



**THE CORPORATION OF THE TOWNSHIP OF WAINFLEET**  
**REGULAR MEETING OF COUNCIL AGENDA**

**MAY 31, 2022 – 7:00 P.M.**

**COUNCIL CHAMBERS**

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C11/22

- 1. Call to Order**
- 2. National Anthem**
- 3. Land Acknowledgement Statement**
- 4. Disclosures of Interest and the General Nature Thereof**
- 5. Mayor's Announcements & Remarks**
- 6. Councillor's Announcements & Remarks**
- 7. Adoption of Previous Council Minutes**
  - a) Minutes of the regular meeting of Council held May 10, 2022
- 8. Public Meeting**
  - a) Draft Plan of Subdivision P02/2021W & Zoning By-law Amendment Z06/2021W  
Applicant: 270998 Ontario Inc. (LandPro Planning Solutions Inc. – Agent)  
Subject Property: Vacant Lot Pettit Road
- 9. Delegations**
  - a) Leslie Daudelin – Request for amendment to Noise By-law No. 042-2018
  - b) Kathy Buttigieg, HorsePlay Niagara – Request for permission to use the beach areas for the purpose of offering horseback rides to the public
- 10. Staff Reports & Recommendations**
  - a) Administrative Staff Reports
    - i. ASR-013/2022 Re: Right to Disconnect Policy

ii. ASR-014/2022 Re: Noise By-law

b) Public Works Staff Reports

i. PWSR-011/2022 Re: Site Alteration By-law

**11. Review of Correspondence**

a) C-2022-108 – Request for Proclamation (World Hepatitis Day – June 28, 2022)

b) C-2022-111– Niagara Region Waterpipe Smoking By-law

**12. By-laws**

a) By-law No. 025-2022 being a Site Alteration By-law to regulate the removal, placing or dumping of fill in the Township of Wainfleet

b) By-law No. 026-2022 being a by-law to amend By-law No. 027-2019, being a by-law to establish an administrative monetary penalty system for non-parking related offences

**13. Notices of Motion**

a) Councillor MacLellan provided notice at the May 10, 2022 regular meeting of Council Re: Animals at Large By-law

**THAT** staff be directed to amend Schedule “A” of the Township’s Animals at Large By-law No. 008-2018 to increase penalties in section 3 (a) Permit Animal to run at large as follows:

1<sup>st</sup> Offence: \$250.00

2<sup>nd</sup> Offence: \$500.00

3<sup>rd</sup> Offence: \$1,000.00

4<sup>th</sup> Offence: \$2,000.00

5<sup>th</sup> and Subsequent Offences: \$5,000.00

**14. Closed Meeting**

a) Item under Section 234 (2)(k) of the Municipal Act, 2001, a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board. 1 item - (A Negotiation Matter)

**15. Rise & Report**

**16. By-law to Confirm the Proceedings of Council**

- a) By-law No. 027-2022 being a by-law to adopt, ratify and confirm the actions of the Council at its meeting held on the 31<sup>st</sup> day May, 2022

**17. Adjournment**



## THE CORPORATION OF THE TOWNSHIP OF WAINFLEET REGULAR MEETING OF COUNCIL MINUTES

C10/2022  
May 10, 2022  
7:00 p.m.  
Council Chambers

PRESENT:	K. Gibson	Mayor
	D. Cridland	Councillor
	T. Gilmore	Councillor
	J. MacLellan	Councillor
	S. Van Vliet	Councillor
STAFF PRESENT:	W. Kolasa	Chief Administrative Officer
	M. Alcock	Fire Chief
	M. Ciuffetelli	Deputy Clerk
	A. Chrastina	Administrative Assistant
	L. Earl	Mngr. of Community & Development Services
	L. Gudgeon	Manager of Human Resources
	M. Jemison	Drainage Superintendent
	M. Luey	Mngr. of Corporate Services/Treasurer
	R. Nan	Manager of Operations
	M. Tardif	By-law Enforcement Officer
OTHER:	J. Stirton	Township Solicitor

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- 1. Call to Order**  
Mayor Gibson called the meeting to order at 7:00 p.m.
- 2. National Anthem**
- 3. Land Acknowledgement Statement**  
Mayor Gibson acknowledged that the land on which we gather is the traditional territory of Anishinaabeg and Haudenosaunee Peoples, acknowledging the One Bowl and Spoon Treaty.
- 4. Disclosures of Pecuniary Interest and the General Nature Thereof**  
None.
- 5. Mayor's Announcements and Remarks**  
Mayor Gibson provided the following remarks:
  - I was recently appointed to the Board of Directors of the Ontario Association of Police Services Boards, representing Zone 4, Halton Region.

- The Historical Society held a plaque unveiling last Friday at the Wainfleet Bog to commemorate the World War II, Prisoner of War camp.
- The next vaccination clinic will be held at the Firefighters' Community Hall on May 14 from 10 a.m. – 6:30 p.m.
- The Police Services Board will meet Thursday May 19 at 8:30 a.m. Regional Council meets virtually later that day at 6:30 p.m.
- Our next regular meeting of Council will be held Tuesday May 31 at 7:00 p.m.

6. **Councillor's Announcements and Remarks**

Councillor Cridland noted that the next Niagara Peninsula Conservation Authority Board meeting will be held May 20 at 9:30 a.m.

7. **Adoption of Previous Council Minutes**

**Resolution No. C-2022-077**

Moved by Councillor Gilmore

Seconded by Councillor MacLellan

**"THAT** the minutes of the regular meeting of Council held April 5, 2022 and the minutes of the special meeting of Council held April 8, 2022 be adopted as circulated."

CARRIED

8. **Public Meeting**

None.

9. **Delegations**

- a) Yar Diduch, Board Member, FACS Niagara Foundation Re: Request to proclaim Sunday, June 12, 2022, Mountainview LemonAID Day

**Resolution No. C-2022-078**

Moved by Councillor Cridland

Seconded by Councillor Van Vliet

**"THAT** the delegation presentation from Yar Diduch, Board Member, FACS Niagara Foundation, be received and supported; and

**THAT** Council hereby proclaim Sunday, June 12, 2022, Mountainview LemonAID Day in the Township of Wainfleet."

CARRIED

10. **Staff Reports & Recommendations**

a) Administrative Staff Reports

- i. ASR-012/2022 Re: 2022 Property Tax Rates

**Resolution No. C-2022-079**

Moved by Councillor MacLellan

Seconded by Councillor Cridland

**“THAT** ASR-012/2022 be received; and

**“THAT** Council consider the by-law attached to this report as Appendix “A”, to provide for Final Property Tax Rates for the 2022 taxation year at the May 10, 2022 Regular Meeting of Council.

CARRIED

b) By-law Enforcement Staff Reports

- i. Memorandum Re: Summer Municipal By-law Enforcement Officer

**Resolution No. C-2022-080**

Moved by Councillor MacLellan

Seconded by Councillor Van Vliet

**“THAT** the Memorandum from the By-law Enforcement Officer respecting Summer Municipal By-law Enforcement Officer be received as information.”

CARRIED

c) Community & Development Services

- i. CDS-002/2022 Re: Draft Short-Term Rental By-law

**Resolution No. C-2022-081**

Moved by Councillor Van Vliet

Seconded by Councillor MacLellan

**“THAT** Council now move into closed session to discuss:

- a) “Item under Section 234 (2)(f) of the Municipal Act, 2001, advice that is subject to solicitor-client privilege, including communications necessary for that purpose - 1 item (Advice respecting draft Short Term Rental By-law)

CARRIED

Council made a motion to go into closed session at 7:25 p.m. and resumed in open session at 8:30 p.m.

The Deputy Clerk reported that Council received advice that is subject to solicitor-client privilege respecting a draft short term rental by-law.

**Resolution No. C-2022-082**

Moved by Councillor MacLellan

Seconded by Councillor Van Vliet

**“THAT** Community & Development Services Staff Report CDS-002/2022 be **DEFERED** to the next available meeting.”

CARRIED

d) **Drainage Staff Reports**

- i. DSR-003/2022 Re: Request for a drain improvement, Chambers Corner Drain Extension

**Resolution No. C-2022-083**

Moved by Councillor Gilmore

Seconded by Councillor MacLellan

**“THAT** Drainage Staff Report DSR-003/2022 regarding a request for a drain improvement, Chambers Corner Drain Extension, be received as information; and

**THAT** Council accept the Request for Drain Improvement and authorize staff to prepare and distribute the necessary notices in accordance with Section 78(1) *Drainage Act*; and

**THAT** Council appoint Spriet Associates Engineering under the *Drainage Act* to improve the Chambers Corner Drain Extension.”

CARRIED

- ii. DSR-004/2022 Re: Petition for Drainage Works, Newhouse Drain

**Resolution No. C-2022-084**

Moved by Councillor MacLellan

Seconded by Councillor Gilmore

**“THAT** Drainage Staff Report DSR-004/2022 regarding a Petition for Drainage Works, Newhouse Drain, be received as information; and

**THAT** Council accept the Petition for Drainage Works and authorize staff to prepare and distribute the necessary notices in accordance with Section 5(1) *Drainage Act*; and

**THAT** Council appoint Spriet Associates Engineering under the *Drainage Act* to facilitate the Newhouse Drain.”

CARRIED

e) Fire Staff Reports

i. FSR-005/2022 Re: 2022 First Quarter Review

**Resolution No. C-2022-085**

Moved by Councillor MacLellan  
Seconded by Councillor Gilmore

**“THAT** Fire Staff Report FSR-005/2022 respecting 2022 First Quarter Fire & Emergency Services Review be received for information.”

CARRIED

f) Public Works Staff Reports

i. PWSR-008/2022 Re: Award of Tender for 2 Hybrid SUV's

**Resolution No. C-2022-086**

Moved by Councillor MacLellan  
Seconded by Councillor Gilmore

**“THAT** Public Works Staff Report PWSR-008/2022 respecting Award of Tender for 2 Hybrid SUVs be received; and

**THAT** Council authorize the Manager of Operations to purchase 2 Hybrid SUVs from Mike Knapp Ford, being the only bid submitted.”

CARRIED



- ii. PWSR-009/2022 Re: Award of Tender for Recreation Tractor

**Resolution No. C-2022-087**

Moved by Councillor Van Vliet  
Seconded by Councillor Gilmore

**“THAT** Public Works Staff Report PWSR-009/2022 respecting Award of Tender for Recreation Tractor be received; and

**THAT** Council authorize the Manager of Operations to purchase a new Compact Utility Tractor with Loader and grooming Mower from Ben Berg Farm and Industrial Equipment being the only bid submitted.”

CARRIED

- iii. PWSR-009/2022 Re: Award of Tender for Recreation Tractor

**Resolution No. C-2022-088**

Moved by Councillor Van Vliet  
Seconded by Councillor MacLellan

**“THAT** Report PWSR-010/2022 respecting Award for Engineering Services for Belleview Beach Road, Beach Road East and Hill Avenue be received; and

**THAT** Council direct the Manager of Operations to engage the services of Urban and Environmental Management to perform engineering services for the design for Belleview Beach Road, Beach Road East and Hill Avenue Reconstruction.”

CARRIED

- iv. Memorandum Re: Canada Summer Games Bicycle Trials

**Resolution No. C-2022-089**

Moved by Councillor Cridland  
Seconded by Councillor MacLellan

**“THAT** the Memorandum submitted by the Manager of Operations respecting Canada Summer Games Bicycle Time Trials be received; and

**THAT** Council support the Bicycle Time Trial Race on August 16, 2022, being organized by the Niagara 2022 Canada Summer Games and the City of Port Colborne; and

**THAT** staff be directed to support and cooperate in the issuance of the appropriate permits and execute the appropriate plans/agreements necessary for the event.”

CARRIED

11. **Review of Correspondence**

None.

12. **By-laws**

**Resolution No. C-2022-090**

Moved by Councillor MacLellan

Seconded by Councillor Cridland

“**THAT** the following by-laws be read and passed this 10<sup>th</sup> day of May, 2022:

- a) By-law No. 020-2022 being a by-law to establish estimates and tax rates for the year 2022
- b) By-law No. 021-2022 being a by-law to protect, prohibit, regulate and control municipally-owned properties providing lakeshore access in the Township of Wainfleet
- c) By-law No. 022-2022 being a by-law to appoint a Municipal By-law Enforcement Officer for the Township of Wainfleet.

CARRIED

13. **Notices of Motion**

- a) Councillor MacLellan provided notice that he would be introducing a motion at the next regular meeting respecting the Township’s Animals at Large by-law.
- b) Councillor MacLellan introduced the following motion:

**Resolution No. C-2022-091**

Moved by Councillor MacLellan

Seconded by Councillor Cridland

“**THAT** section 14.10 (c) of Procedural By-law No. 058-2019 be waived to allow Council to consider a motion regarding new business not listed on the agenda, respecting proposed amendments to the penalties in Schedule “B” of the Township’s Noise By-law.”

CARRIED

**Resolution No. C-2022-092**

Moved by Councillor MacLellan  
Seconded by Councillor Gilmore

**“THAT** Council consider an amendment to the Township’s Noise By-law No. 042-2018 to increase the penalties of the following sections:

- Section 3.1 f) from \$250.00 to \$1,000
- Section 4.1 a) from \$75.00 to \$1,000
- Section 4.1 b) from \$75.00 to \$1,000
- Section 4.1 c) from \$75.00 to \$1,000

CARRIED

**Resolution No. C-2022-093**

Moved by Councillor Cridland  
Seconded by Councillor Gilmore

**“THAT** By-law No. 023-2022 being a by-law to amend By-law No. 042-2018 being a by-law to regulate noise in the Township of Wainfleet be read and passed this 10<sup>th</sup> day of May, 2022.

CARRIED

Direction was provided to staff to do a fulsome review of the noise by-law and come back with revisions for consideration at the next available meeting.

14. **Closed Meeting**

**Resolution No. C-2022-094**

Moved by Councillor Gilmore  
Seconded by Councillor Cridland

- a) Item under Section 234 (2)(e) of the Municipal Act, 2001, litigation or potential litigation, including matters before administrative tribunals, affecting the municipality or local board – 1 item (An update on a litigation matter)
- b) Item under Section 234 (2)(k) of the Municipal Act, 2001, a position, plan, procedure, criteria or instruction to be applied to any negotiations carried on or to be carried on by or on behalf of the municipality or local board. 1 item - (A negotiation matter)
- c) Item under Section 234 (2)(c) of the Municipal Act, 2001, a proposed or pending acquisition or disposition of land by the municipality or local board – 1 item (An acquisition of land matter)

d) Minutes of the closed meetings of Council held March 29, 2022 and April 5, 2022

CARRIED

15. **Rise & Report**

Council met in closed session to receive information respecting a litigation matter and an acquisition of land matter. Confidential direction was provided to staff on two negotiation matters.

A procedural vote was taken to adopt previous closed meeting minutes.

16. **By-law to Confirm the Proceedings of Council**

**Resolution No. C-2022-095**

Moved by Councillor Gilmore

Seconded by Councillor MacLellan

“**THAT** By-law No. 024-2022 being a by-law to adopt, ratify and confirm the actions of the Council at its meetings held April 8, 2022 and May 10, 2022 be read and passed this 10<sup>th</sup> day of May, 2022.”

CARRIED

17. **Adjournment of Meeting**

There being no further business, the meeting was adjourned at 9:47 p.m.

\_\_\_\_\_  
K. Gibson, MAYOR

\_\_\_\_\_  
M. Ciuffetelli, DEPUTY CLERK



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## **PUBLIC MEETING INFORMATION REPORT**

**Public Meeting:** Tuesday May 31<sup>st</sup>, 2022 at 7:00 p.m. in Council Chambers  
**File No.:** Draft Plan of Subdivision P02/2021W  
Zoning By-law Amendment Z06/2021W  
**Applicant:** 2709998 Ontario Inc. (LandPro Planning Solutions Inc. – Agent)  
**Subject Property:** Vacant Lot Pettit Road  
(Concession 4, Part Lot 32, RP 59R-4745 Part 1)

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### **Purpose of a Public Meeting**

The purpose of the Public Meeting is to provide more information about the applications and an opportunity for public input. No recommendations are provided at the Public Meeting and Township Council will not be making any decision at this meeting. A recommendation report will be prepared by staff and presented at a subsequent meeting of Township Council following a full review of the application.

Any person may make written or verbal representation either in support of or in opposition to the proposed Draft Plan of Subdivision and/or Zoning By-law Amendment. Please note that all submissions, including personal information, will become part of the public record and may be publicly released. The public meeting will also be live-streamed through the Township's [Youtube](#) page. Written comments are encouraged and can be submitted by email to [planning@wainfleet.ca](mailto:planning@wainfleet.ca), personal delivery to the Township Office at 31940 Highway #3, Wainfleet or regular mail to P.O. Box 40, Wainfleet ON L0S 1V0, to the attention of Sarah Ivins, Planner.

### **Property Information**

The subject lands are located on the west side of Pettit Road between Highway #3 and Bell Road as shown in Schedule "A". The property is 8.93 hectares in size and is currently being used for agricultural purposes. The surrounding land uses include residential and agricultural – an aerial photograph is attached as Schedule "B".

The subject lands are designated as Hamlet in the Regional Official Plan, designated as Village Residential in the Township Official Plan and zoned Development – D and Hazard – H under Zoning By-law 581-78.

### **Application Details**

The Draft Plan of Subdivision proposes fifteen lots for single detached dwellings, one block for the existing municipal drain, two blocks for stormwater management, one block for water for firefighting purposes and two public roads.

The Zoning By-law Amendment proposes to rezone the subject lands from Development – D and Hazard – H to Residential – R1-358 and Hazard – H under Zoning By-law 581-78. The proposed Residential – R1-358 zone contains the following site specific provisions:

- Minimum Lot Frontage for Lot 5: 35.93m;
- Minimum Lot Frontage for Lot 6: 36.94m;
- Minimum Lot Frontage for Lot 10: 28.45m;

- Minimum Lot Frontage for Lot 11: 33.15m.

In support of the applications, the following documents/studies, which are presently undergoing technical review, were submitted:

- Draft Plan of Subdivision prepared by LandPro Planning Solutions Inc. (April 2022);
- Stage 1 & 2 Archaeological Assessment prepared by Earthworks Archaeological Services Inc. (June 2020);
- Environmental Impact Statement prepared by Terrastory Environmental Consulting Inc. (August 2021);
- Hydrogeological Assessment prepared by Terra-Dynamics Consulting Inc. (October 2019);
- Phase One Environmental Site Assessment prepared by Hallex Environmental Ltd. (May 2020);
- Phase Two Environmental Site Assessment prepared by Hallex Environmental Ltd. (August 2020);
- Planning Justification Brief prepared by LandPro Planning Solutions Inc. (July 2021);
- Planning Addendum prepared by LandPro Planning Solutions Inc. (February 2022);
- Civil Drawings prepared by Hallex Engineering Ltd. (February 2022);
- Sewage System Servicing Design prepared by Attema Consulting Services Inc. (August 2021);
- Stormwater Management Design Brief prepared by Hallex Engineering Ltd. (March 2022);
- Water Servicing Design Brief prepared by Hallex Engineering Ltd. (March 2022).

### **Consultation**

In accordance with the *Planning Act*, a Notice of Public Meeting was mailed to all landowners within 120m of the subject property on April 29<sup>th</sup>, 2022 and a public notice sign was posted on the subject property. The notice, along with the submitted studies, were also posted on the Township's website at [www.wainfleet.ca/publicnotices](http://www.wainfleet.ca/publicnotices).

The application was circulated to external agencies and internal departments for review and comments on April 29<sup>th</sup>, 2022.

Comments received prior to the public meeting will be addressed verbally at the public meeting and any comments received after the public meeting will be addressed in the staff report.

### **Next Steps**

A planning report regarding a complete review of the applications will be brought forward by staff and considered by Council at a later date.

If a person or public body does not make oral submissions at the public meeting or make written submission to the Township of Wainfleet regarding the proposed Draft Plan of Subdivision and/or Zoning By-law Amendment before the approval authority gives or refuses to give approval to the application, the person or public body is not entitled to appeal the decision of the Township of Wainfleet to the Ontario Land Tribunal.

If a person or public body does not make oral submissions at the public meeting and/or make written submissions to the Township of Wainfleet regarding the proposed Draft Plan of Subdivision and/or Zoning By-law Amendment before the approval authority gives or refuses to give approval to the application, the person or public body may not be added as a party to the hearing of an appeal

before the Ontario Land Tribunal unless, in the opinion of the Tribunal, there are reasonable grounds to do so.

If you wish to be notified of the decision of the Corporation of the Township of Wainfleet in respect of the proposed applications, you must make a written request to the Deputy Clerk of the Township of Wainfleet at the address noted below and quote the appropriate file number(s).

### **Contact**

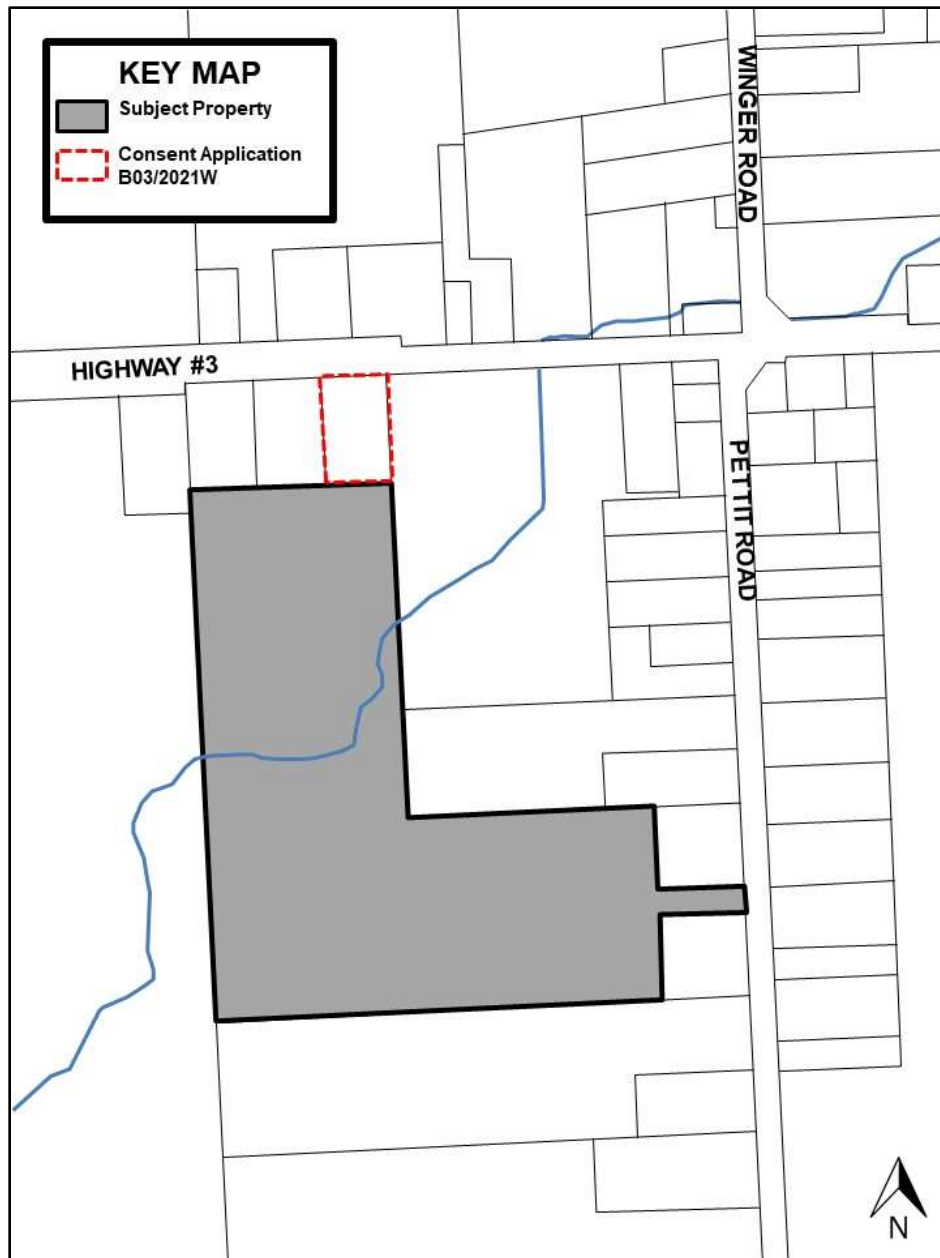
For further information regarding the proposed applications please contact Sarah Ivins, Planner, at 905-899-3463 ext. 225 or [planning@wainfleet.ca](mailto:planning@wainfleet.ca). Written comments can also be sent to the attention of Sarah Ivins.

To request to be notified of the decision, please contact the Deputy Clerk at [mciuffetelli@wainfleet.ca](mailto:mciuffetelli@wainfleet.ca).

### **Attachments**

Schedule "A" – Location Map  
Schedule "B" – Aerial Photograph  
Schedule "C" – Draft Plan of Subdivision  
Schedule "D" – Proposed Zoning By-law Amendment

## Schedule "A" – Location Map



**Draft Plan of Subdivision Application  
Zoning By-law Amendment Application**

**2709998 Ontario Inc.  
LandPro Planning Solutions Inc. (Agent)**

Vacant Lot Pettit Road  
CON 4, PT LOT 32 RP 59R-4745 PT 1  
2714 000 00912401

### LOCATION MAP

**TOWNSHIP OF  
WAINFLEET**  
*Wainfleet - Find your countryside!*

Date: May 2022

File No.: P02/2021W  
& Z06/2021W



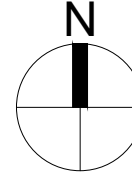
File No.: P02/2021W  
& Z06/2021W

## **Schedule “C” – Draft Plan of Subdivision**

KING'S HIGHWAY No. 3

EX. 4000 CULVERT  
W. INV=176.84  
E. INV=176.86

0 50 75 100m



## PROJECT: WINGER SUBDIVISION

Part Lot 32, Concession 4  
RP 59R4745 Part 1  
Township of Wainfleet

## SHEET TITLE: SITE PLAN

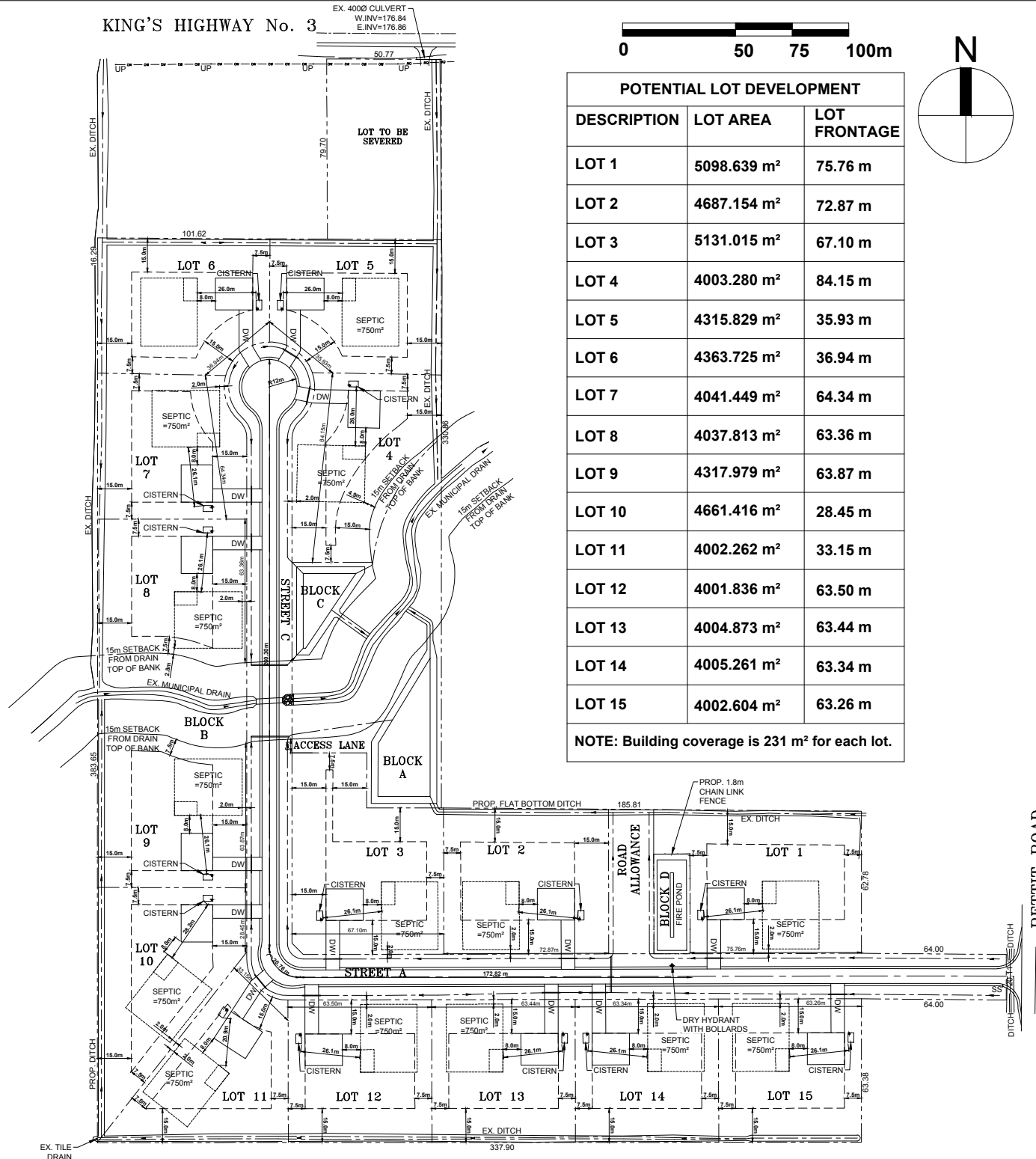
**LENGTH OF THE PROPOSED  
ROAD (FROM THE FIRE POND  
TO THE CUL-DE-SAC):**  
453.88 m

### VARIANCES REQUIRED:

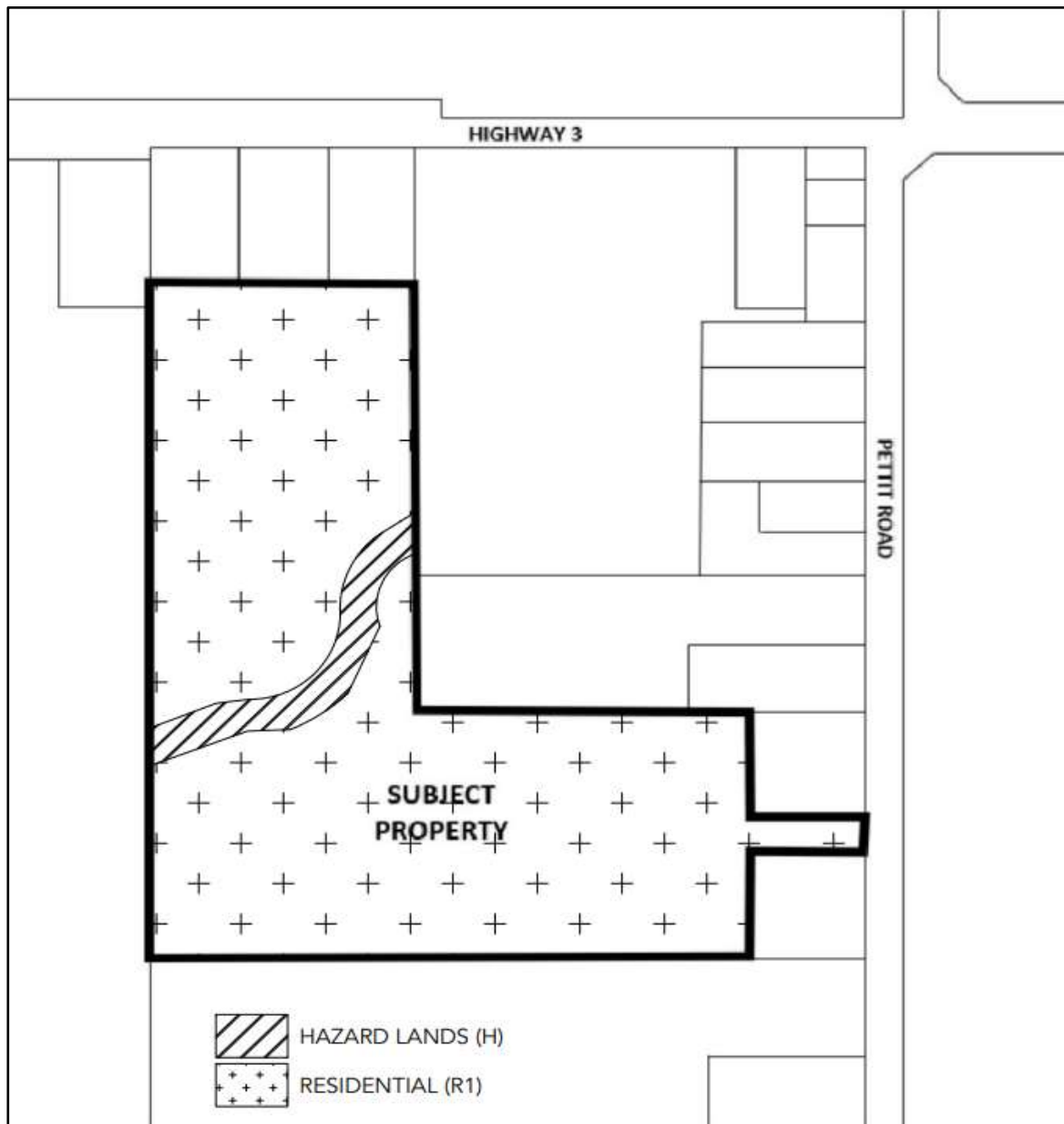
The Township of Wainfleet Zoning By-law 581-78 requires all lot frontages within the R1 zone to be a minimum of 46 metres.

The proposed lot frontages of Lots 5, 6, 10, and 11 do not currently meet this zoning provision. Included as part of the attached zoning by-law amendment application is a recognition of the reduced lot frontages.

**SCALE: 1: 2500**  
**DATE: April 26, 2022**



## Schedule "D" – Zoning By-law Amendment



### Draft Plan of Subdivision Application Zoning By-law Amendment Application

**2709998 Ontario Inc.**  
**LandPro Planning Solutions Inc. (Agent)**

Vacant Lot Pettit Road  
CON 4, PT LOT 32 RP 59R-4745 PT 1  
2714 000 00912401

### ZONING BY-LAW AMENDMENT

**TOWNSHIP OF  
WAINFLEET**

*Wainfleet - Find your countryside!*

Date: May 2022

File No.: P02/2021W &  
Z06/2021W



**TOWNSHIP OF WAINFLEET**  
**DELEGATION REQUEST FORM**

Please fill out and return no later than 4:30 p.m. on the Tuesday prior to the meeting you wish to appear. Completed forms are to be submitted to the Clerks Department and can be dropped off or emailed to [mciuffetelli@wainfleet.ca](mailto:mciuffetelli@wainfleet.ca)

If you are speaking to an item listed on the agenda, the deadline for submission is 12:00 p.m. on the day of the scheduled meeting.

<b>Name:</b> Leslie Daudelin	
<b>Address:</b> 11263 Harbourview Road	
<b>Telephone:</b> 289-836-9911	<b>E-mail:</b> jldaudelin@gmail.com

**Date of Meeting:** May 31/2022

<b>Subject Matter to be Discussed:</b>	Requesting consideration for amending Bylaw 042-2018
<b>Action Requested:</b>	<small>We are requesting consideration by Council to give direction to staff to hopefully amend the current noise bylaw. We hope amending current criteria related to noise, point of reception, and time or length of noise permitted can be changed to positively impact the lives and enjoyment of residents properties that are currently suffering loss of enjoyment as a result of noise issues from adjacent properties. Our hope is that by amending the bylaw the need for a STR policy, regulations, and bylaw may be augmented, diminished or removed. By amending a few things in the current noise bylaw we believe there may be financial savings to the Township and taxpayers of Wainfleet by way of using something we already have that can be better worked to more efficiently manage noise issues.</small>

**Have you previously spoken on this issue?** Yes ☐ No ☒

If an individual has previously appeared as a delegation, a further delegation from the same individual on the same topic will not be permitted, unless there is significant new information to be brought forward.

**Do you have material for distribution at the meeting?** Yes ☐ No ☒

If yes, specify:

**Do you have a copy of your notes/presentation to attach?** Yes ☒ No ☐

If yes, specify:

I am including my presentation. The document includes information pertaining to what we believe may assist the Township staff in targeting areas of improvement. Also at the end of my document I have added a few comments that I will not verbalize due to time c

Delegations are required to provide the Clerk's Department presentation materials for publication in Council's agenda package.

☒ I have read and understand the Delegation Protocol attached to this form and understand that the information contained on this form, including any attachments, will become public documents and listed on Township meeting agendas and posted to the Township's website.

Leslie Daudelin  
Signature

May 19/2022  
Date



Honorable Mayor Gibson and Council,

Thank you for allowing me the opportunity to bring forward a delegation from the Harbourview Road area. This delegation request is respectfully seeking Council's consideration regarding amendments to Bylaw 042-2018 as it does not provide a mechanism by which noise generated can be controlled between the hours of 0700-2300 in the Township of Wainfleet. Currently the bylaw enables adjacent properties and anyone using them to create noise that disturbs neighbours for sixteen hours a day. The noise and vibration generated by human sound made by an individual(s) or other human-produced noise that is unnecessarily loud." in such a manner which is likely to disturb the peace, quiet, comfort or repose of any other inhabitant needs to be included and worked into the current bylaw. Much tighter time restraints are also requested. The current bylaw defines "point of reception" however it needs to be expanded and redefined to include the outdoor square footage of adjacent and neighbouring properties. We have found and audiotaped that the noise generated by voices alone has the capacity to find a secondary point of reception beyond 225 feet from its point of origin. Noise generated at properties, especially those abutting lake erie, are amplified and carried further than properties not on the lakefront. The greatest impact is felt by those residents living on Lake Erie abutting properties. Where sound travels and is amplified exponentially.

We have found the current bylaw for noise no longer fits the build for Wainfleet as a result of the unprecedented uptick in rentals, changing demographics and use of properties.

For one moment imagine you are a night shift worker and after a shift from hell in Emerg you tuck yourself into bed to sleep before your second twelve hour night shift. Another group has rented the home adjacent yours and all day long through your walls you are kept awake by their loud voices, voices over talking one another, screams of excitement because the beer pong game for the bachelor/bachelorette party has commenced. Past experience tells you the group next door has every intention of getting their money's worth. After all, they paid to stay. With no recourse as a result of lenient or lacking noise definitions and inclusions contained in the noise bylaw you are forced to endure sixteen (16) hours of noise; and are required by law to wait until 2300 hours to call police. Your shift starts four hours before you can act. You've been forced into a vicious cycle of endure, complain, endure, Ask yourself if you'd like to be the patient being cared for by someone who had no sleep? This example has become the reality for some residents in Wainfleet.

Life, the world, and Wainfleet have changed. Wainfleet has had a huge uptick in business use of residential properties with the majority being rented during the summer months. Each and everyone of us look forward to summer. As a result of these changes full-time residents living near or adjacent to properties that typically are occupied by short term renters have suffered a loss of peace, quiet, sanctity, security and safety. Those adjectives support and underpin the Township's catchphrase "countryside" Where neighbours knew neighbours. Where a handshake meant something. Where problems could be worked out amicably amongst one another. And, it meant that Bylaw wasn't receiving multiple calls, written complaints and the police could be left to do policing.

While many summer rental residences close for winter allowing the peace to be restored; those of us living on Harbourview Road haven't been afforded the same relief. In the past couple of years full time homes on Harbourview Road have been purchased as investments and these rental properties have no down time or season because they have a furnace. Snow, rain cold or inclement weather that keeps full time neighbours indoors, is no match for the renters.

Harbourview homes and other Lake Erie abutting properties are not permitted to put up a fence taller than four feet as a result of the amended fence bylaw. Yet; another Wainfleet resident not living on the lake who wishes to erect a fence to dampen noise from an adjacent neighbouring property may.

The investment properties on Harbourview were once family homes that housed families. The street was attractive to those of us living here because neighbours were quiet yet friendly. The quiet residential zoned street didn't have businesses/hotels operating on it and in 2018 no one relied on or needed the noise bylaw to control noise. In 2020 within a month of a family home selling on Harbourview it had multiple paying guests staying in it. We no longer knew our neighbours and had no idea who was inhabiting the property. The sense of security and safety from knowing your neighbours suddenly was gone. The once quiet family homes no longer are, because they are advertised on AirBnb. Rental fees as are the listings public knowledge found in the public domain and some of the prices charged necessitate multiple persons/couples to defer cost. The ads also offer sleeping arrangements not for a quiet family but for numbers that would astound you. With renters sharing costs it brings loud voiced crowds, non-paying guests who come to make the most of a free beachfront day resulting in exponentially increased noise and nuisance along with overspilling driveways and a congested roads.

Summer of 2021, these noisy properties were pretty much booked to capacity with groups that often varied between 10 - 25 people. The overflow persons didn't always leave but instead partied until the early morning hours. Some of these rentals advertise and suggest having large gatherings which allow for commercial style functions like weddings, bachelor and bachelorette parties. Most of us understand the correlation between celebrations, alcohol and noise. We observed groups trespass onto adjacent properties for their own personal use and for their wedding photographers' use. That liability surely was unbeknownst to the registered property owners.

Since the fall of 2020 the adjacent and direct neighbours living on Harbourview Road have been consistently and constantly subjected to loud music, drunken parties, hot tub parties, harassment, sexual harassment, complete loss of privacy, people urinating in the lake and on the property, loud fireworks displays, dogs at large, crowd and voice noise that penetrates the walls of adjacent houses with windows and doors closed, noise with a point of reception across three 75 foot yards necessitating a retreat inside where you still cannot escape the noise.

For the most part, the people renting are partying for the entire time they are here, disturbing other full time residents' lawful use and enjoyment of their own properties. Direct and adjacent neighbours have suffered a loss of enjoyment and loss of use of property as a direct result of the actions allowed by the property owners who rent their properties. In spite of assurances and documentation that noise/nuisance isn't allowed by property owners we have reported multiple documented incidents.

In fairness to some of the smaller more mature groups we acknowledge they were not disruptive but these are the exception rather than the rule. Logic tells us that more people means more noise and more trouble however even what looks like a benign group can metastasize quickly.

Attempts to communicate with some property owners have eroded because they rarely attend the property except to clean for the next group arriving. Some of the property owners themselves host large gatherings that neighbours are not invited to. This included a children's party last summer with the PA System and speakers blasting the entertainment's voice and music all day long. Neighbouring properties were sprayed with bubbles which were not welcomed. Neighbours on Harbourview endured the all day event with kids screaming, an outdoor PA system blaring pop and hip hop music as a result of choosing to demonstrate some of the core values Wainfleet residents pride themselves in. On a beautiful summer day neighbours on Harbourview couldn't enjoy their own properties inside or out because the noise had a point of reception 225 feet away from the party and inside their homes. The property owner wasn't held accountable for the noise and nuisance they constructed, encouraged and allowed. Rather than file a complaint or call police the neighbours chose to exercise kindness, understanding, tolerance, acceptance, compassion, and respect. The PA system was in direct violation of Section 3(f) in the noise bylaw. While the owner and guests enjoyed the day outside in the sun and surf, neighbours sought refuge indoors. If all neighbours could demonstrate those same qualities and courtesy's I'd not be standing here this evening.

It's only May and we have already endured several boisterous groups, necessitating a late night call to police, a late night text to the owner that went unanswered, complaints to AirBnB, and a desperate request for a meeting with the Township seeking some relief from an increasingly untenable situation.

Having had no success at regaining the lawful and enjoyable use of our properties when noise occurs because requests are ignored we studied the noise bylaw. We identified barriers that allow some residents/property owners to "obstruct, interrupt or interfere with the lawful use, enjoyment or operation" of adjacent properties. ~Criminal Code of Canada Section 430 (1) (c) and 430 (1)(d)

In having done so we identified what we believe to be a fiscally responsible and swift reparation to the loss of enjoyment and loss of lawful use of property for the residents of Wainfleet. Those suggestions are on a supplementary document provided to Council.

Thank you.



k g &lt;jlداودلين@gmail.com&gt;

## Items/Information for Council Consideration

1 message

k g &lt;jlداودلين@gmail.com&gt;

Fri, May 20, 2022 at 9:31 AM

To: Leslie Daudelin &lt;jlداودلين@gmail.com&gt;

### **Supplementary information/comments/wording to help support the peaceful enjoyment of property by all residents in the Township of Wainfleet.**

- The criteria for "noise" be expanded and amended to include noises having a point of reception inside homes with windows and doors closed; and across adjacent properties caused by human noise and any other prohibited noise (for greater than 30 minutes) in such a manner which is likely to disturb the peace, quiet, comfort or repose of any other inhabitant within, or having quiet enjoyment of the lands upon which is located, any dwelling unit, apartment building, hotel, motel or any other type of residence.
- Inclusion of the following; The yelling, shouting, hooting, whistling, singing, or any other sound made by an individual or other human-produced noise that is unnecessarily loud." in such a manner which is likely to disturb the peace, quiet, comfort or repose of any other inhabitant within, or having quiet enjoyment of the lands upon which is located, any dwelling unit, apartment building, hotel, motel or any other type of residence.
- Include the following: the grating, grinding, rattling noise, honking of horns, racing of engines; or any other noise caused by a condition of disrepair or maladjustment of any motor vehicle or other vehicle whatsoever or part or accessory thereof likely to disturb the peace, quiet, comfort or repose of any other inhabitant within the municipality.
- Currently, Bylaw 042-2018 allows individuals to do whatever they want outside from 0700-2300 hours. Sixteen hours of non-stop noise should be reduced according to the above suggested amendment capturing what constitutes noise, point of reception, no longer than 30 minutes of continuous noise.
- Section 430 (1)(c) and 430 (1)(d) of the Criminal Code of Canada.
  - (c) obstructs, interrupts or interferes with the lawful use, enjoyment or operation of property or
  - (d) obstructs, interrupts or interferes with any **person** in the lawful use, enjoyment or operation of property
- THAT this By-law does not affect: a) Any bona fide agricultural use or practice engaged in by a bona fide farmer or employee thereof. b) The operation of snow-making machinery or snow-grooming vehicles. c) The operation of snow-removal equipment. d) Noises or sounds authorized by the municipality. (By-law No. \*\*\*\*\*insert Wainfleet Bylaw) Noises or sounds related to the non-residential use of land that is permitted by a by-law enacted by the municipality pursuant to Section 34 of the Planning Act between the hours of 07:00 hours and 19:00 hours. (By-law 2002-60) f) Noises or sounds related to the non-residential use of land that is permitted pursuant to the regulations made under the Niagara Escarpment Planning And Development Act between the hours of 07:00 hours and 19:00 hours. (By-law2002-60)



- THAT every person who contravenes any provision of this By-law is guilty of an offence and on conviction is liable to a penalty as provided in the Provincial Offences Act. 5. THAT should any section, clause or provision of this By-law be declared by a court of a competent jurisdiction to be invalid, the same shall not affect the validity of the By-law as a whole or in part hereof, other than the part which was declared to be invalid

## Delegation Request

Kathy Buttigieg

President HorsePlay Niagara

11061 Ellsworth Rd. N RR2

Port Colborne, L3K 5V4

905-834-2380

[info@horseplayniagara.com](mailto:info@horseplayniagara.com)

I request to speak at the May 30, 2022, Council meeting to present information regarding our company and request to receive permission to continue to use the beach areas for the purpose of offering horseback rides to the general public.

## Presentation

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### Opening Slide

- HorsePlay Niagara has been providing horseback riding tours on the beach in Wainfleet for over 20 years.
- We employ more than 15 people and support local farms and business with our purchases of hay and feed and supplies
- Outdoor activity tourism based business in Wainfleet include Sky Dive Burnaby, Two Golf Courses, 905 Jetski rentals and HorsePlay
- Then there are the countless restaurants, gas stations, variety stores, hotels, cottages, Airbnb's and trailer parks that benefit from tourism dollars we bring in

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### Our Clients

- Our customers come from all over Canada, US, Europe and the rest of the world.
- We have had customers from Dubai, Australia, China, The Philippines and just about every other area in the world
- We accommodate single people, couples, friends, families, engagements, wedding parties, birthday parties, and other celebrations.
- Our clientes range in age from 6 years old to our oldest so far that was 93 years old.

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### Bucket List

- If you do a search on Top Bucket list Items, horseback ride on the beach is #1.
- HorsePlay Niagara and Wainfleet have fulfilled these dreams for thousands of people over the years.
- HorsePlay Niagara is the only stable that offers riding on the beach in all of Ontario

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### Winter Riding

- The winter landscape at the beach is unique and we are typically the only ones utilizing this area at this time of year. HorsePlay Niagara offers the only outdoor winter activity in Wainfleet.
- 

### Sample Reviews

- This is a sampling of what people say about our beach rides
- 

### Tourism Grant

- In 2020 the South Coast Tourism Association (of which I was a founding board member) received almost \$474,000 of grant money for the community
- 

### Mayors

- Our own mayor Gibson talks of the pursuit of a slower pace of county life which is what our local residents want if social media is any indication.
- 
- Past mayors have been supportive of HorsePlay Niagara showcasing the local diversity to the world.

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### Clean Up

- And now for the #1 complaint regarding horses on the trails
- Horse Manure
- Unlike dog feces, horse manure presents no threat to human health but of course nobody wants to step in it either
- Our guides communicate on a group chat with the cleanup crew throughout their rides, whenever a horse defecates so it can be cleaned up as soon as possible.

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### Clean Up 1

- What many people don't realize is that is not the only thing we clean up
- Dead animals on the beach

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### Clean Up 2

- The Roads
- The garbage that doesn't quite make it into the bins

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### Clean Up 3

- After the parties
- We've even cleaned and properly disposed of car parts, household trash, building materials, tires, masks, dirty diapers and human waste you name it we've cleaned it
- Did you know dog owners like to tie their bagged feces into trees and bushes. We do.

---

### 2003 Regional Awards

- Our staff has been cleaning the road and beach areas since 1998
- We had communicated with Township staff for years regarding the need for installing garbage cans both at the beach and at the entrance to the Quarry area. Finally, these items were provided reducing the need for us to remove all the garbage back to our farm.
- In 2003 we were recognized for our organized efforts to remove several tons of trash from the Wainfleet area every year
- We were honoured to receive the Niagara Regional Environmental Award which was presented by our own Gord Harry at the ceremony in St. Catharines
- Our staff has also identified and communicated to the Niagara Regional Police regarding crimes occurring in the area helping to keep the area safe for the residents

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### Covid

- Covid-19 presented all of Wainfleet with new challenges.
- We were fortunate to be one of the first business's allowed to open due to the outdoor nature of our excursions

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### Lakeshore

- With people desiring outdoor activities though, The lakeshore road areas became heavily crowded and as a result of that, we started traveling up Lakeshore and Rathon Rd. to avoid the heavy car and pedestrian traffic
- We understand this route has been inconvenient for this area and now that these problems have now eased we can return to some of our traditional routes

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### Traditional Routes

- Our summer Route takes us down Quarry Rd to the south side of Lakeshore Rd. on a path through the tree area above the beach and back out to the road
- We travel alongside the road on the shoulder, passing the parking area with the bathrooms
- We enter towards the water at the beginning of the stone area where people typically do not sunbathe or walk and follow a stony path along the lake back to the road.

- 
- We circle back along Lakeshore through a path alongside the road and back to Quarry Rd.
  - We would return to the Gord Harry trail along Quarry Rd.
  - This route would minimize the impact we have both on the locals and traffic

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### Considerations

- We realize there are complaints, but please consider for every complaint there are literally hundreds of people young and old that are excited to see us with the horses. Our stables are popular with many, many local Wainfleet residents.
- 
- A consideration to help minimize complaints could posting a sign on the trail that says Horse Path by permit only so people are aware both that we travel there and also that other horseback riders cannot use the trail without permission

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### Moving Forward

- We sincerely hope that we can work together for a solution so we may continue to offer this unique tour to the many people all over the world.
-

**TO:** Mayor Gibson & Members of Council

**FROM:** Lee Gudgeon, Manager of Human Resources

**DATE OF MEETING:** May 31, 2022

**SUBJECT:** Right to Disconnect Policy

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**RECOMMENDATION(S):**

**THAT** Administrative Staff Report ASR-013/2022 respecting Right to Disconnect Policy be received for information;

**AND THAT** Council adopt Policy and Procedure HR 2.31.ON respecting the Right to Disconnect.

**EXECUTIVE SUMMARY:**

Amendments to the *Employment Standards Act, 2000* (ESA) enacted on December 2, 2021, require that all employers with 25 or more employees shall have a written policy in place by June 2, 2022, regarding employees disconnecting from work. The term “disconnecting from work” is defined in the ESA to mean not engaging in work-related communications, including emails, telephone calls, video calls or sending or reviewing other messages, to be free from the performance of work.

**BACKGROUND:****The Need to Disconnect**

Ontario is the first Canadian jurisdiction to impose a legislated response to the risks of a digitally hyper-connected workforce and the encroachment of work on leisure time. The Province’s *Working for Workers Act, 2021* (introduced as Bill 27) received royal assent on December 2, 2021, making the ESA the statutory vehicle for an employee’s right to disconnect from work-related communication.

This occurs as part of a wider recognition, both nationally and internationally, that the demands on employees to remain constantly tethered to electronic devices, and therefore work, can take a debilitating toll.

Some countries, including France, Italy, Spain and Belgium, have, to various extents, enacted right to disconnect laws. Ireland has a non-binding code of conduct to address the issue. Germany has a largely unlegislated approach in which many organizations implement voluntary practices to manage hyper-connectivity. For its part, the Federal Government of Canada is exploring prospective legislation for federal workers.



Policies related to addressing the increasingly digital nature of administrative and information-based work are intended to balance the needs of employers and employees with the understanding that from the employer's perspective, flexibility must be maintained as emergencies happen and problems do not end with the end of the employee's typical workday.

### **OPTIONS/DISCUSSION:**

The policy attached to this report addresses the Provincial requirement for a policy and recognizes that an employee's right to disconnect from work necessarily implies several aspects, such as the right to disconnect from technology as one of the means by which employees are effectively tethered to work.

From a Human Resources perspective, other factors unrelated to technology, such as organizational culture within the Township, are root causes of hyper-connectivity and warrant recognition by Council and residents, as well as intentional focus by our management team.

The *Working for Workers Act, 2021* is arguably short on detailed guidance or prescriptive requirements. The Ministry of Labour, Training and Skills Development has published some guidance as part of its Employment Standards Act, 2000 Policy and Interpretation Manual (the "Ministry Guidelines"), those these too are somewhat light in terms of proposed content.

Similar in approach to other Ontario municipalities, the Township of Wainfleet has attempted to construct a policy that blends a high degree of flexibility to ensure the proper functioning of municipal operations, as needed, while recognizing the statutory requirements surrounding the need to employees to disconnect from the performance of work outside of normal work hours, whenever possible.

With employee health and well-being at its core, this provincial legislation has far-reaching implications from a Human Resources perspective, as it has the potential to affect almost every aspect of the way in which employees interact with their employers – and most importantly, with their work roles. This has wider implications in terms of acceptable expectations in terms of what employees can be expected to do, and the timeframes in which their performance and communication can reasonably be expected.

This administrative policy is required by Provincial law and is drafted to meet the legal requirements of the *Working for Workers Act, 2021* and the *Employment Standards Act, 2000*. Being a provincially-mandated Administrative Policy, consideration and adoption of this policy is required by June 2, 2022.

### **FINANCIAL CONSIDERATIONS:**

There are no direct financial implications to the institution of this policy.

**OTHERS CONSULTED:**

Strategic Leadership Team (SLT)

**ATTACHMENTS:**

- 1) Appendix "A" – Policy and Procedure HR 2.31.ON respecting the Right to Disconnect.

Respectfully submitted by,

Reviewed by,

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Lee Gudgeon  
Manager of Human Resources

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William J. Kolasa  
Chief Administrative Officer/Clerk

## **APPENDIX “A”**

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STATEMENT of POLICY and PROCEDURE			
Chapter:	Human Resources	SPP No.	<b>HR 2.31.ON</b>
Section:	Employment Policies	Issued:	May 31, 2022
Subject:	<b>DISCONNECTING from WORK</b>	Effective:	May 31, 2022
Issue to:	All Manual Holders	Page:	1 of 14
		Replaces:	HR 2.31.ON
Issued by:	Human Resources	Issued:	May 31, 2022

## 1 POLICY

- 1.01 **The Township of Wainfleet** respects employees' right to disengage from work-related communication and other work outside of normal working hours to enjoy personal or leisure time for their health and wellness.
- 1.02 **The Township of Wainfleet** encourages employees to come forward if they are experiencing any health issues, especially issues related to mental well-being. Employees who feel comfortable doing so should talk to their manager/management team and take steps to seek professional help.

## 2 PURPOSE

- 2.01 The purpose of this policy is to provide:
- (a) Guidance to managers and all other employees on disconnecting from work-related communications and other work outside of normal working hours.
  - (b) Assistance to employees who feel obligated to habitually work an unhealthy number of hours or beyond their normal working hours.
  - (c) Guidance to ensure compliance with *Employment Standards Act, 2000* (ESA) provisions on disconnecting from work, while maintaining compliance with requirements surrounding overtime, hours of work, breaks, vacations, flexible or hybrid work, remote work, and other laws and best practices.
  - (d) Balance between employees' right to disconnect and the organization's need for employee flexibility in emergencies and other necessary instances.

## 3 SCOPE

- 3.01 This policy applies to all employees, contractors, interns and students without exception, in all locations, whether in management or non-management roles, full-time or part-time, working flexible hours, on-site or under remote or hybrid work arrangements.

## 4 RESPONSIBILITY

- 4.01 The Strategic Leadership Team (SLT) is accountable for implementing a written disconnecting from work policy and may delegate responsibility for creating the policy to the Manager of Human Resources.
- 4.02 The Manager of Human Resources is responsible for leading the development, implementation, monitoring, operation and continual improvement of the policy on disconnecting from work.

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4.03 Managers, supervisors and other leaders are responsible for modelling appropriate behaviours surrounding disconnecting from work and effecting, enforcing and monitoring the efficacy of the disconnecting from work policy.

4.04 The Manager of Human Resources is responsible for supporting managers and other employees for all matters involving the development, implementation, monitoring, operation and continual improvement of the disconnecting from work policy. This includes investigating disputes arising under the policy.

4.05 The Information Technology Specialist is responsible for providing technological support to enable the smooth operation of the disconnecting from work policy.

4.06 All employees are responsible for complying with this policy, taking ownership of their own ability to disconnect from work and respecting the rights of others to disconnect from work.

## 5 DEFINITIONS

5.01 **“Disconnecting from work”** refers to an employee’s right to disengage from work and be free of work-related obligations, including work-related communications, outside of his or her normal working hours, except in cases of emergencies or prior agreement. Work-related communications include phone or video calls and sending, reading or responding to emails, texts, instant messages, social media messages and other electronic communications. Prior agreement includes on-call, standby arrangements or collective agreement provisions.

5.02 **“Emergency”** refers to an unexpected and aberrant situation that demands attention before an employee’s normal working hours to avoid significant adverse consequences. Significant adverse consequences may include loss of life, material financial costs, a material loss of revenues, or the inability to continue operations for the municipality, its residents or business partners. Emergencies can arise in various contexts, for instance, during a snowstorm or other natural disasters or because of man-made events like an unplanned outage of a critical computer system. An urgent need to fill an important shift because of a failure of typically adequate scheduling practices qualifies as an emergency.

5.03 **“Mental Health”** refers to an employee’s state of mental well-being where he or she can optimize his or her full capacity, maximize his or her abilities, work productively, cope with stresses and successfully contribute to the goals of the municipality.

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5.04 **“Normal working hours”** refer to an employee’s standard working hours according to contract, collective agreement or mutual agreement as applicable, typically coinciding with the Corporation’s operating or business hours.

5.05 **“Remote work”** means working from a home or from another location rather than being required to go to the physical workplace of the employer.

## 6 REFERENCES and RELATED STATEMENTS of POLICY and PROCEDURE

*Employment Standards Act, 2000*

Exemptions, Special Rules and Establishment of Minimum Wage, O Reg 285/01

*Working for Workers Act, 2021*

*Ontario Employment Standards Act, 2000 Policy and Interpretation Manual*

## 7 PROCEDURE

7.01 The CAO will delegate the following responsibilities to the Manager of Human Resources:

- (a) Gather and review data on disconnecting from work practices in the organization; and
- (b) Create a written policy on disconnecting from work that complies with the ESA and best practices.

7.02 The Manager of Human Resources in consultation with the Strategic Leadership Team (SLT) and the Joint Health and Safety Committee (JHSC) will:

- (a) Collect and evaluate data on organizational practices around disconnecting from work outside of normal working hours. Data collection methods may include employee surveys, observations, discussions, reviews of reports on overtime and other sources.
- (b) Create and implement a written policy on disconnecting from work that meets legislated requirements and municipal best practices. The policy will form part of the HR policy manual so that every employee is covered under a written policy. The implementation team will use **Attachment B – Disconnecting from Work Checklist** to further inform the basic requirements of the disconnecting from work policy.
- (c) Ensure that the policy preserves principles of equity, employee accommodation and anti-discrimination. The policy should support employee retention strategies, including the availability of flexible work arrangements.
- (d) Ensure communication of the policy to:
  - (i) Employees, and obtain their sign-off.

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- (ii) Members of Council, residents and other stakeholders whom the policy will impact. Awareness of the policy will manage expectations about employees' response times.
- (e) Ensure that HR provides training and orientation for managers and all other employees.
- (f) Review the right to disconnect policy as needed to assess its effectiveness and identify opportunities for continual improvement.
- (g) Ensure retention of the policy for at least three years after it ceases to have effect and otherwise comply with document retention policies.

7.03 Managers and other leaders will be expected to:

- (a) Model appropriate behaviours, for instance, by communicating with direct reports only during their normal work hours, except in cases of an emergency or as previously agreed to. Leaders should demonstrate in real terms that they themselves disconnect outside of their own normal working hours.
- (b) Foster an environment and culture in which employees feel free to exercise their right to disconnect, by, among other things:
  - (i) Not penalizing employees who rely on their right to disconnect. Managers should avoid formal sanctions, discipline or other informal or non-verbal penalties.
  - (ii) Not rewarding employees who pressure others to surrender their right to disconnect or surrender their own rights in order to be hyper-available for work.
- (c) Set realistic deadlines and schedules, reallocate work, create adequate backup, on-call or standby arrangements, and otherwise ensure that direct reports can complete work during normal working hours. Managers should minimize overtime demands, strongly discourage or prohibit working through breaks, sick leaves, vacations or other leaves, and other encroachments on personal time.
- (d) Ensure that each direct report is informed of what their normal working hours are reasonably expected to be and are informed of the circumstances in which they will be expected to engage in work-related communications outside of their normal working hours.
- (e) Monitor direct reports' work patterns and hours to ensure compliance with this policy. Monitoring may include reviewing reports on system log-on or overtime hours. Leaders must document and be able to provide proof of the specific steps and due diligence undertaken to ensure compliance with the policy.
- (f) Follow-up with direct reports who appear to be working excessive hours or hours outside of their normal working hours. Document follow-up in writing. Evidence may be required to defend against allegations that the organization knowingly permitted policy violations.
- (g) Act on an employee's notification that he or she cannot disengage from work. Prompt action will de-escalate disputes. Document corrective actions taken and resolutions.

STATEMENT of POLICY and PROCEDURE			
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- (h) Ensure equitable treatment of employees who work flexible hours, remotely, require accommodation, or are otherwise at risk of adverse impacts related to the right to disconnect. For instance, ensure that:
  - (i) These employees understand and can define their normal working hours. The lines are particularly blurry when employees work from home or have atypical arrangements.
  - (ii) If necessary, employees with flexible work hours confirm, or document their actual hours worked in time-tracking software or mechanisms. A simple spreadsheet or even email confirmations may suffice.
  - (iii) There is documented evidence that these employees are not being deprived of their right to disengage from work.
- (i) Ensure that direct reports take vacations and other leaves and encourage them to disengage from work-related communication and work during that time. Vacations are essential from both wellness and internal control perspectives. For example, leaders may ask:
  - (i) IT to deny email access to employees on vacation.
  - (ii) Direct reports to engage auto-replies or “out of office” messages explaining that they are away and asking the sender to contact their backup.
- (j) Where applicable, compensate direct reports for on-call, standby, overtime or similar hours by encouraging and reminding employees to report their hours. Also comply with ESA or collective agreement provisions on maximum work hours, overtime, health and safety, rest periods between shifts, safe use of equipment and other matters. Do not deny payment for validly claimed hours. Discourage hidden overtime. (Typically, unless union or other contracts require otherwise, there is no obligation to pay employees for waiting during on-call or standby time. Compensation applies only when the employee reports for or performs work.)
- (k) Ensure that direct reports use appropriate automated messages, phone greetings or email signature messages to communicate expectations about response times. See Sample Message Templates (Attachment A).
- (l) Establish emergency communication protocols with direct reports. For instance, the protocol may be to text or contact a landline instead of email or cell phone in an emergency.

7.04 The Human Resources Manager or staff will:

- (a) Prepare and maintain the disconnecting from work policy with assistance and collaboration from Managers and other municipal leaders, including the provision of data or policy amendments. Human Resources may need to advise on the interplay between the disconnecting from work policy and other policies, including those on equity, accommodation, overtime and hours of work.
- (b) Provide training and orientation for managers and other employees.



STATEMENT of POLICY and PROCEDURE			
Chapter:	Human Resources	SPP No.	<b>HR 2.31.ON</b>
Section:	Employment Policies	Issued:	May 31, 2022
Subject:	<b>DISCONNECTING from WORK</b>	Effective:	May 31, 2022
Issue to:	All Manual Holders	Page:	6 of 14
		Replaces:	HR 2.31.ON
Issued by:	Human Resources	Issued:	May 31, 2022

- (c) Ensure that employment contracts or amendments define normal working hours.
- (d) Ensure that each new hire receives and acknowledges receipt of the disconnecting from work policy within the first 30 days of his or her employment. Ensure that existing employees receive and acknowledge receipt of amended policies within 30 days after changes to the policy. Policies may be provided in hard copy or, if employees have access to a printer and know how to use it, in soft copy by email attachment or posting to the intranet.
- (e) Apply the disconnecting from work policy equitably, in the context of other policies, including those on overtime, breaks, vacations, health and safety, flexible work hours, remote work, hybrid work arrangements and accommodations.
- (f) Investigate and resolve complaints or disputes between employees and managers or colleagues.

7.05 IT will provide technological support to enable the smooth operation of the disconnecting from work policy by providing automated or other technological tools. For instance, the IT department may need to disable an employee's system access during his or her vacation, implement pop-up messages to employees who log on to email software outside of normal working hours or take the email server offline after hours.

7.06 All employees will:

- (a) Take responsibility for their ability to disengage from work by:
  - (i) Knowing their normal working hours and the organization's normal business hours and being aware of circumstances in which they will be expected to engage in work-related communications outside of their normal working hours.
  - (ii) Notifying their managers if they are routinely unable to disengage from work outside of their normal working hours because of excessive meetings, overtime, workload, or frequent communications from colleagues or others.
  - (iii) Claiming overtime, standby or on-call pay if eligible. Some employers only compensate employees on stand-by or on-call if the employee performs work or reports to work.
  - (iv) Notifying their managers of pressures to waive their rights to disconnect. If the manager fails to resolve the concerns, employees may escalate the matter to HR or the union's grievance procedures.
  - (v) Tracking work hours and complying with other procedures implemented under this policy. For instance, employees with flexible or remote work arrangements may need to document actual work hours in software or other tracking mechanisms.
  - (vi) Taking leaves and breaks and truly disconnecting. Employees should notify managers in writing if they lose the benefit of a leave or break because of any inability to disconnect from work. Provide details of when the interruption occurred and why, so that managers can address root causes.

STATEMENT of POLICY and PROCEDURE			
Chapter:	Human Resources	SPP No.	<b>HR 2.31.ON</b>
Section:	Employment Policies	Issued:	May 31, 2022
Subject:	<b>DISCONNECTING from WORK</b>	Effective:	May 31, 2022
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- (vii) Putting away work materials and carrying out other end-of-day rituals at the end of the workday. These disengagement procedures are critical particularly for employees working at home. For remote workers, the best practice is to have a dedicated workspace in the home to make it easier to separate work and personal time and space.
  - (viii) Managing electronic devices and communication, for instance, by using different email accounts for work and personal purposes, separate devices for work and personal use or a dual Subscriber Identity Module (SIM) device to better separate work and personal phone numbers. Use sender-based rules in email software to generate notifications for urgent emails.
  - (b) Respect the rights of other employees to disengage from work by:
    - (i) Ideally, not sending emails or other electronic communications outside of business hours, even if no response is requested or expected before their normal working hours. For instance, use email software's delivery options to delay delivery of emails until normal working hours.
    - (ii) Using the appropriate tone when communicating outside of normal working hours or business hours. For instance, do not unnecessarily request an "immediate" or "urgent" response. Instead, state in the email signature or body that a reply is not expected until the recipient's normal working hours.
    - (iii) Scheduling meetings with due regard to normal working hours and business hours. For instance, do not schedule meetings too close to the end of the workday or after normal working hours. Minimize the number of meetings by ensuring that each meeting is truly necessary before scheduling it. Invite only necessary participants. Employees are reportedly experiencing meeting and on-camera fatigue caused by the widespread use of Zoom, Teams and similar platforms during the COVID-19 pandemic.
  - (c) Communicate response times. For instance, enable autoreplies to convey out of office status and intended response times before the start of vacations and other leaves.
- 7.07 This policy will be reviewed by January 31 of each alternating year. If amendments are required, such amendments may be administratively implemented by the Chief Administrative Officer without Council consideration or ratification and the revised policy will be issued by March 1 of that year. Employees will be provided with the updated policy within 30 days of the policy being reissued. A copy of the updated policy will also be provided to Council in accordance with normal Council procedures.
- 7.08 **The Township of Wainfleet** will ensure that copies of this policy, including any subsequent revisions, are retained for a period of three years after the policy ceases to be in effect.

STATEMENT of POLICY and PROCEDURE			
Chapter:	Human Resources	SPP No.	<b>HR 2.31.ON</b>
Section:	Employment Policies	Issued:	May 31, 2022
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## 8

### ATTACHMENTS

Attachment A — Sample Message Templates

Attachment B — Disconnecting from Work Checklist

## **Attachment A — Sample Message Templates**

### **Sample Message Templates**

#### **Sample 1 – Autoreply from an individual's email account**

My normal hours of work are 8:30 a.m. to 4:30 p.m. I will respond to your email within these hours on the next business day.

#### **Sample 2 – Autoreply to anyone emailing any employee in the organization**

We are open from 8:30 a.m. to 4:30 p.m., Monday to Friday. Our employees will respond to your email during these hours on the next business day.

DRAFT

## Disconnecting from Work Checklist

This checklist covers the basic requirements of the disconnecting from work policy, including the following:

### The Requirement to Have a Policy

#### Policy Scope and Content

#### Changes to the Policy

#### Withdrawal or Retention of the Policy

#### Document Retention

No.	Questions	Yes/No
<b>The Requirement to Have a Policy</b>		
1.	<p>Have you assessed employee headcount as of January 1, 2022?</p> <p>A “No” answer means non-compliance with the ESA requirement to assess employee headcount by January 1, 2022, to determine whether or not the organization needs a disconnecting from work policy.</p>	
2.	<p>Do you employ 25 or more employees as of January 1, 2022?</p> <p>If yes, you need a written disconnecting from work policy in place by June 2, 2022, and the rest of this checklist will apply.</p> <p>If the answer to this question is “No,” you do not need a written disconnecting from work policy at this time and do not need to complete the rest of this checklist.</p> <p>However, the Manager of Human Resources should mark the HR calendar to complete another assessment by January 31, 2024, and in alternating years thereafter. (See question 3 below.)</p>	

No.	Questions	Yes/No
3.	<p>Do you employ 25 or more employees as of January 1, [2023]?</p> <p>If the answer to this question is “Yes,” the organization needs to have a written policy in place before March 1, [2023], and complete the rest of this checklist.</p> <p>If the answer to this question is “No,” re-perform this assessment on January 31st of every alternating year, starting in 2024. Mark calendars so that the organization does not forget.</p>	
4.	<p>Has the Manager of Human Resources marked the HR calendar to re-perform the assessments above by January 31st of each year?</p>	
5.	<p>Does the employee count include all relevant employees?</p> <p>In assessing whether the organization meets the 25-or-more employee threshold:</p> <ul style="list-style-type: none"> <li>• Multi-location employers should include employees working at all the different locations even if any location has less than 25 employees.</li> <li>• Assess whether two or more employers may be treated as one under the ESA.</li> <li>• Exclude temporary employees that a temporary help agency provides. The temporary help agency will include such employees in their own assessment of headcounts, regardless of whether those employees are active or inactive.</li> <li>• Count unique individuals, not full-time equivalents (FTEs). Each part-time or casual employee counts as one employee regardless of their FTE.</li> </ul>	

No.	Questions	Yes/No
<b>Policy Scope and Content</b> <b>(A “No” answer to any of the following questions may indicate non-compliance)</b>		
6.	<p>Does the disconnecting from work policy cover every employee regardless of their status, FTE or work arrangement?</p> <p>This assumes that the organization has a single disconnecting from work policy.</p> <p>The policy must cover all employees, be they homeworkers, probationary employees, directors and officers who work for wages, employees hired for fixed tasks or terms of any length, employees on lay-off if their employment was not severed or terminated, employees on leaves of absence, strike or lockout, some trainees and employees who may be exempt from other sections of the ESA.</p>	
7.	Does the policy include the date the policy was prepared?	
8.	Has each existing employee received a copy of the policy within 30 calendar days of the date the policy was prepared?	
9.	Has the organization provided each new hire with a copy of the policy within 30 calendar days of the employee’s start date?	
10.	<p>Has the organization provided the policy to employees in an appropriate format?</p> <p>For example, the organization may provide the policy in hard copy, or attached to an email or posted to the intranet so that the employee can print it. If the organization does not provide the policy in hard copy, it must ensure that employees have access to a printer and know how to use it.</p>	

No.	Questions	Yes/No
11.	<p>Has the organization assessed whether the right to disconnect policy provides a greater right or benefit than the ESA?</p> <p>If the answer to the above is “No,” the organization should make this assessment.</p> <p>The organization should remain alert to instances where the disconnecting from work policy provides greater benefits or rights than the ESA requires—the greater rights and benefits are enforceable at common law and, as explained below, under the ESA.</p> <p>One potential area where the right to disconnect policy or contract may provide greater rights and benefits than those available under the ESA relates to standby hours and when the <a href="#">Exemptions, Special Rules and Establishment of Minimum Wage, O Reg 285/01 (O Reg 285/01)</a> deems work to be performed. For example, under section 2(b) of O Reg 285/01, employees are not performing work if they are not at the place of employment and are waiting or holding themselves ready for a call to work.</p> <p>Consequently, if the policy, collective agreement or employment contract provides greater rights than the ESA, the policy may be enforceable under the ESA. If this policy does not provide greater rights than the ESA, the policy may not be enforceable under the ESA.</p>	
12.	<p>Have you provided the policy to employees in the proper format?</p> <p>For example, the organization may provide the policy in hard copy, attached to an email, or posted to the intranet so that the employee can print it. If the organization does not provide the policy in hard copy, it must ensure that employees have access to a printer and know how to use it.</p>	
<b>Changes to the Policy</b>		
13.	<p>Have there been changes to the disconnecting from work policy?</p> <p>If yes, employees must receive an updated copy of the policy, and other requirements apply. If there are no changes, there is no need to provide an updated policy.</p>	



No.	Questions	Yes/No
14.	Does the policy reflect the date the change was made?  “No” means non-compliance with ESA requirements.	
15.	Have you provided all existing employees with a copy of the revised policy within 30 days of changing the policy?  “No” means non-compliance with ESA requirements.	
16.	Have you provided each new hire with a copy of the changed policy within 30 calendar days of the employee’s start date?  “No” means non-compliance with ESA requirements.	
<b>Withdrawal or Retention of the Policy</b>		
17.	<p>Are you planning to withdraw an existing policy, reinstate a previously withdrawn policy or implement a policy for the first time because of changes to the employee headcount after January 1 of a calendar year?</p> <p>If “Yes,” assess whether implementation, reinstatement or withdrawal of the policy is necessary under the ESA. The relevant date to determine whether the ESA requires the organization to have a policy is January 1—no other date during the calendar year. If that determination was performed accurately, there is no ESA requirement to change a decision made on January 1 to implement, reinstate or withdraw a policy, even if the headcount changes thereafter.</p> <p>Even if there is no requirement to have a policy under the ESA, the organization may prefer to have the policy as a best practice.</p>	
<b>Document Retention</b> <b>(A “No” answer may indicate non-compliance)</b>		
18.	Have you retained a copy of the disconnecting from work policy for at least three years after the policy is no longer in effect?	

## ADMINISTRATIVE STAFF REPORT

ASR-0142022

**TO:** Mayor Gibson & Members of Council

**FROM:** Jennifer Stirton, Township Solicitor

**DATE OF MEETING:** May 31, 2022

**SUBJECT:** Proposed Replacement of Noise Control By-law

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### **RECOMMENDATION(S):**

**THAT** Administrative Staff Report ASR-014/2022, Proposed Replacement of Noise Control By-law, be received for information; and

**THAT** the proposed Noise Control By-law appended to this report be presented to Council for consideration; and

**THAT** Council adopt and enact the proposed Noise Control By-law.

### **EXECUTIVE SUMMARY:**

In May 2021, the Township received a complaint that Township of Wainfleet By-law No. 042-2018, as amended by By-law Nos. 047-2019 and 023-2022 ("the Noise By-law"), did not adequately regulate or prohibit noise that was disturbing to the complainants. In response to this complaint, staff reviewed the Noise By-law and determined that it would be beneficial to replace the existing by-law to address gaps in noise regulation in the Township and to facilitate administration and enforcement of the by-law.

### **BACKGROUND:**

Section 129 of the *Municipal Act, 2001* authorizes the Township to regulate with respect to noise. The Noise By-law presently prohibits noise created by or resulting from certain acts that is clearly audible at a point of reception.

Section 3 of the Noise By-law prohibits all noise from specified acts. The listed acts include operating a motor vehicle in such a way that its tires squeal, persistent sounding of alarms, bells and horns and the operation of sound-emitting devices at a volume that is clearly audible at other properties with their doors and windows closed.

Section 4 of the Noise By-law prohibits all noise from specified acts during prescribed times. The listed acts include shouting, yelling, whistling, etc. that "*disturbs the peace, quiet comfort or repose of any person in any residential unit*" between 11:00 p.m. and 7:00 a.m. daily (10:00 a.m. on Sundays and holidays), the operation of combustion engine lawn and garden maintenance equipment between 9:00 p.m. and 7:00 p.m. (10:00 a.m. on Sundays and holidays) and the operation construction equipment between 9:00 p.m. and 7:00 a.m. or at any time on Sundays and holidays.

The Noise By-law does not presently prohibit noise that does not arise from a listed act, nor does it define “*clearly audible*”. The Noise By-law also contains several exemptions, some of which are very broad. For example, the Noise By-law does not apply to sound emitted in connection with any celebration in commemoration of a statutory holiday or religious holiday. These factors impact the efficacy of the Noise By-law and suggest that substantial changes are required.

### **OPTIONS/DISCUSSION:**

The proposed Noise Control By-law is appended to this report. The key differences between the existing by-law and the proposed by-law can be summarized as follows:

Item	Existing Noise By-law	Proposed Noise Control By-law
Overall Approach to Noise Prohibition	<ul style="list-style-type: none"> <li>Prohibits noise created by or resulting from specified acts</li> </ul>	<ul style="list-style-type: none"> <li>Prohibits noise that is unreasonable or likely to disturb inhabitants</li> <li>Deems noise resulting from certain acts to be unreasonable or likely to disturb inhabitants but does not limit prohibited noise to listed acts</li> </ul>
General Prohibitions	<ul style="list-style-type: none"> <li>Prohibits all noise created by listed acts that is clearly audible at a point of reception</li> <li>Does not define clearly audible</li> </ul>	<ul style="list-style-type: none"> <li>Prohibits noise resulting from listed acts at any time or place and deems such noise to be unreasonable or likely to disturb inhabitants</li> <li>Expands listed acts to include noises not presently prohibited</li> <li>Defines “<i>Clearly Audible</i>”</li> </ul>
Prohibitions by Time and Place	<ul style="list-style-type: none"> <li>Prohibits noise resulting from listed acts that is clearly audible at a point of reception</li> <li>Does not define clearly audible</li> </ul>	<ul style="list-style-type: none"> <li>Prohibits noise resulted from listed acts at certain times and locations</li> <li>Expands listed acts to include noises not presently prohibited</li> <li>Defines “<i>Clearly Audible</i>”</li> </ul>
Exemptions	<ul style="list-style-type: none"> <li>Exempts sounds emitted in connection with certain acts</li> </ul>	<ul style="list-style-type: none"> <li>Expands list of exemptions but restricts their breadth</li> </ul>
Temporary Exemptions	<ul style="list-style-type: none"> <li>Requires requests for temporary by-law exemptions to be made to Committee of Adjustment</li> </ul>	<ul style="list-style-type: none"> <li>Provides procedure for temporary by-law exemption requests to be made to and approved by Township staff</li> </ul>

The proposed Noise Control By-law addresses gaps in the current by-law by prohibiting all noise that is unreasonable or likely to disturb the inhabitants of the Township. As a general legal principle, the Township has considerable discretion to determine how it will enforce its by-laws as long as it acts reasonably and in good faith. The proposed Noise Control By-law preserves the discretion to determine if noise is unreasonable or likely to disturb inhabitants but also provides guidance to assist with the assessment, including deeming certain sources of noise to be unreasonable or likely to disturb inhabitants and defining “*Clearly Audible*”.

Some municipal noise by-laws include an objective threshold for prohibited noise, such as decibel readings. This is an option that Council could consider; however, it would require the determination and justification of an appropriate decibel or other threshold, the purchase, calibration and maintenance of sound measuring equipment and staff training on the use of such equipment. In addition, staff understand that the Niagara Regional Police Service, which provides by-law enforcement services for the Township when by-law staff are not on duty, may not enforce a decibel-based standard.

**FINANCIAL CONSIDERATIONS:**

There are no direct financial implications if the proposed Noise Control By-law is adopted.

**OTHERS CONSULTED:**

Strategic Leadership Team

By-law Staff

**ATTACHMENTS:**

1) Appendix "A" – Proposed Noise Control By-law

Respectfully submitted by,

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Jennifer Stirton  
Township Solicitor

Approved by,

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William J. Kolasa  
Chief Administrative Officer

## **APPENDIX “A”**

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# THE CORPORATION OF THE TOWNSHIP OF WAINFLEET

## BY-LAW NO. 0XX-2022

Being a By-law to regulate and control noise in the Township of Wainfleet and to repeal By-law No. 042-2018, as amended by By-law 047-2019 and By-law No. 023-2022.

**WHEREAS** section 8 of the *Municipal Act, 2001*, S.O. 2001, c. 25 ("*Municipal Act, 2001*" or "the statute") provides that the powers of a municipality under the statute or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues;

**AND WHEREAS** section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the statute or any other Act;

**AND WHEREAS** section 11 of the *Municipal Act, 2001* authorizes a municipality to pass by-laws respecting the economic, social and environmental well-being of the municipality, the health, safety and well-being of persons and the protection of persons and property and further authorizes it to pass by-laws respecting animals;

**AND WHEREAS** section 129 of the *Municipal Act, 2001* authorizes a municipality to pass by-laws to prohibit and regulate with respect to noise;

**AND WHEREAS** section 425 of the *Municipal Act, 2001* authorizes a municipality to create offences for the contravention of its by-laws;

**AND WHEREAS** section 429 of the *Municipal Act, 2001* authorizes a municipality to establish a system of fines for offences under its by-laws;

**AND WHEREAS** section 434.1 of the *Municipal Act, 2001* authorizes a municipality to establish a system of administrative monetary penalties to assist the municipality in promoting compliance with its by-laws;

**AND WHEREAS** the Council of the Township of Wainfleet deems it necessary and desirable in the public interest to regulate noise in the municipality and to enact this By-law for that purpose;

**NOW THEREFORE** the Council of the Township of Wainfleet enacts as follows:

### 1. SHORT TITLE

1.1. This By-law shall be known as the "Noise Control By-law".

### 2. DEFINITIONS

2.1. In this By-law:

**"Administrative Monetary Penalty"** means a monetary penalty administered pursuant to Township By-law No. 027-2019, as amended from time to time.

**"Agricultural Operation"** has the same meaning as in the *Farming and Food Production Protection Act, 1998*, S.O. 1998, c. 1 ("*Farming and Food Production Protection Act, 1998*").

**"Animal"** means any member of the animal kingdom other than a human.

**"Clearly Audible"** means that the sound or noise in question is easily perceptible, without undue effort, to a disinterested person with no hearing disability.

**"Community Event"** means an event that is open to the public including but not limited to a fair, exhibition, celebration, sporting event, concert, festival, parade, or other similar event, which may be presented or hosted by the Township or by another Person or organization.

**“Construction”** means erection, alteration, repair, dismantling, demolition, structural maintenance, excavating, laying pipe or conduit, street and highway building, equipment installation and alteration and the structural installation of construction components and materials in any form, and includes any work in connection therewith, but does not include Domestic Construction.

**“Construction Equipment”** means any equipment or device used or intended for use in Construction, including but not limited to hand tools, power tools, air compressors, pile drivers, pneumatic or hydraulic tools, bulldozers, tractors, excavators, trenchers, cranes, derricks, loaders, scrapers, pavers, generators, haulers or trucks, ditchers, compactors and rollers, pumps, concrete mixers, graders or other material handling equipment.

**“Conveyance”** means a vehicle or any other device used to transport a Person or Persons or goods from place to place.

**“Council”** means the Council of The Corporation of the Township of Wainfleet.

**“Domestic Construction”** means erection, alteration, repair, dismantling, demolition, structural maintenance, excavating, laying pipe or conduit and installation of equipment or construction components or materials at a Property in a Residential Area that is carried on by the Owner of the Property.

**“Domestic Construction Equipment”** means any equipment or device used or intended for use in Domestic Construction, including but not limited to air compressors, pneumatic or hydraulic tools, hand tools, tractors, excavators, loaders, backhoes, generators, concrete mixers or other such equipment.

**“Exemption Authority”** means the Township Clerk or their designate and any other Person appointed by the Township to authorize exemptions from this By-law.

**“Highway”** has the same meaning as in the *Highway Traffic Act*, R.S.O. 1990, c. H.8 (*“Highway Traffic Act”*) and, for greater certainty, includes all municipal, regional and provincial highways within the boundaries of the Township of Wainfleet.

**“Holiday”** means New Year’s Day, Family Day, Good Friday, Easter Monday, Victoria Day, Canada Day, Labour Day, Thanksgiving Day, Christmas Day, Boxing Day and any day set out in a Township By-law to be a Holiday.

**“Inhabitants”** means one or more Persons who reside in the Township, temporarily or permanently, and may include visitors to the Township.

**“Motor Vehicle”** has the same meaning as in the *Highway Traffic Act*.

**“Normal Farm Practice”** has the same meaning as in the *Farming and Food Production Protection Act*, 1998.

**“Officer”** means any by-law enforcement officer appointed by Council for the purpose of enforcing the by-laws of the Township or any provincial offences officer, member of the Niagara Regional Police Service and/or member of the Ontario Provincial Police.

**“Order”** means an order issued under this By-law.

**“Owner”** means any Person that is a registered owner of a Property.

**“Persistent”** means continuously for a period of ten (10) minutes or longer or intermittently for an aggregate period of ten (10) minutes or longer in any sixty (60) minute period.

**“Person”** means an individual, corporation, partnership or association.

**“Point of Reception”** means any location on a Property where noise originating from other than that Property is received.

**“Property”** means any land or premises within the Township.

**“Residential Area”** means those areas in the Township where residential use is permitted under the zoning by-laws of the Township, as enacted and amended by the Township from time to time, or where human habitation is a legal non-conforming use.

**“Township”** means The Corporation of the Township of Wainfleet.

**“Township Clerk”** means the Clerk of the Township.

### **3. GENERAL PROHIBITION**

- 3.1. No Person shall at any time make, cause or permit an unreasonable noise or a noise that is likely to disturb Inhabitants.

### **4. DEEMED PROHIBITIONS AT ANY TIME AND PLACE**

- 4.1. Without limiting the generality of section 3.1, noise resulting from any of the following acts is deemed to be unreasonable noise or noise that is likely to disturb Inhabitants:
- (a) the operation of a Motor Vehicle in an unauthorized race;
  - (b) the operation of a Motor Vehicle in a manner that causes the tires of the vehicle to squeal;
  - (c) the operation of a Motor Vehicle or trailer in a manner that results in rattling, banging, clanking, grinding, squealing or other like sound or noise due to disrepair or inadequate maintenance or due to an improperly secured load;
  - (d) the operation of a Motor Vehicle without an effective exhaust muffling device that is in proper working order and in constant operation;
  - (e) the operation of Construction Equipment without an effective exhaust muffling device that is in proper working order and in constant operation;
  - (f) the operation of a bell, horn, siren or other warning device on a Motor Vehicle, bicycle or other vehicle except as authorized by law or in accordance with good safety practices;
  - (g) the operation of a bell, horn, siren or other warning device on a Motor Vehicle, bicycle or other vehicle for an unnecessary or unreasonable period of time;
  - (h) the operation of a radio, amplifier, speaker or other similar device on or in a Motor Vehicle, trailer or vehicle in a manner or with such volume that is Clearly Audible at least 8 metres from the vehicle;
  - (i) the operation of any instrument, radio, television, record or tape player, digital music source, amplifier, loudspeaker, electronic sound system or other similar sound-producing device for the purpose of advertising a good or service in a manner that projects sound or noise into any public street or other public place;
  - (j) the operation of any instrument, radio, television, record or tape player, digital music source, amplifier, loudspeaker, electronic sound system or other similar sound-producing device in a manner or with such volume that it is Clearly Audible in a residential dwelling or commercial unit with the doors and windows closed at a Property other than the Property from which the sound originates;
  - (k) the Persistent barking, howling, whining or other like sounds of any Animal kept or used for any purpose other than a Normal Farm Practice carried on by an Agricultural Operation.

### **5. DEEMED PROHIBITIONS BY TIME AND PLACE**

- 5.1. Without limiting the generality of section 3.1, noise resulting from any of the following acts is deemed to be unreasonable noise or noise that is likely to disturb Inhabitants where it is Clearly Audible at a Point of Reception:
- (a) the operation of a combustion engine used or intended for use in a toy, model or replica of any device, which has no function other than amusement and which is not a Conveyance, between the hours of 8:00 p.m. of one day and 8:00 a.m. of the following day;
  - (b) the operation of any motorized Conveyance other than on a Highway between the hours of 8:00 p.m. of one day and 8:00 a.m. of the following day other than on Sundays and Holidays;
  - (c) on Sundays and Holidays, the operation of any motorized Conveyance other than on a Highway prior to 11:00 a.m.;
  - (d) the racing of any motorized Conveyance when regulated by law between the hours of 9:00 p.m. of one day and 9:00 a.m. of the following day other than on Sundays and Holidays;



- (e) on Sundays and Holidays, the racing of any motorized Conveyance when regulated by law prior to 10:00 a.m.;
- (f) the operation or use of any tool for lawn, yard or garden maintenance between the hours of 9:00 p.m. of one day and 7:00 a.m. of the following day other than on Sundays and Holidays;
- (g) on Sundays and Holidays, the operation or use of any tool for lawn, yard or garden maintenance prior to 10:00 a.m.;
- (h) the operation or use of Construction Equipment between the hours of 8:00 p.m. of one day and 7:00 a.m. of the following day other than on Sundays and Holidays;
- (i) on Sundays and Holidays, the operation or use of Construction Equipment at any time;
- (j) the operation or use of Domestic Construction Equipment between 8:00 p.m. of one day and 7:00 a.m. of the following day other than on Sundays and Holidays;
- (k) on Sundays and Holidays, the operation or use of Domestic Construction Equipment prior to 10:00 a.m.;
- (l) the Persistent shouting, yelling, hooting, whistling or singing or other like sounds of any Person between the hours of 8:00 p.m. of one day and 8:00 a.m. of the following day, other than on Sundays and Holidays; and
- (m) on Sundays and Holidays, the Persistent shouting, yelling, hooting, whistling or singing or other like sounds of any Person prior to 11:00 a.m.

## **6. APPLICATION OF STRICTEST STANDARD**

- 6.1. Where a source of noise is subject to more than one provision of this By-law, the most restrictive provision shall apply.

## **7. GENERAL EXEMPTIONS**

- 7.1. This By-law shall not apply to noise resulting from:
  - (a) emergency measures undertaken for the immediate health, safety or welfare of any Person or Persons in the Township or for the preservation or restoration of property;
  - (b) emergency measures undertaken by or on behalf of the Township;
  - (c) the operation of any emergency service vehicle carrying out its lawful duties;
  - (d) the operation of any railway or airport under Parliament's legislative authority;
  - (e) the operation of equipment by or on behalf of the Township for Construction projects, general maintenance projects and emergency projects of the Town;
  - (f) the operation of equipment by or on behalf of the Township for maintenance operations including but not limited to snow removal, street cleaning, grass cutting, planting and pruning of trees and shrubs, and Property maintenance;
  - (g) the collection or disposal of garbage, waste or recyclable material by or on behalf of the Township or the Regional Municipality of Niagara;
  - (h) the reasonable use of equipment for snow removal at any Property;
  - (i) Community Events presented or hosted by the Township;
  - (j) Community Events presented or hosted by any other Person that have been authorized or approved by the Township, provided that the event is carried on in accordance with all terms and conditions of the authorization or approval;
  - (k) sports and recreational activities held on Property owned by the Township that have been authorized or approved by the Township, provided that the sport or recreational activity is carried on in accordance with all terms and conditions of the authorization or approval;
  - (l) the operation of bells or chimes in relation to any religious or military ceremony or service or by or on behalf of the Township;
  - (m) a Normal Farm Practice carried on by an Agricultural Operation;
  - (n) the normal operation of wind turbines; and

- (o) activities carried out in compliance with a permission granted under federal or provincial legislation, including but not limited to an environmental compliance approval.

## **8. TEMPORARY EXEMPTIONS**

- 8.1. Any Person may apply to the Township for a temporary exemption from this By-law or any provision of it with respect to any source of noise to allow such Person to make, cause or permit such noise for the period of time set out in the application.
- 8.2. An application under section 8.1 shall be made in writing to the Exemption Authority, in the form determined by the Exemption Authority from time to time, and shall be submitted not less than fifteen (15) days prior to the commencement of the activity for which the temporary exemption is sought.
- 8.3. An application under section 8.1 shall contain the following:
  - (a) the name and contact information of the Person making the application;
  - (b) the municipal address of the Property where the activity for which a temporary exemption is sought will be held;
  - (c) where the Person making the application does not own the Property where the activity will be held:
    - i. the name and contact information of the Owner(s) of the Property; and
    - ii. written approval of the application by the Owner(s) of the Property;
  - (d) a description of the activity for which the temporary exemption is sought;
  - (e) the days and hours for which the temporary exemption is sought;
  - (f) a description of the source and level of the noise for which the temporary exemption is sought;
  - (g) a statement of the steps, if any, planned or being taken to minimize the noise;
  - (h) a statement of the provision or provisions of this By-law from which the temporary exemption is sought;
  - (i) the rationale for the temporary exemption request and the reason(s) it should be granted; and
  - (j) the name and contact information of the Person responsible for supervising the activity for which the temporary exemption is sought and will be available during the activity to address concerns raised by Persons in any area where the noise is Clearly Audible.
- 8.4. Upon receipt of an application that contains all information required under section 8.3, the Exemption Authority shall review and determine the application.
- 8.5. The Exemption Authority may grant or refuse an application and may impose such terms and conditions on a temporary exemption as are considered appropriate.
- 8.6. Where the Exemption Authority grants a temporary exemption, any breach of the terms or conditions of the exemption by any Person shall render it null and void.

## **9. ENFORCEMENT**

- 9.1. This By-law shall be enforced by an Officer.
- 9.2. For the purposes of enforcing this By-law, an Officer may exercise any power, authority or remedy granted to the Township pursuant to the *Municipal Act, 2001* and the *Provincial Offences Act*, R.S.O. 1990, c. P. 33 ("*Provincial Offences Act*").
- 9.3. No Person shall hinder or obstruct an Officer from exercising a power or performing a duty under this By-law.
- 9.4. Where an Officer is satisfied that a Person has contravened any provision of this By-law, the Officer may make an Order requiring the Person who contravened the By-law and/or the Owner of the Property where the contravention occurred to discontinue the contravention.

- 9.5. The Order shall include the municipal address of the Property where the contravention occurred, reasonable particulars of the contravention and the time for compliance with the Order.
- 9.6. The Order may be posted at the Property, delivered to the Person and/or the Owner or served by registered mail to the last known address of the Person and/or the Owner. An Order served by registered mail shall be deemed served after five (5) business days.
- 9.7. No Person shall contravene an Order issued under this By-law.

## **10. OFFENCES AND PENALTIES**

- 10.1. Every Person who contravenes any provision of this By-law or an Order issued under this By-law is guilty of an offence and upon conviction is liable to such penalties as are provided for in the *Municipal Act, 2001* and the *Provincial Offences Act*.
- 10.2. Where an Officer is satisfied that a Person has failed to comply with any provision of this By-law, the Officer may issue a penalty notice imposing an Administrative Monetary Penalty. The Administrative Monetary Penalties for failures to comply with this By-law are set out in Schedule "A", which is attached hereto and forms part of this By-law.

## **11. GENERAL**

- 11.1. If any or part of a provision of this By-law is declared by any court or tribunal of competent jurisdiction to be illegal or inoperative, in whole or in part, or inoperative in particular circumstances, the balance of the By-law, or its application in other circumstances, shall not be affected and shall remain in full force and effect.
- 11.2. If there is a conflict between a provision of this By-law and a provision of any other by-law of the Township, the provision establishing the higher standard shall prevail.
- 11.3. Any reference to legislation in this By-law includes the legislation referred to and any amendments, replacement, subsequent enactment or consolidation of such legislation.
- 11.4. This By-law shall come into full force and effect on the date on which it is passed.

## **12. BY-LAWS REPEALED**

- 12.1. By-law No. 042-2018, as amended by By-law No. 047-2019 and By-law No. 023-2022, being a by-law to regulate noise in the Township of Wainfleet, is hereby repealed and replaced.

## **13. ENACTMENT**

- 13.1. This By-law shall come into force on the date that it is passed.

**BY-LAW READ A FIRST TIME THIS XX DAY OF XXXX, 2022.**

**BY-LAW READ A SECOND TIME THIS XX DAY OF XXXX, 2022.**

**BY-LAW READ A THIRD TIME AND FINALLY PASSED THIS XX DAY OF XXXX, 2022.**

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K. Gibson, MAYOR

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M. Ciuffetelli, DEPUTY CLERK

## SCHEDULE "A" TO BY-LAW NO. 0XX-2022

### Short Form Wording and Administrative Penalties

Section	Short Form Wording	Penalty
4. 1 (a)	Operation of a Motor Vehicle in an unauthorized race	\$1,000.00
4. 1 (b)	Operation of a Motor Vehicle in a manner that causes its tires to squeal	\$75.00
4. 1 (c)	Operation of a Motor Vehicle or Trailer in manner that results in noise due to disrepair or unsecured load	\$75.00
4. 1 (d)	Operation of a Motor Vehicle without effective exhaust muffling device	\$75.00
4. 1 (e)	Operation of Construction Equipment without effective exhaust muffling device	\$75.00
4.1 (f)	Operation of bell, horn, siren or other warning device on a Motor Vehicle, bicycle or vehicle not authorized by law or within good safety practices	\$75.00
4.1 (g)	Operation of bell, horn, siren or other similar device on a Motor Vehicle, bicycle or vehicle unnecessarily or for unreasonable period of time	\$75.00
4.1 (h)	Operation of radio, amplifier, speaker or similar device on or in a Motor Vehicle, trailer or vehicle in a manner that is Clearly Audible 8 metres from the vehicle	\$75.00
4.1 (i)	Operation of sound-producing device for purpose of advertising that projects sound into any public street or public place	\$75.00
4.1 (j)	Operation of sound-producing device at a Property in a manner that is Clearly Audible in another dwelling or commercial unit with its doors and windows closed	\$1,000.00
4.1 (k)	Persistent barking, howling, whining or other like sounds of any Animal	\$75.00
5.1 (a)	Operation of a combustion engine used or intended for use in a toy, model or replica that is used only for amusement between 8:00 p.m. one day and 8:00 a.m. the following day	\$75.00
5.1 (b)	Operation of any motorized Conveyance other than on a Highway between 8:00 p.m. one day and 8:00 a.m. the following day, other than on Sundays or Holidays	\$75.00
5.1 (c)	On Sundays and Holidays, operation of a motorized Conveyance other than on a Highway before 11:00 a.m.	\$75.00
5.1 (d)	Racing of any motorized Conveyance when regulated by law from 9:00 p.m. one day and 9:00 a.m. the following day, other than on Sundays and Holidays	\$75.00
5.1 (e)	On Sundays and Holidays, racing of any motorized Conveyance when regulated by law before 10:00 a.m.	\$75.00
5.1 (f)	Operation of any tool for lawn, yard or garden maintenance between 9:00 p.m. one day and 7:00 a.m. the following day, other than on Sundays and Holidays	\$1,000.00

5.1 (g)	On Sundays and Holidays, operation of any tool for lawn, yard or garden maintenance before 10:00 a.m.	\$1,000.00
5.1 (h)	Operation of Construction Equipment, between 8:00 p.m. one day and 7:00 a.m. the following day, other than on Sundays and Holidays	\$75.00
5.1 (i)	On Sundays and Holidays, operation of Construction Equipment before 10:00 a.m.	\$75.00
5.1 (j)	Operation of Domestic Construction Equipment between 8:00 p.m. one day and 7:00 a.m. the following day, other than on Sundays and Holidays	\$75.00
5.1 (k)	On Sundays and Holidays, operation of Domestic Construction Equipment before 10:00 a.m.	\$75.00
5.1 (l)	Persistent shouting, yelling, hooting, whistling, singing or like sounds of any Person between 8:00 p.m. one day and 8:00 a.m. the following day, other than on Sundays or Holidays	\$1,000.00
5.1 (m)	On Sundays and Holidays, Persistent shouting, yelling, hooting, whistling, singing or like sounds of any Person before 11:00 a.m.	\$75.00
9.3	Hinder or obstruct Officer from performing duties	\$250.00

**TO:** Mayor Gibson & Members of Council

**FROM:** Richard Nan, Manager of Operations

**DATE OF MEETING:** May 31, 2022

**SUBJECT:** Site Alteration By-law

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**RECOMMENDATION(S):**

**THAT** Public Works Staff Report PWSR-011/2022 respecting the draft Site Alteration By-law be received; and

**THAT** the draft Site Alteration By-law appended to this report be presented to council for adoption; and

**THAT** the the Township of Wainfleet Administrative Monetary Penalty System By-law be amended to include the new Site Alteration by-law.

**EXECUTIVE SUMMARY:**

Since 2019, staff and present Council have been considering the possibility of a site alteration by-law. Recently, the Township has experienced an influx of soils being delivered from outside the municipality to privately owned properties resulting in numerous public complaints as well as impacts to private properties and municipal infrastructure.

Although the Ministry of the Environment, Conservation and Parks, has initiated legislation to assist in Managing Excess Soils, there is little in the way of provincial enforcement capabilities at this time. Along with the damage to roads, tracking of mud, and the volume of vehicles delivering unknown soils to our community, Council is aware of the imminent need to regulate site alterations to protect our water courses, agriculture, environment and infrastructure.

This report serves to provide Council with a draft by-law proposing to regulate the removal, placing or dumping of fill in the Township of Wainfleet in order to provide staff with the necessary tools to be able to effectively monitor fill importation and manage complaints that are received by the Township from time to time.

**BACKGROUND:**

A draft site alteration by-law had originally been brought to Council in 2008. The draft by-law was defeated and instead replaced with our current Berm By-law No. 012-2009. Since that time, staff has been considering a new draft site alteration by-law in an effort to reduce the damage being done to our road network as well as the dumping of fill on

various parcels of privately owned land. Pursuant to direction from Council, a new draft by-law was brought forward for Council's information in Report PWSR-009/2021 on May 11, 2021. At that meeting, Council enacted the following motion:

**Resolution No. C-121-2021**

Moved by Councillor Gilmore

Seconded by Councillor Cridland

**"THAT** Public Works Staff Report PWSR-009/2021 respecting Site-Alteration By-law be received; and

**THAT** staff be directed to form a sub-committee comprised of Councillor MacLellan, Councillor Cridland, staff and a member of the Drainage Advisory Committee to assist in finalizing the attached Site Alteration By-law in the Township of Wainfleet for the next available meeting."

As the draft by-law was presented to Council, staff were also directed prepare a by-law similar to the City of Thorold's site alteration by-law. As such, staff began the process of investigating various local municipal site alteration by-laws. A member of staff and a Member of Council also attended a symposium to review the newly-created Managing of Excess Soil Legislation being implemented by the Province of Ontario. Council Members also became aware of several incidents located in the Region of Niagara that were experiencing illegal infilling taking place.

As the Township's road network started receiving heavy flow of large truck traffic and damage to the road surface in a few areas of the Township where fill was being brought in from outside the municipality, staff were directed to work with the various Ministries to enforce Provincial regulations in lieu of an enforceable Township by-law. Discussions took place with a representative of the Ministry of the Environment, Conservation and Parks to try and gain assistance with recent issues. The Township was advised of the process to follow so they could enforce their new Managing Excess Soils legislation. Unfortunately, efforts were made to start the process but success of enforcement of the new changes was short lived. As such, staff have now come to the conclusion that it would be appropriate to provide Council with a new draft Site Alteration By-law for review and consideration.

**The Draft Site Alteration By-law**

The draft by-law is required to regulate the removal, placing or dumping of fill in the Township of Wainfleet. The key regulations considered in the draft by-law include;

- Definitions
- Administration and Delegated Authority
- Prohibitions
- Exemptions
- Administration and Issuance of a Permit
- Conditions on a Permit
- Orders, Offences and Penalties

It is important for Council to note that by-law includes exemptions for landowners currently requiring fill as a result of a building permit application, as part of normal farm practices, as well as soil for gardens and simple lawn maintenance activities. The focus of the by-law is intended to regulate the larger quantities of fill that are entering from either inside or outside of the municipality from unknown sources. This will allow the Township to monitor the types of soils being brought in and where they can be placed as not to interfere with our drainage systems and watercourses.

As Council is aware of the recent issues with the importation of fill causing significant road damage, staff are attempting to mitigate any further issues in order to minimize imminent infrastructure damage through the implementation of the new by-law.

The Township Solicitor has reviewed the document prior to preparation of the report and staff have prepared the attached Site Alteration By-law for Council's consideration.

### **OPTIONS/DISCUSSION:**

- 1) Council adopt the Site Alteration by-law as provided (Recommended).
- 2) Council not approve the Site Alteration by-law and continue without an enforceable by-law (Not Recommended).
- 3) Council provide alternative direction to staff.

### **FINANCIAL CONSIDERATIONS:**

Staff will have to set aside the necessary time for processing of applications as well as the required enforcement of the new by-law. The penalty structure may require staff to attend court proceedings along with legal representation as part of the enforcement. Staff time will be required for the inspection of the site and perform an inspection of haul routes prior to and upon completion of the infilling process. As such, staff are recommending the application fees be set at:

- |  |          |
|--|----------|
| • Application Fee for Less than 500m <sup>3</sup>                        | \$500    |
| • Application Fee (500m <sup>3</sup> up to 1000m <sup>3</sup> )          | \$1,000  |
| • Application Fee for greater than 1000m <sup>3</sup>                    | \$1,500  |
| • Road Damage Deposit  | \$10,000 |
| • Additional Security (as provided for in the Site Alteration Agreement) |          |

### **OTHERS CONSULTED:**

- 1) Strategic Leadership Team
- 2) Township Solicitor

### **ATTACHMENTS:**

- 1) Appendix "A" – Draft Site Alteration By-law



Respectfully submitted by,

Approved by,

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Richard Nan  
Manager of Operations

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William J. Kolasa  
Chief Administrative Officer

## **APPENDIX “A”**

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# THE CORPORATION OF THE TOWNSHIP OF WAINFLEET

## BY-LAW NO. 0XX-2022

Being a Site Alteration By-law to regulate the removal, placing or dumping of fill in the Township of Wainfleet.

**WHEREAS** sections 8, 9 and 11 of the *Municipal Act, 2001*, S.O. 2001, c. 25, authorize a municipality to pass by-laws respecting the economic, social and environmental well-being of the municipality, the health, safety and well-being of persons, and the protection of persons and property;

**AND WHEREAS** section 142 of the *Municipal Act, 2001*, S.O. 2001, c. 25, provides that a local municipality may pass by-laws to prohibit or regulate the placing or dumping of fill, the removal of topsoil and the alteration of the grade of land, to require that a permit be obtained for the placing or dumping of fill, the removal of topsoil and the alteration of the grade of land and for imposing conditions to a permit, including requiring the preparation of plans acceptable to the municipality relating to grading, filling or dumping, the removal of topsoil and the rehabilitation of the site;

**AND WHEREAS** sections 23.1, 23.2, 23.3 and 23.5 of the of the *Municipal Act, 2001*, S.O. 2001, c. 25, authorize a municipality to delegate certain powers and duties;

**AND WHEREAS** section 425 of the of the *Municipal Act, 2001* S.O. 2001, c. 25, permits a municipality to pass by-laws providing that any person who contravenes any by-law of the municipality enacted under the statute is guilty of an offence;

**AND WHEREAS** subsection 426(4) of the of the *Municipal Act, 2001*, S.O. 2001, c. 25, provides that any person that hinders or obstructs, or attempts to hinder or obstruct, any person who is exercising or performing a duty under a by-law enacted under the statute is guilty of an offence;

**AND WHEREAS** subsection 444(1) of the *Municipal Act, 2001* S.O. 2001, c. 25, permits a municipality, if satisfied that a contravention of a by-law of the municipality passed under the statute has occurred, to 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;

**AND WHEREAS** section 446 of the *Municipal Act, 2001*, S.O. 2001, c. 25, provides a municipality with the authority to direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person's expense;

**AND WHEREAS** section 434.1 of the *Municipal Act, 2001*, S.O. 2001, c. 25, provides that a municipality may require a person to pay an administrative monetary penalty if the municipality is satisfied that the person has failed to comply with a by-law of the municipality passed under the statute;

**AND WHEREAS** Council of the Township of Wainfleet deems it expedient and in the public interest to enact this By-law;

**NOW THEREFORE** the Council of the Corporation of the Township of Wainfleet enacts as follows:

## **1. SHORT TITLE**

1.1 This By-law may be cited and known as the "Site Alteration By-law".

## **2. DEFINITIONS**

2.1 For the purposes of this By-law:

**"Agricultural Lands"** includes:

- a) land upon which Agriculture is a permitted use pursuant to the applicable zoning by-law(s); and
- b) land which is being used for Agriculture at the time of submission of an application for a Permit;

**"Agricultural uses"** means the growing of crops, including nursery, biomass and horticultural crops; raising of livestock; raising of other animals for food, fur or fibre, including poultry and fish; aquaculture; apiaries; agro-forestry; maple syrup production; associated on-farm buildings and structures, including but not limited to livestock facilities, manure storages, value-retaining facilities and accommodation for full-time farm labour when the size and nature of the operation requires additional employment;

**"Applicable Law"** means all legislative laws, standards, codes, regulation or by-law as amended that may apply;

**"Commercial Fill Operation"** means the removal, placing or Dumping of Fill involving remuneration paid, or other compensation, to an Owner of land whether or not the remuneration or compensation to the Owner is the sole reason for the removal, placing or the Dumping of Fill;

**"Complete Application"** means an application for a Permit that includes the application form and all other plans, fees, securities, certificates, approvals and other documents required to be submitted in accordance Part VII of this By-law;

**“Conservation Authority”** means the Niagara Peninsula Conservation Authority;

**“Council”** means the Council of the Township of Wainfleet;

**“Dump”, “Dumped” or “Dumping”** means the placing or depositing of Fill in a location other than where the Fill was obtained and includes the movement and depositing of Fill from one location to another on the same property;

**“Fill”** means any type of material removed from or deposited or placed on lands and, without limiting the generality of the foregoing, includes soil, subsoil, topsoil, stone, sod, turf, clay, sand, gravel or other such similar material, either singly or in combination, at the discretion of the Manager;

**“Haul Route”** means Roads designated or approved by the Township for the purposes of ingress or egress to a Site Alteration as a condition of a Permit;

**“Lot”** means a parcel of land which can be legally conveyed;

**“Manager”** means the Manager of Operations for the Township of Wainfleet and shall include any Person authorized by the Manager to carry out any of the powers or duties of the Manager pursuant to this By-law;

**“Ministry”** means the Ministry of the Environment, Conservation and Parks;

**“Normal Farm Practice”** means a practice, as defined in the Farming and Food Production Protection Act, 1998, S.O. 1998, C.1, that is 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 management practices. Normal farm practices shall be consistent with the Nutrient Management Act, 2002, S.O. 2002, c.4, and its regulations made under that Act;

**“Officer”** includes:

- a) a Police Officer employed by the Royal Canadian Mounted Police (RCMP), Ontario Provincial Police (OPP) or Niagara Regional Police Service (NRPS);
- b) a Municipal By-law Enforcement Officer of the Township or other Person appointed by or under the authority of a Township by-law to enforce Township by-laws including, but not limited to, the Manager of Operations for the Township and any Person authorized by the Manager to carry out any of the powers or duties of the Manager pursuant to this By-law;

- c) a Provincial Offences Officer designated as such under the *Provincial Offences Act, R.S.O. 1990, c.P.33*;
- d) a Peace Officer authorized to enforce the Highway Traffic Act;

**“Order”** means an order issued under this By-law;

**“Owner”** means the registered owner of land;

**“Permit”** means a permit issued pursuant to the provisions of this By-law which is, subject to Part XI of this By-law, valid for a period of twelve (12) consecutive months from the date of issuance;

**“Person”** means an individual, firm, corporation, association or partnership and includes an Owner;

**“Public Open House”** means a meeting that is open to the public for the purposes of section 9.5 of this By-law;

**“Qualified Person”** means a Person who meets the qualifications as set out in section 5 or 6 of O. Reg. 153/04 - Records of Site Condition - Part XV.1 made under the *Environmental Protection Act, R.S.O. 1990, c. E.19*;

**“Road(s)”** means a common and public highway, and includes a street, bridge or other structure forming part of a highway over or across which a highway passes and includes the whole of a road allowance under the jurisdiction of the Township;

**“Security”** means financial security in the form of a cash deposit or an irrevocable letter of credit to ensure fulfillment of the terms of a Permit or to secure the cost of repairing damage to municipal property as a result of work undertaken under a Permit which is posted under this By-law or pursuant to a Site Alteration Agreement;

**“Site”** means the Lot or Lots altered or proposed to be altered by a Site Alteration;

**“Site Alteration”** means any temporary or permanent removal of Fill from the Site by any means or any temporary or permanent Dumping of Fill on the Site by any means, whether the Fill originates from lands or Lots appurtenant to the Site or from elsewhere;

**“Site Alteration Agreement”** means an agreement between an Owner and the Township required by the Manager as a condition of obtaining a Permit under this By-law;

**“Site Plan”** means a set of drawings that clearly indicates the area on the Site subject to Site Alteration along with the property lines of the Lot or Lots;

**“Topsoil”** means those horizons in a soil profile, commonly known as “O” and “A” horizons, containing organic material and includes deposits of partially decomposed organic material such as peat;

**“Township”** means The Corporation of the Township of Wainfleet;

**“Zoning By-law”** means a by-law passed under section 34 of the *Planning Act*, R.S.O. 1990, c. P.13 (“Planning Act”) and applicable to lands within the Township.

### 3. SCOPE

- 3.1 This By-law shall apply to all Site Alterations within the Township, unless the Conservation Authority has made a regulation under section 28 of the *Conservation Authorities Act*, R.S.O. 1990, c. C.27, applicable to the Site, or unless specifically excluded pursuant to this By-law.

### 4. ADMINISTRATION AND DELEGATED AUTHORITY

- 4.1 The Manager shall be responsible for the administration of this By-law.

- 4.2 The Manager is authorized and has the delegated authority to:

- a) approve, exempt, waive, issue, deny, refuse, revoke, extend, renew, amend, or close a Permit and/or grant approvals of Site Alteration;
- b) impose conditions on the issuance of a Permit;
- c) determine and deem an application for a Permit to be abandoned, expired, or closed;
- d) approve and coordinate any works required to remediate a Site as part of or subsequent to a Site Alteration;
- e) approve amendments to Site Alteration Agreements;
- f) appoint a peer review consultant or other engineering, scientific and/or technical experts to fulfill the role or duties of a Officer for purposes of this By-law;
- g) require or exempt any works from the requirements of this By-law;
- h) authorize any Person to carry out any of the powers or duties of the Manager pursuant to this By-law;
- i) approve forms and documents to be used under this By-law;

- j) authorize and/or hire such agents, contractors and other Persons to perform work, as required; and
- k) take any actions or steps incidental to or ancillary to the Manager's authority under this By-law.

## **5. GENERAL PROHIBITIONS**

- 5.1. Subject to the exemptions prescribed under Part VI of this By-law, no Person shall cause, permit, perform or carry out a Site Alteration except in accordance with all Applicable Law and/or without first obtaining a Permit from the Township to do so.
- 5.2. No Person shall cause, permit, perform or carry out a Site Alteration except in accordance with this By-law and all Applicable Law.
- 5.3. Notwithstanding any other provision of this By-law, no Person shall import any Fill onto any land where the quality of the imported material is not acceptable for the intended use and betterment of the land.
- 5.4. Where a Permit has been issued under this By-law authorizing a Site Alteration, no Person shall undertake or permit a Site Alteration except in accordance with:
  - a) the plans, approvals, documents or other material filed in support of the issuance of the Permit;
  - b) the conditions attached to the Permit;
  - c) the terms of any Site Alteration Agreement or other agreement with the Township entered into under this By-law; and
  - d) the provisions of this By-law.
- 5.5. No Person shall modify an approved Site Alteration without approval of the Manager.
- 5.6. No Person shall operate a Commercial Fill Operation in the Township of Wainfleet.
- 5.7. No Person shall remove Fill, Dump Fill, or cause or permit the removal or Dumping of Fill unless such Fill complies with the Ministry of Environment standards for clean Fill, as described in the *Environmental Protection Act*, R.S.O. 1990, c. E.19 ("*Environmental Protection Act*").
- 5.8. No Person shall import any Fill onto any Lot, land or property with the use of a hydro excavation truck, being any truck that excavates, removes or moves Fill with water and/or air, except where approval has been given by the Township or by Council in accordance with the requirements with this by-law.



5.9. No Person shall carry out any Site Alteration works for which a Permit is required in a manner that contravenes Township By-law No. 042-2018 (Township's Noise Control By-law) or at any time on a statutory holiday.

5.10. No Person shall fail to comply with an Order issued under this By-law.

5.11. No Person shall obstruct an Officer carrying out an inspection under this By-law.

## 6. EXEMPTIONS

6.1 This By-law is not applicable to the following:

- a) a Site Alteration:
  - (i.) that involves the Dumping or placing of Topsoil on a Site for improving the soil capability for agricultural uses on Agricultural Lands as part of a Normal Farm Practice;
  - (ii.) that is incidental to a grading requirement under the *Ontario Building Code*, O. Reg. 332/12 ("*Building Code*") for the construction or demolition of a building or structure for which a building permit has been issued or for the purpose of constructing a driveway, parking lot or assembly area reasonably accessory to the building or structure for which a building permit has been issued or is a septic disposal system where a permit has been issued by the Township, the Regional Municipality of Niagara or the Ministry in accordance with Part 8 of Division B of the *Building Code*;
  - (iii.) on lands that are used for the purpose of flood or erosion control to establish finished grade shown on a grading and drainage plan approved by the Conservation Authority; or
  - (iv.) on lands that are used for storage purposes either as a primary or accessory use provided that the use is permitted on the lands pursuant to the Zoning By-law;
- b) public sector related activities or matters undertaken by the Township or a local board of the Township;
- c) the Dumping of Fill, removal of Topsoil or alteration of the grade of land imposed after December 31, 2002 as a condition to the approval of a site plan, a plan of subdivision or a consent under sections 41, 51 or 53 of the *Planning Act*, RSO. 1990, c. P13 or as a requirement of a site plan agreement or subdivision/severance agreement entered into under those sections;
- d) the Dumping of Fill, removal of Topsoil or alteration of the grade of land imposed after December 31, 2002 as a condition to a development permit

authorized by regulation made under section 70.2 of the *Planning Act*, RSO. 1990, c. P13 or as a requirement of an agreement entered into under that regulation;

- e) the Dumping of Fill, removal of Topsoil or alteration of the grade of land undertaken by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act*, 1998, S.O. 1998, c. 15, Sched. A, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
- f) the Dumping of Fill, removal of Topsoil or alteration of the grade of land undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*, R.S.O. 1990, c. A.8 ("*Aggregate Resources Act*");
- g) the Dumping of Fill, removal of Topsoil or alteration of the grade of land undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land;
  - (i) that has not been designated under the *Aggregate Resources Act* or a predecessor of that statute; and
  - (ii) on which a pit or quarry is a permitted land use under a by-law passed under section 34 of the *Planning Act*, RSO. 1990, c. P13;
- h) the Dumping of Fill, removal of Topsoil or alteration of the grade of land undertaken as an incidental part of drain construction under the *Drainage Act*, R.S.O. 1990, c. D.17 or the *Tile Drainage Act*, R.S.O. 1990, c. T.8;
- i) the use, operation, establishment, alteration, enlargement or extension of a waste management system or waste disposal site lawfully permitted under Part V of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, or a waste disposal site or waste management system that is exempted by regulation from said Part V;
- j) the construction, extension, alteration, maintenance or operation of works under section 28 of the *Public Transportation and Highway Improvement Act*, R.S.O. 1990, c. P.50;
- k) the construction of a building or structure, including a driveway, parking pad or swimming pool, pursuant to a valid building permit which has been issued by the Township, where the Site Plan accompanying the building permit application provides sufficient information to ensure that the Site Alteration proposed therein meets the guidelines established by the Manager pursuant to this By-law;

- l) any filling of an excavation to the elevation of an existing grade following the demolition or removal of a building or structure for which a demolition permit has been issued, or for which no demolition permit is required under the *Building Code Act, 1992*, S.O. 1992, c. 23 or the *Building Code*;
- m) any Site Alteration that is:
  - (i) determined to be a Normal Farm Practice; and
  - (ii) carried on by Owners at properties that have an active registration as a “farming business” as defined in the *Farm Registration and Farms Organization Funding Act, 1993*, S.O. 1993, c. 21 and are in good standing under that statute;
- n) the stockpiling of Fill in the ordinary course of the operation of a garden supply establishment that is legally established under the Zoning By-law, provided that such activity does not result in the permanent alteration of the existing grade of the land of the garden supply establishment. For this exemption to apply, the Owner must:
  - (i) maintain records from the material source sites indicating that the imported Fill meets the requirements of the site condition standards for agricultural uses, and
  - (ii) demonstrate, to the satisfaction of the Manager, that the Fill is being exported regularly and not returning to the same Lot, land or property.

6.2 A Permit is not required for a Site Alteration if the size of the Site and total amount of Fill is as follows:

- a) for a Site of 0.1 hectares or less, a maximum of 10 cubic metres of Fill, which shall be permitted only within a twelve (12) month period for betterment of the Site and the permitted use of the Site;
- b) for a Site of 0.2 hectares to 0.5 hectares, a maximum of 100 cubic metres of Fill, which shall be permitted only within a twelve (12) month period for betterment of the Site and the permitted use of the Site;
- c) for a Site of 0.5 hectares or larger, a maximum of 500 cubic metres of Fill, which shall be permitted only within a twelve (12) month period for betterment of the Site and the permitted use of the Site.

6.3 Any Site Alteration in which the amount or volume of Fill exceeds the maximum volumes prescribed by section 6.2 is prohibited unless a Permit is issued by the Manager and is subject to all other provisions and requirements of this By-law.

- 6.4 Notwithstanding the exemptions from the Permit requirement prescribed by section 6.2 of this By-law, every Person carrying out a Site Alteration to which section 6.2 applies shall provide written notice of the Site Alteration to the Manager.

## **7. ADMINISTRATION AND REQUIREMENTS FOR ISSUANCE OF A PERMIT**

7.1 Every Owner applying for a Permit shall submit to the Manager:

- a) a completed application in the form prescribed by the Township from time to time;
- b) payment of the fee for a Permit shall be submitted in accordance with this By-law and shall be accompanied by the full Permit fee as set out in the Fees and Charges By-law;
- c) a Security in an amount satisfactory to the Manager;
- d) a description of the Fill proposed to be removed or Dumped including a detailed description of the destination or source of the Fill, the quantity of the Fill and the proposed placement of the Fill;
- e) a certificate of commercial general liability insurance in the owner's name, in the amount of \$5,000,000, naming the Township as an additional insured party, and maintain such insurance for the full period of time during which the Permit is valid, which certificate shall be in a form prescribed by the Manager from time to time;
- f) a Site Alteration Plan satisfactory to the Manager, which includes and accurately indicates the following:
  - (i) the property lines of the lands, with dimensions,
  - (ii) the location on the Site of the Site Alteration, with dimensions,
  - (iii) location and details of any proposed sediment control measures,
  - (iv) all existing storm sewers, ditches, swales, creeks, watercourses and wetlands on the lands and on abutting lands and public Roads,
  - (v) all woodlands on the Site,
  - (vi) all easements and rights of way over, under, across or through the Site,
  - (vii) proof of permission with respect to the removal, placement or Dumping of the Fill from the grantee of any easement on the Site impacted by a Site Alteration,

- (viii) all existing buildings and driveways on the Site,
  - (ix) all existing elevations with sufficient buffer onto adjacent properties to assess existing drainage patterns,
  - (x) proposed grades and drainage systems upon completion of the Site Alteration,
  - (xi) proposed ground covering to be used upon completion of the Site Alteration,
  - (xii) location and composition of any temporary or permanent entrances and/or access roads that will be constructed to facilitate access to the Site, and
  - (xiii) location and composition of any temporary or permanent mud mat at the entrance to the Site to mitigate mud tracking onto the municipal right-of-way;
- g) where applicable, copies of any approval required from any other agency, including, but not limited to, the Conservation Authority;
  - h) the proposed Haul Route;
  - i) a certificate stating that the Fill contains no contaminants with the meaning of the *Environmental Protection Act*, which certificate shall be in a form prescribed by the Manager from time to time;
  - j) an executed unconditional release and indemnity to save harmless the Township, its elected officials, staff and agents, with respect to any and all liability which may arise directly or indirectly from the Site Alteration, including the presence of any fill that is determined to contain contaminants within the meaning of the *Environmental Protection Act*, which release and indemnity shall be in a form prescribed by the Manager from time to time; and
  - k) any other study, report, plan or material related to the application as deemed necessary by the Manager to constitute a Complete Application.

## **8. ISSUANCE OF A PERMIT BY THE MANAGER**

- 8.1 The Manager shall review and assess or cause to be reviewed and assessed a Complete Application. In carrying out this review the Manager may seek comments from any other agency deemed necessary by the Manager for the purpose of reviewing and/or assessing a Complete Application.

8.2 The Manager shall issue a Permit where, in the assessment of the Manager, acting reasonably:

- a) The Person has fulfilled all of the requirements of this By-law, including the payment of all applicable fees, charges and Security;
- b) The Site is not within an area where the Site Alteration is prohibited under this By-law or any other Applicable Law;
- c) The issuance of the Permit:
  - (i.) will result in maintaining or improving the overall agricultural capability of the Site, or
  - (ii.) is incidental to a Normal Farm Practice, or
  - (iii.) is appropriate for the development and use of the Site and that maintains the general intent and purpose of the Zoning By-law, the Official Plan and this By-law.

8.3 The Manager may require as a condition of the Permit that the Person to whom the Permit is issued enter into a Site Alteration Agreement in the form prescribed by the Township from time to time, which may include a requirement to provide additional Security.

8.4 Where the Manager refuses to issue a Permit, an applicant may appeal the decision of the Manager to Council, and Sections 9.4 through 9.8 shall apply, with necessary modifications to the appeal process.

8.5 The Manager shall not issue a Permit or accept an application for a Site Alteration within a twelve (12) month period of the expiry date of any previous Permit.

## **9. CONSIDERATION BY COUNCIL OVER 1000 CUBIC METRES**

9.1 Where the amount or volume of Fill to be removed or Dumped in relation to a Site Alteration exceeds one thousand (1000) cubic metres within any twelve (12) month period, the Permit for such Site Alteration may not be issued by the Manager unless and until the Complete Application has been reviewed and assessed by Council and the issuance of the Permit has been approved by Council.

9.2 In reviewing and assessing a Complete Application in accordance with section 9.1 of this By-law, Council shall have the same powers as the Manager pursuant to this By-law.

9.3 In addition to the all other requirements of this By-law, every Person to whom a Permit is issued under section 9.1 shall be required to enter into a Site Alteration

Agreement prescribed by the Township from time to time, which may include a requirement to provide additional Security.

9.4 Upon receipt of a Complete Application for a Site Alteration that exceeds one thousand (1000) cubic metres of Fill:

a) the Manager shall:

(i.) schedule a Public Open House,

(ii.) provide the Person submitting the Complete Application with notice of the Public Open House at least thirty (30) days prior to the date of the meeting,

(iii.) provide notice of the Complete Application to all registered Owners of Lots, land or property within one hundred and twenty (120) metres of the boundaries of the Site, and

(iv.) post notice of the Public Open House on the Township's website at least ten (10) days prior to the Public Open House date; and

(b) the Person submitting the Complete Application shall post a placard on the Site as provided by the Township at least ten (10) days prior to the Public Open House so that it is clearly visible to the public, provide proof of the placement of the placard to the Manager and leave the placard on the Site until the Permit is issued or denied.

9.5 The written notice required under this section of this By-law shall be sent to the Applicant by registered or regular mail, personal service or email and shall be deemed to have been served on the fifth day after it was mailed or, in the case of email, on the day that it was sent.

9.6 Comments received at the Public Open House shall form part of a technical report provided by the Operations Department to Council and shall form part of the review by Council.

9.7 Consideration of the Complete Application shall be held in public and the Person submitting the Complete Application may request to be a delegate.

9.8 Upon reviewing and assessing the Complete Application, reviewing the technical report described in section 9.6 and hearing from any delegation described in section 9.7, Council shall consider whether the Complete Application meets the requirements of this By-law and shall approve or deny the issuance of the Permit.

9.9 The decision of Council to approve or deny the issuance of the Permit is final.

## 10. CONDITIONS ON PERMITS AND HAUL ROUTES

10.1 The Manager shall, as a condition of a Permit, require an Owner of the Site which is the subject of the Permit either prior to the Permit being issued or after the Permit has been issued, to comply with the following:

a) notify the Manager in writing:

(i.) at least seventy-two (72) hours before commencing any Site Alteration under the Permit; and

(ii.) of the completion of the Site Alteration under the Permit no later than seventy-two (72) hours following completion of the Site Alteration;

b) maintain the Roads providing ingress and egress to the Site in the same condition that existed prior to the commencement of the Site Alteration;

c) keep all Roads providing ingress and egress to the Site free from any damage, equipment or material or mud tracked onto the Road arising from any Site Alteration undertaken as a result of the Permit;

d) remediate and clean up forthwith any material or mud tracked onto the Roads where required to do so by Township staff;

e) ensure that dust control measures are in place so as to restrict and limit the blowing of dust onto any adjacent lands;

f) install temporary signage in accordance with Ministry of Transportation's Ontario Traffic Manual (OTM) Book 7 regulations on all Roads immediately adjacent to the Site where Fill is being Dumped;

g) inspect and maintain sediment control measures to ensure they are kept in good working order;

h) ensure that any machinery operating on a Road or any Person directing traffic on a Road does so in a manner acceptable to the Manager and in accordance with all other Applicable Law;

i) ensure that Fill that is Dumped on the Site is in accordance with the Permit, the Site Plan and all other Applicable Law;

j) provide the Manager or an Officer a report from a Qualified Person, qualified engineer or environmental consultant possessing an expert or special knowledge in respect to the source and nature of the Fill to be Dumped that the Fill meets the standards prescribed by the Ministry; and



- k) provide Security satisfactory to the Manager or secure the maintenance of the Roads that are used by trucks delivering or removing Fill in a state of good repair and free from dust and mud.

10.2 The Manager may, as a condition of a Permit, require an Owner of the Site which is the subject of the Permit, either prior to the Permit being issued or after the Permit has been issued, to comply with one or more of the following:

- a) keep, maintain and make available to the Manager the following records:
  - (i.) the full and complete legal name and business name if different from the legal name of each hauler,
  - (ii.) the commercial vehicle registration number of each hauler,
  - (iii.) the motor vehicle permit number of the motor vehicles owned and operated by each hauler,
  - (iv.) the date and time of delivery of Fill,
  - (v.) the point of origin of each delivery of Fill,
  - (vi.) the volume of each delivery of Fill,
  - (vii.) the content of material of each delivery of Fill,
  - (viii.) any other information required by O. Reg. 153/04 - Records of Site Condition - Part XV.1 made under the *Environmental Protection Act*, R.S.O. 1990, c. E. 19; and
  - (ix.) any other information required by the Manager; and
- b) to comply with any other conditions imposed by the Manager.

10.3 The Manager may, as a condition of a Permit, designate one or more Haul Routes to be used for ingress or egress to the Site for the Site Alteration.

10.4 Where Haul Routes are not within the jurisdiction of the Township, the Manager may require that the Owner of the Site that is the subject of the Permit provide proof of permission to use the Roads.

10.5 Every Owner who is issued a Permit under this By-law shall be responsible for ensuring that the designated Haul Routes are used by any Person coming to or from the Site under the Permit and any failure to do so is a contravention of this By-law.

10.6 The Township may engage such legal, engineering or other technical consultants the Manager deems necessary in order to evaluate and/or review studies and/or agreements or to provide assistance to the Manager in respect of an application and ensuing Site Alteration and the costs incurred by the Township in so doing shall be charged back to the Owner.

10.7 The Township may draw on any Security provided under this By-law in order to remedy any breach of the provisions of this By-law, the conditions of a Permit, or any other obligation of the Owner relating to the Permit.

10.8 The issuance of a Permit under this By-law does not relieve an Owner or any other Person from compliance with the By-law or any other Applicable Law.

## **11. SUSPENSION, REVOCATION, TRANSFER AND EXPIRY OF A PERMIT**

11.1 A Permit issued pursuant to the provisions of this By-law may be revoked by the Manager at any time and without notice under any of the following circumstances:

- a) if no work has been commenced after three (3) months from the date of issuance;
- b) if the Permit was issued on mistaken, misleading, false or incorrect information;
- c) if the Permit was issued in error; or
- d) where the Owner of the Site that is the subject of the Permit is in contravention of a condition to the Permit, a provision of this By-law, or a provision of any Site Alteration Agreement that has been entered into.

11.2 No refund of any fees paid pursuant to this By-law shall be provided if a Permit expires or is revoked.

11.3 A Permit issued under this By-law may be renewed or extended prior to expiry where the following conditions are met:

- a) work has been commenced or completed under the Permit;
- b) the work previously approved under the Permit has not been and will not be revised;
- c) the Person to whom the Permit was issued or the Owner of the Site that is the subject of the Permit submits a renewal or extension application to the Manager that is accompanied by the applicable Permit fee; and
- d) the renewal or extension application is submitted at least sixty (60) days prior to the expiry of the Permit.

11.4 A renewal or extension of a Permit issued pursuant to this By-law shall be valid for a period of six (6) months from the date of issuance, but shall expire after three (3) months from the date of issuance if work has not been commenced by that date.

11.5 If title to the Site for which a Permit has been issued is transferred while the Permit remains in effect, the Permit is automatically cancelled unless the new Owner, within thirty (30) days prior to the transfer:

- a) provides the Township with written undertaking to comply with all conditions under which the existing Permit was issued, an executed assumption agreement satisfactory to the Manager and an executed release and indemnity as required by subsection 7.1(j) of this By-law; or
- b) applies for and obtains a new Permit in accordance with the provisions of this By-law.

## 12. ORDERS

12.1 For the purpose of ensuring compliance with this By-law, the Manager or any Person authorized by the Manager or an Officer may, at all reasonable times, enter upon and inspect any Site to determine whether or not the following are being complied with:

- a) this By-law;
- b) any condition of a Permit;
- c) a provision of any Site Alteration Agreement, direction or Order made under this By-law; or
- d) a prohibition order made under section 431 of the *Municipal Act, 2001*.

12.2 The Manager or an Officer may, for the purposes of the inspection under this Part:

- a) require the production for inspection of documents or things relevant to the inspection;
- b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
- c) require information in writing or otherwise as required by the Officer from any Person concerning a matter related to the inspection; or

- d) alone or in conjunction with a Person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.

12.3 Any cost incurred by the Township in exercising its authority to inspect under this Part including but not limited to the cost of any examination, test, sample or photograph necessary for the purposes of the inspection, shall be paid by the Owner of the Site where the inspection takes place or the Person to whom the Permit was issued in relation to the Site where the inspection takes place.

12.4 If the Manager or an Officer is satisfied that:

- a) a contravention of this By-law has occurred, they may make an Order requiring the Owner of the Site where the contravention occurred or the Person who caused or permitted the contravention to immediately discontinue the contravening activity. Such the Order shall set out:
  - (i.) the municipal address or the legal description of the Site,
  - (ii.) reasonable particulars of the contravention, and
  - (iii.) the period of time within which there must be compliance; or
- b) a Person has caused or permitted a Site Alteration in contravention of the provisions of this By-law, they may make an Order requiring the Owner of the Site where the contravention occurred or the Person who caused or permitted the contravention to carry out work to correct the contravention. Such Order shall set out:
  - (i.) the municipal address or the legal description of the Site,
  - (ii.) reasonable particulars of the contravention,
  - (iii.) the period of time within which there must be compliance, and
  - (iv.) that if the work is not done in compliance with the Order within the specified period, the Township may have the work completed at the expense of the Owner of the Site where the contravention occurred.

12.5 Any Order issued under this Part shall be served Personally or by registered mail to the last known address of the Owner of the Site and to any other Person to be served. If an Order is served by registered mail, the service shall be deemed to have been made five (5) days after the date of mailing.

12.6 Upon completion of the work to correct the contravention by or on behalf of the Township under this Part, the Township shall have a lien on the Site for the amount

spent in excess of any Security applied to remedy or rectify the contravention and the amount may be added to the tax roll and collected in the same manner and with the same priority as municipal property taxes.

### **13. OFFENCES AND PENALTIES**

- 13.1 Every Person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to such penalties as provided for in the *Municipal Act, 2001* and the *Provincial Offences Act*.
- 13.2 Where an Officer is satisfied that a Person has failed to comply with any provision of this By-law, the Officer may issue a penalty notice imposing an Administrative Monetary Penalty. The Administrative Monetary Penalties for failures to comply with this By-law are set out in Schedule "B", which is attached hereto and forms part of this By-law.
- 13.3 Township By-law No. 027-2019, being a By-law to Establish an Administrative Monetary Penalty System for Non-Parking Related Offences, applies to each Administrative Monetary Penalty issued pursuant to this By-law.
- 13.4 Every Person who contravenes any provision of this By-law, a condition of a Permit or an Order issued under this By-law, is guilty of an offence and upon conviction is liable:
- a) on a first conviction, to a fine of not more than \$10,000; and
  - b) on any subsequent conviction, to a fine of not more than \$25,000.
- 13.5 Notwithstanding section 13.4, where the Person convicted is a corporation, the maximum penalty that may be imposed is,
- a) on a first conviction, to a fine of not more than \$25,000; and
  - b) on any subsequent conviction, to a fine of not more than \$50,000.
- 13.6 In addition to any fine or any other penalty, any Person who is convicted of contravening a provision of this By-law, the terms or conditions of a Permit issued pursuant to this By-law or any Order issued pursuant to this By-law, may be ordered by a court of competent jurisdiction at the expense of the Person to:
- a) rehabilitate the Site and surrounding lands;
  - b) remove the Fill; and/or
  - c) restore the grade of the Site and surrounding lands to its original condition.

### **14. OBSTRUCTION**

14.1 No Person shall hinder or obstruct, or attempt to hinder or obstruct the Manager or an Officer, or Person in the discharge of duties under this By-law as required by the Manager or Officer in order to bring a Site into compliance with this By-law or an Order issued under this By-law.

14.2 No Person shall provide false information in any statement, whether orally, in writing or otherwise, made to an Officer or the Manager.

14.3 No Person shall hinder or obstruct, or attempt to hinder or obstruct, any Officer or Manager who is exercising a power or performing a duty under this By-law.

## **15. SEVERABILITY**

15.1 Should a court of competent jurisdiction declare any provision of this by-law to be invalid or of no force and effect, the provision is deemed severable from this by-law and it is the intention of the Township that the remainder of the by-law shall survive and be applied and enforced in accordance with its terms to the extent possible under the law.

## **16. INTERPRETATION**

16.1 Any reference to a statute, regulation, by-law or other statutory instrument shall be deemed to refer to the legislation as amended, consolidated, replaced or modified.

16.2 This By-law shall come into force on the date it is passed.

BY-LAW READ AND PASSED THIS XXTH DAY OF XX, 2022

\_\_\_\_\_  
K. Gibson, MAYOR

\_\_\_\_\_  
M. Ciuffetelli, DEPUTY CLERK

PART I PROVINCIAL OFFENCES ACT

Township of Wainfleet

Schedule "A" to By-law No XXX-2022, Site Alteration By-law

Set Fine Schedule

<b>Item</b>	<b>Column 1 Short Form Wording</b>	<b>Column 2 Offence Creation Provision or defining Offence</b>	<b>Column 3 Set Fine</b>
1.	Site Alteration without a Permit	Section 5.2	\$500
2.	Importing Fill not intended for use or betterment of Land	Section 5.3	\$500
3.	Site Alteration not in accordance with approved plans	Section 5.4 (a)	\$500
4.	Not following conditions on Site Alteration Permit	Section 5.4 (b)	\$500
5.	Violation of Site Alteration Agreement	Section 5.4 (c)	\$500
6.	Violation of Provisions of the Site Alterations By-law	Section 5.4 (d)	\$500
7.	Modify an Approved Site Alteration Plan without Authorization	Section 5.5	\$500
8.	Operating a Commercial Fill Operation in the Township	Section 5.6	\$500
9.	Removal or dumping of Fill not approved by the Ministry of Environment	Section 5.7	\$500
10.	Importing Fill by Hydro Excavation Truck without approval	Section 5.8	\$500
11.	Site Alterations Conducted on a Statutory Holiday	Section 5.9	\$500
12.	Failing to comply with an Order Issued	Section 5.10	\$500
13.	Hindering or Obstructing an Officer carrying out an inspection	Section 5.11	\$500

**Note:** The general penalty provision for the offences listed above is section 6, section 7, section 8, section 9, section 10, section 11, section 12, section 13, section 14 and section 15 of By-law No. XXX-2022, a certified copy of which has been filed.

Schedule "B" to By-law No. 0XX-2022

Site Alteration By-law

Short Form Wording for Administrative Monetary Penalties

Section	Short Form Wording	Penalty
5.2	Site Alteration without a Permit	<b>\$500.00</b>
5.3	Importing Fill not Intended for use or Betterment of Land	<b>\$500.00</b>
5.4 (a)	Site Alteration not in Accordance with Approved Plans	<b>\$500.00</b>
5.4 (b)	Not following Conditions on Site Alteration Permit	<b>\$500.00</b>
5.4 (c)	Violating a Site Alteration Agreement	<b>\$500.00</b>
5.4 (d)	Violating Provisions of the Site Alterations By-law	<b>\$500.00</b>
5.5	Modifying an Approved Site Alteration Plan without authorization	<b>\$500.00</b>
5.6	Operating a Commercial Fill Operation in the Township	<b>\$500.00</b>
5.7	Removing or dumping of Fill not approved by the Ministry of Environment	<b>\$500.00</b>
5.8	Importing Fill by Hydro Excavation Truck without Approval	<b>\$500.00</b>
5.9	Conducting Site Alterations on a Statutory Holiday	<b>\$500.00</b>
5.10	Failing to comply with an Order Issued	1 <sup>st</sup> Offence: <b>\$500.00</b> 2 <sup>nd</sup> Offence: <b>\$1,000.00</b> 3 <sup>rd</sup> & Subsequent Offences: <b>\$2,000.00</b>
5.11	Hindering or Obstructing an Officer carrying out an Inspection	<b>\$750.00</b>

**Note:** The above Penalties are per Registered Property Owner(s) as listed on the latest returned Municipal Tax Roll and may be issued for every day that a property is in violation.



Schedule "C" to By-law No. 0XX-2022

Fees and Charges

Section	Description	Amount of Fee/Charge
7.1 b)	Application Fee for Less than 500m <sup>3</sup>	\$500
7.1 b)	Application Fee (500m <sup>3</sup> up to 1000m <sup>3</sup> )	\$1,000
7.1 b)	Application Fee for greater than 1000m <sup>3</sup>	\$1,500
7.1 c)	Road Damage Security (Deposit)	\$10,000
9.3	Additional Security	As provided for in the Site Alteration Agreement

Note: This schedule shall be deemed to form part of Appendix "A" of the Township of Wainfleet General Fees and Charges By-law and which may be amended by Council from time-to-time.

**Subject:** RE: World Hepatitis Day - Proclamation Request - 2022

**From:** Usick, Karen <[Karen.Usick@niagarahealth.on.ca](mailto:Karen.Usick@niagarahealth.on.ca)>

**Sent:** May 18, 2022 6:15 PM

**To:** 'jim.bradley@niagararegion.ca' <[jim.bradley@niagararegion.ca](mailto:jim.bradley@niagararegion.ca)>; 'wayne.redekop@niagararegion.ca' <[wayne.redekop@niagararegion.ca](mailto:wayne.redekop@niagararegion.ca)>; 'marvin.junkin@niagararegion.ca' <[marvin.junkin@niagararegion.ca](mailto:marvin.junkin@niagararegion.ca)>; 'frank.campion@niagararegion.ca' <[frank.campion@niagararegion.ca](mailto:frank.campion@niagararegion.ca)>; 'Walter.Sendzik@NiagaraRegion.ca' <[Walter.Sendzik@NiagaraRegion.ca](mailto:Walter.Sendzik@NiagaraRegion.ca)>; 'Betty Disero' <[betty.disero@notl.com](mailto:betty.disero@notl.com)>; [bill.steele@niagararegion.ca](mailto:bill.steele@niagararegion.ca); 'sandra.easton@niagararegion.ca' <[sandra.easton@niagararegion.ca](mailto:sandra.easton@niagararegion.ca)>; 'jeff.jordan@niagararegion.ca' <[jeff.jordan@niagararegion.ca](mailto:jeff.jordan@niagararegion.ca)>; [dave.bylsma@niagararegion.ca](mailto:dave.bylsma@niagararegion.ca); 'terry.ugulini@niagararegion.ca' <[terry.ugulini@niagararegion.ca](mailto:terry.ugulini@niagararegion.ca)>; 'jim.diodati@niagararegion.ca' <[jim.diodati@niagararegion.ca](mailto:jim.diodati@niagararegion.ca)>; 'Kevin.Gibson@niagararegion.ca' <[Kevin.Gibson@niagararegion.ca](mailto:Kevin.Gibson@niagararegion.ca)>  
**Cc:** 'Kristine Elia' <[kelia@niagarafalls.ca](mailto:kelia@niagarafalls.ca)>; Diana Kelley <[DKelley@forterie.ca](mailto:DKelley@forterie.ca)>; 'SLeach@pelham.ca' <[SLeach@pelham.ca](mailto:SLeach@pelham.ca)>; 'theresa.ettore@welland.ca' <[theresa.ettore@welland.ca](mailto:theresa.ettore@welland.ca)>; 'jhughes@stcahtarines.ca' <[jhughes@stcahtarines.ca](mailto:jhughes@stcahtarines.ca)>; 'victoria.steele@notl.com' <[victoria.steele@notl.com](mailto:victoria.steele@notl.com)>; Andrea Chambers ([achambers@lincoln.ca](mailto:achambers@lincoln.ca)) <[achambers@lincoln.ca](mailto:achambers@lincoln.ca)>; 'hsoady-easton@grimsby.ca' <[hsoady-easton@grimsby.ca](mailto:hsoady-easton@grimsby.ca)>; 'Jthrower@westlincoln.ca' <[Jthrower@westlincoln.ca](mailto:Jthrower@westlincoln.ca)>; 'ginger@thorold.com' <[ginger@thorold.com](mailto:ginger@thorold.com)>; Amber Chrastina <[AChrastina@wainfleet.ca](mailto:AChrastina@wainfleet.ca)>; 'erica.pretty@notl.com' <[erica.pretty@notl.com](mailto:erica.pretty@notl.com)>; 'Brenda Heidebrecht' <[Brenda.Heidebrecht@portcolborne.ca](mailto:Brenda.Heidebrecht@portcolborne.ca)>; 'BHutchinson@westlincoln.ca' <[BHutchinson@westlincoln.ca](mailto:BHutchinson@westlincoln.ca)>; 'nancygiles@portcolborne.ca' <[nancygiles@portcolborne.ca](mailto:nancygiles@portcolborne.ca)>

**Subject:** World Hepatitis Day - Proclamation Request - 2022

Greetings everyone

I am in touch with you today on behalf of the Niagara Health System-Hepatitis C Care Clinic to make our request for you to proclaim July 28, 2022 World Hepatitis in your Niagara Region municipality. However, I would like to begin by thanking each of you for all that you are doing to support and carry our municipalities through the Covid pandemic . . . and now in this post pandemic world. We all have become accustom to an ever-evolving world where things can change overnight. The one thing that has remains constant is your hard work and dedication for the residents of Niagara, as this is so truly admirable and appreciated! These are unprecedented times and so much of our lives that we knew as normal has changed so much. The Covid-19 virus remains in the forefront of much we are doing at this time; but our Team is working hard to raise awareness of World Hepatitis Day-2022, hepatitis and liver health.

We are very excited to be sharing with you that the Hepatitis C Care Clinic will be holding the annual World Hepatitis Day event "in-person" this year. We will be hosting our community awareness events on Friday July 22, 2022 in St. Catharines at Montebello Park, this event will run from 11:00 am to 3:00 p.m. In addition, we will be hosting a 2<sup>nd</sup> World Hepatitis Day awareness event in Niagara Falls on Thursday July 28, 2022 at Centennial Square, from 10:00 am to 2:00 pm. These will be our first events since 2019... and in a post-pandemic world. We

would like to assure you that we are proceeding cautiously in our planning to ensure everyone's safety at the events. We realize that there will be changes from how our event looked before, but we know that if we all work together this event will make a huge impact within our communities and on those individuals in Niagara that need us the most.

If you have any questions, or require further information about World Hepatitis Day, hepatitis, or the care and services of the Hepatitis C Care Clinic program, please feel free to contact me!

Hope you have a lovely evening!

Take care and stay safe!

*Karen*

**Karen Usick – Reg. N**

Hepatitis C Care Clinic | Community Coordinator

Niagara Health System | Addiction Services

[Karen.Usick@NiagaraHealth.on.ca](mailto:Karen.Usick@NiagaraHealth.on.ca)

W: 905-378-4647 x32555 | C: 289-696-2523

260 Sugarloaf Street, Port Colborne, ON L3K 2N7

HCCC Website Address - [www.niagarahealth.on.ca/site/hepatitis-c-care](http://www.niagarahealth.on.ca/site/hepatitis-c-care)

NHS Addiction Services - [www.niagarahealth.on.ca/services/addiction-recovery](http://www.niagarahealth.on.ca/services/addiction-recovery)



**#HepCantWait | #WorldHepatitisDay | #NoHep**

May 25, 2022

**CL 10-2022, May 19, 2022**  
**PHSSC 5-2022, May 10, 2022**  
**PHD 2-2022, May 10, 2022**

**LOCAL MUNICIPAL CLERKS**

**SENT ELECTRONICALLY**

**Re: Waterpipe Smoking By-law**

Regional Council, at its meeting of May 19, 2022, approved the following recommendation of its Public Health and Social Services Committee:

That Report PHD 2-2022, dated May 10, 2022, respecting Waterpipe Smoking By-law, **BE RECEIVED** and the following recommendations **BE APPROVED**:

1. That Regional Council **APPROVE** the proposed by-law to regulate waterpipe use in the Regional Municipality of Niagara, outlined in Appendix 1 of Report PHD 2-2022;
2. That Regional Council **ADOPT** a by-law to regulate waterpipe smoking in the Regional Municipality of Niagara, outlined in Appendix 1 of Report PHD 2-2022, that will, if adopted, come into force and effect on January 1, 2023, provided that:
  - 2.1. A majority of the councils of the local area municipalities pass resolutions consenting to the by-law; and
  - 2.2. The total number of electors in the local municipalities that have passed resolution in support of the by-law form a majority of all electors in the Region of Niagara as established in the revised list of electors for the municipal election held in the year 2018; and
3. That, subject to the adoption of the aforementioned by-law, a copy of the by-law and Report PHD 2-2022 **BE CIRCULATED** to the Clerks of the 12 local area municipalities (LAMs) with a request that their councils adopt the following resolution and advise the Regional Clerk of the results of that consideration by August 1, 2022:

“That the Council of (name of municipality) consents to the passage of the Waterpipe By-law of the Regional Municipality of Niagara, being a by-law to regulate waterpipe smoking in the Region.”

Pursuant to Section 115(5) of the *Municipal Act, 2001*, a by-law passed under subsection 115(1) shall not come into force unless:

- a) A majority of all votes on the Council of the upper-tier municipality are cast in its favour;
- b) A majority of the Councils of all the lower-tier municipalities forming part of the upper-tier municipality for municipal purposes have passed resolutions giving their consent to the by-law; and
- c) The total number of electors in the lower-tier municipalities that have passed resolutions under clause (b) form a majority of all the electors in the upper-tier municipality.

We respectfully request that you place this matter before your Council at your earliest opportunity to consider a resolution consenting to the by-law and advise of the action taken by your Council no later than August 1, 2022.

A copy of Report PHD 2-2022 and By-law No. 2022-35 are enclosed for your information.

Thanking you in advance for your assistance and should you require anything further, please do not hesitate to contact me.

Yours truly,



Ann-Marie Norio  
Regional Clerk

:kl

CLK-C 2022-073

cc:

K. Grewal, Health Promoter, Chronic Disease & Injury Prevention  
Dr. M. M. Hirji, Acting Medical Officer of Health  
D. Teng, Manager, Chronic Disease & Injury Prevention  
D. Lorenzo, Associate Director, Chronic Disease & Injury Prevention  
W. Middleton, Executive Assistant to the Acting Medical Officer of Health

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**Subject:** Waterpipe Smoking By-law

**Report to:** Public Health and Social Services Committee

**Report date:** Tuesday, May 10, 2022

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## Recommendations

1. That Regional Council **APPROVE** the proposed by-law to regulate waterpipe use in the Regional Municipality of Niagara, outlined in Appendix 1 of Report PHD 2-2022;
2. That Regional Council **ADOPT** a by-law to regulate waterpipe smoking in the Regional Municipality of Niagara, outlined in Appendix 1 of Report PHD 2-2022, that will, if adopted, come into force and effect on January 1, 2023, provided that:
  - 2.1. A majority of the councils of the local area municipalities pass resolutions consenting to the by-law; and
  - 2.2. The total number of electors in the local municipalities that have passed resolution in support of the by-law form a majority of all electors in the Region of Niagara as established in the revised list of electors for the municipal election held in the year 2018; and
3. That, subject to the adoption of the aforementioned by-law, a copy of the by-law and Report PHD 2-2022 **BE CIRCULATED** to the Clerks of the 12 local area municipalities (LAMs) with a request that their councils adopt the following resolution and advise the Regional Clerk of the results of that consideration by August 1, 2022:

‘That the Council of (name of municipality) consents to the passage of the Waterpipe By-law of the Regional Municipality of Niagara, being a by-law to regulate waterpipe smoking in the Region.’

## Key Facts

- The purpose of this report is to seek Council’s approval to enact a by-law that prohibits tobacco and non-tobacco (i.e., herbal) waterpipe smoking in open and enclosed public spaces as described in the Policy Consideration section and Appendix 1 of Report PHD 2-2022.
- Taking a proactive approach to governing waterpipe use could prevent an influx in establishments coming to Niagara due to restrictions in neighbouring communities (e.g., Halton, Toronto, Peel Region and Durham Region), allow consistency of rules across the Golden Horseshoe, and give predictability and clarity to local businesses.

- Through an online survey, 60.8% of the general population was supportive of a waterpipe by-law to restrict use in public places. LAM members that participated in consultation were also supportive of a regional waterpipe by-law.

## **Financial Considerations**

There are no financial implications of this report. The Ministry of Health provides funding under the Smoke-free Ontario Strategy in a cost shared (provincial and Regional levy) model for the Tobacco Control Program. Existing staff of this program will manage enforcement of the by-law should it be adopted within the existing budget.

## **Analysis**

### **Current Legislation**

The *Smoke-free Ontario Act, 2017 (SFOA)* prohibits spaces where waterpipe smoking of tobacco product is allowed, however has no restrictions to non-tobacco (i.e., herbal) products which are allowed in enclosed public spaces and outdoor spaces under the *SFOA* and By-law No. 112-2013.

Enforcement challenges arise when determining whether a product is tobacco or non-tobacco. Testing is offered through the provincial Ministry of Health and requires taking a sample and testing at a lab, making it difficult to know what is being used in waterpipe devices. Sampling of four establishments conducted between Dec. 2021 and March 2022 all came back positive with tobacco. Waterpipes therefore exploit a legislative and regulatory loophole to allow smoking of substances in otherwise regulated places.

### **Local Context**

In Niagara, there are five waterpipe establishments in operation, three in Niagara Falls and two in St. Catharines. As by-laws are implemented across the GTHA to address the current regulatory gaps, there are concerns that more establishments may decide to relocate or open in Niagara given the absence of governing rules.

### **Healthy and Safety Concerns**

Waterpipes filled with tobacco and/or herbal shisha contain harmful toxins and chemicals comparable to cigarette smoking, including particulate matter, polycyclic aromatic hydrocarbons, carbon monoxide, and heavy metals.<sup>1</sup> Non-tobacco and

tobacco shisha contain similar levels of toxins, thus health harms are due to the waterpipe device rather than the product itself.<sup>1</sup> Similar to cigarette smoking, waterpipe use is associated with increases in lung cancer and cardiovascular disease.<sup>1,2</sup>

A waterpipe session lasts from 20 to 80 minutes, putting others at risk due to high levels of toxic compounds in second-hand smoke, irrespective of the product being used (i.e., tobacco or herbal).<sup>1,3</sup> Non-smoking sections of waterpipe cafés have similar levels of toxins in the air as restaurants where cigarette smoking is allowed.<sup>1</sup> The chemicals and toxins in second-hand exposure lead to increased risk of cancer, cardiovascular disease, carbon monoxide poisoning and chronic obstructive pulmonary disease.<sup>1</sup>

Waterpipe smokers often share a hose/mouthpiece in a communal environment, putting users at risk of contracting viruses and respiratory infections such as tuberculosis, hepatitis, herpes, influenza, COVID-19 and oral diseases.<sup>1,3</sup>

## **Public Consultation**

An online survey was conducted from February 8 to March 14, 2022, to gauge public opinion. To review the promotion of the survey, see Appendix 2 of Report PHD 2-2022. 956 surveys were completed and included in the analysis. See Appendix 3 of Report PHD 2-2022, for the breakdown of survey responses per municipality in Niagara Region.

Of the respondents, 10.4% had used a waterpipe in the last 12 months; use was highest among youth 17-24 year olds (16.9%). Of all respondents, 35% perceived waterpipe use as more socially acceptable than cigarettes. The flavouring, misperception of harm, accessibility, and social use are contributing factors to waterpipe use among youth.<sup>4,5</sup>

2.9% of those who smoked waterpipe in the last 12 months were “very concerned” with the health effects as compared to 97.1% of non-users. 33.3% of users thought waterpipe use was a healthier alternative to cigarette smoking.

31.3% used waterpipes for cultural reasons. Waterpipes were most commonly used at waterpipe establishments (68.7%), at home (59.6%), or someone else’s home (55.6%). When asked about the primary reason for visiting a waterpipe establishment, ‘to socialize’ (34.5%) was the top reason; for ‘food and drink (26.7%)’ was second; ‘to smoke’ (21.6%) was ranked third.

60.8% of the respondents supported a by-law, 27.4% did not support, and 11.1% were ambivalent. The majority of respondents supported further restrictions in particular



locations including restaurants, lounges, and bars (67.8%), workplaces (81.2%), and patios (58.5%). See Appendix 4 of Report PHD 2-2022 for the breakdown of support for a by-law.

### **Owner/Operator Consultation**

All five existing establishments participated in interviews. Establishments offered food and drink in addition to waterpipes. Some offered alcoholic beverages and live entertainment as well. Revenue from waterpipe sales ranged from three to 15%. Owners noted that demand had not changed, with the exception of a decline due to the pandemic, and they did not foresee a change in the future.

Two of the five establishments did not expect a prohibition to have a significant impact on their business, whereas others felt it would significantly affect revenue as waterpipe is what brings patrons into the establishment.

### **Municipal Consultation**

Niagara Region Public Health & Emergency Services (NRPH&ES) consulted with the area CAOs to convene a representative group together from each LAM. The LAM group met on Dec. 6, 2021 and March 28, 2022. Background information, current research and evidence on waterpipe smoking was provided. As a group, decisions and guidance were provided for the public consultation survey including planning, implementation, and communication.

Consultation results were shared with LAM representatives in attendance. The LAM group was presented with items for consideration, a proposed by-law based on the consultations done, the opportunity to discuss whether amendments should be added, and the opportunity to either support or oppose the by-law. All LAMs in attendance were supportive of the by-law.

### **Policy Consideration**

The Water Pipe Smoking By-law intends to address tobacco and non-tobacco (i.e. herbal) waterpipe smoking in Niagara. The by-law will address all areas currently covered by the *SFOA* and Niagara Region By-law 112-2013, which include enclosed public places, enclosed workplaces, parks, beaches, recreational trails, nine metres from public entrances, patios, sporting areas and their spectator areas, schools, and 20 metres from sporting and spectator areas, playgrounds and schools.

In alignment with GTHA jurisdictions, the fines will be no more than \$10,000 for the first offence, and \$25,000 for subsequent convictions, for individuals. For corporate offences are not more than \$50,000 for the first offence, and \$100,000 for subsequent offences.

## **Enforcement**

There are five FTE Tobacco Control Officers currently supporting the existing provincial and local smoke-free legislation, and will support education and enforcement the new by-law. As part of routine *SFOA* inspections, waterpipe establishment education and sampling is already conducted on an annual basis.

Niagara takes a progressive enforcement approach, which entails providing education, then moving on to warn and/or enforce. The by-law will be monitored through routine inspections and on a complaint basis. Complaints are received through the NRPH Tobacco Hotline 1-888-505-6074 ext.7393 and NRPH&ES website.

Comprehensive education is fundamental to ensuring successful implementation. It is important to ensure that people know about the changes and NRPH&ES will ease into this change process with a similar approach to previous legislative changes.

## **Alternatives Reviewed**

Through the consultation process, the owners/operators of waterpipe establishments suggested to continue allowing waterpipes in designated areas, at specific times (i.e., time of day or duration), or to remove hookah lounges from the by-law. Considering the health concerns due to second-hand smoke, difficulty with enforcement and previous experience with similar alternatives when prohibiting indoor smoking, Public Health recommends moving forward with restricting waterpipe use at all locations within the *SFOA* and current smoke-free Bylaw No. 112-2013.

## **Relationship to Council Strategic Priorities**

Adoption of a by-law to regulate waterpipe use supports the Council Strategic Priority of Healthy and Vibrant Community by enabling Public Health to protect children and vulnerable persons from exposure to second-hand vapour from waterpipe sources.

## Other Pertinent Reports

- [PHD 10-2021 – Waterpipe \(Hookah\) Smoking – Policy Consideration](https://pub-niagararegion.escibemeetings.com/filestream.ashx?DocumentId=19010)  
(https://pub-niagararegion.escibemeetings.com/filestream.ashx?DocumentId=19010)
- [PHD 09-2019 – Amendments to By-law 112-2013 – A Regional By-law to Protect Children and Vulnerable Persons from Exposure to Outdoor Second-hand Smoke](https://pub-niagararegion.escibemeetings.com/filestream.ashx?DocumentId=3899)  
(https://pub-niagararegion.escibemeetings.com/filestream.ashx?DocumentId=3899)

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### Prepared by:

Kavalpreet Grewal  
Health Promoter, CDIP  
Public Health and Emergency Services

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### Recommended by:

M. Mustafa Hirji, MD MPH RCPC  
Medical Officer of health & Commission  
Public Health and Emergency Services

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### Submitted by:

Ron Tripp, P.Eng.  
Chief Administrative Officer

This report was prepared in consultation with Diana Teng, Manager, Chronic Disease and Injury Prevention, and reviewed by Callie Anderson, Health Promoter, Chronic Disease and Injury Prevention, and David Lorenzo, Associate Director, Chronic Disease and Injury Prevention.

## Appendices

Appendix 1	Waterpipe By-Law
Appendix 2	Survey promotion for public consultation
Appendix 3	Number and Proportion of Respondents by Municipality
Appendix 4	Support Versus Opposition for a By-law by Municipality

## Sources

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<sup>1</sup> Public Health Ontario. (2021). Evidence Brief: Health Impacts of Waterpipe Smoking and Exposure. Retrieved from: ([https://cm.publichealthontario.ca/-/media/documents/e/2021/eb-waterpipe-smoking-exposure.pdf?sc\\_lang=eng](https://cm.publichealthontario.ca/-/media/documents/e/2021/eb-waterpipe-smoking-exposure.pdf?sc_lang=eng))

<sup>2</sup> U.S. Centers for Disease Control and Prevention. (2018). Smoking and tobacco use: hookahs. Retrieved from: ([https://www.cdc.gov/tobacco/data\\_statistics/fact\\_sheets/tobacco\\_industry/hookahs/index.htm](https://www.cdc.gov/tobacco/data_statistics/fact_sheets/tobacco_industry/hookahs/index.htm))

<sup>3</sup> World Health Organization Study Group on Tobacco Product Regulation. (2005). Waterpipe tobacco smoking: Health effects, research needs and recommended actions by regulators. Geneva, Switzerland: World Health Organization. Retrieved from: ([www.who.int/tobacco/global\\_interaction/tobreg/Waterpipe%20recommendation\\_Final.pdf](http://www.who.int/tobacco/global_interaction/tobreg/Waterpipe%20recommendation_Final.pdf))

<sup>4</sup> Non-Smokers Rights Association. (2012). Waterpipe smoking in Canada: New trend, old tradition. Ottawa, ON: Non-Smokers Rights Association. Retrieved from: ([https://nsra-adnf.ca/wp-content/uploads/2016/08/Waterpipe\\_SMoking\\_in\\_Canada\\_New\\_Trend\\_Old\\_Tradition\\_Feb\\_2012.pdf](https://nsra-adnf.ca/wp-content/uploads/2016/08/Waterpipe_SMoking_in_Canada_New_Trend_Old_Tradition_Feb_2012.pdf))

<sup>5</sup> McKeown, D. (2015). Hookah (waterpipe) use in licensed establishments. Toronto, ON: City of Toronto. Retrieved from: (<http://www.toronto.ca/legaldocs/mmis/2015/hl/bgrd/backgroundfile-80194.pdf>)

THE REGIONAL MUNICIPALITY OF NIAGARA  
BY-LAW NO.

**A by-law to regulate water pipe smoking in the Regional Municipality of Niagara**

WHEREAS, water pipe smoking has been associated with various disease and poor health outcomes, including lung cancer, negative pregnancy outcomes, poor oral health, dental disease, respiratory illness and impaired lung function linked to tobacco water pipe formulations, and carbon monoxide exposure and reduced lung capacity linked to non-tobacco formulations;

AND WHEREAS, water pipe smoking, in general, negatively affects indoor air quality for indicators including carbon monoxide and particulate matter, which are closely related to potential impacts on human health;

AND WHEREAS, subsection 11(2) of the Municipal Act, 2001, S.O. 2001, c. 25, provides that upper tier municipalities have the authority to pass by-laws respecting the health, safety and well-being of persons;

AND WHEREAS, subsection 115(1) of the Municipal Act, 2001, S.O. 2001, c. 25 provides that a municipality may prohibit or regulate the smoking of tobacco in public places and workplaces;

AND WHEREAS, it is desirable for the health, safety and well-being of the inhabitants of Niagara Region to prohibit the use of water pipes in enclosed public places, enclosed workplaces, and other specified areas within Niagara Region to protect individuals from conditions hazardous to human health;

NOW THEREFORE, the Council of the Regional Corporation enacts as follows:

**DEFINITIONS**

1. That in this By-law:

“Employee” means a person who performs any work for, or supplies any service to, an employer, or a person who receives any instruction or training in the activity, business, work, trade, occupation or profession of an employer;

“Employer” includes an owner, operator, proprietor, manager, superintendent, overseer, receiver or trustee of an activity, business, work, trade, occupation, profession, project or undertaking who has control or direction of, or is directly or indirectly responsible for, the employment of a person in it;

“Enclosed Public Place” means the inside of any place, building or structure, or vehicle or conveyance or a part of any of them,

- (a) That is covered by a roof; and
- (b) To which the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry.

“Enclosed Workplace” means the inside of any place, building or structure or vehicle or conveyance or a part of any of them,

- (a) That is covered by a roof; and
- (b) That employees work in or frequent during the course of their employment whether or not they are acting in the course of their employment at the time.

“Highway” means a highway as defined in the Municipal Act, 2001, S.O. 2001, c. 25

“Medical Officer of Health” means the Medical Officer of Health for The Regional Municipality of Niagara, duly appointed under the Health Protection and Promotion Act, R.S.O. 1990, c. H.7, as amended;

“Officer” means a Provincial Offences Officer, acting under the direction of the Medical Officer of Health;

“Order” has the meaning set forth in section 11 of this By-law.

“Person” means an individual or a corporation;

“Playground” means an area where the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry, that is primarily used for the purposes of children’s recreation, and is equipped with children’s play equipment including but not limited to slides, swings, climbing apparatuses, splash pads, wading pools, or sand boxes.

“Proprietor” means the person, governing body or agency which controls, governs or directs activity carried on within an Enclosed Public Place, Enclosed Workplace, or other area specified by this By-law and includes the person who is actually in charge thereof;

“Patio” means an area where the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry, or that is worked in or frequented by employees during the course of their employment, whether or not they are acting in the course of their employment at the time, and where food or drink is served or sold or offered for consumption, or that is part of or operated in conjunction with an area where food or drink is served or sold or offered.

“Property Owner” means a Person with a legal or beneficial ownership of a building or other structure that contains an Enclosed Public Place or an Enclosed Workplace operated either directly by the Property Owner or indirectly by a tenant, licensee or other Person operating in the building or structure with the permission of that Property Owner and includes:

- (a) the registered owner on title of the property
- (b) the person, for the time being, managing or receiving the rent of the land or premises in connection with which the word is used, whether on the person’s own account or as agent or trustee of any other person, or who would receive the rent if the land and premises were let; and,
- (c) the lessee or occupant of the property.

“Public Place” means

- (a) Any property owned, leased, or controlled by Niagara Region or any area municipality, including without limitation parks, playgrounds, sports or playing fields, recreational trails, beaches, arenas, recreational centers, community meeting areas, special events, farmers markets, bus shelters, splash pads, and pools;
- (b) Any outdoor area within a nine-metre radius of an entrance to or exit from a building located at any property owned, leased or controlled by Niagara Region or any area municipality; and
- (c) Any outdoor area that is within a nine-metre radius of an entrance to or exit from a public building or building generally accessible to the public, whether or not the building is leased, or controlled by Niagara Region or any area municipality, including places of employment, condominium buildings, apartment buildings and other similar residential buildings

“Roof” means a physical barrier of any size, whether temporary or permanent, that covers an area or place or any part of an area or place, and that is capable of excluding rain or impeding airflow, or both;

“School” means the lands or premises included in the definition of a school under the Education Act, R.S.O. 1990, c. E.2 or the building or the grounds surrounding the building of a private school as defined in the Education Act, where the private school is the sole occupant of the premises, or the grounds annexed to a private school as defined in the Education Act, where the private school is not the sole occupant of the premises.

“Spectator Area” means an area with tiered seating or benches;

“Smoke” or “Smoking” includes the use or carrying of any lighted or activated or heated Water pipe as well as the fumes or byproducts of heating or combustion associated with Water pipe use.

“Sporting Area” means an area where the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry, used primarily for the purposes of sports including, but without being limited to soccer, football, basketball, tennis, baseball, softball, cricket, skating, beach volleyball, running, swimming, or skateboarding.

“Water pipe” means any activated, lighted or heated smoking equipment used to burn or heat tobacco or a non-tobacco substance or a combination thereof, with which the vapor or smoke may be passed through a water basin before inhalation.

## **PROHIBITIONS**

2. That no person shall Smoke a Water pipe in:
  - (a) an Enclosed Public Place;
  - (b) an Enclosed Workplace;
  - (c) a Patio;
  - (d) a Playground;
  - (e) a Public Place;
  - (f) a Sporting Area;
  - (g) a Spectator Area adjacent to a Sporting Area;
  - (h) a School; or
  - (i) any area that is within nine metres of any point on the perimeter of a Public Place, Playground, Sporting Area or Spectator Area adjacent to a Sporting Area.
3. That the prohibitions in this By-law shall apply whether or not a notice is posted that Water pipe Smoking is prohibited;
4. That no Person shall provide or supply a Water pipe for use in an area where Smoking a Water pipe is prohibited by this By-law;
5. That no Proprietor, Employer, or Employee shall encourage, entice, cause or permit the Smoking of a Water pipe within an Enclosed Public Place, Enclosed Workplace, or Restaurant or Patio or Sporting Area or Spectator Area;
6. No Property Owner, shall cause or permit use of a building or other structure that contains an Enclosed Public Place or an Enclosed Workplace building in which that Property Owner has a legal or beneficial interest to be used

## **EXEMPTIONS**



7. That this By-law does not apply to a Highway including a pedestrian sidewalk adjacent to a Highway, but does apply to public transportation vehicles and taxicabs on a Highway;
8. That this By-law does not apply to the portion of a premises used primarily as a private dwelling;

## ENFORCEMENT

9. That where any Person contravenes any provision of this By-law, an Officer may direct such Person to comply with this By-law. Every Person so directed shall comply with such direction without delay;
10. That 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;
11. In the event the Medical Officer of Health is satisfied that a contravention of this By-law has occurred, Niagara Region may make an order, as authorized by section 444(1) of the *Municipal Act, 2001* S.O. 2001 c25 (as amended or replaced from time to time) requiring the person who contravened the By-law or who caused or permitted the contravention or the Property Owner of the land on which the contravention occurred to discontinue the contravening activity and the Medical Officer of Health is by this By-law, delegated authority to issue such Orders.

## INSPECTIONS

12. That an Officer may enter and inspect all buildings, structures or parts thereof that are subject to this By-law at any reasonable time for the purposes of determining whether there is compliance with this By-law;
13. That for the purposes of an inspection under this By-law, an Officer may:
  - (a) require the production for inspection of documents or things relevant to the inspection;
  - (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
  - (c) require information from any person concerning a matter related to the inspection; and
  - (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
14. In the event the Medical Officer of Health determines that it would be beneficial for the enforcement of the requirements of this By-law, Niagara Region shall have

all be entitled to:

- (a) seek a search warrant pursuant to section 439 of the *Municipal Act, 2001* S.O. 2001 c25 (as amended or replaced from time to time);
- (b) Apply to restrain any breach or continuing breach of the By-law pursuant to section 440 of the *Municipal Act, 2001* S.O. 2001 c25 (as amended or replaced from time to time); and

## **OBSTRUCTION**

- 15. That no Person shall hinder or obstruct, or attempt to hinder or obstruct, an Officer lawfully carrying out a power, duty or direction under this By-law;

## **OFFENCES**

- 16. That every Person other than a corporation who contravenes any provision of this By-law, is guilty of an offence and on conviction is liable, for every day or part thereof upon which such offence occurs or continues, to a fine of not more than \$10,000 for a first offence; and not more than \$25,000 for any subsequent conviction;
- 17. That every Person other than a corporation who fails to promptly comply with an Order issued pursuant to section 11 of this By-law, is guilty of an offence and on conviction is liable, for every day or part thereof upon which such offence occurs or continues, to a fine of not more than \$10,000 for a first offence; and not more than \$25,000 for any subsequent conviction;
- 18. That every corporation which contravenes any provision of this By-law, is guilty of an offence and on conviction is liable, for every day or part thereof upon which such offence occurs or continues, to a fine of not more than \$50,000 for a first offence and not more than \$100,000 for any subsequent conviction;
- 19. That every corporation which fails to promptly comply with an Order issued pursuant to section 11 of this By-law, is guilty of an offence and on conviction is liable, for every day or part thereof upon which such offence occurs or continues, to a fine of not more than \$50,000 for a first offence and not more than \$100,000 for any subsequent conviction;
- 20. That without limiting any other section of this By-law, every Person who contravenes any provision of this By-law is guilty of an offence and on conviction is liable to a fine in accordance with the *Provincial Offences Act*, R.S.O. 1990, c. P.33;
- 21. That without limiting any other section of this By-law, every Person who fails to promptly comply with an Order issued pursuant to section 11 of this By-law is guilty of an offence and on conviction is liable to a fine in accordance with the *Provincial Offences Act*, R.S.O. 1990, c. P.33;

22. That if any Person is in contravention of any provision of this By-law, and the contravention has not been corrected, the contravention of the provision shall be deemed to be a continuing offence for each day or part of a day that the contravention remains uncorrected;
23. That for the purposes of this By-law, subsequent conviction means a conviction for an offence which occurs after the date of conviction for an earlier offence under this By-law;
24. That where any Person contravenes any provision of this By-law, such person shall be responsible for all costs incurred by the Region directly related to the contravention;

### **SEVERABILITY**

25. That if any section or sections of this By-law, or parts thereof are found by any court of competent jurisdiction to be illegal or beyond the power of Regional Council to enact, such section or sections or parts thereof shall be deemed to be severable from this By-law and all remaining sections or parts of this By-law shall be deemed to be separate and independent therefrom and to be properly enacted and to be of full force and effect;

### **CONFLICT**

26. That in the event of a conflict between any provision of this By-law and any applicable Act or regulation, the provision that is the most restrictive prevails;

### **EFFECTIVE DATE**

27. That this By-law shall come into force and take effect on **<insert date>**, provided that the conditions in subsection 115(5) of the *Municipal Act, 2001*, S.O. 2001, c. 25 have been satisfied;

### **SHORT TITLE**

28. That the short title of this By-law is the "Niagara Region Water pipe Smoking By-law".

## Appendix 2

### Survey Promotion for Public Consultation

The target population for the public consultation survey was Niagara residents from all municipalities who were 16 and older. The survey was primarily promoted through paid advertisements on Niagara Region social media accounts (i.e. Twitter, Facebook, Instagram, and Snapchat). Advertisements were placed on the Niagara Region website Public Health landing page and the vine site. Municipal communications representatives for each LAM were provided a promotion toolkit enabling them to promote the survey through unpaid social media messages, email and/or newsletter, and other established communication channels. Finally, the survey may also have spread on social media organically and by word of mouth.

## Appendix 3

Table 1 – Number and Proportion of Respondents by Municipality

Municipality	Population Estimate	Proportion of Total Niagara Population	Response Rate per Municipality	Number of Respondents	Proportion of Total Survey Respondents
Niagara Region	447,888	100%	0.21%	956	96.27%
St. Catharines	133,113	30%	0.25%	327	33.93%
Niagara Falls	88,071	20%	0.22%	191	19.23%
Welland	52,293	12%	0.19%	98	9.87%
Fort Erie	30,710	7%	0.25%	76	7.65%
Port Colborne	18,306	4%	0.25%	45	4.53%
Lincoln	23,787	5%	0.16%	39	3.93%
Niagara-on-the-Lake	17,511	4%	0.18%	31	3.12%
Grimsby	27,314	6%	0.13%	35	3.52%
Thorold	18,801	4%	0.26%	48	4.83%
Pelham	17,110	4%	0.22%	38	3.83%
West Lincoln	14,500	3%	0.09%	13	1.31%
Wainfleet	6,372	1%	0.16%	10	1.01%

## Appendix 4

Table 2 – Support Versus Opposition for a By-law by Municipality

Municipality	Support Number of respondents	Support Proportion of respondents	Opposition Number of respondents	Opposition Proportion of respondents
Niagara Region	581	60.8%	269	28.1%
St. Catharines	197	60.2%	96	29.4%
Niagara Falls	115	60.2%	48	25.1%
Welland	56	57.1%	32	32.7%
Fort Erie	45	59.2%	21	27.6%
Port Colborne	23	51.1%	14	31.1%
Lincoln	23	59.0%	14	35.9%
Niagara-on- the-Lake	22	71.0%	7	22.6%
Grimsby	22	62.9%	9	25.7%
Thorold	31	64.6%	11	22.9%
Pelham	27	71.1%	10	26.3%
West Lincoln	Not reportable	Not reportable	Not reportable	Not reportable
Wainfleet	Not reportable	Not reportable	Not reportable	Not reportable

THE REGIONAL MUNICIPALITY OF NIAGARA

BY-LAW NO. 2022-35

A BY-LAW TO REGULATE WATER PIPE SMOKING IN THE  
REGIONAL MUNICIPALITY OF NIAGARA

WHEREAS, water pipe smoking has been associated with various disease and poor health outcomes, including lung cancer, negative pregnancy outcomes, poor oral health, dental disease, respiratory illness and impaired lung function linked to tobacco water pipe formulations, and carbon monoxide exposure and reduced lung capacity linked to non-tobacco formulations;

WHEREAS, water pipe smoking, in general, negatively affects indoor air quality for indicators including carbon monoxide and particulate matter, which are closely related to potential impacts on human health;

WHEREAS, subsection 11(2) of the Municipal Act, 2001, S.O. 2001, c. 25, provides that upper tier municipalities have the authority to pass by-laws respecting the health, safety and well-being of persons;

WHEREAS, subsection 115(1) of the Municipal Act, 2001, S.O. 2001, c. 25 provides that a municipality may prohibit or regulate the smoking of tobacco in public places and workplaces; and

WHEREAS, it is desirable for the health, safety and well-being of the inhabitants of Niagara Region to prohibit the use of water pipes in enclosed public places, enclosed workplaces, and other specified areas within Niagara Region to protect individuals from conditions hazardous to human health.

NOW THEREFORE, the Council of the Regional Corporation enacts as follows:

DEFINITIONS

1. In this By-law:

“Employee” means a person who performs any work for, or supplies any service to, an employer, or a person who receives any instruction or training in the activity, business, work, trade, occupation or profession of an employer.

“Employer” includes an owner, operator, proprietor, manager, superintendent, overseer, receiver or trustee of an activity, business, work, trade, occupation, profession, project

or undertaking who has control or direction of, or is directly or indirectly responsible for, the employment of a person in it.

“Enclosed Public Place” means the inside of any place, building or structure, or vehicle or conveyance or a part of any of them:

- (a) that is covered by a roof; and
- (b) to which the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry.

“Enclosed Workplace” means the inside of any place, building or structure or vehicle or conveyance or a part of any of them:

- (a) that is covered by a roof; and
- (b) that employees work in or frequent during the course of their employment whether or not they are acting in the course of their employment at the time.

“Highway” means a highway as defined in the Municipal Act, 2001, S.O. 2001, c. 25.

“Medical Officer of Health” means the Medical Officer of Health for The Regional Municipality of Niagara, duly appointed under the Health Protection and Promotion Act, R.S.O. 1990, c. H.7, as amended.

“Officer” means a Provincial Offences Officer acting under the direction of the Medical Officer of Health;

“Order” has the meaning set forth in section 11 of this By-law.

“Person” means an individual or a corporation;

“Playground” means an area where the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry, that is primarily used for the purposes of children’s recreation, and is equipped with children’s play equipment including but not limited to slides, swings, climbing apparatuses, splash pads, wading pools, or sand boxes.

“Proprietor” means the person, governing body or agency which controls, governs or directs activity carried on within an Enclosed Public Place, Enclosed Workplace, or other area specified by this By-law and includes the person who is actually in charge thereof;



“Patio” means an area where the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry, or that is worked in or frequented by employees during the course of their employment, whether or not they are acting in the course of their employment at the time, and where food or drink is served or sold or offered for consumption, or that is part of or operated in conjunction with an area where food or drink is served or sold or offered.

“Property Owner” means a Person with a legal or beneficial ownership of a building or other structure that contains an Enclosed Public Place or an Enclosed Workplace operated either directly by the Property Owner or indirectly by a tenant, licensee or other Person operating in the building or structure with the permission of that Property Owner and includes:

- (a) the registered owner on title of the property;
- (b) the person, for the time being, managing or receiving the rent of the land or premises in connection with which the word is used, whether on the person’s own account or as agent or trustee of any other person, or who would receive the rent if the land and premises were let; and
- (c) the lessee or occupant of the property.

“Public Place” means:

- (a) any property owned, leased, or controlled by Niagara Region or any area municipality, including without limitation parks, playgrounds, sports or playing fields, recreational trails, beaches, arenas, recreational centers, community meeting areas, special events, farmers markets, bus shelters, splash pads, and pools;
- (b) any outdoor area within a nine-metre radius of an entrance to or exit from a building located at any property owned, leased or controlled by Niagara Region or any area municipality; and
- (c) any outdoor area that is within a nine-metre radius of an entrance to or exit from a public building or building generally accessible to the public, whether or not the building is leased, or controlled by Niagara Region or any area municipality, including places of employment, condominium buildings, apartment buildings and other similar residential buildings.

“Roof” means a physical barrier of any size, whether temporary or permanent, that covers an area or place or any part of an area or place, and that is capable of excluding rain or impeding airflow, or both.

“School” means the lands or premises included in the definition of a school under the Education Act, R.S.O. 1990, c. E.2 or the building or the grounds surrounding the building of a private school as defined in the Education Act, where the private school is the sole occupant of the premises, or the grounds annexed to a private school as defined in the Education Act, where the private school is not the sole occupant of the premises.

“Spectator Area” means an area with tiered seating or benches.

“Smoke” or “Smoking” includes the use or carrying of any lighted or activated or heated Water pipe as well as the fumes or byproducts of heating or combustion associated with Water pipe use.

“Sporting Area” means an area where the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry, used primarily for the purposes of sports including, but without being limited to soccer, football, basketball, tennis, baseball, softball, cricket, skating, beach volleyball, running, swimming, or skateboarding.

“Water pipe” means any activated, lighted or heated smoking equipment used to burn or heat tobacco or a non-tobacco substance or a combination thereof, with which the vapor or smoke may be passed through a water basin before inhalation.

## PROHIBITIONS

2. No person shall Smoke a Water pipe in:

- (a) an Enclosed Public Place;
- (b) an Enclosed Workplace;
- (c) a Patio;
- (d) a Playground;
- (e) a Public Place;
- (f) a Sporting Area;
- (g) a Spectator Area adjacent to a Sporting Area;
- (h) a School; or

- (i) any area that is within 9 metres of any point on the perimeter of a Public Place, Playground, Sporting Area or Spectator Area adjacent to a Sporting Area.
- 3. The prohibitions in this By-law shall apply whether or not a notice is posted that Water pipe Smoking is prohibited.
- 4. No Person shall provide or supply a Water pipe for use in an area where Smoking a Water pipe is prohibited by this By-law.
- 5. No Proprietor, Employer, or Employee shall encourage, entice, cause or permit the Smoking of a Water pipe within an Enclosed Public Place, Enclosed Workplace, or Restaurant or Patio or Sporting Area or Spectator Area.
- 6. No Property Owner, shall cause or permit use of a building or other structure that contains an Enclosed Public Place or an Enclosed Workplace building in which that Property Owner has a legal or beneficial interest to be used.

#### EXEMPTIONS

- 7. This By-law does not apply to a Highway including a pedestrian sidewalk adjacent to a Highway, but does apply to public transportation vehicles and taxicabs on a Highway.
- 8. This By-law does not apply to the portion of a premises used primarily as a private dwelling.

#### ENFORCEMENT

- 9. Where any Person contravenes any provision of this By-law, an Officer may direct such Person to comply with this By-law. Every Person so directed shall comply with such direction without delay.
- 10. 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.
- 11. In the event the Medical Officer of Health is satisfied that a contravention of this By-law has occurred, Niagara Region may make an order, as authorized by section 444(1) of the Municipal Act, 2001 S.O. 2001 c25 (as amended or replaced from time to time) requiring the person who contravened the By-law or who caused or permitted the contravention or the Property Owner of the land on which the contravention occurred to discontinue the contravening activity and the

Medical Officer of Health is by this By-law, delegated authority to issue such Orders.

## INSPECTIONS

12. An Officer may enter and inspect all buildings, structures or parts thereof that are subject to this By-law at any reasonable time for the purposes of determining whether there is compliance with this By-law.
13. For the purposes of an inspection under this By-law, an Officer may:
  - (a) require the production for inspection of documents or things relevant to the inspection;
  - (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
  - (c) require information from any person concerning a matter related to the inspection; and
  - (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
14. In the event the Medical Officer of Health determines that it would be beneficial for the enforcement of the requirements of this By-law, Niagara Region shall have all be entitled to:
  - (a) seek a search warrant pursuant to section 439 of the Municipal Act, 2001 S.O. 2001 c. 25 (as amended or replaced from time to time); and
  - (b) apply to restrain any breach or continuing breach of the By-law pursuant to section 440 of the Municipal Act, 2001 S.O. 2001 c. 25 (as amended or replaced from time to time).

## OBSTRUCTION

15. No Person shall hinder or obstruct, or attempt to hinder or obstruct, an Officer lawfully carrying out a power, duty or direction under this By-law.

## OFFENCES

16. Every Person other than a corporation who contravenes any provision of this By-law, is guilty of an offence and on conviction is liable, for every day or part thereof upon which such offence occurs or continues, to a fine of not more than \$10,000 for a first offence; and not more than \$25,000 for any subsequent conviction.
17. Every Person other than a corporation who fails to promptly comply with an Order issued pursuant to section 11 of this By-law, is guilty of an offence and on conviction is liable, for every day or part thereof upon which such offence occurs or continues, to a fine of not more than \$10,000 for a first offence; and not more than \$25,000 for any subsequent conviction.
18. Every corporation which contravenes any provision of this By-law, is guilty of an offence and on conviction is liable, for every day or part thereof upon which such offence occurs or continues, to a fine of not more than \$50,000 for a first offence and not more than \$100,000 for any subsequent conviction.
19. Every corporation which fails to promptly comply with an Order issued pursuant to section 11 of this By-law, is guilty of an offence and on conviction is liable, for every day or part thereof upon which such offence occurs or continues, to a fine of not more than \$50,000 for a first offence and not more than \$100,000 for any subsequent conviction.
20. Without limiting any other section of this By-law, every Person who contravenes any provision of this By-law is guilty of an offence and on conviction is liable to a fine in accordance with the Provincial Offences Act, R.S.O. 1990, c. P.33.
21. Without limiting any other section of this By-law, every Person who fails to promptly comply with an Order issued pursuant to section 11 of this By-law is guilty of an offence and on conviction is liable to a fine in accordance with the Provincial Offences Act, R.S.O. 1990, c. P.33.
22. If any Person is in contravention of any provision of this By-law, and the contravention has not been corrected, the contravention of the provision shall be deemed to be a continuing offence for each day or part of a day that the contravention remains uncorrected.
23. For the purposes of this By-law, subsequent conviction means a conviction for an offence which occurs after the date of conviction for an earlier offence under this By-law.

24. Where any Person contravenes any provision of this By-law, such person shall be responsible for all costs incurred by the Region directly related to the contravention.

#### SEVERABILITY

25. If any section or sections of this By-law, or parts thereof are found by any court of competent jurisdiction to be illegal or beyond the power of Regional Council to enact, such section or sections or parts thereof shall be deemed to be severable from this By-law and all remaining sections or parts of this By-law shall be deemed to be separate and independent therefrom and to be properly enacted and to be of full force and effect.

#### CONFLICT

26. In the event of a conflict between any provision of this By-law and any applicable Act or regulation, the provision that is the most restrictive prevails.


#### EFFECTIVE DATE

27. This By-law shall come into force and take effect on January 1, 2023, provided that the conditions in subsection 115(5) of the Municipal Act, 2001, S.O. 2001, c. 25 have been satisfied.

#### SHORT TITLE

28. The short title of this By-law is the "Niagara Region Water Pipe Smoking By-law".

THE REGIONAL MUNICIPALITY OF NIAGARA

  
James Bradley, Regional Chair

  
Ann-Marie Norio, Regional Clerk

Passed: May 19, 2022

# THE CORPORATION OF THE TOWNSHIP OF WAINFLEET

## BY-LAW NO. 025-2022

Being a Site Alteration By-law to regulate the removal, placing or dumping of fill in the Township of Wainfleet.

**WHEREAS** sections 8, 9 and 11 of the *Municipal Act, 2001*, S.O. 2001, c. 25, authorize a municipality to pass by-laws respecting the economic, social and environmental well-being of the municipality, the health, safety and well-being of persons, and the protection of persons and property;

**AND WHEREAS** section 142 of the *Municipal Act, 2001*, S.O. 2001, c. 25, provides that a local municipality may pass by-laws to prohibit or regulate the placing or dumping of fill, the removal of topsoil and the alteration of the grade of land, to require that a permit be obtained for the placing or dumping of fill, the removal of topsoil and the alteration of the grade of land and for imposing conditions to a permit, including requiring the preparation of plans acceptable to the municipality relating to grading, filling or dumping, the removal of topsoil and the rehabilitation of the site;

**AND WHEREAS** sections 23.1, 23.2, 23.3 and 23.5 of the of the *Municipal Act, 2001*, S.O. 2001, c. 25, authorize a municipality to delegate certain powers and duties;

**AND WHEREAS** section 425 of the of the *Municipal Act, 2001* S.O. 2001, c. 25, permits a municipality to pass by-laws providing that any person who contravenes any by-law of the municipality enacted under the statute is guilty of an offence;

**AND WHEREAS** subsection 426(4) of the of the *Municipal Act, 2001*, S.O. 2001, c. 25, provides that any person that hinders or obstructs, or attempts to hinder or obstruct, any person who is exercising or performing a duty under a by-law enacted under the statute is guilty of an offence;

**AND WHEREAS** subsection 444(1) of the *Municipal Act, 2001* S.O. 2001, c. 25, permits a municipality, if satisfied that a contravention of a by-law of the municipality passed under the statute has occurred, to 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;

**AND WHEREAS** section 446 of the *Municipal Act, 2001*, S.O. 2001, c. 25, provides a municipality with the authority to direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person's expense;

**AND WHEREAS** section 434.1 of the *Municipal Act, 2001*, S.O. 2001, c. 25, provides that a municipality may require a person to pay an administrative monetary penalty if the municipality is satisfied that the person has failed to comply with a by-law of the municipality passed under the statute;

**AND WHEREAS** Council of the Township of Wainfleet deems it expedient and in the public interest to enact this By-law;

**NOW THEREFORE** the Council of the Corporation of the Township of Wainfleet enacts as follows:

## **1. SHORT TITLE**

1.1 This By-law may be cited and known as the "Site Alteration By-law".

## **2. DEFINITIONS**

2.1 For the purposes of this By-law:

**"Agricultural Lands"** includes:

- a) land upon which Agriculture is a permitted use pursuant to the applicable zoning by-law(s); and
- b) land which is being used for Agriculture at the time of submission of an application for a Permit;

**"Agricultural uses"** means the growing of crops, including nursery, biomass and horticultural crops; raising of livestock; raising of other animals for food, fur or fibre, including poultry and fish; aquaculture; apiaries; agro-forestry; maple syrup production; associated on-farm buildings and structures, including but not limited to livestock facilities, manure storages, value-retaining facilities and accommodation for full-time farm labour when the size and nature of the operation requires additional employment;

**"Applicable Law"** means all legislative laws, standards, codes, regulation or by-law as amended that may apply;

**"Commercial Fill Operation"** means the removal, placing or Dumping of Fill involving remuneration paid, or other compensation, to an Owner of land whether or not the remuneration or compensation to the Owner is the sole reason for the removal, placing or the Dumping of Fill;

**"Complete Application"** means an application for a Permit that includes the application form and all other plans, fees, securities, certificates, approvals and other documents required to be submitted in accordance Part VII of this By-law;



**“Conservation Authority”** means the Niagara Peninsula Conservation Authority;

**“Council”** means the Council of the Township of Wainfleet;

**“Dump”, “Dumped” or “Dumping”** means the placing or depositing of Fill in a location other than where the Fill was obtained and includes the movement and depositing of Fill from one location to another on the same property;

**“Fill”** means any type of material removed from or deposited or placed on lands and, without limiting the generality of the foregoing, includes soil, subsoil, topsoil, stone, sod, turf, clay, sand, gravel or other such similar material, either singly or in combination, at the discretion of the Manager;

**“Haul Route”** means Roads designated or approved by the Township for the purposes of ingress or egress to a Site Alteration as a condition of a Permit;

**“Lot”** means a parcel of land which can be legally conveyed;

**“Manager”** means the Manager of Operations for the Township of Wainfleet and shall include any Person authorized by the Manager to carry out any of the powers or duties of the Manager pursuant to this By-law;

**“Ministry”** means the Ministry of the Environment, Conservation and Parks;

**“Normal Farm Practice”** means a practice, as defined in the Farming and Food Production Protection Act, 1998, S.O. 1998, C.1, that is 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 management practices. Normal farm practices shall be consistent with the Nutrient Management Act, 2002, S.O. 2002, c.4, and its regulations made under that Act;

**“Officer”** includes:

- a) a Police Officer employed by the Royal Canadian Mounted Police (RCMP), Ontario Provincial Police (OPP) or Niagara Regional Police Service (NRPS);
- b) a Municipal By-law Enforcement Officer of the Township or other Person appointed by or under the authority of a Township by-law to enforce Township by-laws including, but not limited to, the Manager of Operations for the Township and any Person authorized by the Manager to carry out any of the powers or duties of the Manager pursuant to this By-law;

- c) a Provincial Offences Officer designated as such under the *Provincial Offences Act, R.S.O. 1990, c.P.33*;
- d) a Peace Officer authorized to enforce the Highway Traffic Act;

**“Order”** means an order issued under this By-law;

**“Owner”** means the registered owner of land;

**“Permit”** means a permit issued pursuant to the provisions of this By-law which is, subject to Part XI of this By-law, valid for a period of twelve (12) consecutive months from the date of issuance;

**“Person”** means an individual, firm, corporation, association or partnership and includes an Owner;

**“Public Open House”** means a meeting that is open to the public for the purposes of section 9.5 of this By-law;

**“Qualified Person”** means a Person who meets the qualifications as set out in section 5 or 6 of O. Reg. 153/04 - Records of Site Condition - Part XV.1 made under the *Environmental Protection Act, R.S.O. 1990, c. E.19*;

**“Road(s)”** means a common and public highway, and includes a street, bridge or other structure forming part of a highway over or across which a highway passes and includes the whole of a road allowance under the jurisdiction of the Township;

**“Security”** means financial security in the form of a cash deposit or an irrevocable letter of credit to ensure fulfillment of the terms of a Permit or to secure the cost of repairing damage to municipal property as a result of work undertaken under a Permit which is posted under this By-law or pursuant to a Site Alteration Agreement;

**“Site”** means the Lot or Lots altered or proposed to be altered by a Site Alteration;

**“Site Alteration”** means any temporary or permanent removal of Fill from the Site by any means or any temporary or permanent Dumping of Fill on the Site by any means, whether the Fill originates from lands or Lots appurtenant to the Site or from elsewhere;

**“Site Alteration Agreement”** means an agreement between an Owner and the Township required by the Manager as a condition of obtaining a Permit under this By-law;

**“Site Plan”** means a set of drawings that clearly indicates the area on the Site subject to Site Alteration along with the property lines of the Lot or Lots;

**“Topsoil”** means those horizons in a soil profile, commonly known as “O” and “A” horizons, containing organic material and includes deposits of partially decomposed organic material such as peat;

**“Township”** means The Corporation of the Township of Wainfleet;

**“Zoning By-law”** means a by-law passed under section 34 of the *Planning Act*, R.S.O. 1990, c. P.13 (“Planning Act”) and applicable to lands within the Township.

### 3. SCOPE

- 3.1 This By-law shall apply to all Site Alterations within the Township, unless the Conservation Authority has made a regulation under section 28 of the *Conservation Authorities Act*, R.S.O. 1990, c. C.27, applicable to the Site, or unless specifically excluded pursuant to this By-law.

### 4. ADMINISTRATION AND DELEGATED AUTHORITY

- 4.1 The Manager shall be responsible for the administration of this By-law.

- 4.2 The Manager is authorized and has the delegated authority to:

- a) approve, exempt, waive, issue, deny, refuse, revoke, extend, renew, amend, or close a Permit and/or grant approvals of Site Alteration;
- b) impose conditions on the issuance of a Permit;
- c) determine and deem an application for a Permit to be abandoned, expired, or closed;
- d) approve and coordinate any works required to remediate a Site as part of or subsequent to a Site Alteration;
- e) approve amendments to Site Alteration Agreements;
- f) appoint a peer review consultant or other engineering, scientific and/or technical experts to fulfill the role or duties of a Officer for purposes of this By-law;
- g) require or exempt any works from the requirements of this By-law;
- h) authorize any Person to carry out any of the powers or duties of the Manager pursuant to this By-law;
- i) approve forms and documents to be used under this By-law;

- j) authorize and/or hire such agents, contractors and other Persons to perform work, as required; and
- k) take any actions or steps incidental to or ancillary to the Manager's authority under this By-law.

## **5. GENERAL PROHIBITIONS**

- 5.1. Subject to the exemptions prescribed under Part VI of this By-law, no Person shall cause, permit, perform or carry out a Site Alteration except in accordance with all Applicable Law and/or without first obtaining a Permit from the Township to do so.
- 5.2. No Person shall cause, permit, perform or carry out a Site Alteration except in accordance with this By-law and all Applicable Law.
- 5.3. Notwithstanding any other provision of this By-law, no Person shall import any Fill onto any land where the quality of the imported material is not acceptable for the intended use and betterment of the land.
- 5.4. Where a Permit has been issued under this By-law authorizing a Site Alteration, no Person shall undertake or permit a Site Alteration except in accordance with:
  - a) the plans, approvals, documents or other material filed in support of the issuance of the Permit;
  - b) the conditions attached to the Permit;
  - c) the terms of any Site Alteration Agreement or other agreement with the Township entered into under this By-law; and
  - d) the provisions of this By-law.
- 5.5. No Person shall modify an approved Site Alteration without approval of the Manager.
- 5.6. No Person shall operate a Commercial Fill Operation in the Township of Wainfleet.
- 5.7. No Person shall remove Fill, Dump Fill, or cause or permit the removal or Dumping of Fill unless such Fill complies with the Ministry of Environment standards for clean Fill, as described in the *Environmental Protection Act*, R.S.O. 1990, c. E.19 ("*Environmental Protection Act*").
- 5.8. No Person shall import any Fill onto any Lot, land or property with the use of a hydro excavation truck, being any truck that excavates, removes or moves Fill with water and/or air, except where approval has been given by the Township or by Council in accordance with the requirements with this by-law.

5.9. No Person shall carry out any Site Alteration works for which a Permit is required in a manner that contravenes Township By-law No. 042-2018 (Township's Noise Control By-law) or at any time on a statutory holiday.

5.10. No Person shall fail to comply with an Order issued under this By-law.

5.11. No Person shall obstruct an Officer carrying out an inspection under this By-law.

## **6. EXEMPTIONS**

6.1 This By-law is not applicable to the following:

- a) a Site Alteration:
  - (i.) that involves the Dumping or placing of Topsoil on a Site for improving the soil capability for agricultural uses on Agricultural Lands as part of a Normal Farm Practice;
  - (ii.) that is incidental to a grading requirement under the *Ontario Building Code*, O. Reg. 332/12 ("*Building Code*") for the construction or demolition of a building or structure for which a building permit has been issued or for the purpose of constructing a driveway, parking lot or assembly area reasonably accessory to the building or structure for which a building permit has been issued or is a septic disposal system where a permit has been issued by the Township, the Regional Municipality of Niagara or the Ministry in accordance with Part 8 of Division B of the *Building Code*;
  - (iii.) on lands that are used for the purpose of flood or erosion control to establish finished grade shown on a grading and drainage plan approved by the Conservation Authority; or
  - (iv.) on lands that are used for storage purposes either as a primary or accessory use provided that the use is permitted on the lands pursuant to the Zoning By-law;
- b) public sector related activities or matters undertaken by the Township or a local board of the Township;
- c) the Dumping of Fill, removal of Topsoil or alteration of the grade of land imposed after December 31, 2002 as a condition to the approval of a site plan, a plan of subdivision or a consent under sections 41, 51 or 53 of the *Planning Act*, RSO. 1990, c. P13 or as a requirement of a site plan agreement or subdivision/severance agreement entered into under those sections;
- d) the Dumping of Fill, removal of Topsoil or alteration of the grade of land imposed after December 31, 2002 as a condition to a development permit

authorized by regulation made under section 70.2 of the *Planning Act*, RSO. 1990, c. P13 or as a requirement of an agreement entered into under that regulation;

- e) the Dumping of Fill, removal of Topsoil or alteration of the grade of land undertaken by a transmitter or distributor, as those terms are defined in section 2 of the *Electricity Act*, 1998, S.O. 1998, c. 15, Sched. A, for the purpose of constructing and maintaining a transmission system or a distribution system, as those terms are defined in that section;
- f) the Dumping of Fill, removal of Topsoil or alteration of the grade of land undertaken on land described in a licence for a pit or quarry or a permit for a wayside pit or wayside quarry issued under the *Aggregate Resources Act*, R.S.O. 1990, c. A.8 ("*Aggregate Resources Act*");
- g) the Dumping of Fill, removal of Topsoil or alteration of the grade of land undertaken on land in order to lawfully establish and operate or enlarge any pit or quarry on land;
  - (i) that has not been designated under the *Aggregate Resources Act* or a predecessor of that statute; and
  - (ii) on which a pit or quarry is a permitted land use under a by-law passed under section 34 of the *Planning Act*, RSO. 1990, c. P13;
- h) the Dumping of Fill, removal of Topsoil or alteration of the grade of land undertaken as an incidental part of drain construction under the *Drainage Act*, R.S.O. 1990, c. D.17 or the *Tile Drainage Act*, R.S.O. 1990, c. T.8;
- i) the use, operation, establishment, alteration, enlargement or extension of a waste management system or waste disposal site lawfully permitted under Part V of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, or a waste disposal site or waste management system that is exempted by regulation from said Part V;
- j) the construction, extension, alteration, maintenance or operation of works under section 28 of the *Public Transportation and Highway Improvement Act*, R.S.O. 1990, c. P.50;
- k) the construction of a building or structure, including a driveway, parking pad or swimming pool, pursuant to a valid building permit which has been issued by the Township, where the Site Plan accompanying the building permit application provides sufficient information to ensure that the Site Alteration proposed therein meets the guidelines established by the Manager pursuant to this By-law;

- l) any filling of an excavation to the elevation of an existing grade following the demolition or removal of a building or structure for which a demolition permit has been issued, or for which no demolition permit is required under the *Building Code Act, 1992*, S.O. 1992, c. 23 or the *Building Code*;
- m) any Site Alteration that is:
  - (i) determined to be a Normal Farm Practice; and
  - (ii) carried on by Owners at properties that have an active registration as a “farming business” as defined in the *Farm Registration and Farms Organization Funding Act, 1993*, S.O. 1993, c. 21 and are in good standing under that statute;
- n) the stockpiling of Fill in the ordinary course of the operation of a garden supply establishment that is legally established under the Zoning By-law, provided that such activity does not result in the permanent alteration of the existing grade of the land of the garden supply establishment. For this exemption to apply, the Owner must:
  - (i) maintain records from the material source sites indicating that the imported Fill meets the requirements of the site condition standards for agricultural uses, and
  - (ii) demonstrate, to the satisfaction of the Manager, that the Fill is being exported regularly and not returning to the same Lot, land or property.

6.2 A Permit is not required for a Site Alteration if the size of the Site and total amount of Fill is as follows:

- a) for a Site of 0.1 hectares or less, a maximum of 10 cubic metres of Fill, which shall be permitted only within a twelve (12) month period for betterment of the Site and the permitted use of the Site;
- b) for a Site of 0.2 hectares to 0.5 hectares, a maximum of 100 cubic metres of Fill, which shall be permitted only within a twelve (12) month period for betterment of the Site and the permitted use of the Site;
- c) for a Site of 0.5 hectares or larger, a maximum of 500 cubic metres of Fill, which shall be permitted only within a twelve (12) month period for betterment of the Site and the permitted use of the Site.

6.3 Any Site Alteration in which the amount or volume of Fill exceeds the maximum volumes prescribed by section 6.2 is prohibited unless a Permit is issued by the Manager and is subject to all other provisions and requirements of this By-law.

- 6.4 Notwithstanding the exemptions from the Permit requirement prescribed by section 6.2 of this By-law, every Person carrying out a Site Alteration to which section 6.2 applies shall provide written notice of the Site Alteration to the Manager.

## **7. ADMINISTRATION AND REQUIREMENTS FOR ISSUANCE OF A PERMIT**

7.1 Every Owner applying for a Permit shall submit to the Manager:

- a) a completed application in the form prescribed by the Township from time to time;
- b) payment of the fee for a Permit shall be submitted in accordance with this By-law and shall be accompanied by the full Permit fee as set out in the Fees and Charges By-law;
- c) a Security in an amount satisfactory to the Manager;
- d) a description of the Fill proposed to be removed or Dumped including a detailed description of the destination or source of the Fill, the quantity of the Fill and the proposed placement of the Fill;
- e) a certificate of commercial general liability insurance in the owner's name, in the amount of \$5,000,000, naming the Township as an additional insured party, and maintain such insurance for the full period of time during which the Permit is valid, which certificate shall be in a form prescribed by the Manager from time to time;
- f) a Site Alteration Plan satisfactory to the Manager, which includes and accurately indicates the following:
  - (i) the property lines of the lands, with dimensions,
  - (ii) the location on the Site of the Site Alteration, with dimensions,
  - (iii) location and details of any proposed sediment control measures,
  - (iv) all existing storm sewers, ditches, swales, creeks, watercourses and wetlands on the lands and on abutting lands and public Roads,
  - (v) all woodlands on the Site,
  - (vi) all easements and rights of way over, under, across or through the Site,
  - (vii) proof of permission with respect to the removal, placement or Dumping of the Fill from the grantee of any easement on the Site impacted by a Site Alteration,



- (viii) all existing buildings and driveways on the Site,
  - (ix) all existing elevations with sufficient buffer onto adjacent properties to assess existing drainage patterns,
  - (x) proposed grades and drainage systems upon completion of the Site Alteration,
  - (xi) proposed ground covering to be used upon completion of the Site Alteration,
  - (xii) location and composition of any temporary or permanent entrances and/or access roads that will be constructed to facilitate access to the Site, and
  - (xiii) location and composition of any temporary or permanent mud mat at the entrance to the Site to mitigate mud tracking onto the municipal right-of-way;
- g) where applicable, copies of any approval required from any other agency, including, but not limited to, the Conservation Authority;
  - h) the proposed Haul Route;
  - i) a certificate stating that the Fill contains no contaminants with the meaning of the *Environmental Protection Act*, which certificate shall be in a form prescribed by the Manager from time to time;
  - j) an executed unconditional release and indemnity to save harmless the Township, its elected officials, staff and agents, with respect to any and all liability which may arise directly or indirectly from the Site Alteration, including the presence of any fill that is determined to contain contaminants within the meaning of the *Environmental Protection Act*, which release and indemnity shall be in a form prescribed by the Manager from time to time; and
  - k) any other study, report, plan or material related to the application as deemed necessary by the Manager to constitute a Complete Application.

## **8. ISSUANCE OF A PERMIT BY THE MANAGER**

- 8.1 The Manager shall review and assess or cause to be reviewed and assessed a Complete Application. In carrying out this review the Manager may seek comments from any other agency deemed necessary by the Manager for the purpose of reviewing and/or assessing a Complete Application.

8.2 The Manager shall issue a Permit where, in the assessment of the Manager, acting reasonably:

- a) The Person has fulfilled all of the requirements of this By-law, including the payment of all applicable fees, charges and Security;
- b) The Site is not within an area where the Site Alteration is prohibited under this By-law or any other Applicable Law;
- c) The issuance of the Permit:
  - (i.) will result in maintaining or improving the overall agricultural capability of the Site, or
  - (ii.) is incidental to a Normal Farm Practice, or
  - (iii.) is appropriate for the development and use of the Site and that maintains the general intent and purpose of the Zoning By-law, the Official Plan and this By-law.

8.3 The Manager may require as a condition of the Permit that the Person to whom the Permit is issued enter into a Site Alteration Agreement in the form prescribed by the Township from time to time, which may include a requirement to provide additional Security.

8.4 Where the Manager refuses to issue a Permit, an applicant may appeal the decision of the Manager to Council, and Sections 9.4 through 9.8 shall apply, with necessary modifications to the appeal process.

8.5 The Manager shall not issue a Permit or accept an application for a Site Alteration within a twelve (12) month period of the expiry date of any previous Permit.

## **9. CONSIDERATION BY COUNCIL OVER 1000 CUBIC METRES**

9.1 Where the amount or volume of Fill to be removed or Dumped in relation to a Site Alteration exceeds one thousand (1000) cubic metres within any twelve (12) month period, the Permit for such Site Alteration may not be issued by the Manager unless and until the Complete Application has been reviewed and assessed by Council and the issuance of the Permit has been approved by Council.

9.2 In reviewing and assessing a Complete Application in accordance with section 9.1 of this By-law, Council shall have the same powers as the Manager pursuant to this By-law.

9.3 In addition to the all other requirements of this By-law, every Person to whom a Permit is issued under section 9.1 shall be required to enter into a Site Alteration

Agreement prescribed by the Township from time to time, which may include a requirement to provide additional Security.

9.4 Upon receipt of a Complete Application for a Site Alteration that exceeds one thousand (1000) cubic metres of Fill:

a) the Manager shall:

(i.) schedule a Public Open House,

(ii.) provide the Person submitting the Complete Application with notice of the Public Open House at least thirty (30) days prior to the date of the meeting,

(iii.) provide notice of the Complete Application to all registered Owners of Lots, land or property within one hundred and twenty (120) metres of the boundaries of the Site, and

(iv.) post notice of the Public Open House on the Township's website at least ten (10) days prior to the Public Open House date; and

(b) the Person submitting the Complete Application shall post a placard on the Site as provided by the Township at least ten (10) days prior to the Public Open House so that it is clearly visible to the public, provide proof of the placement of the placard to the Manager and leave the placard on the Site until the Permit is issued or denied.

9.5 The written notice required under this section of this By-law shall be sent to the Applicant by registered or regular mail, personal service or email and shall be deemed to have been served on the fifth day after it was mailed or, in the case of email, on the day that it was sent.

9.6 Comments received at the Public Open House shall form part of a technical report provided by the Operations Department to Council and shall form part of the review by Council.

9.7 Consideration of the Complete Application shall be held in public and the Person submitting the Complete Application may request to be a delegate.

9.8 Upon reviewing and assessing the Complete Application, reviewing the technical report described in section 9.6 and hearing from any delegation described in section 9.7, Council shall consider whether the Complete Application meets the requirements of this By-law and shall approve or deny the issuance of the Permit.

9.9 The decision of Council to approve or deny the issuance of the Permit is final.

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**10. CONDITIONS ON PERMITS AND HAUL ROUTES**

10.1 The Manager shall, as a condition of a Permit, require an Owner of the Site which is the subject of the Permit either prior to the Permit being issued or after the Permit has been issued, to comply with the following:

a) notify the Manager in writing:

(i.) at least seventy-two (72) hours before commencing any Site Alteration under the Permit; and

(ii.) of the completion of the Site Alteration under the Permit no later than seventy-two (72) hours following completion of the Site Alteration;

b) maintain the Roads providing ingress and egress to the Site in the same condition that existed prior to the commencement of the Site Alteration;

c) keep all Roads providing ingress and egress to the Site free from any damage, equipment or material or mud tracked onto the Road arising from any Site Alteration undertaken as a result of the Permit;

d) remediate and clean up forthwith any material or mud tracked onto the Roads where required to do so by Township staff;

e) ensure that dust control measures are in place so as to restrict and limit the blowing of dust onto any adjacent lands;

f) install temporary signage in accordance with Ministry of Transportation's Ontario Traffic Manual (OTM) Book 7 regulations on all Roads immediately adjacent to the Site where Fill is being Dumped;

g) inspect and maintain sediment control measures to ensure they are kept in good working order;

h) ensure that any machinery operating on a Road or any Person directing traffic on a Road does so in a manner acceptable to the Manager and in accordance with all other Applicable Law;

i) ensure that Fill that is Dumped on the Site is in accordance with the Permit, the Site Plan and all other Applicable Law;

j) provide the Manager or an Officer a report from a Qualified Person, qualified engineer or environmental consultant possessing an expert or special knowledge in respect to the source and nature of the Fill to be Dumped that the Fill meets the standards prescribed by the Ministry; and

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- k) provide Security satisfactory to the Manager or secure the maintenance of the Roads that are used by trucks delivering or removing Fill in a state of good repair and free from dust and mud.
- 10.2 The Manager may, as a condition of a Permit, require an Owner of the Site which is the subject of the Permit, either prior to the Permit being issued or after the Permit has been issued, to comply with one or more of the following:
- a) keep, maintain and make available to the Manager the following records:
    - (i.) the full and complete legal name and business name if different from the legal name of each hauler,
    - (ii.) the commercial vehicle registration number of each hauler,
    - (iii.) the motor vehicle permit number of the motor vehicles owned and operated by each hauler,
    - (iv.) the date and time of delivery of Fill,
    - (v.) the point of origin of each delivery of Fill,
    - (vi.) the volume of each delivery of Fill,
    - (vii.) the content of material of each delivery of Fill,
    - (viii.) any other information required by O. Reg. 153/04 - Records of Site Condition - Part XV.1 made under the *Environmental Protection Act*, R.S.O. 1990, c. E. 19; and
    - (ix.) any other information required by the Manager; and
  - b) to comply with any other conditions imposed by the Manager.
- 10.3 The Manager may, as a condition of a Permit, designate one or more Haul Routes to be used for ingress or egress to the Site for the Site Alteration.
- 10.4 Where Haul Routes are not within the jurisdiction of the Township, the Manager may require that the Owner of the Site that is the subject of the Permit provide proof of permission to use the Roads.
- 10.5 Every Owner who is issued a Permit under this By-law shall be responsible for ensuring that the designated Haul Routes are used by any Person coming to or from the Site under the Permit and any failure to do so is a contravention of this By-law.

10.6 The Township may engage such legal, engineering or other technical consultants the Manager deems necessary in order to evaluate and/or review studies and/or agreements or to provide assistance to the Manager in respect of an application and ensuing Site Alteration and the costs incurred by the Township in so doing shall be charged back to the Owner.

10.7 The Township may draw on any Security provided under this By-law in order to remedy any breach of the provisions of this By-law, the conditions of a Permit, or any other obligation of the Owner relating to the Permit.

10.8 The issuance of a Permit under this By-law does not relieve an Owner or any other Person from compliance with the By-law or any other Applicable Law.

## **11. SUSPENSION, REVOCATION, TRANSFER AND EXPIRY OF A PERMIT**

11.1 A Permit issued pursuant to the provisions of this By-law may be revoked by the Manager at any time and without notice under any of the following circumstances:

- a) if no work has been commenced after three (3) months from the date of issuance;
- b) if the Permit was issued on mistaken, misleading, false or incorrect information;
- c) if the Permit was issued in error; or
- d) where the Owner of the Site that is the subject of the Permit is in contravention of a condition to the Permit, a provision of this By-law, or a provision of any Site Alteration Agreement that has been entered into.

11.2 No refund of any fees paid pursuant to this By-law shall be provided if a Permit expires or is revoked.

11.3 A Permit issued under this By-law may be renewed or extended prior to expiry where the following conditions are met:

- a) work has been commenced or completed under the Permit;
- b) the work previously approved under the Permit has not been and will not be revised;
- c) the Person to whom the Permit was issued or the Owner of the Site that is the subject of the Permit submits a renewal or extension application to the Manager that is accompanied by the applicable Permit fee; and
- d) the renewal or extension application is submitted at least sixty (60) days prior to the expiry of the Permit.

11.4 A renewal or extension of a Permit issued pursuant to this By-law shall be valid for a period of six (6) months from the date of issuance, but shall expire after three (3) months from the date of issuance if work has not been commenced by that date.

11.5 If title to the Site for which a Permit has been issued is transferred while the Permit remains in effect, the Permit is automatically cancelled unless the new Owner, within thirty (30) days prior to the transfer:

- a) provides the Township with written undertaking to comply with all conditions under which the existing Permit was issued, an executed assumption agreement satisfactory to the Manager and an executed release and indemnity as required by subsection 7.1(j) of this By-law; or
- b) applies for and obtains a new Permit in accordance with the provisions of this By-law.

## **12. ORDERS**

12.1 For the purpose of ensuring compliance with this By-law, the Manager or any Person authorized by the Manager or an Officer may, at all reasonable times, enter upon and inspect any Site to determine whether or not the following are being complied with:

- a) this By-law;
- b) any condition of a Permit;
- c) a provision of any Site Alteration Agreement, direction or Order made under this By-law; or
- d) a prohibition order made under section 431 of the *Municipal Act, 2001*.

12.2 The Manager or an Officer may, for the purposes of the inspection under this Part:

- a) require the production for inspection of documents or things relevant to the inspection;
- b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
- c) require information in writing or otherwise as required by the Officer from any Person concerning a matter related to the inspection; or

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- d) alone or in conjunction with a Person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
- 12.3 Any cost incurred by the Township in exercising its authority to inspect under this Part including but not limited to the cost of any examination, test, sample or photograph necessary for the purposes of the inspection, shall be paid by the Owner of the Site where the inspection takes place or the Person to whom the Permit was issued in relation to the Site where the inspection takes place.
- 12.4 If the Manager or an Officer is satisfied that:
- a) a contravention of this By-law has occurred, they may make an Order requiring the Owner of the Site where the contravention occurred or the Person who caused or permitted the contravention to immediately discontinue the contravening activity. Such the Order shall set out:
    - (i.) the municipal address or the legal description of the Site,
    - (ii.) reasonable particulars of the contravention, and
    - (iii.) the period of time within which there must be compliance; or
  - b) a Person has caused or permitted a Site Alteration in contravention of the provisions of this By-law, they may make an Order requiring the Owner of the Site where the contravention occurred or the Person who caused or permitted the contravention to carry out work to correct the contravention. Such Order shall set out:
    - (i.) the municipal address or the legal description of the Site,
    - (ii.) reasonable particulars of the contravention,
    - (iii.) the period of time within which there must be compliance, and
    - (iv.) that if the work is not done in compliance with the Order within the specified period, the Township may have the work completed at the expense of the Owner of the Site where the contravention occurred.
- 12.5 Any Order issued under this Part shall be served Personally or by registered mail to the last known address of the Owner of the Site and to any other Person to be served. If an Order is served by registered mail, the service shall be deemed to have been made five (5) days after the date of mailing.
- 12.6 Upon completion of the work to correct the contravention by or on behalf of the Township under this Part, the Township shall have a lien on the Site for the amount



spent in excess of any Security applied to remedy or rectify the contravention and the amount may be added to the tax roll and collected in the same manner and with the same priority as municipal property taxes.

### **13. OFFENCES AND PENALTIES**

- 13.1 Every Person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to such penalties as provided for in the *Municipal Act, 2001* and the *Provincial Offences Act*.
- 13.2 Where an Officer is satisfied that a Person has failed to comply with any provision of this By-law, the Officer may issue a penalty notice imposing an Administrative Monetary Penalty. The Administrative Monetary Penalties for failures to comply with this By-law are set out in Schedule "B", which is attached hereto and forms part of this By-law.
- 13.3 Township By-law No. 027-2019, being a By-law to Establish an Administrative Monetary Penalty System for Non-Parking Related Offences, applies to each Administrative Monetary Penalty issued pursuant to this By-law.
- 13.4 Every Person who contravenes any provision of this By-law, a condition of a Permit or an Order issued under this By-law, is guilty of an offence and upon conviction is liable:
- a) on a first conviction, to a fine of not more than \$10,000; and
  - b) on any subsequent conviction, to a fine of not more than \$25,000.
- 13.5 Notwithstanding section 13.4, where the Person convicted is a corporation, the maximum penalty that may be imposed is,
- a) on a first conviction, to a fine of not more than \$25,000; and
  - b) on any subsequent conviction, to a fine of not more than \$50,000.
- 13.6 In addition to any fine or any other penalty, any Person who is convicted of contravening a provision of this By-law, the terms or conditions of a Permit issued pursuant to this By-law or any Order issued pursuant to this By-law, may be ordered by a court of competent jurisdiction at the expense of the Person to:
- a) rehabilitate the Site and surrounding lands;
  - b) remove the Fill; and/or
  - c) restore the grade of the Site and surrounding lands to its original condition.

### **14. OBSTRUCTION**

14.1 No Person shall hinder or obstruct, or attempt to hinder or obstruct the Manager or an Officer, or Person in the discharge of duties under this By-law as required by the Manager or Officer in order to bring a Site into compliance with this By-law or an Order issued under this By-law.

14.2 No Person shall provide false information in any statement, whether orally, in writing or otherwise, made to an Officer or the Manager.

14.3 No Person shall hinder or obstruct, or attempt to hinder or obstruct, any Officer or Manager who is exercising a power or performing a duty under this By-law.

## **15. SEVERABILITY**

15.1 Should a court of competent jurisdiction declare any provision of this by-law to be invalid or of no force and effect, the provision is deemed severable from this by-law and it is the intention of the Township that the remainder of the by-law shall survive and be applied and enforced in accordance with its terms to the extent possible under the law.

## **16. INTERPRETATION**

16.1 Any reference to a statute, regulation, by-law or other statutory instrument shall be deemed to refer to the legislation as amended, consolidated, replaced or modified.

16.2 This By-law shall come into force on the date it is passed.

BY-LAW READ AND PASSED THIS 31<sup>st</sup> DAY OF MAY, 2022

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K. Gibson, MAYOR

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M. Ciuffetelli, DEPUTY CLERK

PART I PROVINCIAL OFFENCES ACT

Township of Wainfleet

Schedule "A" to By-law No 025-2022, Site Alteration By-law

Set Fine Schedule

<b><u>Item</u></b>	<b><u>Column 1</u> Short Form Wording</b>	<b><u>Column 2</u> Offence Creation Provision or defining Offence</b>	<b><u>Column 3</u> Set Fine</b>
1.	Site Alteration without a Permit	Section 5.2	\$500
2.	Importing Fill not intended for use or betterment of Land	Section 5.3	\$500
3.	Site Alteration not in accordance with approved plans	Section 5.4 (a)	\$500
4.	Not following conditions on Site Alteration Permit	Section 5.4 (b)	\$500
5.	Violation of Site Alteration Agreement	Section 5.4 (c)	\$500
6.	Violation of Provisions of the Site Alterations By-law	Section 5.4 (d)	\$500
7.	Modify an Approved Site Alteration Plan without Authorization	Section 5.5	\$500
8.	Operating a Commercial Fill Operation in the Township	Section 5.6	\$500
9.	Removal or dumping of Fill not approved by the Ministry of Environment	Section 5.7	\$500
10.	Importing Fill by Hydro Excavation Truck without approval	Section 5.8	\$500
11.	Site Alterations Conducted on a Statutory Holiday	Section 5.9	\$500
12.	Failing to comply with an Order Issued	Section 5.10	\$500
13.	Hindering or Obstructing an Officer carrying out an inspection	Section 5.11	\$500

**Note:** The general penalty provision for the offences listed above is section 6, section 7, section 8, section 9, section 10, section 11, section 12, section 13, section 14 and section 15 of By-law No.025-2022, a certified copy of which has been filed.

Schedule "B" to By-law No. 025-2022

Site Alteration By-law

Short Form Wording for Administrative Monetary Penalties

Section	Short Form Wording	Penalty
5.2	Site Alteration without a Permit	<b>\$500.00</b>
5.3	Importing Fill not Intended for use or Betterment of Land	<b>\$500.00</b>
5.4 (a)	Site Alteration not in Accordance with Approved Plans	<b>\$500.00</b>
5.4 (b)	Not following Conditions on Site Alteration Permit	<b>\$500.00</b>
5.4 (c)	Violating a Site Alteration Agreement	<b>\$500.00</b>
5.4 (d)	Violating Provisions of the Site Alterations By-law	<b>\$500.00</b>
5.5	Modifying an Approved Site Alteration Plan without authorization	<b>\$500.00</b>
5.6	Operating a Commercial Fill Operation in the Township	<b>\$500.00</b>
5.7	Removing or dumping of Fill not approved by the Ministry of Environment	<b>\$500.00</b>
5.8	Importing Fill by Hydro Excavation Truck without Approval	<b>\$500.00</b>
5.9	Conducting Site Alterations on a Statutory Holiday	<b>\$500.00</b>
5.10	Failing to comply with an Order Issued	1 <sup>st</sup> Offence: <b>\$500.00</b> 2 <sup>nd</sup> Offence: <b>\$1,000.00</b> 3 <sup>rd</sup> & Subsequent Offences: <b>\$2,000.00</b>
5.11	Hindering or Obstructing an Officer carrying out an Inspection	<b>\$750.00</b>

**Note:** The above Penalties are per Registered Property Owner(s) as listed on the latest returned Municipal Tax Roll and may be issued for every day that a property is in violation.

Schedule "C" to By-law No. 025-2022

Fees and Charges

Section	Description	Amount of Fee/Charge
7.1 b)	Application Fee for Less than 500m <sup>3</sup>	\$500
7.1 b)	Application Fee (500m <sup>3</sup> up to 1000m <sup>3</sup> )	\$1,000
7.1 b)	Application Fee for greater than 1000m <sup>3</sup>	\$1,500
7.1 c)	Road Damage Security (Deposit)	\$10,000
9.3	Additional Security	As provided for in the Site Alteration Agreement

Note: This schedule shall be deemed to form part of Appendix "A" of the Township of Wainfleet General Fees and Charges By-law and which may be amended by Council from time-to-time.

# THE CORPORATION OF THE TOWNSHIP OF WAINFLEET

## BY-LAW NO. 026-2022

Being a By-law to amend By-law No. 027-2019,  
being a By-law to establish an administrative  
monetary penalty system for non-parking related  
offences

**WHEREAS** the Council of the Township of Wainfleet enacted By-law No. 027-2019 to establish an administrative monetary penalty system for non-parking related offences;

**AND WHEREAS** the Council of the Township of Wainfleet deems it necessary and appropriate to amend By-law No. 027-2019 to provide for enforcement of said By-law via Administrative Monetary Penalties;

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

- 1) **THAT** Schedule “A” of By-law No. 027-2019 be amended to read as follows:

Designated By-law	By-law Number
Animals at Large	008-2018
Building	027-2012
Clean Yards	073-2019
Discharge of Firearms	025-2013
Dog Control	014-2016
Entry onto Adjoining Lands	027-2011
Exotic Animal	011-2018
Fence	019-2005
Fireworks	021-2007
Fouling of Roads	041-2021
Medical Marijuana Facilities	057-2017
Noise	042-2018
Open Air Burning	027-2009
Property Standards	059-2000
Public Nuisance	022-2009
Site Alteration	025-2022

- 2) **AND THAT** this By-law shall come into force and take effect on the date of final passage thereof.

BY-LAW READ AND PASSED THIS 31<sup>ST</sup> DAY OF MAY, 2022.

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K. Gibson, MAYOR

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M. Ciuffetelli, DEPUTY CLERK

# THE CORPORATION OF THE TOWNSHIP OF WAINFLEET

## BY-LAW NO. 027-2022

Being a by-law to adopt, ratify and confirm the proceedings of the Council of the Corporation of the Township of Wainfleet at regular meeting held May 31, 2022

**WHEREAS** Subsection 5 (1) of the *Municipal Act, 2001*, S.O. 2001, Chapter M.25, as amended, provides that the powers of a municipal corporation are to be exercised by its Council;

**AND WHEREAS** section 5 (3) of the *Municipal Act 2001*, S.O. 2001, Chapter M.25, as amended, provides that, except if otherwise authorized, the powers of Council shall be exercised by by-law;

**AND WHEREAS** it is deemed desirable and expedient that the actions of the Council as herein set forth be adopted, ratified and confirmed by by-law;

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

1. (a) The actions of the Council at its regular meeting held May 31, 2022, including all resolutions or motions approved, are hereby adopted, ratified and confirmed as if they were expressly embodied in this by-law.  
  
(b) The above-mentioned actions shall not include:
  - (i) any actions required by law to be taken by resolution, or
  - (ii) any actions for which prior Ontario Municipal Board approval is required, until such approval is obtained.
2. The Mayor and proper officials of the Corporation of the Township of Wainfleet are hereby authorized and directed to do all things necessary to give effect to the above-mentioned actions and to obtain approvals where required.
3. Unless otherwise provided, the Mayor and Clerk are hereby authorized and directed to execute and the Clerk to affix the seal of the corporation of the Township of Wainfleet to all documents necessary to give effect to the above-mentioned actions.
4. This by-law shall come into force on the day upon which it is passed.

BY-LAW READ AND PASSED THIS 31<sup>st</sup> DAY OF MAY, 2022

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K. Gibson, MAYOR

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M. Ciuffetelli, DEPUTY CLERK