

The Corporation of the City of Port Colborne

By-law no. 6613/68/18

Being a by-law for prohibiting and regulating the sale of fireworks and the setting off of fireworks in the City of Port Colborne and to repeal By-law No. 4989/45/07

Whereas Subsection 121(a) of the *Municipal Act 2001*, provides that a local municipality may prohibit and regulate the sale of fireworks and the setting off of fireworks; and

Whereas Subsection 121(b) of the *Municipal Act, 2001*, provides that a by-law passed under Subsection 121(1) may prohibit the activities described in that subsection unless a permit is obtained from the municipality for those activities and may impose conditions for obtaining, continuing to hold and renewing the permit, including requiring the submission or plans; and

Whereas Section 128 of the *Municipal Act, 2001*, provides that a local municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of Council, are or could become public nuisances; and the opinion of Council with respect to public nuisances, if arrived at in good faith, is not subject to review by any court; and

Whereas Section 129 of the *Municipal Act, 2001*, as amended provides that a municipality may prohibit and regulate with respect to noise; and

Whereas Section 11(2) of the *Municipal Act, 2001*, as amended provides that a lower tier municipality may pass by-laws respecting the health, safety and well-being of persons; and

Whereas it is the desire of the Council of The Corporation of the City of Port Colborne to regulate the sale and setting off of fireworks with a view to ensuring the safety of the public in respect to the sale and setting off of fireworks; and

Now therefore the Council of The Corporation of the City of Port Colborne enacts as follows:

SECTION 1 SHORT TITLE

1.1 This by-law may be cited as "The Fireworks By-law".

SECTION 2 SCOPE

2.1 The provisions of this by-law shall be applicable on all lands and properties within the limits of The Corporation of the City of Port Colborne.

2.2 This by-law shall be considered separate from the *Explosives Act* and Explosives Regulations and passage of this by-law does not mean the City is responsible for any aspect of enforcement of the *Explosives Act* or Explosives Regulations, which is the sole responsibility of the Federal Government of Canada.

2.3 By-law exemptions

2.3.1 This by-law does not apply to the Federal Government of Canada, the Province of Ontario, the Regional Municipality of Niagara of the City of Port Colborne.

SECTION 3 DEFINITIONS

3.1 In this by-law

3.1.1 Definitions in the *Building Code Act* and the Building Code shall be used with respect to matters pertaining to buildings and which are undefined in this By-law.

- 3.1.2 Definitions in the *Explosives Act* and the Explosives Regulations shall be used with respect to matters pertaining to fireworks which are undefined in this by-law.
- 3.1.3 "Applicant" means the applicant for a permit required by this by-law.
- 3.1.4 "Authority Having Jurisdiction" means the Fire Chief of the City of Port Colborne or their designate.
- 3.1.5 "City" or City of Port Colborne means The Corporation of the City of Port Colborne and includes all land and properties within its limits.
- 3.1.6 "City Property" means any property owned by the City including park land, buildings and lands, vacant land, pathways, streets, opened and unopened road allowances.
- 3.1.7 "Consumer Fireworks" means an outdoor, low hazard, recreational firework that is classed as a class 7, division 2, subdivision 1 firework under the *Explosives 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 guys containing not in excess of twenty-five one-hundredths of a grain of explosive used per cap.
- 3.1.8 "Consumers Fireworks Sales Permit" means a permit issued in accordance with this by-law by the Fire Chief of the City of Port Colborne for the sale of consumer fireworks.
- 3.1.9 "Council" means the Council of The Corporation of the City of Port Colborne.
- 3.1.10 "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.
- 3.1.11 "Display Fireworks" means an outdoor, high hazard, recreational firework that is classed as class 7, division 2, subdivision 2 firework under the *Explosive Act* and include, but not limited to, rockets, serpents, shells, bombshells, tourbillions, maroons, large wheels, bouquets, bombardos, waterfalls, fountains, batteries, illumination, set pieces and pigeons, but does not include firecrackers.
- 3.1.12 "Display Fireworks Manual" means the latest edition manual produced by the Explosive Regulatory Division of the Department of Natural Resources Canada, and as amended from time-to-time.
- 3.1.13 "Display Fireworks Permit" means a permit issued in accordance with this by-law by the Fire Chief of the City of Port Colborne or their designate for the display fireworks.
- 3.1.14 "Display Supervisor" means a person whom is an approved purchase of display fireworks and whom is qualified, under the *Explosives Act*, to supervise the discharge of display fireworks.
- 3.1.15 "Enforcement Officer" means every member of Port Colborne Fire & Emergency Services designated as an Assistant to the Fire Marshal, every By-law Enforcement Officer for the City of Port Colborne and every Police Constable with the Niagara Regional Police service.
- 3.1.16 "*The Explosives Act*" means the *Explosives Act*, revised Statutes of Canada 1985, Chapter E-17, as amended for time to time.
- 3.1.17 "Explosives Regulations" means regulations made under the *Explosives Act*.
- 3.1.18 "Fire Chief" means the Fire Chief appointed by the City of Port Colborne for purposes described in the *Fire Protection and Prevention Act* or their designate.

- 3.1.19 "Firecracker" means a high hazard device that explodes instantaneously when ignited and does not make any subsequent display or visible effect after the explosion and includes those devices commonly known as Chinese firecrackers, but does not include paper caps for toy guns.
- 3.1.20 "Fireworks" means class 7, division 2, subdivisions 1 to 5 inclusive, fireworks as defined in the Explosives Regulations.
- 3.1.21 "FPPA" means the *Fire Protection and Prevention Act, 1997* and the regulations enacted thereunder as amended from time to time or any act and regulations enacted in substitution therefor.
- 3.1.22 "Owner" means the building or property owner or other person in control of the building or property from which the subject fireworks are used, sold or set off or proposed to be used, sold or set off.
- 3.1.23 "Operator" includes the owner, manager or person in charge of the fireworks and includes a fireworks supervisor.
- 3.1.24 "Prohibited Fireworks" includes, but is not limited to, cigarette loads or pings, exploding matches, sparkling matches, ammunition for miniature tie clips, cufflink or key chain pistols, auto alarms or jokers, cherry bombs, M-80 and silver salutes, flash crackers, throw down torpedoes and crackling balls, exploding golf balls, stink bombs, table rockets and battle sky rockets, fake firecrackers and other trick devices as included on the most recent list of prohibited fireworks as published from time to time under the *Explosives Act*.
- 3.1.25 "Public Fireworks Display" means an exhibition of fireworks in an outdoor assembly or open air occupancy in which the public is invited, attends, may attend or is admitted with or without a fee being charged.
- 3.1.26 "Pyrotechnic Special Effect Fireworks" means a high hazard firework that is classed as a class 7, division A, subdivision 5 firework under the *Explosives Act* and that is used to produce a special pyrotechnic effect for indoor or outdoor performances and includes black powder bombs, bullet effects, flash powder, air bursts, smoke composition, gerbs , lances and wheels.
- 3.1.27 "Residential Lands or District" means property actually used for residential purposes.
- 3.1.28 "Sell" includes offer for sale, cause or permit to be sold and possess for the purpose of sale and the words "selling" and "sold" have similar meaning.
- 3.1.29 "Street" means a highway, road, or other public right-of-way as defined by "*The Highway Traffic Act*" and "*The Municipal Act, 2001*" but does not include a private land or unopened road allowance.

SECTION 4 PROHIBITED FIREWORKS AND FIRECRACKERS

- 4.1 No person shall sell, use, set off, store or cause to be used, set off or store firecrackers in the City of Port Colborne.
- 4.2 No person shall sell, use, set off, store or cause to be used, set off or store any prohibited fireworks in the City of Port Colborne that are included on the most recent list of prohibited fireworks published under the *Explosives Act*.

SECTION 5 GENERAL PROVISIONS

- 5.1 Every owner, operator and fireworks supervisor required to hold a licence or certificate pursuant to the *Explosives Act* or Explosives Regulations shall forthwith produce a copy of such licence or certificate to the authority having jurisdiction.

- 5.2 No person shall use, sell, set off, or cause to be used, sold or set off, fireworks in the City of Port Colborne except in accordance with the provisions of this by-law.
- 5.3 No person shall set off fireworks in or on or into any highway, street, lane, square, park or other City property unless authorized in writing by Council.
- 5.4 No person shall use, sell, set off, or cause to be used, sold or set off, fireworks located on City property.
- 5.5 No person shall set off, or cause to be set off, display fireworks unless a permit has been issued by the Fire Chief for the City of Port Colborne.
- 5.6 Every owner, operator and fireworks supervisor shall ensure the provisions of this by-law are complied with.
- 5.7 Fireworks set off or discharged in conformance with this by-law shall be deemed exempt from the Noise Control By-law.
- 5.8 A licensed fireworks supervisor shall notify the Fire Chief of their intention to do business or perform any action within the City which involves display fireworks, prior to undertaking the business or action.
- 5.9 Prohibitions
 - 5.9.1 Indoor pyrotechnic special effects fireworks are deemed a public safety hazard and hereby prohibited by this by-law.
 - 5.9.2 Fireworks obstructing or interfering with the intended operation of any public utility, traffic control, fire route or building health/safety system, are hereby prohibited.

SECTION 6 CONSUMER FIREWORKS SALES

- 6.1 No person shall sell consumer Fireworks unless a consumer fireworks sales permit has first been obtained from the Fire Chief in accordance with this by-law.
 - 6.1.2 An Enforcement Officer as prescribed by this by-law shall be permitted to conduct a site inspection in relation to each consumer fireworks sales permit application received.
 - 6.1.3 No person shall sell consumer fireworks in a building unless the provisions of the Ontario Fire Code and all other applicable acts and regulations are complied with.
 - 6.1.4 A person applying for a consumer fireworks sales permit shall be required to submit the following:
 - a) A completed application, in the form provided by the Fire Chief;
 - b) Written consent of the owner of the property on which the sale of consumer fireworks is proposed, unless the applicant is the owner;
 - c) Any fees associated with an application for a consumer fireworks sales permit shall be paid in conformance with By-law 6558 /13 /18, being a by-law to establish fees and charges for various services as amended from time-to-time;
 - d) A site plan for the sale location;
 - e) A description of the fire emergency procedures; and
 - f) Any other information that may be required by the Fire Chief to review the application.

- 6.1.5 A consumer fireworks sales permit shall not be issued where:
- a) The permit application is incomplete;
 - b) The property on which the sale of consumer fireworks is proposed is not zoned to permit retail sales;
 - c) There are reasonable grounds to believe that the sale of consumer fireworks by the applicant will result in a breach of this by-law, the FPPA, *Explosive Act*; or
 - d) The information provided in support of the consumer fireworks sales permit pursuant to section 6 of this by-law is unacceptable to the Fire Chief in their sole discretion, acting reasonably.
- 6.1.6 The Fire Chief may revoke a consumer fireworks sales permit where:
- a) The person to whom the permit was issued fails to comply with all provisions and conditions to which the permit is subject in accordance with this by-law;
 - b) The application for the consumer fireworks sales permit contains false or misleading information; or
 - c) The person to whom the permit was issued, fails to comply with a direction, instruction, or order of the Fire Chief or their designate.
- 6.1.7 No person shall sell consumer fireworks unless they are eighteen (18) years of age or older.
- 6.1.8 No person shall sell consumer fireworks from an outdoor stand, tent, unenclosed trailer, shipping container, motor vehicle or residential dwelling.
- 6.1.9 No person shall store consumer fireworks except as permitted under the Act.
- 6.1.10 No person shall exhibit consumer fireworks unless the consumer fireworks are separated into individual lots that do not exceed 25 kilograms in gross weight, and such separation between lots shall be sufficient to prevent fire from spreading rapidly from one lot to the next by:
- a) Maintaining a minimum aisle width of 1.1 metres between lots;
 - b) Maintaining a partition, constructed of 6 millimetre plywood or other suitable material that extends a minimum of 15 centimetres above the right of the lot or to the display shelf above; or
 - c) Maintaining sufficient separation between lots by such other suitable method or means, and;
 - d) Ensuring that no more than ten percent (10%) of the area of any display shelf on which consumer fireworks are exhibited contain holes or other openings.
- 6.1.11 No person shall exhibit consumer fireworks that are not in consumer packs, unless the consumer fireworks are inaccessible to the public and are displayed in a glass or Plexiglas case, or other suitable receptacle.
- 6.1.12 No person shall exhibit consumer fireworks that are exposed, or may be exposed, to the rays of the sun or to excess heat, or that are within close proximity to flammable goods.
- 6.1.13 No person shall exhibit consumer fireworks on a display board or in a shop window unless the display consists of mock samples only and does not contain any explosive composition.

- 6.1.14 No person shall sell consumer fireworks at any time unless, the location is designated as a non-smoking area and has been posted with "No Smoking" signs and is equipped with the appropriate number and class of fire extinguishers, as may be required by the Fire Chief.
- 6.1.15 No person who sells consumer fireworks shall exhibit consumer fireworks to the public at any time unless the location or shop is attended by the vendor or an employee thereof.
- 6.1.16 No person shall exhibit consumer fireworks in an indoor shop or location, or in a trailer unless there is a minimum of two (2) unobstructed, clearly identified exits to ensure that employees and the public can quickly evacuate in the event of a fire or emergency.
- 6.1.17 No person shall sell consumer fireworks except on the following days:
- a) Victoria Day, each of the seven (7) days immediately preceding Victoria Day,
 - b) Canada Day, each of the seven (7) days immediately preceding Canada Day, and
 - c) July 4th, each of the seven (7) days immediately preceding July 4th.
- 6.1.18 No person shall advertise the sale of consumer fireworks except on Victoria Day, Canada Day, July 4th, and the preceding twenty-one (21) days in each case.
- 6.1.19 No person shall store for sale, or future use, consumer fireworks except during the 30 day period prior to any of the lawful date(s) thereof and not longer than 30 days after the lawful date(s) thereof, unless stored by a licensed fireworks supervisor and permitted in the Explosives Regulations.

SECTION 7 CONDITIONS FOR CONSUMER FIREWORKS SALES PERMIT

- 7.1 The Fire Chief may issue permits for the sale of consumer fireworks on the following conditions set forth in section 6 of this by-law.
- 7.1.2 The following conditions shall apply to all consumer fireworks sales permits:
- a) The permit shall be valid for the calendar year in which it was issued;
 - b) The permit is only valid for the sales location identified in the permit and is to be posted on site;
 - c) Every permit holder shall provide and maintain fire extinguishers in conformance with the Ontario Fire Code ready for immediate use;
 - d) The permit holder shall sell consumer fireworks in conformance with the information provided to the Fire Chief pursuant to section 6 of this by-law;
 - e) The permit holder shall comply at all times with the provisions of the *Explosives Act*, FPPA and the provisions of this by-law; and
 - f) The permit holder shall comply with any other condition deemed reasonable in the circumstances by the Fire Chief.

SECTION 8 DISCHARGE OF CONSUMER FIREWORKS

- 8.1 No person shall discharge consumer fireworks, except on the following days:
- a) Victoria Day
 - b) The day immediately preceding Victoria Day

- c) The day immediately following Victoria Day
- d) Canada Day
- e) The day immediately preceding Canada Day
- f) The day immediately following Canada Day
- g) July 4th
- h) The day immediately preceding July 4
- i) The day immediately following July 4
- j) Such other times and dates as permitted by the Fire Chief

- 8.1.2 No person shall sell, give or distribute consumer fireworks to any person under the age of eighteen (18) years.
- 8.1.3 No person under the age of eighteen (18) years shall use, handle, discharge, set off, purchase or store consumer fireworks.
- 8.1.4 Subject to compliance with the provisions of this by-law, a person eighteen (18) years of age or over may hold a display of consumer fireworks on any land belonging to them or on any other privately owned land where the owner thereof has given written permission for such a discharge of consumer fireworks.
- 8.1.5 No person shall use, discharge or set off, or permit to be used, discharged or set off consumer fireworks in such a place or in such a manner as might create a danger to the public or constitute a nuisance to any person or property.
- 8.1.6 No person shall use, discharge or set off, or permit to be used, discharged or set off consumer fireworks in an area containing dead undergrowth, dry grass, highly flammable substances or any other thing susceptible to combustion.
- 8.1.7 No person shall use, discharge or set off, or permit to be used, discharged or set off consumer fireworks in or into any building, tent, structure, doorway, automobile or other place unless authorized in writing by the Fire Chief and permitted by the Explosives Regulations.
- 8.1.8 No person shall discharge consumer fireworks in or on any street or public place, unless prior written permission has been obtained from the Fire Chief.
- 8.1.9 No person shall discharge consumer fireworks except in conformance with this by-law and between the hours of dusk and 11:00 pm.

SECTION 9 DISPLAY FIREWORKS / PERMITS AND DISCHARGING

- 9.1 No person, shall set off or discharge, or permit to be set off or discharged display fireworks unless a permit to do so has been issued by the Fire Chief.
- 9.1.2 The Fire Chief or Enforcement Officer shall be permitted to conduct a site inspection or inspections in relation to each permit application received pursuant to section 7 of this by-law.
- 9.1.3 A person applying for a display fireworks permit shall be required to submit the following:
- a) A completed permit application in the form provided by the Fire Chief, submitted no later than thirty (30) days prior to the date of the display event;
 - b) A site plan providing a description of the site to be used for the discharging of the display fireworks;

- c) A description of the fire and emergency procedures;
- d) Proof that the applicant is certified as a display fireworks supervisor;
- e) Written consent of the owner of the property on which the discharge of display fireworks is proposed, unless the applicant is the owner of the property;
- f) The fee prescribed in conformance with By-law 6558/13/18, being a by-law to establish fees and charges for various services as amended from time-to-time.

9.1.4 No person, owner, operator or fireworks supervisor shall set off or discharge or permit to be set off or discharged display fireworks unless liability insurance has been obtained by the person, owner or operator to the satisfaction of the City. The insurance policy must be in the amount of \$5,000,000.00 or greater and must list the City as an additional insured. Proof of liability insurance shall be provided at time of application. Any notice of cancellation of insurance shall be provided 30 days prior to the event.

9.2 A display fireworks permit shall not be issued where:

- a) The permit application is incomplete;
- b) The applicant is not a display supervisor; or
- c) There are reasonable grounds in the belief that the holding of the display fireworks will result in a breach of this by-law, the FPPA or the *Explosive Act*.

9.2.1 The Fire Chief may revoke a display fireworks permit where;

- a) The person to whom the permit was issued fails to comply with all provisions and conditions to which the permit is subject in accordance with this by-law;
- b) The application for display fireworks permit contains false or misleading information;
- c) Environmental concerns such as weather conditions, wind speed and or wind direction are a factor; or
- d) The Fire Chief has instituted an open air fire ban.

9.2.2. The following conditions shall apply to all display fireworks permits:

- a) All display fireworks events shall be undertaken, planned, conducted and executed under the direction of a fireworks supervisor, who shall be responsible to ensure all requirements of the *Explosives Act* and this by-law have been met prior to setting off any fireworks.
- b) All display fireworks shall be planned, conducted and executed in compliance with the most current edition of the display fireworks manual, or any part of the manual specified. For purposes of the manual, Port Colborne Fire & Emergency Services is the authority having jurisdiction.
- c) No display fireworks shall be set off, discharged or permitted to be set off or discharged where the firing point is less than the fallout and separation distance from the public, structures, vehicles and overhead objects specified in the display fireworks manual.
- d) A danger zone shall be established around the firing site in conformance with the clearances identified in the display fireworks manual for display fireworks. A means of identifying and restricting access to the danger zone such as security personnel, barricades or fences must be provided. No person shall

enter or remain in the danger zone unless authorized.

- e) The permit holder shall comply at all time with the provisions of the *Explosives Act*, FPPA, the display fireworks manual published by Natural Resources Canada or any other successor publication, and the provisions of this by-law.
- f) The permit holder shall conduct the display of display fireworks in conformance with the information provided to the Fire Chief pursuant to Section 9 of this by-law.
- g) A trial shot of at least one (1) large shell shall be fired in the presence of the Fire Chief or designate, prior to commencement of a display fireworks show to check trajectory, wind effect and proper location of the fallout zone, if deemed necessary.

9.3 No display fireworks shall be set off, discharged or permit to be set off or discharged where the surface wind speed exceeds 45 kilometres per hour (28 miles per hour).

9.3.1 No person shall set off or discharge, or permit to be set off or discharged display fireworks unless the fire and first aid equipment specified in the display fireworks manual is available at the event site, including a fire blanket, eye wash, fire extinguishers and personal protection for all crew members.

9.4 Inspections

9.4.1 The fireworks supervisor shall notify the Fire Chief or designate at least 2 hours prior to the following stages of display fireworks:

- (a) Commencement of preparation of the site for display fireworks;
- (b) Completion of preparation of the site for display fireworks;
- (c) Commencement of the display fireworks show.

9.4.2 The Fire Chief or designate shall inspect the display fireworks site, before, during and after the display as deemed necessary, and may issue directions, instructions, or orders to the fireworks supervisor, owner or operator or any other person.

9.4.3 Upon receipt of orders from the Fire Chief, the person shall comply with the orders.

9.4.4 The permit holder shall remove all unused display fireworks and all debris resulting from the display from the property on which the event was held, and from any adjacent property affected forthwith and ensure that it is safely disposed of.

SECTION 10 USE OF CITY PROPERTY

10.1 No person shall set off consumer fireworks or display fireworks in or on or into any City property unless authorized in writing by Council.

SECTION 11 ADMINISTRATION, ENFORCEMENT AND RIGHT OF ACCESS

11.1 This by-law shall be administered and enforced by the City, the Fire Chief, every Enforcement Officer or any person appointed or otherwise delegated the authority of administration and enforcement.

11.2 The Fire Chief or Enforcement Officer may at any reasonable time and without prior notice inspect any land, property, places, premises, buildings or structures where Fireworks are stored or offered for sale.

- 11.3 The Fire Chief or Enforcement Officer may at any reasonable time and without prior notice inspect any land, property, places, premises, buildings or structures for which an application under this by-law has been received for the purposes of conducting site inspections pursuant to section 9 of this by-law.
- 11.4 The Fire Chief or Enforcement Officer may at any reasonable time and without prior notice inspect any land, property, places, premises, buildings or structures for the purposes of carrying out an inspection to determine if any section of this by-law is complied with.
- 11.5 No person shall obstruct, hinder or interfere with the Fire Chief or an Enforcement Officer in their enforcement of this by-law.
- 11.6. Notwithstanding section 9, the officer shall not enter or remain in any room or place actually used as a dwelling unless the provisions of Section 437 of the *Municipal Act, 2001* are complied with.
- 11.7 The Fire Chief may grant an exemption to any person from any provision of this by-law and impose conditions for such exemption as may be considered reasonable and necessary, provided such exemption does not interfere with the general integrity of this by-law.

SECTION 12 PENALTIES

- 12.1. Any person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to the penalty specified by the *Provincial Offences Act*. R.S.O., Chapter P33, as amended.

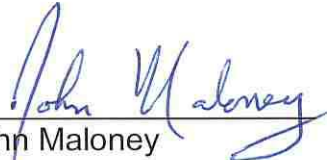
SECTION 13 VALIDITY


- 13.1 Should any section, clause or provision of this by-law be held by a court of competent jurisdiction to be invalid, the validity of the remainder of the by-law shall not be affected.
- 13.2 Nothing in the *Explosives Act* relieves any person of the obligation to comply with this by-law as stated in Section 29 of the *Explosives Act*.

SECTION 14 FORMER BY-LAWS REPEALED

- 14.1 By-law No. 4989/45/07 of The Corporation of the City of Port Colborne being "A By-law For Prohibiting and Regulating the Sale of Fireworks and the Setting Off of Fireworks in the City of Port Colborne is hereby repealed.

Enacted and passed this 24th day of September, 2018


John Maloney
Mayor


Amber LaPointe
Clerk