

THE CORPORATION OF THE TOWN OF MARATHON

BY-LAW NO. 1650

A by-law to repeal By-Law No. 938, a by-law to provide for the sale and prohibit or regulate the setting off of fireworks and pyrotechnics and the requirement of permits for holding firework displays.

WHEREAS Part III, Section 120 subsection (1) of the Municipal Act, S.O. 2001, c.25 provides that without limiting sections 9, 10 and 11, a municipality may;

- a) prohibit and regulate the manufacture of explosives in the municipality;
- b) prohibit and regulate the storage of explosives and dangerous substances in the municipality;
- c) regulate the keeping and transportation of explosives and dangerous substances in the municipality;
- d) prohibit the manufacture or storage of explosives 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 121 of the Municipal Act, S.O. 2001, c. 25 provides that 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 7.1 subsection (1) of the Fire Protection and Prevention Act, 1997, S.O. 1997, c.4 provides that a council of a municipality may pass by-laws regulating fire prevention, including the prevention of the spreading of fires;

AND WHEREAS this by-law and any other by-laws thereafter passed with respect to fees or costs to be charged will be established in the current municipal "Fees and Charges" by-law;

NOW THEREFORE, the Council of the Corporation of the Town of Marathon enacts as follows:

SHORT TITLE

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

DEFINITIONS:

- 2. In this by-law:
 - a) "Act" means the Explosives Act, Revised Statutes of Canada, 1985, Chapter E-17, and the Regulations enacted thereunder as amended from time to time or any Act and Regulations enacted in substitution therefore.
 - b) "Authorized Persons" means, as the context requires, a) in the case of Display Fireworks those persons working under the direct supervision of the fireworks supervisor, who have been as a minimum, certified as an apprentice as required by the Explosives Regulatory Division of Natural Resources Canada, and b) in the case of Pyrotechnic Special Effects Fireworks, those persons working under the direct supervision of the protechnician, who have been as a minimum, certified as theatrical user as required by the Explosives Regulatory Division of Natural Resources Canada.

- c) “Consumer Firework” means an outdoor, low hazard, recreational firework that is classed as a subdivision 1 of Division 2 of Class 7 Fireworks under the Act and includes fireworks showers, fountains, golden rain, lawn lights, pin wheels, Roman candles, and volcanoes, but does not include sparklers, Christmas crackers, and caps for toy guns containing not in excess of twenty-five one-hundredths of a grain of explosive used per cap.
- d) “Corporation” means the Corporation of the Town of Marathon.
- e) “Dangerous Substance” means an explosive substance that falls within a class of dangerous goods set out in the Schedules to the Dangerous Goods Transportation Act as amended.
- f) “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.
- g) “Display Firework” means an outdoor, high hazard, recreational firework that is classed as a subdivision 2 of Division 2 of Class 7 Fireworks under the Act, and includes rockets, serpents, shells, bombshells, tourbillions, maroons, large wheels, bouquets, bombardos, waterfalls, fountains, batteries, illumination, set pieces and pigeons but does not include firecrackers.
- h) “Exhibition of Display Fireworks” means a display of display fireworks which may include consumer fireworks.
- i) “Explosive” means anything that is made, manufactured or used to produce an explosion or a detonation or pyrotechnic effect, and includes any thing prescribed to be an explosive by the regulations, but does not include gases, organic peroxides or any thing prescribed not to be an explosive by the regulation of the Explosive Act (Canada).
- j) “Fire Chief” means the highest ranking officer of the Marathon Emergency Services of the Town of Marathon or authorized designate(s).
- k) “Firecracker” means a pyrotechnic device that explodes when ignited and does not make any subsequent display or viable effect after the explosion, and includes those devices commonly known as Chinese Firecrackers.
- l) “Firework(s)” means a device containing chemicals that burn or explode spectacularly.
- m) “Fireworks Supervisor” means a person who is an approved purchaser of display fireworks and who is qualified under the Act to supervise the discharge of display fireworks.
- n) “FPPA” means the Fire Protection and Prevention Act of Ontario, 1997, c.4, as amended, and the Regulations enacted thereunder as amended from time to time or any Act and Regulations enacted in substitution therefore.
- o) “Prohibited Firework” includes but is not limited to cigarette loads or plugs, exploding matches, sparkling matches, ammunition for miniature tie clip, cufflink or key chain pistols, auto alarms or jokers, cherry bombs, M-80 silver salutes, flash crackers, throw down torpedoes, cracking balls, exploding golf balls, stink bombs, smoke bombs, tear gas pens, launchers, party poppers, table bombs, table rockets, bottle sky rockets, fake firecrackers and other trick devices or practical jokes as included on the most recent list of prohibited fireworks as published from time to time under the Act.
- p) “Pyrotechnician” means a person who is certified under the Act as a Theatrical User, an Assistant, a Pyrotechnician or a Special Effects Pyrotechnician and is qualified to purchase and supervise the display of pyrotechnic special effect fireworks under the Act.

- q) “Pyrotechnic Special Effect Firework” means a high hazard firework that is classed as a subdivision 5 of Division 2 of Class 7 Firework under the Act and that is used to produce a special pyrotechnic effect for indoor or outdoor performances and includes black powder bombs, bullet effect, flash powder, air bursts, smoke compositions, gerbs, lances and wheels..
- r) “Sell” includes offer for sale, cause or permit to be sold and to possess for the purpose of sale and the words “selling” and “sold” have a similar meaning.
- s) “Town or “Town of Marathon” means the Corporation of the Town of Marathon.

INTERPRETATION

- 3. (a) In this by-law:
 - i. Words importing the singular number only, include more persons, parties or things of the same kin than one and the converse, and
 - ii. a word interpreted in the singular number has a corresponding meaning when used in the plural.
- (b) It is declared that if any section, subsection or part or parts thereof be declared by any Court of Law to be bad, illegal or ultra vires, such section or part or parts shall be deemed to be severable and all parts hereof are declared to be separate and independent and enacted as such.

SALE OF CONSUMER FIREWORKS AND FIRECRACKERS

- 4. No person shall sell any firecrackers or prohibited fireworks within the Town of Marathon.
- 5. No person shall sell fireworks without a valid business licence issued by the Town of Marathon;
 - a) Additionally, every person selling consumer fireworks must possess a valid “Fireworks Sale Permit” issued by the Fire Chief.
 - b) The “Fireworks Sale Permit” shall be renewed annually.
 - c) The permit may be suspended or revoked by the Fire Chief if the conditions of the permit are not being met or it is determined by the Fire Chief that the business selling consumer fireworks is storing them in an unsafe manner,
 - d) Notwithstanding the foregoing sections, the Fire Chief may require additional information of the applicant to ensure the public’s safety and may impose additional conditions on the issuance of a permit as (s)he deems advisable in the particular circumstances of the application.
- 6. A “Fireworks Sale Permit” is valid for one sales/display location only. Only one permit will be issued per store.
- 7. The “Fireworks Sale Permit” and any other notice or document prescribed by the Fire Chief respecting this by-law must be displayed in public view.
- 8. The “Fireworks By-Law” must be available at every location selling fireworks.
- 9. The sale of consumer fireworks shall be subject to any other conditions as required by the Fire Chief.
- 10. No person shall display, in any store window, any type of fireworks, except imitations containing no explosive or chemical.
- 11. No person shall display for sale any type of consumer fireworks in any manner other than in such place that the fireworks are not exposed to the rays of the sun or to excess heat from any other source.

12. 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.
13. No person shall display for sale any consumer fireworks in lots that exceed 22.69 kilograms gross weight (50 pounds gross weight).
14. No person shall display for sale any consumer fireworks in any manner other than in a package, glass case or other suitable receptacle, away from any other flammable materials and not readily accessible to children.
15. No person shall, sell or give to any person under the age of eighteen (18) years any type of fireworks.

DISCHARGE OF FIRECRACKERS AND DISPLAY FIREWORKS

16. No person shall discharge any firecrackers, consumer or display fireworks within the Town of Marathon;
 - i) Except with the appropriate federal approvals and
 - ii) For the purpose of cultural celebrations and
 - iii) Be in possession of a "Display Fireworks Permit" issued by the Fire Chief.
 - a) Police Officers, Ontario Ministry of Natural Resources conservation officers, municipal law enforcement officers and any other person authorized by the Fire Chief are exempt from the discharge of firecrackers provisions of Section 16 (i)(ii) and (iii) when in the lawful execution of their duties. This includes, but is not restricted to, the use of firecrackers commonly known as "Bear Bangers" when used for indigenous animal control within the municipality.
17. No person or group of persons shall put on a show of or discharge any display fireworks in the Town of Marathon, without first having obtained a "Display Fireworks Permit" issued by the Fire Chief authorizing the exhibition of display fireworks.
18. Every application for a "Display Fireworks Permit" shall be made to the Fire Chief a minimum of twenty-one (21) calendar days prior to the event when the proposed discharge is to occur.
19. Every application for a "Display Fireworks Permit" shall be submitted by the Fireworks Supervisor and shall include:
 - a) a description of the event including,
 - i. the date and time of the proposed discharge of display fireworks,
 - ii. the type and kind of display fireworks that may be discharged;
 - iii. the discharge techniques to be used;
 - iv. the manner and means of controlling unauthorized persons from attending too close to the discharge site;
 - v. the manner in which unused display fireworks are to be disposed of;
 - vi. the number of authorized persons on site during the event to handle and discharge the display fireworks;
 - b) a site plan providing a description of the discharge site to be used for the discharging of the display fireworks;
 - c) a description of the fire emergency procedures;
 - d) the name and address of the applicant (Fireworks Supervisor) and the sponsoring

- organization, if applicable;
- e) proof of certification of the applicant as a Fireworks Supervisor;
 - f) proof of consent in writing of the owner of the property to the discharge of display fireworks;
 - g) proof of insurance and indemnification in accordance with Sections 21 and 22;
 - h) any other such information as required by the Fire Chief.
20. An applicant for a “Display Fireworks Permit” is, subject to the provisions of this by-law, entitled to be issued the permit, except where:
- a) the application is incomplete;
 - b) the applicant is not a Fireworks Supervisor; or
 - c) there are reasonable grounds for belief that the holding of the event will result in a breach of this or another by-law, the FPPA or the Act.

INSURANCE

21. The applicant for a “Display Fireworks Permit” or a “Pyrotechnic Special Effects Fireworks Permit” shall provide and maintain Commercial General Liability insurance subject to limits of 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 Corporation of the Town of Marathon as an additional insured thereunder;
- a) Such insurance shall include coverage for exhibitions of display fireworks, consumer fireworks or pyrotechnic special effects of fireworks.
 - b) The said insurance policy shall contain an endorsement to provide that the policy will not be altered, cancelled, allowed to lapse or coverage diminished without ten (10) days written notice, of the change(s) to the Corporation.
 - c) The applicant must provide the Corporation at the time of application a Certificate of Liability Insurance certifying the permit being applied for is insured against general liability and property damage claims as stated in Section 21.

INDEMNIFICATION

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

CONDITIONS APPLYING TO PERMIT FOR DISPLAY FIREWORKS

23. The Fire Chief may issue permits for exhibition of display fireworks on the conditions set forth in Section 24, and each such permit shall state the name of the sponsoring club, association or group, the purpose of the display, the place and date at which the same may be held, and the name of the Fireworks Supervisor under whose supervision the display shall be held.
24. The following conditions shall apply to the holding of an exhibition of display fireworks under a permit issued under this by-law:
- a) The permit is valid only for the display at the place and on the date or dates set forth in the permit.
 - b) The permit holder shall supervise the exhibition of display fireworks;

- c) The permit holder shall discharge the display fireworks and any consumer fireworks;
 - d) The permit holder shall comply at all times with the provisions of the Act, FPPA and the Display Fireworks Manual published by Natural Resources Canada or any successor publication.
 - e) Any other conditions as required by the Fire Chief.
25. No permit holder shall discharge display fireworks or consumer fireworks except in accordance with the conditions of the permit.
26. The permit holder holding the exhibition of display fireworks shall ensure that all unused fireworks and all debris are removed, in compliance with the Act, FPPA and the Display Fireworks Manual published by Natural Resources Canada or any successor publication.
27. All permits granted by the Fire Chief may be revoked whenever, in the Fire Chief's discretion, the holder of such permit is in non-compliance with its conditions or requirements, or the Fire Chief has concerns for public safety.

PYROTECHNIC SPECIAL EFFECTS FIREWORKS

28. a) No person or group of persons shall hold a display of pyrotechnic special effect fireworks in the Town of Marathon without first having obtained a permit to do so issued by the Fire Chief.
- b) No person or group of persons shall discharge any pyrotechnic special effect fireworks in the Town of Marathon without first having obtained a permit issued by the Fire Chief authorizing the display of pyrotechnic special effect fireworks.
- c) All discharges of pyrotechnic special effects fireworks will take place out of doors only.
29. Every application for a "Pyrotechnic Special Effects Fireworks Permit" pursuant to Section 30 shall be made to the Fire Chief a minimum of thirty-one (31) calendar days prior to the event where the proposed discharge of pyrotechnic special effect fireworks is to occur.
30. Every application for a permit shall be submitted by the pyrotechnician and shall include:
- a) a description of the event including,
 - i. a site plan of the facility, the stage and the pyrotechnic special effect fireworks storage area;
 - ii. a list of all pyrotechnic special effect fireworks;
 - iii. height, range of effect, fallout and duration of the display of pyrotechnic special effect fireworks;
 - iv. sequence of firing;
 - v. location of the audience and all exits;
 - vi. date and time of the proposed event using pyrotechnic special effect fireworks; and
 - i. the number of authorized persons on site during the event to handle and discharge the pyrotechnic special effect fireworks.
 - b) description of fire emergency procedures;
 - c) name and address of the applicant (pyrotechnician) and the sponsoring business or organization, if applicable;
 - d) proof of certification of the applicant as a pyrotechnician;
 - e) proof of insurance and indemnification in accordance with Sections 21 and 22;
 - f) written consent of the owner of the property to the discharge of pyrotechnic

- special effect fireworks if the applicant (pyrotechnician) is not the owner of the property;
- g) any other information as required by the Fire Chief.
31. An applicant for a permit is, subject to the provisions of this by-law, entitled to be issued the permit, except where:
- a) the application is incomplete;
 - b) the applicant is not a pyrotechnician under the Act, or
 - c) there are reasonable grounds for belief that the holding of the display of pyrotechnic special effect fireworks will result in a breach of this or another by-law, the FPPA or the Act or represent a safety concern.

CONDITIONS APPLYING TO PERMIT FOR PYROTECHNIC SPECIAL EFFECT FIREWORKS

32. The Fire Chief may issue permits for displays of pyrotechnic special effect fireworks on the conditions set forth in Section 33 and each such permit shall state the name of the sponsoring business, club, association or group, the purpose of the display, the place and date at which the display may be held, and the name of the pyrotechnician under whose supervision the display shall be held.
33. The following conditions shall apply to the holding of a display pyrotechnic special effect fireworks under a permit issued under this by-law.
- a) Permit is valid only for the display at the place and on the date or dates set forth in the permit;
 - b) the permit holder shall supervise the display of pyrotechnic special effect fireworks;
 - c) the permit holder shall discharge the pyrotechnic special effects fireworks;
 - d) the permit holder shall provide and maintain fully operational, fire extinguishing equipment ready for immediate use, and
 - e) the permit holder shall comply at all times with the requirements of the Act, FPPA and the Pyrotechnics Special Effects Manual published by Natural Resources Canada or any successor publication.
34. No permit holder shall discharge pyrotechnic special effect fireworks except in accordance with the conditions of the permit.
35. The permit holder holding the display of pyrotechnic special effect fireworks shall ensure that all unused fireworks and all debris are removed.
36. All permits granted by the Fire Chief may be revoked whenever, in the Fire Chief's discretion, the holder of such permit is in non-compliance with its conditions or requirements, or the Fire Chief has concerns for public safety.

GENERAL REQUIREMENT

37. Every holder of a "Sale of Consumer Fireworks," "Display Fireworks" or "Pyrotechnic Special Effect Fireworks" permit shall produce the said permit at the request of a Police Officer or Fire Chief or Municipal Law Enforcement Officer.
38. The Chief Administrative Officer of the Town of Marathon may regulate, amend or waive any fee relating to this by-law.
39. Any person who contravenes any of the provisions of this by-law is guilty of an offence and upon conviction subject to a penalty. All such penalties are recoverable under the provision of the Ontario Provincial Offences Act, R.S.O. 1990 as amended.
40. On the date that this by-law is adopted By-Law No. 938 is hereby repealed.

READ A FIRST AND SECOND TIME THIS 27TH DAY OF APRIL, A.D., 2009.

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Mayor

(SEAL)

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Clerk

READ A THIRD TIME AND FINALLY PASSED THIS 27TH DAY OF APRIL, A.D.,
2009.

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Mayor

(SEAL)

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Clerk