

The Corporation of the City of Burlington

City of Burlington By-law XX-2020

**Being a By-law to Regulate the Discharge of Fireworks and to Repeal and Replace
By-law 125-1992**

WHEREAS sections 8, 9 and 11 of the *Municipal Act, 2001*, c.25, as amended (the “*Municipal Act, 2001*”) authorize The Corporation of the City of Burlington (the “City of Burlington”) to pass by-laws necessary or desirable for municipal purposes, and in particular, paragraphs 5, 6 and 8 of subsection 11(2), and paragraph 11 of subsection 11(3) authorize by-laws respecting the economic, social and environmental well-being of the City, the safety and well-being of persons, the protection of persons and property and structures and business licensing; and,

WHEREAS the City of Burlington is responsible for ensuring that:

- persons are protected from injury; and
- property is protected from damage in the discharge of fireworks, and,

WHEREAS section 121 of the *Municipal Act, 2001*, authorizes the City of Burlington to pass by-laws prohibiting and regulating the sale and the setting off of fireworks, and to 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 the permit; and,

WHEREAS Sections 390 to 400 of the *Municipal Act, 2001* authorize the City of Burlington to pass by-laws imposing fees or charges for services or activities provided or done by them; and,

WHEREAS section 425 of the *Municipal Act, 2001* provides that a municipality may pass a by-law providing that any person who contravenes the by-law of the municipality is guilty of an offence; and,

WHEREAS section 444 of the *Municipal Act, 2001* provides that a municipality may make an order requiring a person who contravened a by-law or who caused or permitted the contravention or the owner or occupier of the land on which the contravention occurred to discontinue the contravening activity; and,

WHEREAS the Council for the City of Burlington considers it desirable and necessary to repeal By-law 125-1992, and to enact a new by-law to regulate the discharge of fireworks; and,

NOW THEREFORE the Council of the City of Burlington hereby enacts as follows:

PART 1 - DEFINITIONS

1.1 In this By-law:

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“By-law” means this by-law and any schedule to this by-law, as amended;

“By-law to Impose Rates and Fees” means City of Burlington By-law 52-2019, as amended or replaced from time to time.

“City” or “City of Burlington” means The Corporation of the City of Burlington;

“Consumer Fireworks”, otherwise known as “Family Fireworks”, means Type F.1 fireworks under the *Explosives Act* and comprises of low-hazard fireworks generally used for recreation such as fountains, wheels, Roman candles, sparklers, volcanoes, mines, snakes and toy pistol caps;

“Council” means the Council of the City of Burlington;

“Discharge” includes firing, igniting, exploding and setting off as it relates to Fireworks, Firecrackers or Prohibited Fireworks;

“Display Fireworks” means Type F. 2 fireworks under the *Explosives Act* and comprises of high-hazard display fireworks used for recreation, including but not limited to, display shells, barrages, batteries, fountains, exhibition candles, flares, set-pieces, maroons, wheels, and bouquets. These may only be purchased by persons with a valid fireworks operator certificate;

“FPPA” means *Fire Protection and Prevention Act*, 1997, S.O. 1997, c.4, , as amended or replaced from time to time, and all regulations thereto;

“Firecracker” or “Firecrackers” 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 caps for toy guns, safety flares or marine rockets;

“Fireworks” means Consumer Fireworks, Display Fireworks, and Special Effect Pyrotechnics Fireworks, but does not include Firecrackers or Prohibited Fireworks;

“Fireworks Permit” is a permit to Discharge Display Fireworks or Special Effect Pyrotechnics issued by the Fire Chief pursuant to this By-law;

“Fireworks Supervisor” means a person who is the holder of a valid Fireworks Operator Supervisor Certificate (display supervisor) issued under the authority of the *Explosives Act*, or any regulations thereunder to conduct displays of Fireworks;

“Fire Chief” means the City’s Fire Chief, or its designate;

“Explosives Act” means the *Explosives Act* R.S.C. 1985 c. E-17, as amended or replaced from time to time, and all regulations thereto;

“Motor Vehicle” means motor vehicle as defined in the *Highway Traffic Act*, R.S.O.

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1990, c. H.8.;

“Officer” means a police officer, a person appointed by Council as a municipal law enforcement officer, a by-law enforcement officer of the City, or a person appointed by the Fire Chief, or under this By-law, to administer or enforce this By-law and includes a person employed by the City whose duties are to enforce this By-law;

“Owner” means the person having effective control over or apparent possession of property or the relevant portion thereof, or where that person cannot be determined, the registered owner of that property, and for the purposes of this by-law, a mortgagee-in-possession of property, or a receiver and manager, personal representative or trustee in bankruptcy who has taken possession of that property shall be deemed to have effective control over the property;

“Person” means an individual, firm, association, partnership, corporation, company or organization of any kind;

“Prohibited Fireworks” includes but is not limited to ammunition for tie clip, cufflinks or key chain pistols; auto-foolers; blaster balls; cherry bombs, M-80 and silver salutes and flash crackers; cigarette loads or pings; dancing crackers (throw down and step on torpedoes); exploding or smoking golf balls; helicopters; parachute shells; party poppers; table rockets and battle sky rockets; stink or smoke bombs; table bombs; table or bottle rockets; tear gas pens and launchers; throw downs (also called snap caps); trick matches including exploding matches and sparkling matches, and other fireworks as included on the most recent list of prohibited fireworks, as published from time to time under the *Explosives Act*;

“Property” means any public or private land, building, structure, premise or other real property within the City; and,

“Special Effect Pyrotechnics” means Type F. 3 fireworks under the *Explosives Act* and comprises of high-hazard fireworks designed for professional use, including articles such as gerbs, mines, comets, and crossettes, as well as special-purpose pyrotechnics made for live stage performances and the film and television industry.

PART 2 - APPLICATION OF BY-LAW

2.1 This By-law applies to all Property within the City of Burlington.

2.2 This By-law does not apply to the following:

- (a) safety and strike-anywhere matches;
- (b) life-saving devices (for example, signals, highway safety flares, parachute release devices, and marine rockets) that are being carried in an aircraft, train, vessel or Motor Vehicle or any vehicle as equipment that is necessary for its safe operation or for the safety of its occupants;

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- (c) explosives classified as UN 3268 by the competent authority of their country of origin under the *Model Regulations on the Transport of Dangerous Goods*, published by the United Nations;
 - (d) explosives diluted to less than 1% by weight, including diluted explosives used as reagents (for example, 1H-tetrazole), training kits for sniffer dogs and kits to test the functioning of machines that detect trace levels of explosives; and
 - (e) Christmas crackers containing less than 2 mg of explosive substance.
- 2.3 Nothing in this By-law is to be construed as permitting anything which is prohibited under federal or provincial legislation, and where there is a conflict in this respect between federal or provincial legislation and this By-law, the federal or provincial legislation prevails.

PART 3 – GENERAL PROHIBITIONS and OBLIGATIONS REGARDING THE POSSESSION AND DISCHARGE OF FIREWORKS, FIRECRACKERS and PROHIBITED FIREWORKS

3.1 No Person shall:

- (a) possess, sell, offer for sale, cause or permit to be sold or otherwise distribute, store or buy, or offer to buy any Firecrackers or other Prohibited Fireworks;
- (b) Discharge or cause or permit the Discharge of Firecrackers or Prohibited Fireworks;
- (c) Discharge or cause or permit the Discharge of Display Fireworks or Special Effects Pyrotechnics without first obtaining a Fireworks Permit in accordance with this By-law;
- (d) Discharge or cause or permit the Discharge of any Fireworks other than in compliance with this By-law and all conditions of the Fireworks Permit issued under this By-law;
- (e) Discharge or cause or permit the Discharge of any Fireworks on a day on which, notwithstanding any other provision of this By-law, the permission to Discharge has been suspended, or Discharge has been banned, or Fireworks Permit revoked due to any reason, including extreme weather conditions, an emergency situation or to protect persons, property or environment, as determined by the Fire Chief;
- (f) Discharge or cause or permit the Discharge of any Fireworks on any Property without obtaining the authorization of the legal Owner of the Property;
- (g) Discharge or cause or permit the Discharge of any Fireworks onto, in or on any highway, street, lane, square, public park or other public place, except as permitted by and in accordance with a Fireworks Permit;

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- (h) fail to follow the manufacturer's requirements for the Discharge of Fireworks;
 - (i) Discharge or cause or permit the Discharge of Fireworks in a manner that causes or creates an unsafe condition, danger from fire, or risk from accident, injury, damage at or in respect of any person, property or thing;
 - (j) fail to clean up the unused Display Fireworks and debris immediately following the conclusion of the Fireworks Display or no later than 10:00 a.m. the day following the commencement of the Display;
 - (k) Discharge or cause or permit the Discharge of Fireworks in a manner that is not in compliance with all applicable statutes, regulations, standards, codes, By-laws, rules and similar requirements;
 - (l) cause or permit a person under eighteen years of age to possess or Discharge Fireworks, excluding toy pistol caps, unless the Person ensured the minor is supervised by a Person who is at least 18 years old;
 - (m) Discharge or cause or permit the Discharge of Fireworks into, inside of, or closer than 10 metres to any building, accessory building, deck, structure, or Motor Vehicle;
 - (n) hinder or obstruct, or attempt to hinder or obstruct, either directly or indirectly, an Officer or any person who is exercising a power or performing a duty under this By-law;
 - (o) provide false or inaccurate information in an application for a Fireworks Permit issued under this By-law or any document or thing required to be submitted under this By-law;
 - (p) provide false information or give a false statement to an officer, employee and/or agent of the City in the lawful exercise of a power or duty under this by-law;
 - (q) Every person shall comply with any Order or notice issued under the authority of this bylaw.
- 3.2 Every Fireworks Permit holder shall produce a copy of the Fireworks Permit to the Fire Chief or Officer upon request.
- 3.3 Every Person Discharging Fireworks in accordance with a Fireworks Permit issued to them shall:
- (a) provide and maintain fully operational fire extinguishing equipment ready for immediate use throughout the time while the Fireworks are being Discharged,

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and for a reasonable period thereafter, at the location or site of the Discharge of Fireworks;

- (b) ensure that the Fireworks are extinguished prior to disposal; and
- (c) restore the site to the condition it was in prior to the Discharge of the Fireworks.

PART 4 – DISCHARGE OF CONSUMER (FAMILY) FIREWORKS (F.1)

- 4.1 No Person shall Discharge or cause or permit the Discharge of any Consumer Fireworks except between dusk and 11:00 p.m. on the day of, the day before, or the day after Canada Day.
- 4.2 The Fire Chief may suspend or ban the Discharge of Consumer Fireworks, or revoke an issued Fireworks Permit, for reasons of extreme weather conditions an emergency situation or otherwise to protect persons, property or the environment.

**PART 5 – DISCHARGE of DISPLAY FIREWORKS AND SPECIAL EFFECTS
PYROTECHNICS (F.2 AND F.3)**

- 5.1 No person shall Discharge or cause or permit the Discharge of Display Fireworks or Special Effect Pyrotechnics without first obtaining a Fireworks Permit in accordance with this By-law.
- 5.2 No Person shall Discharge or cause or permit the Discharge of Display Fireworks or Special Effect Pyrotechnics other than in the presence and under the supervision of a Fireworks Supervisor.
- 5.3 A Fireworks Supervisor named in a Fireworks Permit issued under this By-law shall, at all relevant times:
 - (a) hold a valid Fireworks Operator Supervisor Certificate (display supervisor) issued under the authority of the *Explosives Act*; and
 - (b) be present in person at all times during which the Display Fireworks or Special Effects Pyrotechnics are being set up, Discharged and cleaned up after the conclusion of the Discharge or other setting off of those Fireworks.
- 5.4 A Discharge of Display Fireworks or Special Effect Pyrotechnics shall be conducted in a manner consistent with the *Explosives Act* and any other applicable legislation and guidelines.

**PART 6 – PERMIT APPLICATION for DISPLAY FIREWORKS AND SPECIAL EFFECTS
PYROTECHNICS**

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- 6.1 A person applying for a Fireworks Permit shall submit a completed application, in the proscribed form, to the Fire Chief at least 10 days prior to the proposed Discharge date that includes:
- (a) the name, municipal address, telephone number and email address of the applicant;
 - (b) the description of the type of Discharge (Display Fireworks or Special Effect Pyrotechnics) and the municipal address of the location of Discharge or, where no municipal address, the nearest municipal address(es);
 - (c) the scheduled start date and time of the Discharge and the estimated length of time to complete the Discharge;
 - (d) the name, municipal address, telephone number and email address of the Fireworks Supervisor that will supervise the Discharge;
 - (e) evidence that the applicant has been approved by the Chief Inspector of Explosives pursuant to the *Explosives Act* as a Fireworks Supervisor in the form of a copy of the Fireworks Supervisor's Licence;
 - (f) description Discharge techniques to be used, and the manner and means of restraining Persons from being too near the Discharge location;
 - (g) a letter of authorization from the Owner of the Property on which the Discharge of Fireworks will occur consenting to the Discharge;
 - (h) any proposed lane closure, road closure or sidewalk closure, and where deemed required by the Fire Chief, written confirmation from the police that appropriate arrangements have been made by the applicant for traffic and crowd control during the Discharge;
 - (i) an indemnification and hold harmless undertaking in favour of the City and signed by the applicant satisfactory to the Fire Chief;
 - (j) certified copy of Commercial General Liability insurance policy or a certificate of Insurance issued by the insurer in an amount no less than \$5,000,000.00 against bodily injury and property damage resulting from any one occurrence during the term of the Fireworks Permit, naming The Corporation of the City of Burlington as an additional insured and containing a cross liability clause. Such insurance shall include coverage for displays of fireworks, and shall provide the City with 30 calendar days prior written notice of cancellation or of material change that would diminish coverage;
 - (k) security as required by the Fire Chief;
 - (l) an agreement with the City with respect to the Discharge as required by the Fire Chief; and
 - (m) payment of the prescribed non-refundable application fee(s) in a manner as required by the Fire Chief.
- 6.2 The Fire Chief may issue a Fireworks Permit after receipt of a completed application, including any revised or additional information required by them, and the prescribed application fee(s). In making their decision to issue or refuse a Fireworks Permit, the Fire Chief shall have regard to, but not limited to, the FPPA, *Fire Code*, this By-law, the *Explosives Act*, safety measures to be taken or lack thereof, any environmental consideration, and any consideration regarding the

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health or safety of the public or property.

6.3 Without limiting the generality of the discretion of the Fire Chief, the Fire Chief may refuse to issue a Fireworks Permit if:

- (a) the applicant is not eighteen years of age; or
- (b) the application or the Discharge proposed by the application is not in compliance with this By-law, the FPPA, the Fire Code or the *Explosives Act*, or
- (c) the Fire Chief is of the opinion that the proposed site at which the Fireworks are to be Discharged is not suitable for the purpose; or
- (d) the applicant has not paid any penalty or court awarded costs resulting from a legal proceeding relating to this By-law.

6.4 A Fireworks Permit expires:

- (a) on the date the Discharge is completed or as set out in the permit, whichever comes first; or
- (b) on notice of revocation by the Fire Chief.

PART 7 – PERMITS – GENERAL

7.1 A Fireworks Permit issued under this By-law is the property of the City and is not transferable.

7.2(1) A permit holder shall immediately inform the Fire Chief of any change to:

- (a) the information contained in an application for a Fireworks Permit;
- (b) the information contained in a Fireworks Permit that has been issued;
- (c) the characteristics of the Discharge for which the permit has been issued; or
- (d) cancellation of the Discharge.

(2) The Fire Chief may require any one or more of revised or additional information, additional prescribed fee(s), or a fresh application with respect to a change under subsection 7.2(1).

7.3 The Fire Chief may impose conditions as a requirement for obtaining or continuing to hold a Fireworks Permit issued under this By-law that they consider appropriate for the protection of persons, property or the prevention of nuisance, or to minimize inconvenience to the general public. Such conditions may include but are not limited to:

- (a) giving the Fire Chief notice of any change to the commencement time of the Discharge;
- (b) producing a copy of the Fireworks Permit at the location of the Discharge upon demand;
- (c) carrying out the Discharge diligently, including,

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- (i) taking proper precautions to protect individuals from injury and property from harm;
 - (ii) damaging the road or City property as little as possible; and
 - (d) paying all prescribed fees.
- 7.4 The Fire Chief may, on their own initiative:
- (a) alter or revoke the terms and conditions of a Fireworks Permit after it has been issued; and/or
 - (b) impose new terms and conditions in a Fireworks Permit.
- 7.5 The Fire Chief may immediately suspend or revoke a Fireworks Permit issued under this By-law, in writing, where the Fire Chief is satisfied that a suspension or revocation is necessary due to weather, an emergency situation of immediate threat or danger to any person or Property.
- 7.6 The Fire Chief may revoke a permit if in their opinion the permit holder:
- (a) fails to comply with the requirements or conditions of a Fireworks Permit, this By-law, FPPA, the Fire Code or the *Explosives Act*;
 - (b) fails to notify the Fire Chief immediately of any of the changes referred to in subsection 7.2(1); or,
 - (c) provides false or inaccurate information in the application for the Fireworks Permit.
- 7.7(1) The Fire Chief may give notice of the suspension or revocation of a Fireworks Permit by contacting a permit holder in writing, by telephone or by email in accordance with the contact information provided on the permit application.
- (2) A permit holder shall give notice to the Fire Chief in writing by registered mail.

PART 8 - ADMINISTRATION AND ENFORCEMENT

General

- 8.1 The Fire Chief is authorized to administer and enforce this By-law including but not limited to:
- (a) arranging for:
 - (i) the assistance or work of City staff, City agents or the assistance of police officers;
 - (ii) the making of orders or other requirements and the imposition of conditions as authorized under this By-law;
 - (iii) the obtaining of court orders or warrants as may be required;
 - (iv) the commencement of such actions on behalf of the City to recover costs or restrain contravention of this By-law as deemed necessary; and
 - (b) prescribing the format and content of any forms or other documents required under this By-law.

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- 8.2 The Fire Chief may assign Officers to enforce this By-law and Officers so assigned or appointed by Council to enforce this By-law shall have the authority to:
- (a) carry out inspections;
 - (b) make orders or other requirements as authorized under this By-law; and,
 - (c) and give immediate effect to any orders or other requirements made under this By-law.
- 8.3 The Fire Chief and all City employees of the Burlington Fire Department are appointed as Officers for the purposes of the administration and enforcement of this By-law and the applicable sections of the *Municipal Act, 2001*.
- 8.4 The Fire Chief may assign duties or delegate tasks under this By-law to be carried out in the Fire Chief's absence or otherwise.
- 8.5 All information submitted under this By-law, including all information submitted for any permit issued under this By-law, may be made available to any member of the public subject to the *Municipal Freedom of Information and Protection of Privacy Act*, if requested.

Fees

- 8.6 All fees referred to in this By-law, including fees for services provided, shall be as set out in the City's By-law to Impose Rates and Fees, or as otherwise set and approved by Council from time to time.

Entry and Inspections

- 8.7 An Officer may enter on land at any reasonable time and in accordance with the conditions set out in FPPA and sections 435 and 437 of the *Municipal Act, 2001* for the purpose of carrying out an inspection to determine whether or not the following are being complied with:
- (a) an order or other requirement made under this By-law;
 - (b) a condition of a permit issued under this By-law; or
 - (c) an order made under section 431 of the *Municipal Act, 2001*.
- 8.8 An Officer, for the purposes of the inspection under section 8.7 and in accordance with the conditions set out in section 436 of the *Municipal Act, 2001*, may:
- (a) require the production for inspection of documents or things relevant to the inspection;
 - (b) inspect and remove documents or things relevant to the inspection for the purpose of making copies or extracts;
 - (c) require information in writing or otherwise as required by an Officer from any person concerning a matter related to the inspection; and,

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- (d) alone or in conjunction with a person possessing special or expert knowledge, make examinations or take tests, samples or photographs necessary for the purposes of the inspection.
- 8.9 An Officer may undertake an inspection pursuant to an order issued by a provincial judge or justice of the peace under section 438 of the *Municipal Act, 2001*, in accordance with the conditions set out in that section, where they have been prevented or is likely to be prevented from carrying out an inspection under section 8.7 of this By-law.

PART 9 - PENALTIES

- 9.1 Any person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to a fine and such other penalties as provided for by the *Provincial Offences Act*, R.S.O. 1990, Chapter P. 33, as amended.
- 9.2 All contraventions of any provision of this By-law are designated as multiple offences and continuing offences pursuant to subsections 429(2) and (5) of the *Municipal Act, 2001*.
- 9.3 Every person other than a corporation who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable for every day or part thereof upon which such offence occurs or continues, to a fine of not less than \$300 and not more than \$5,000 for a first offence and not more than \$10,000 for a subsequent offence.
- 9.4 Every corporation that contravenes any provision of this By-law is guilty of an offence and upon conviction is liable for every day or part thereof upon which such offence occurs or continues, to a fine of not more than \$50,000 for a first offence and not more than \$100,000 for a subsequent offence.
- 9.5 Where a person has been convicted of an offence, the court in which the conviction has been entered and any court of competent jurisdiction thereafter may, in addition to any other remedy and to any penalty imposed by this By-law, make an order:
- (a) prohibiting the continuation or repetition of the offence by the Person convicted; and,
 - (b) requiring the Person convicted to correct the contravention in the manner and within the period that the court considers appropriate.
- 9.6 Where any person contravenes any provision of this By-law, such person shall be responsible for all costs incurred by the City related to the contravention.
- 9.7 In the event the Fire Chief or an Officer responds to an incident involving the Discharge of Fireworks without a Fireworks Permit where required by this By-law, or in violation of the conditions of a Fireworks Permit or otherwise in contravention of

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this By-law, including responding to the Discharge of Fireworks or Prohibited Fireworks, the full costs of the extinguishment, including labour costs and equipment costs as determined by the Fire Chief, may be charged to the property owner and or Fireworks Permit holder, as applicable.

PART 10 - GENERAL PROVISIONS

- 10.1 This By-law may be referred to as the “Fireworks By-law.”
- 10.2 If a court of competent jurisdiction declares any provision or part of a provision of this By-law invalid, the provision or part of a provision is deemed severable from this By-law and it is the intention of Council that the remainder of this By-law shall continue in force.

PART 11 - REPEAL AND ENACTMENT

- 11.1 By-law 125-1992 is hereby repealed.
- 11.2 This By-law comes into force on the date of its passing.

PASSED this _____ day of _____, 2020.

Marianne Meed Ward, Mayor

Kevin Arjoon, City Clerk