

## Table of Contents

Burning Control By-Law .....	3
Part 1 – Interpretation and Application.....	3
1.1 Short Title .....	3
1.2 Severability .....	3
1.3 Definitions .....	4
Part 2 – Fire Management Areas.....	5
2.1 Fire Management Areas .....	5
Part 3 – General Conditions and Prohibitions.....	5
3.1 Prohibition.....	5
3.2 Permit Required .....	6
3.3 Hours of Burning.....	6
3.4 Fire Bans .....	6
3.5 No Burning of Grass .....	6
3.6 Environmental Conditions.....	7
3.7 Land Owned by Others.....	7
3.8 General Requirements for Open Air Fires.....	7
3.9 Unfounded and Frivolous Complaints.....	8
3.10 Exemption.....	8
Part 4 – Permits.....	8
4.1 Authority and Discretion to Issue Permits .....	8
4.2 Application for Permit.....	8
4.3 Types of Permits.....	9
4.4 General Provisions Relating to Permits .....	9
Part 5 – Recreational Open Air Fires .....	9
5.1 Additional Requirements for Recreational Open Air Fires.....	9
5.2 Open Air Burning Device Required.....	9
5.3 Open Air Burning Devices on Decks, Balconies and Rooftops .....	9
5.4 Wind Velocity .....	10
5.5 Owner’s Duty .....	10
Part 6 – Non-Recreational Open Air Fires .....	10
6.1 Additional Requirements for Non-Recreational Open Air Fires.....	10
6.2 Wind Velocity .....	10
6.3 Owner’s Duty .....	11
Part 7 – Agricultural Open Air Fires .....	11
7.1 Additional Provisions for Agricultural Open Air Fires.....	11
7.2 Wind Velocity .....	11
7.3 Owner’s Duty .....	11
Part 8 – Gas Fired Outdoor Appliances .....	11
8.1 Conditional Exemption .....	11
Part 9 – Barbecues.....	12
9.1 Conditional Exemption .....	12
Part 10 – Enforcement.....	12
10.1 Authority to Enforce .....	12
10.2 Right of Entry.....	12
10.3 Order to Extinguish / Comply.....	12

10.4	Remedial Costs and Recovery .....	13
Part 11	– Offences and Penalty .....	13
11.1	Offences .....	13
11.2	Penalty.....	13
Part 12	– Coming into Force and Repeal of Previous By-laws .....	13
12.1	Coming into Force .....	13
12.2	Repeal .....	14

## The Corporation of the City of North Bay

### By-Law No. 2015-115

#### **Being a By-Law to Regulate the Setting of Fires and to Set Out Precautions to be Taken with Open Air Fires, Barbecues and Gas Fired Outdoor Appliances**

**Whereas** section 9 of the *Municipal Act, 2001*, SO 2001, c. 25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under that Act or any other Act.

**And whereas** section 7.1(1) of the *Fire Protection and Prevention Act, 1997*, SO 1997, c. 4 provides that a council of a municipality may pass by-laws regulating fire prevention, including the prevention of the spreading of fires, and regulating the setting of open air fires, including establishing the times during which open air fires may be set;

**And whereas** the City is situated within the East Fire Region as defined and prescribed by the *Forest Fires Prevention Act*, RSO 1990, c. F.24 and O Reg 207/96 made pursuant to the *Forest Fires Prevention Act*, and must therefore comply with this Act and Regulation;

**And whereas** section 10(1) of the *Municipal Act, 2001*, provides that a single-tier municipality may provide any service or thing that the municipality considers necessary or desirable for the public;

**And whereas** section 10(2) of the *Municipal Act, 2001*, provides that a single-tier municipality may pass by-laws respecting: in paragraph 5, social and environmental well-being of the municipality; in paragraph 6, health, safety and well-being of persons; in paragraph 7, services and things that the municipality considers necessary or desirable for the public; and in paragraph 8, protection of persons and property;

**And whereas** section 8(1) of the *Municipal Act, 2001*, provides that the powers of a municipality under the *Municipal Act, 2001* shall be interpreted broadly so as to confer broad authority on a municipality to enable it to govern its affairs as it considers appropriate and to enhance its ability to respond to municipal issues;

**And whereas** section 391(1) of the *Municipal Act, 2001*, provides that a municipality may pass by-laws imposing fees or charges on persons for services or activities provided or done by or on behalf of it;

**And whereas** the City deems it necessary to regulate the setting of fires and to set out precautions to be taken with open air fires, barbecues and gas fired outdoor appliances;

**And whereas** Council passed Community Services Committee Report No. 2015-03 on the 5th day of January, 2015 to authorize a revised open air burning by-law reflecting two zones within the City, an unrestricted burning area and a recreational burning area;

**Now therefore the Council of The Corporation of the City of North Bay hereby enacts as follows:**

#### **Part 1 – Interpretation and Application**

##### **1.1 Short Title**

This By-Law may be cited as the “Burning Control By-Law”.

##### **1.2 Severability**

If any provision or part of a provision of this By-Law is declared by a court of competent jurisdiction to be illegal or inoperative in whole or in part, or

inoperative in particular circumstances, such provision or part of the provision shall be deemed to be severable, and the balance of the by-law, or its application in other circumstances, shall not be affected and shall continue to be in full force and effect.

### 1.3 Definitions

For the purposes of this By-Law:

**“Agricultural Open Air Fire”** means an open air fire conducted for the disposal of crop residue, vegetable matter or vegetation on farm lands that is a normal farm practice within the meaning of the *Farming and Food Production Protection Act, 1998*, SO 1998, c. 1.

**“Authorized Campground”** means a commercial campground or children’s summer camp operation which has been inspected by the Chief Fire Official for compliance with the requirements for campgrounds pursuant to O Reg 207/96, made under the *Forest Fires Prevention Act*, RSO 1990, c F.24, and for which the Chief Fire Official has issued a permit under this By-Law.

**“Barbecue”** means an appliance or structure designed and intended solely for the cooking of food in the open air, including a Hibachi or any other similar commercially manufactured device designed and intended solely for the cooking of food in the open air, but does not include devices predominately designed for personal warmth, fire pits or campfires.

**“Campfire”** means a small contained open air fire ignited for cooking or warmth.

**“Chief Fire Official”** means the Chief of the North Bay Fire and Emergency Services or his/her designate.

**“City”** means The Corporation of the City of North Bay.

**“Council”** means the Council for The Corporation of the City of North Bay.

**“Enforcement Officer”** means the Chief Fire Official, any Fire Prevention Officer or firefighter with the North Bay Fire and Emergency Services, police officer, or by-law enforcement officer or employee of the City whose duties include the enforcement of this By-Law.

**“Extinguish”** means to completely put out a fire.

**“Farmer”** means the owner or operator of an agricultural operation.

**“Fire Management Area”** means a designated area of land as indicated in section 2.1 and Schedule “A” of this By-Law.

**“Gas Fired Outdoor Appliance”** means a portable or fixed appliance designed for use outdoors and which is fuelled by natural gas or propane including, but not limited to, a heater, barbecue, smoker, fireplace or fire pit.

**“Municipal Fire Ban”** means a ban on burning within the municipality of North Bay imposed by the Chief Fire Official.

**“Non-Recreational Open Air Fire”** means any open air fire that is not recreational.

**“Nuisance”** when used in relation to a fire means circumstances in which a fire causes discomfort, irritation or danger to any person occupying in the area of the fire through sparking, smoke or unpleasant odour from the fire.

**“Open Air Burning Device”** means a commercially manufactured device for the purpose of containing a recreational fire, which is made of a non-combustible

material and has a spark screen or other spark-arresting device to prevent sparks from escaping, and which is installed in accordance with the manufacturer's recommendations. Examples of open air burning devices include a chiminea, an outdoor fireplace, and a fire pit, provided that the device in question meets the requirements above. See Schedule "B" to this By-Law for diagrams of acceptable open air burning devices, by way of example.

**"Open Air Fire"** means the burning of material outside of a building.

**"Owner"** means the registered owner of the land, or anyone with a leasehold interest in a property.

**"Permit"** means the permit issued by the Chief Fire Official granting approval to set an open air fire and establishing the conditions under which the permit is granted.

**"Police Officer"** means a sworn member of the North Bay Police Service.

**"Recreational Open Air Fire"** means a small, controlled and contained fire that is utilizing an open air burning device for the purpose of cooking, warmth or personal enjoyment.

**"Restricted Fire Zone Order"** means a ban on burning ordered by the Ontario Minister of Natural Resources and Forestry, that restricts the use of open air fires in a specific area of the province. It is used when the fire hazard is extreme and/or when firefighting resources are stretched to capacity. For the purposes of this By-Law, any reference to a restricted fire zone order means a restricted fire zone order that includes the City or a part of the City within its geographic boundaries.

**"Yard Waste"** means natural debris collected from a property and includes branches, tree limbs and trunks and leaves.

## **Part 2 – Fire Management Areas**

### **2.1 Fire Management Areas**

For the purposes of this By-Law the City shall be divided into two Fire Management Areas as shown on Schedule "A" of this By-Law, and described as follows:

- (a) **"Settlement Area"**: Includes those lands that are serviced by City water services and therefore contain fire hydrants for firefighting purposes and identified in light green in Schedule "A" of this By-Law; and
- (b) **"Rural Area"**: Includes those lands surrounding the Settlement Area. The Rural Area includes lands not serviced by City water and which do not have fire hydrants available for firefighting purposes. The Rural Area is identified in dark green in Schedule "A" of this By-Law.

## **Part 3 – General Conditions and Prohibitions**

### **3.1 Prohibition**

- (1) No person shall set, maintain, or cause or permit to be set or maintained, an open air fire within the City, except as permitted under this By-Law.
- (2) While this By-Law also creates specific prohibitions in order to address the most common circumstances relating to fires and fire safety, nothing in the

specific prohibitions shall have the effect of limiting the general prohibition against open air fires set out in subsection (1).

### **3.2 Permit Required**

- (1) No person shall set, maintain, or cause or permit to be set or maintained, an open air fire without a current valid permit. Without limiting the generality of the foregoing, this includes recreational open air fires being conducted in an open air burning device.
- (2) No person shall set, maintain, or cause or permit to be set or maintained, an open air fire in contravention of any condition on a permit.
- (3) The permit holder shall keep the permit at the site of the open air fire and, upon request of an enforcement officer, shall forthwith produce the permit for inspection.

### **3.3 Hours of Burning**

- (1) Where a fire is permitted under this By-Law, it shall only be permitted between the hours of 7:30 p.m. and 1:00 a.m. No person shall set, maintain, or cause or permit to be set or maintained, an open air fire outside of these hours.
- (2) Subsection (1) does not apply to agricultural open air fires.

### **3.4 Fire Bans**

- (1) Notwithstanding any other provisions of this By-Law, the Chief Fire Official may impose a municipal fire ban prohibiting all open air fires for the whole or any part of the City, when weather or other conditions so warrant, for any period of time as the Chief Fire Official deems necessary.
- (2) The provisions of this By-Law and any permit issued under it shall be superseded by:
  - (a) a municipal fire ban; and
  - (b) a restricted fire zone order.
- (3) No person shall set, maintain, or cause or permit to be set or maintained, an open air fire during a municipal fire ban or a restricted fire zone order.
- (4) Subsections (2) and (3) do not apply to an open air fire conducted in an authorized campground, provided that the permit holder ensures compliance with:
  - (a) all conditions of the permit issued by the Chief Fire Official; and
  - (b) all provisions of O Reg 207/96, made under the *Forest Fires Prevention Act*.
- (5) No permit holder for an authorized campground shall permit a fire on the campground that is not in compliance with subsection (4).

### **3.5 No Burning of Grass**

No person shall burn grass in any area.

### **3.6 Environmental Conditions**

- (1) No person shall set, maintain, or cause or permit to be set or maintained, an open air fire unless conditions will allow the fire to burn safely from start to extinguishment.
- (2) No person shall set, maintain, or cause or permit to be set or maintained, an open air fire when there is rain or fog.
- (3) No person shall set, maintain, or cause or permit to be set or maintained, an open air fire when a smog alert has been issued by the Ontario Ministry of the Environment and Climate Change for an area that includes the City.
- (4) No person shall set, maintain, or cause or permit to be set or maintained, an open air fire that causes a nuisance.

### **3.7 Land Owned by Others**

- (1) Subject to subsection (2), no person shall set, maintain, or cause or permit to be set or maintained, an open air fire on land of which the person is not the registered owner, without first having obtained the written permission of the registered owner.
- (2) No person shall set, maintain, or cause or permit to be set or maintained, an open air fire on a highway, park, walkway, public land or upon any vacant or other land owned by the City, without first having obtained written permission from the Chief Fire Official.

### **3.8 General Requirements for Open Air Fires**

- (1) In addition to any other requirements of this By-Law, every person who sets, maintains, or causes or permits to be set or maintained an open air fire shall:
  - (a) notify the North Bay Fire and Emergency Services Dispatch before the commencement and after the completion of the fire;
  - (b) while the fire is burning, have immediately available a suitable means of extinguishment that is capable of extinguishing the fire, such as a charged garden hose or fire extinguisher;
  - (c) take all other precautions as may be reasonably necessary to prevent the fire from getting beyond control, causing damage, or becoming a danger to life or property, and to ensure that adjacent properties and individuals are not adversely affected by the products of combustion; and
  - (d) ensure that there is constant supervision and control over the fire by a competent adult from start to extinguishment.
- (2) Every person who sets, maintains, or causes or permits to be set or maintained an open air fire shall, in the event that the fire becomes out of control, report the fire immediately to the North Bay Fire and Emergency Services.
- (3) In a prosecution for an offence under subsection (2), the onus is on the person charged to prove that he or she reported the fire in accordance with the requirements of subsection (2).

### **3.9 Unfounded and Frivolous Complaints**

No person shall make repeated complaints about a fire for which a current valid permit exists, when those complaints are unfounded or frivolous in nature. Frivolous or unfounded complaints causing North Bay Fire and Emergency Services to attend a location can cause emergency services to not be available for legitimate emergencies.

### **3.10 Exemption**

The North Bay Fire and Emergency Services is exempt from this By-Law with respect to an open air fire conducted for the purpose of educating, training, or any other purpose as approved by the Chief Fire Official.

## **Part 4 – Permits**

### **4.1 Authority and Discretion to Issue Permits**

- (1) The Chief Fire Official may issue permits authorizing open air fires, at his or her sole discretion.
- (2) In issuing any permit, the Chief Fire Official may impose any additional requirements or exempt any conditions under Parts 3, 5, 6 and 7 of this By-Law as the Chief Fire Official considers necessary in the interest of public safety, or advisable in the circumstances, or to minimize inconvenience to the general public, or to give effect to the objects of this By-Law.
- (3) Prior to issuing a permit, the Chief Fire Official may require an inspection of the site where the fire is proposed to be conducted and, for a recreational open air fire permit, may require an inspection of the open air burning device as well.
- (4) Where the Chief Fire Official requires an inspection:
  - (a) the inspection will be conducted by a member of the North Bay Fire and Emergency Services; and
  - (b) the permit applicant shall pay the applicable fees as set out in the City's current User Fees By-Law for the North Bay Fire and Emergency Services.
- (5) Notwithstanding any other provisions of this By-Law, the Chief Fire Official may issue a special fire permit to an applicant and approve any open air fire subject to the fire being adequately supervised, and to any special conditions the Chief Fire Official may direct. Failure to comply with any of the conditions of the special permit will render the permit invalid.
- (6) The Chief Fire Official may refuse, revoke or suspend a permit at any time in his or her sole discretion.

### **4.2 Application for Permit**

- (1) Application forms for permits may be obtained from the City's Customer Service Centre at City Hall or from the North Bay Fire and Emergency Services' website.
- (2) In order to obtain a permit, the applicant must submit the completed application for a permit to the Customer Service Centre at City Hall or to the North Bay Fire and Emergency Services, accompanied by the



appropriate fees as set out in the City's current User Fees By-Law for the North Bay Fire and Emergency Services.

#### **4.3 Types of Permits**

- (1) For properties located within the Settlement Area, permits may only be issued for recreational open air fires.
- (2) For properties located within the Rural Area, permits may be issued for recreational, non-recreational and agricultural open air fires.

#### **4.4 General Provisions Relating to Permits**

- (1) A permit is not transferable to another person or to a new location.
- (2) A permit is valid on the date of issue and for the balance of the calendar year in which the permit is issued, unless otherwise specified on the permit.

### **Part 5 – Recreational Open Air Fires**

#### **5.1 Additional Requirements for Recreational Open Air Fires**

In addition to the requirements of Part 3 of this By-Law, every person setting or maintaining a recreational open air fire shall also comply with the provisions of this Part.

#### **5.2 Open Air Burning Device Required**

Every person setting or maintaining a recreational open air fire shall:

- (a) ensure that the fire is contained in an open air burning device with a dimension not greater than 61 centimetres by 61 centimetres or a volume not greater than 0.26 cubic metres;
- (b) use only commercially produced charcoal, briquettes or clean, dry seasoned wood and, without limiting the generality of the foregoing, shall not burn painted wood, pressure treated wood, creosote treated wood, or any type of yard waste;
- (c) if burning wood, burn only wood that has a dimension smaller than that of the open air burning device;
- (d) ensure that the fire is completely confined within the open air burning device at all times; and
- (e) ensure that the open air burning device is located:
  - (i) in a safe area;
  - (ii) at least six metres from any adjacent property line; and
  - (iii) at least two metres from any combustible structure or object, including but not limited to trees, other tall vegetation, houses, garages, sheds, fences, and overhead wires.

#### **5.3 Open Air Burning Devices on Decks, Balconies and Rooftops**

- (1) No person shall use, or cause or permit the use of, an open air burning device on a balcony or rooftop.

- (2) No person shall use, or cause or permit the use of, an open air burning device on a deck that is situated above the first storey of the building.
- (3) No person shall use, or cause or permit the use of, an open air burning device on a deck located at the level of the first storey of the building unless the requirements of subsection (4) are complied with.
- (4) The use of an open air burning device is permitted on a first storey deck provided that all other provisions of this Part are complied with and, in addition, if the deck is constructed with wood, composite decking material, or any other combustible material, there is:
  - (a) at least one course of brick or stone installed under the appliance; and
  - (b) sheet metal installed under the brick or stone, extending at least two inches beyond the perimeter of the brick or stone.

#### **5.4 Wind Velocity**

No person shall set, maintain, or cause or permit to be set or maintained a recreational open air fire when there is a wind exceeding 15 kilometres per hour.

#### **5.5 Owner's Duty**

Every owner shall ensure that any recreational open air fire on his or her property complies with the provisions of this Part.

### **Part 6 – Non-Recreational Open Air Fires**

#### **6.1 Additional Requirements for Non-Recreational Open Air Fires**

- (1) In addition to the requirements of Part 3 of this By-Law, every person setting or maintaining a non-recreational open air fire shall also comply with the provisions of this Part.
- (2) Every person setting or maintaining a non-recreational open air fire shall ensure that all of the following conditions are met:
  - (a) the burn pile is less than two metres in diameter and less than two metres in height;
  - (b) only clean, dry seasoned wood or yard waste materials are burned and, without limiting the generality of the foregoing, kitchen garbage, construction materials or debris or materials made of or containing rubber, plastic or tar shall not be burned at any time; and
  - (c) the fire is located:
    - (i) in a safe area;
    - (ii) at least 20 metres from any adjacent building or structure;
    - (iii) at least 20 metres from any adjacent property line; and
    - (iv) at least six metres from any combustible structure or object.

#### **6.2 Wind Velocity**

No person shall set, maintain, or cause or permit to be set or maintained a non-recreational open air fire when there is a wind exceeding 20 kilometres per hour.

### **6.3 Owner's Duty**

Every owner shall ensure that any non-recreational open air fire on his or her property complies with the provisions of this Part.

## **Part 7 – Agricultural Open Air Fires**

### **7.1 Additional Provisions for Agricultural Open Air Fires**

- (1) In addition to the requirements of Part 3 of this By-Law, every person setting or maintaining an agricultural open air fire shall also comply with the provisions of this Part.
- (2) Every farmer or other person setting or maintaining an agricultural open air fire shall ensure that all of the following conditions are met:
  - (a) the fire is conducted between sunrise and sunset only;
  - (b) the fire is for the purpose of burning crop residue, vegetable matter or vegetation only, on farm lands, and is a normal farm practice with the meaning of the *Farming and Food Production Protection Act, 1998*; and
  - (c) the fire is located:
    - (i) in a safe area;
    - (ii) at least 20 metres from any adjacent building or structure;
    - (iii) at least 20 metres from any adjacent property line; and
    - (iv) at least six metres from any combustible structure or object.

### **7.2 Wind Velocity**

No person shall set, maintain, or cause or permit to be set or maintained an agricultural open air fire when there is a wind exceeding 20 kilometres per hour.

### **7.3 Owner's Duty**

Every owner shall ensure that any agricultural open air fire on his or her property complies with the provisions of this Part.

## **Part 8 – Gas Fired Outdoor Appliances**

### **8.1 Conditional Exemption**

- (1) The provisions of this By-Law do not apply to the use of a gas fired outdoor appliance provided that all of the provisions of this Part are complied with.
- (2) No person shall use a gas fired outdoor appliance on a balcony or rooftop, or on a deck that is situated above the first storey of the building.
- (3) In addition, a person who is using a gas fired outdoor appliance shall:
  - (a) ensure that the gas fired outdoor appliance has been approved for use by the Underwriters Laboratories of Canada (ULC) or the Canadian Standards Association (CSA);

- (b) use only propane or natural gas as a fuel source;
- (c) ensure that the gas fired outdoor appliance is located in a safe area so that it is securely situated and a safe distance away from any combustible materials; and
- (d) ensure that the gas fired outdoor appliance is supervised by a competent adult at all times while ignited or while still warm from use.

## **Part 9 – Barbecues**

### **9.1 Conditional Exemption**

- (1) Without limiting the generality of Part 8, the provisions of this By-Law do not apply to the use of a barbecue, whether gas fired or designed or intended to use charcoal, briquettes or other fuel, provided that all of the provisions of this Part are complied with.
- (2) No person shall use a barbecue on a balcony or rooftop, or on a deck that is situated above the first storey of the building.
- (3) In addition, a person who is using a barbecue shall:
  - (a) use only commercially produced charcoal, briquettes, natural gas or propane as a fuel source;
  - (b) ensure that the barbecue is located in a safe area so that it is securely situated and a safe distance away from any combustible materials; and
  - (c) ensure that the barbecue is supervised by a competent adult at all times while ignited or while still warm from use.

## **Part 10 – Enforcement**

### **10.1 Authority to Enforce**

- (1) Any enforcement officer is authorized to enforce this By-Law pursuant to the provisions hereof, the *Municipal Act, 2001*, the *Provincial Offences Act*, RSO 1990, c. P.33, and the *Fire Protection and Prevention Act, 1997*.
- (2) No person shall hinder or obstruct, or attempt to hinder or obstruct, any person exercising a power or performing a duty under this By-Law.

### **10.2 Right of Entry**

- (1) An enforcement officer shall be permitted to enter upon any land at any reasonable time for the purpose of enforcing this By-Law.
- (2) A person exercising a power of entry on behalf of the City under this By-Law shall, on request, display or produce proper identification.

### **10.3 Order to Extinguish / Comply**

- (1) An enforcement officer may at his or her sole discretion, order a fire extinguished or brought into compliance with this By-Law and this order shall be final.

- (2) Every person who is ordered by an enforcement officer to extinguish a fire or otherwise bring a fire into compliance with this By-Law shall comply immediately.
- (3) In the event that an order of an enforcement officer under subsection (1) is not complied with, the enforcement officer may take action to have the fire extinguished or otherwise brought into compliance with this By-Law.
- (4) Every person who fails to comply with an order of an enforcement officer under this By-Law shall be liable for any costs incurred by the North Bay Fire and Emergency Services to extinguish the fire or bring it into compliance. Where applicable, such costs shall be calculated in accordance with the City's current User Fees By-Law for North Bay Fire and Emergency Services.

#### **10.4 Remedial Costs and Recovery**

- (1) The City may recover the remedial action costs incurred under this Part by action, or by adding such costs to the tax roll and collecting them in the same manner as property taxes in accordance with section 446 of the *Municipal Act, 2001*.
- (2) Prior to recovering remedial costs under subsection (1), the City may invoice the owner requesting voluntary payment of those remedial costs.

### **Part 11 – Offences and Penalty**

#### **11.1 Offences**

- (1) Every person who contravenes any provision of this By-Law is guilty of an offence.
- (2) Every director or officer of a corporation who knowingly concurs in the contravention by the corporation of any provision of this By-Law is guilty of an offence.
- (3) Every person who contravenes an Order issued by a court pursuant to this By-Law is guilty of an offence.

#### **11.2 Penalty**

- (1) Every person who is found guilty of an offence under this By-Law is liable to a fine up to \$100,000.
- (2) If any provision of this By-Law is contravened and a conviction entered, in addition to any other remedy and to any penalty imposed by this By-Law, 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.
- (3) Any fine imposed under this Part shall be payable in addition to any fees, charges and costs payable under this By-Law.

### **Part 12 – Coming into Force and Repeal of Previous By-laws**

#### **12.1 Coming into Force**

This By-Law No. 2015-115 shall come into force on the 1st day of January, 2016.

## **12.2 Repeal**

Upon the coming into force of this By-Law, By-Law No. 2011-130 and all amendments thereto are hereby repealed.

Read a First Time in Open Council the 2nd day of November, 2015.

Read a Second Time in Open Council the 2nd day of November, 2015.

Read a Third Time in Open Council and Enacted and Passed this 2nd day of November, 2015.

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Mayor Allan McDonald

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City Clerk Catherine Conrad