

## DISTRICT OF PORT HARDY

### BYLAW NO. 05-2010

#### A BYLAW TO REGULATE THE POSSESSION AND DISCHARGE OF FIREWORKS

WHEREAS it is deemed advisable that the District of Port Hardy establishes regulation for the possession and discharge of fireworks;

THEREFORE, the Council of the District of Port Hardy, in open meeting assembled, enacts as follows:

#### 1. TITLE

This Bylaw may be cited for all purposes as "Fireworks Regulation Bylaw No. 05-2010".

#### 2. INTERPRETATION

In this Bylaw:

"Act" means the *Explosives Act, Revised Statutes of Canada, 1985* and the Regulations enacted thereunder as amended from time to time or any *Act* and Regulations enacted in substitution therefor;

"Certification Card" means documented proof of the completion of either the Fireworks Supervisory Level 1 or 2 training course conducted by the Explosives Regulatory Division;

"Consumer Firework" means an outdoor, low hazard, recreational firework that is classed as a subdivision 1 of Division 2 of Class 7 Fireworks under the *Act* and includes fireworks showers, fountains, golden rain, lawn lights, pin wheels and volcanoes but does not include Roman candles, Noise Makers, Christmas crackers, sparklers and caps for toy guns;

"Consumer Fireworks Event" means the observance or celebration of a special event or festival where a permit has been issued to allow the discharge of consumer fireworks;

"Discharge" means to fire, ignite, explode or set off or cause to be fire, ignited, exploded or set off and the words "discharged" and "discharging" have a similar meaning;

"Display Firework" means an outdoor, high hazard, recreational firework that is classed as a subdivision 2 of Division 2 of Class 7 Fireworks under the *Act* and includes rockets, serpents, shells, bombshells, tourbillions, maroons, large whels, bouquets, bombardos, waterfalls, fountains, batteries, illumination, set pieces and pigeons but does not include firecrackers;

"Display Fireworks Event" means the observance or celebration of a special event or festival where a permit has been issued to allow the discharge of display fireworks;

"District" means the District of Port Hardy;

“Explosives Regulatory Division” means the Explosives Regulatory Division of the Explosives Branch of the Minerals and Metals Sector of Natural Resources Canada;

“Federal Regulations” means the Explosives Regulations enacted under the Explosives Act and any amendments thereto;

“Fire Chief” means a person appointed by the Council to be in charge of the Fire Department or authorized subordinates;

“Firecracker” means a pyrotechnic device that explodes when ignited and does not make any subsequent display or visible effect after the explosion and includes those devices commonly known as Chinese firecrackers;

“Fire Safety Plan” means a plan dealing with the procedures for a permit holder to follow to protect public safety when discharging pyrotechnic special effects fireworks, which meets the requirements specified by the Fire Chief;

“Fireworks” means consumer fireworks, display fireworks and pyrotechnic special effects fireworks;

“Fireworks Supervisor” means a person who is an approved purchaser of display fireworks and who is qualified under the *Act* to supervise the discharge of display fireworks;

“Insurance Requirements” means the liability insurance requirements in the form prescribed by the District from time to time;

“Peace Officer” means a person employed as Fire Chief by the Fire Department of the District or any person employed by the District as a Bylaw Enforcement Officer or any member of the Royal Canadian Mounted Police;

“Permit” means a current and valid permit, in the form prescribed by the District from time to time, specifying and authorizing a person to discharge consumer fireworks or display fireworks;

“Prohibited Firework” includes but is not limited to Roman candles, Noise Makers, after-market modified fireworks, cigarette loads or pings, exploding matches, sparking matches, ammunition for miniature tie clip, cufflink or key chain pistols, auto alarms or jokers, cherry bombs, M-80 and silver salutes and flash crackers, throw down torpedoes and crackling balls, exploding golf balls, stink bombs and smoke bombs, tear gas pens and launchers, party peppers and table bombs, table rockets and battle sky rockets, fake firecrackers and other trick devices or practical jokes as included on the most recent list of prohibited fireworks as published from time to time under the *Act*;

“Pyrotechnician” means a person who is certified under the *Act* as a Theatrical User, an Assistant, A Pyrotechnician or a Special Effects Pyrotechnician and is qualified to purchase and supervise the display of pyrotechnic special effect fireworks under the *Act*;

“Pyrotechnics Permit” means a current and valid permit in the form prescribed by the District from time to time, specifying and authorizing a person to discharge pyrotechnic special effect fireworks;

“Pyrotechnic Special Effects Firework” means a high hazard firework that is classed as a subdivision 5 of Division 2 of Class 7 Firework under the *Act* and that is used to produce a special pyrotechnic effect for indoor or outdoor performances and includes black powder bombs, bullet effect, flash powder, air bursts, smoke compositions, gerbs, lances and wheels;

“Pyrotechnic Special Effects Fireworks Event” means an event or production, generally for the entertainment industry, where a pyrotechnics permit has been issued to allow the discharge of pyrotechnics special effects fireworks;

“Sell” includes offer for sale, cause or permit to be sold, trade, or to otherwise dispose of and to possess for the purpose of sale and the words “selling” and “sold” have a similar meaning; and

### **3. PROHIBITIONS:**

- a) No person may buy, sell, hold, possess, store, discharge or otherwise use any prohibited fireworks.
- b) No person may buy, sell, hold, possess, store, discharge or otherwise use firecrackers.
- c) No person may hold, possess, store, discharge or otherwise use consumer fireworks or display fireworks without a permit.
- d) No person may discharge consumer fireworks except on October 31<sup>st</sup> of each year between 5:00 p.m. and 10:00 p.m. or through exceptional circumstances as approved by the Chief Administrative Officer or his designate.
- e) No consumer fireworks or display fireworks permit holder may hold, possess, store, discharge or otherwise use consumer fireworks or display fireworks in contravention of a permit.
- f) No person may hold, possess, store, discharge or otherwise use fireworks in a manner that increases the risk of physical injury to any person or damage to any public or private property.
- g) No person under the age of nineteen (19) years may hold, possess, store, discharge or otherwise use any fireworks.
- h) No person being the parent or guardian of any person under the age of nineteen (19) years shall allow that person to hold, possess, store, discharge or otherwise use any fireworks.
- i) No person may hold, possess, store, discharge or otherwise use pyrotechnic special effects fireworks without a pyrotechnics permit.
- j) No pyrotechnics permit holder may hold, possess, store, discharge or otherwise use the pyrotechnic special effect fireworks in contravention of a pyrotechnics permit.

#### **4. PERMITS FOR CONSUMER FIREWORKS OR DISPLAY FIREWORKS**

- a) Any person nineteen (19) years of age or older, before discharging consumer fireworks or display fireworks, must apply for and receive a permit.
- b) Permit applications for consumer fireworks events must be submitted to the District no later than 12:00 noon on October 31<sup>st</sup> and, if October 31<sup>st</sup> falls on a day other than a business day, no later than 12:00 noon of the last business day prior to October 31<sup>st</sup>.
- c) In the case of a consumer fireworks event deemed by Council to be an exceptional circumstance as stated by policy, the required consumer fireworks permit application must be submitted no later than thirty (30) days prior to the date upon which the consumer fireworks event is to occur.
- d) Permit applications for display fireworks events must be submitted to the District at least thirty (30) days prior to the date upon which the display fireworks event is to occur.
- e) All permit applications must include:
  - i) a completed Application for Permit in the form prescribed by the District from time to time;
  - ii) if the consumer fireworks event or display fireworks event is to occur on property that is not owned by the applicant or is on property owned or controlled by the District, a written agreement of the property owner in the form prescribed by the District from time to time;
  - iii) if the consumer fireworks event or display fireworks event is being organized or sponsored by any person other than the applicant, a written agreement of such person in the form prescribed by the District from time to time;
  - iv) evidence that the applicant is a Certification Card holder.
- f) The District will consider all permit applications and issue a permit to the applicant if:
  - i) in the case of municipal property, the property upon which the consumer fireworks event or display fireworks event is to occur is available for such use on the date and time set out in the application;
  - ii) the consumer fireworks event or display fireworks event will not, in the opinion of the District, create a public safety risk to public or private property;
  - iii) the applicant has submitted to the District the items described in section 4(a) and any additional information in relation to the consumer fireworks event or display fireworks event that the District may reasonably require to determine whether the consumer fireworks event or display fireworks event will create a public safety risk or risk to public or private property; and
  - iv) for a display fireworks event, the applicant has submitted to the District a site plan including firing location and limiting distance set out in the Act, and a copy of the applicant's insurance policy that meets the insurance requirements listed in Schedule "A".

## **5. PYROTECHNICS PERMITS FOR PYROTECHNIC SPECIAL EFFECTS FIREWORKS**

- a) Permit applications for pyrotechnic special effects fireworks events must be submitted to the District at least thirty (30) days prior to the date upon which the pyrotechnic special effects fireworks event is to occur.
- b) The District may issue a pyrotechnics permit to discharge pyrotechnic special effects fireworks to a person who is over the age of nineteen (19) years provided that the applicant meets all the requirements of this bylaw and submits:
  - i) a completed Application for Pyrotechnics Permit in the form prescribed by the District from time to time;
  - ii) a copy of the Explosive Regulatory Division event approval;
  - iii) a fire safety plan approved by the Fire Chief after the Fire Chief has visited the location for the pyrotechnics special effects fireworks event and determined the amount of fire protection required;
  - iv) if the pyrotechnic special effects fireworks event is to occur on property that is not owned by the applicant or is on property owned or controlled by the District, a written agreement of the property owner in the form prescribed by the District from time to time;
  - v) if the pyrotechnic special effects fireworks event is being organized or sponsored by any person other than the applicant, a written agreement of such person in the form prescribed by the District from time to time;
  - vi) site plan, drawn to scale, with the direction of firing, separation distances, position of ramps and mortars, any significant ground features, rights of way, buildings or structures, overhead obstructions, parking areas or spectator viewing areas, fallout zone, north arrow, traffic control plans and location of emergency vehicles indicated;
  - vii) an event description, which should include a time schedule of the event, attendance estimates, lists of fireworks or explosives or flammable and/or combustible products to be used, firing procedures, emergency response procedures and a list of crew members;
  - viii) a valid permit if consumer fireworks or display fireworks are used in the pyrotechnics special effects fireworks event; and
  - ix) proof acceptable to the District that the applicant holds either a valid Level 1 Certification Card or, for unconventional sites as defined by the Explosives Regulatory Division, a valid Level 2 Certification Card, issued by the Explosives Regulatory Division.
- c) Every pyrotechnics permit issued must:
  - i) specify the fireworks that the pyrotechnics permit holder are authorized to discharge;
  - ii) specify the day and the hours on which, and the description of the property or place, where the fireworks may be discharged;

- iii) include a copy of the applicant's insurance policy that meets the insurance requirements listed in Schedule "A".

**6. PYROTECHNIC SPECIAL EFFECTS FIREWORKS – COST RECOVERY CHARGES:**

The District may recover all costs and expenses it incurs incidental to the provision of any fire protection services for a pyrotechnics event, jointly and severally from any person who at the time had the charge, management or control of the building or premises where the pyrotechnics special effects fireworks event occurred. If that person fails to pay those costs and expenses within six (6) months after they are incurred, the District may recover those costs and expenses from the owner of the real property by direct invoice, together with interest at the rate set out in the *Community Charter*. Default on those costs, expenses and interest, when they relate to fire protection for real property, will result in the amount being added to the property taxes of the owner of the real property.

**7. ENFORCEMENT**

- a) No person shall obstruct a Peace Officer or any other designated person engaged in the administration or enforcement of this bylaw.
- b) Every person who contravenes a provision of this Bylaw commits an offence and each day that the violation is caused or allowed to continue constitutes a separate offence.
- c) Any person guilty of an infraction of this bylaw is liable on summary conviction, to a fine of not less than \$100.00 and not more than \$10,000.00 or imprisonment not exceeding the maximum allowed by the *Offence Act*.
- d) A Peace Officer may rescind a permit if:
  - i) the permit holder or pyrotechnics permit holder fails to comply with any term or condition of the permit or pyrotechnics permit without the prior written consent of the District; or
  - ii) the permit holder or pyrotechnics permit holder violates or breaches any of the provisions of this bylaw; or
  - iii) circumstances arising or ascertained after the permit or pyrotechnics permit was issued demonstrate that a public safety risk to public or private property exists in connection with the fireworks event; or
  - iv) the District determines that the permit holder or pyrotechnics permit holder submitted false or inaccurate information in his or her permit or pyrotechnics permit application.
- e) Every person who possesses or discharges fireworks contrary to the provisions of this bylaw commits an offence and shall, when directed to do so, surrender all fireworks in their immediate possession to a Peace Officer who shall be authorized to search and seize and hold all such firecrackers or fireworks in the interest of public safety and as evidence of the commission of the offence.
- f) Fireworks seized under this bylaw may be disposed of without compensation.

**8. EXEMPTION**

This bylaw does not prohibit or regulate the use of torpedoes, flares, fuzzes or similar pyrotechnic devices by motorists, boat operators, railroads, police or other agencies for signalling purposes or illumination.

**9. VALIDITY OF BYLAW**

If a court of competent jurisdiction declares any portion of this bylaw invalid, then the invalid portion must be severed and the remainder of the bylaw is deemed valid.

Schedule "A" attached to this bylaw forms part of this bylaw.

**10. REPEAL**

District of Port Hardy "Fireworks Regulation Bylaw No. 963, 1997" is hereby repealed.

Read a first time the 8<sup>th</sup> day of June, 2010.

Read a second time the 8<sup>th</sup> day of June, 2010.

Read a third time the 8<sup>th</sup> day of June, 2010.

Adopted the 22<sup>nd</sup> day of June, 2010.

*Original signed by:*

\_\_\_\_\_  
Director of Corporate Services

\_\_\_\_\_  
Mayor

Certified to be a true copy of  
Fireworks Regulation Bylaw 05-2010.

\_\_\_\_\_  
Director of Corporate Services

## **SCHEDULE "A"**

### **Insurance Requirements**

A display fireworks permit holder or a pyrotechnics permit holder shall, at his or her own expense, for the duration of the fireworks event or pyrotechnic special effects fireworks event, secure and maintain a comprehensive general liability insurance policy with an inclusive limit of not less than \$3,000,000 per occurrence for bodily injury and property damage.

1. The Comprehensive General Liability insurance policy shall:
  - a) include all premises and operations necessary or incidental to the fireworks event or pyrotechnic special effects fireworks event;
  - b) include the municipality, its elected officials, officers, agents and employees and contractors acting on behalf of the municipality, as additional insured;
  - c) be primary and non-contributing with respect to any insurance carried by the municipality;
  - d) not include a deductible greater than \$5,000.00 per occurrence (unless the municipality advises in writing that it has determined that a greater deductible is acceptable);
  - e) include a provision requiring the insurer to give the municipality fourteen (14) days prior written notice before making any material change to the insurance coverage or the termination or cancellation thereof;
  - f) provide that the municipality, its elected officials, officers, agents and employees and contractors acting on behalf of the municipality are protected notwithstanding any act, neglect or misrepresentation of the display fireworks permit holder or the pyrotechnics permit holder which might otherwise result in the avoidance of a claim and that such policy is not affected or invalidated by any act, omission or negligence of any third party which is not within the knowledge or control of the insured; and
  - g) be underwritten by a responsible insurance company or companies licensed to do business in the Province of British Columbia and that meet with the reasonable approval of the municipality.
2. Twenty-one (21) days prior to the fireworks event or pyrotechnic special effects fireworks event and upon the municipality's written request from time to time, the display fireworks permit holder or pyrotechnics permit holder shall furnish the municipality with a certificate or certificates of insurance as evidence that the required insurance is in force.
3. Maintenance of the insurance required herein and the performance by the display fireworks permit holder or pyrotechnics permit holder of his or her obligations under this clause shall not relieve the display fireworks permit holder or pyrotechnics permit holder from liability under any covenant to indemnify the municipality.
4. It shall be the sole responsibility of the display fireworks permit holder or pyrotechnics permit holder to determine his or her own additional insurance coverages, if any, including workers' compensation, that are necessary and advisable for his or her own protection or to fulfil his

or her obligations with respect to the fireworks event or pyrotechnic special effects fireworks event. Any such additional insurance shall be secured and maintained by the display fireworks permit holder or pyrotechnics permit holder at his or her own expense.

5. The foregoing insurance provisions shall not limit the insurance the display fireworks permit holder or pyrotechnics permit holder is required to secure and maintain by Provincial or Federal law.
6. If the display fireworks permit holder or pyrotechnics permit holder fails to secure or maintain insurance as required herein, then the municipality shall have the right, but not the duty or obligation, to secure and maintain such insurance and give evidence thereof to the display fireworks permit holder or pyrotechnics permit holder. The display fireworks permit holder or pyrotechnics permit holder shall pay the cost thereof to the municipality on demand or the municipality may deduct such cost from any amount that is due or may become due to the display fireworks permit holder or pyrotechnics permit holder from the municipality.