THE CORPORATION OF THE TOWN OF LINCOLN

Schedule "A"

to

BY-LAW NO. 2017-110

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

FARM FIRE PERMIT REGULATIONS

- A.1. 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) Maintain a perimeter around the Open Air Fire of at least 5 metres which is clear of combustible material such as dry ground cover or vegetation;
 - (c) Confine the fire to a single Fire Pit or pile that does not exceed 6 metres in diameter and the material being burned does not exceed 2 metres in height, unless specifically approved by the Fire Chief under application of a written Burning Safety Plan;
 - (d) Maintain a distance of not less than 60 metres from the Open Air Fire to any building, structure, fence, property line, roadway, railway, overhead wire, or combustible material; and
 - (e) Comply with all provisions, conditions, and prohibitions prescribed by the by-law.
- A.2. The Fire Chief may approve an exemption from one or more provisions prescribed for an Open Air Fire for farming purposes where, in his or her opinion, such exemption does not unreasonably pose an increased threat to health or safety.

THE CORPORATION OF THE TOWN OF LINCOLN

Schedule "B"

to

BY-LAW NO. 2017-110

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

URBAN FIRE PERMIT REGULATIONS

- B.1. An Urban Fire Permit shall not be valid for any property with a lot size that is less than 12 metres in width.
- B.2. Every Person who sets or maintains an Open Air Fire under the authority of an Urban Fire Permit shall:
- (a) Confine the fire to a Fire Pit or Outdoor Fireplace of no greater than 61 centimetres in diameter, and where the material being burned is no greater than 61 centimetres in height;
 - (b) Restrict the time the Open Air Fire is set or maintained to between the hours of 4 p.m. and 11 p.m. on any day;
 - (c) Maintain a distance of not less than 6 metres from the Open Air Fire to an adjacent property or roadway;
 - (d) Maintain a distance of not less than 5 metres from the Open Air Fire to any building, structure, fence, overhead wire, or combustible material;
 - (e) Not set or maintain an Open Air Fire on a combustible surface or deck, or on or near dry grass or vegetation; and
 - (f) Comply with all provisions, conditions, and prohibitions prescribed by the by-law.

THE CORPORATION OF THE TOWN OF LINCOLN

Schedule "C"

to

BY-LAW NO. 2017-110

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

RURAL FIRE PERMIT REGULATIONS

- C.1. Every Person who sets or maintains an Open Air Fire under the authority of a Rural Fire Permit shall:
- (a) Not set or maintain an Open Air Fire in an Urban Area;
 - (b) Restrict the time the Open Air Fire is set or maintained to between the hours of 8:00 a.m. and 11:00 p.m. on any day;
 - (c) Confine the fire to a Fire Pit or Outdoor Fireplace of no greater than 1 metre in diameter and where the material being burned is no greater than 1 metre in height;
 - (d) Maintain a distance of not less than 10 metres from the Open Air Fire to any building, structure, fence, overhead wire, combustible material, adjacent property, roadway, or railway; and
 - (e) Comply with all provisions, conditions, and prohibitions prescribed by the by-law.

THE CORPORATION OF THE TOWN OF LINCOLN

Schedule "D"

to

BY-LAW NO. 2017-110

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

CAMPGROUND FIRE PERMIT REGULATIONS

- D.1. A Burning Safety Plan shall be submitted with every Campground Fire Permit application, and shall be approved by the Fire Chief.
- D.2. 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 fire to a Fire Pit or Outdoor Fireplace;
 - (b) Maintain a distance of not less than 3 metres from each fire to any building, structure, fence, or combustible material; and
 - (c) Comply with all provisions, conditions, and prohibitions prescribed by the by-law.

THE CORPORATION OF THE TOWN OF LINCOLN

Schedule "E"

to

BY-LAW NO. 2017-110

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

SCHEDULE OF ADMINISTRATIVE PENALTIES

- E.1. For the purposes of Section 51 of this by-law, Column 1 in the following table lists the provisions that are hereby designated as infractions of this by-law for the purposes of Section 434.1 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended.
- E.2. Column 2 in the following table sets out the Short Form Wording to be used in a Penalty Notice for the contravention of the designated provisions listed in Column 1.
- E.3. Column 3 in the following table sets out the Administrative Penalty amounts that are payable for contraventions of the Designated Provisions listed in Column 1.

ITEM	COLUMN 1 Designated Provisions	COLUMN 2 Short Form Wording	COLUMN 3 Administrative Penalty
1	Section 42	Set or maintain an Open Air Fire without permit.	\$300
2	Section 43	Owner of property allow an Open Air Fire without permit.	\$300
3	Section 44(a)	Set, maintain or allow a fire on a highway, road allowance, or public property.	\$300
4	Section 44(c)	Set, maintain or allow a fire that is not confined to a Fire Pit or Outdoor Fireplace, including an unconfined grass fire.	\$300
5	Section 44(d)	Set, maintain or allow a fire that causes smoke to travel across a public road or highway.	\$300
6	Section 44(e)	Set, maintain or allow a fire where smoke, odour, ashes, or embers invade neighbouring property creating a Nuisance.	\$300
7	Section 44(g)	Set, maintain or allow a fire that spreads beyond a Fire Pit or Outdoor Fireplace.	\$300
8	Section 44(h)	Set, maintain or allow a fire during rainy or foggy weather, smog alert, or air quality advisory.	\$300
9	Section 44(i)	Fail to supervise a fire by a Competent Person 18 years of age or older.	\$300
10	Section 44(k)	Fail to ensure a fire is extinguished before leaving the site.	\$300
11	Section 44(l)	Set, maintain or allow a fire at a time other than allowed by regulation.	\$300
12	Section 44(m)	Set, maintain or allow a fire of greater size than allowed by regulation.	\$300

13	Section 44(n)	Fail to maintain minimum distance from a fire to an adjacent property or roadway.	\$300
14	Section 44(o)	Fail to maintain minimum distance required by regulation from a fire to a building, structure, fence, overhead wire, railway, or combustible material.	\$300
15	Section 44(p)	Set, maintain or allow a fire during a fire ban.	\$500
16	Section 44(q)	Set, maintain or allow a fire involving prohibited materials.	\$750
17	Section 44(r)	Set, maintain or allow a fire within 75 metres of a Sensitive Receptor location.	\$500
18	Section 46	Ignite or release an ignited Flying Lantern.	\$500
19	Section 47	Set, maintain or allow a fire in a burn barrel, waste incinerator or similar device.	\$300
20	Section 62	Make a false Open Air Fire complaint.	\$300

THE CORPORATION OF THE TOWN OF LINCOLN

Schedule "F"

to

BY-LAW NO. 2017-110

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

SCHEDULE OF FEES AND CHARGES

- F.1. Any fee or charge prescribed herein shall be subject to amendment from time to time by the applicable Fees and Charges By-Law of the Town

PERMIT FEES

F.2. Open Air Fire Permit Application Fee – Farm	No Charge
F.3. Open Air Fire Permit Application Fee – Urban	\$35.00
F.4. Open Air Fire Permit Application Fee – Rural	\$35.00
F.5. Open Air Fire Permit Application Fee – Campground	\$35.00
F.6. Open Air Fire Permit Application Fee – Specific Event	\$35.00

COST RECOVERY FEES AND CHARGES

F.7. Fee for fire department personnel, vehicles, apparatus, and equipment to respond to investigate and/or to extinguish an open air fire.	\$750.00 per hour or part thereof per vehicle (Minimum 1 hour)
F.8. Recovery of costs incurred by the fire department to extinguish an open air fire, including water usage, supplies, mutual aid or other reciprocal agreement fees, specialized equipment or contractors, or other incidental expenses associated with extinguishing the fire.	Actual disbursements plus 10% administrative charge
F.9. Fee for fire department personnel, vehicles, apparatus, and equipment to respond to investigate a second or subsequent false or frivolous open air fire complaint within a 12-month period.	\$750.00 per hour or part thereof per vehicle (Minimum 1 hour)