

THE CORPORATION OF THE TOWN OF LINCOLN
A BY-LAW TO PROHIBIT AND REGULATE PUBLIC NUISANCES WITHIN
THE TOWN OF LINCOLN

BY-LAW NO. 2021-

WHEREAS:

The Council of the Town of Lincoln deems it appropriate to enact a By-law to prohibit and regulate certain public nuisances within the Town of Lincoln pursuant to sections 11(2), 128 and 129 of the *Municipal Act, 2001*, S.O. 2001, c. 25, (the "*Municipal Act, 2001*").

Section 429 of the *Municipal Act, 2001*, authorizes a municipality to impose fines for offences of a by-law of the municipality passed under the *Municipal Act, 2001*.

Section 436 of the *Municipal Act, 2001* authorizes a municipality to pass by-laws providing that the municipality may enter on land at any reasonable time for the purpose of carrying out an inspection to determine whether or not the following are being complied with: A by-law of the municipality passed under the *Municipal Act, 2001*, a direction or order of the municipality made under a by-law of the municipality passed under the *Municipal Act, 2001*.

Section 444 of the *Municipal Act, 2001* authorizes municipalities to make orders requiring the person who contravened the by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity.

Sections 445 and 446 of the *Municipal Act, 2001* authorize municipalities to issue work orders and in default of a work order being completed by the person directed or required to do it, the work shall be done by the Town at the person's expense by action or by adding the costs to the tax roll and collecting them in the same manner as property taxes.

For the purposes of this regulatory By-law any of the following are or could become a public nuisance:

- (a) the act of urinating or defecating in public places;
- (b) the act of knocking over mailboxes, relay boxes, newspaper boxes, recycling boxes, porta potty's and other waste containers located on highways;
- (c) Trespass lighting; or
- (d) Obnoxious odours.

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

PART I – INTERPRETATION

Definitions

1. In this By-law:

“Agricultural Operation” means an agricultural, aquacultural, horticultural or silvicultural operation carried on in the expectation of gain, reward and includes:

- (e) draining, irrigating or cultivating land;
- (f) growing producing or raising livestock including poultry and raticities;
- (g) fur bearing animals;
- (h) bees;
- (i) cultured fish;
- (j) deer and elk;
- (k) game animals and birds;
- (l) any additional animals, birds or fish prescribed by the applicable Minister;
- (m) The production of agricultural crops, greenhouse crops, maple syrup, mushrooms, nursery stock, tobacco, tree and turf grass, and any additional agricultural crops prescribed by the applicable Minister;
- (n) The production of eggs, cream and milk
- (o) The operation of agricultural machinery and equipment
- (p) The application of fertilizers, soil conditioners and pesticides;
- (q) Ground and aerial spraying;
- (r) The storage, handling or use of organic wastes for farm purposes;
- (s) The processing by a farmer of the products produced primarily from the farmer’s agricultural operation;
- (t) Activities that are a necessary but ancillary part of an agricultural operation such as the movement of transport vehicles for the purposes of the agricultural operation; and

- (u) Any other agricultural activity prescribed by the applicable Minister conducted on, in or over agricultural land;

“By-law” means this by-law to prohibit and regulate certain nuisances within the Town of Lincoln;

“Canada Post” means Canada Post Corporation established by the *Canada Post Corporation Act*, R.S.C., 1985, c. C-10;

“Town” means the municipal corporation of the Town of Lincoln or its geographic area, as the context requires;

“Defecate” means to discharge excrement from the human body;

“Direct Lighting” means light emitted directly from the lamp of the reflector or luminaire;

“Fixture” means the assembly that houses the lamp or lamps and can include all or some of the following parts: housing, a reflector, and a mounting bracket or pole socket;

“Flood or Spot Light” means any light fixture or lamp that incorporates a reflector or a refractor to concentrate the light output into a directed beam in a particular direction;

“Glare” means light emitting from a luminaire with intensity great enough to reduce a viewer’s ability to see, or to produce sensation of discomfort;

“Indirect Lighting” means light that has been reflected or has scattered off other surfaces;

“Highway” includes a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, part of which is intended for use or used, by the general public for the passage of vehicles or persons, and includes the area between the lateral property lines thereof, including sidewalks and boulevards under the jurisdiction of the Town.

“Light Trespass” means the shining of light produced by a luminaire beyond the boundaries of the property on which it is located;

“Motion Sensor Activated Lighting” means lighting products equipped with a sensor that detects activity which will switch on the luminaire and then switch off the luminaire after an interval of no activity detection;

“Nuisance” means anything that is injurious to health, indecent, offensive to any of the senses, or an obstruction to the reasonable use of property, so as to interfere with the reasonable enjoyment of life or property;

“Normal Farm Practice” means practices that are conducted in a manner consistent with proper and acceptable customs and standards, as established and followed by similar agricultural operations under similar circumstances or makes use of innovative

technology in a manner consistent with proper advanced farm management practices. These activities happen on an agricultural operation as part of day-to-day business;

“Obnoxious Odour” means the emitting of an odour from a property and disperses or is likely to disperse to one or more other properties, and is of such emission that it causes a nuisance to a reasonable person;

“OMAFRA” means Ontario Ministry of Agriculture, Food and Rural Affairs, and includes engineers and specialist employed by/ with OMAFRA;

“Outdoor Light Fixture” means outdoor artificial illuminating devices installed or portable, used for flood lighting, general illumination or advertising;

“Officer” means a Police Officer or a Municipal Law Enforcement Officer appointed under any federal or provincial statute or regulation or Town By-law or any other person assigned or appointed by Council of the Town to administer or enforce this By-law and includes a person employed by the Town or contracted whose duties are to enforce Town by-laws generally or specifically this By-law;

“Porta Potty” means a portable building containing a toilet;

“Public Place” includes a Highway and any place to which the public has access and private property that is exposed to public view, whether or not the property is owned by the person contravening the By-law, but does not include a Washroom Facility;

“Senses” means a faculty by which the human body perceives an external stimulus and includes one or more of the faculties of sight, smell, hearing, taste and touch;

“Urinate” means to discharge urine from the human body;

“Wall Pack Light Fixture” means light fixtures on exterior walls of building, and

“Washroom Facility” means a room inside a building that is equipped with toilet facilities and includes a Porta Potty.

Application

2. This By-law applies to all persons, lands and properties in the Town.

PART II - PROHIBITIONS

Urinating or Defecating in a Public Place

3. No person shall Urinate or Defecate in a Public Place.

Knocking over Personal and Public Property

4. No person shall knock over or attempt to knock over a Canada Post mailbox, Canada Post relay box, newspaper box, recycling container, garbage container, Porta Potty or other similar waste container located in a public place. This section shall not apply to:
 - (a) Town employees or any person under contract to the Town who is acting under the Town's Solid Waste Management By-law;
 - (b) Town employees or any person under contract to the Town while performing work in the normal course of their duties; or
 - (c) Canada Post employees or any person under contract to Canada Post while performing work in the normal course of their duties.

Lighting

5. The general purpose of this section of this By-law:
 - (a) To prohibit and regulate Light Trespass Nuisances from one property to another such as: glare from exterior luminaries and interior luminaries and unwanted light trespass and spill;

Light Trespass

6. No person shall cause a Light Trespass within the Town from one property, impacting another property to the level of a Nuisance. A Light Trespass Nuisance source, without limiting the generality of the foregoing, may include;
 - (a) The use of laser source light, signal beacons, Flood Light, Spotlights, flashing lights or any other similar high intensity luminaire that projects light onto adjacent private property; subject to the exemptions set out herein; and
 - (b) No Direct Lighting or Indirect Lighting shall be used so that an unusual quantity or type of light creates a Glare or Light Trespass upon the land of others so as to be or to cause a Nuisance to the public generally or to others residing or carrying on a business or trade in the vicinity; subject to the exemptions set out herein..
7. Any person who installs outdoor lighting on private property within the boundaries of the Town shall do so in conformity with the requirements of this By-law. If conflicts arise between this By-law and other laws regarding control and maintenance of outdoor light, this By-law shall be the governing document.
8. Direct or Indirect Lighting from private property identified as causing Glare or Light Trespass by the Officer and not in compliance with the provisions of the By-law shall be corrected by the Owner or removed to the satisfaction of Officer.

9. Direct or Indirect Light emitted from Wall-Pack Light Fixtures on private property identified as creating Glare or Light Trespass by the Officer, and not in compliance with the provisions of the By-law shall be corrected or removed to the satisfaction of the Officer.

Obnoxious Odours

10. The general purpose of this odour nuisance section of this By-law:
 - (a) To prohibit the emitting of obnoxious odours from one property to another.
 - (b) To reduce unwanted obnoxious odour and spill; and
 - (c) To prohibit and regulate odour nuisances.

Odour Nuisance

11. No person shall cause, create or permit the emission of an obnoxious odour from their property so as to be or to cause a Nuisance to any person or to the public generally and discernable on another property.
12. Exemption: nothing within this By-law shall contradict those practices deemed to be part of normal farm practice as identified and accepted within the *Normal Farm Practices Protection Act* and OMAFRA.

PART III – ENFORCEMENT & ORDERS

Enforcement

13. The provisions of this By-law may be enforced by an Officer.
14. No person shall hinder or obstruct, nor attempt to hinder or obstruct, either directly or indirectly, an Officer, employee and/or agent of the Town in the lawful exercise of a power or duty under this by-law.
15. Where an Officer has reasonable grounds to believe that an offence has been committed by a person, the Officer may require the name, address and proof of identity of that person and the person shall supply the required information to the Officer.
16. No person shall provide false information or give a false statement to an officer, employee and/or agent of the Town in the lawful exercise of a power or duty under this by-law.
17. An Officer conducting an inspection shall, upon request, produce identification issued by the Town.

18. Pursuant to section 436 of the *Municipal Act, 2001*, and in addition to any powers of entry granted to the Municipality, for the purpose of determining whether there is compliance with this By-law, an Officer may have access to or enter any land, building, or structure governed by this By-law and may conduct an inspection for the purpose of determining compliance with this by-law or an order for compliance arising from a contravention of this by-law.
19. If an Officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred, to discontinue the contravening activity.
20. An order under this by-law shall set out:
 - (a) reasonable particulars of the contravention adequate to identify the contravention and the location of the land on which the contravention occurred; and
 - (b) the date or dates by which there must be compliance with the order.
21. Every person who is served with an order of contravention pursuant to the provisions of this By-law shall comply with the terms of the order within the time set out therein.
22. If an Officer is satisfied that a contravention of this By-law has occurred, he or she may make an order requiring the person who contravened the By-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred, to do work to correct the contravention.
23. An Order made under this by-law may be served personally or by registered mail to the last known address of:
 - (a) The person who caused, created or permitted the offence: and
 - (b) The owner or occupier of the lands on which the contravention occurred.
24. When an owner or occupier of the land on which the identified contravention/s/ occurred, who had been served with an order and who fails to comply with said order, then an Officer, or any authorized agent on behalf of the Town may enter on the land at a reasonable time and complete the work required to bring the land into compliance with the provisions of this By-law as set out in the served order.
25. Where the work required to bring the land into compliance with the By-law has been performed by or for the Town, the costs incurred in completing the work may be collected by action or the costs may be added to the tax roll for the land on which the order was served, and collected in the same manner as taxes.

26. Where the work required to bring the land into compliance with the By-law has been performed by or for the Town, the costs incurred shall include such administrative fees as applicable, in amount determined in accordance with the Town Fees and Charges By-law.

Offence and Penalty

27. Every person who contravenes any provision of this By-law is guilty of an offence and is liable upon conviction to a fine recoverable pursuant to the *Provincial Offences Act*, R.S.O. 1990, Chapter P.33, or any successor thereof (the "*Provincial Offences Act*").
28. If an Officer is satisfied that a contravention of this By-law has occurred, he or she may issue a notice of contravention requiring the person who contravened the By-law or who caused or permitted the contravention or the owner of the property on which the contravention occurred to discontinue the contravening activity.
29. Any person other than a corporation who contravene any provision of this By-law or who fails to comply with an order under this By-law or who obstructs or attempts to obstruct an Officer in carrying out his or her duties under this By-law is guilty of an offence and on conviction is liable to a maximum fine of \$5,000.00 for a first offence, and a maximum fine of \$10,000.00 for a subsequent offence.

Same re Corporations

30. Any corporation which contravenes any provision of this By-law or who fails to comply with an order made under this By-law or who obstructs or attempts to obstruct an Officer in carrying out his or her duties under this By-law is guilty of an offence and on conviction is liable to a maximum fine of \$50,000 for a first offence and \$100,000 for any subsequent offence pursuant to the *Provincial Offences Act*, R.S.O. 1990, c. P 33, as amended.

Other Remedies

31. If a person or corporation is convicted of an offence under this By-law, in addition to any other remedy or any penalty imposed, the court in which the conviction has been entered, and any court of competent jurisdiction, may make an order prohibiting the continuation or repetition of the offence by the person convicted.

Continuing Offence

32. Each day on which a person contravenes any provision of this bylaw shall be deemed to constitute a separate offence under this bylaw as provided for in section 429(2) of the *Municipal Act, 2001*.

