

ORDINANCE RELATING TO FIREWORKS

SUMMARY: AN ORDINANCE ESTABLISHING A PERMITTING PROCESS FOR THE SALE OF CONSUMER FIREWORKS WITHIN THE COUNTY WHICH REQUIRES THOSE ENGAGED IN SELLING FIREWORKS TO LOCATE IN HIGHWAY COMMERCIAL OR LIGHT INDUSTRIAL ZONING DISTRICTS, PROVIDED THAT SEASONAL FIREWORKS RETAILERS MAY LOCATE IN GENERAL BUSINESS ZONING DISTRICTS IF FACILITY IS A MINIMUM OF 300 FEET FROM RESIDENTIAL STRUCTURES, AND TO BE ISSUED A PERMIT BY STATE AND LOCAL FIRE AUTHORITIES, AND TO MEET FEDERAL, STATE, AND LOCAL SAFETY STANDARDS, AND TO MAINTAIN LIABILITY INSURANCE

WHEREAS, the Kentucky Legislature enacted House Bill 333 which amended KRS Chapter 227 thereby expanding the type of fireworks that are permitted to be sold and used within the Commonwealth of Kentucky; and

WHEREAS, KRS 227.750 (4) specifically authorizes local government entities to enact ordinances that affect the sale or use of fireworks within their jurisdiction; and

WHEREAS, the Henderson Fiscal Court has determined it to be in the best interest of the community to regulate the sale of fireworks and to designate the zoning districts in which fireworks shall be sold; and

WHEREAS, the County of Henderson, by the enactment of this ordinance, shall require persons or entities engaged in the seasonal or permanent sale of Consumer Fireworks as defined in the KRS 227.702, which are generally described as aerial devices and audible ground devices, to have a business license, meet certain safety standards as established by applicable federal, state, and local law, maintain minimal levels of liability insurance, and be, at all times, in possession of a valid permit issued by the state Fire Marshal and a valid permit issued by the Henderson County Sheriff or his designee where required under this ordinance, and be located in designated zoning districts.

NOW, THEREFORE, BE IT ORDAINED by the County of Henderson, Kentucky, as follows:

Regulation of Fireworks.

1. Title. This ordinance shall be known and may be cited as the "Fireworks Enforcement Code."

2. Definitions. The following words, terms and/or phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Aerial or Audible Consumer Fireworks shall mean those Consumer Fireworks described in KRS 227.702 (2) and (3) only.

Ancillary Fireworks Retailer shall mean any person, business entity, association, or corporation of any kind which is open to the public year round and at least 20 calendar days per month, and which offers for sale, exposes for sale, sells at retail or wholesale, or keeps with intent to sell only those fireworks as described in KRS 227.702 (1) and which such sales are ancillary to its primary course of business.

Consumer Fireworks shall have the same meaning as in KRS 227.702.

Fireworks shall have the same meaning as in KRS 227.700 except it shall not include those described in KRS 227.702 (1).

Permanent Fireworks Retailer shall mean any person, business entity, association, or corporation of any kind which is open to the public year round and at least 20 calendar days per month, and, which offers for sale, exposes for sale, sells at retail or wholesale, or keeps with intent to sell any Consumer Fireworks as its primary course of business.

Seasonal Fireworks Retailer shall mean any person, business entity, association, or corporation of any kind which is not considered a Permanent Fireworks Retailer, and which offers for sale, exposes for sale, sells at retail or wholesale, or keeps with intent to sell any Consumer Fireworks described in KRS 227.702 (2) and/or (3).

3. The use or sale of fireworks, including Consumer Fireworks, is prohibited except as set forth herein. The use or sale of any fireworks other than Consumer Fireworks, including Display Fireworks as defined in KRS 227.706, are subject to the applicable restrictions of state, federal, and local law.

4. Fireworks and Consumer Fireworks shall not be used, ignited, fired, or exploded in Henderson County, Kentucky, except as follows:

(A) Fireworks and Consumer Fireworks must be handled, stored, used, possessed, and sold in accordance with all applicable federal, state, and local law.

(B) Fireworks and Consumer Fireworks may only be used, ignited, fired, or exploded between the hours of 10:00 a.m. and 10:00 p.m., except, that they may be used, ignited, fired, or exploded between the hours of 10:00 a.m. on December 31st to midnight on January 1st, and also between the hours of 10:00 a.m. and midnight on the following dates or holidays: July 3rd, July 4th, and Memorial Day.

(C) Notwithstanding any provision herein to the contrary, and regardless of the day of the week on which July 4th falls, persons may use, ignite, fire, or explode Fireworks or Consumer Fireworks on any date specifically named or designated by the Henderson County Fiscal Court as the date to celebrate Independence Day for the County, if other than the actual date of July 4th between the hours of 10:00 a.m. and midnight.

(D) No person may use, ignite, fire, or explode any fireworks or Consumer Fireworks as defined in KRS 227.702 (2) and (3) if they are under the age of eighteen (18), or within two hundred (200) feet of any structure, motor vehicle (whether operational or non-operational), or any other person.

5. Seasonal Fireworks Retailers and Permanent Fireworks Retailers within the Henderson County, Kentucky shall:

(A) Submit an application for a "Retail Fireworks Permit" to the Henderson Sheriff's Department, at least fifteen (15) days prior to the applicant's desired effective date for the Retail Fireworks Permit, on a form approved by the Henderson County Sheriff which shall, in addition to any requirements established by the Sheriff or his designee, at a minimum require the submission of the name, phone number, and permanent address of the applicant. In the event that the applicant desires to operate multiple locations, a separate application does not have to be submitted for each location, however, each location must have a separate Firework Sales Permit. Additionally, all applications must include a detailed site plan for the proposed location which must be in a Highway Commercial or Light Industrial zoning district, provided however, that Seasonal Fireworks Retailers are also allowed to locate in General Business zoning districts provided that the facility from which the fireworks are sold and/or stored is at least three hundred feet (300') from any residential structure measured from a corner of the facility which is nearest the residential structure in a straight line to the nearest corner of the residential structure. The site plan shall also be submitted to the County Codes department, and the application shall contain the address of the proposed location, and contact information for the owner of the proposed location if other than the applicant. Further, the provisions contained in the County's zoning ordinance prohibiting more than one (1) business or building per lot shall not apply to the facilities used by Seasonal Fireworks Retailers in any zoning districts in which they are allowed; and

If the aforesaid 300' distance requirement from a residential structure is violated, then the owner of the business conducted in the Seasonal Fireworks Retailer facility shall be cited and assessed a civil penalty in the amount of two hundred fifty dollars (\$250.00) to be paid to the County Treasurer within ten (10) business days of the issuance of the citation. Should the penalty not be paid within said ten (10) days, then the County may seek to collect said sum in the Henderson District Court, together with legal interest, court costs and attorney fees. Each day a violation occurs shall constitute a separate offense.

(B) Provide proof of registration with the state Fire Marshal in accordance with the applicable provisions of Chapter 227 of the Kentucky Revised Statutes, and

(C) Obtain a signature on the application from the Henderson City-County Planning Commission indicating that the proposed location on the application is zoned appropriately for the conduct of said business; and

(D) Provide a certificate of insurance or other valid proof of general liability insurance in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence which shall remain in effect at all times while engaged in the permitted activity, and

(E) Pay a permit fee according to the following table:

Type of Applicant	Permit Fee	Permit Period
Seasonal Fireworks Retailer	\$500.00 Per Location	Automatically expires 60 calendar days after the effective date
Permanent Fireworks Retailer	\$3000.00 Per Location	Automatically expires 365 calendar days after the effective date or upon a date in which the location no longer qualifies as a Permanent Fireworks Retailer as defined herein
Permanent Fireworks Retailer (Renewal)	\$600.00 Per Location	Automatically expires 365 calendar days after the effective date or upon a date in which the location no longer qualifies as a Permanent Fireworks Retailer as defined herein

In the event that an applicant wishes to operate more than one geographical location within the County, each location must have a separate permit and each permit is subject to the applicable permit fee, and

(F) Comply with all aspects of applicable provisions of Chapter 227 of the Kentucky Revised Statutes, the International Building Code with Kentucky Amendments (adopted edition), NFPA 1124 (National Fire Protection Association) and the Code of Ordinances of the Henderson County; and

(G) Not allow any person under eighteen (18) years of age to sell Consumer Fireworks, and

(H) Not give, offer for sale, or sell any Consumer Fireworks to any person under eighteen (18) years of age, and

(I) Not offer for sale, expose for sale, or sell Consumer Fireworks except between the hours of 8:00 a.m. and 10:00 p.m.

6. A valid Retail Fireworks Permit must be prominently displayed at each location and at all times during the hours of operation. The Henderson County Sheriff or his designee may revoke or suspend any Retail Fireworks Permit of any site which is in violation of this ordinance or Chapter 227 of the Kentucky Revised Statutes or any County Ordinance.

7. Ancillary Fireworks Retailers shall:

(A) Comply with all aspects of the applicable provisions of Chapter 227 of the Kentucky Revised Statutes, the International Building Code with Kentucky Amendments (adopted edition), NFPA 1124 (National Fire Protection Association) and Henderson County Ordinances, and

(B) Not give, offer for sale, or sell any Consumer Fireworks to any person under eighteen (18) years of age, and

(C) Not offer for sale, expose for sale, sell at retail or wholesale, or keep with intent to sell any Consumer Fireworks other than those described in KRS 227.702 (1), and

(D) Maintain a certificate of insurance or other valid proof of general liability insurance in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence.

8. Criminal Penalties:

(A) Any person or entity convicted of violating paragraph 4(B) of this ordinance shall be deemed guilty of a misdemeanor and shall be subject to a fine of not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00). Each day a violation occurs shall constitute a separate offense.

(B) Any person or entity convicted of violating any provision of this ordinance other than paragraph 4 (B) or the distance requirement in paragraph 5 (A) shall be deemed guilty of a misdemeanor and shall be subject to a fine of not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1000.00), or imprisonment for a period not to exceed thirty (30) days, or both such fine and imprisonment. Each day a violation occurs shall constitute a separate offense.

9. The provisions of this Ordinance are severable, and if any section, phrase or provision hereof shall for any reason be declared invalid or unenforceable, such declaration shall not affect the validity of the remainder hereof. Where any provision of this ordinance is in conflict with any other provision of applicable federal, state, or local law or regulation or any permit issued pursuant to this ordinance or the Kentucky Revised Statutes, the more restrictive provision(s) shall prevail.

All ordinances or parts of ordinances in conflict herewith are hereby repealed and superseded to the extent of such conflict.

This ordinance shall become effective upon its legal adoption.

On first reading of the foregoing ordinance, it was moved by Magistrate _____, seconded by Magistrate _____, that the ordinance be adopted on its first reading:

On roll call the vote stood:

Magistrate Warren: _____ Magistrate Alexander: _____
Magistrate Todd: _____ Magistrate Wilkerson: _____
Magistrate Puttman: _____ County Judge McCormick: _____

WHEREUPON, County Judge McCormick declared the ordinance adopted on first reading and ordered that it be presented for a second reading by the Fiscal Court.

On second reading of the foregoing ordinance, it was moved by Magistrate _____, seconded by Magistrate _____, that the ordinance be adopted on its first reading:

On roll call the vote stood:

Magistrate Warren: _____

Magistrate Alexander: _____

Magistrate Todd: _____

Magistrate Wilkerson: _____

Magistrate Puttman: _____

County Judge McCormick: _____

WHEREUPON, County Judge McCormick declared the ordinance adopted, affixed his signature and the date and ordered that it be recorded.

Donald H. McCormick,
County Judge Executive
Date: _____

ATTEST:

Sue Baker, Fiscal Court Clerk