

CORPORATION OF THE TOWNSHIP OF MCKELLAR

BY-LAW NO. 2019-22

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

WHEREAS Section 7.1 (1) of the Fire Protection and Prevention Act, S.O. 1997, c. 4, as amended, provides authority to a Council of a municipality to pass by-laws to regulate fire prevention including the prevention of the spreading of fires; and

WHEREAS Section 12 (5) of the Fire Protection and Prevention Act, S.O. 1997, c. 4, as amended, provides authority to a Council of a municipality to pass by-laws that are more restrictive than the Ontario Fire Code requirements respecting the keeping and manufacturing of explosives; and

WHEREAS Section 120 (1) (a)(b)(c) of the Municipal Act, S. O. 2001, c. 25, as amended, provides authority to a municipality to pass a by-law to prohibit and regulate the manufacture and storage of explosives; and

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

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 on behalf of any other municipality, or local board; and

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; and

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” means the Fire Chief of the **Township** and **Township** staff as designated by the Fire Chief.

“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**.

“Display Fireworks” means an 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.

“Fireworks” means any and all classes of fireworks which are included in the **Act** and includes **Consumer Fireworks** and **Display Fireworks**.

“Fireworks Permit” means a permit issued by the **Township** in accordance with the provisions of this By-law.

“Officer” means a Municipal Law Enforcement Officer, Police Officer, **Chief Fire Official**, or any other person appointed by by-law to enforce the provisions of this By-law.

“Owner” includes,

- (a) the registered owner of the land; and
- (b) the **person** for the time being managing or receiving the rent of the land, lot or premises in connection with which the word is used, whether on the **person’s** own account or as agent or trustee of any other **person**, or who would receive the rent if the land, lot and premises were let; and

- (c) a lessee or occupant of the lot who, under the terms of a lease, is required to repair and maintain the lot in accordance with the standards for the maintenance and occupancy of the lot.

“**Person**” includes an individual, sole proprietorship, partnership, limited partnership, trust, corporation, and an individual in his or her capacity as a trustee, executor, administrator, or other legal representative.

“**Provincial Offences Act**” means the Provincial Offences Act, R.S.O. 1990, c. P. 33 and its regulations, as amended.

“**Sky Lantern**” 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 and includes what is known as a Kongming or Chinese Lantern.

“**Township**” means the Corporation of the Township of McKellar or the land within the geographic limit of the Corporation of the Township of McKellar as the context requires

2.0 GENERAL PROHIBITIONS

- 2.1 No **person** shall set off, discharge, cause or permit to be set off or discharged any **Fireworks** when there is a Fire Ban in effect or when the Fire Danger Rating is “High” or “Extreme” under the **Township’s** Burning By-law.
- 2.2 No **person** shall discharge, fire, set off, or cause to be set off or discharged any **Firecrackers** or **Sky Lanterns** within the **Township**.
- 2.3 No **person** shall display, offer for sale, sell, cause or permit to be sold, or otherwise distributed **Firecrackers** or **Sky Lanterns** within the **Township**.
- 2.4 No **person** shall display, offer for sale or sell **Fireworks**:
 - (a) except from lands designated under the **Township’s** Zoning By-law as Commercial or Industrial; and
 - (b) other than from a building that has met the requirements of the Building Code Act, 1992, S.O. 1992, c. 23, as amended or the requirements of the Building Code Act in place at the time the building was constructed; and
 - (c) unless displayed in accordance with the **Act**.
- 2.5 No **person** shall sell **Fireworks** when there is a Fire Ban in effect or when the Fire Danger Rating is “High” or “Extreme” under the **Township’s** Burning By-law.

2.6 No **person** shall set off or discharge or cause to be set off or discharged **Fireworks** other than in accordance with this By-law and the terms and conditions of a **Fireworks Permit**.

3.0 SETTING OFF OF CONSUMER FIREWORKS

3.1 No **person** shall set off, discharge, cause or permit to be set off or discharged in the **Township, Consumer Fireworks**, at any time except on the day observed as:

Victoria Day;
Canada Day;
Independence Day (USA);
the first weekend in August Holiday Weekend;
Labour Day;
Thanksgiving Day;
Christmas Day;
New Year's Eve;
Family Day; and
Good Friday

two days immediately preceding and/or following each of the above days, unless a **Fireworks Permit** has been issued in accordance with the provisions of this By-law.

3.2 No **person** shall set off, discharge, cause or permit to be set off or discharged **Consumer Fireworks** in the **Township** except between 6:00 p.m. and 11:00 p.m. of the same day.

3.3 No **person** under the age of eighteen (18) years of age shall set off or discharge **Consumer Fireworks**.

3.4 No **person** shall set off, discharge, cause or permit to be set off or discharged **Consumer Fireworks** other than those authorized pursuant to the **Act** and the setting off or discharging must be in accordance with recognized safety procedures, including but not limited to:

- (a) In compliance with 3.3;
- (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.

3.5 No **person** shall set off, discharge, cause or permit to be set off or discharged **Consumer Fireworks** other than in accordance with any applicable legislation.

3.6 Property damage or injury as a result of the discharge of **Consumer Fireworks** shall be the responsibility of the **person** setting off the **Consumer Fireworks**.

4.0 SETTING OFF OF “DISPLAY” FIREWORKS

4.1 No **person** shall set off, discharge, cause or permit to be discharged in the **Township**, **Display Fireworks** without a **Fireworks Permit**.

4.2 No **person** under the age of eighteen (18) years of age shall set off or discharge **Display Fireworks**.

4.3 No **person** shall set off, discharge, cause or permit to be set off or discharged **Display Fireworks** other than those authorized pursuant to the **Act** and the setting off or discharging must be in accordance with recognized safety procedures, including but not limited to:

- (a) In compliance with 4.2;
- (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 No **person** shall set off, discharge, cause or permit to be set off or discharged **Display Fireworks** other than in accordance with any applicable legislation.

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

4.6 No **person** shall fail to remove all **Display Fireworks** and debris immediately after the conclusion of the event of the setting off or discharging of **Display 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 A **person** making an application for a **Fireworks Permit** to set off or discharge **Display Fireworks** shall hold and submit proof of a valid Display Supervisor Certificate, or such, issued by the Explosives Regulatory Division of Natural Resources Canada.

- 5.3 The **Chief Fire Official** upon the issuing of a **Fireworks Permit** may impose such terms and conditions to ensure the safety of the public.
- 5.4 A **Fireworks Permit** is conditional upon completion of a satisfactory inspection of the lands by an **Officer** at any time prior to the setting off or discharging of the **Fireworks** or during the setting off or discharging of the **Fireworks**.
- 5.5 Where a **person** is applying for a **Fireworks Permit** on **Township** lands, 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 shall be submitted to the **Township** by the insurance underwriter and it shall reference the purpose of coverage is for the discharge of **Fireworks** and name the **Township** as an additional insured.
- 5.6 A **person** who is issued a **Fireworks Permit** shall indemnify and save harmless the **Township** 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 **person** as set out in the By-law and **fireworks permit** conditions whether with or without negligence on the part of the **person**, the **person's** employees, directors, contractors and agents.
- 5.7 The **Chief Fire Official** may revoke a **Fireworks Permit** when the:
- (a) safety of the public is at risk;
 - (b) the provisions of this By-law or the terms and conditions of a **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 **Township** 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 ENFORCEMENT AND PENALTY

- 8.1 The enforcement of this By-law shall be conducted by an **Officer**.
- 8.2 Every **person** who contravenes any provision of this By-law or every director or officer of a corporation, who knowingly concurs in the contravention by a corporation is guilty of an offence and upon conviction is liable to a fine as provided for under the **Provincial Offences Act**.
- 8.3 Upon conviction any penalty imposed under this By-law may be collected under the authority of the **Provincial Offences Act**.

9.0 RECOVERY OF COSTS

- 9.1 (a) In addition to any fines or penalties established elsewhere in accordance with this By-law, any **person** 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 "A" and "B" 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 an **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 an **Officer** was in violation of a By-law and therein resulted in.
- (c) The dispatching of an **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 **Township** 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 **Township** and, in the case of **owners** of a property being responsible for payment of the fees and charges, the **Township** 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 SINGULAR AND PLURAL

- 11.1 In this By-law, unless the context otherwise requires words importing the singular shall include the plural and use of the masculine shall include the feminine, where applicable.

12.0 SHORT TITLE

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

13.0 EFFECTIVE DATE

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

14.0 REPEAL OF BY-LAWS

14.1 By-Law No. 2018-31 is hereby repealed.

READ a **FIRST** and **SECOND** time this 6th day of May, 2019.

Original signed by Peter Hopkins

Original signed by Tammy Wylie

Mayor

Clerk

READ a **THIRD** time and **PASSED** in **OPEN COUNCIL** this 21st day of May, 2019

Original signed by Peter Hopkins

Original signed by Tammy Wylie

Mayor

Clerk

THE CORPORATION OF THE TOWNSHIP OF MCKELLAR
Schedule "A" of By-Law No. 2019-22
COSTS OF INVESTIGATION/ENFORCEMENT PER SECTION 9.1

In the event of a violation under this By-Law being investigated and confirmed by an **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 Officer @ \$50.00 per hour	Officer's time sheets & related video/photos
Occurrence and Investigation Time	Section 9.1	Time per Officer @ \$75.00 per hour	Officer's time sheets & related video/photos
Court - Officer Time	Section 9.1	Time per 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 any fines, the costs identified in Schedule "A", the below Schedule "B" 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.

THE CORPORATION OF THE TOWNSHIP OF MCKELLAR
Schedule "B" of By-Law No. 2019-22
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 **Township** 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 "A" & "B" cost and fee schedule may be amended at any time at the discretion of the Council of the **Township**.