

THE CORPORATION OF THE MUNICIPALITY OF PORT HOPE

BY-LAW NO. 102/2008

Being a By-law to Provide for the Sale of Fireworks and the Setting off of Fireworks and Pyrotechnics within the Municipality of Port Hope, and for Requiring a Permit and Imposing Conditions and to Adopt Requirements Imposed by the Proposed Federal Explosives Act

WHEREAS s.120 of the Municipal Act, 2001, S.O. 2001, c.25, as amended provides that a local municipality may

- a) prohibit and regulate the manufacture of explosives in the Municipality;
- b) prohibit and regulate the storage of explosives and dangerous substances in the Municipality;
- c) regulate the keeping and transportation of explosives and dangerous substances in the municipality;

AND WHEREAS a By-law may prohibit the manufacture or storage of explosives unless a permit is obtained, and may impose conditions of obtaining or continuing to hold and renewing the permit, including requiring the submission of plans;

AND WHEREAS s.121 of the Municipal Act, 2001, S.O. 2001, c.25, as amended provides that a local municipality may prohibit and regulate the sale of fireworks and the setting off 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 WHEREAS Fireworks safety is a concern of the Council of the Municipality of Port Hope. The restrictions on the sale and purchase of fireworks in this By-law are intended to promote:

- the health and safety of Port Hope citizens;
- the control of nuisances, particularly danger to persons and property from fireworks that escape from the property where they are set off; and
- consumer protection, particularly the use of unauthorized fireworks.

BACKGROUND STATEMENT TO THIS BY-LAW

Consumer fireworks are fireworks that are designed for recreational use by the public. They are different from display fireworks, which are fireworks used in larger, usually public, fireworks displays. Consumer fireworks are dealt with in part 12 of Regulation C.R.C. chapter 599 of the Federal Explosives Act. Display fireworks are dealt with in part 13.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF PORT HOPE ENACTS AS FOLLOWS:

1. That in this By-law:

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

“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 of 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.

“Clerk” means the Municipal Clerk for the Municipality of Port Hope;

“Council” means the Council of the Municipality of Port Hope;

“Consumer Fireworks” 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, and volcanoes, but does not include sparklers, Christmas crackers, and caps for toy guns containing not in excess of twenty-five one-hundredths of a grain of explosive used per cap;

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

“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, batteries, illumination, set pieces and pigeons but does not include firecrackers.

“Display of Display Fireworks” means a display of display fireworks which may include consumer fireworks;

“Fire Chief” means the Director of Fire and Emergency Services for the Municipality or authorized designates;

“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;

“Fireworks” means a pyrotechnical display comprised of a combustible or explosive device; or combination of explosives and combustibles set off to produce a striking display of light or a loud noise, used for signaling or as part of a celebration, and noise for amusement;

“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, c.4, as amended, and the Regulations enacted thereunder as amended from time to time or any Act and Regulations enacted in substitution therefore;

“Officer” means a municipal by-law enforcement officer, provincial offences officer or police officer;

“Municipality” means The Corporation of the Municipality of Port Hope or the geographic area of the Municipality of Port Hope as the context requires;

“Permit” means a permit issued by the Municipality to any establishment that sells fireworks within the Municipality and for each special event who has a qualified and certified pyrotechnician under the Act who will be conducting a pyrotechnical display within the Municipality as provided for under the Explosives Act;

“Prohibited Firework” includes but is not limited to cigarette loads or 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 cracking balls, exploding golf balls, stink bombs and smoke bombs, tear gas pens and launchers, party poppers and table bombs, table rockets and bottle 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;

“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;

“Pyrotechnician 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; and

“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.

2. INTERPRETATION

2.1 In this By-law:

2.1.1 words importing the singular number only, include more persons, parties or things of the same kind than one and the converse, and

2.1.2 a word interpreted in the singular number has a corresponding meaning when used in the plural.

2.2 It is declared that if any section, subsection or part or parts thereof be declared by any Court of Law to be bad, illegal or ultra vires, such section or part or parts shall be deemed to be severable and all parts hereof are declared to be separate and independent and enacted as such.

3. SHORT TITLE

3.1 This By-law shall be known as “Fireworks By-law”.

4. DISCHARGE OF FIRECRACKERS AND PROHIBITED FIREWORKS

4.1 No person shall discharge any firecrackers, except with the appropriate federal approvals and for the purpose of cultural celebrations.

4.2 No person shall discharge any prohibited fireworks.

5. CONSUMER FIREWORKS

5.1 No person shall discharge consumer fireworks except:

5.1.1 between dusk and 11:00 p.m. on Victoria Day;

5.1.2 between dusk and 11:00 p.m. on Canada Day;

5.1.3 as part of a display of display fireworks for which a permit has been obtained and for which all conditions and requirements of the permit have been met; or

5.1.4 at such other times and such other dates as permitted by Council by by-law.

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 do to 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 in or into any buildings, doorway, or automobile.

5.7 No person shall discharge any consumer fireworks in or on or into any park, highway, street, lane, square or other public place, unless under a display fireworks permit to do so issued by the Fire Chief.

6. PROHIBITIONS

SALE OF FIREWORKS

6.1 No person shall sell or offer for sale any fireworks or firecrackers to any person in the Municipality unless he has obtained a license pursuant to the requirements of the Explosives Act and Regulations governing the sale/discharge of fireworks.

6.2 No person shall sell or retail in the Municipality any fireworks on any day or days during the year except on Victoria Day and Canada Day and except on the ten (10) days immediately preceding Victoria Day and on the ten (10) days immediately preceding Canada Day, provided that the foregoing shall not prevent the sale on any day for the purposes of a fireworks display to a person who is the holder of a permit for such display pursuant to the provisions of the Explosives Act to a certified pyrotechnician.

6.3 No person shall sell or retail in the Municipality any fireworks to anyone under the age of eighteen (18) years.

7. REQUIREMENTS OF VENDOR FOR THE SALE OF FIREWORKS

7.1 Each vendor shall be responsible for ensuring that:

7.1.1 They have obtained the necessary fireworks permit issued by the Fire Chief for the Municipality of Port Hope.

7.1.2 “No Smoking” and “Fireworks” signs are prominently displayed within the sales structure.

7.1.3 The “No Smoking” prohibition is enforced at all times.

7.1.4 Fire extinguishers are supplied in accordance with the Ontario Fire Code and staff have been trained to operate the same.

7.1.5 To the best of their ability no fireworks offered for sale have not been manufactured or assembled using child labour.

8. DISPLAY FIREWORKS

8.1 No person or group of persons shall hold a display of display fireworks in the Municipality of Port Hope without first having obtained a permit to do so issued by the Fire Chief.

8.2 No person or group of persons shall discharge any display fireworks in the Municipality of Port Hope, without first having obtained a permit issued by the Fire Chief authorizing the display of display fireworks.

9. Every application for a permit shall be made to the Fire Chief a minimum of twenty-one (21) calendar days prior to the event when the proposed discharge of display fireworks is to occur.

10. Every application for a permit shall be submitted by the Fireworks Supervisor and shall include:

10.1 a description of the event including:

10.1.1 the date and time of the proposed discharge of display fireworks.

10.1.2 the type and kind of display fireworks that may be discharged.

10.1.3 the discharge techniques to be used.

10.1.4 the manner and means of restraining unauthorized persons from attending too near the discharge site.

10.1.5 the manner in which unused display fireworks are to be disposed of.

10.1.6 the number of Authorized Persons on site during the event to handle and discharge the display fireworks and

- 10.1.7 confirmation from the local Coast Guard and the closest air field or base (Trenton Air Base) that they have been advised of the discharge of display fireworks over water
- 10.2 a site plan providing a description of the discharge site to be used for the discharging of the display fireworks;
- 10.2.1 A site plan showing:
- The location of the sale structure.
 - The Clearances from adjacent properties.
 - The access to be provided for fire and emergency vehicles.
 - The location of the services to the site.
 - The location of the barriers establishing a zone free from vehicular traffic around the sale structure, where applicable.
- 10.2.2 a description of the fire emergency procedures;
- 10.2.3 the name and address of the applicant (Fireworks Supervisor) and the sponsoring organization, if applicable.
- 10.2.4 proof of certification of the applicant as a Fireworks Supervisor;
- 10.2.5 proof of consent of the owner of the property to the discharge of display fireworks in writing;
- 10.2.6 a permit fee as set out in the applicable Municipality of Port Hope Fees and Charges By-law;
- 10.2.7 proof of insurance and indemnification in accordance with Sections 10 and 11; and
- 10.2.8 such other information as required by the Fire Chief.
11. An applicant for a permit is, subject to the provisions of this by-law, entitled to be issued the permit, except where:
- 11.1 the application is incomplete;
- 11.2 the applicant is not a Fireworks Supervisor; or
- 11.3 there are reasonable grounds for belief that the holding of he display fireworks will result in a breach of this or another by-law, the FPPA or the Act.

12. INSURANCE

The applicant for a fireworks display permit 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 Corporation of the Municipality of Port Hope as an additional insured there under. Such insurance shall include coverage for displays of pyrotechnic special effects fireworks, consumer fireworks or display fireworks. Such insurance policy shall contain an endorsement to provide the Municipality of Port Hope within thirty (30) calendar days prior written notice of cancellation or of a material change that would diminish coverage and a standard Municipality of Port Hope Certificate of Insurance evidencing such insurance coverage shall be provided to the Municipality prior to the issuance of a permit.

13. IDEMNIFICATION

The applicant for a permit shall indemnify and save harmless the Municipality of Port Hope from any and all claims, demands, causes of action, loss, costs or damages that the Municipality of Port Hope 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. CONDITIONS APPLYING TO PERMIT

The Fire Chief may issue permits for display of fireworks on the conditions set forth in Section 14, 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 Fireworks Supervisor under whose supervision the display shall be held.

14.1 The following conditions shall apply to the holding of a display fireworks under a permit issued under this by-law:

- 14.1.1 the permit is valid only for the display at the place and on the date or dates set forth in the permit;
- 14.1.2 the permit holder shall supervise the display of display fireworks;
- 14.1.3 the permit holder shall discharge the display fireworks and any consumer fireworks;
- 14.1.4 every permit holder shall provide and maintain fully operational, fire extinguishing equipment ready for immediate use, and request that Fire Department personnel are in attendance, and
- 14.1.5 the permit holder shall comply at all times with the provisions of the Act, FPPA and the Display Fireworks Manual published by Natural Resources Canada or any successor publication.

14.2 No permit holder shall discharge display fireworks or consumer fireworks except in accordance with the conditions of the permit.

14.3 The permit holder holding the display of display fireworks shall ensure that all unused fireworks and all debris are removed, in compliance with the Act, FPPA and the Display Fireworks Manual published by Natural Resources Canada or any successor publication.

15. PYROTECHNIC SPECIAL EFFECTS FIREWORKS

15.1 No person or group of persons shall hold a display of pyrotechnic special effect fireworks in the Municipality of Port Hope without first having obtained a permit to do so issued by the Fire Chief.

15.2 No person or group of persons shall discharge any pyrotechnic special effect fireworks in the Municipality of Port Hope, without first having obtained a permit issued by the Fire Chief authorizing the display of pyrotechnic special effect fireworks.

15.3 Every application for a permit pursuant to Section 16 shall be made to the Fire Chief or his designate a minimum of twenty-one (21) calendar days prior to the event where the proposed discharge of pyrotechnic special effect fireworks is to occur.

15.4 Every application for a permit shall be submitted by the pyrotechnician and shall include:

15.4.1 a description of the event including:

- a site plan of the facility and room capacity, the stage and the pyrotechnic special effect fireworks storage area;
- a list of all pyrotechnic special effect fireworks to be employed;
- location of all pyrotechnic special effect fireworks;
- height, range of effect, fallout and duration of the display of pyrotechnic special effect fireworks;
- sequence of firing;
- location of the audience and all exists;
- date and time of the proposed event using pyrotechnic special effect fireworks; and
- the number of Authorized Persons on site during the event to handle and discharge the pyrotechnic special effect fireworks.

15.4.2 description of fire emergency procedures;

15.4.3 name and address of the applicant (pyrotechnician) and the sponsoring business or organization, if applicable;

15.4.4 proof of certification of the applicant as a pyrotechnician;

15.4.5 proof of insurance and indemnification in accordance with Sections 12 and 13;

15.4.6 proof of written consent of the owner of the property to the discharge of pyrotechnic special effect fireworks if the applicant (pyrotechnician) is not the owner of the property;

15.4.7 a permit fee as set out in the applicable Municipality of Port Hope fees and charges by-law; and

15.4.8 such other information as required by the Fire Chief.

15.5 Notwithstanding section 18(1)(a), where pyrotechnic special effect fireworks will be used for filming or television productions or similar events, every applicant for a permit may include a Letter of Intent approved by the Fire Chief, as provided in the Pyrotechnics Special Effects Manual published by Natural Resources Canada or any successor publication thereto, and where such Letter of Intent is provided, the requirements of section 18(1)(a) need not be met.

15.6 An applicant for a permit is, subject to the provisions of this by-law, entitled to be issued the permit, except where:

15.6.1 the application is incomplete;

15.6.2 the applicant is not a pyrotechnician under the Act, or

15.6.3 there are reasonable grounds for belief that the holding of the display of pyrotechnic special effect fireworks will result in a breach of this or another by-law, the FPPA or the Act.

16. CONDITIONS APPLYING TO PERMIT

The Fire Chief may issue permits for displays of pyrotechnic special effect fireworks on the conditions set forth in Section 17 and each such permit shall state the name of the sponsoring business, club, association or group, the purchase of the display, the place and date at which the display may be held, and the name of the pyrotechnician under whose supervision the display shall be held.

17. The following conditions shall apply to the holding of a display of pyrotechnics special effect fireworks under a permit issued under this by-law.

- 17.1 permit is valid only for the display at the place and on the date or dates set forth in the permit;
 - 17.2 the permit holder shall supervise the display of pyrotechnic special effect fireworks;
 - 17.3 the permit holder shall discharge the pyrotechnic special effects fireworks;
 - 17.4 the permit holder shall provide and maintain fully operational, fire extinguishing equipment ready for immediate use, and
 - 17.5 the permit holder shall comply at all times with the requirements of the Act, FPPA and the Pyrotechnics Special Effects Manual published by Natural Resources Canada or any successor publication.
- 18. No permit holder shall discharge pyrotechnic special effect fireworks except in accordance with the conditions of the permit.
 - 19. The permit holder holding the display of pyrotechnic special effect fireworks shall ensure that all unused fireworks and all debris are removed.
 - 20. All permits granted by the Fire chief may be revoked whenever, in the Fire Chief's discretion, the holder of such permit is in non-compliance with its conditions or requirements, or the Fire Chief has concerns for public safety.

21. ENFORCEMENT

This by-law will be enforced by the Fire Chief, the Municipality of Port Hope Fire Department, Fire Prevention Officers, the Port Hope Police Service, the Ontario Provincial Police (OPP) and the Municipality of Port Hope By-law Enforcement Officers.

22. GENERAL REQUIREMENTS

Every holder of a display fireworks or pyrotechnic special effect fireworks permit shall produce his or her permit upon being so directed by the Fire Chief.

23. OFFENCES AND PENALTIES

- 23.1 Every person who contravenes any of the provisions of this by-law is guilty of an offence.
- 23.2 Every person who is convicted of an offence under this by-law is liable to a fine as provided for in the Provincial Offences Act, R.S.O. 1990, Chapter P.33, as amended.

24. SEVERABILITY

If any section or sections of this by-law shall be declared by a court of competent jurisdiction to be invalid, such section or sections shall be deemed to be severable and shall not affect the validity of this by-law as a whole or any part thereof and all other sections of the by-law shall be deemed to be separate and independent therefrom and enacted as such.

25. CONFLICT

In the event of any conflict between any provisions of this by-law and any other by-law heretofore passed the provisions of this by-law shall prevail.

That By-law 55/87 is hereby repealed.

That this By-law shall come into force and effect immediately upon passing.

READ a FIRST, SECOND and THIRD time and finally passed in Open Council this 30th day of September, 2008.

Linda Thompson, Mayor

S.C. Dawe, Municipal Clerk