

THE CORPORATION OF THE TOWN OF MILTON

BY-LAW NO. 037-2009

BEING A BY-LAW TO PROHIBIT AND REGULATE THE SALE, STORAGE, DISPLAY AND DISCHARGE OF FIREWORKS, AND TO REPEAL BY-LAW NO. 43-2000

WHEREAS section 121 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, permits a municipality to pass by-laws prohibiting and regulating the sale and the setting off of fireworks;

AND WHEREAS section 121 of the *Municipal Act, 2001*, S.O. 2001, c. 25, as amended, states that a municipality may require that a permit be obtained for the sale and setting off of fireworks, and that conditions may be prescribed by the municipality for obtaining, continuing to hold and renewing said permit;

AND WHEREAS the Council of The Corporation of the Town of Milton is desirous of enacting a by-law to prohibit and regulate the sale and discharge of fireworks, and to repeal By-law No. 43-2000, as amended;

NOW THEREFORE, THE COUNCIL FOR THE CORPORATION OF THE TOWN OF MILTON ENACTS AS FOLLOWS:

1. DEFINITIONS

1.1 In this By-law:

- (a) “*Act*” shall mean the *Explosives Act*, R.S.C 1985, c. E-17, as amended, and all Regulations thereto;
- (b) “*Chief Fire Official*” shall mean the Town’s Chief Fire Official, or his or her designate;
- (c) “*Council*” shall mean the Council of The Corporation of the Town of Milton;
- (d) “*discharge*” when used in relation to *fireworks*, includes firing, igniting, exploding and setting off such articles;
- (e) “*Director*” shall mean the Town’s Director of Community Services, or his or her designate;
- (f) “*duty of care*” - everyone who has an explosive substance in his or her possession or under his or her care and control is under a legal duty to

use reasonable care to prevent bodily harm and death to persons or damage to property by that explosive device;

- (g) “*exhibition fireworks*” shall mean high hazard fireworks used for public fireworks displays, also referred to as display fireworks, formerly Canadian Class 7.2.2;
- (h) “*family fireworks*” shall mean low hazard fireworks generally used for recreation, also referred to as consumer fireworks, formerly Canadian Class 7.2.1;
- (i) “*firecracker*” shall mean a pyrotechnic device that explodes instantaneously when ignited and does not produce any visible effect after the explosion, but does not include caps for toy guns;
- (j) “*Fire Service*” shall mean the *Town’s* Fire Service;
- (k) “*fireworks*” shall include *exhibition fireworks* and *family fireworks*;
- (l) “*Fireworks Supervisor*” shall mean a person certified by Natural Resources Canada to conduct a *fireworks* display and who is responsible for ensuring all *fireworks* are properly installed and that all appropriate safety measures have been taken;
- (m) “*mobile vending structure*” means a temporary mobile retail outlet, and includes detached storage units, tractor trailer units, roadside stands or temporary structures, tents or air-supported structures or other conveyance in or from which *family fireworks* are displayed, sold or offered for sale;
- (n) “*mobile vendor*” means any person, organization or company that sells, displays or offers *family fireworks* for sale in or from a temporary mobile retail outlet;
- (o) “*Noise By-law*” shall mean the *Town’s* Noise By-law, as amended from time to time;
- (p) “*theatrical fireworks*”, also referred to as pyrotechnics, formerly Class 7.2.5, includes any authorized explosive that is made, manufactured, or used to produce a special pyrotechnic theatrical effect in conjunction with an indoor or outdoor performance or in front of a live audience;
- (q) “*Town*” shall mean The Corporation of the Town of Milton;
- (r) “*Zoning By-law*” shall mean the *Town’s* Zoning By-law, as amended from time to time.

2. APPLICATION OF BY-LAW

- 2.1 This By-law applies to all lands and premises within the *Town*.
- 2.2 This By-law does not apply to the following low hazard fireworks having a practical use: highway safety flares, fuse and other small distress signals classed as Class 7, Division 3, Subdivision 4 of the *Act*.
- 2.3 This By-law does not apply to the storage of explosives or explosive materials and/or detonation, and/or explosions:
- (a) created at quarries or construction sites for the purposes of creating aggregate stone, construction materials or the removal or repositioning of said materials;
 - (b) made by the Halton Regional Police Service, the Ontario Provincial Police, the Royal Canadian Mounted Police, the Canadian Military or any other public law enforcement agency.

3. SALE OF FAMILY FIREWORKS

- 3.1 *Family Fireworks* shall only be sold, offered for sale, caused or permitted to be sold or otherwise distributed on the ten (10) days prior to Victoria Day and the ten (10) days prior to Canada Day.
- 3.2 No person shall sell, offer for sale, cause or permit to be sold, or otherwise distribute *family fireworks*:
- (i) unless the person has obtained a permit to sell *family fireworks* from the *Chief Fire Official*;
 - (ii) to a person who is under eighteen (18) years of age, and the vendor shall use reasonable care to ensure that said *fireworks* are not accessible to a minor.
- 3.3 No person shall sell:
- (i) *firecrackers* or *pyrotechnic devices*;
 - (ii) or display *family fireworks* outside a building, or part thereof;
 - (iii) any *family fireworks* articles that are not in approved packaging;
 - (iv) or store any *family fireworks* not in conformity with all other applicable legislation or requirements.

4. SALE OF FAMILY FIREWORKS BY MOBILE VENDORS

- 4.1 Every *mobile vendor* shall comply with all of the provisions of this By-law, shall obtain the appropriate sales permit from the *Chief Fire Official* prior to doing business, and shall ensure that such sales permit is prominently displayed in a place visible to the public on the site from which the *mobile vendor* is doing business.
- 4.2 Notwithstanding section 3.2(ii) of this By-law, retail sales of *family fireworks* may be permitted from *mobile vending structures* that are located:
- (i) with the prior approval and permission of the *Chief Fire Official* for the location;
 - (ii) in compliance with the requirements of the *Zoning By-law*;
 - (iii) at least 6 metres from any combustible material;
 - (iv) at least 6 metres from any building or any other temporary retail outlet;
 - (v) at least 3 metres from any vehicle parking lot and 20 metres from any road.
- 4.3 Every *mobile vendor* shall:
- (i) if the *mobile vendor* is not the owner of the property where the *mobile vending structure* is to be located, provide a letter to the *Chief Fire Official* from the owner of the property indicating that permission to locate the *mobile vending structure* on his or her property has been given to the *mobile vendor*;
 - (ii) provide the *Chief Fire Official* with written confirmation from the *Town's Zoning Officer* that sales of *family fireworks* from the *mobile vending structure* meets the provisions of the *Zoning By-law*;
 - (iii) provide that, where the public is permitted access to a *mobile vending structure*, such structure has at least two (2) unobstructed exits to ensure that employees and the public can quickly evacuate the *mobile vending structure* in the event of a fire;
 - (iv) post and maintain "NO SMOKING" signs that are clearly visible to the public, and of a size acceptable to the *Chief Fire Official*, at every entrance to the *vending structure*;

- (v) have at least two (2) fully operational fire extinguishers, being a minimum of 2A10BC, ready and accessible for immediate use at all times in the *mobile vending structure*;
- (vi) where a *mobile vending structure* is a tent, ensure that the tent material conforms with NFPA 701-1977, "Standard Methods of Fire Tests for Flame Resistant Textiles and Films", and that the tent is so labeled;

5. PERMIT TO SELL FAMILY FIREWORKS

5.1 The *Chief Fire Official* shall administer the processing and issuance of permits for the sale of *family fireworks*.

5.2 Every person who wishes to sell *family fireworks* in the *Town* shall:

- (i) submit an application to the *Chief Fire Official* for a permit to sell *family fireworks* on such prescribed application form as may be issued by the *Chief Fire Official*;
- (ii) pay the appropriate, non-refundable, fee as set out in the *Town's* User Fee By-law, as amended from time to time;
- (iii) provide a floor plan of the premises where *family fireworks* are to be sold, showing where *family fireworks* will be stored and displayed for sale;
- (iv) for *mobile vendors* - provide written approval from the Zoning Officer that the location of the *mobile vending structure* and the sale of *family fireworks* complies with the *Zoning By-law*;
- (v) provide proof of building permit, if required;
- (vi) provide a list of the *family fireworks* to be offered for sale. Only *family fireworks* included on the most recent list of authorized explosives as published by the Explosives Branch of Natural Resources (Canada), or its successor, shall be offered for sale;
- (vii) submit any other documentation or information required by the *Chief Fire Official*.

5.3 The *Chief Fire Official* shall inspect the premises where *family fireworks* are proposed to be sold, offered for sale, caused or permitted to be sold or otherwise distributed.

- 5.4 Upon receipt of a completed *family fireworks* sales permit application, and other documentation or information required under the By-law, all of which must be to the satisfaction of the *Chief Fire Official*, the *Chief Fire Official* may issue a *family fireworks* sales permit, subject to any conditions deemed necessary by the *Chief Fire Official*.
- 5.5 The *family fireworks* sales permit shall be displayed in a conspicuous location in the premises where *family fireworks* are to be sold under this By-law.

6. DISPLAY OF FAMILY FIREWORKS BY VENDORS

- 6.1 All vendors of *family fireworks* shall:
- (i) keep *family fireworks* away from flammable goods and keep them in a way that they are not exposed to the sun or direct heat;
 - (ii) only display *family fireworks* that contain mock samples and that do not contain explosive compound;
 - (iii) only display *family fireworks* in lots, bins or bundles that weigh less than 25 kg.
- 6.2 A “NO SMOKING” sign must be posted in the display area.
- 6.3 *Family fireworks* on display must be attended by an employee or kept within an enclosed, non-combustible display unit, locked and accessible only to employees.
- 6.4 Every *family fireworks* vendor, including *mobile vendors*, shall ensure that all *family fireworks* not on display are stored pursuant to section 7 of this By-law.

7. STORAGE OF FAMILY FIREWORKS

- 7.1 For *family fireworks* that remain unsold at the expiration of the selling period, vendors shall immediately store said *family fireworks* in a cool, dry place, remote from flammable material and inaccessible to the public.
- 7.2 A building may house up to 1,000 kg gross weight of *family fireworks* provided that it is detached from a dwelling and that the building, or a dedicated portion of it, is:
- (i) closed to public access;
 - (ii) well constructed, and;
 - (iii) used exclusively for *family fireworks* storage.

7.3 If the building does not meet the requirements of section 7.2 to this By-law, the *family fireworks* may be kept in a lockable secure bin within the building, but storage is limited to 100 kg gross weight.

7.4 Persons who store *fireworks* shall use reasonable care to ensure that those *fireworks* are not accessible to *children*.

8. PERMIT TO DISCHARGE FAMILY FIREWORKS

8.1 No person shall *discharge family fireworks* unless the person has obtained a permit to *discharge family fireworks* from the *Chief Fire Official*.

8.2 A permit to *discharge family fireworks* shall not be issued to a person under the age of eighteen (18) years.

8.3 Every person who wishes to *discharge family fireworks* in the *Town* shall:

- (i) submit an application for a permit to *discharge family fireworks* to the *Chief Fire Official*, on such prescribed application form as may be issued by the *Chief Fire Official*. Said application form shall include:
 - (a) the name, address and telephone number of the applicant and the sponsoring organization, if applicable;
 - (b) the date and time of the proposed *discharge* of *family fireworks* and, in the event of inclement weather, an alternate date and time for the *discharge*;
 - (c) a description of the site on the property where the *discharge* of *family fireworks* is proposed;
 - (d) a list of the type and kind of *family fireworks* to be *discharged*;
 - (e) proof of the written authorization of the lawful owner or occupier of the property that *family fireworks* may be *discharged* on his or her property, if applicable;
 - (f) such other information or documentation as the *Chief Fire Official* may require.
- (ii) pay the applicable, non-refundable fee for a permit to *discharge family fireworks*, pursuant to the *Town's* User Fee By-law, as amended from time to time;

9. DISCHARGE OF FAMILY FIREWORKS

- 9.1 No person shall *discharge family fireworks* except on Victoria Day and Canada Day, and the two (2) days immediately preceding each of these days, or any other day for which a permit has been issued by the *Chief Fire Official*, and only then on that day.
- 9.2 Notwithstanding section 9.1 of this By-law, if weather conditions such as rain, fog, smog or wind on the date specified on the *family fireworks discharge* permit does not allow the *discharge of family fireworks*, the *family fireworks* may be *discharged* on a mutually agreeable date.
- 9.3 No person shall discharge *family fireworks*:
- (i) at any time except in accordance with the *Noise By-law*, between the hours of dusk and 11:00 p.m. on the same day;
 - (ii) in any place or manner as to create a danger or nuisance to any person or property or to do or cause or allow any unsafe act or omission at the time and place of the *discharging* of any *family fireworks*;
 - (iii) in a building or automobile.
- 9.4 Every person who *discharges family fireworks* shall be mindful of their *duty of care* to individuals and property, and shall provide the following for set-up:
- (i) an open area away from buildings, vehicles, overhead obstructions, and dry brush/grass;
 - (ii) a minimum clear area of 30m by 30m for aerial *family fireworks* such as roman candles, and a minimum clear area of 20m by 20m for fountains and other ground based *family fireworks*;
 - (iii) fully operational fire extinguishing equipment (minimum of 2A10BC extinguisher, 10 litre pressurized water unit or a fully charged garden hose) ready and accessible at all times when *family fireworks* are being *discharged* and for a reasonable period thereafter, at the *family fireworks discharge* site;
 - (iv) a hard, flat and level surface for ground based *family fireworks* to ensure stability of the item;
 - (v) a means to bury aerial *family fireworks* to half their length in the ground or in a large pail or box filled with earth or sand;
 - (vi) a means to keep all spectators at least 20m away.

9.5 Every person who *discharges family fireworks* shall:

- (i) read the instructions, cautions and warnings on each *family fireworks* item;
- (ii) light only one (1) *family firework* at a time;
- (iii) wear proper eye protection and wear proper clothing;
- (iv) keep children away from *family fireworks*;
- (v) use care when handling and firing *family fireworks*;
- (vi) clean up the area after the display.

9.6 Prior to *discharge* on the approved date, the applicant, his representative or agent shall access the *Town's* website, Fire Services home page, to confirm that the *discharge of family fireworks* is approved for that date.

9.7 Every person or organization that conducts a *family fireworks* display shall ensure that all *family fireworks* that failed to fire or were not *discharged* are immediately disposed of in a safe manner, having regard to the particular type of *fireworks* involved.

10. PERMIT FOR DISCHARGE OF EXHIBITION FIREWORKS

10.1 No person shall *discharge exhibition fireworks* unless the person has obtained a permit to *discharge exhibition fireworks* from the *Chief Fire Official*;

10.2 Every person who wishes to *discharge exhibition fireworks* in the *Town* shall:

- (i) submit an application for a permit to *discharge exhibition fireworks* to the *Chief Fire Official*, on such prescribed application form as may be issued by the *Chief Fire Official*. Said application form shall include:
 - (a) the name, address and telephone number of the applicant and the sponsoring organization, if applicable;
 - (b) the date and time of the proposed *discharge of exhibition fireworks* and, in the event of inclement weather, a mutually agreeable date for the *discharge of exhibition fireworks*.
 - (c) a site plan of the property where the *discharge of exhibition fireworks* is proposed, including separation distances and access to be provided for fire and emergency vehicles;

- (d) a list of the type and kind of *exhibition fireworks* to be *discharged*;
 - (e) the number of persons authorized to handle and *discharge exhibition fireworks*;
 - (f) proof of written authorization from the lawful owner or occupier of the property that *exhibition fireworks* may be *discharged* on that property, if applicable;
 - (g) proof of Commercial General Liability insurance subject to the limit of not less than five million dollars (\$5,000,000) inclusive per occurrence for bodily injury, death and damage to property, including loss thereof. Such insurance shall be in the name of the applicant and shall name the *Town* as an additional insured thereunder;
 - (h) such other information or documentation as the *Chief Fire Official* may require.
- (ii) pay the applicable, non-refundable fee for a permit to *discharge exhibition fireworks*, pursuant to the *Town's* User Fee By-law, as amended from time to time;
- 10.3 The *Chief Fire Official* shall inspect the site where the *discharge of exhibition fireworks* is to be held.
- 10.4 An application for a permit for an *exhibition fireworks display* must be received by the *Chief Fire Official* at least thirty (30) days prior to the event.

11. DISCHARGE OF EXHIBITION FIREWORKS

- 11.1 No person shall fire or set off any *exhibition fireworks* within the *Town* without first successfully completing a Fireworks Supervisor's course and holding a valid Fireworks Supervisor Card.
- 11.2 The *Fireworks Supervisor* shall be present in person at all times during which the *fireworks* are being set up, *discharged* and cleaned up after the conclusion of the display or other *discharge* of those *fireworks*.
- 11.3 No person shall discharge *exhibition fireworks*:
- (i) at any time except in accordance with the *Noise By-law* between the hours of dusk and 11:00 p.m. on the same day;

- (ii) in any place or manner as to create a danger or nuisance to any person or property or to do or cause or allow any unsafe act or omission at the time and place of the *discharging* of any *exhibition fireworks*;
- 11.4 No person shall use any *exhibition fireworks* in a display, other than those authorized pursuant to the *Act*, the Display Fireworks Manual, and all other applicable law.
- 11.5 Every person who *discharges exhibition fireworks* shall:
 - (i) have fully operational fire extinguishers available at the *discharge* location that conforms to the requirements of the Display Fireworks Manual;
 - (ii) keep all persons at a safe distance from the firing zone as outlined in the Display Fireworks Manual;
 - (iii) immediately after the *exhibition fireworks* have been *discharged*, inspect the site and remove all unsafe or partly used *exhibition fireworks* and debris from the site and return the site to the condition it was in before the *discharge* of the *exhibition fireworks*;

12. THEATRICAL FIREWORKS (PYROTECHNICS)

- 12.1 The use of *theatrical fireworks* (pyrotechnic special effects) is prohibited within the *Town*.

13. REVOCATION OF PERMITS

- 13.1 All permits granted by the *Chief Fire Official* may be revoked whenever, in the *Chief Fire Official's* opinion, the holder of such permit is in non-compliance with this By-law's conditions or requirements, or the *Chief Fire Official* has concerns for public safety.

14. PROHIBITION

- 14.1 No person shall store for sale, display, sell or *discharge fireworks* within the *Town* in any manner contrary to the Criminal Code, R.S., 1985, C-46, as amended, the *Act*, the Fire Protection and Prevention Act, 1997 or any other applicable laws. If any provision of this By-law conflicts with the *Act*, the more stringent requirements will prevail.
- 14.2 No person shall *discharge* any *fireworks* on *Town* owned lands, including public streets and roadways, at any time, without the written permission of the *Director*. Said permission may be denied by the *Director* in his or her

complete discretion and which permission may be subject to terms and conditions, including but not limited to, the provision of insurance on such terms and in such amount as set out in section 15 of this by-law.

15. INSURANCE REQUIREMENTS

- 15.1 The applicant for a permit to hold a *fireworks display* on *Town* property shall provide and maintain Commercial General Liability insurance subject to limits or 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 *Town* as an additional insured thereunder. Such insurance shall include coverage for displays of *fireworks*. Such insurance policy shall contain an endorsement to provide the *Town* within thirty (30) calendar days prior written notice of cancellation or of a material change that would diminish coverage, and a Certificate of Insurance evidencing such insurance coverage shall be provided to the *Town* prior to the issuance of a permit to hold a *fireworks display*.

16. INDEMNIFICATION

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

17. SEVERABILITY

- 17.1 If a court or any tribunal of competent jurisdiction declares any section or part of this By-law invalid, the remainder of this By-law shall continue in force unless the court or tribunal makes an order to the contrary.

18. SHORT TITLE

- 18.1 This by-law shall be known as the *Fireworks* By-law.

19. PENALTY

- 19.1 Any person who violates any provisions of this By-law is, upon conviction, guilty of an offence and shall be liable to a fine, subject to the provisions of the Provincial Offences Act, R.S.O. 1990, c. P.33, as amended, and be subjected to any other penalties permitted by law for each offence. Each day such violation continues, shall constitute a separate offence and shall be punishable as such.

- 19.2 In the event the Fire Service responds to a *fireworks* incident being conducted without a permit, or in violation of the conditions of the permit, the full costs of extinguishment, including labour costs and equipment costs as determined by the *Chief Fire Official*, may be charged to the property owner and/or permit holder.

20. ENFORCEMENT

- 20.1 This By-law shall be enforced by the Fire Service, Municipal Law Enforcement Officers, the Halton Regional Police Service, officers from Conservation Halton, Assistants to the Fire Marshall, or such other persons as *Council* may designate.
- 20.2 No person shall hinder or obstruct, or attempt to hinder or obstruct, those individuals charged with the enforcement of this By-law under section 20.1 from carrying out their duties under this By-law.

21. REPEAL OF BY-LAWS

- 21.1 By-law No. 43-2000 is hereby repealed.

22. EFFECT

- 22.1 This By-law shall come into force and effect on the day it is passed.

READ a FIRST, SECOND and THIRD TIME and FINALLY PASSED this 30th day of March, 2009.

Gordon A. Krantz Mayor

Troy McHarg Town Clerk