

LICENCE

Chapter 544 FIREWORKS VENDORS

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SCHEDULE

Schedule 'A' - Business Licence Procedure

WHEREAS *it is deemed expedient to exercise the powers conferred on Council by Municipal Act, 2001, S.O. 2001, c. 25;*

AND WHEREAS *Council has determined that requiring temporary vendors selling fireworks and owners of premises used for sale of fireworks to meet certain regulations regarding the sale and storage of fireworks and the safety of the premises from which fireworks are sold decreases the likelihood of accidental fire and thus contributes to public safety;*

AND WHEREAS *Council has determined that requiring temporary vendors selling fireworks and persons allowing premises to be used for sale of fireworks to obtain licences protects consumers as there is a record of*

licence holders and the ability to require legal and honest operation of such businesses and to hold licensees responsible when the business is not conducted in accordance with the law or with integrity;

AND WHEREAS Council has determined that the ability to add conditions to, suspend, revoke or refuse licences encourages temporary vendors selling fireworks to comply with the by-law requirements;

AND WHEREAS notice of a public meeting was given by advertisement in a local newspaper on October 22, 2004;

AND WHEREAS a public meeting was held on November 1, 2004 to allow any person attending to make representations with respect to this by-law.

Article 1 INTERPRETATION

544.1.1 Fireworks - defined

“fireworks” means any article containing a combustible or explosive composition or any substance or combination of substances prepared for, capable of, or discharged for the purpose of producing a visual show or effect which may or may not be preceded by, accompanied with, or followed by an explosion or audible sound and include fireballs, Roman candles, skyrockets, pinwheels and sparklers, but do not include pyrotechnical signalling devices for marine, military or railway purposes.

544.1.2 Premises - defined

“premises” means lands and includes any building, structure or vehicle located temporarily or permanently on the lands.

544.1.3 Temporary vendor licence - defined

“temporary vendor licence” means a temporary vendor licence issued pursuant to Chapter 549 of the City of Kitchener Municipal Code.

Article 2 GENERAL PROVISIONS

544.2.1 General provisions - Chapter 500

The provisions of Chapter 500 of the City of Kitchener Municipal Code shall apply to this Chapter. In the event of any conflict, the provisions of this Chapter shall apply.

544.2.2 Fees - Chapter 501

The fees for a licence under this Chapter shall be as set out in Chapter 501 of the City of Kitchener Municipal Code.

544.2.3 Schedule 'A' - Business Licence Procedure

The provisions of Schedule 'A' hereto shall form a portion of this Chapter.

544.2.4 Operation - without licence - prohibited

Notwithstanding any other Chapter or City by-law, no person possessing or required to possess a temporary vendor licence shall sell or offer for sale fireworks within the City boundaries without first having made application and having received a temporary vendor licence permitting such sales issued in the name of Council by the Manager of Licensing or his/her delegate.

544.2.5 Applicable - all locations - within - outside - City

The provisions of this Chapter apply to any trade, occupation, calling or business described herein that is carried on either wholly or partly within the City even if the business is being carried on from a location outside the City.

544.2.6 Building - structure - construction - storage - display

The applicant for a temporary vendor licence shall provide the Manager of Licensing with a description of the building, structure or vehicle from which the fireworks will be sold indicating:

- (a) the type and quality of construction; and
- (b) where the fireworks will be stored in the building, structure or vehicle, how the fireworks will be stored and displayed, where they will be sold and the fire and explosion safeguards to be undertaken including the number of fire extinguishers.

544.2.7 Number of licences - maximum three per person

No person shall possess more than three temporary vendor licences at the same time.

544.2.8 Licence - displayed - prominent location

Every person possessing a temporary vendor licence shall ensure that the temporary vendor licence is displayed in a prominent location on the premises where the fireworks are sold.

544.2.9 Sale from vehicle - safety zone established

Every person possessing a temporary vendor licence shall ensure that in the case where the fireworks will be sold from a vehicle, a zone free from vehicular and pedestrian traffic is established by the erection and maintenance of a barrier at least 15 metres (49.2 feet) away from the exterior walls of the vehicle and maintained for the length of the sale period.

544.2.10 Sale from vehicle - ignition disconnected

Every person possessing a temporary vendor licence shall ensure that in the case where the fireworks will be sold from a vehicle, the component of the vehicle containing the ignition source or motor is disconnected and moved outside the barricaded area referred to in Section 544.2.9.

544.2.11 Signs - posted - no smoking - fireworks

Every person possessing a temporary vendor licence shall ensure that “no smoking” and “fireworks” signs are displayed on the approach to the sale building, structure or vehicle and within the sale building, structure or vehicle.

544.2.12 Smoking prohibition - enforcement

Every person possessing a temporary vendor licence shall ensure that the prohibition against smoking is enforced.

544.2.13 Fire extinguishers - requirement

Every person possessing a temporary vendor licence shall ensure that fire extinguishers are supplied in accordance with the *Fire Protection and Prevention Act, 1997* and regulations thereunder.

544.2.14 Premises licence - requirement

No person shall permit his/her premises to be used for the purpose of selling or offering for sale fireworks by a person possessing or required to possess a temporary vendor licence, without first having applied to the City on the prescribed form and having received a premises licence permitting the use of the premises for such sales issued in the name of Council by the Manager of Licensing or his/her delegate.

544.2.15 Premises licence - application - requirement

The applicant for a premises licence shall provide the Manager of Licensing with a site plan indicating the location of the sale building, location of the structure or vehicle, the clearances from adjacent properties, the access to be provided for fire and emergency vehicles, the location of the services to the premises, and the location of the barriers establishing a zone free from vehicular and pedestrian traffic around the sale building, structure or vehicle, where applicable.

544.2.16 Additional licences - requirement

Any licence obtained under this Chapter shall be in addition to any temporary vendor licence required or obtained under Chapter 549 of the City of Kitchener Municipal Code.

544.2.17 Chapter 749 - applicable

Chapter 749 of the City of Kitchener Municipal Code shall apply to all sales of fireworks within the City’s boundaries.

544.2.18 Licence - location specific

Every licence issued pursuant to this Chapter applies only with respect to the specified location.

544.2.19 Vendor licence - suspended - revoked - prohibited

No person possessing or required to possess a temporary vendor licence shall sell or offer for sale fireworks within the City boundaries while a licence issued under this Chapter is suspended or revoked by Council.

544.2.20 Sale of fireworks - suspended - revoked - prohibited

No person shall sell or offer for sale fireworks where a licence issued under this Chapter is suspended or revoked by Council.

544.2.21 Condition of licence - compliance

No person shall violate any condition that Council places on a licence issued under this Chapter.

**Article 3
ENFORCEMENT****544.3.1 Fine - for contravention - person**

Every person other than a corporation who contravenes any provision of this Chapter and every director or officer of a corporation who concurs in such contravention by the corporation is guilty of an offence and is liable, upon conviction, to a fine not exceeding Twenty-Five Thousand Dollars (\$25,000).

544.3.2 Fine - for contravention - corporation

Every corporation that contravenes any provision of this Chapter is guilty of an offence and is liable, upon conviction, to a fine not exceeding Fifty Thousand Dollars (\$50,000).

**Article 4
VALIDITY****544.4.1 Severability**

It is hereby declared that each and every of the foregoing Sections of this Chapter is severable and that, if any provisions of this Chapter should for any reason be declared invalid by any court, it is the intention and desire of Council that each and every of the then remaining provisions hereof shall remain in full force and effect.

Article 5
REPEAL - ENACTMENT

544.5.1 By-law - previous

By-law 99-27, sections 14 and 15 of By-law 2000-228, section 11 of By-law 2001-224, section 11 of By-law 2001-233, sections 15 and 16 of By-law 2001-239, section 11 of By-law 2001-241, sections 16 and 17 of By-law 2002-233 and the contents of the previous Chapter 544 are hereby repealed as of January 1, 2005.

544.5.2 Effective date

This Chapter comes into force and effect on January 1, 2005. By-law 2004-240, 6 December, 2004.

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SCHEDULE

Schedule 'A' - Business Licence Procedure

1. Upon receipt of a complete licence application the Manager of Licensing shall either issue or renew a licence hereunder or shall refer the matter to Council or a Committee of Council where appropriate under the provisions of this Chapter or any other by-law of Council.
2. Save as otherwise provided herein, every licence issued or renewed pursuant to this Chapter shall be issued in the name of Council by the Manager of Licensing.
3. The Manager of Licensing shall not process an application where that application is incomplete. An application will be deemed incomplete where:
 - (a) required information has not been provided on the application form;
 - (b) information or documentation required by the Manager of Licensing as part of the application process has not been provided;
 - (c) the prescribed licence fee is unpaid; or
 - (d) the Manager of Licensing has received an unsatisfactory report regarding an investigation carried out pursuant to Chapter 500 of the City of Kitchener Municipal Code or any other by-law of the City and the conditions causing the report to be unsatisfactory have not been remedied.
4. Where the Manager of Licensing receives an incomplete application, the Manager of Licensing shall, where an address or other contact information has been provided, notify the applicant that the application is incomplete and of the steps required to complete the application.
5. Where the Manager of Licensing decides an application is incomplete, the applicant shall have the right to appeal that decision to Council or a Committee of Council.
6. If the Manager of Licensing is unable to determine whether an application is incomplete, he/she may refer the matter to Council or a Committee of Council for consideration.

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7. The Manager of Licensing may refer an application or a licence to Council or a Committee of Council where:
 - (a) the applicant or licensee does not meet the requirements of this Chapter or any other applicable law or by-law;
 - (b) there are reasonable grounds for belief that an application or other document provided to the Manager of Licensing by or on behalf of an applicant or licensee contains a false statement or provides false information;
 - (c) the past or present conduct of any person, including the officers, directors, employees or agents of a corporation, affords reasonable cause to believe that the person will not carry on or engage in the business in accordance with the law or with honesty and integrity;
 - (d) without limiting the generality of Section 7(c), any person, including the officers, directors, employees or agents of a corporation, has contravened this Chapter or any other by-law or federal or provincial statute or regulation while engaged in or conducting the business;
 - (e) any special conditions placed on a former or current licence of the applicant or licensee under this Chapter have not been met; or
 - (f) the provisions of this Chapter provide grounds not to issue or renew in the circumstances.
8. When any matter has been referred or appealed to Council or a committee of Council, the applicant or licensee shall be given reasonable notice of the time and place of the hearing and shall be invited to make submissions.
9. When any matter has been referred or appealed to Council or a Committee of Council, after due consideration of the application or licence and after Council or a Committee of Council has heard such representations as the applicant or licensee and staff may care to make, Council may direct that the licence be issued or renewed, or may refuse, suspend, revoke or add conditions to a licence where:

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- (a) the applicant or licensee does not meet the requirements of this Chapter or any other applicable law or by-law;
- (b) information or documentation required by the Manager of Licensing as part of the application process has not been provided;
- (c) the application is incomplete or the prescribed licence fee is unpaid;
- (d) the Manager of Licensing receives an unfavourable report regarding an investigation carried out pursuant to Chapter 500 of the City of Kitchener Municipal Code or any other by-law of the City;
- (e) there are reasonable grounds for belief that an application or other document provided to the Manager of Licensing by or on behalf of an applicant or licensee contains a false statement or provides false information;
- (f) the past or present conduct of any person, including the officers, directors, employees or agents of a corporation, affords reasonable cause to believe that the person will not carry on or engage in the business in accordance with the law or with honesty and integrity;
- (g) without limiting the generality of Section 9(f), any person, including the officers, directors, employees or agents of a corporation, has contravened this Chapter or any other by-law or federal or provincial statute or regulation while engaged in or conducting the business;
- (h) any special conditions placed on a former or current licence of the applicant or licensee under this Chapter have not been met;
- (i) the provisions of this Chapter provide grounds not to issue or renew in the circumstances; or

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- (j) the applicant or licensee has consented to the refusal, suspension, revocation or adding of conditions to the licence.
10. Where a licensee is convicted of an offence under any federal or provincial Act, any regulation made thereunder, or any by-law of the City in relation to or during the carrying on of the trade, calling, business or occupation licensed hereunder, the licence may be suspended forthwith by Council until such time as the matter can be heard and finally determined by Council. By-law 2004-240, 6 December, 2004; Schedule 'A'; By-law 2006-46, 13 February, 2006.