

THE CORPORATION OF THE TOWN OF AMHERSTBURG

BY-LAW NO. 2017-92

A By-law to respecting the sale and the setting off of fireworks within the Town of Amherstburg

WHEREAS Section 120 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended authorizes municipalities to prohibit and regulate the manufacturing, storage and transporting of explosives within the municipality;

AND WHEREAS Section 121 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended provides that a local municipality may prohibit and regulate the sale and setting of fireworks and further that a by-law may prohibit those activities unless a permit is obtained for those activities and may impose conditions for obtaining, continuing to hold and renewing the permit, including requiring the submission of plans;

AND WHEREAS section 7.1(1) of the *Fire Protection and Prevention Act, 1997*, S.O. 1997, c. 4, as amended provides that a council of a municipality may pass by-laws regulating fire prevention, including the prevention of spreading fires; and,

AND WHEREAS Section 391 states 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 it; **AND WHEREAS** it is deemed expedient to regulate the sale and setting off of fireworks in the Town of Amherstburg;

THEREFORE the Council of the Corporation of the Town of Amherstburg enacts as follows:

1. DEFINITIONS

In this by-law:

"Act" means the Explosives Act, Revised Statutes of Canada, 1985, Chapter E-17, and the Regulations enacted thereunder as amended from time to time or any Act and Regulations enacted in substitution therefore;

"Applicant" means a Person eighteen (18) years of age or more who is a registered legal Owner of the property upon which the display is to be Discharged or a Person eighteen (18) years of age or more who is the Occupier of the property up on which the Display is to be Discharged and who has been provided with permission by a registered legal Owner of the property;

"Authorized Persons" means, as the context requires, a) in the case of Display Fireworks those persons working under the direct supervision of the fireworks supervisor, who have been as a minimum, certified as an apprentice as required by the Explosives Regulatory Division of Natural Resources Canada, and b) in the case of Pyrotechnic Special Effects Fireworks, those persons working under the direct supervision of the pyrotechnician, who have been as a minimum, certified as a theatrical user as required by the Explosives Regulatory Division of Natural Resources Canada;

"Building" means any structure used or intended for supporting or any sheltering use or occupancy;

"Chief Fire Official" means the Chief of the Amherstburg Fire Department or his designate(s);

"Consumer Firework" means an outdoor, low hazard, recreational firework that is classed as a Subdivision 1 of Division 2 of Class 7 Fireworks under the Act, and includes fireworks showers, fountains,

golden rain, lawn lights, pin wheels, Roman candles, volcanoes, and sparklers but does not include Christmas crackers and caps for toy guns containing not in excess of twenty-five one-hundredths of a grain of explosive used per cap;

“Council” means the Council of the Corporation of the Town of Amherstburg;

“Discharge” means to fire, ignite, explode, or set off or cause to be fired, ignited, exploded or setoff and the words “discharged” and “discharging” have a similar meaning;

“Display” means a performance, show, or event using Fireworks intended for public entertainment;

“Display Firework” means an outdoor, high hazard, recreational firework that is classed as a Subdivision 2 of Division 2 of Class 7 Fireworks under the Act, and includes rockets, serpents, shells, bombshells, tourbillions, maroons, large wheels, bouquets, bombardos, waterfalls, fountains, batteries, illumination, set pieces and pigeons but does not include firecrackers;

“Firecracker” means a pyrotechnic device that explodes when ignited and does not make any subsequent display or visible effect after the explosion, and includes those devices commonly known as Chinese firecrackers;

“Fire Extinguishing Equipment” means sufficient personnel and/or equipment, which may include items such as fire extinguishers, water hose, pails and sand, as is necessary dependent on the type and size of the fireworks being discharged;

“Fireworks” means display fireworks, pyrotechnic special effects fireworks and consumer fireworks;

“Fireworks Supervisor” means a person who is an approved purchaser of display fireworks and who is qualified under the Act to supervise the Discharge of Display Fireworks;

“FPPA” means the Fire Protection and Prevention Act, 1997, S.O. 1997, as amended, and the Regulations enacted thereunder as amended from time to time or any Act or Regulations enacted in substitution therefore;

“Municipal Law Enforcement Officer” means an individual appointed by the Town for the purpose of enforcing Town by-laws;

“Nuisance” means a hazard or condition, thing, act or omission which is offensive or which tends to prejudice the safety, order, peace or health of residents of the municipality or an activity, condition or premises or thing which adversely affects the rights or reasonable comfort convenience or peace and quiet of any neighbourhood in the municipality;

“Occupant” means any person or persons over the age of eighteen (18) years in possession of the property;

“Owner” shall include any Person who is an owner of land either jointly or in common with any other Person or persons and shall include any or all of such persons;

“Permit” means a written conditional authorization issued and administered by the Chief Fire Official to Display Fireworks in accordance with restrictions and conditions contained within this by-law or as may be specified on the Permit itself;

“Person” means any individual, owner, occupant, association, firm, partnership, corporation, agent or trustee and the heirs, executors, or other legal representatives of a person to whom the context can apply according to law who is at least eighteen (18) years of age or more;

"Prohibited Firework" includes but is not limited to sky lanterns (Chinese, Kongming or Wish lantern), cigarette loads or pings/ plugs, exploding matches, sparkling matches, ammunition for miniature tie clip, cufflink or key chain pistols, auto alarms or jokers, cherry bombs, M-80 and silver salutes and flash crackers, throw down torpedoes and crackling balls, exploding golf balls, stink bombs and smoke bombs, tear gas pens and launchers, party poppers and table bombs, table rockets and battle sky rockets, fake firecrackers and other trick devices or practical jokes as included on the most recent list of prohibited fireworks as published from time to time under the Act and any fireworks not on the approved list of the Ministry of National Resources Explosives Branch as amended from time to time;

"Public Events" includes, but is not limited to, an event that is held at Municipal Facilities (including parks, buildings, roadways, etc.), is open to the general public with or without an admission fee and has the potential for involvement of a number of attendees that could not be managed without special measures being put in place;

"Pyrotechnician" means a person who is certified under the Act as a Theatrical User, an Assistant, a Pyrotechnician or a Special Effects Pyrotechnician and is qualified to purchase and supervise the display of pyrotechnic special effect fireworks under the Act;

"Pyrotechnic Special Effect Firework" means a high hazard firework that is classed as a Subdivision 5 of Division 2 of Class 7 Firework under the Act and that is used to produce a special pyrotechnic effect for indoor or outdoor performances and includes black powder bombs, bullet effect, flash, powder, air bursts, smoke compositions, gerbs, lances and wheels;

"Sell" includes offer for sale, cause or permit to be sold and to possess for the purpose of sale and the words "selling" and "sold" have a similar meaning.

"Sky Lantern" (also known as a Chinese, Kongming or Wish lantern) are devices that are constructed of paper and a frame containing a fuel pack. The fuel pack is usually a petroleum or wax based fuel that when lit causes the lantern to lift into the sky;

"Temporary Sales Unit" means an enclosed portable stand, cart, display rack, cargo container or trailer, or other display unit that can be moved from one location to another and is used for the sale of Consumer Fireworks.

"Town" means the Corporation of the Town of Amherstburg

2. INTERPRETATION

- 2.1 In this by-law, a word interpreted in the singular number has a corresponding meaning when used in the plural.
- 2.2 Nothing in this by-law shall be interpreted as reducing or eliminating compliance with the provisions of all applicable Federal or Provincial statutes and regulations related to explosives or fireworks and in particular the Act, as amended.
- 2.3 Words importing the singular number or the masculine gender only, include more persons, parties or things of the same kind than one and females as well as males and the converse.

3. SALE OF FIREWORKS AND FIRECRACKERS

- 3.1 No Person shall Sell any Firecrackers.
- 3.2 No Person shall Sell any Prohibited Fireworks.
- 3.3 No Person shall Sell Consumer Fireworks except on the following days:

- 3.3.1 Victoria Day, Canada Day, the Fourth of July, New Year's Eve; and,
- 3.3.2 Each of the seven (7) business days immediately preceding Victoria Day, Canada Day, Fourth of July and New Year's Eve.
- 3.4 Every Person in charge of a store shall ensure that Fireworks displayed in store windows shall be mock samples only and not contain explosive composition.
- 3.5 No Person shall display for sale within the Town any type of Fireworks in any manner other than in such a place that the Fireworks are not exposed to the rays of the sun or to excess heat from any other source.
- 3.6 No Person shall, within the Town, Sell or give any Person under the age of 18 years any type of Consumer or Display Fireworks.
- 3.7 No Person shall display for sale within the Town any Consumer Firework in any manner other than in a package, glass case, or other suitable receptacle, away from any other flammable goods.
- 3.8 No Person shall Sell Fireworks in a Building or Temporary Sales Unit unless the provisions of the Ontario Fire Code and all other applicable Acts and Regulations are complied with.

4. DISCHARGE OF FIRECRACKERS AND PROHIBITED FIREWORKS

- 4.1 No Person shall Discharge any Firecrackers.
- 4.2 No Person shall Discharge any Prohibited Fireworks.

5. CONSUMER FIREWORKS PROHIBITIONS

- 5.1 No Person shall Discharge Consumer Fireworks except on the following days:
 - 5.1.1 between dusk and 11:00 p.m. Victoria Day, Canada Day, the Fourth of July and between dusk and 1:00 a.m. on New Year's Eve.
- 5.2 A Person eighteen (18) years of age or older may hold a Display of Consumer Fireworks on any land belonging to him or her or on any other privately owned land where the Owner thereof has given permission for such Display or Discharge of Fireworks.
- 5.3 No Person under the age of eighteen (18) years shall Discharge any Consumer Fireworks except under the direct supervision of and control of a Person eighteen (18) years of age or over.
- 5.4 No Person being the parent or guardian of any Person under the age of eighteen (18) years shall allow the Person to Discharge any Consumer Fireworks except when such parent or guardian or some other responsible Person of eighteen (18) years of age or over is in direct supervision and control.
- 5.5 No Person shall Discharge any Consumer Fireworks in such a manner as might create danger or constitute a Nuisance to any Person or property, or to do or cause or allow any unsafe act or omission at the time and place for the Discharging of any Fireworks.
- 5.6 No Person shall Discharge any Consumer Fireworks including sparklers or volcanoes inside a restaurant or other public assembly occupancy without the following conditions being met:
 - 5.6.1 A description of the fire emergency procedures specific to the Consumer Fireworks contained within the fire safety plan for the occupancy, and
 - 5.6.2 Provide and maintain fully operational, Fire Extinguishing Equipment ready for immediate use at site of Display (table/serving cart, etc)

- 5.7 No Person shall Discharge any Consumer Fireworks in or into any Building, doorway, or automobile.
- 5.8 No Person shall Discharge any Consumer Fireworks in or on or into any highway, street, alley, lane, square or other public place, unless under a Display Fireworks permit to do so issued by the Chief Fire Official.

6. DISPLAY FIREWORKS PROHIBITIONS

- 6.1 No Person or group of Persons shall Discharge any Display Fireworks in the Town of Amherstburg, without first having obtained a Permit issued by the Chief Fire Official authorizing the Discharge of Display Fireworks.
- 6.2 No Display Fireworks shall be permitted on any Town owned property without first having obtained the Public Event approval of Council as well as the required Permit from the Chief Fire Official.
- 6.3 No Permit Holder shall Discharge Display Fireworks except in accordance with the conditions of the Permit.

7. PERMIT REQUIREMENTS- DISPLAY FIREWORKS

- 7.1 Every application for a Display Firework Permit shall be made to the Chief Fire Official a minimum of 30 days prior to the event when the proposed Discharge of Display Fireworks is to occur.
- 7.2 The Chief Fire Official may issue Permits for Displays Fireworks on the conditions set forth in Section 8, and each such Permit shall state the name of the sponsoring club, association or group, the purpose of the Display, the place and date at which the same may be held, and the name of the Person under whose supervision the Display shall be held.
- 7.3. The application for a Display Firework Permit shall include:
 - 7.3.1 The name, address, email address and phone number of the Applicant;
 - 7.3.2 The Owner's written consent to a Display of Fireworks if the Applicant is not the Owner of the property, and if part of a Public Event, approval of Council;
 - 7.3.3 The location, date and time of the proposed Discharge of Display Fireworks;
 - 7.3.4 The type and kind of Display Fireworks that may be Discharged, including the height, range of effect, fallout and duration of the Display Fireworks;
 - 7.3.5 The Discharge techniques to be used;
 - 7.3.6 The manner and means of restraining unauthorized persons from attending too near the Discharge site;
 - 7.3.7 The manner in which unused Display Fireworks are to be disposed of,
 - 7.3.8. The number of Authorized Persons on site during the event to handle and Discharge the Display Fireworks;
 - 7.3.9 The method and location of storage of the Display Fireworks prior to set up and Display;
 - 7.3.10 A site plan providing a description of the Discharge site to be used for the Discharging of the Display Fireworks;
 - 7.3.11 A description of the fire emergency procedures;

7.3.12 Proof of certification of the Applicant as a Fireworks Supervisor;

7.3.13 The Permit Fee.

7.3.14 Proof of Insurance and Indemnification in accordance with the requirements of this by-law.

7.3.15 Such other information as required by the Chief Fire Official.

7.4 The Chief Fire Official reserves the right to issue or deny issuing a Permit.

8. DISPLAY FIREWORK PERMIT CONDITIONS

8.1 The following conditions shall apply to the holding of a Display of Display Fireworks under a Permit issued under this by-law:

8.1.1 the Permit is valid only for the Display at the place and on the date or dates set forth on the Permit,

8.1.2 the permit holder shall supervise the Display of Display Fireworks,

8.1.3 the permit holder or his licensed designate shall Discharge the Display Fireworks, and any Consumer Fireworks identified,

8.1.4 every permit holder shall provide and maintain fully operational, Fire Extinguishing Equipment ready for immediate use at each firing site,

8.1.5 the permit holder shall comply at all times with the provisions of the Act, the Fire Protection and Prevention Act, 1997, and the Display Fireworks Manual published by Natural Resources Canada or any successor publication, and

8.1.6 a demonstration of the Display or portions of the Display shall be conducted upon request of the Chief Fire Official.

8.1.7 the permit holder shall recognize the Chief Fire Official's authority to reduce and or cancel the Display if the weather conditions are not conducive to public safety.

8.2 The permit holder holding the Display of Display Fireworks shall ensure that all unused Fireworks and all debris are removed.

8.3 No permit holder shall Discharge Display Fireworks except in accordance with the conditions of the Permit.

8.4 The Chief Fire Official may impose further conditions on the Permit as deemed necessary.

8.5 Every holder of a Display Fireworks Permit shall produce his or her Permit upon being so directed by the Chief Fire Official.

8.6 A Display Fireworks Permit granted by the Chief Fire Official may be revoked whenever, in his discretion, the holder of such Permit is in non-compliance with its terms or he has concerns for the safety of the public.

9. PYROTECHNIC SPECIAL EFFECTS FIREWORKS PROHIBITIONS

9.1 No Person or group of Persons shall hold a Display of Pyrotechnic Special Effect Fireworks in the Town of Amherstburg without first having obtained a Permit.

9.2 No Display of Pyrotechnic Special Effect Fireworks shall be permitted on any Town owned property without first having obtained the Public Event approval of Council as well as the required Permit from the Chief Fire Official.

10. PERMIT REQUIREMENTS- PYROTECHNIC SPECIAL EFFECT FIREWORKS

10.1 Every application for a Pyrotechnic Special Effect Firework Permit shall be made to the Chief Fire Official a minimum of 30 days prior to the event when the proposed Discharge of Pyrotechnic Special Effect Fireworks is to occur.

10.2 The Chief Fire Official may issue Permits for Pyrotechnic Special Effect Fireworks on the conditions set forth in Section 11, and each such Permit shall state the name of the sponsoring club, association or group, the purpose of the Display, the place and date at which the same may be held, and the name of the Person under whose supervision the Display shall be held.

10.3 The application for a Pyrotechnic Special Effect Firework Permit shall include:

10.3.1 The name, address, email address and phone number of the Applicant;

10.3.2 The Owner's written consent to a Pyrotechnic Special Effect Firework Display if the Applicant is not the Owner of the property, and if part of a Public Event, approval of Council;

10.3.3 The location, date and time of the proposed Pyrotechnic Special Effect Firework Display

10.3.4 The type and kind of Pyrotechnic Special Effect Firework that may be Discharged, including the height, range of effect, fallout and duration of the Pyrotechnic Special Effect Fireworks.

10.3.5 A site plan of the facility and room capacity, the stage and the Pyrotechnic Special Effect Fireworks storage area.

10.3.6 The Discharge techniques to be used including the sequence of firing;

10.3.7 The location of the audience and all exits;

10.3.8 The manner in which unused Pyrotechnic Special Effect Fireworks are to be disposed of;

10.3.9 The number of Authorized Persons on site during the event to handle and Discharge of the Pyrotechnic Special Effect Fireworks;

10.3.10 The method and location of storage of the Pyrotechnic Special Effect Fireworks prior to set up and Display;

10.3.11 Description of fire emergency procedures;

10.3.12 Proof of certification of the Applicant as a Pyrotechnician;

10.3.13 The Permit Fee

10.3.14 Proof of Insurance and Indemnification in accordance with the requirements of this by-law;

10.3.15 Such other information as required by the Chief Fire Official;

- 10.4 The Chief Fire Official reserves the right to issue or deny issuing a Permit.

11. PYROTECHNIC SPECIAL EFFECT FIREWORKS CONDITIONS

- 11.1 The following conditions shall apply to the holding of a Display of Pyrotechnic Special Effect Fireworks under a Permit issued under this by-law:

- 11.1.1 The Permit is valid only for the Display at the place and on the date or dates and time(s) set forth in the Permit;
- 11.1.2 The permit holder shall supervise the Display of Pyrotechnic Special Effect Fireworks;
- 11.1.3 The permit holder shall Discharge the Pyrotechnic Special Effects Fireworks;
- 11.1.4 The permit holder shall provide and maintain fully operational, Fire Extinguishing Equipment ready for immediate use;
- 11.1.5 The permit holder shall comply at all times with the requirements of the Act and the Pyrotechnics Special Effects Manual published by Natural Resources Canada or any successor publication;
- 11.1.6 A demonstration of the Display or portions of the Display shall be conducted upon request of the Chief Fire Official.

- 11.2 The permit holder holding the Display of Pyrotechnic Special Effect Fireworks shall ensure that all unused Fireworks and all debris are removed.
- 11.3 No permit holder shall Discharge Pyrotechnic Special Effect Fireworks except in accordance with the conditions of the Permit.
- 11.4 The Chief Fire Official may impose further conditions on the Permit as deemed necessary.
- 11.5 Every holder of a Pyrotechnic Special Effect Fireworks Permit shall produce his Permit upon being directed by the Chief Fire Official.
- 11.6 A Pyrotechnic Special Effect Fireworks Permit granted by the Chief Fire Official may be revoked whenever, in his discretion, the holder of such Permit is in non-compliance with its terms or he has concerns for the safety of the public.

12. INSURANCE

- 12.1 The Applicant shall provide and maintain Commercial General Liability insurance subject to limits of not less than Five Million Dollars (\$5,000,000.00) inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof. Such insurance shall be in the name of the Applicant and shall name the Town of Amherstburg as an additional insured thereunder. Such insurance shall include permission to conduct Displays of Pyrotechnic Special Effects Fireworks or Display Fireworks. Such insurance policy shall contain an endorsement to provide the Town of Amherstburg with (30) days prior written notice of cancellation or of a material change that would diminish coverage, and a Certificate of Insurance evidencing such insurance coverage shall be provided to the Town of Amherstburg prior to the issuance of a Permit.

13. INDEMNIFICATION

- 13.1 The Applicant shall indemnify and save harmless the Town of Amherstburg from any and all claims, demands, causes of action, loss costs or damages that the Town of Amherstburg may suffer, incur or be liable for resulting from the performance of the Applicant as set out in the by-law whether with or without negligence on the part of the Applicant, the Applicant's employees, directors, contractors and agents.

14. PERMIT FEE

- 14.1 The non-refundable Permit application fee is set out in of the Town's User Fee By-law as amended from time to time.

15. ENFORCEMENT

- 15.1 A Municipal Law Enforcement Officer shall be permitted to enter onto land at any time for the purpose of enforcing this by-law and any orders or conditions imposed under the authority of this by-law.
- 15.2 No Person shall hinder or obstruct, or attempt to hinder or obstruct the entry or the inspection of any property by a Municipal Law Enforcement Officer or otherwise hinder or obstruct a Municipal Law Enforcement Officer exercising a power or performing a duty under this By-law or Act.

16. OFFENCES AND PENALTIES

- 16.1 Every Person who contravenes any section of this by-law is, upon conviction, guilty of an offence and shall be liable to a fine as provided for by the Provincial Offences Act, R.S.O. 1990, c.P. 33, as amended, and be subjected to any other penalties permitted by law for each offence.

17. SEVERABILITY

- 17.1 Should any paragraph, clause or provision of the By-law be declared invalid by a court of competent jurisdiction, the same shall not affect the validity of the By-law as a whole or any part of thereof, other than the part which was declared to be invalid.
- 17.2 When any requirement of this by-law is at variance with any other by-law in effect in the Town or with any applicable provincial or federal statute or regulation, the more restrictive requirement shall apply unless otherwise stated in such legislation.

18. REPEAL

- 18.1 Town of Amherstburg By-law 2003-26 and all amending by-laws are hereby repealed.

19. SHORT TITLE

- 19.1 This by-law may be referred to as the Fireworks By-law.

Read a first, second and third time and finally passed this 23rd day of October, 2017.



MAYOR – ALDO DICARLO



CLERK – PAULA PARKER