

ORDINANCE NO. **BG2011 – 51**

ORDINANCE AMENDING CODE OF ORDINANCES

ORDINANCE AMENDING CHAPTER 15
(BUSINESS AND GENERAL REGULATIONS) OF
THE CITY OF BOWLING GREEN CODE OF
ORDINANCES RELATED TO THE SALE AND USE
OF FIREWORKS

WHEREAS, the 2011 Kentucky General Assembly enacted House Bill 333 expanding the type of fireworks permitted to be sold and used within the Commonwealth; and,

WHEREAS, House Bill 333 specifically authorized local governments to enact ordinances regulating the sale and use of fireworks; and,

WHEREAS, the Board of Commissioners of the City of Bowling Green adopted Ordinance No. BG2011-21 regulating the sale and use of fireworks; and,

WHEREAS, that ordinance was amended by Ordinance No. BG2011-36 to limit the months during which consumer fireworks could be discharged; and,

WHEREAS, it is in the best interests of the City to further amend Chapter 15 to further regulate the sale and use of fireworks.

NOW, THEREFORE, BE IT ORDAINED by the City of Bowling Green, Kentucky as follows:

1. Chapter 15 (Business and General Regulations) is hereby amended to add a new Subchapter to read as follows:

15-5 STORAGE, SALE AND USE OF FIREWORKS.

15-5.01 Definitions.

Unless the context requires otherwise, the following terms as used in this Subchapter shall have the following meanings:

“Ancillary Fireworks Retailer” shall mean any person, partnership, corporation or other business entity which is open to the public year round and which offers for sale, exposes for sale, sells

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at retail or wholesale, or keeps with the intent to sell fireworks defined in KRS 227.702(1), with such sales being ancillary to its primary business, with ancillary being defined as ten percent (10%) or less of the gross sales of the business entity.

“Competent Display Operator” shall have the same definition as set out in KRS Chapter 227.710.

“Consumer Fireworks” shall have the same definition as set out in KRS Chapter 227.702.

“Display Fireworks” shall have the same definition as set out in KRS Chapter 227.706.

“Fireworks” shall have the same definition as set out in KRS Chapter 227.700, including the applicable exceptions set forth in that statute.

“Permanent Fireworks Retailer” shall mean any person, partnership, corporation or other business entity which is open to the public year round and which offers for sale, exposes for sale, sells at retail or wholesale or keeps with the intent to sell any Consumer Fireworks as its primary course of business.

“Pyrotechnic Devices” shall have the same definition as set out in KRS Chapter 227.

“Seasonal Fireworks Retailers” shall have the same definition as set out in KRS Chapter 227.715.

15-5.02 Storage of Fireworks.

a. The storage of fireworks, consumer fireworks, display fireworks or theatrical pyrotechnic devices at retail, wholesale, storage or manufacturing facilities shall be reported in writing to the City of Bowling Green Fire Chief or his designee and shall comply with all of the provisions set out in KRS Chapter 227, National Fire Protection Association (NFPA) 1124 (current edition) and other applicable federal and state laws with the exception that the storage of fireworks, consumer fireworks, display fireworks or theatrical pyrotechnic devices shall not be allowed within seventy-five (75) feet of fuel pumps or in multiple-tenant buildings. ~~and~~ All such storage shall be in stand alone permanent

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structures. All such stand alone permanent structures shall have a minimum of fifty (50) feet separation from adjacent buildings and structures.

b. The storage of such fireworks shall also comply with applicable City building and fire regulations, zoning regulations and business registration requirements and the notification to the Fire Chief or his designee shall include a zoning verification letter and a copy of the City's business registration form. The notification shall also include a site plan showing the size of the lot, the location of the permanent structure, the setback of the structure from the right-of-way, locations of adjacent structures, including fuel pumps, and other information that may be required by the Fire Chief. The notification shall include a copy of a deed to the property or a written lease from the owner or authorized agent of the owner of the property granting permission or consent to the tenant to store fireworks at that location.

15-5.03 Display Fireworks.

a. No person, firm, partnership, corporation or other business entity shall offer for sale, expose for sale, sell at retail, keep with the intent to sell, possess, use or explode any display fireworks except as authorized in KRS 227.710.

b. The Fire Chief or his designee may grant permits for supervised public displays of fireworks with such public displays handled by a competent display operator. All public displays must comply with the provisions of KRS 227.710 and no permit shall be approved without documentation that the display has been approved by the State Fire Marshal. The permit shall be valid only for the specific authorized public display event, shall be valid only for the designated permittee and shall not be transferable.

15-5.04 Sale and Use of Fireworks.

a. No person, firm, partnership, corporation or other business entity not classified as an ancillary fireworks retailer shall offer for sale, expose for sale, sell at retail or keep with the intent to

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sell any fireworks, including consumer fireworks, without a permit approved by the City of Bowling Green Fire Chief or his designee. The permit application shall include the name, address and phone number of the applicant, the address or addresses of the proposed sale site and any other information deemed necessary by the Fire Chief. Separate permits shall be issued for each proposed fireworks sale site of the applicant. No permit shall be granted without the approval of the State Fire Marshal if applicable. Permits shall not be required for ancillary fireworks retailers.

b. All permit applications shall be submitted a minimum of fifteen (15) days prior to the proposed sale of fireworks, including consumer fireworks. Each ~~ancillary fireworks retailer~~, seasonal fireworks retailer and permanent fireworks retailer permit shall be valid for one year and may be renewed annually for the same location.

c. Ancillary fireworks retailers may only ~~be authorized to~~ sell consumer fireworks as defined in KRS 227.702(1). Ancillary fireworks retailers are not subject to the remaining provisions of this subchapter.

d. The sale of fireworks, including consumer fireworks, by ~~ancillary fireworks retailers~~, permanent fireworks retailers and seasonal fireworks retailers is subject to the provisions of KRS Chapter 227 and NFPA 1124 (current edition) except as set out hereinbelow:

1. The sale of consumer fireworks as defined in KRS 227.702(1) shall be allowed in multiple-tenant buildings and in stand alone structures. All permitted structures shall have a minimum of seventy-five (75) feet separation from adjacent gas pumps.

2. The sale of consumer fireworks as defined in KRS 227.702(1) shall comply with applicable City building and fire regulations, zoning regulations, sign regulations and business registration regulations and a copy of the City's business registration form shall be submitted with the permit application.

13. The sale of ~~fireworks, including~~ consumer fireworks as defined in KRS

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227.702(2) and (3) shall not be allowed in multiple-tenant buildings and all such sales shall be in stand alone structures. All such stand alone structures shall have a minimum of fifty (50) feet separation from adjacent buildings and structures and seventy-five (75) feet separation from any fuel pumps.

24. The sale of ~~fireworks, including~~ consumer fireworks as defined in KRS 227.702(2) and (3) shall comply with applicable City building and fire regulations, zoning regulations, sign regulations and business registration regulations, and a zoning verification letter and a copy of the City's business registration form shall be submitted with the permit application. The application shall also include a site plan showing the size of the lot, the location of the stand alone structure, the setback of the structure from the right-of-way, locations of adjacent structures, including fuel outlets and other fireworks retail locations, and other information that may be required by the Fire Chief or his designee. Applicants for fireworks sales permits, ~~including consumer fireworks,~~ shall provide a copy of a deed to the property or a written lease or similar document from the owner or authorized agent of the owner of the property granting permission or consent for the applicant to sell fireworks at that location.

35. Any language in NFPA 1124 establishing a size exemption for the applicability of NFPA 1124 is hereby repealed and all sales of fireworks, including consumer fireworks, shall be subject to the provisions of this Subchapter.

e. No fireworks, including consumer fireworks, may be given to, offered for sale or sold to any person under the age of eighteen (18) and no person under the age of eighteen (18) shall sell fireworks, including consumer fireworks, unless the individual is supervised by a parent or guardian.

f. Any person or business entity applying for a permit to sell ~~fireworks, including~~ consumer fireworks as defined in KRS 227.702(2) and (3) shall provide proof of general liability insurance in an amount of not less than one million (\$1,000,000) dollars per occurrence for bodily injury liability, property damage liability or both combined.

g. Any permit issued for the sale of fireworks, including consumer fireworks, shall be

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prominently displayed at each location where the fireworks are sold.

h. Appropriate City fire inspectors, building inspectors, code enforcement inspectors and police officers shall be authorized to inspect the permitted site without notice and without consent during the reasonable operating hours of the permittee.

i. Persons may use, ignite, fire or explode those fireworks authorized by KRS Chapter 227 and this Subchapter in the City. Fireworks, including consumer fireworks, may only be used between the hours of noon and 10:00 p.m. on June 27th through July 3rd and on July 5th and between the hours of noon and 11:00 p.m. on July 4th of any year. Any person wishing to use, ignite, fire or explode those fireworks authorized by KRS Chapter 227 and this Subchapter in the City on any other days shall obtain a permit from the City Fire Chief or his designee with the issuance of the permit conditioned on the applicant complying with all applicable state and local laws, rules and regulations. The permit application shall be filed no later than fifteen days prior to the proposed use of the fireworks and shall be on a form provided by the City. The permit, if granted, shall be valid for a four (4) hour period on the permitted date between the hours of noon and 9:00 p.m. between the hours of 10:00 a.m. and 12:30, but may not be used, ignited, exploded or discharged during the months of August, September and October of any year. Fireworks, including Consumer fireworks, as defined in KRS 227.7023 (2), and (3) and (4) may only be used by individuals at least eighteen (18) years of age and shall not be ignited within two hundred (200) feet of any structure, vehicle or any other person. Fireworks, including consumer fireworks, shall not be ignited or discharged from a motor vehicle and shall not be ignited or discharged on property of another without the consent of the owner or occupant or on public property.

15-5.05 Permit Fees.

Due to the need to closely inspect and monitor the sale of fireworks, the City of Bowling Green hereby imposes fees to cover the cost of the inspection of facilities and inspections of the sale of

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fireworks. The fees for permits required by this Subchapter are as follows:

a. There shall be no fee for the review, issuance and inspections for a display fireworks permit or for the use permit required in 15-5.04(i) above.

b. The fee for the review, issuance and inspections for a seasonal fireworks retail permit and a permanent fireworks retail permit for the sale of consumer fireworks as defined in KRS 227.702(1) ~~an ancillary fireworks retail permit~~ shall be twenty-five (\$25.00) ~~five hundred (\$500.00)~~ dollars for the initial annual permit and the same two hundred and fifty (\$250.00) ~~dollars~~ for each annual renewal. This permit fee shall be in addition to all other occupational license fees payable by the permittee.

c. The fee for the review, issuance and inspections for a seasonal fireworks retail permit and a permanent fireworks retail permit for the sale of consumer fireworks as defined in KRS 227.702(2) and (3) shall be one thousand (\$1,000.00) dollars annually. This permit fee shall be in addition to all other occupational license fees payable by the permittee. If consumer fireworks as defined in KRS 227.702(1) are also sold, the total annual fee shall be one thousand (\$1,000.00) dollars.

d. All permits required by this Subchapter shall be issued by the Fire Chief or his designee. All permit fees shall be payable to the City of Bowling Green and are to be submitted to the City's Finance Department located in the City Hall Annex prior to the issuance of any permit.

15-5.06 Penalties, Revocation or Suspension of Permit and Removal of Fireworks.

a. Any person convicted of violating Subsection 15-5.04(i) shall be deemed guilty of a violation and subject to the monetary fine set out in the Kentucky Revised Statutes.

b. Any person convicted of violating the remaining provisions of this Subchapter shall be deemed guilty of a misdemeanor and shall be fined not more than one thousand (\$1,000.00) dollars, or imprisoned for not more than thirty (30) days, or both.

c. The Fire Chief may revoke or suspend the permit of any person or business entity that

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violates the provisions of this Subchapter, including but not limited to, the failure of the permittee to comply with this Subchapter and other laws and regulations involving the sale, display or storage of fireworks, the failure of the permittee to pay the appropriate permit fees and other taxes and fees payable to the City, and the submission by the permittee of an application that contains material false or untrue statements.

d. Any fireworks stored, sold or used in violation of this Subchapter may be removed by the Fire Chief or his designee in cooperation with the State Fire Marshal pursuant to the provisions of KRS 227.750.

2. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared invalid, such declaration of invalidity shall not affect the validity of the remainder of this Ordinance.

3. All prior Municipal Orders or Ordinances or parts of any Municipal Order or Ordinance in conflict herewith are hereby repealed.

4. This Ordinance is adopted pursuant to KRS 83A.060 in that it was introduced on December 6, 2011, and given final reading on December 20, 2011, and said Ordinance shall be in full force and effect upon signature, recordation and publication in summary pursuant to KRS Chapter 424.

ADOPTED: December 20, 2011

APPROVED: Bruce Wilkerson
Mayor, Chairman of Board of Commissioners

ATTEST: Kate Schaller
City Clerk

SPONSORED BY: Melinda Hill, Commissioner, 11/28/2011, 12:00 p.m.