



2006-

BEING A BY-LAW respecting the regulating, licensing, sale and discharge of fireworks

WHEREAS section 121(1) of the *Municipal Act, 2001*, S.O. 2001, c.25 ("the Act" as amended) authorizes Council to enact by-laws for prohibiting or regulating the setting off of fireworks and requiring a permit for the holding of fireworks displays;

AND WHEREAS section 150 of the Act authorizes Council to enact by-laws to license, regulate and govern any business carried on within the municipality;

AND WHEREAS the Council of The Corporation of the Town of Markham wishes to enact the measures herein in order to provide a mechanism for the regulating, licensing, safe sale and discharge of fireworks within the municipality;

AND WHEREAS the Town of Markham has enacted Fee By-law 2002-276 to set fees or charges for services or activities provided by or done on behalf of the Town;

NOW THEREFORE the Council of The Corporation of the Town of Markham **ENACTS AS FOLLOWS:**

DEFINITIONS

1. In this By-law, the following words have the meanings assigned thereto:

"building" means any structure used or intended for supporting or sheltering any use or occupancy;

"Council" means the Council of The Corporation of the Town of Markham;

"Explosives Act" means the *Explosives Act*, R.S.C. 1985, c. E-17, and the regulations thereto;

"Firecracker" means a pyrotechnic device that explodes when ignited and does not make any subsequent display or visible effect after the explosion but does not include paper caps containing not more than twenty five one-hundredths of a grain of explosive on average per cap, devices for use with such caps, safety flare or marine rockets;

"Fireworks" means Display Fireworks, Family Fireworks and Theatrical Fireworks;

"Fireworks, Display" means high-hazard Fireworks for recreation, including firecrackers, that are classified under Class 7, Division 2, Subdivision 1 under the *Explosives Act* and the regulations made thereunder and includes, but is not limited to, rockets, serpents, shells, bombshells, tourbillion, maroons, large wheels, bouquets, barrages, bombardos, waterfalls, fountains, batteries, illuminations, set pieces and pigeons;

"Fireworks, Family" means low-hazard Fireworks for recreation that are classified under Class 7, Division 2, Subdivision 2 of the *Explosives Act* and the Regulations made thereunder, and includes but is not limited to Fireworks showers, fountains, golden rain, lawn lights, pinwheels, roman candles, volcanoes, sparklers, and other similar devices, but does not include Christmas crackers and paper containing not more than twenty five one-hundredths of a grain of explosive on average per cap, devices for use with such caps, safety flares or marine rockets;

“Fireworks, Prohibited” includes but is not limited to cigarette loads or pings, exploding matches, sparkling matches, ammunition for miniature tie clip, cufflink, or key chain pistols auto alarms or jokers, cherry bombs, M-80 and silver salutes and flash crackers; throw down and step on torpedoes, and crackling balls; exploding golf balls, stink bombs and smoke bombs, tear gas pens and launchers, party peppers and table bombs, table rockets and battle 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 *Explosives Act*;

“Fireworks Supervisor” means a person certified as a technician under the *Explosives Act* to conduct displays of Fireworks;

“Fireworks, Theatrical” means an authorized explosive of a class set out in Section 6 of the *Explosives Act*, that is made, manufactured or used to produce a pyrotechnic theatrical effect in connection with a motion picture, theater or television production or with a, or as a performance, before a live audience;

"licence" means an authorization under this By-law to sell Fireworks from a Permanent Sales Premise or a Mobile Sales Premise

"Licensing Officer" means a person appointed by the Town to issue licences;

“Magazine” means magazine as defined in the *Explosives Act*;

“Mobile Sales Premise” means a mobile or portable premise from which Fireworks are sold and includes a trailer, roadside stand and a motor vehicle;

“Permanent Sales Premise” means a permanent premise for which Fireworks are sold and is restricted to a **building**, as defined under this By-law;

“permit” means a permit to discharge Fireworks issued pursuant to this By-law;

"person" includes a natural individual, and their heirs, executors, administrators or other legal representatives, a corporation, partnership or other form of business association or a receiver or mortgagee in possession;

“to discharge”, when used in relation to Fireworks, Prohibited Fireworks and Firecrackers, includes firing, igniting, exploding and setting-off such articles;

“to sell” includes offering for sale, causing or permitting to be sold and possessing for the purpose of sale;

"Town" means The Corporation of the Town of Markham in the Regional Municipality of York.

PROHIBITIONS

- 2.1 No person shall discharge Family Fireworks except on Victoria Day and Canada Day and pursuant to a Permit.
- 2.2 No person shall possess or discharge Fireworks except in accordance with the provisions of this By-law .
- 2.3 No person shall possess or discharge any Firecrackers or other Prohibited Fireworks.
- 2.4 No person shall sell any Firecrackers or Prohibited Fireworks.
- 2.5 No person shall sell any Fireworks except in accordance with the provisions of this By-

law.

- 2.6 No person may discharge or possess for the purpose of discharge any Display Fireworks or Theatrical Fireworks except pursuant to a Permit.
- 2.7 In circumstances where a Permit is obtained for the discharge of Fireworks, no permit applicant shall discharge Fireworks at a date, time, location or site other than that specified in the Permit and all conditions of such Permit shall be observed.
- 2.8 No person shall discharge Fireworks in a manner that creates or may create a nuisance or that creates or may create an unsafe condition, danger from fire or from risk of accident, injury or damage at or in respect of any place, location or site, or to or in respect of any person, property or thing.
- 2.9 No person shall discharge Fireworks into, in or on any highway, street, lane, square, public park or other public place, without previously obtaining a Permit for such purpose.
- 2.10 No person shall sell any Fireworks without making application for, obtaining and maintaining, pursuant to the terms of this By-law, a licence therefor authorizing him to carry on such trade, calling, business or occupation in respect of the location authorized on such licence.

REGULATIONS AFFECTING THE DISCHARGE OF FAMILY FIREWORKS

- 3.1 No parent or guardian of any person under the age of eighteen years shall allow or permit that person to set off Family Fireworks, except under the direct supervision and control of A natural person eighteen years of age or older, who shall, at all times, remain physically present in the immediate area where the Family Fireworks are being set off.
- 3.2 No person shall set off or hold a display of Family Fireworks on any land that is not owned by him or her, unless written permission for the setting off or the holding of a display of Family Fireworks on a date to be clearly specified in the written permission, has been obtained from the owner, lessee or person in charge of the land.
- 3.3 Every person who sets off Family Fireworks shall:
 - a) provide and maintain fully operational fire extinguishing equipment ready for immediate use, and present at all times and for a reasonable period thereafter, at the location or site of the setting off of Family Fireworks; and
 - b) permit the inspection of any site where the Family Fireworks may be stored, set off or displayed, and the Family Fireworks themselves, together with all associated equipment, by anyone authorized to enforce this By-law, forthwith upon demand.
- 3.4 No person shall set off Family Fireworks into, inside of, or on a building, accessory building, structure, or motor vehicle.
- 3.5 No person, other than a vendor of Fireworks may, without a Permit, possess more than 10 kilograms of Family Fireworks.

PERMITS FOR THE DISCHARGE OF FIREWORKS

- 4.1 Every application for a permit shall be made to the Licensing Officer upon such application form as may be issued by the Licensing Officer from time to time.
- 4.2 The fees for permits are set out in the Town of Markham Fee By-law 2002-276.
- 4.3 No permit shall be issued to any person under eighteen years of age.
- 4.4 Every permit application shall include:
- (a) a description of the type and kind of Fireworks which may be discharged, the discharge techniques to be used, the manner and means of restraining unauthorized persons from attending too near the discharge location, the manner in which unused Fireworks are to be disposed of and the number of persons authorized to handle and discharge the Fireworks;
 - (b) a description of the discharge site to be used for the setting off of the Fireworks sufficient to identify and locate the site upon the property where the discharge is proposed;
 - (c) proof of authorization of the owner of the land that Fireworks may be discharged at such location;
 - (d) the name of the applicant and the name of the sponsoring organization, if applicable; and
 - (e) the date and time of the proposed discharge of Fireworks and an alternate date and time in the event of inclement weather.
- 4.5 Every application for a Permit for Display Fireworks and Theatrical Fireworks shall include:
- (a) proof of comprehensive general liability insurance in an amount no less than Two Million Dollars (\$2,000,000.), naming The Corporation of the Town of Markham as an additional insured and containing a cross liability clause;
 - (b) proof that the applicant has been approved by the Chief Inspector of Explosives pursuant to the *Explosives Act* as a Fireworks Supervisor by providing a copy of Fireworks Supervisor's Licence;
 - (c) an Indemnification and Hold Harmless Undertaking in favour of the Town and signed by the applicant or by an individual having the authority to bind the applicant.
 - (d) such further and other information as the Licensing Officer may require.
- 4.6 Every person to whom a Permit is issued shall:
- (a) provide and maintain fully operational fire extinguishing equipment ready for immediate use, and present at all times and for a reasonable period thereafter, at the location or site of the discharge of Fireworks;
 - (b) conform to the provisions of the current issue of the Fireworks Manual as published from time to time by the Explosives Branch of Natural Resources Canada, or any successor publication, applicable to the discharge of Fireworks authorized in the Permit;

- (c) produce the Permit on demand by any person authorized to enforce this By-law; and
 - (d) permit the inspection by the Town of the Fireworks and any site where the Fireworks may be stored or discharged together with all associated equipment.
- 4.7 Every Permit issued shall include the following conditions
 - (a) the Permit holder shall only discharge the Fireworks at the date, time, location and discharge site shown on the Permit;
 - (b) no person, except a Fireworks Supervisor, shall set off any Display or Theatrical Fireworks;
 - (c) the Fireworks Supervisor, who is named on the Permit application, shall be present in person at the display at all times during which the display is being set up, discharged and cleaned up;
 - (d) no person shall set off Display or Theatrical Fireworks within three hundred (300) metres of any premises or place where explosives, gasoline or other highly flammable substances are manufactured or stored in bulk; and
 - (e) no person shall set off Display or Theatrical Fireworks within three hundred (300) metres of a hospital, nursing home, home for the aged, church or school unless the consent of the owner or authorized representative thereof is obtained.
- 4.8 The Licensing Officer may attach additional conditions to the permit upon issuance of the permit.

REGULATIONS AFFECTING THE SALE OF ALL FIREWORKS

- 5.2 All vendors of Fireworks in the Town of Markham are required to conduct the sales of Fireworks within a Permanent Sales Premises.
- 5.2 Mobile Sales Premises may be approved within the Town of Markham, provided the vendor conforms with section 7 of this By-law.
- 5.1 No person shall sell Fireworks unless:
 - (a) the Fireworks are included on the most recent list of authorized explosives as published from time to time by the Explosives Branch of Natural Resources Canada, or their successors;
 - (b) the Fireworks are displayed for sale in a package, glass case or other suitable receptacle away from inflammable goods; and
 - (c) the Fireworks are displayed in a place where they are not exposed to the rays of the sun or to excessive heat or adjacent to any exit door.
- 5.2 All vendors of Fireworks in the Town of Markham must complete a Fireworks training and information seminar conducted by the Markham Fire and Emergency Services, Fire Prevention Division.
- 5.2 All vendors of Fireworks in the Town of Markham must display and make available to purchasers of Fireworks, a manufacturer's brochure outlining the safe handling of Fireworks.

- 5.3 An area of 6 metres surrounding every location from which Fireworks are sold or stored for the purposes of sale shall be designated and posted as a “non-smoking” area and no person may smoke or ignite any flammable material, or have in his possession any lighted match, lighter, pipe, cigar, cigarette, open flame or spark emitting device in such area;
- 5.4 No person shall sell Fireworks to any person under the age of eighteen years;
- 5.5 No vendor of Fireworks may permit any employee to sell Fireworks without first instructing such employee in the regulations of this By-law and ensuring that such employee complies with these regulations.
- 5.6 The fees affecting the sale of all Fireworks are set out in the Town of Markham Fee By-law 2002-276

REGULATIONS AFFECTING THE SALE OF FAMILY FIREWORKS

- 6.1 In addition to the regulations affecting the sale of Fireworks, no person shall sell Family Fireworks unless:
 - (a) the Fireworks are displayed for sale in lots that do not exceed 25 kilograms each in gross weight;
 - (b) the Fireworks are displayed in a place where they are not exposed to the rays of the sun or to excessive heat or adjacent to any exit door;
 - (c) Family Fireworks displayed in any shop window shall be mock samples only and shall not contain explosive composition;
 - (d) no person shall sell Family Fireworks or possess Family Fireworks for the purpose of sale, except on Victoria Day, Canada Day, and each of the seven days immediately preceding Victoria Day and Canada Day; and
 - (e) any unsold Fireworks must be returned to the manufacturer within seven days immediately following Victoria Day and Canada Day.

REGULATIONS AFFECTING MOBILE SALES OF FIREWORKS

- 7.1 In addition to the regulations affecting the sale of Fireworks, no person shall sell Fireworks from a Mobile Sales Premise except in accordance with the following regulations:
 - (a) the vendor is a not-for-profit service club such as the Kiwanas;.
 - (b) the weight of Fireworks stored at the Mobile Sales Premise cannot exceed 1,000 kilograms unless the vendor is licensed by Natural Resources Canada Explosives Division;
 - (c) not less than two (2) signs must be posted in prominent locations on the outside of the Mobile Sales Premise indicating that persons may not smoke or ignite any flammable material, or have in their possession any lighted match, lighter, pipe, cigar, cigarette, open flame or spark emitting device within 6 metres of the Mobile Sales Premise;
 - (d) a Mobile Sales Premise may not be located within twenty (20) meters of any road or occupied parking space and may not be located within forty (40) metres of any occupied building, or any dwelling or gas station;

- (e) the public shall not be permitted to enter any Mobile Sales Premise for the purpose of purchasing Fireworks unless there are at least two operational doors providing means of access to and egress from the Mobile Sales Premise;
- (f) no more than fifteen (15) customers are permitted in a Mobile Sales Premise at the same time;
- (g) any portable power supply to the mobile sales trailer must be located not less than twelve (12) metres from the Mobile Sales Premise;
- (h) with the exception of its entrance and exit, every Mobile Sales Premise shall have a “no encroachment zone” of at least 6 metres established around its perimeter by means of a barrier, such as snow fencing or pylons or other material satisfactory to the Licensing Officer to exclude the public from this area; and
- (i) every vendor of Fireworks from a Mobile Sales Premise shall keep their licence certificate issued in respect of this By-law posted in a conspicuous place on the Mobile Sales Premise, at all times during the currency of the licence.

NATURE OF LICENCE

- 8.1 No person shall enjoy a vested right in the continuance of a licence and the value of a licence shall be the property of the Town and shall remain so irrespective of the issue, renewal or revocation thereof.
- 8.2 No person licensed to carry on any trade, calling, business or occupation pursuant to this By-law shall advertise or promote or carry on such trade, calling, business or occupation under any name other than the name endorsed upon his licence.
- 8.3 The licences required by this By-law shall, unless they are expressed to be for a shorter or longer time, be for the period up to and including the 31st day of December in the year of issuance, unless they are sooner forfeited or revoked.
- 8.4 No licence shall be transferred or assigned and if a person licensed under this By-law sells, leases or otherwise disposes of his interest in the trade, calling business or occupation, his licence shall, notwithstanding any other provision of this By-law, be revoked.
- 8.5 Every licence shall have endorsed thereon the location of a Permanent or Mobile Sales Premise and such endorsement shall be for one location only and such licence shall be valid only for the location endorsed thereon.

APPLICATION, RENEWAL AND REVOCATION OF LICENCE

- 9. Every applicant shall appear in person before a Licensing Officer and shall complete such licence application forms as may be provided from time to time by the Licensing Officer in accordance with the requirements of this By-law and shall provide all information requested thereon. In the case of a Permanent or Mobile Sales Premise operated by a partnership such appearance shall be made by one of the partners, provided the application shall be signed by all of the partners and in the case of a Mobile Sales Premise operated by a corporation, such appearance shall be made by an officer of the corporation and not by an agent thereof.
- 10. Every applicant for a licence, where such applicant is a natural individual shall provide two (2) passport size photographs, which must be taken within thirty (30) days of the licence application. Where the applicant is a corporation, such photograph shall be taken of an officer of the corporation. Where the applicant is a partnership, such photograph shall be taken of one of the partners.

11. At the time of submission of their application, every applicant shall pay to the Town the fee set forth in the Fee By-law 2002-276 provided such fee shall not be reduced in the event that the period for which the licence is granted is less than one year. Fifty percent of such fee is refundable in the event that an application is not accepted for licensing.
12. Receipt of the application and/or the licence fee by the Town shall not represent approval of the application for the issuance of a licence nor shall it obligate the Town to issue such licence.
13. Without limiting the generality of any other provision in this By-law, persons associated in a partnership applying for a licence under this By-law shall file with their application a statutory declaration, in writing, signed by all members of the partnership, which declaration shall state:
 - (a) the full name of every partner and the address of his ordinary residence;
 - (b) the name or names under which they carry on or intend to carry on business;
 - (c) that the persons therein named are the only members of the partnership; and
 - (d) the mailing address for the partnership.
14. If any member of a partnership applying for a licence is a corporation, such corporation shall be deemed to be applying for an operator's licence in place and stead of the partnership.
15. Without limiting the generality of any other provision in this By-law, every corporation applying for a licence shall file with the Licensing Officer, at the time of making its application, a copy of articles of incorporation or other incorporating document and shall file a statutory declaration, in writing signed by an officer of the corporation, which declaration shall state:
 - (a) the full name of every shareholder and the address of his ordinary residence;
 - (b) the name or names under which it carries on or intends to carry on business;
 - (c) that the persons therein named are the only shareholders of the corporation; and
 - (d) the mailing address for the corporation.
16. Every person applying for a licence shall file with the Licensing Officer, documentation satisfactory to the Licensing Officer demonstrating the applicant's right to possess or occupy the premises and if any applicant is not the registered owner of the property upon which the Mobile Sales Premise is to be located, such person shall file with the Licensing Officer a copy of his lease, if any, and a copy of any other document constituting or affecting the legal relationship relating to the said lands or premises between said applicant and the registered owner or owner in fee simple of the said real property.
17. The Licensing Officer shall:
 - (a) receive and process all applications for licences and renewal of licences to be issued under this By-law;
 - (b) co-ordinate the enforcement of this By-law;
 - (c) generally perform all the administrative functions conferred upon him by this By-law;
 - (d) make or cause to be made a circulation respecting the application which shall

include circulation of the licence application to the and Municipal and Provincial Police Departments for comments, Federation of Natural Resources.

- (e) make or cause to be made all investigations and inspections which he deems necessary to determine whether an applicant meets the requirements of this By-law and all applicable laws;
 - (f) issue licences to persons who meet the requirements of this By-law and suspend licences pursuant to the provisions of this By-law; and
 - (g) where a licence has been issued pursuant to this By-law and otherwise remains in full force and effect, renew the licences of persons who meet the requirements of this By-law.
18. Notwithstanding the foregoing section, upon review of a licence application, including an application for renewal, the Licensing Officer shall prepare a report and seek Council's direction with respect to the issuance or renewal of a licence where:
- (a) the past or current conduct of the applicant or licence holder affords reasonable grounds for belief that he is not carrying or will not carry on the trade, calling, business or occupation in accordance with law and with integrity and honesty; or
 - (b) there are reasonable grounds for belief that the carrying on of the trade, calling, business or occupation by the applicant or licence holder has or will result in a breach of this By-law or any other applicable law; or
 - (c) the applicant or licence holder is a corporation or a partnership and its conduct or the conduct of its officers, directors, employees, agents or partners affords reasonable grounds for belief that its trade, calling, business or occupation has or will not be carried on in accordance with the law and with integrity and honesty; or
 - (d) there are reasonable grounds for belief that the premises, accommodations, equipment or facilities in respect of which the licence is required do not comply with the provisions of this By-law or any other applicable law; or
 - (e) the conduct of the applicant or licence holder or other related circumstances afford reasonable grounds for the belief that the carrying on by the applicant of the trade, calling, business or occupation in respect of the premises for which the licence is sought would infringe the rights, or endanger the health or safety of other members of the public.
19. When an application for licence is made in accordance with the provisions of this By-law and the applicant meets all the requirements of this By-law or where the Licensing Officer has been so authorized by Council in response to a Report in this regard, the Licensing Officer shall issue a licence certificate which shall set out the expiry date of the licence in accordance with this By-law and the applicant shall thereby be licensed.
20. The Licensing Officer may suspend a licence where there is reason to believe that a breach of this By-law has occurred or for any of the reasons that would form the basis of a report to seek Council's direction with respect to the issuance or renewal of a licence. Such suspension shall take effect upon service of written notice thereof to the licensee and the licence shall remain suspended for no more than fifteen days from the date of service of this notice. In order to continue this suspension beyond the fifteen day period or to revoke the licence, the Licensing Officer must prepare a report and receive Council's direction in this regard. Where any licence is suspended, it shall not be reinstated until the Licensing Officer is able to confirm that the conditions leading to the suspension have been remedied.
21. At any meeting of Council called in relation to a report to consider the issuance, renewal,

suspension or revocation of a licence:

- (a) the applicant shall be accorded its rights pursuant to the Statutory Powers Procedures Act including the right to appear and speak to the matter before the Licensing Committee of the Town;
- (b) where the applicant has been provided with notice of the meeting and does not attend, Council may proceed with the meeting in the absence of the applicant; and
- (c) where Council concludes that grounds exist upon which a licence may be refused, suspended or revoked, Council may in lieu thereof issue a licence for any period up to a full licence period, on probation, or without a term of probation, subject to such conditions as Council may impose and are in accordance with law.

OFFENCE, PENALTY AND ENFORCEMENT

- 23. Any person who contravenes the provisions of this By-law is guilty of an offence and, upon conviction pursuant to the provisions of the *Provincial Offences Act*, is liable to the maximum fine applicable pursuant to said Act.
- 24. The making of a false or intentionally misleading recital of fact, statement or representation in any agreement, statutory declaration or application form required by this By-law shall be deemed to be a violation of the provisions of this By-law and may result in the revocation of a permit issued hereunder.
- 26. Every person shall comply with the provisions of this By-law applicable to him whether or not he is licensed under this by-law.
- 27. Every permit applicant shall during the regular operating hours of the Permanent or Mobile Sales Premise and at all times when Fireworks are provided therein make available for inspection by the Licensing Officer, a peace officer, a Provincial Offences Officer, or a By-law Enforcement Officer the original of any document or record referred to in this By-law.
- 28. Every permit applicant and every person discharging Fireworks shall, at all times during the set-up, discharge and dismantling of the Fireworks permit the entry by and the inspection of the site where the Fireworks will be discharged by a By-law Enforcement Officer, a Provincial Offences Officer, the Licensing Officer or a Peace Officer.
- 29. No person may obstruct or hinder the entry or the inspection of a Permanent or Mobile Sales Premise by a By-law Enforcement Officer, a Provincial Offences Officer, the Licensing Officer or a Peace Officer.

MISCELLANEOUS

- 30. The provisions of this By-law shall apply to all lands and premises within the Town of Markham.
- 31. Should any section of this By-law be declared invalid by a court of competent jurisdiction, such section shall be construed as being severed herefrom and the remainder of the By-law shall continue in full force and effect.

32. All Schedules referred to in this By-law and attached to this By-law form and are part of the By-law.
33. Wherever notice or materials are required to be served upon or provided to any person pursuant to this By-law, such provision shall be deemed effective upon mailing of such materials by registered mail to the last address of that person as indicated upon licence or other material filed with the Town or to the last assessed business address for the person indicated upon the Taxation Roll Records.
34. This By-law shall come into force and effect upon third reading hereof.
35. The short title of this By-law shall be the “Fireworks By-law”.
36. By-law 310-87 is repealed in its entirety.

READ A FIRST, SECOND, AND THIRD TIME AND PASSED THIS
DAY OF OCTOBER, 2006.

SHEILA BIRRELL, TOWN CLERK

DON COUSENS, MAYOR