

By-Law Number 2021-XX

A By-Law Respecting the Kingston Public Market, and to Repeal By-Law Number By-Law 2006-118, in its Entirety

Passed: Meeting Date, 2021

A By-Law Respecting the Kingston Public Market

Whereas Section 113 of the *Municipal Act, 2001*, S.O. 2001, c. 25 authorizes municipalities to pass by-laws to establish, maintain, operate and regulate markets;

And Whereas pursuant to Section 113 of the *Municipal Act, 2001*, Council enacted By-Law 2006-118, "A By-Law Respecting the Kingston Public Market";

And Whereas Council desires to repeal and replace By-Law 2006-118;

Now Therefore the Council of The Corporation of the City of Kingston hereby enacts as follows:

1. Definitions

In this By-Law:

"**Administrative Policies Committee**" means the Administrative Policies Committee designated by Council or, in the event of organizational changes, another committee designated by Council to carry out the committee's responsibilities for appeals under this By-Law;

"**City**" means The Corporation of the City of Kingston;

"**Council**" means the Council of the City;

"**Craft**" means an item of decorative design and handicraft, or an item produced by hand and consisting of a one-of-a-kind or studio production work, and generally includes those items made with some degree of artistic purpose, but excludes mass-manufactured items;

"**Daily Permit**" means a permit issued by the City to a Stall Holder pursuant to this By-Law governing the Stall Holder's use and occupation of a Stall for one day;

"**Jury**" shall mean the Market jury established by the City's Manager of Recreation & Leisure Services pursuant to Schedule D of this By-Law;

"**Licence Agreement**" means the licence agreement entered into by the City and the Stall Holder pursuant to this By-Law governing the Stall Holder's use and occupation of a Stall. The licence is not a lease in the legal sense and does not afford lease rights and remedies under the *Commercial Tenancies Act* or otherwise under applicable law;

"**Manager**" means the Manager of Recreation & Leisure Services for the City, or his or her designate, or, in the event of organizational changes, the manager of the appropriately titled department;

"**Market**" means the City of Kingston public market located at Springer Market Square, as approximately shown on Schedule A;

"**Market Clerk**" means the Person designated by the Manager to manage the Market;

"**Market Season**" means:

	Item	Dates
i)	Produce	January 1 to December 31;
ii)	Craft	January 1 to December 31;
iii)	Antiques	April 1 to November 30;

"**Person**" includes an individual, partnership, association, firm or corporation;

"**Producer**" means a Stall Holder who produces a minimum of 80% of their product;

"**Re-seller**" means a Stall Holder who produces less than 80% of their product and/or buys their product either locally or from wholesalers;

"**Stall Holder(s)**" means a Person who has entered into a Licence Agreement with the City for the use and occupation of a Stall, or who has received a Daily Permit from the City for the use and occupation of a Stall; and

"**Stall**" means that portion of the Market licensed by the City to a Stall Holder pursuant to a Daily Permit or Licence Agreement, as the case may be.

2. Administration

2.1 The City's Recreation & Leisure Services department is responsible for the administration of this By-Law.

2.2 Every application for a new Licence Agreement, or a renewal of an existing Licence Agreement, shall be submitted to the Manager in the form provided.

2.3 Every application for a new Licence Agreement, or a renewal of an existing Licence Agreement, shall be accompanied by the full licence fee, as set out in City of

Kingston By-Law Number 2005-10, "A By-Law to Establish Fees and Charges to be Collected by The Corporation of the City of Kingston", together with the jurying fee referred to in Schedule D, if applicable.

- 2.4 Notwithstanding Section 2.3 of this By-Law, a Producer may request a 50% fee reduction in exchange for a bi-weekly donation to a local food program or organization that supports the most vulnerable populations in the community, subject to and in accordance with the terms of the Licence Agreement.
- 2.5 The Manager shall review each complete application and shall grant or refuse to issue a Licence Agreement or Daily Permit, as the case may be, and shall notify the applicant of its decision in writing.
- 2.6 All applications for a Craft Stall or the sale of Crafts must include a detailed description of the Crafts to be offered, as well as information on how the Crafts are produced. All such applications are subject to the Jury process described in Schedule D.
- 2.7 A Person whose application for a Licence Agreement or a renewal of a Licence Agreement has been refused, or a Person whose Licence Agreement has been terminated may, within 15 days of being notified of the City's decision, submit an application to appeal to the Administrative Policies Committee for a review of the decision. A Person whose application for a Daily Permit has been refused has no right of appeal and the decision of the Manager is final.
- 2.8 On appeal, the Administrative Policies Committee has the power to affirm the decision of the Manager to refuse or terminate the Licence Agreement, or to direct the Manager to issue, renew or reinstate the Licence Agreement.
- 2.9 Decisions of the Administrative Policies Committee are final.

3. Interpretation

- 3.1 Any reference herein to any by-law or Act of any government shall be construed as a reference thereto as amended or re-enacted from time to time or as a reference to any successor thereto then in force.

4. Application of By-Law and Prohibitions

- 4.1 This By-Law applies to the use of the Market by Stall Holders. Non-Market civic events held in Springer Market Square will be regulated by the City's First Capital Place Policy, the City's Special Events Policy for City Parks and Facilities, and all other applicable City policies, as amended or replaced from time to time.
- 4.2 No Person shall sell, offer for sale, display, distribute or hand out any item in, on or at the Market without a valid Licence Agreement or a Daily Permit issued under the

provisions of this By-Law.

4.3 No Person shall knowingly submit an application for a Licence Agreement or Daily Permit that contains false, misleading or deceptive information.

4.4 No Stall Holder or employee of a Stall Holder will discriminate in the carrying on of business against any member of the public on the basis of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status or disability.

4.5 No Stall Holder may sell, offer for sale, display, distribute or give any live animal, including any live bird, live fish or live reptile, at the Market.

5. Licence Agreements and Daily Permits

5.1 Each Stall Holder shall be required to execute a Licence Agreement or to obtain a Daily Permit prior to accessing or using the Stall. Each Licence Agreement and Daily Permit shall contain the terms and conditions specified in this By-Law, including, without limitation, the general provisions set out in Schedule C of this By-Law, subject to any modifications or additional provisions which may be made to those general provisions as reasonably required by the Manager and approved by the City's Director of Legal Services.

5.2 No Stall Holder shall transfer or assign their Licence Agreement or Daily Permit or sublicense or allow any other Person(s) to occupy the Stall without the prior written consent of the Manager.

5.3 Every Stall Holder shall comply with all applicable federal, provincial, and municipal laws and regulations governing the use and occupation of the Stall and the operation of the Stall Holder's business at the Stall.

5.4 A Stall Holder may request a temporary suspension of its obligations under the Licence Agreement, subject to and in accordance with Schedule E of this By-Law.

5.5 All Stall Holders shall display their Stall card in a prominent place in their Stall at all times.

6. Allocation of Stalls and Eligibility for Renewal

6.1 Stalls will be allocated to Stall Holders based on seniority and compliance with the attendance requirements set out in Section 6.3 below, except between November 1 and March 31 inclusive, when Stalls will be offered by availability and seniority. Seniority will be determined by the number of consecutive years that the Stall Holder has maintained a Stall at the Market.

- 6.2 In allocating Stalls to new Stall Holders, preference will be given to Producers who live within a 100-kilometre radius of the geographic boundaries of the City of Kingston.
- 6.3 In order to be eligible for renewal of a Licence Agreement, a Stall Holder must achieve 80% attendance at the Market, during the days and at the times specified in Schedule B, in the Stall Holder's best three months of the previous Market Season, subject to Section 6.4 below. For clarity, in calculating the 80% attendance threshold, inclement weather days shall be excluded.
- 6.4 Notwithstanding Section 6.3, a Producer is only required to maintain a minimum attendance of one day per week during the Producer's best three months of the previous Market Season in order to be eligible for renewal of a Licence Agreement.

7. Cancellation, Postponement and Rain Checks

- 7.1 Any Licence Agreement or Daily Permit may be cancelled by the City at any time for breach of any provision of the Licence Agreement, Daily Permit, or this By-Law.
- 7.2 The City may, without notice, require the closure and/or vacation of the Market at any time due to a real or perceived emergency. For purposes of this Section 7.2, an emergency shall include any public emergency, such as a pandemic and/or epidemic as deemed to be such by the City in its sole discretion.
- 7.3 If the Market is required by the City for a special event, including, without limitation, a program, filming activity or civic event approved by the City, the Manager may, upon at least four weeks' notice to the Stall Holders, where possible, require the closure, vacation and/or postponement of the Market on the days and at the times specified in the notice. Where possible, such notice will include any scheduled rain dates for the special event. In addition to the notice period, the following terms and conditions will be applicable in the case of a cancellation or postponement:
- In the case of postponement, the Market day will be rescheduled to the next available Friday, where reasonably possible;
 - The City must display signage at the Market announcing the cancellation/postponement for a period of at least one week prior to the cancellation/postponement;
 - The City and Tourism Kingston must announce the cancellation/postponement on their website and through social media channels.
- 7.4 Rain checks will only be offered to Daily Permit holders who have paid the daily fee, and who are required to vacate the Market prior to 11:00 a.m. due to inclement weather. Rain checks will not be offered to Licence Agreement holders.

8. Jury

8.1 The composition and duties of the Jury with respect to the sale of Crafts at the Market shall be as set out in Schedule D of this By-Law.

9. Schedules

9.1 The following schedules are attached to and form part of this By-Law:

Schedule A – Market Layout

Schedule B – Market Days and Hours

Schedule C – General Provisions for Stall Holders

Schedule D – Composition and Duties of the Jury

Schedule E – Requests for Temporary Absences

10. Inspections

10.1 The Manager, the Market Clerk, and any authorized agent or employee of the City, shall have the right, at any time and from time to time, to inspect the Stalls, and all property, equipment, products and fixtures therein, to determine whether the requirements of this By-Law are being complied with, and no Person shall obstruct, hinder or otherwise interfere with such an inspection.

11. Offence and Penalty Provisions

11.1 Every Person, other than a corporation, who breaches any provision of this By-Law, or contravenes an order issued under this By-Law, is guilty of an offence, and on conviction, is liable to a fine of not more than \$10,000 for a first offence and \$25,000 for any subsequent offence.

11.2 Every corporation that breaches any provision of this By-Law, or contravenes an order issued under this By-Law, is guilty of an offence, and on conviction, is liable to a fine of not more than \$50,000 for a first offence and \$100,000 for any subsequent offence.

11.3 If this By-Law is contravened and a conviction entered, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty that is imposed, make an order prohibiting the continuation or repetition of the offence by the Person convicted.

12. Validity

12.1 If a court of competent jurisdiction declares any provision, or any part of a provision, of this By-Law to be invalid, or to be of no force and effect, it is the intention of Council in enacting this By-Law that each and every provision of this By-Law authorized by law be applied and enforced in accordance with its terms to the extent possible according to law.

13. Repeal of By-Law 2006-118

13.1 By-Law 2006-118, “A By-Law Respecting the Kingston Public Market”, as amended, is hereby repealed in its entirety.

14. Commencement

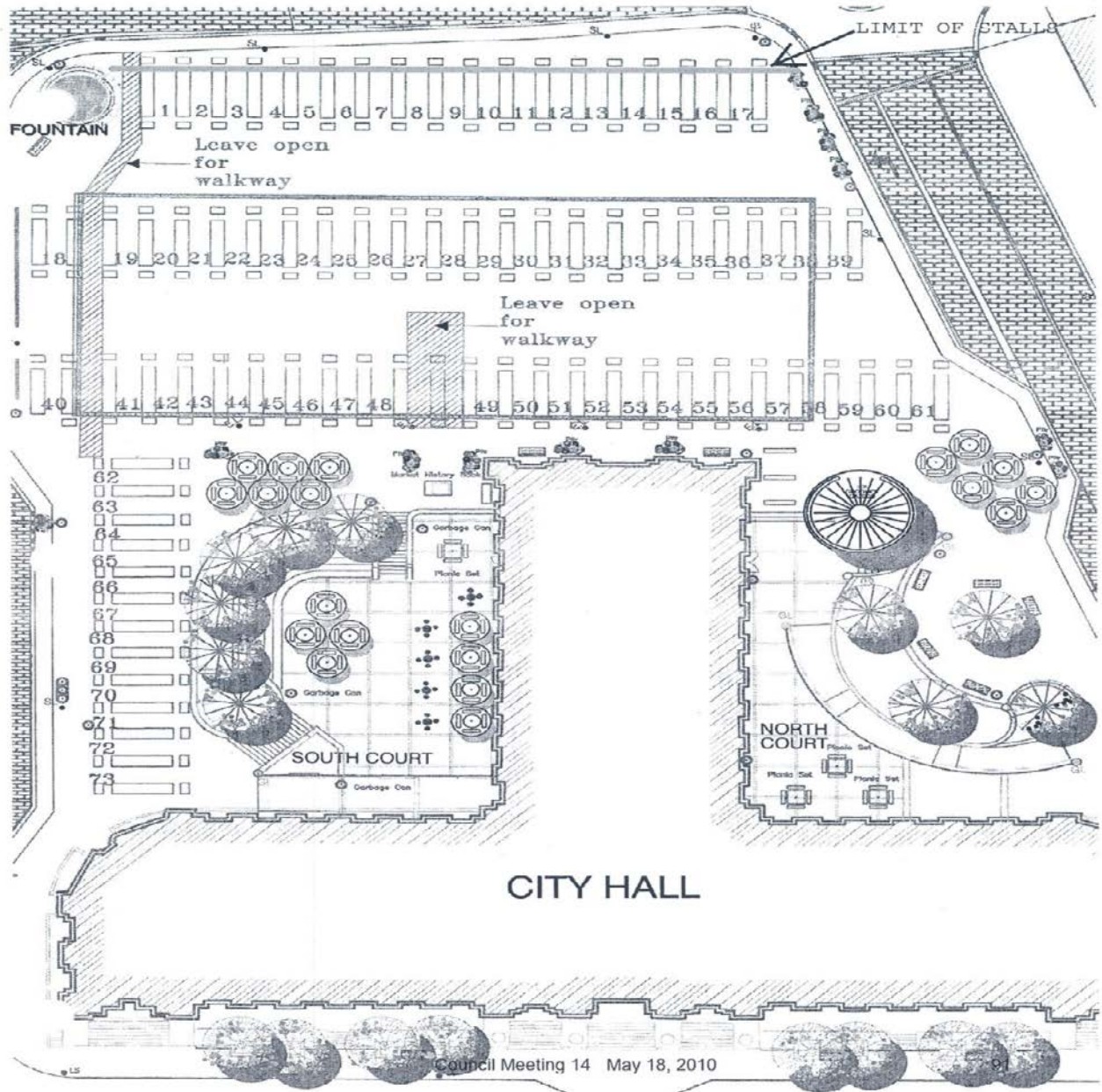
14.1 This By-Law comes into force and take effect on the date of its passing by Council.

Given All Three Readings and Passed: Meeting date, 2021

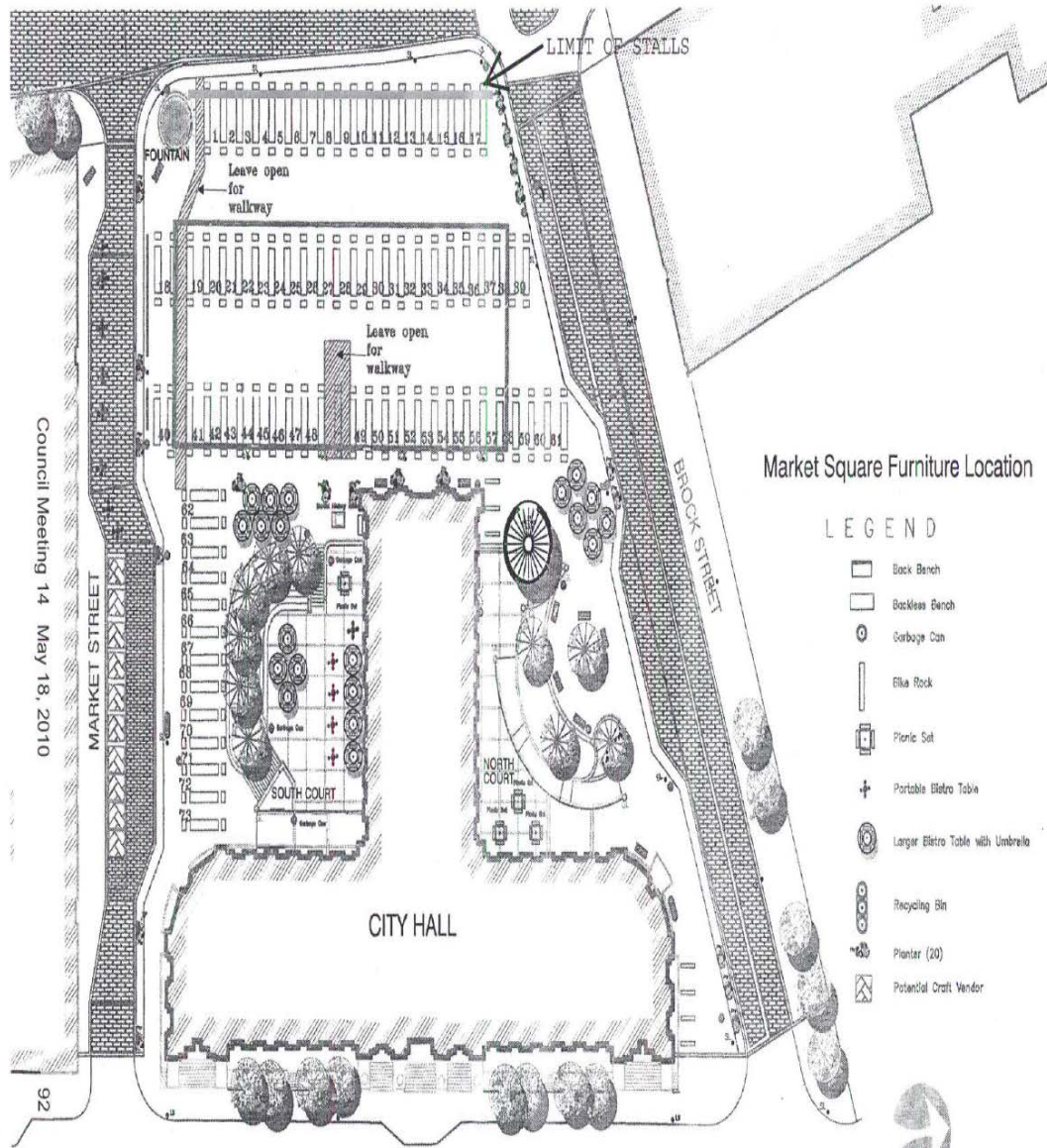
John Bolognone
City Clerk

Bryan Paterson
Mayor

Schedule A Market Layout



Schedule A Continued



Council Meeting 14 May 18, 2010

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Schedule B
Market Days and Hours

- 1) The Market will run during the Market Season (as defined in Section 1 of this By-Law) on the following days:
 - a) Produce and Craft – Tuesday, Thursday, Saturday; and
 - b) Antiques, Produce and Craft – Sunday.

- 2) The regular Market operating hours shall be as follows:
 - a) 8:30 a.m. to 5:00 p.m. from April 1 to October 31; and
 - b) 9:00 a.m. to 5:00 p.m. from November 1 to March 31.

- 3) Stall Holders shall set-up their Stall no earlier than 6:00 a.m. and no later than 7:30 a.m. on Market days during the months of June, July and August, or by 8:00 a.m. during any other calendar month, unless otherwise authorized by the Market Clerk. All Stall Holders must vacate the Market by no later than 6:00 p.m. each day.

- 4) If a Stall remains unoccupied by 7:30 a.m. during the months of June, July and August, or by 8:00 a.m. during any other calendar month, the Market Clerk shall have the right to offer the Stall(s) to the other Stall Holders in attendance for use on the subject day. Unoccupied stalls will be allocated based on seniority pursuant to Section 6.1 of this By-Law, subject to the following provisions:
 - a) if a Producer or Re-Seller Stall is unoccupied, a Producer or Re-Seller who is in attendance may request to relocate to that Stall at no additional cost. If no Producer or Re-Seller requests to be relocated, or if more than one Producer or Re-Seller requests to be relocated, the unoccupied Stall will be allocated based on seniority in the manner described above; and
 - b) if a Craft Stall is unoccupied, a Craft Stall Holder who is in attendance may request to relocate to that Stall at no additional cost. If no Craft Stall Holder requests to be relocated, or if more than one Craft Stall Holder requests to be relocated, the unoccupied Stall will be allocated based on seniority in the manner described above.

- 5) The Market Clerk has the right to reassign Stalls to improve the compatibility and appearance of the Market, and to assure that no Stall Holder is isolated.

- 6) Notwithstanding the provisions of the foregoing, Craft Stall Holders may operate on regular Market days in the produce area of the Market, provided space is available.

- 7) During the months of April to October inclusive, Producers and Re-Sellers may offer for sale Craft products, provided that the Craft products do not occupy more than 10% of the display area of the Stall, and provided the Crafts have been approved by the Jury in accordance with Schedule D.
- 8) During the months of November to March inclusive, Producers and Re-Sellers may offer for sale Craft products, provided that the Craft products do not occupy more than 20% of the display area of the Stall, and provided the Crafts have been approved by the Jury in accordance with Schedule D.

Schedule C
General Provisions for Stall Holders

1. Market Sales

- 1) The Stall Holder shall not use or permit the use of a Stall for any purpose other than the following:
 - (a) the retail sale of raw or processed product of an agricultural crop, industry or enterprise, such as, by way of example, fruits and vegetables;
 - (b) food sampling in accordance with the provisions of the *Health Promotion and Protection Act*, R.S.O. 1990, c. H.7, and all public health regulations, rules and guidelines;
 - (c) the retail sale of Crafts approved pursuant to Schedule D of this By-Law; and
 - (d) the retail sale of antiques, on the day specified in Schedule B only.
- 2) No Craft vendor shall be permitted to occupy more than one (1) Stall in the Market.

2. Attendance

Stall Holders must use reasonable efforts to notify the Market Clerk in advance if the Stall Holder is unable to attend the Market on a scheduled Market day in accordance with the Market hours set out in Schedule B.

3. Vehicles and Parking, No Obstructions

- 1) Stall Holders shall be permitted to park their vehicles in their designated Stall on regular Market days, during the hours set out in Section 2 of Schedule B, so long as the Stall is being actively operated for business.
- 2) Stall Holders shall only be permitted to park their vehicles in their designated Stall. Any vehicle that will not fit on a double Stall will not be permitted in any other location on the Market.
- 3) Stall Holders shall maintain their vehicles, trailers and associated equipment, and shall take whatever precautions are necessary to ensure that there is no fluid leakage on the Market, including, without limitation, placing cardboard or other materials under the oil pan of the vehicle. Stall Holders shall minimize vehicle idling at the Market in accordance with the City's Idling By-Law.

- 4) The Stall Holder shall not, and shall not permit the obstruction of any sidewalks, including by way of placement of awnings, signs, fixtures or products. Awnings may be permitted to overhang onto a sidewalk if the Manager determines that the awning does not interfere with pedestrian and/or other traffic or adjacent Stalls.

4. Operating Requirements

All Stall Holders shall comply with the operating requirements set out in the Licence Agreement or Daily Permit, including without limitation, all insurance, indemnification, maintenance, and cleaning requirements set out therein.

5. Community Purpose Stalls

Notwithstanding any of the provisions of this By-Law, one Stall in the Market will be reserved for community purposes on Market days in a location designated by the City. During the period from November 1 to March 31 in each year, the City will reserve six Stalls for community purposes, in locations designated by the City. The community purpose Stall(s) shall be available on a daily, first-come, first-served basis, upon application in writing to the Market Clerk. Each application for a community purpose Stall shall be for one date only.

6. Sale of Ice Cream Products

The sale of ice cream products from mobile carts shall be allowed in the Market on regular Market days; provided, however, that such sales shall take place only from the two internal roadways between Brock Street and Market Street. The ice cream vendor shall not block internal vehicular traffic that is ongoing throughout Market days or interfere with any Stall Holder's ability to do business. Ice cream vendors shall also obtain and abide by the terms of all other City permits as required.

7. Modification of Conditions

These conditions may be modified or added to as provided for under Section 5.1 of this By-Law.

**Schedule D
Composition and Duties of the Jury**

- 1) All first-time applications for the sale of Crafts at the Market shall be referred to the Jury for the purpose of ensuring that the Crafts to be offered meet established criteria. A jurying fee shall be charged to each applicant at the time application is made.
- 2) The Jury shall consist of three individuals appointed by the Manager who are not Stall Holders. Jurors shall be chosen based on the following criteria:
 - a. experience in Crafts; and
 - b. knowledge of Craft techniques.

City staff shall not sit on the Jury in a decision-making capacity; however, staff may be present to advise and make recommendations to the Jury.

- 3) The applicant must be present in person (or virtually if the jurying process is conducted electronically) for the jurying process.
- 4) Jurors will be compensated at a rate set by the Manager from time to time.
- 5) Any Person may appeal the decision of the Jury to the Manager within 15 days of being notified of the Jury's decision. On appeal, the Manager has the power to affirm the decision of the Jury, or to approve the application.

Schedule E
Requests for Temporary Absences

The Manager (as defined in Section 1 of this By-Law) has the authority to grant temporary sabbaticals/leaves of absence (a “**Temporary Absence**”) to Stall Holders for a period not to exceed 12 months. Requests for a Temporary Absence must be submitted in writing to the Manager and will be governed by the following provisions:

- 1) The written request for a Temporary Absence must be received by the Manager before February 1 of each year;
- 2) The written request for a Temporary Absence must include the Stall number and the reason for the Temporary Absence;
- 3) Requests for Temporary Absences will only be granted due to medical or health conditions, or other circumstances beyond the reasonable control of the Stall Holder;
- 4) In order to request a Temporary Absence, the Stall Holder must be in good standing under the terms of the Licence Agreement and this By-Law; and
- 5) The Manager will respond in writing within 15 business days and will either approve or deny the request. The decision of the Manager is final.

By-Law Number 2021-XX

A By-Law to Amend By-Law Number 2005-10, “A By-Law to Establish Fees and Charges to be Collected by The Corporation of the City of Kingston, as Amended.”

Passed:

Be it resolved that the Council of the Corporation of the City of Kingston hereby enacts as follows:

1. By-Law 2005-10, being “A By-Law To Establish Fees and Charges to be Collected by The Corporation of the City of Kingston”, as amended, is hereby further amended as follows:
 - a. Schedule A of By-Law 2005-10, Springer Market Square - Daily Rates, deletes the Casual Produce fee of \$48.76 per day and replaces with \$30 per day; and
 - b. Springer Market Square - Additional Fees, deletes the Sabbatical Leave and Leave Of Absence fees in entirety.
1. This By-Law shall come into force and take effect on the date of its passing.

Given all Three Readings and Passed: Meeting Date, 2021

John Bolognone
City Clerk

Bryan Paterson
Mayor

Art in Public Places Working Group

Terms of Reference

The Art in Public Places Working Group is an ongoing sub-committee of the Arts Advisory Committee to include its members and community representatives, to be appointed on an annual basis. The Art in Public Places Working Group supports the implementation of the City's Public Art Program that facilitates the creation of contemporary public art by emerging and established artists through commissions and artist collaborations and contributes to developing a vibrant public realm in Kingston, and enhances a sense of community across the City, in the downtown, suburban, rural and natural areas.

Purpose

- Review processes, policies, plans related to the City's Public Art Program, including the renewal of the Public Art Master Plan, updates to the Public Art Policy, and the public art proposed for sites, developments or projects falling with the City's responsibility, in order to make recommendations to staff;
- Act as a resource to staff, City departments and agencies, the arts community, partners including developers, and citizens;
- Advise on the development and implementation of maintenance for the public art collection and for accessioning and de-accessioning of works associated with the Public Art Policy and Civic Collections Policy in coordination with the Heritage Assets Working Group;
- Review donation requests for public art in order to make recommendations to staff;
- Provide expertise, fair advice and guidance to staff on matters involving public art;
- Raise awareness and understanding of the importance of public art in the City;
- Review, nominate and approve individuals to be members of Art Selection Juries; and
- Advise staff as to the changing conditions and impact of broader policies, programs and regulations on the Kingston arts sector.

The Art in Public Places Working Group Terms of Reference are to be reviewed every 5 (five) years, or in tandem with revisions to the Public Art Program and Policy, to ensure the efficacy of the Working Group and its ability to respond to community needs.

Membership

The Art in Public Places Working Group will be made up of seven to nine members that includes at least two members of the Arts Advisory Committee, to be appointed by City Council, as follows:

- Two artists active in the community that can include one emerging artist and/or student artist;
- Three other art professionals (curators, gallery directors, administrative, executive and/or artistic directors, arts programmers, educators, conservators,

etc.) who have a thorough knowledge of contemporary visual and/or public art, and who are established in the arts community;

- One urban designer (architects, landscape architects, designers or others);
- One developer recognized by the community;
- One member of the business community; and
- A general member of the community.

The Art in Public Places Working Group will be chaired by a member of the Arts Advisory Committee. The Working Group is expected to provide the Arts Advisory Committee with regular updates throughout the year, including meeting notes. Community representatives applying to be members of the Working Group must submit a Letter of Interest that demonstrates their familiarity with the Terms of Reference for the Working Group as well as their interest and experience related to visual arts, public art, urban design, development, business and/or community-based programming and engagement. Working Group members may remain on the Art in Public Places Working Group for up to three (3) years but must be appointed on an annual basis in keeping with By-Law Number 2010-205, 'A By-Law to Define the Mandate and Meeting Procedures for Committees Established by the Corporation of the City of Kingston'.

Conflict of Interest

Active and current members of the Art in Public Places Working Group are excluded from applying to any City of Kingston public art projects, calls or commissions. This includes collaborating, coaching or contributing to artists' submissions.

By-Law Number 2021-XX

A By-Law to Amend By-Law Number 2010-205 “A By-Law to Define the Mandate and Meeting Procedures for Committees Established by the Corporation of the City of Kingston” (To Describe the Terms of Reference of Working Groups of the Arts of Advisory Committee)

Passed: [Meeting Date]

That the Council of the Corporation of the City of Kingston hereby enacts as follows:

1. By-Law Number 2010-205 “A By-Law to Define the Mandate and Meeting Procedures for Committees Established by the Corporation of the City of Kingston”, as amended, is hereby further amended as follows:
 - 1.1. Schedule F-3, Arts Advisory Committee Mandate, the Section entitled “Working Groups” shall include the following:

Art in Public Places Working Group – Terms of Reference

The Art in Public Places Working Group is an ongoing sub-committee of the Arts Advisory Committee to include its members and community representatives, to be appointed on an annual basis. The Art in Public Places Working Group supports the implementation of the City’s Public Art Program that facilitates the creation of contemporary public art by emerging and established artists through commissions and artist collaborations and contributes to developing a vibrant public realm in Kingston, and enhances a sense of community across the City, in the downtown, suburban, rural and natural areas.

Purpose

- Review processes, policies, plans related to City’s Public Art Program, including the renewal of the Public Art Master Plan, updates to the Public Art Policy, and the public art proposed for sites, developments or projects falling with the City’s responsibility, in order to make recommendations to staff;
- Act as a resource to staff, City departments and agencies, the arts community, partners including developers, and citizens;
- Advise on the development and implementation of maintenance for the public art collection and for accessioning and de-accessioning of works associated with the Public Art Policy and Civic Collections Policy in coordination with the Heritage Assets Working Group;
- Review donation requests for public art in order to make recommendations to staff;
- Provide expertise and fair advice and guidance to staff on matters involving public art;

- Raise awareness and understanding of the importance of public art in the City;
- Review, nominate and approve individuals to be members of Art Selection Juries; and
- Advise staff as to the changing conditions and impact of broader policies, programs and regulations on the Kingston arts sector.

The Art in Public Places Working Group Terms of Reference are to be reviewed every 5 (five) years, or in tandem with revisions to the Public Art Program and Policy, to ensure the efficacy of the working group and its ability to respond to community needs.

Membership

The Art in Public Places Working Group will be made up of seven to nine members that includes at least two members of the Arts Advisory Committee, to be appointed by City Council, as follows:

- Two artists active in the community that can include one emerging artist and/or student artist;
- Three other art professionals (curators, gallery directors, administrative, executive and/or artistic directors, arts programmers, educators, conservators, etc.) who have a thorough knowledge of contemporary visual and/or public art, and who are established in the arts community;
- One urban designer (architects, landscape architects, designers or others);
- One developer recognized by the community;
- One member of the business community; and
- A general member of the community.

The Art in Public Places Working Group will be chaired by a member of the Arts Advisory Committee. The Working Group is expected to provide the Arts Advisory Committee with regular updates throughout the year, including meeting notes. Community representatives applying to be members of the Art in Public Places Working Group must submit a Letter of Interest that demonstrates their familiarity with the Terms of Reference for the Working Group as well as their interest and experience related to visual arts, public art, urban design, development, business and/or community-based programming and engagement. Working Group members may remain on the Art in Public Places Working Group for up to three (3) years but must be appointed on an annual basis in keeping with By-Law Number 2010-205, 'A By-Law to Define the Mandate and Meeting Procedures for Committees Established by the Corporation of the City of Kingston'.

Conflict of Interest

Active and current members of the Art in Public Places Working Group are excluded from applying to any City of Kingston public art projects, calls or commissions. This includes collaborating, coaching or contributing to artists' submissions.

2. This By-Law shall come into force and take effect on the date of its passing.

Given all Three Readings and Passed: [Meeting Date], 2021

By-Law Number 2021-XX

A By-Law to Amend By-Law Number 2010-205 “A By-Law to Define the Mandate and Meeting Procedures for Committees Established by the Corporation of the City of Kingston” (To Describe the Terms of Reference of Working Groups of the Arts of Advisory Committee)

Passed: [Meeting Date]

That the Council of the Corporation of the City of Kingston hereby enacts as follows:

1. By-Law Number 2010-205 “A By-Law to Define the Mandate and Meeting Procedures for Committees Established by the Corporation of the City of Kingston”, as amended, is hereby further amended as follows:
 - 1.1. Schedule F-3, Arts Advisory Committee Mandate, the Section entitled “Working Groups” shall remove the following:

Professional Development Working Group – Terms of Reference

This Working Group shall undertake work on behalf of the Arts Advisory Committee (AAC) related to targeted professional development opportunities to help strengthen the arts sector as follows:

- Research, identify and develop professional development opportunities relevant to the arts community;
- Forge stakeholder relationships as needed to identify professional opportunities;
- Support the efforts of the Kingston Arts Council, Queen’s University and the local Boards of Education as it relates to the professional development programs they offer; and
- Identify specific actions and activities the AAC may pursue to ensure that individual artists and arts organizations are provided with access to additional professional development opportunities that are meaningful, relevant and effective.

The membership of this working group will be comprised of three members of the AAC along with at least four members from the community. The working group is expected to provide the AAC with a verbal update regarding its progress by September 14, 2017 and complete a series of actions and activities by June 14, 2018.

2. This By-Law shall come into force and take effect on the date of its passing.

Given all Three Readings and Passed: [Meeting Date], 2021

John Bolognone
City Clerk

Bryan Paterson
Mayor

By-Law Number 2021-XX**A By-Law to Regulate the Setting and Maintaining of Open Air
Fires within the City of Kingston****Passed: _____, 2021**

Whereas subsection 7.1(1) of the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c. 4, as amended, authorizes the council of a municipality to pass by-laws regulating the setting of Open Air Fires, including establishing the times during which Open Air Fires may be set; and

Whereas subsection 10(2) of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, authorizes a municipality to pass by-laws respecting the health, safety and well-being of persons, the protection of persons and property, and the economic, social and environmental well-being of the municipality, including respecting climate change; and

Whereas the regulation of Open Air Fires will contribute to the health, safety and well-being of the inhabitants of the municipality, the protection of persons and property within the municipality, and the economic, social and environmental well-being of the municipality; and

Whereas section 391 of the *Municipal Act, 2001*, S.O. 2001, c.25, as amended, provides that a municipality may pass by-laws imposing fees or charges on any class of persons for services or activities provided or done by or on behalf of the municipality and for the use of the municipality's property, including property under its control; and

Whereas the Council of The Corporation of the City of Kingston deems it necessary and desirable to enact such a by-law to regulate Open Air Fires;

Now Therefore be it resolved that By-Law 2021-XX "A By-Law to Regulate the Setting and Maintaining of Open Air Fires within the City of Kingston" is hereby enacted as follows:

1 - Definitions

For the purposes of this By-Law,

"Adverse Effect" means one or more of the following, as determined by the Fire Chief:

- (a) material impairment of the quality of the natural environment for any use that can be made of it,
- (b) injury or damage to Property, or plant or animal life,
- (c) harm or material discomfort to any person,
- (d) a detrimental effect on the health, or the impairment of the safety of any person,
- (e) loss of enjoyment of normal use of Property, or
- (f) interference with the normal operation of any business;

“Agricultural Fire” means an Open Air Fire that is Set and Maintained solely for the purpose of burning wood, tree limbs and branches related to a Farming Business;

“Agricultural Fire Permit” means an Open Air Fire Permit that authorizes an Agricultural Fire;

“Applicant” means the Person making an application for an Open Air Fire Permit under this By-Law;

“Barbecue” means a portable or fixed device designed and intended solely for the cooking of food in the open air, but does not include an Outdoor Fireplace or a Campfire;

“Brush Fire” means an Open Air Fire Set and Maintained solely for the purpose of burning wood, tree limbs, leaves, and branches;

“Brush Fire Permit” means an Open Air Fire Permit that authorizes a Brush Fire;

“Campfire” means an Open Air Fire that is Set and Maintained solely for the purposes of cooking food, providing warmth, or recreational enjoyment;

“Campfire Permit” means an Open Air Fire Permit that authorizes a Campfire;

“Campground” means an area of land that contains campsites for the purpose of overnight accommodations for tents, trailers and/or motorhomes in exchange for monetary payment, and that has been approved by the Fire Chief;

“Campground Permit” means an Open Air Fire Permit authorizing Open Air Fires at a Campground;

“Ceremonial/Sacred Fire” means an Open Air Fire carried out as part of or in observance of a ceremonial or sacred service;

“City” means the municipal Corporation of the City of Kingston or the geographic area of the City of Kingston as the context requires;

“Dangerous Condition” means any condition as determined by the Fire Chief or an Officer that increases the risk of the spread of a fire;

“Extinguish” means to put out or quench completely with no smoke, or hot or glowing embers remaining;

“Farming Business” means a Farming Business as defined by the *Farm Registration and Farm Organizations Funding Act, 1993*, S.O. 1993, c. 21;

“Fees and Charges By-Law” means City of Kingston By-Law Number 2005-10, “A By-Law to Establish Fees and Charges to be Collected by The Corporation of the City of Kingston”, as amended from time to time;

“Fire Chief” means the person appointed under Section 6 of the *Fire Protection and Prevention Act* as Fire Chief for the City, or his or her designate;

“Flying/floating lantern” means a warm air floating device made of combustible material and equipped with an open flame for floatation;

“Fire Protection and Prevention Act” means the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c. 4, as amended, and the regulations enacted thereunder, as amended from time to time, or any Act or Regulation enacted in substitution therefor;

“Highway” means a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles, and includes the area between the lateral property lines thereof; and, except as otherwise provided, includes a portion of a highway;

“Maintain” means to cause or permit an Open Air Fire to continue to burn;

“Material to be Burned” means the total volume of the materials contained in a fire;

“Non-approved Device” means a container that has not been approved by CSA/ULC or the Fire Chief to contain an Open Air Fire, including but not limited to drums, barrels, oil tanks, gas tanks, and wheel rims;

“Nuisance Open Air Fire” means an Open Air Fire that causes smoke, odour and/or airborne sparks or embers, alone or in combination, that is likely to, or does, disturb others, reduce visibility on a Highway or private driveway, and/or create a Dangerous Condition, and/or produce an Adverse Effect, inconvenience, or discomfort to others in the vicinity of the Open Air Fire;

“Officer” means any person who has been assigned the responsibility of administering and enforcing this By-Law and includes a Provincial Offences Officer, a Municipal Law Enforcement Officer, Fire Inspector, an Assistant to the Fire

Marshal as defined in section 11 of the *Fire Protection and Prevention Act*, and an Officer of the Kingston Police or other police force assisting the Kingston Police;

“Open Air Fire” means the burning of material, including but not limited to untreated wood and wood fibre products such as non-laminated paper, cardboard and boxboard, brush, tree limbs, leaves, and branches, where the flame is not wholly contained, and includes Agricultural Fires, Brush Fires, Campfires and Outdoor Appliance Fires, but does not include the use of appliances with mechanical shut-offs (e.g. propane or natural gas appliances), smokers, Barbecues, or charcoal appliances;

“Open Air Fire Permit” means a permit issued by the City to conduct an Open Air Fire;

“Open Air Fire Zone 1” means the areas west of Collins Creek and all lands west that are north of the CNR tracks; all lands north of Highway 401 and Middle Road to the intersection of Highway 401 and Highway 15; and all lands east of Greenwood Subdivision, St. Lawrence Business Park, and CFB Kingston, as depicted on the map attached as Schedule A to this By-Law;

“Open Air Fire Zone 2” means all areas not included in the Open Air Fire Zone 1;

“Outdoor Appliance” means a wood burning device that is CSA/ULC approved or approved by the Fire Chief to contain an Open Air Fire;

“Outdoor Appliance Fire” means an Open Air Fire contained within an Outdoor Appliance;

“Outdoor Appliance Fire Permit” means an Open Air Fire Permit that authorizes an Open Air Fire in an Outdoor Appliance;

“Outdoor Fireplace” means a manufactured, non-combustible, enclosed container designed to hold a small fire for decorative purposes and the size of which does not exceed 1 m in any direction and includes, but is not limited, to a chiminea;

“Outdoor Fireplace Permit” means an Open Air Fire Permit that authorizes an Open Air Fire in an Outdoor Fireplace;

“Owner” means a Person who is shown on the parcel register maintained by the Province of Ontario as the owner of Property, and includes any Person in legal possession of a Property, and also includes a Person who for the time being manages the Property or receives rent for it, or who pays municipal taxes on the Property, whether on their own account or as an agent or trustee of any other Person, or who would carry out the aforementioned duties if the Property were let, and shall also include a tenant or occupant of the Property;

“Partial Burn Ban” means a period of time declared by the Fire Chief during which the Setting of Agricultural Fires, Brush Fires and fireworks are prohibited;

“Permit Holder” means a Person to whom an Open Air Fire Permit has been issued by the City;

“Person” means any individual, association, firm, partnership, corporation, agent or trustee and the heirs, executors, or other legal representative of a person to whom the context can apply according to law;

“Prohibited Conditions” means:

- (a) wind speeds exceeding 25 kilometers per hour, as determined by Environment and Climate Change Canada;
- (b) the duration of any smog alert/smog watch/smog advisory, as determined by Environment and Climate Change Canada; or
- (c) drought or dry weather conditions that increase the risk of a burn escaping containment and becoming a wildfire;

“Prohibited Materials” means combustible material, including but not limited to: rubber, rubber products, plastic, plastic products, polyethylene terephthalate, polystyrenes (Styrofoam), waste petroleum products, rubbish, demolition materials, metal, tires, rubber, plastic, fiberglass, cloth, asphalt products, shingles, insulation, electrical wiring, painted or treated wood, furniture, synthetic fabrics, composite wood waste, residential waste (such as food scraps, diapers and household trash), commercial, industrial, manufacturing, or construction waste, flammable or combustible liquids, oils, paints, solvents, batteries, acids, chemicals, explosives, radioactive, infectious, and other hazardous materials, and any material prohibited by the *Environmental Protection Act*, R.S.O. 1990, c. E. 19, as amended, but shall not include untreated wood and wood fiber products, such as non-laminated paper, cardboard and boxboard, brush, tree limbs, leaves, and branches;

“Property” includes a building or structure or part of a building or structure, and includes the lands appurtenant thereto and all mobile homes, mobile buildings or mobile structures and vacant land;

“Set” means to light an Open Air Fire;

“Special Event” means an event held by the City, or by a community not-for-profit organization, school, or an event that supports the local tourism industry;

“Total Burn Ban” means a period of time declared by the Fire Chief during which the Setting of fireworks and all Open Air Fires, including Campfires, Outdoor Appliance Fires, Agricultural Fires and Brush Fires are prohibited, but does not

include Outdoor Appliances with mechanical shut-off (i.e. propane and natural gas appliances), smokers, Barbecues, and charcoal appliances;

2 - Administration

2.1 The Fire Chief shall be responsible for the administration of this By-Law.

3 - Application

3.1 This By-Law applies within the geographic limits of the City.

4 - Interpretation

4.1 Nothing in this By-Law shall be deemed to authorize any fire, burning or other act that is in contravention of the *Environmental Protection Act*, R.S.O. 1990, c. E.19, the *Forest Fires Prevention Act*, R.S.O. 1990, c. F.24, the *Fire Protection and Prevention Act*, or other federal or provincial statute, or any regulation made thereunder.

4.2 In the event of any conflict between the provisions of this By-Law and said Act or Acts or Regulations, the said Act or Acts or Regulations made thereunder shall govern. In the event of any conflict between the provisions of this By-Law and any other municipal by-law, the provision that establishes the higher standard to protect the health, safety and welfare of the general public shall prevail.

5 - Exemptions

5.1 This Bylaw does not apply to the Setting or Maintaining of a Ceremonial/Sacred Fire.

5.2 This Bylaw does not apply to an event held by the City, or by a community not-for-profit organization, school, or an event that supports the local tourism industry;

5.3 This By-Law does not apply to the use of blow torches, cutting or welding torches, paving equipment or other such apparatus associated with a service or occupation.

5.4 This By-Law does not apply to the Setting or Maintaining of an Open Air Fire:

(a) In an incinerator operated in accordance with the Certificate of Approval issued pursuant to the *Environmental Protection Act*, R.S.O. 1990, c. E.19 and Regulations thereunder;

(b) In a device that has been installed outside of a building and that meets each of the following conditions:

- (i) the device is designed for and used as a source of heat or power for the building or is designed for and used for a purpose ancillary to a manufacturing process,
 - (ii) the device is certified for use for a purpose described in paragraph 5(b)(i) by a recognized agency mandated in part for that purpose;
 - (iii) the certification of the device is produced upon request of an Officer or the Fire Chief, or the device has been approved by the Fire Chief; and
 - (iv) the device is in good working order; or
- (c) For the purpose of a training exercise or demonstration of firefighting equipment, if such exercise or demonstration is authorized by the Fire Chief;

6 – Open Air Fire Permits

- 6.1 Every Open Air Fire Permit shall include the terms and conditions set out in Schedule B of this By-Law, as applicable.
- 6.2 An Agricultural Fire Permit shall be required prior to Setting an Agricultural Fire.
- 6.3 Only a Person who operates a Farming Business may apply for an Open Air Fire Permit for an Agricultural Fire.
- 6.4 A Brush Fire Permit shall be required prior to Setting a Brush Fire.
- 6.5 An Outdoor Appliance Fire Permit shall be required prior Setting a fire in an Outdoor Appliance.
- 6.8 An Outdoor Fireplace Permit shall be required prior to Setting a fire in an Outdoor Fireplace.
- 6.7 A Campfire Permit shall be required prior to Setting a Campfire.
- 6.8 A Special Event Fire Permit shall be required prior to Setting an Open Air Fire during or as part of a Special Event.
- 6.9 A Campground shall obtain a Campground Permit prior to Setting any Open Air Fire or permitting an Open Air Fire to be Set at a Campground.
- 6.10 Every application for an Open Air Fire Permit shall be submitted to Kingston Fire and Rescue in the form approved by the Fire Chief and shall contain the Applicant's contact information and all other information, documentation or materials as may be requested by Kingston Fire and Rescue.
- 6.11 An incomplete application for an Open Air Fire Permit may not be processed.
- 6.12 The Fire Chief may require an inspection of any Property prior to issuing an

Open Air Fire Permit.

6.13 The Fire Chief may, in his or sole discretion, refuse to issue an Open Air Fire Permit if:

- (a) the application is incomplete;
- (b) the Fire Chief has reasonable grounds to believe that the Open Air Fire may cause or result in an Adverse Effect or a Dangerous Condition;
- (c) the Applicant has an outstanding debt owing to the City as a result of unpaid fees or charges or fines issued pursuant to this By-Law; or
- (d) the Fire Chief has reasonable grounds to believe that the Open Air Fire will result in a breach of this By-Law, the *Fire Protection and Prevention Act*, or any other provincial or federal statute.

6.14 Where the Fire Chief refuses to issue an Open Air Fire Permit, the Fire Chief shall advise the applicant that the application has been denied and shall provide reasons for the denial.

6.15 An Open Air Fire Permit issued under this By-Law is personal to the Permit Holder and shall not be transferred or assigned.

6.16 An Open Air Fire Permit shall be valid for the calendar year in which it is issued.

6.17 The Fire Chief may, at any time, in his or her sole discretion, revoke any Open Air Fire Permit, if the Fire Chief has reasonable grounds to believe that:

- (a) Any of the information provided with the Open Air Fire Permit application or supporting documentation or materials is not accurate, is false or misleading;
- (b) A provision of this By-Law or a term or condition of the Open Air Fire Permit is not being observed; or
- (c) The Permit Holder has caused or permitted a Nuisance Open Air Fire on one or more occasions.

6.18 If the Fire Chief revokes an Open Air Fire Permit pursuant to section 6.17, the Fire Chief shall notify the Permit Holder using the contact information provided on the application as required by section 6.9 of this By-Law.

6.19 Notice of the revocation of an Open Air Fire Permit, if sent to the contact information provided on the application as required by section 6.9 of this By-Law shall, in the absence of evidence to the contrary, be deemed to be received:

- (a) on the date of delivery, if delivered personally;

- (b) on the date and time of transmission, if delivered via email;
- (c) three (3) business days after the date of mailing, if delivered by registered mail to an address within the City;
- (d) five (5) days after the date of mailing, if delivered by registered mail to an address outside of the City;
- (e) five (5) days after the date of mailing if delivered by regular mail to an address within the City;
- (f) seven (7) days after the date of mailing if delivered by regular mail to an address outside of the City.

7 – General Regulations

- 7.1 Except as provided in Section 5 - Exemptions, no Person shall cause or permit an Open Air Fire to be Set or Maintained unless that Person holds a valid Open Air Fire Permit.
- 7.2 No Person shall cause or permit an Open Air Fire to be Set or Maintained except in accordance with the provisions of this By-Law and the terms and conditions of a valid Open Air Fire Permit issued under this By-Law.
- 7.3 No Person shall cause or permit a Campfire, an Agricultural Fire or a Brush Fire to be Set or Maintained, except within the Open Air Fire Zone 1.
- 7.4 No Person shall cause or permit an Open Air Fire to be Set or Maintained in a Campground, unless the Campground has been issued a Campground Permit under this By-Law.
- 7.5 No Person shall cause or permit an Open Air Fire to be Set or Maintained in a Campground, except in accordance with the provisions of this By-Law and the terms and conditions of a valid Campground Permit issued under this By-Law
- 7.6 No Person shall cause, permit or Maintain the burning of Prohibited Materials in an Open Air Fire.
- 7.7 No Person shall cause or permit an Open Air Fire to be Set or Maintained in Prohibited Conditions.
- 7.8 No Person shall cause or permit an Open Air Fire to be Set or Maintained, during a Total Burn Ban.
- 7.9 No Person shall cause or permit an Open Air Fire to be Set or Maintained in contravention of the restrictions during a Partial Burn Ban.
- 7.10 No Person shall cause or permit fireworks to be set off during a Partial Burn Ban.

7.11 No Person shall cause or permit an Open Air Fire to be Set or Maintained in a Non-approved Device.

7.12 No Person shall cause or permit a Nuisance Open Air Fire.

7.13 No Person shall use, or cause or permit the use of a Flying/floating Lantern.

8 – Enforcement

8.1 The provisions of this By-Law may be enforced by an Officer, or other authorized employee or agent of the City.

8.2 No Person shall obstruct or hinder or attempt to obstruct or hinder an Officer or other authorized employee or agent of the City in the exercise of a power or the performance of a duty under this By-Law.

9 - Right of Entry

9.1 Upon producing proper identification, an Officer or the Fire Chief may, at any reasonable time, enter upon and inspect any Property to determine if there is a contravention of this By-Law and to enforce or carry into effect the provisions of this By-Law.

10 - Extinguishing Any Fire

10.1 The Fire Chief may direct any person to Extinguish any Open Air Fire where the Fire Chief has reasonable grounds to believe that the Open Air Fire is in contravention of this By-Law or of the terms and conditions of an Open Air Fire Permit.

10.2 Where the action taken by such person pursuant to 10.1 is, in the opinion of the Fire Chief not adequate, the Fire Chief may take such action as he or she considers necessary to control and Extinguish the fire.

10.3 No action or other proceeding for damages shall be instituted against a firefighter, a fire coordinator, a fire inspector, a community fire safety officer, a member or employee of the Fire Safety Commission, an assistant to the Fire Marshal, the Deputy Fire Marshal, the Fire Marshal, or a person acting under his or her authority, or any other person directed by the Fire Chief pursuant to section 10.1 or 10.2, for any act done in good faith in the execution or intended execution of his or her power or duty or for any alleged neglect or default in the execution in good faith of his or her power or duty.

11 - Costs of Action Regarding Fires

11.1 The Owner(s) of Property may be responsible for any and all extraordinary costs

and expenses of any action(s) taken by the Fire Chief pursuant to section 10.1 and/or section 10.2 of this By-Law with respect to responding to, controlling or Extinguishing an Open Air Fire on that Property that is caused by, or results from, a contravention of this By-Law, or is caused by or results from the failure to comply with any of the provisions of this By-Law or the terms and conditions of an Open Air Fire Permit issued pursuant to this By-Law.

- 11.2 For the purposes of section 11.1 of this By-Law, extraordinary costs and expenses include, but are not limited to: the costs and expenses related of any actions related to the burning of Prohibited Materials or in Prohibited Conditions; the costs and expenses of multiple responses to the same address due to contraventions of this By-Law; the costs and expenses related to the spread of an Open Air Fire onto property owned by the City, including to repair or replace damaged property.
- 11.3 The costs and expenses in section 11.1 of this By-Law shall be assessed in accordance with the City's Fees and Charges By-law and are payable to the City.
- 11.4 If costs or expenses are assessed against an Owner under this By-Law, the City shall deliver an invoice to each such Owner and the Owner shall pay the fee within thirty (30) days of receipt of the invoice or as may be otherwise specified on the invoice.
- 11.5 The City may deliver such invoice personally, by registered mail, or by regular mail to the Owner(s)'s last known address.
- 11.6 Receipt of the invoice shall be deemed to have occurred: a) on the date of delivery, if delivered personally; b) three (3) business days after the date of mailing, if delivered by registered mail to an address within the City; c) five (5) days after the date of mailing, if delivered by registered mail to an address outside of the City; d) five (5) days after the date of mailing if delivered by regular mail to an address within the City; e) seven (7) days after the date of mailing if delivered by regular mail to an address outside of the City.
- 11.7 If any amount payable under this By-Law remains unpaid after thirty (30) days of receipt of the invoice, the City may add such amount to the tax roll for any Property for which all the Owners are responsible and may collect the amount in the same manner as municipal taxes or through the use of other legal means as deemed appropriate.

12 – Offence and Penalty Provisions

- 12.1 Every person who contravenes any provision of this By-Law is guilty of an offence as provided in the *Provincial Offences Act*, R.S.O. 1990, c. P.33 as amended.

- 12.2 Subject to section 12.3 and section 12.4 of this By-Law, upon conviction, every Person who contravenes any provision of this By-Law is liable to a minimum fine of not less than One Hundred Dollars (\$100) and a maximum fine of not more than Twenty-Five Thousand Dollars (\$25,000) for a first offence and not more than Fifty Thousand Dollars (\$50,000) for any subsequent offence.
- 12.3 A corporation that has contravened any provision of this By-Law is, upon conviction, liable to a minimum fine of not less than One Hundred Dollars (\$100) and a maximum fine of not more than Fifty Thousand Dollars (\$50,000) for a first offence and not more than One Hundred Thousand Dollars (\$100,000) for any subsequent offence.
- 12.4 Where a corporation contravenes any provision of this By-Law, every director and officer of the corporation who knowingly concurs in the contravention is guilty of an offence and, upon conviction, is liable to a minimum fine of not less than One Hundred Dollars (\$100) and a maximum fine of not more than Twenty-Five Thousand Dollars (\$25,000) for a first offence and not more than Fifty Thousand Dollars (\$50,000) for any subsequent offence.
- 12.5 If a Person has been convicted of an offence under this By-Law, the Ontario Court of Justice or any court of competent jurisdiction thereafter may, in addition to any penalty imposed on the Person convicted, issue an order prohibiting the continuation or repetition of the offence by the Person convicted, and/or requiring the Person convicted to correct the contravention in the manner and within the period that the court considers appropriate.
- 12.6 In accordance with section 398 of the *Municipal Act*, the treasurer of the City may add any unpaid fees, charges and/or fines imposed under this By-Law to the tax roll and collect them in the same manner as property taxes.

13 - Schedules

13.1 The following Schedules are attached to and form part of this By-Law:

- (a) Schedule A: Open Air Fire Zones
- (b) Schedule B: Open Air Fire Permit Conditions

14 - Validity

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

15 - Short Title of By-Law

15.1 This By-Law may be referred to as the “Open Air Fires By-Law”.

16 – Commencement

16.1 This By-Law shall come into force and take effect on the date of its passing.

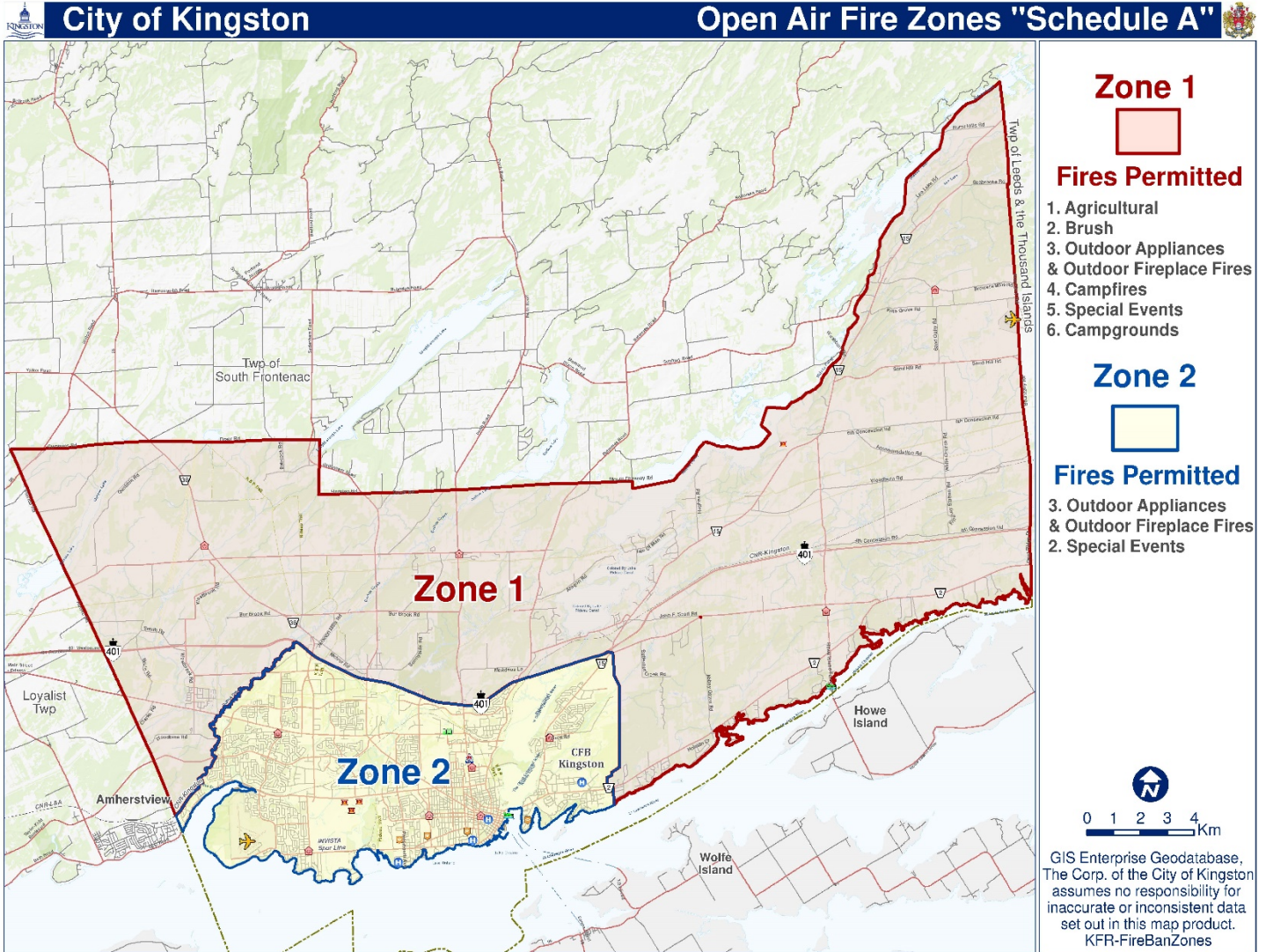
Given all Three Readings and Passed: Meeting date, 2021

John Bolognone
City Clerk

Bryan Paterson
Mayor

Schedule A

Open Air Fire Zones



Schedule B**Open Air Fire Permit Conditions****1. Application**

1.1 The terms and conditions set out in this Schedule apply to and form part of every Open Air Fire Permit.

2. Agricultural Fires

2.1 No Person shall Set or Maintain an Agricultural Fire, or cause or permit an Agricultural Fire to be Set or Maintained, unless all of the following conditions are met:

- (a) The Agricultural Fire is contained on a Property within the Open Air Fire Zone 1;
- (b) Kingston Fire & Rescue has inspected and approved the location of the Agricultural Fire;
- (c) Kingston Fire & Rescue dispatch / communications has been notified prior to Setting the Agricultural Fire;
- (d) The Agricultural Fire shall be Set and Maintained at a distance of no less than 90 metres (295 feet), or at such greater distance as may be specified in the Agricultural Fire Permit, from any building, hedge, fence, overhead wire, trees, or other combustible material, or the lot line;
- (e) The Material to be Burned shall not exceed 6 metres (20 feet) in height, 6 metres (20 feet) in width and 6 metres (20 feet) in length or as otherwise approved by the Fire Chief;
- (f) The Agricultural Fire is not Set or Maintained except during the timeframes set out on the issued Open Air Fire Permit;
- (g) Necessary means are immediately available at the site of the Agricultural Fire to permit the fire to be Extinguished, and/or to limit the spread of fire, and if necessary, to summon Kingston Fire & Rescue;
- (h) There is a Person present and in control of the Agricultural Fire at all times;
- (i) The Person present and in control of the Agricultural Fire is the Person identified in the Open Air Fire Permit; and
- (j) Kingston Fire & Rescue dispatch / communications is notified as soon as is practicable after the Agricultural Fire is Extinguished.

3. Brush Fires

3.1 No Person shall Set or Maintain a Brush Fire, or cause or permit a Brush Fire to be Set or Maintained, unless all of the following conditions are met:

- (a) The Brush Fire is contained on a Property within the Open Air Fire Zone 1;
- (b) Kingston Fire & Rescue has inspected and approved the location of the Brush Fire;
- (c) Kingston Fire & Rescue dispatch / communications has been notified prior to Setting the Brush Fire;
- (d) The Brush Fire shall be Set and Maintained at a distance of no less than 30 metres (98 feet), or such greater distance as may be specified in the Open Air Fire Permit, from any building, hedge, fence, overhead wire, trees, or other combustible material, or the lot line;
- (e) The Material to be Burned shall not exceed 3 metres (10 feet) in height, 3 metres (10 feet) in width and 3 metres (10 feet) in length or as otherwise approved by the Fire Chief;
- (f) The Brush Fire is not Set or Maintained except during the timeframes set out on the issued Open Air Fire Permit;
- (g) Necessary means are immediately available at the site of the Brush Fire to permit the fire to be Extinguished, and/or to limit the spread of fire, and if necessary, to summon Kingston Fire & Rescue;
- (h) There is a Person present and in control of the Brush Fire at all times;
- (i) The Person present and in control of the Brush Fire is the Person identified in the Open Air Fire Permit; and
- (j) Kingston Fire & Rescue dispatch / communications is notified as soon as is practicable after the Brush Fire is Extinguished.

4. Outdoor Appliance and Outdoor Fireplace Fires

4.1 No Person shall Set or Maintain a fire in an Outdoor Appliance or Outdoor Fireplace, or cause or permit a fire to be Set or Maintained in an Outdoor Appliance or Outdoor Fireplace, unless all of the following conditions are met:

- (a) The Outdoor Appliance or Outdoor Fireplace is not located on a balcony;
- (b) The Outdoor Appliance or Outdoor Fireplace is not located on any combustible surface;

- (c) The Outdoor Appliance or Outdoor Fireplace is in good working order;
- (d) The Outdoor Appliance is located at a distance of not less than 5 metres (16 feet) from any building, structure, hedge, fence, overhead wiring, trees, or other combustible material or the lot line;
- (e) The Outdoor Fireplace is located at a distance of not less than 3 metres (10 feet) from any building, structure, hedge, fence, overhead wiring, trees, or other combustible material or the lot line;
- (f) The Outdoor Appliance or Outdoor Fireplace is equipped with a spark arrester or protective cover placed over the fuel, chimney or opening so that it contains sparks and embers;
- (g) The Material to be Burned is clean dry wood in a single pile and does not exceed 45 centimetres (1.5 feet) in height, width and length;
- (h) Necessary means are immediately available to permit the fire to be Extinguished, and/or to limit the spread of fire, and if necessary, to summon Kingston Fire & Rescue;
- (i) There is a Person present and in control of the fire at all times; and
- (j) The Person present and in control of the Fire is identified in the Open Air Fire Permit.

5. Campfires

5.1 No Person shall Set or Maintain a Campfire, or cause or permit a Campfire to be Set or Maintained, unless all of the following conditions are met:

- (a) The Campfire is contained on a Property within the Open Air Fire Zone 1;
- (b) The Campfire is contained within an area of non-combustible metal, masonry, ceramic or stone or is contained within a pit in the ground that does not exceed 90 centimetres (3 feet) in height, width and length;
- (c) The Material to be Burned in the Campfire is clean dry wood in a single pile and does not exceed 90 centimetres (3 feet) in height, width and length;
- (d) The Campfire is located at a distance of not less than 5 metres (16 feet) from any building, structure, hedge, fence, overhead wiring, trees, or other combustible material or the lot line;
- (e) Necessary means are immediately available at the site of the Campfire to permit the fire to be Extinguished, and/or to limit the spread of fire, and if necessary, to summon Kingston Fire & Rescue;

- (f) There is a Person present and in control of the Campfire at all times; and
- (g) The Person present and in control of the Campfire is the Person identified in the Open Air Fire Permit.

6. Open Air Fires during or as part of a Special Event

6.1 No Person shall Set or Maintain an Open Air Fire during or as part of a Special Event, or cause or permit an Open Air Fire to be Set or Maintained during or as part of a Special Event, except in accordance with any specific terms and conditions that the Fire Chief imposes pursuant to section 6.2 of this Schedule, and unless all the following terms and conditions are met:

- (a) Necessary means are immediately available at the site of the Open Air Fire to permit the fire to be Extinguished, and/or to limit the spread of fire, and if necessary, to summon Kingston Fire and Rescue;
- (b) There is a Person present and in control of the Open Air Fire at all times; and
- (c) The Person present and in control of the Open Air Fire is the Person identified in the Special Event Fire Permit.

6.2 The Fire Chief may, in his or her sole discretion, may impose, as part of a Special Event Fire Permit, any other terms and conditions as the Fire Chief deems necessary, in addition to those set out in this By-Law and Schedule, including but not limited to restricting the time(s) or day(s) during which an Open Air Fire is permitted.

7. Campgrounds

7.1 No Person shall Set or Maintain an Open Air Fire in a Campground, or cause or permit an Open Air Fire to be Set or Maintained in a Campground, except in accordance with any specific terms and conditions that the Fire Chief imposes pursuant to section 7.2 of this Schedule, and unless all the following terms and conditions are met:

- (a) Necessary means are immediately available at the Campground to permit an Open Air Fire to be Extinguished, and/or to limit the spread of fire, and if necessary, to summon Kingston Fire and Rescue; and
- (b) There is a Person present and in control of the Open Air Fire at all times.

7.2 The Fire Chief may, in his or her sole discretion, require as a condition of any Campground Permit, specific terms and conditions in addition to those set out in this By-Law and Schedule.

- 7.3 Every owner/operator/supervisor of a Campground shall be responsible for ensuring compliance with the provisions of this By-Law and the terms and conditions of an issued Campground Permit.

**Exhibit B to Report Number ARCP-21-002
Set Fine Schedule**

Offence	Set Fine	Total Payable (including court costs)
Set or Maintain an Open Air Fire without a Permit	\$150	\$180
Fail to Comply with the Terms and Conditions of a Permit	\$150	\$180
Set or Maintain an Outdoor Appliance Fire not in accordance with the Terms and Conditions of the By-Law	\$150	\$180
Set or Maintain an Agricultural Fire or a Brush Fire in other than a Designated Area	\$150	\$180
Cause or Permit an Agricultural Fire or a Brush Fire to be Set or Maintained in other than a Designated Area	\$150	\$180
Set or Maintain a Campfire in other than a Designated Area	\$150	\$180
Cause or Permit a Campfire to be Set or Maintained in other than a Designated Area	\$150	\$180
Set or Maintain an Open Air Fire in a Campground without a Permit	\$150	\$180
Cause or Permit an Open Air Fire to be Set or Maintained in a Campground without a Permit Set or Maintain an Open Air Fire in a Campground without a Permit	\$150	\$180
Set or Maintain an Open Air Fire in a Campground not in accordance with the Terms and Conditions of the Permit	\$150	\$180
Cause or Permit an Open Air Fire to be Set or Maintained in a Campground without a Permit Set or Maintain an Open Air Fire in a Campground not in accordance with the Terms and Conditions of the Permit	\$150	\$180
Cause, permit or Maintain the burning of Prohibited Materials in an Open Air Fire	\$150	\$180

**Exhibit B to Report Number ARCP-21-002
Set Fine Schedule**

Set or Maintain an Open Air Fire in Prohibited Conditions	\$150	\$180
Cause or permit an Open Air Fire to be Set or Maintained in Prohibited Conditions	\$150	\$180
Set or Maintain an Open Air Fire during a Total Burn Ban	\$200	\$240
Cause or permit an Open Air Fire to be Set or Maintained during a Total Burn Ban	\$200	\$240
Set or Maintain an Open Air Fire in contravention of the conditions of a Partial Burn Ban	\$200	\$240
Cause or permit an Open Air Fire to be Set or Maintained in contravention of the conditions of a Partial Burn Ban	\$200	\$240
Set or Maintain an Open Air Fire in a Non-approved Device	\$150	\$180
Cause or permit an Open Air Fire to be Set or Maintained in a Non-approved Device	\$150	\$180
Cause or permit a Nuisance Open Air Fire	\$150	\$180
Use or cause or permit the use of a Flying/floating Lantern	\$150	\$180
Obstruct or hinder an Officer/Employee/Agent	\$250	\$305
Attempt to obstruct or hinder an Officer/Employee/Agent	\$250	\$305