

THE CORPORATION OF THE TOWNSHIP OF WAINFLEET

BY-LAW NO. 011-2020

Being a by-law to repeal By-Law No. 027-2009, as amended, and to regulate the setting, control and extinguishment of Open Air Fires, and provide set penalties for contraventions and fees of suppression and other costs, within the Township of Wainfleet.

WHEREAS Section 7.1 (1) (b) of the Fire Protection and Prevention Act, 1997, S.O. 1997, c. 4 provides that Council of a Municipality may pass By-laws regulating the setting of open air fires, including establishing the times during which open air fires may be set;

AND WHEREAS Section 7.1 (3) of the Fire Protection and Prevention Act, 1997, S.O. 1997, c. 4, provides that a By-law under this section may deal with different areas of the municipality differently;

AND WHEREAS Section 7.1 (4) of the Fire Protection and Prevention Act, 1997, S.O. 1997, c. 4, provides that a municipality 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 Part 2 of the Ontario Fire Code, Ontario Regulation 388/97 issued under the Fire Protection and Prevention Act, 1997, S.O. 1997, c. 4, provides that open air burning shall not be permitted unless approved, or unless such burning consists of a small confined fire supervised at all times and used to cook food on a grill or barbeque or such burning takes place in an appliance that is in conformance with the Technical Standards and Safety Act, 2000, is for outdoor use and is installed in accordance with the manufacturer's instructions;

AND WHEREAS Section 128 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that a municipality may pass by-laws to prohibit and regulate public nuisances, including matters that, in the opinion of Council, are or could become or cause public nuisance;

AND WHEREAS Section 391 of the *Municipal Act, 2001*, S.O. 2001, c.25, provides that despite any Act, a municipality and a local board may pass By-laws imposing fees or charges on any class of person, for services or activities provided or done by or on behalf of it or for costs payable by it for services or activities provided or done by or on behalf of any other municipality or local board;

AND WHEREAS Section 429 (1) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended provides that Subject to subsection (4), a municipality may establish a system of fines for offences under a by-law of the municipality passed under this Act. 2006, c. 32, Sched. A, s. 184

AND WHEREAS Section 442 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended provides that where the municipality has the authority by any Act or By-law to direct or require a person to do a matter or thing, the municipality may also provide that, in default or it being done by the person directed or required to do so, the matter or thing shall be done at the person's expense and the municipality may recover the costs of doing the matter or thing from the person required to do it, by action or by adding the costs to the tax roll and collecting them in the same manner as taxes;

AND WHEREAS the Council of the Corporation of the Township of Wainfleet, deems it desirable and expedient to regulate the setting of open air fires, including the provision of conditions for the purposes of ensuring fire safety from the risks of open air fires and reducing the public nuisance arising from such fires;

NOW THEREFORE the Council of the Corporation of the Township of Wainfleet **HEREBY ENACTS AS FOLLOWS:**

1.0 DEFINITIONS

1.1 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) **"Applicant"** means the applicant for a *burning permit* being an *Owner* or person who is the *Authorized Agent* for an *owner*.
- (c) **"Appropriate Weather Conditions"** means that the *wind speed at the location of the open air burn does not exceed 15 kilometres per hour*, nor is there a declared smog alert. The appropriate Federal and/or Provincial Government agency shall be used as the source of this information.
- (d) **"Authorized Agent"** means any *Responsible Person* who provides a Property Owner Permission to Burn Release Form as approved by the Fire Chief, identifying that they are authorized in writing to act for the *Owner* of a particular property.
- (e) **"Barbecue"** means a portable or fixed device including a hibachi, a permanent structure designed and intended solely for the cooking of food in the open air and other similar devices designed and intended solely for the cooking of food in the open air, but does not include devices designed for personal warmth, fire pits or camp fires.

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- (f) "**Burn Safety Plan**" means procedures provided by the Campground owner, and shall include provisions for facilitating emergency vehicle access, and specify open air fire safety control procedures including on-site extinguishment capabilities and supervision requirements.
- (g) "**Burning Permit**" means a written, conditional, authorization issued and administered by the *Fire Chief* or *designate* to set or maintain an *open air fire* that is not an *exempt* fire and as per any restrictions and conditions contained in this By-law or as may be specified on the *burning permit* itself
- (h) "**By-products**" includes smoke and ash.
- (i) "**Campfire/Recreational Burn**" means a small, confined fire, supervised at all times, and used only for the purposes of cooking or entertainment.
- (j) "**Campground**" means a campground or recreation trailer park as defined and permitted by the Township Zoning By-law.
- (k) "**Combustible**" means any material, combination of materials, or arrangement of materials in which any portion thereof is susceptible to catch fire when exposed to heat, flame, or burning materials.
- (l) "**Cooking**" means the activity of preparing food for human consumption by placing it over a fire until such time as it is ready to eat and includes fire pre-burn time before the cooking commences but only as is reasonably necessary and is limited to burning of commercially produced charcoal, briquettes or clean, dry seasoned wood.
- (m) "**Council**" means the elected Council of the Township of Wainfleet.
- (n) "**Designate**" means any person that has designated authority from the *Fire Chief* for the administration and enforcement of this By-law and may include the *Deputy Fire Chief, Officer, Firefighter*.
- (o) "**Exempt**" means that, under specified conditions, a particular type or configuration of *open air fire* does not require a *burning permit*.
- (p) "**Fire Ban**" means a total fire ban and shall prohibit; burning of debris, burning in an outdoor incinerator, chimineas, fireworks displays, campfires of any type, and charcoal installations.
- (q) "**Fire Chief**" means the person appointed as Chief Fire Official, by Township BY-LAW pursuant to the Fire Protection and Prevention Act, and his or her designate.
- (r) "**Firefighter**" means a firefighter of the Wainfleet Fire & Emergency Services
- (s) "**Fire pit**" means any space designed specifically for the purposes of holding campfire, which encloses the perimeter of a campfire with non-combustible materials, and may include a steel or masonry container, such as a chiminea.

- (t) **"Fire"** shall have the same meaning as ***open air burning***.
- (u) **"Fire Service/Department"** means the Fire & Emergency Services for the Township of Wainfleet as established by By-law.
- (v) **"Flying Lantern"** means a small hot air balloon or other device designed to carry an open flame as an airborne light, also known as Sky Lantern, Chinese Lantern, Kongming Lantern or Wish Lantern, or other similar device which are devices containing a fuel pack, which fuel pack is usually a petroleum or wax based fuel that when lit causes the lantern to rise.
- (w) **"Grill"** means any custom designed fuel-fired *cooking* device that is constructed of metal, ceramic, stone, or masonry, that completely contains the fire and that has been *approved* for use as a *cooking* device.
- (x) **"Municipal Property"** includes any property owned or operated by the Township, but does not include any property which is leased out by the Township.
- (y) **"Negative impact"** means one or more of:
- i. actual damage to property or to plant or animal life;
 - ii. harm or material discomfort to any person;
 - iii. impairment of the safety of any person
 - iv. loss of normal use of property; or
 - v. interference with normal conduct of business.
- (z) **"Notify"** means that any person proposing to have an open air burn is required to contact the Township Office and provide a minimum of twenty-four (24) hours advance notice. No burning shall take place prior to receiving authorization from the Fire Chief or designate, provided that the required application as indicated in this by-law has been supplied.
- (aa) **"Nuisance"** means the travel of the products of a fire, including but not limited to smoke, odour, ash and hot embers, which products in the opinion of the *Fire Chief* or *designate* may cause unreasonable discomfort to persons, loss of enjoyment or normal use of property, interference with normal conduct of business, or damage to property.
- (bb) **"Nuisance Deployment"** means the dispatch of Wainfleet Fire & Emergency Services to emergency or non-emergency situations due to complaints received relative to *open air burning* activity for either authorized or unauthorized *open air burning* or dispatch to vacant buildings due to inadequate security and unlawful entry.
- (cc) **"Officer"** means shall mean an person designated by the Wainfleet Fire Chief or a By-law Enforcement Officer appointed by the Township of Wainfleet, a member of the Niagara Regional Police (NRP), Ontario Provincial Police (OPP), Royal Canadian Mounted Police (RCMP) or Canadian National Police (CNP).

- (dd) **"Open Air"** means any open place; yard, field or construction area which is not enclosed by a building or structure;
- (ee) **"Open Air Burning"** means burning or combustion of materials in any open place including but not limited to gardens, yards, alleys, fields, parks, industrial sites, construction sites, building lots, parking lots, streets, or any other open place or construction areas which are not enclosed by a building or structure.
- (ff) **"Owner"** means the person registered on title as the owner of a property.
- (gg) **"Person"** means and includes an individual, firm, corporation, association or partnership and includes an occupant or owner of a premise.
- (hh) **"Public/Special Event"** means any event where a recreational fire does not occur on residential property
- (ii) **"Responsible/Competent Person"** means any adult person (18 years of age or older) who, in the opinion of the *Fire Chief* or *designate*, is capable of exercising the required judgment and is capable of performing the necessary actions to control a fire and prevent its unwanted spread and does not include persons impaired by alcohol or drugs.
- (jj) **"Township"** means the Corporation of the Township of Wainfleet.
- (kk) **"Vacated"** means the absence of any person attending to the fire

2. ADMINISTRATION

- 2.1 The short-title of this By-law shall be the "Open Air Burning By-law".
- 2.2 The administration of this By-law shall be the responsibility of the Fire Chief except with regard to enforcement which shall be the responsibility of the Fire Chief and any Officer.
- 2.3 If this By-law is in conflict with any Federal or Provincial Act or Regulation, the provisions of the said Federal or Provincial Act or Regulation shall supersede those affected portions of this By-law.
- 2.4 The provisions of this By-law shall apply to all lands and premises within the corporate and geographic limits of the Township.

3. PROHIBITION

- 3.1 No person shall set or maintain or cause or permit an Open Air Fire within the boundaries of the Township unless approved by the Fire Chief.
- 3.2 No person shall set or maintain or cause or permit an Open Air Burning contrary to the conditions set out in this By-law or a permit issued pursuant to this By-law.
- 3.3 No person shall set or maintain or cause or permit an Open Air Burning within the boundaries of the Township unless they are the owner or authorized agent (written proof of authorization required) of the property owner.

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- 3.4 No person shall burn any material restricted by the Ministry of the Environment including but not limited to rubber, plastics, foam, treated wood, or any material which could cause toxic or noxious gasses, as listed in Schedule 'A' of this By-law.
- 3.5 No person shall set or maintain or cause or permit an Open Air Fire where it may cause nuisance, inconvenience, irritation or detriment to any other person or property.
- 3.6 No person shall set or maintain or cause or permit an Open Air Fire directly under or near any telecommunications or power lines.
- 3.7 No person shall set or maintain or cause or permit an Open Air Fire on or near roadways, which could interfere with traffic.
- 3.8 No person shall set or maintain or cause or permit an Open Air Fire on Municipal Property or on any road allowances.
- 3.9 No person shall start a fire outdoors without ensuring that:
- (a) The appropriate conditions (weather and ground) are safe and suitable for said fire.
 - (b) There are responsible persons competent to control the fire in attendance from start to extinguishment.
 - (c) There are no Fire Bans in place at the time.
 - (d) The rules and regulations of this By-law are followed.
 - (e) There are adequate personnel, equipment, and water available to control and extinguish said fire.
 - (f) The ability to contact the Township or Fire & Emergency Services is immediately available.
 - (g) The fire is on bare mineral soil or rock and is at least 3 metres (9.75 ft.) from any flammable material.
- 3.10 No person within the Township of Wainfleet shall ignite or release an ignited Flying Lantern.
- 3.11 Any person who ignites or releases an ignited Flying Lantern and causes a Fire in the Township of Wainfleet shall be deemed to be fully responsible for fire control and shall:
- (a) be responsible for any damage to property or injury to persons or animals occasioned by said Fire;
 - (b) be liable for all costs incurred by the Fire Service/Department responding to the Fire, including the costs of the personnel and equipment as authorized and set out in the Township of Wainfleet Fees and Charges By-law in effect at the time of the incident.
- 3.12 The Fire Chief or designate may, at their discretion, declare a Ban that will prohibit or restrict any or all Open Air Burning or all outdoor Fires depending on weather conditions. *See definition of Fire Ban*

NOTE: during a fire ban a cooking appliances, BBQ or Hibachis (charcoal installation) may be used, provided the appliance is used within 100 metres of a permanent structure that is used as a dwelling that is occupied, or in an organized campground. Appliances must be at least 2 metres from any flammable material and the ashes and coals produced are completely extinguished and safely disposed of.

- 3.13 A Ban on Open Air Fires declared by the Fire Chief shall cause all issued Open Air Permits to be suspended while the Ban is in effect.
- 3.14 The Fire Chief shall ensure declaration and revocation of any Ban is communicated and notice is posted on the Township Website
- 3.15 Nothing in this By-law shall be construed as permitting the operation of an incinerator.

4. EXEMPTIONS

- 4.1 The Wainfleet Fire & Emergency Services shall be exempt from the provisions of this By-law with respect to open air burnings for the purposes of educating and training individuals.
- 4.2 Any *Open Air Fires* under the direct and constant supervision of employees of the Township of Wainfleet during the execution of their job-related duties shall be exempt from the provisions of this By-law subject to notification to the Wainfleet Fire & Emergency Services.
- 4.3 A person may set or maintain, or cause or permit to be set or maintained an *Open Air Fire* without being *approved* if the fire is to be used for the sole purpose of *cooking*, provided that:
 - (a) *It is a confined fire that is contained entirely within a fixed or portable grill, barbecue or spit designed for cooking food or an approved alternative;*
 - (b) *Commensurate with the type and quantity of food being cooked*
 - (c) *The fire is supervised at all times by a responsible person;*
 - (d) *A means of controlling and extinguishing the fire, sufficient for the size of the fire, is present at all times;*
 - (e) *The responsible person ensures the fire is made safe (fully extinguished) once the cooking is completed;*
 - (f) *No material other than commercially produced charcoal, briquettes or clean, dry seasoned wood may be burned;*
 - (g) *The grill, barbecue or spit is located no closer than 3 metres from any structure or property line or any combustible material that may contribute to fire spread such as a fence, hedge, and plantings and is not operated in such a manner as to create a fire hazard.*

- 4.4 Open air fires may be considered exempt from the provisions of this By-law, if they involve patio torches and candles provided such devices are not operated in or near dry vegetation, and such devices are not operated in any other place conducive to the development or the spread of fire or explosion.
- 4.5 Open air fires may be considered exempt from the provisions of this By-law, if they involve a fire that is confined within a gas fired appliance (natural gas or propane) that is in conformance with the Technical Standards and Safety Act, 2000, is for outdoor use, and is installed and used in accordance with the manufacturer's instructions.
- 4.6 Open Air Fires exempted in Sections 4.1 through 4.5 shall not be set or maintained or caused or permitted on a porch, balcony, roof, or veranda that is attached to or part of a Multi-Unit Residential Building and are therefore prohibited, unless otherwise approved.
- 4.7 Open air fires may be considered exempt from the provisions of this By-law, if they involve an appliance of a portable nature which requires an open flame for the heating of a material during a construction or maintenance process provided such appliance is safe to operate, such appliance is not operated in such a manner as to create a fire hazard, and that the fire is attended at all times by a responsible person to supervise it.

5. RECREATIONAL BURNING (CAMPFIRES)

- 5.1 Open air burning for recreational purposes, except at a public event, is deemed to be approved by the Fire Chief if all conditions set out in Section 4 have been met, as well as;
- (a) *Between April 1 and October 31, the fire is set no earlier than 7:00 p.m., and is extinguished no later than 7:00 a.m.*
 - (b) The fire is contained in a fire pit which does not exceed more than one metre (3.28 ft.) in diameter and;
 - (c) The flame height does not exceed one metre (3.3 ft.) in height
 - (d) the fire is at least 3 metres (9.8 ft.) from any building, structure, hedge, fence, vehicular roadway of any kind or nature, overhead wiring or any property line, or any object or material with potential to ignite; unless otherwise approved by the Fire Chief or within a site of a permitted campground;
 - (e) The fire is attended, controlled and supervised at all times;
 - (f) Steps are taken to ensure that smoke caused by the fire does not have an adverse affect on the visibility of motorists using roads in the vicinity of the burn;
 - (g) The owner or authorized agent takes steps to ensure that adjacent properties are protected and that the by-products of the fire do not have a negative impact on persons, pets or the environment;
 - (h) The fire is not occurring on any road allowance or municipal property without written permission of the Township;

- (i) An effective means of extinguishment (e.g. garden hose, fire extinguisher and shovel) sufficient for the size of fire and with the capability to perform such extinguishment is immediately available for use;
- (j) The fire is conducted in such a manner as to preclude the escape of fire or the escape of combustible solids such as sparks and ash from the fire;
- (k) The only materials being burned are those listed in Schedule 'A', forming part of this By-law; and
- (l) The fire is completely extinguished before the site is vacated.

6. SPECIAL/PUBLIC EVENTS

- 6.1 Open air burning for the purposes of a public event, and deemed to be approved by the Fire Chief, provided that all conditions set out in Sub-Section 3.9 and Section 4 have been met, as well as;
- (a) The fire proposed to take place on land that is not zoned for residential use.
 - (b) The fire is contained and does not exceed more than two metres (6.5 ft.) in diameter and two metres (6.6 ft.) in height
 - (c) The fire is at least 5 metres (16.4 ft.) from any building, structure, hedge, fence, vehicular roadway of any kind or nature, overhead wiring or any property line, or any object or material with potential to ignite; unless otherwise approved by the Fire Chief or within a site of a permitted campground;
 - (d) The fire is attended, controlled and supervised by a responsible person at all times;
 - (e) The fire is not occurring on any road allowance or municipal property without written permission of the Township and Steps are taken to ensure that smoke caused by the fire does not have an adverse effect on the visibility of motorists using roads in the vicinity of the burn;
 - (f) The Owner or authorized agent takes steps to ensure that adjacent properties are protected and that the by-products of the fire do not have a negative impact on persons, pets or the environment;
 - (g) A sufficient means of extinguishment (e.g. garden hose, fire extinguisher and shovel) sufficient for the size of fire and with the capability to perform such extinguishment is immediately available for use;
 - (h) The fire is conducted in such a manner as to preclude the escape of fire or the escape of combustible solids such as sparks and ash from the fire;
 - (i) The only materials being burned are those listed in Schedule 'A', attached hereto and forming part of this By-law; and,
 - (j) The ability to contact the Township or Fire & Emergency Services is immediately available.
 - (k) The fire is completely extinguished before the site is vacated.
- 6.2 Notification must be made to the Township of the Special/Public Event Fire five business days prior to the Special/Public Event.

- 6.3 The Fire Chief or their designate may require or conduct a site inspection prior to the Special/Public Event.
- 6.4 Burn Permits issued under this section are for Single Events only shall expire on the date listed on the permit.
- 6.5 Despite section 6.4, 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 set to and maintain an open Air Fire at the same location on more than one occasion.

7. RESIDENTIAL BURN PERMITS

- 7.1 Open air burning on lands zoned Residential, not meeting the requirements of Sections 5, 6, 8 or 9 of this by-law, shall require an application to the Township for an annual permit. Such application shall be made as required by the Fire Chief, and requires a minimum of twenty-four (24) hours advance notice. Permits shall be issued at the sole discretion of the Fire Chief or designate provided that all conditions set out in Sub-section 3.9 and Section 4 have been met, as well as:
- (a) the fire is located on land designated for Residential use in the Township Zoning By-law;
 - (b) only materials as set out in Schedule 'A', attached hereto and forming part of this By-law, are burned;
 - (c) the fire is attended, controlled and supervised by a responsible person at all times;
 - (d) the fire is completely extinguished before the burn site is vacated;
 - (e) the fire is confined to an area located at least 5 metres (16.4 feet) from any building, structure, hedge, fence, vehicular roadway of any kind or nature, overhead wiring, or any property line or any object or material with potential to ignite;
 - (f) steps are taken to ensure that smoke caused by the fire does not adversely affect the visibility of motorists using roads in the vicinity of the burn;
 - (g) No piles to be burned shall be greater than 2 metres (6.6 ft.) high and 2 metres (6.6 ft.) in diameter. Piles must be separated by a minimum of 10 metres (32.8 ft.)
 - (h) A fire for the purpose of burning grass and/or leaves must not exceed an area of 0.5 hectare (70.75 metres x 70.75 metres), must not have a flame edge exceeding 20 metres (65.6 feet) across, and must not have a flame height exceeding 1 metre (3.3 feet). Notwithstanding the provisions of Clause 7.1(h), burning of leaves or grass may be done as long as the soil conditions and ground moisture content are not conducive to sub surface fires, in accordance with Sub-section 3.9.
 - (i) Steps are taken to ensure that the adjacent properties are protected and that by-products of the fire do not have a negative impact on persons, pets or the environment;

- (j) The burn is conducted in such a manner to prevent the escape of the fire or the escape of combustible solids such as sparks and ash from the fire;
 - (k) An effective means of extinguishment (e.g. garden hose, fire extinguisher and shovel) sufficient for the size of fire and with the capability to perform such extinguishment;
 - (l) The fire is not located on any road allowance or municipal property without the written permission of the Township, unless such burning is being conducted by authorized employees of the Township of Wainfleet or is for the purpose of clearing the Township drainage ditches;
 - (m) Ability to contact the Township or Fire & Emergency Services is immediately available.
 - (n) The holder of a burning permit issued pursuant to this section is required to notify the Township Fire Department at the telephone number specified on the permit on each and every day that they intend to burn and before any burning commences.
- 7.2 The Fire Chief or their designate may require or conduct a site inspection prior to the issuance of a Burn Permit.
- 7.3 Any Burn Permit issued under this section shall expire December 31st of the year it was issued.
- 7.4 Permits shall be subject to provisions as set out in Section 10 of this By-law.

8. AGRICULTURAL BURN PERMITS

- 8.1 Open air burning on lands zoned Agricultural, not meeting the requirements of Sections 4, 5, 6, 7 or 9 of this by-law shall require an application to the Township for an annual permit. Such application shall be made as required by the Fire Chief, and requires a minimum of twenty-four (24) hours advance notice. Permits shall be issued at the sole discretion of the Fire Chief or designate provided that all conditions set out in Section 4 have been met, as well as;
- (a) the fire is located on land designated for Agricultural use in the Township zoning By-law;
 - (b) only materials as set out in Schedule 'A', forming part of this By-law, are burned;
 - (c) the fire is attended, controlled and supervised at all times;
 - (d) the fire is completely extinguished before the burn site is vacated;
 - (e) the fire is confined to an area at least 5 metres (16.5 ft.) from any building, structure, hedge, fence, vehicular roadway of any kind or nature, overhead wiring, or any property line or any object or material with potential to ignite;
 - (f) steps are taken to ensure that smoke caused by the fire does not adversely affect the visibility of motorists using roads in the vicinity of the burn;
 - (g) No piles to be burned shall be greater than 3 metres (9.84 ft.) high and 10 metres (32.81 feet) in diameter. No more than 2 piles may be burning at one time. Piles must be separated by a minimum of 10 metres (32.5 ft.)

- (h) A fire for the purpose of burning grass and/or leaves must not exceed an area of 0.5 hectare (70.75 metres x 70.75 metres), must not have a flame edge exceeding 20 metres (65 ft.) across, and must not have a flame height exceeding 1 metre (3.25 feet). Notwithstanding, the provisions of Clause 8.1(h)., burning of leaves or grass may be done so long as the soil conditions and ground moisture content are not conducive to sub surface fires, in accordance with Sub-section 3.9.
 - (i) Steps are taken to ensure that the adjacent properties are protected and that by-products of the fire do not have a negative impact on persons, pets or the environment;
 - (j) The burn is conducted in such a manner to prevent the escape of the fire or the escape of combustible solids such as sparks and ash from the fire;
 - (k) An effective means of extinguishment (e.g. garden hose, fire extinguisher and shovel) sufficient for the size of fire and with the capability to perform such extinguishment;
 - (l) The fire is not located on any road allowance or municipal property without the written permission of the Township, unless such burning is being conducted by authorized employees of the Township of Wainfleet or is for the purpose of clearing the Township drainage ditches;
 - (m) Ability to contact the Township or Fire & Emergency Services is immediately available.
 - (n) The holder of a burning permit issued pursuant to this section is required to notify the Township Fire Department at the telephone number specified on the permit on each and every day that they intend to burn and before any burning commences.
- 8.2 The Fire Chief or their designate may require or conduct a site inspection prior to the issuance of a Burn Permit.
- 8.3 Any Burn Permit issued under this section shall expire December 31st of the year it was issued.
- 8.4 Permits shall be subject to provisions as set out in Section 10 of this By-law.

9. COMMERCIAL, INDUSTRIAL, INSTITUTIONAL BURNING

- 9.1 Open air burning on lands zoned commercial, industrial or institutional that do not meet the requirements of Section 4 are not permitted; except under the authority of and in compliance with a (Commercial Ignition Authority) permit issued pursuant to this section.
- 9.2 Qualified Commercial Operators or Contractors may conduct open air burning on lands zoned Residential that do not meet the requirements of Sections 5 and 7 under the authority of and in compliance with a (Commercial Ignition Authority) permit issued pursuant to this section.

- 9.3 Qualified Commercial Operators or Contractors may conduct open air burning on lands zoned Agricultural that do not meet the requirements of Sections 8 under the authority of and in compliance with a (Commercial Ignition Authority) permit issued pursuant to this section.
- 9.4 Permits shall be issued at the sole discretion of the Fire Chief or designate provided that all conditions set out in Section 3 have been met, as well as;
- (a) Commercial operators and Contractors will be required to provide proof Liability Insurance.
- 9.5 The holder of a burning permit issued pursuant to this section is required to notify the Township at the telephone number specified on the permit on each and every day that they intend to burn and before any burning commences, and again when the fire is extinguished.
- 9.6 The Fire Chief or their designate may require or conduct a site inspection prior to the issuance of a Burn Permit
- 9.7 Any permit issued under this section shall expire sixty (60) calendar days after it was issued. *The Fire Chief or designate, may shorten or extend the permit period if required.*

10. GENERAL PERMIT PROVISIONS

- 10.1 The application and permit shall be in the form as set out by the Fire Chief.
- 10.2 Each permit application must be accompanied by the applicable fee as set out in the Township of Wainfleet's current Fees and Charges By-law.
- 10.3 Permits are issued at the discretion of the Fire Chief.
- 10.4 Prior to granting a permit to conduct open air burning, the Fire Chief may give consideration to:
- (a) the results of an on-site inspection;
- (b) the size of the proposed fire;
- (c) the safety measures proposed;
- (d) the supervision arrangements proposed;
- (e) the time of year and the time of day;
- (f) the type of special event;
- (g) the materials to be burned;
- (h) the anticipated weather conditions; and
- (i) any other relevant considerations.
- 10.5 The Fire Chief may attach such conditions as deemed appropriate to any permit granted for open air burning.
- 10.6 The holder of the burning permit shall keep the permit or a copy of the permit at the burning site specified in the permit.

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- 10.7 No person, being the holder of a burning permit, shall fail to produce the permit or a copy of the permit on the demand of an Officer.
- 10.8 Any permit holder who is in violation of this By-law shall have their permit summarily revoked and all fires shall be immediately extinguished.
- 10.9 Despite the existence of a valid burning permit, the Fire Chief may suspend, without recourse, any and all burning permits and cause to be extinguished any fire until such conditions as the Fire Chief may indicate are met.
- 10.10 The Fire Chief may refuse to approve or issue a permit for an open air burning if the proposed open air burning would be in contravention of this By-law; if the owner, occupant or permit holder has, in the past, contravened the provisions of this By-law or has not complied with any conditions attached to a permit issued pursuant to this By-law.
- 10.11 The Fire Chief may withdraw a permit for an open air burning if, in the Fire Chief's opinion, the fire is causing a negative impact, smoke produced by the fire is causing visibility concerns on roads in the area of the burn, the weather has deteriorated or conditions have become unfavorable for an open air burning, conditions attached to the granting of a permit are not being adhered to or any provision of this By-law is being contravened.
- 10.12 Open air burning conducted under S. 20 of the Marihuana for Medical Purposes Regulations (Health Canada) shall be governed by those regulations and must provide that there will be no negative impact on community safety and/or neighbouring properties. The determination of negative impact will be at the sole discretion of the Fire Chief (or designate).

11. POWER OF ENTRY AND INSPECTION

- 11.1 An Officer may, at any time, enter onto land to determine whether this bylaw is being complied with;
- 11.2 Every owner shall permit the Officer to inspect any land for the purposes of determining compliance with this by-law;
- 11.3 Notwithstanding any provision of this by-law, an Officer shall not enter or remain in any room or place actually being used as a dwelling unless:
- (a) the consent of the occupier is obtained, the occupier is obtained, the occupier first having been informed that the right of entry may be refused and, if refused, may only be made under the authority of a warrant issued under the Provincial Offences Act, R.S.O 1990, as amended;
 - (b) a warrant issued under the Provincial Offences Act, R.S.O. 1990, as amended is obtained.

12. OBSTRUCTION

- 12.1 No person shall hinder or obstruct, or attempt to hinder or obstruct, any Officer exercising a power or performing a duty under this by-law.

12.2 Any person who has been alleged to have contravened any of the provisions of this by-law, shall identify themselves to the Officer upon request, failure to do so shall be deemed to have obstructed or hindered the Officer in the execution of his duties.

13. EXTINGUISHED UPON DEMAND

13.1 The Fire Chief or designate may order any fire extinguished. If so ordered the person or persons responsible shall extinguish the said fire immediately. Failure to do so shall result in suppression costs being levied against the person or persons responsible as set out in the Township of Wainfleet's current Fees and Charges By-law.

13.2 When made aware of an unapproved open air burning, any Officer may order the land owner or occupant to immediately extinguish the fire.

13.3 Where in the opinion of any Officer, if any approved open air burning is having a negative impact on the occupants of adjacent land, the fire is adversely affecting persons using a road or highway adjacent to the burn site, the weather has deteriorated or conditions have become unfavourable, or conditions attached the any permit or the provisions of this By-law are being contravened, the Officer is hereby granted the authority to order the owner or occupant to immediately extinguish the fire.

13.4 No person conducting or permitting an open air burning shall fail to extinguish a fire upon direction by an Officer.

14. LIABILITY

14.1 Every person who starts a fire shall be responsible and liable for damage to property, or injury to persons occasioned by the said fire.

14.2 The Municipality shall not be held responsible or liable for any damages, or costs incurred for the purpose of investigating, controlling and extinguishing any fire.

15. PENALTY

15.1 Every person who contravenes any provision of this By-law is guilty of an offence and upon conviction shall be liable to a fine or penalty as set out in the Provincial Offences Act, R.S.O. 1990, as amended.

15.2 Where a person fails to comply with requirements of the By-law, an Officer may give the person a notice and direction to comply. Further an Officer may issue a penalty notice immediately upon evidence of a violation to the owner of the property, in accordance with the Non-Parking AMPS By-law No. 027- 2019. Set monetary Penalties are listed in Schedule "B", attached hereto and forming part of this By-law.

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

16. ENFORCEMENT

- 16.1 The authority to enforce the provisions of this By-law is hereby granted to the Township Wainfleet Fire Chief or designate and Officers as defined.

17. FALSE AND FRIVOLOUS COMPLAINTS

- 17.1 No Person shall make a complaint about an Open Air Fire that is false, frivolous or vexatious in nature.
- 17.2 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.
- 17.3 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.

18. COLLECTION OF COSTS

- 18.1 If any contravention of the By-law results in the Township Fire Services being dispatched, the person and/or property owner may be charged with the actual cost of the Fire Department response according to the rates established in the current Township of Wainfleet Fees and Charges By-law in addition to current Ministry of Transportation rates, if required; however, nothing in this schedule of rates shall be construed as limiting the rights of the Township of Wainfleet to seek restitution for other direct or consequential damages or costs incurred beyond those listed;
- 18.2 Should any land owner or occupant fail to extinguish a fire when ordered to do so by the Fire Chief, the Fire Chief may take action to have the fire extinguished, and the person who owns or occupies the land on which the open burning is located shall be responsible for any and all costs incurred by the Township Fire Department in its efforts to extinguish the fire;
- 18.3 Any such fee or charge imposed pursuant to this By-law shall be payable within 30 days of invoicing the person responsible, at the person's last known address, and interest shall accrue and be added to the amount at the rate of 1.25% per month;
- 18.4 The Township shall have the right to collect any unpaid costs as authorized by this By-law by adding such charges to the tax roll where they may be collected in like manner as municipal taxes.

19. INDEMNIFICATION

- 19.1 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.

20. SEVERABILITY

20.1 If any section or sections of this By-law or parts thereof are found in any court of law to be illegal or beyond the power of the Council of the Township to enact, such section or sections or parts thereof shall be deemed to be severable and all other sections or parts of this By-law shall be deemed to be separate and independent there from and to be enacted as such.

21. REPEAL

21.1 All by-laws and/or resolutions that are inconsistent with the provisions of this By-law and the same are hereby repealed or rescinded insofar as it is necessary to give effect to the provisions of this By-law, including By-law 027-2009, as amended.

B-LAW READ AND PASSED THIS 10TH DAY OF MARCH, 2020.

K. Gibson, MAYOR

M. Ciuffetelli, DEPUTY CLERK

SCHEDULE 'A' TO BY-LAW NO. 011-2020**1. Acceptable Materials**

- 1.1 The following is a list of **Acceptable Material** for burning under this By-law.
- (a) Wood and wood by-products that have not been chemically treated, painted or stained.
 - (b) Paper and paper products.
 - (c) Cardboard
 - (d) Brush
 - (e) Tree stumps
 - (f) Hay, straw and dry grass (non-baled)
 - (g) Yard wastes such as twigs and leaves
 - (h) Other combustible materials only with the specific approval from the Fire Chief

2. Prohibited Materials

- 2.1 The following is a list of **Prohibited Materials** that are not to be burned:
- (a) garbage, trash, and residential, commercial, or industrial waste;
 - (b) construction or demolition waste materials including asphalt products, shingles, metals, electrical wiring, and fiberglass;
 - (c) hazardous substances including chemicals, pesticides, flammable liquids, batteries, used oil, paints, solvents, tires, and rubber materials;
 - (d) plastic materials including, but not limited to; Nylon, PVC or ABS plastics, Polystyrene, Urethane foam, Synthetic fabrics, Plastic films, and Plastic containers;
 - (e) Furniture, Appliances and Upholstered items;
 - (f) 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;
 - (g) Animal fecal deposits, manure, and animal carcasses; and

SCHEDULE "B" TO BY-LAW NO. 011-2020

Open Air Burning Short Form Wording and Administrative Monetary Penalties.

Section	Short Form Wording	Penalty
3.1	Set, maintain, cause or permit an open air fire without approval from the Fire Chief (Permit)	\$300.00
3.2	Set, maintain, cause or permit an open fire contrary to conditions set forth in this by-law	\$300.00
3.4	Set, maintain, cause or permit an open air fire of materials not listed in Schedule "A" of this By-law	\$500.00
3.6	Set, maintain, cause or permit an open air fire under or near telecommunication or power lines.	\$200.00
3.7	Set, maintain, cause or permit an open air fire on or near roadways, having an adverse affect on visibility of roadway	\$200.00
3.8	Set, maintain, cause or permit an open air fire on Municipally owned property or Road Allowances	\$200.00
3.9(a)	Fail to set, maintain, cause or permit an open air burn in suitable weather and ground conditions	\$200.00
3.9(b)	Fail to provide adequate and competent supervision	\$200.00
3.9(e)	Fail to provide sufficient means for control and extinguishment	\$200.00
3.9(f)	Fail to provide reliable and rapid means of communication to contact emergency services	\$100.00
3.10	Set, maintain, cause or permit the ignition and release of an ignited Flying Lantern	\$300.00
3.12	Set, maintain, cause or permit an open air fire during a Fire Ban	\$500.00
3.13	Operate an incinerator	\$200.00
4.3(b)	Fail to attend, maintain control and supervise fire	\$200.00
4.3(c)	Fail to provide a sufficient means for control and extinguishment	\$200.00
4.3(d)	Fail to ensure fire is extinguished	\$200.00
4.6	Conduct fire on any part of a Multi-Unit Residential Building	\$300.00
5.1(a)	Fail to burn during permitted time	\$150.00
5.1(b)	Fire Pit exceeds permitted size	\$100.00
5.1(c)	Flame height exceeds 1 metre in height	\$100.00
5.1(d)	Fire is within 3 metres (9.75ft) to combustible materials	\$150.00
5.1(e)	Fail to attend, maintain control and supervise fire	\$200.00

5.1(f)	Fail to conduct a fire in a manner that contains combustible solids like sparks or ash from escape	\$150.00
5.1(i)	Fail to provide a sufficient means for control and extinguishment	\$200.00
5.1(k)	Set, maintain, cause or permit an open air burn of prohibited materials not listed in Schedule "A" of this By-law	\$500.00
5.1(l)	Fail to ensure fire is extinguished	\$200.00
6.1(b)	Fire exceeds permitted size	\$150.00
6.1(c)	Fire is within 5 metres (16.5ft) to combustible materials	\$150.00
6.1(d)	Fail to attend, maintain control and supervise fire	\$200.00
6.1(e)	Set, maintain, cause or permit an open air fire on or near roadways, having an adverse affect on visibility of roadway	\$200.00
6.1(f)	Fail to conduct a fire in a manner that protects adjacent properties from fire by-products	\$150.00
6.1(g)	Fail to provide a sufficient means for control and extinguishment	\$150.00
6.1(h)	Fail to conduct a fire in a manner that contains combustible solids like sparks or ash from escape	\$150.00
6.1(i)	Set, maintain, cause or permit an open air burn of prohibited materials not listed in Schedule "A" of this By-law	\$500.00
6.1(k)	Fail to ensure fire is extinguished	\$200.00
6.2	Fail to provide notification of Special/Public Event fire	\$150.00
7.1(b)	Set, maintain, cause or permit an open air burn of prohibited materials not listed in Schedule "A" of this By-law	\$500.00
7.1(c)	Fail to attend, maintain control and supervise fire	\$200.00
7.1(d)	Fail to ensure fire is extinguished	\$200.00
7.1.(e)	Fire is within 5 metres (16.5ft) to combustible materials	\$150.00
7.1.(f)	Set, maintain, cause or permit an open air fire on or near roadways, having an adverse affect on visibility of roadway	\$200.00
7.1(g)	Pile exceeds permitted size or Piles are too close to each other	\$150.00
7.1(h)	Fire exceeds permitted area or length, or height	\$150.00
7.1(i)	Fail to conduct a fire in a manner that protects adjacent properties from fire by-products	\$150.00
7.1(j)	Fail to conduct a fire in a manner that contains combustible solids like sparks or ash from escape	\$150.00
7.1(k)	Fail to provide a sufficient means for control and extinguishment	\$200.00
7.1(n)	Fail to provide notification of burn dates and times	\$75.00

8.1(b)	Set, maintain, cause or permit an open air burn of prohibited materials not listed in Schedule "A" of this By-law	\$300.00
8.1(c)	Fail to attend, maintain control and supervise fire	\$200.00
8.1(d)	Fail to ensure fire is extinguished	\$200.00
8.1(e)	Fire is within 5 metres (16.5ft) to combustible materials	\$200.00
8.1(f)	Set, maintain, cause or permit an open air fire on or near roadways, having an adverse affect on visibility of roadway	\$150.00
8.1(g)	Pile exceeds permitted size or Piles are too close to each other	\$150.00
8.1(h)	Fire exceeds permitted area or length, or height	\$150.00
8.1(j)	Fail to conduct a fire in a manner that protects adjacent properties from fire by-products	\$150.00
8.1(j)	Fail to conduct a fire in a manner that contains combustible solids like sparks or ash from escape	\$150.00
8.1(k)	Fail to provide a sufficient means for control and extinguishment	\$200.00
8.1(n)	Fail to provide notification of burn dates and times	\$75.00
9.3.(a)	Fail to ensure required Liability Insurance coverage	\$300.00
9.5	Fail to provide notification of burn dates, ignition and extinguishment times.	\$200.00
10.5	Fail to burn in accordance with additional conditions attached to permit	\$300.00
10.6	Fail to ensure permit or copy of permit is on location of the burn site	\$100.00
10.7	Fail to produce permit at the request of an Officer	\$100.00
10.8	Set, maintain, cause or permit an open air fire under a revoked permit	\$350.00
11.2	Fail to permit Officer entry, to inspect lands for compliance.	\$200.00
12.1	Hinder or Obstruct Officer in performing duties of this by-law	\$200.00
12.2	Fail to provide identification upon request of an Officer	\$200.00
13.4	Fail to extinguish fire on direction of an Officer	\$500.00
17.	Make a complaint about an Open Air Fire that is false, frivolous or vexatious in nature	\$250.00

NOTE: The fees and charges as listed in this Schedule of this by-law may be subject to Harmonized Sales Tax (H.S.T) where applicable.