

CORPORATION OF THE TOWNSHIP OF MCKELLAR

BY-LAW NO. 2018-31

Being a By-law to regulate the setting off of Fireworks

WHEREAS Section 121(a) of the Municipal Act, 2001, S.O. 2001, c.25 provides that the Council may prohibit and regulate the sale of fireworks and the setting off of fireworks;

AND WHEREAS Section 121(b) of the Municipal Act, 2001, S.O. 2001, c.25 provides that the Council may prohibit the activities described in Section 121(a), above, 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 submissions of plans;

AND WHEREAS Section 391 of the Municipal Act, 2001, S.O. 2001, c.25 authorizes Council to 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 for costs payable by it for services or activities provided or done by or behalf of any other municipality, or local board;

AND WHEREAS Section 429, subject to subsection (4), of the Municipal Act, 2001, S.O. 2001, c. 25, provides that a municipality may establish a system of fines for offences under a by-law of the municipality passed under this Act;

AND WHEREAS Section 446 of the Municipal Act, 2001, S.O. 2001, c. 25, provides that a municipality has the authority to direct or require a person to do a matter or thing, the municipality may also provide that, in default of it being done by the person directed or required to do it, the matter or thing shall be done at the person's expense;

NOW THEREFORE the Council of the Corporation of the Township of McKellar hereby enact as follows:

1.0 DEFINITIONS:

In this By-law

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

"Chief Fire Official" if referenced means the Fire Chief and/or his or her designate.

"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.

“Competent Person” means a person who is : 16 years of age or older, and that person does not show signs of being under the influence of alcohol or drugs, and/or the person does not appear to be suffering from physical or physiological impairment.

“Display Fireworks” means and outdoor, high hazard, recreational firework that is classed as a Subdivision 2 of Division 2 of Class 7 Fireworks under the Act.

“Firecrackers” means a class of fireworks which when ignited explodes with little or no visual effect.

“Fire Department” means a Fire Department or a Fire Emergency agency which may be called upon by the Municipality’s Chief Fire Official in the event of an unsafe fire condition within the Township. This may include the related resources of the Ministry of Natural Resources as well as heavy equipment contractors who may be called upon to help contain/control a spreading fire.

“Fireworks” means display fireworks, pyrotechnic special effects fireworks and Consumer Fireworks.

“Fireworks Permit” means a permit to discharge fireworks, issued by the Chief Fire official. Without limiting this definition, a Fireworks Permit may be for display fireworks or consumer fireworks, or both.

“Officer” means a Municipal Law Enforcement Officer, Police Officer, Chief Fire Official, or his or her designate.

“Owner” includes with respect to land or property, the registered owner, occupant, tenant, or the person for the time being managing or receiving the rent of the property, whether on their own account or on account of an agent or trustee of any other person, or any of the aforesaid.

“Person” includes an individual, an owner, corporation, partnership, company, firm, association, or party, and includes the successors, assigns, heirs, executors, administrators or legal representatives of a person to whom the context can apply, according to law and the singular shall include the plural. It also includes those persons who are legally occupying/using the property as relatives or guests of the registered owner(s).

“Provincial Offences Act (POA)” is a provincially (Ontario) set of various regulations which have been established/validated for the establishment and enforcement of rules and enforcement criteria which are administered and enforced by related agencies, which therein includes municipalities, under the Municipal Act and its benchmarks.

“Sky Lantern” also known as Kongming or Chinese Lanterns, means a small hot air balloon made of paper or any other material with an opening at the bottom where a small fire may be suspended such that the lantern will rise and float in the air while ignited.

“Township” means the Corporation of the Township of McKellar.

“Temporary Vendor” means a person or persons or organization, which does not have, own or operate a McKellar Township registered business, which sells to the public, various general use items, in the Township of McKellar from a fixed structural location.

“Unsafe Conditions” includes a Fire Hazard Rating of High or Extreme, or a total Fire Ban which has been declared by the Chief Fire Official.

2.0 GENERAL PROHIBITIONS

2.1 No person shall set off any Fireworks when there is a Fire Ban in effect or the Fire Danger Rating is “High” or “Extreme”, wherein no open burning is permitted.

2.2 No person shall discharge, fire, set off, or cause to be set off any Firecrackers or Sky Lanterns within the Township of McKellar.

2.3 No person or corporation shall offer for sale, cause or permit to be sold, sell or otherwise distribute Firecrackers or Sky Lanterns within the Township of McKellar.

2.4 Pop-up or temporary Fireworks vendors are prohibited at any time within the Township of McKellar.

2.5 During any period when a “Total Ban” on Fireworks/Fires is declared by the Chief Fire Official, then the sale of Fireworks within the Township of McKellar by any business or person is banned.

3.0 SETTING OFF OF CONSUMER FIREWORKS

3.1 No person shall set off Consumer Fireworks on any day or days during the year except on Victoria Day, Canada Day, Independence Day (USA), the first weekend in August Holiday Weekend, Labour Day, Thanksgiving Day and the two days immediately preceding and/or following each of these designated days.

3.2 Notwithstanding Section 3.1 above, any person may make application for a Fireworks Permit to the Chief Fire Official, to be granted an exemption. Fireworks Permits may be issued for special events such as significant birthdays, anniversaries or celebrations.

3.3 No person shall set off any Consumer Fireworks except between 6:00 p.m. and 11:00 p.m. of the same day.

3.4 No person under the age of eighteen (18) years of age may discharge, fire, set off or cause to be set off any Consumer Fireworks except under the

direct supervision of and control of a Competent Person(s) eighteen (18) years of age or over.

- 3.5 Setting off of Consumer Fireworks must be in accordance with recognized safety procedures, including but not limited to:
- (a) In compliance with 3.4;
 - (b) Keeping spectators at a safe distance;
 - (c) Protecting private and public property; and
 - (d) Ensuring suitable fire extinguishing equipment is available at all times.
- 3.6 Only Fireworks authorized pursuant to the Canadian Explosives Act and The Explosives Regulations made under it may be displayed or set off.
- 3.7 Property damage or injury as a result of the discharge of Fireworks shall be the responsibility of the person and/or organization setting off the Fireworks.

4.0 SETTING OFF OF “DISPLAY” FIREWORKS

- 4.1 No person shall hold a display of or set off Display Fireworks on any day or days without first having obtained a Fireworks Permit to do so, issued by the Chief Fire Official.
- 4.2 The Chief Fire Official may impose conditions for the approval as he/she considers necessary to ensure the safety of the public.
- 4.3 Setting off of Display Fireworks must be in accordance with recognized safety procedures, including but not limited to:
- (a) Having a Competent/Certified person in charge;
 - (b) Keeping spectators at a safe distance;
 - (c) Protecting private and public property; and
 - (d) Ensuring suitable fire extinguishing equipment is available at all times.
- 4.4 The person(s) responsible for the setting off of any Display Fireworks or classes thereof must ensure that all unused Fireworks and debris is removed and safely disposed of immediately following the event.
- 4.5 Only person who hold a valid Display Supervisor Certificate, or such, issued by the Explosives Regulatory Division of Natural Resources Canada are eligible to request approval to display or set off Display Fireworks/Pyrotechnic Special Effects.
- 4.6 The handing and discharge of Display Fireworks shall conform to the Natural Resources Canada (NR Can) “Display Fireworks Manual” and Natural Resources Canada (NR Can) “Pyrotechnic Special Effect Manual”.

4.7 Property damage or injury as a result of Display Fireworks shall be the responsibility of the person setting off the Fireworks.

5.0 FIREWORKS PERMITS

5.1 Every application for a Fireworks Permit shall be made to the Chief Fire Official a minimum of ten (10) business days prior to the event when the proposed discharge of Fireworks is to occur.

5.2 Persons who discharge Fireworks under the authority of a Fireworks Permit must also comply with all provisions of this By-law and the conditions of the Fireworks Permit.

5.3 The Chief Fire Official may impose such conditions upon the issuance of a Fireworks Permit as he/she considers necessary to ensure the safety of the public.

5.4 If a permit has been issued under Section 5, the site, and prior to the scheduled activation and/or during the activation of the Fireworks, are subject to an inspection by the Chief Fire Official or his/her designate, including a Municipal Law Enforcement Officer.

5.5 If the discharge of Fireworks is to be held on municipal land, the applicant for a Fireworks Permit shall provide with the permit application, proof of liability insurance subject to limits of not less than five million Canadian dollars (\$5,000,000.00) inclusive per occurrence for bodily injury, death and damage to property including loss of use thereof. Such insurance shall name the Township of McKellar as an additional insured thereunder. Such insurance shall include coverage for the Consumer Fireworks or Display Fireworks as per the application for a Fireworks Permit.

5.6 The applicant for a Fireworks Permit shall indemnify and save harmless the Township of McKellar from any and all claims, demands, causes of action, loss, costs or damages that the Township may suffer, incur or be liable for resulting from the performance of the applicant as set out in the By-law and permit conditions whether with or without negligence on the part of the applicant, the applicant's employees, directors, contractors and agents.

5.7 The approved Fireworks Permit may be suspended or cancelled by the Chief Fire Official during periods of High or Extreme fire conditions or at any time or location in which, in the opinion of the Chief Fire Official, the safety of the public is at risk or the provisions of this By-law or the conditions of the Fireworks Permit are not being complied with.

6.0 RIGHT OF ENTRY

6.1 An Officer may enter at all reasonable times upon any premises or property to ascertain whether the provisions of this By-law are obeyed and to enforce and carry into effect the provisions of this By-law.

6.2 No person shall hinder or obstruct, or attempt to hinder or obstruct an Officer from carrying out inspections or premises or property to ensure compliance with this By-law.

6.3 An Officer must upon request, display or produce proper identification.

7.0 OBSTRUCTION

7.1 No person shall hinder or obstruct, or attempt to hinder or obstruct any Officer exercising a power, or performing a duty under this By-law.

7.2 Any person, who has been alleged to have contravened any of the provisions of this By-law, shall identify himself/herself to the Officer upon request. Failure to do so shall be deemed to have obstructed or hindered the Officer in the execution of his/her duties.

7.3 A refusal of consent to enter or to remain in a room or place actually used as a dwelling does not constitute hindering or obstruction within the meaning of subsection 7.1 unless the Municipality is acting under an order, under Section 438 of the Municipal Act, or a warrant under Section 439 of the Municipal Act, or in the circumstances described in Section 437(d) or (e) of the Municipal Act.

8.0 PENALTY

8.1 The Chief Fire Official of the Township of McKellar and/or a Municipal Law Enforcement Officer are hereby authorized to enforce provisions of this By-law pursuant to the Provincial Offences Act, and the applicable Municipal Act regulations as identified in this by-law under Schedule "A".

8.2 Every person who contravenes or fails to comply with any of the provisions of this By-law is guilty of an offence and on conviction is liable to the fines and other penalties prescribed by the Provincial Offences Act. The applicable minimum fines for a first offence are identified on Schedule "B" of this By-law. Other applicable penalties include those provisions identified under Section 9 (Recovery of Cost).

8.3 (a) The Enforcement Official may at their discretion, subject to the specific circumstances, or the Fire Danger Rating is at "Moderate" or "Low", may issue a first time warning, if the violator agrees to immediately cease the discharging of Fireworks.

(b) If the scene circumstances as observed by the Officer indicate a valid violation foundation, the Officer may issue a POA offence under Schedule "B".

(c) If the registered property owner(s) are not on scene at the time of the violation, a copy of that warning or POA violation will be sent to the site owner's address as shown on the tax roll file. Thereafter, Section 8.3(d) and Section 9.1 may be applied.

- (d) If there is a second validated violation of this By-law which occurs on property occupied by or owned by the same person(s) as 8.2, then that person or persons are subject to relative fines under Schedule “B” and/or additional fines or further enforcement actions as determined under the Ontario Provincial Offences Act. Plus the Owner(s) are then also subject to penalties under Section 9.

9.0 RECOVERY OF COSTS

- 9.1 (a) In addition to any fines or penalties established elsewhere in accordance with this By-law, the person or persons responsible for setting or maintaining, or permitting to be set off or using Fireworks and/or the property owners shall be liable to the Township by way of a fee or charge, as calculated in accordance with Schedules “B” and “C” to this By-law, for those costs and expenses incurred by the Township or its agent, including (b) or (c).
 - (b) Investigating and responding to a location where Fireworks have been observed and/or a complaint made to the Township or Chief Fire Official or designate, or and Enforcement Officer by any person acting reasonably and in good faith, which complaint results from setting off or using Fireworks and, in the opinion of the Chief Fire Official, or a Municipal Law Enforcement Officer was in violation of a By-law and therein resulted in.
 - (c) The dispatching of a Municipal Law Enforcement Officer, a Fire Department and/or other agencies, their vehicles, equipment or aircraft, and firefighting and/or emergency support personnel for the purpose of investigating a complaint and/or initiating the controlling of the discharge of Fireworks.
- 9.2 All fees and charges payable under this By-law per Section 9.1 are due and owing to the Municipality within thirty (30) days of the date of an invoice rendered to the person liable to pay them.
- 9.3 All overdue accounts shall accrue interest at a rate of 1.25% per month (15% per annum), calculated monthly, from the due date, until paid in full.
- 9.4 If a person who sets or maintains the using of Fireworks contrary to this By-law is not the owner of the property, but occupies or is using the property with the owner’s consent, the owner and the person conducting the Fireworks utilization shall be jointly and severally liable to pay any fees and charges imposed by this By-law.
- 9.5 All fees and charges payable under this By-law constitute a debt of the person liable for payment of them to the Municipality and, in the case of owners of a property being responsible for payment of the fees and charges, the Municipality may add the amount owing to the tax roll for the owner(s) real property and collect them in like manner as municipal taxes.

10.0 SEVERABILITY

10.1 If any section, clause or provision of this By-law is for any reason declared to be invalid by a court of competent jurisdiction, the same shall not affect the validity of the By-law as a whole or in part thereof, other than the section, clause or provision so declared to be invalid and it is hereby declared to be the intention that all remaining sections, clauses or provisions of this By-law shall remain in full force and effect until repealed.

11.0 SHORT TITLE

11.1 The short title of this By-law is the "Fireworks By-Law".

12.0 EFFECTIVE DATE

12.1 This By-Law shall come into force and take effect immediately upon the final passing thereof.

13.0 REPEAL OF BY-LAWS

13.1 By-Law No. 2012-13, By-Law No. 2013-17 and By-Law No. 2013-33 are hereby repealed.

READ a **FIRST** and **SECOND** time this 30th day of July, 2018.

Reeve

Clerk

READ a **THIRD** time and **PASSED** in **OPEN COUNCIL** this day of , 2018

Reeve

Clerk

THE CORPORATION OF THE TOWNSHIP OF MCKELLAR
Schedule "A" of By-Law No. 2018-31
FIREWORKS BY-LAW, Part 1 – SET FINE SCHEDULE
Provincial Offences Act

ITEM	COLUMN 1 "Short Form Wording"	COLUMN 2 "Provision Creating or Defining Offense"	COLUMN 3 "Set Fine"
1	Causing or permitting Fireworks to be set off during a Fire Ban or Extreme Conditions	Section 2.1	\$425.00
2	Discharge, fire, set off or cause to be set off any Firecrackers or Sky Lanterns	Section 2.2	\$425.00
3	Sell or permit sale of Firecrackers or Sky Lanterns within the jurisdiction of McKellar Township	Section 2.3	\$425.00
4	Sell Fireworks as a "temporary" vendor, or as a person or Retail Outlet within the jurisdiction of McKellar Township.	Section 2.4 or 2.5	\$300.00
5	Set Off Consumer Fireworks on prohibited days without a permit	Section 3.1	\$300.00
6	Set Off Consumer Fireworks during prohibited times	Section 3.3	\$300.00
7	Set Off Consumer Fireworks in an unsafe manner	Section 3.5	\$300.00
8	Set Off Display Fireworks without a valid permit	Section 4.1	\$425.00
9	Set Off Display Fireworks in an unsafe manner	Section 4.3	\$425.00

Victim Fine Surcharges are added to all fines laid under POA, Part 1 process; per Ontario Regulation 161/100 as amended O.Reg.66/16

THE CORPORATION OF THE TOWNSHIP OF MCKELLAR
Schedule "B" of By-Law No. 2018-31
COSTS OF INVESTIGATION/ENFORCEMENT PER SEC. 9.1

In the event of a violation under this By-Law being investigated and confirmed by the Chief Fire Official, Bylaw Officer or designated representative, all related costs are applicable as detailed below.

ITEM	AUTHORITY SECTION	RELATED COSTS MAY INCLUDE	CALCULATED & DOCUMENTED BY
Responding to a Scene	Section 9.1	Time per By-law Officer @ \$50.00 per hour	Officer's time sheets & related video/photos
Occurrence and Investigation Time	Section 9.1	Time per By-law Officer @ \$75.00 per hour	Officer's time sheets & related video/photos
Court - MLEO Time	Section 9.1	Time per By-law Officer @ \$75.00 per hour	Officer's time sheets & related video/photos
Court - Prosecutor(s) Costs	Section 9.1	Time as per Prosecutor's Case Invoice	Legal Invoices
Administrative Costs	Section 9.1	Staff TIME	Office Staff & Officer logged hours

In addition to the fines/costs identified under Schedule(s) "A" and/or "B", the below Schedule "C" costs are also applicable if required.

COST OF FIRE SUPPRESSION SERVICES

Are applicable costs when a violation of this By-law has resulted in the ignition of an out of control fire requiring fire containment resources from any responding agency.

Schedule "C" of By-Law No. 2018-31
FIRE CONTAINMENT & SUPPRESSION SERVICES

Are expenses for which a Person(s) may be liable to cover the cost of sufficient personnel and equipment required to investigate the violation, control; any resulting fire condition, as referred to in Section 9.1 of this By-Law. Such costs have been deemed as including costs for the required fire suppression/containment service based on the applicable rates set by that responding agency.

Costs will be invoiced by the Municipality and will be due (30) thirty days from the date of the invoice, and interest shall accrue and be added to the amount at the rate of 1.25% per month, commencing (30) thirty days following delivery or sending of the invoice.

The above sections "C" & "B" cost and fee schedule may be amended at any time at the discretion of the Council of the Township of McKellar.