



# BY-LAW

NO. 2018 - 040

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## BEING A BY-LAW IN RESPECT TO THE SALE AND USE OF FIREWORKS

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**WHEREAS** pursuant to the Municipal Act, 2001, S.O. 2001, c.25 as amended, Section 8 (1) and 9 provide that the powers of a municipality under this or any other Act shall be interpreted broadly so as to confer broad authority on the municipality to enable the municipality to govern its affairs as it considers appropriate and to enhance the municipality's ability to respond to municipal issues and has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

**AND WHEREAS** pursuant to the Municipal Act, 2001, S.O. 2001, c.25 as amended, Section 121 without limiting sections 9, 10 and 11 a local municipality may

- (a) prohibit and regulate the sale of fireworks and the setting off of fireworks;
- (b) prohibit the activities described in clause (a) 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 of plans

**AND WHEREAS** Section 425 and 429 of the Municipal Act, 2001, S.O. 2001, c. 25, authorize a municipality to create offences and to establish fines for offences under by-laws;

**AND WHEREAS** Section 435 and 436 of the Municipal Act, 2001, S.O. 2001, c. 25 provide for conditions governing powers of entry on land and the conduct of inspections;

**AND WHEREAS** the Council of the Municipality of Kincardine deems it necessary to govern the sale and discharge of fireworks in the Municipality of Kincardine;

**NOW THEREFORE** the Council of The Corporation of the Municipality of Kincardine **ENACTS** as follows:

### 1.0 DEFINITIONS

In this By-law:

- (a) "*Act*" means The Explosives Act R.S.C, 1985 c. E-17
- (b) "*By-law Enforcement Officer*" shall mean the By-law Enforcement Officer of the Municipality of Kincardine.
- (c) "*Chinese New Year*" means the first day of the Chinese calendar.
- (d) "*Diwali*" means the festival of lights in November.

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- (e) *"Chief Fire Official"* – "Chief Fire Official" shall mean the Fire Chief of Kincardine Fire and Emergency Services or their appointed designates at the Kincardine and Tiverton Fire Stations.
- (f) *"Firecrackers"* means any class of Fireworks that explodes when ignited and does not make any significant display or visible effect after the explosion but does not include caps for toy guns;
- (g) *"Family Fireworks"* also known as *"Consumer Fireworks"* means low hazard fireworks generally having a recreational use and sold to the public without necessity for licensing by provincial or federal laws or regulations. Includes but not limited to fireworks showers, fountains, lawn lights, pin wheels, roman candles, volcanos, sparklers but excluding Public Fireworks and Prohibited Fireworks.
- (h) *"Holiday"* means New Year's Eve, Canada Day, Victoria Day, Independence Day (US), Diwali and the Chinese New Year;
- (i) *"Public Fireworks"* also known as *"Exhibit Fireworks"* means high hazard fireworks as defined in the Explosive Regulations and being a type generally used for public gatherings but excluding Family Fireworks and Prohibited Fireworks.

## **2.0 ADMINISTRATION**

- 2.1 The Fire Chief, their designate, or By-Law Enforcement Officer shall be responsible for the administration and enforcement of this By-Law.
- 2.2 The Chief Fire Official, their designate or the By-Law Enforcement Officer is hereby authorized to enter, at all reasonable times and upon any property in the Municipality, in order to ascertain whether the provisions of this by-law are being obeyed. The Fire Chief or his designate is hereby further empowered to enforce or carry into effect the provisions of this By-law.

## **3.0 GENERAL PROVISIONS**

- 3.1 Sale of Family Fireworks and Firecrackers
  - (a) No person shall sell, offer for sale, or have in their possession any firecrackers or fireworks not authorized by the Explosive Regulatory Division of the Government of Canada.
  - (b) The sale of family fireworks is prohibited except on the following days:
    - (i) New Year's, Victoria Day, Canada Day, Independence Day (USA), Diwali, Chinese New Year.
    - (ii) Each of the seven business days immediately preceding New Year's, Victoria Day, Canada Day, Independence Day (USA), Diwali, Chinese New Year.
  - (c) Subject to subsection (d) no person shall sell, give or distribute family fireworks to any person under the age of 18 or;
  - (d) appears to be under 18 years of age and does not produce evidence that he/she is 18 years of age or older.
  - (e) Notwithstanding subsection (a), (b) and (c), a person may sell paper caps, toy pistols, toy cannon or toy guns for the use of such caps, the explosive content of which is not in excess of twenty-five one-hundredths of a grain per cap.
  - (f) No person shall have in their possession, sell, offer for sale, give or distribute any exhibition fireworks unless licensed to do so.

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- (g) Fireworks defined in Subdivisions 1, 3 and 4 of Division 2 of Class 7 of the Act are being displayed for sale they shall be displayed:
- (i) in lots that do not exceed 25 kilograms each gross weight;
  - (ii) in a package, glass case or other suitable receptacle away from inflammable goods; and
  - (iii) in a place where they are not exposed to the rays of the sun or excess heat;
  - (iv) with a No Smoking sign posted at entrance to building;
  - (v) with a sign posted that the sale of fireworks is prohibited to any person under the age of 18.

3.2 Displays of Family Fireworks

- (a) No Person shall fire or set off any Subdivision I of Class 7 Fireworks within the Municipality of Kincardine except:
- (i) on a Holiday; or
  - (ii) any other day for which a permit has been issued by the Fire Chief according to this By-law.
- (i) between dusk and 12:00 a.m.;
- (ii) In the event of rain on a Holiday in such amount that it is impractical to fire or set off the Fireworks, the next day following a Holiday, as the case may be, shall be considered to be the Holiday.
  - (iii) Notwithstanding the provision of the bylaw in relation to day and time, the Chief Fire Official may suspend the use of fireworks on "legal" days when a no burn order has been issued.
- (b) A person 18 years of age or over may hold a display of family fireworks on any land belonging to him/her or on any other privately owned land where the owner thereof has given permission for such a display or discharge of fireworks provided such land is of an adequate size for the safe discharge of family fireworks.

When fireworks are discharged from a property, the property owner is deemed to have permitted, allowed or caused the setting off of the fireworks, unless there is evidence to the contrary.

- (c) No person shall use, set off or allow to be used or set off any firework(s) in such a place or 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 of commission or omission at the time and place for the setting off of any fireworks.
- (d) No person shall set off any firework(s) in or on or into any highway, street, lane or boulevard; nor permit debris to fall upon such sites provided that this shall not be deemed to prohibit a display of exhibition fireworks in a public place in accordance with the provisions of this by-law.
- (e) No person shall set off any firework(s) in or into any building, any lands used for school purposes, automobile, or other place where such setting off might create a danger or nuisance to any person or property.
- (f) No person under the age of 18 years shall set off any firework(s).
- (g) No person being the parent or guardian of any child under the age of 18 shall allow the child to set off any firework(s).
- (h) When setting off Permitted Fireworks or using sparkler there must be a container of water or charged hose line available and readily accessible.

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3.3 Public Fireworks Displays

- (a) No person or group of persons shall hold a display of exhibition fireworks without first having obtained a permit to do so signed by the Chief Fire Official of the Municipality of Kincardine and who is certified by the Explosive Regulatory Division to authorize permits.
- (b) The application for a permit shall be made at least two weeks prior to the date on which it is desired to hold the display of exhibition fireworks, stating place and time, and with what group, and what protection they have.
- (c) A display of exhibition fireworks may only be held by a certified firework's supervisor. All persons must be certified firework's supervisor Level 1.
- (d) A display of exhibition fireworks shall be conducted in conformance with Display Fireworks Edition #1 1999 Natural Resources Canada and any subsequent edition.
- (e) All unused fireworks and all debris shall be removed by the group holding the display immediately following its conclusion and disposed of following procedures as outlined in the Display Fireworks Manual Edition #1 1999 Natural Resources Canada and any subsequent edition.
- (f) A public advertisement shall be given at least one week in advance of any exhibition fireworks display.

3.4 Discharge of Firecrackers

No person shall discharge, fire or set off, or cause to be discharged, fired or set off, any firecrackers.

3.5 Flying Lanterns

No person shall sell, offer for sale, or have in their possession flying lanterns.

The use of flying lanterns is prohibited per Section 3.12 of the By-Law to Regulate Open Air Burning within the Municipality of Kincardine.

**4.0 STORAGE OF**

A person, who acquires Permitted Fireworks, must store them in accordance with this section.

4.1 Up to 25 kg. No more than 3kg of fireworks (net explosive quantity) may be stored in a dwelling or in a place attached to a dwelling. Up to 25kg of Permitted Fireworks (net explosives quantity) may be stored in a place or container that is not in or attached to a dwelling.

4.2 More than 25kg. Any quantity more than 25kg of Permitted Fireworks (net explosives quantity) must be stored in accordance with federal law.

4.3 Safety precautions. The Permitted Fireworks must be stored in a dry place to which access is denied to anyone under 18 years of age, away from any source of heat and any substance that could cause ignition. A place or container containing more than 3kg of Permitted Fireworks must be attended when it is unlocked.

**5.0 PENALTY**

5.1 No Person shall fail to comply with regulations as set out in this by-law.

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- 5.2 Every person who contravenes any provisions of this by-law is guilty of an offence and on conviction is liable to a fine as provided in the attached Schedule "A".
- 5.2 The court in which the conviction has been entered and any court of competent jurisdiction thereafter may make an order prohibiting the continuation or repetition of the offence by the person convicted, and such order shall be in addition to any other penalty imposed on the person convicted.
- 5.3 Any Inspector who observes a contravention of the provisions of this by-law may seize any fireworks in possession of the person or corporation who committed the contravention.

**6.0 Indemnification**

- 6.1 All persons granted permission under this by-law shall indemnify and save harmless the Municipality of Kincardine from any and all claims, demands, causes of action, losses, costs or damages that the Municipality of Kincardine may suffer, incur or be liable for resulting from the use of fireworks as set out in this by-law or its predecessor, whether with or without negligence on the part of the applicant, the applicant's employees, directors, contractors and agents.

**7.0 Miscellaneous**

- 7.1 That By-law No. 2002-16 and By-law No. 2017-135 be hereby repealed.

7.2 That this by-law shall come into full force and effect upon its final passage.

7.3 This by-law may be cited as the "Fireworks By-Law".

**READ a FIRST and SECOND TIME** this 11<sup>th</sup> day of April, 2018.

**READ a THIRD TIME and FINALLY PASSED** this this 11<sup>th</sup> day of April, 2018.

[REDACTED]

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