



A People Place, A Change of Pace
SHELBURNE
ONTARIO, CANADA

Meeting Date: Monday, May 10, 2021

To: Mayor Mills and Members of Council

From: Jennifer Willoughby, Director of Legislative Services/Clerk

Report: LS 2021-08

Subject: **Shelburne Fireworks By-law #23-2021**

Recommendation

BE IT RESOLVED THAT Council receives report LS2021-08 from the Clerk as presented and circulated;

AND THAT leave be given for the reading and enacting of By-law #23-2021, being a by-law to regulate the sale, use, and storage of fireworks within the Town of Shelburne.

Background

Staff in consultation with the Fire Chief for the Shelburne and District Fire Department have determined that it is necessary for the health and safety of Shelburne residents to introduce a Fireworks By-law.

Previously, fireworks in the Town of Shelburne were only regulated with limited provisions under the Town's Noise By-law #45-2004.

The Fire Works By-law will set out the provisions for selling fireworks, clarify the dates and times when fireworks can be used, establish classes of fireworks, clarify the types of fireworks that may be sold, used, and stored by residents and business owners. The regulations included in the bylaw are in keeping with the Federal, Provincial Acts and Regulations and are within the jurisdiction of municipal governments.

Legislation and regulations, noise and nuisance, population density, social responsibility, diversity, and inclusivity are the key decision points for the recommendations being made in this report.

The Fireworks By-law review took into consideration the protection of life and property from a fire risk standpoint.

There are several different legislations and regulations that control the manufacture, storage, handling, transportation, sale and use of fireworks in Canada and the Province of Ontario.

For information purposes, a summary of the applicable laws has been provided below:

Explosives Act and Regulations

Explosives Act, R.S.C.,1985, c. E-17:

- the Act relating to the manufacture, testing, acquisition, possession, sale, storage, transportation, importation and exportation of explosives and the use of fireworks.
- requires anyone working with explosives to have a license, certificate or permit issued by the Minister of Natural Resources;
- makes exceptions for certain low-hazard explosives, low-hazard pyrotechnics, sporting ammunition and consumer (family) fireworks.
- Applicable to (high hazard) display/pyrotechnic fireworks displays

The Explosive Regulations, 2013 provide regulations for the safe and secure handling of explosives.

Ontario Fire Code (O. Reg 213/07)

Section 5.2 of the 2015 Ontario Fire Code regulates explosives, fireworks, and pyrotechnics. Div. B, Article 5.2.1.2. - The manufacture, storage, handling, transportation, sale and use of explosives shall meet the requirements of the "Act" and the "Regulations".

- "Act" means the Explosives Act;
- "Regulations" means the Explosives Regulations" made under the Explosives Act.

Fire Prevention and Protection Act, 1997, S.O. 1997, c.4

Section 7.1 (1) of the Fire Prevention and Protection Act states that council of a municipality may pass by-laws,

- (a) regulating fire prevention, including the prevention of the spreading of fires;
- (b) regulating the setting of open-air fires, including establishing the times during which open air fires may be set.

Municipal Act, 2001, S.O. 2001, c.25

Sections 8, 9 and 11 of the Municipal Act, 2001, authorize municipalities to pass bylaws 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 or persons, the protection of persons and property and structures and business licensing.

Section 128 (1) authorizes municipalities to regulate public nuisances, including matters that, in the opinion of council, are or could become or cause public nuisances.

The Draft By-law, as attached, includes the following provisions:

- Consumer fireworks may be used on Victoria Day, Canada Day, and Diwali in addition to the one (1) day immediately preceding and one (1) day immediately following these event dates. The Fireworks can be used between dusk and 11:00 pm.
- In the event that Diwali falls on October 31st of any given year, or November 11th on any given year the use of Consumer Fireworks can be displayed on the day before or the day after Diwali.
- Prohibit the sale, use or storage of high hazard Display Fireworks, Pyrotechnics, and all banned fireworks and explosives banned by the government of Canada.

- Prohibit the use of fireworks during a fire ban.
- Allow for exemptions to be considered and approved by Council for residents, groups, organization to use Consumer or Display Fireworks on days/times or locations not permitted by by-law. Display Fireworks are for professional use only and require training and certification by Natural Resources Canada (NRCAN).
- Prohibit the sale or use of Consumer Fireworks to persons under the age of 18.
- Prohibit the sale or use of fireworks on Town owned or operated property, including parks, trails, parking lots, streets, roads.
- Prohibit the sale or use of fireworks on other public lands, including schools, or educational facilities.
- Prohibit the sale or use of Fireworks near religious facilities, long term care, retirement homes, and group homes.
- No licensing/permitting requirements by the Town.

Financial Impact

No financial impact.

Policies & Implications

No known policies or impacts at this time.

Consultation and Communications

The Fire Chief was consulted during the review of the Fireworks By-law. His suggestions and recommendations are included in the final draft presented for Council's consideration.

Council Strategic Priorities

Council's Strategic Priorities has three Goals - Sustainable, Engaged and Livable. There are a total of 12 targets with the three Goals.

- T9 Promote age-friendly, multicultural community
- T11 Improve community connections

Supporting Documentation

Appendix 1: Draft Fireworks By-law #23-2021

Appendix 2: Recommended Set Fines

Respectfully Submitted By:

Jennifer Willoughby, Director of Legislative Services/Clerk

Prepared by:

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Reviewed by:

Denyse Morrissey, CAO

The Corporation of The Town of Shelburne

Bylaw Number 23 – 2021

Being A By-Law to Regulate the Sale and Use of Fireworks

WHEREAS Section 11 of the *Municipal Act, 2001* provides broad authority for lower-tier municipalities to pass by-laws protecting the health, safety, and well-being of persons,

AND WHEREAS pursuant to section 121, subsection (a) of the Municipal Act, 2001 S.O. 2001, chapter 25, as amended, provides that a local municipality may prohibit and regulate the sale of fireworks and the use of fireworks;

AND WHEREAS the *Explosives Act* governs the manufacture, testing, sale, storage, transportation and importation of explosives and the use of fireworks in Canada,

AND WHEREAS the Council of the Town of Shelburne deems it necessary and expedient to pass the subject by-law to govern sale and discharge of fireworks in the Town of Shelburne; and

NOW THEREFORE the Council of the Town of Shelburne hereby enacts as follows:

1. This By-law may be referred to as the “**Fireworks By-law**”.

2. DEFINITIONS

2.1 For the purposes of this by-law:

- a) “**Corporation**” means the Corporation of the Town of Shelburne;
- b) “**Council**” means Council of the Town;
- c) “**Diwali/Deepawali**” shall mean the third day of the South Asian Diwali Festival on which the main Diwali celebrations, including fireworks, normally take place;
- d) “**Explosives Act**” means the Explosives Act, R.S.C. 1985, c. E-17;
- e) “**Fire Chief**” means the person duly appointed by Council to act as Fire Chief for the Town as defined in the Fire Protection and Prevention Act, as amended;
- f) “**Fire Prevention and Protection Act, 1997**” means the Fire Prevention and Protection Act, 1997, SO 1997, c 4; as amended;

- g) **"Fireworks"** shall include the following devices:
- i. **"Consumer Fireworks"** means low hazard fireworks generally used for recreational purposes classified in Section 14 (5) in the regulations under the Explosives Act (Canada), does include Roman Candles, sparklers, fountains, volcanos, mines, and snakes;
 - ii. **"Display Fireworks"** means high hazard fireworks designed for professional use for community celebrations classified in Section 14 (6) in the regulations under the Explosives Act (Canada) commonly known aerial shells, cakes, Roman candles, waterfalls, lances and wheels, rockets, serpents, shells, bombshells, tourbillions, maroons, large wheels, bouquets, barrages, bombardos, waterfalls, fountains, batteries illumination, set pieces, pigeons, and firecrackers.
 - iii. **"Explosive"** means anything that is made, manufactured, or used to produce an explosion or a detonation or pyrotechnic effect, and includes anything prescribed to be an explosive by the regulations contained within the Explosives Act, R.S.C. 1985, c. E-17, but does not include gases, organic peroxides or anything prescribed not to be an explosive by the regulations;
- h) **"Fireworks Vendor"** means any Person, as defined herein, that sells or offers for sale Fireworks from a permanent or temporary location;
- i) **"Municipal Act"** means the Municipal Act, 2001, SO 2001, c 25;
- j) **"Officer"** means and includes a Police Officer, Fire Inspector, Fire Marshal, assistant to the Fire Marshal, and the Fire Chief, Fire Inspector or Fire Prevention Officer of Shelburne and District Fire Department, and Town Municipal Law Enforcement Officer;
- k) **"Owner"** includes an assessed owner, tenant, lessee, occupant, or any person having an interest, whether equitable or legal, in the land;
- l) **"Person"** includes a corporation and its directors and officers, and their heirs, executors, assignees, trustee and administrators or other legal representatives of an individual and their respective successors and assignees;
- m) **"Prohibited Fireworks"** includes, but is not limited to, flying lanterns, cigarette loads, or pings, exploding matches, electric matches, sparkling matches, ammunition tie clips, cufflink or key chain pistols, auto alarms or jokers, cherry bombs, M-80, and silver salutes and flash crackers, throw down torpedoes and

crackling balls, exploding golf balls, stink bombs, smoke bombs, tear gas pens and launchers, patty peppers, table bombs, table rockets, battle sky rockets, fake firecrackers Sprite bombs, party snaps and other similar types of novelty items and other trick devices or practical jokes as included on the most recent list of prohibited fireworks as published by the Act from time to time;

- n) **“Provincial Offences Act”** means the Provincial Offences Act, RSO, 1990, c P.33;
- o) **“Town”** means the Corporation of the Town of Shelburne or the geographic area of the Town of Shelburne as context requires;
- p) **“Use, Uses and Used”** when referring to Fireworks, means and includes the lighting, discharge, setting off, ignition, detonation or otherwise causing the explosion, sound, or pyrotechnic effect of a Firework; and,
- q) **“Victoria Day”** shall mean the last Monday preceding May 25 of any given year.

3. AUTHORIZED DAYS AND TIMES

3.1 No Person shall use Consumer Fireworks on any occasion except the following:

- a) between dusk and 11:00 p.m. on:
 - i. Victoria Day and one (1) day immediately preceding and the one (1) day immediately following;
 - ii. Canada Day and the one (1) day immediately preceding and the one (1) day immediately following; and,
 - iii. Diwali and the one (1) day immediately preceding and the one (1) day immediately following, except if the day preceding or the day following falls on October 31st or November 11th.

4. GENERAL PROVISIONS

- 4.1 No Person shall use Fireworks in a manner that might create a danger or nuisance to any person or property;
- 4.2 No Person shall cause or permit the storage, use, discharge, sale or offer for sale, any Prohibited Fireworks within the corporate limits of the Town.
- 4.3 No person shall possess or set off any fireworks not authorized by the Explosives Regulatory Division of the Government of Canada.
- 4.4 No Person shall cause or permit to sell or offer for sale Consumer Fireworks and sparklers to any person less than 18 years of age.

- 4.5 No Person shall cause or permit the sale or offer for sale Consumer Fireworks, except for the seven (7) days immediately preceding Canada Day, Victoria Day, Diwali, and New Year's Eve in each year.
- 4.6 No Person shall cause or permit the storage, use, discharge, sale or offer for sale, of any Firecrackers, or Explosives within the corporate limits of the Town.
- 4.7 No Person shall cause or permit the use of Fireworks during a Fire Ban.
- 4.8 No Person shall cause or permit the sale or offer for sale Display Fireworks within the corporate limits of the Town.

5. USE OF FIREWORKS

- 5.1 No Person under the age of eighteen (18) shall be permitted to handle or use Fireworks in the Town.
- 5.2 No Person shall use Fireworks in the Town in the following areas:
- a) on land owned or operated by the Town, its boards, or agencies, without the express written consent from the Town;
 - b) on any park, parkette, trail, linear park, land used for storm water management, or other public place without express written consent from the Town;
 - c) on any road, street, sidewalk, boulevard, shoulder, road allowance, or highway within the corporate limits of the Town;
 - d) on any public property without the express written consent of the owner of the property;
 - e) within 50 metres of a hospital, nursing home, long term care facility, retirement home, or licensed group home; or
 - f) within 50 metres of a school, educational facility, daycare, childcare facility, or religious institution, without the expressed written consent of the owner or their legal representative;
 - g) within 50 metres of a place where explosives, gasoline or other highly flammable substances are commercially manufactured, stored or sold.
- 5.3 No person shall use or cause or permit the use of consumer fireworks on any land except on land belonging to the person using the fireworks, or on other privately owned land where the written consent of the owner has been obtained.
- 5.4 No Person shall cause or permit the use of any Display Fireworks on any land within the corporate limits of the Town.

6. SALE OF CONSUMER FIREWORKS

- 6.1 Every Fireworks Vendor shall ensure that their premises, building or location:

- a) is subject to inspection by an Officer;
- b) has the required safety equipment and fire exits;
- c) has no smoking signs posted;
- d) is equipped with at minimum a 2A 10BC rated fire extinguisher;
- e) be located not within one hundred 100 metres (328 feet) of the entrance to any public park;

6.2 Every Fireworks Vendor shall comply with all the following merchandising provisions:

- a) fireworks packaged as single units shall be inaccessible to the public;
- b) bundles or lots of Fireworks shall not exceed 25 kilograms in gross weight; and
- c) all Fireworks being offered for sale or stored on site shall comply with manufacturing, packaging, and storage provisions of the Explosives Act.

7. STORAGE OF FIREWORKS

7.1 A person, who acquires Permitted Fireworks for use, must store them in accordance with this section.

7.2 Up to 25 kg:

- a) No more than 3 kg of fireworks (net explosives quantity) may be stored in a dwelling or in a place attached to a dwelling. Up to 25 kg of Permitted Fireworks (net explosives quantity) may be stored in a place or container that is not in or attached to a dwelling.

7.3 More than 25 kg:

- a) Any quantity of Permitted Fireworks over 25 kg (net explosives quantity) must be stored in accordance with federal law.

8. SAFETY PRECAUTIONS

8.1 The Permitted Fireworks must be stored in a dry place to which access is denied to anyone under 18 years of age, away from any source of heat and any substance that could cause ignition. A place or container containing more than 3 kg of Permitted Fireworks must be attended when it is unlocked.

9. EXEMPTIONS

9.1 This By-law shall apply to all persons and firework vendors and all uses of Fireworks in the Town except the use of Fireworks for: occupational purposes by trained personnel following all applicable standards, Acts, and Regulations; and emergency warning or signaling purpose

9.2 Council may, at their discretion, provide an exemption by resolutions or by bylaw to any provision of this by-law subject to any conditions Council may see fit to impose, including but not limited to:

- a) Site plan drawn to approximately scale showing direction of firing, spectator viewing area, separation distances, positioning of ramps and mortars, overhead obstructions, parking areas, vegetation etc.;
- b) Fire and Safety Plan to the approval of the Fire Chief, Statement of intent describing the event including time schedule of events attendance estimates, details on the type, size, and number of fireworks to be used, firing procedures, emergency response procedures;
- c) Written permission from the owner lessee, and/or agent of the land where the display is to be held;
- d) Evidence of comprehensive general liability insurance of no less than five (5) million dollars. This insurance shall include the Corporation of the Town of Shelburne as an additional insured when the display is on Town property; and,
- e) Person over the age of eighteen (18) who holds a valid certificate issued by the Explosives Regulatory Division of Natural Resources Canada eligible to request approval to display or set off Display Fireworks/Pyrotechnics Special Effects.

9.3 Where an exemption to this By-Law has been granted by Council, breach of any terms or conditions of the exemption may, at the discretion of an Officer, render the exemption null and void.

10. ENFORCEMENT

10.1 This By-law shall be enforced by any Officer as defined in this by-law.

10.2 Any Officer may enter private property at any time for the purposes of upholding the provisions of this by-law in accordance with applicable legislations, Acts, and regulations.

11. PENALTY

11.1 Any person, organization or business who contravenes the provisions of this By-law is guilty of an offence and, upon conviction, is subject to the penalty set out in the Provincial Offences Act.

12. CONFLICT

12.1 In the event that a provision of this by-law respecting the keeping and manufacturing of explosives is inconsistent with a provision of Part IV of the Fire Prevention and Protection Act, 1997, the provision that is the most restrictive prevails.

12.2 In the event that a provision of this by-law is inconsistent with the Explosives Act or the Municipal Act, their Regulations or any other Act or Regulation, the provision of the Act or Regulation shall prevail.

13. SEVERABILITY

13.1 The terms and provisions of this by-law shall be severable, and should any term or provision be found by a court of competent jurisdiction to be legally unenforceable, in operative or invalid, the remainder of the By-law shall continue to be in full force and effect.

14. REPEAL

14.1 Repeal By-law # 45-2004, as amended, Table 3 Item # 1.

15. EFFECTIVE DATE

14.1 This By-law shall come into force and take effect on the day of passing and enacting.

Read a first, second and third time and finally passed on this 10th day of May 2021.

Mayor, Wade Mills

Clerk, Jennifer Willoughby

Appendix 2 to LS2021-08

ITEM	COLUMN 1 SHORT FORM WORDING	COLUMN 2 Provision Creating or Defining Offence	COLUMN 3 Set Fine
1.	Use Fireworks on prohibited day/time	3.1	\$ 300.00
2.	Use Fireworks in manner create danger/nuisance	4.1	\$ 300.00
3.	Cause/permit storage/use/sale of Prohibited Fireworks	4.2	\$ 300.00
4.	Possess prohibited fireworks	4.3	\$ 300.00
5.	Sell fireworks/sparklers to person under the age of 18	4.4	\$ 200.00
6.	Sell consumer fireworks on prohibited day	4.5	\$ 200.00
7.	Cause/permit the storage/use/discharge/sale of Firecrackers/Explosives	4.6	\$500.00
8.	Cause/permit use of fireworks during fire ban	4.7	\$ 750.00
9.	Cause/permit sale of Display Fireworks	4.8	\$ 300.00
10.	Use fireworks by person under the age of 18	5.1	\$ 200.00
11.	Use Fireworks on Town property without permission	5.2 (a)	\$ 500.00
12.	Use Fireworks in Town park/parkette/trail/storm water management land without permission	5.2 (b)	\$ 300.00
13.	Use Fireworks on road/street/sidewalk/boulevard/shoulder/road allowance/highway	5.2 (c)	\$ 300.00
14.	Use Fireworks within 50 metres of a hospital/ nursing home/ long term care/retirement home/group home	5.2 (e)	\$ 300.00
15.	Use Fireworks within 50 metres of a school/educational facility/daycare/childcare facility/religious institution without permission	5.2 (f)	\$ 300.00
16.	Use Fireworks within 50 metres of a place where explosives/gasoline/flammable substance are commercially manufactured/stored/sold	5.2 (g)	\$ 300.00
17.	Cause/permit use of fireworks on private land without permission	5.3	\$ 200.00
18.	Use Display Fireworks in Town	5.4	\$ 750.00