

LICENCE

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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 vendors selling fireworks and owners of premises used for display, storage, or 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 vendors selling fireworks and persons allowing premises to be used for display, storage, or sale of fireworks to obtain licenses 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 vendors selling fireworks to comply with the by-law requirements.

**Article 1
INTERPRETATION**

544.1.1 Approved - defined

“approved” shall mean approved by the Fire Chief.

544.1.2 Display fireworks manual - defined

“display fireworks manual” shall mean the current version of the manual issued by Natural Resources Canada, under the authority of the *Explosives Act*.

544.1.3 ERD - defined

“ERD” shall mean the Explosives Regulatory Division of Natural Resources Canada.

544.1.4 Explosives Act - defined

“*Explosives Act*” shall mean the *Explosives Act*, R.S., 1985, c. E-17.

544.1.5 Explosives Regulations - defined

“Explosives Regulations” shall mean the Explosives Regulations, C.R.C., c. 599, and shall include those Bulletins that are from time to time issued by the Explosives Regulatory Division of Natural Resources Canada.

544.1.6 Family Fireworks - defined

“family fireworks” shall have the same meaning as Consumer Fireworks.

544.1.7 Fire Chief - defined

“Fire Chief” means the Chief of the Kitchener Fire Department or any officer appointed under him, who holds the position of Assistant to the Fire Marshal as defined in the FPPA.

544.1.8 Firecracker - defined

“firecracker” shall mean a device that is regulated under the authority of the *Explosives Act* by the Explosives Regulations as Class 7.2.2 products and includes any article containing a combustible or explosive substance, or combination of substances, prepared for, capable of, or discharged for, the purposes of producing solely an explosion or audible sound and includes cherry bombs, cannon crackers, firecrackers, mines, squibs and torpedoes but does not include a Christmas cracker or similar device.

544.1.9 Fireworks - defined

“fireworks” shall mean those devices that are regulated under the authority of the *Explosives Act* by the Explosives Regulations as Class 7 products, save and except Practical Use Articles (Class 7.2.4) and shall include:

- (a) “consumer fireworks” which shall mean consumer fireworks (Class 7.2.1) as set out in the Explosives Regulations, commonly known as Family Fireworks, and comprised of low hazard fireworks generally used for recreation, such as fireworks showers, fountains, golden rain, lawn lights, pin wheels, Roman candles, volcanoes, and sparklers;
- (b) “display fireworks” which shall mean display fireworks (Class 7.2.2) as set out in the Explosives Regulations and comprised of high hazard fireworks generally used for recreational displays by qualified persons; and
- (c) pyrotechnic special effects (Class 7.2.5) as set out in the Explosives Regulations and comprised of high hazard items such as

sound effects, pyrotechnic and smoke signals, salutes, and normally intended as theatrical effects.

544.1.10 Fireworks supervisor - defined

“Fireworks Supervisor” shall mean a person holding a current certification as a Fireworks Supervisor under the authority of the *Explosives Act*.

544.1.11 Fireworks Vendor Licence - defined

“fireworks vendor licence” shall mean a licence issued pursuant to this Chapter and shall include a licence issued under one of the three following classes:

- (a) “Class A” means a licence for a vendor who has not established a permanent place of business and is offering Consumer Fireworks for sale from a location that does not have a permanent business licence issued by the City, and only operates during those periods that Chapter 739 of the City of Kitchener Municipal Code authorizes the sale of Consumer Fireworks to the public, and where the quantity of Consumer Fireworks located on the premises does not exceed 1000 kg gross weight including packaging;
- (b) “Class B” means a licence for a vendor who has established a permanent place of business and is offering Consumer Fireworks for sale from a location that does have a permanent business licence issued by the City, and only conducts sales during those periods during which Chapter 739 of the City of Kitchener Municipal Code authorizes the sale of Consumer Fireworks to the public, and where the quantity of fireworks located on the premises does not exceed 1000 kg gross weight including packaging; or
- (c) “Class C” means a licence for a vendor who has established a permanent place of business and is offering fireworks for sale from a location that does have a permanent business licence issued by the City, and only conducts sales of Consumer Fireworks to the general public during those periods during which Chapter 739 of the City of Kitchener Municipal Code authorizes the sale of Consumer Fireworks to the public, but may offer fireworks for sale to persons holding a valid Fireworks Supervisor or Pyrotechnical certification issued by Natural Resources Canada under the authority of the *Explosives Act*.

544.1.12 FPPA - defined

“FPPA” shall mean the *Fire Protection and Prevention Act, 1997, S.O. 1997, c. 4*.

544.1.13 Premises - defined

“premises” means a location where fireworks are displayed, stored, offered for sale or sold, a location for which a licence has been issued or applied for pursuant to this Chapter, and in each case shall also include the land and any building, structure or vehicle located temporarily or permanently thereon.

544.1.14 Provincial Offences Act - defined

“Provincial Offences Act” means the *Provincial Offences Act*, R.S.O. 1990, c. P.33.

544.1.15 Pyrotechnics - defined

“pyrotechnics” shall mean pyrotechnic special effects Class 7.2.5. as set out in the Explosives Regulations (C.R.C., c. 599).

544.1.16 Pyrotechnics Special Effects Manual - defined

“Pyrotechnics Special Effects Manual” shall mean the current version of the manual entitled Pyrotechnics Special Effects Manual that is issued by Natural Resources Canada under the authority of the *Explosives Act*.

544.1.17 Other terms - not defined

Where a term is not defined in this Chapter, the definitions in the *Explosives Act* and Explosives Regulations shall be referenced for interpretation purposes.

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’ shall form a portion of this Chapter.

544.2.4 Sale - fireworks licence required

Notwithstanding any other Chapter or City by-law, no person shall sell or offer for sale any fireworks within the City of Kitchener without first having made application and having received a Fireworks 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 of Kitchener even if the business is being carried on from a location outside the City of Kitchener.

544.2.6 Sale location - approval required

No person shall offer fireworks for sale in the City of Kitchener until the location has been approved as suitable for the sale of fireworks.

544.2.7 Licence - maximum three per vendor

No person shall possess more than three Class A licences at the same time.

544.2.8 Licence displayed - prominent location

Every person possessing a Fireworks Vendor Licence shall ensure that the licence is displayed in a prominent location at the location where the fireworks are sold.

544.2.9 Licence - additional to any existing licence

Any licence obtained under this Chapter shall be in addition to any temporary or permanent vendor licence required or obtained pursuant another Chapter of the City of Kitchener Municipal Code or any other by-law of the City.

544.2.10 Fireworks - firecrackers - Chapter 739 applicable

Chapter 739 of the City of Kitchener Municipal Code shall apply to all sales of fireworks within the City's boundaries.

544.2.11 Licence - location specific

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

544.2.12 Licence - suspended - revoked - sales prohibited

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

544.2.13 Licence - additional conditions imposed

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

544.2.14 Hazardous conditions - sale of fireworks - prohibited

No person shall sell or offer for sale fireworks where the Fire Chief has found hazardous conditions, unless those conditions have been corrected to the satisfaction of the Fire Chief.

544.2.15 Insurance requirements

Where an application for a fireworks vendor licence has been made, the Manager of Licensing shall be provided with proof of general liability insurance showing the following coverages:

- (a) in the case of a Class A licence or a Class B licence, an insurance certificate showing a minimum of Two Million Dollars (\$2,000,000) coverage; and
- (b) in the case of a Class C licence an insurance certificate showing a minimum of Five Million Dollars (\$5,000,000) coverage.

544.2.16 Statutes - regulations compliance with

Every person holding a fireworks vendor licence shall comply with all provincial and federal statutes and regulations pertaining to fireworks.

544.2.17 Sale to person under eighteen - prohibited

No person may sell or offer fireworks for sale to a person under eighteen years of age.

544.2.18 Storage display in residential building - restrictive

No more than 25 kg of fireworks may be stored or displayed in or about any building that contains a residential occupancy unless approved. Any fireworks stored or displayed in a building containing a residential occupancy shall be kept in the original factory packaging.

544.2.19 Sale location - distance from flammables

Fireworks may not be offered for sale within 35 metres of any location where flammable or combustible liquids are dispensed.

544.2.20 Sale location - original packaging required

Fireworks not in their original manufacturer's packaging may not be offered for sale in any establishment where matches or lighters are sold.

544.2.21 Smoking prohibited - location signs posted

No smoking shall be permitted on commercial or industrial premises within 35 metres of an area being used to display, store, or sell fireworks and prominent signage prohibiting smoking shall be erected throughout the sale and storage areas and premises. Where possible, fireworks shall also be displayed and stored at least 35 metres from smoking areas on adjacent land.

Article 3
CLASS A AND CLASS B LICENCES

544.3.1 Application required - 10 business days in advance

The applicant for a Class A or a Class B licence shall complete the fireworks vendor application form provided by the Manager of Licensing, submit said form to the Manager of Licensing, and ensure that the Fire Chief is provided with a copy of such application at least 10 business days prior to the day on which the applicant wishes to begin operations under the licence.

544.3.2 Consumer fireworks - sale of - only

No person shall sell or offer for sale fireworks other than consumer fireworks under the authority of a Class A or a Class B licence.

544.3.3 Sale of fireworks - time set out - Chapter 739

A person holding a Class A or a Class B licence shall only sell or offer fireworks for sale during the times permitted by Chapter 739 of the City of Kitchener Municipal Code.

544.3.4 Storage keeping - maximum amount permissible

No person shall keep more than 1000 kg of consumer fireworks on premises under the authority of a Class A or a Class B licence. Furthermore, if more than one licence has been issued for the same premises which shall include a situation in which more than one licence has been issued for a single building, the total amount of consumer fireworks kept on the premises shall not exceed 1000 kg.

544.3.5 Application requirements - set out

Before receiving a Class A or Class B licence, an applicant must demonstrate the applicant's ability to comply with the following to the satisfaction of the Fire Chief and thereafter must actually comply with the provisions of Sections 544.3.6 through 544.3.16 inclusive.

544.3.6 Locations approved - prior to structure

Proposed locations for the sale of consumer fireworks shall be approved prior to any temporary structures or vehicles being placed or erected on the premises.

544.3.7 Temporary structure - vehicle - pedestrian barrier

Where consumer fireworks are being sold from a temporary structure, the applicant shall ensure a barrier is erected around the temporary structure that ensures a vehicle and pedestrian free zone extending 15 metres out from the exterior walls or sides of the temporary structure. The barriers shall be maintained in operation for the period in which fireworks are stored at the premises.

544.3.8 Display storage - sale from vehicle - prohibited

Display, storage or sales of fireworks in vehicles is not permitted.

544.3.9 Trailers - use - approval required

Trailers may only be used if approved for use as a temporary storage structure.

544.3.10 Customers restricted to defined areas

Parking and pedestrian access facilities shall be controlled to ensure only supervisory staff have access to the entire premises, and customers are restricted to a defined sales areas.

544.3.11 Fire extinguishers - minimum requirements

A minimum of two approved fire extinguishers shall be provided in each of the sales and storage areas, and mounted in a visible location accessible to the vendor, where at least one extinguisher will be a 20 litre Class A water based extinguisher;

544.3.12 Fire extinguishers - additional requirements

Based on the volume and type of fireworks stored on the premises, the Fire Chief may require additional fire extinguishers to be provided.

544.3.13 Storage - strict supervision

Fireworks must be stored in a manner that allows for strict supervision and control by the vendor and supervisory staff.

544.3.14 Storage - away from direct sunlight

Fireworks must not be stored in direct sunlight.

544.3.15 Display - requirements - public access

Fireworks are only permitted to be on display in the sales area accessible to the public where they meet the following configuration:

- (a) if in the original manufacturer's packaging, stored in lots that do not exceed 25 kg gross weight; are located on shelving visible to the vendor and their staff, and each lot is separated from adjacent lots by a distance of two metres, or by a physical barrier consisting of ½" plywood or 5/8" drywall extending above and beyond the edge of the lot, and not more than three lots may be on display in the retail area; and
- (b) if not in the original manufacturer's packaging or stored loose, they shall be stored in lots that do not exceed 25 kg gross weight, located in a locked display case, or located behind a counter and only accessible to the applicant or their staff, each lot separated from adjacent lots by a distance of two metres, or by a physical barrier consisting of ½" plywood or 5/8" drywall

extending above and beyond the edge of the lot, and not more than three lots may be on display in the retail area.

544.3.16 Storage requirements

Fireworks shall be stored in a store or warehouse that:

- (a) is detached from any dwelling house and located at least 12 metres from any highway, street, public thoroughfare or public place;
- (b) is made secure and closed to prevent entry from unauthorized persons and secured from entry from the outside;
- (c) is exclusively used to store fireworks;
- (d) is well and substantially constructed of a suitable material;
- (e) is adequately ventilated to prevent dampness or excessive heat;
- (f) is kept scrupulously clean on the interior;
- (g) is physically separated from dangerous goods;
- (h) does not have any fire, matches, oiled waste, iron, steel grit or any other article liable to spontaneously ignite or likely to cause explosion or fire;
- (i) has only non-sparking tools used on the interior;
- (j) has the word "FIREWORKS" clearly and conspicuously displayed on a contrasting background located on the entrance to the space;
- (k) where the storage area is in a building and the quantity of stored fireworks exceeds 50 kg, the building and storage area shall be sprinkled; and
- (l) where premises cannot be adapted for the storage of fireworks consistent with above requirements, the method and quantity of fireworks must be approved.

544.3.17 Additional protection measures as required

The Fire Chief may require additional protective measures after inspecting the applicant's site and determining that a need exists to protect public or vendor safety.

544.3.18 Conflict of occupancy - sale of fireworks prohibited

The sale of fireworks may not be compatible with all premises and firework sales shall not be permitted, where a conflict of occupancy types exist, as determined by the Fire Chief.

Article 4
CLASS C LICENCE

544.4.1 Application - to Manager of Licencing

The applicant for a Class C licence shall complete the fireworks vendor application form, and submit said form to the Manager of Licencing.

544.4.2 Sale - types - as approval only

Except where approved, no person shall sell or offer for sale fireworks other than consumer fireworks under the authority of a Class C licence.

544.4.3 Purchaser - valid fireworks or pyrotechnics certificate

A person possessing a Class C licence may sell and offer fireworks for sale, to persons in possession of a valid fireworks or pyro-technicians certificate issued by the Explosives Regulatory Division of Natural Resources Canada, outside of the times permitted in Chapter 739 of the City of Kitchener Municipal Code.

544.4.4 Application copy to Fire Chief - 45 days in advance

Where a person is seeking a Class C licence to sell fireworks, in addition to or other than consumer fireworks in compliance with Chapter 739 of the City of Kitchener Municipal Code, the applicant, or licensee as the case may be, shall provide a copy of the fireworks vendors application to the Fire Chief at least forty-five business days prior to the day they wish to begin operations.

544.4.5 Location approval required

The design, configuration and use of storage or sales areas under a Class C licence shall be approved.

544.4.6 Quantity sold - stored - requirement

No person holding a Class C licence shall display or store whether for direct or consignment sale: consumer fireworks in excess of 1000 kg gross weight; display fireworks in excess of 125 kg gross weight; any quantity of high-powered rocket motor; low-hazard, practical purpose pyrotechnics in excess of 1000 kg gross weight; or high-hazard, practical purpose pyrotechnics in excess of 125 kg gross weight unless demonstrating to the satisfaction of the Fire Chief that they hold an appropriate and current magazine licence issued by the ERD.

544.4.7 Location assessment - additional cost to licensee

During the application process for a Class C licence, the Fire Chief shall conduct an assessment of the location where the applicant proposes to conduct business to determine its suitability, and where the Fire Chief believes it necessary to engage the services of a professional engineer or other such expert, the cost of these services shall be borne by the applicant, but in no case shall premises to be used for the sale, display, or storage of fireworks be any closer to a residential building than 500 metres.

Article 5**ENFORCEMENT****544.5.1 Fine - for contravention**

Every person other than a corporation who contravenes any provision of this Chapter or fails to comply with a requirement thereof and every director or officer of a corporation who concurs in such contravention or failure to comply by the corporation is guilty of an offence and is liable, upon conviction, to a fine not exceeding Fifty Thousand Dollars (\$50,000).

544.5.2 Fine - for contravention - corporation

Every corporation that contravenes any provision of this Chapter or fails to comply with a requirement thereof is guilty of an offence and is liable, upon conviction, to a fine not exceeding One Hundred Thousand Dollars (\$100,000).

Article 6**VALIDITY****544.6.1 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 7**REPEAL - ENACTMENT****544.7.1 By-law - previous**

By-law 2004-240 and the contents of the previous Chapter 544 are hereby repealed as of January 18, 2010,

544.7.2 Effective date

This Chapter comes into force and effect on January 18, 2010. By-law 2010-015, 18 January 2010.

FIREWORKS VENDORS

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.
7. The Manager of Licensing may refer an application or a licence to Council or a Committee of Council 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) 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 license be issued or renewed, or may refuse, suspend, revoke or add conditions to a licence where:

- (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;

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- (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
- (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 2010-015, 18 January, 2010, Schedule 'A'.