

11/03/2011

Ordinance

141-2011

ORDINANCE NO. 141-2011

AN ORDINANCE CREATING AND ENACTING CHAPTER 9A OF THE CODE OF ORDINANCES OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT PERTAINING TO FIREWORKS, AND MORE SPECIFICALLY CREATING SECTION 9A-1 OF THE CODE PROVIDING FOR A TITLE; CREATING SECTION 9A-2 OF THE CODE DEFINING ANCILLARY FIREWORKS RETAILER, CONSUMER FIREWORKS, FIREWORKS, PERMANENT FIREWORKS RETAILER, AND SEASONAL FIREWORKS RETAILER; CREATING SECTION 9A-3 OF THE CODE PROHIBITING USE OR SALE EXCEPT AS PROVIDED IN ORDINANCE AND PROVIDING ADDITIONAL REQUIREMENTS FOR USE OR SALE OF NON-CONSUMER AND DISPLAY FIREWORKS; CREATING SECTION 9A-4 OF THE CODE PROVIDING FOR COMPLIANCE WITH APPLICABLE FEDERAL, STATE AND LOCAL LAWS; PROVIDING FOR USE BETWEEN 10 A.M. AND 10 P.M. ONLY EXCEPT ON DECEMBER 31ST, JULY 3RD, JULY 4TH OR OFFICIALLY RECOGNIZED INDEPENDENCE DAY, WHEN USE ALLOWED UNTIL 12 A.M.; PROHIBITING POSSESSION OR USE BY PERSONS UNDER THE AGE OF EIGHTEEN YEARS; PROHIBITING USE WITHIN TWO HUNDRED FEET OF ANY STRUCTURE, MOTOR VEHICLE, OR ANY OTHER PERSON OR DURING A BAN ON BURNING; PROVIDING FOR COMPLIANCE WITH KRS 227.752 STORAGE NOTIFICATION; AND PROVIDING FOR RESPONSIBILITY FOR RESULTANT TRASH AND DEBRIS; CREATING SECTION 9A-5 OF THE CODE PROVIDING FOR RETAIL FIREWORKS PERMIT AND APPLICATION PROCESS INCLUDING INFORMATION ON APPLICANT AND SITE, PROOF OF OTHER COMPLIANCES AND APPROVALS AND INSURANCE COVERAGE, AND PAYMENT OF PERMIT FEES PER LOCATION OF \$500 FOR SEASONAL FIREWORKS RETAILER OR RENEWAL OF PERMANENT FIREWORKS RETAILER AND \$2500 FOR INITIAL PERMANENT FIREWORKS RETAILER; CREATING SECTIONS 9A-6 AND 9A-8 OF THE CODE PROVIDING FOR RESTRICTIONS ON PERMITEES AND/OR RETAILERS INCLUDING DISPLAY OF PERMIT, NO SALES TO OR BY THOSE UNDER THE AGE OF EIGHTEEN YEARS AND SALES BETWEEN 8 A.M. AND 10 P.M. ONLY; CREATING SECTION 9A-7 OF THE CODE PROVIDING FOR SUSPENSION OR REVOCATION OF PERMITS; AND CREATING SECTION 9A-9 OF THE CODE PROVIDING FOR PENALTIES FOR VIOLATIONS NOT TO EXCEED \$1,000, THIRTY (30) DAYS IMPRISONMENT, OR BOTH WITH A MINIMUM FINE OF \$500 FOR VIOLATIONS NOT RELATED TO SECTIONS 9A-4(a) THROUGH (e) OR (g), AND A MINIMUM FINE FOR ALL OTHER VIOLATIONS OF \$100 FOR FIRST OFFENSE, \$200 FOR SECOND OFFENSE WITHIN TWELVE MONTHS AND \$500 FOR A THIRD OR GREATER OFFENSE WITHIN TWELVE MONTHS; ALL EFFECTIVE ON JANUARY 1, 2012.

BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That Section 9A-1 of the Code of Ordinances be and hereby is created and enacted to read as follows:

Sec. 9A-1. Title.

The provisions of this chapter shall be known and may be cited as the "fireworks enforcement code".

Section 2 - That Section 9A-2 of the Code of Ordinances be and hereby is created and enacted to read as follows:

Sec. 9A-2. Definitions.

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

- (a) "Ancillary fireworks retailer" shall mean any person, business entity, association, or corporation of any kind as those terms are defined in section 13-1 of the code, and which offers for sale, exposes for sale, sells at retail or wholesale, or keeps with intent to sell only those types of fireworks described in KRS 227.702(1) and which such sales are ancillary to its primary course of business.

- (b) "Consumer fireworks" shall have the same meaning as in KRS 227.702.
- (c) "Fireworks" shall have the same meaning as in KRS 227.700 except it shall not include those types of fireworks described in KRS 227.702(1).
- (d) "Permanent fireworks retailer" shall mean any person, business entity, association, or corporation of any kind as those terms are defined in section 13-1 of the code, which is open to the public year round, 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.
- (e) "Seasonal fireworks retailer" shall mean any person, business entity, association, or corporation of any kind as those terms are defined in section 13-1 of the code, 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) between June 10 and July 7 only.

Section 3 - That Section 9A-3 of the Code of Ordinances be and hereby is created and enacted to read as follows:

Sec. 9A-3. Use and sale of fireworks.

- (a) The use or sale of fireworks in Fayette County, including consumer fireworks, is prohibited except as set forth herein.
- (b) 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 and federal law and are further prohibited at all times within Fayette County without written approval of the Commissioner of Public Safety or his designee and all necessary permits. The approval of display fireworks by the Commissioner of Public Safety or his designee may include the providing of a variance from the restrictions imposed by Section 9A-4(b). The impact of the noise and any benefit to the community from the display fireworks must be taken into consideration prior to the issuance of any variance. The government may require the applicant for a display permit to reimburse the government for all reasonable costs incurred which are associated with the display, including but not limited to the incurrence of overtime by government personnel.

Section 4 - That Section 9A-4 of the Code of Ordinances be and hereby is created and enacted to read as follows:

Sec. 9A-4. Restrictions.

Fireworks and consumer fireworks shall not be used, ignited, fired, or exploded in Fayette County, 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 on the following dates when the applicable ending hour shall be 12 a.m. (midnight):
 - (1) December 31st (New Year's Eve);
 - (2) July 3rd;
 - (3) July 4th; and

- (4) The date specifically named or designated by the urban county government as the date to celebrate Independence Day, if other than the actual date of July 4th.
- (c) No person under the age of eighteen (18) years of age may possess, use, ignite, fire, or explode any fireworks, or consumer fireworks as defined in KRS 227.702 (2) and (3).
- (d) No person may use, ignite, fire, or explode any fireworks, or consumer fireworks as defined in KRS 227.702(2) and (3), within two hundred (200) feet of any structure, motor vehicle (whether operational or non-operational), or any other person, or in any other place where the person is in violation of any other law, regulation or ordinance.
- (e) No person may use, ignite, fire, or explode any fireworks, or consumer fireworks as defined in KRS 227.702, if otherwise prohibited as part of any ban on burning pursuant to section 9-20 of the code of ordinances.
- (f) Any person subject to the provisions of KRS 227.752 pertaining to storage notification must fully comply with its provisions.
- (g) Any person using, igniting, or exploding fireworks or consumer fireworks as defined in KRS 227.702 shall be responsible for disposing of any resultant trash or debris.

Section 5 - That Section 9A-5 of the Code of Ordinances be and hereby is created and enacted to read as follows:

Sec. 9A-5. Permits.

In order to lawfully operate in Fayette County all seasonal fireworks retailers and permanent fireworks retailers within Fayette County shall first obtain a "retail fireworks permit" from the commissioner of public safety or his designee. The application for a permit, the form of which shall also be approved by the urban county government's fire marshal, shall be submitted at least ten (10) business days prior to the applicant's desired effective date for the permit, and shall, at a minimum, require the following:

- (a) The applicant's name, phone number, and permanent address. 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;
- (b) A detailed site plan for the proposed location(s), the address(es) of the proposed location(s), and contact information for the owner(s) of the proposed location(s) if other than the applicant;
- (c) Proof of current registration with the state fire marshal in accordance with the applicable provisions of KRS Chapter 227;
- (d) Proof that the applicant has submitted to the division of revenue, at least ten (10) days prior to transacting business in Fayette County, a completed transient merchant permit application pursuant to KRS 365.665 and has complied with all necessary requirements related to the statute, if applicable;
- (e) Proof that the applicant has obtained any necessary certificate(s) of occupancy from the government's division of building inspection, and if deemed necessary the applicant must also obtain verification from the government's division of planning that the proposed location on the application is zoned appropriately for the conduct of said business;

- (f) Proof that the applicant has obtained the necessary approval of the division of fire and emergency services' fire prevention bureau;
- (g) Proof that the applicant has obtained the appropriate occupational business license(s) from the division of revenue in accordance with chapter 13 of the code;
- (h) 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
- (i) Payment of a permit fee according to the following table. In the event that an applicant wishes to operate more than one (1) geographical location within Fayette County, each location must have a separate permit and the permit fee shall apply:

Type of Applicant	Permit Fee	Permit Period
Seasonal fireworks retailer	\$500.00 per location	June 10 through July 7th
Permanent fireworks retailer	\$2,500.00 per location	Automatically expires 365 calendar days after the effective date
Permanent fireworks retailer (renewal)	\$500.00 per location	Automatically expires 365 calendar days after the effective date

Section 6 - That Section 9A-6 of the Code of Ordinances be and hereby is created and enacted to read as follows:

Sec. 9A-6. Seasonal and Permanent Fireworks Retailers.

In order to lawfully operate in Fayette County all seasonal fireworks retailers and all permanent fireworks retailers shall:

- (a) Obtain the necessary retail fireworks permit;
- (b) Prominently display a valid retail fireworks permit at each location and at all times during the hours of operation;
- (c) Comply with the applicable provisions of KRS Chapter 227, the International Building Code with Kentucky Amendments (adopted edition), NFPA 1124 (National Fire Protection Association) and the Code of Ordinances, Lexington-Fayette Urban County Government;
- (d) Not allow any person under eighteen (18) years of age to sell consumer fireworks;
- (e) Not give, offer for sale, or sell any consumer fireworks to any person under eighteen (18) years of age; and
- (f) 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.

Section 7 - That Section 9A-7 of the Code of Ordinances be and hereby is created and enacted to read as follows:

Sec. 9A-7. Revocation; suspension.

The urban county government's commissioner of public safety or his designee may revoke or suspend the retail fireworks permit for any site which is

in violation of the fireworks enforcement code, KRS Chapter 227, or chapter 13 of the code.

Section 8 - That Section 9A-8 of the Code of Ordinances be and hereby is created and enacted to read as follows:

Sec. 9A-8. Ancillary fireworks retailers.

In order to lawfully operate in Fayette County all ancillary fireworks retailers shall:

- (a) Comply with all aspects of the applicable provisions of KRS Chapter 227, the International Building Code with Kentucky Amendments (adopted edition), NFPA 1124 (National Fire Protection Association) and the Code of Ordinances, Lexington-Fayette Urban County Government;
- (b) Obtain any necessary certificate(s) of occupancy from the government's division of building inspection;
- (c) Not give, offer for sale, or sell any consumer fireworks to any person under eighteen (18) years of age; and
- (d) 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
- (e) Possess the appropriate occupational business license(s) from pursuant to chapter 13 of the code; and
- (f) Maintain general liability insurance (or the equivalent) and be able to provide proof thereof, in an amount of not less than one million dollars (\$1,000,000.00) per occurrence.

Section 9 - That Section 9A-9 of the Code of Ordinances be and hereby is created and enacted to read as follows:

Sec. 9A-9. Penalties.

Any person convicted of violating the fireworks enforcement code shall be deemed guilty of a misdemeanor and shall be subject to a fine of not more than one thousand dollars (\$1,000.00), or imprisonment for a period of time not to exceed thirty (30) days, or both. Each day a violation occurs shall constitute a separate offense.

- (a) The minimum fine for a conviction under any section other sections 9A-4(a) through (e) or 9A-4(g), shall be five hundred dollars (\$500.00).
- (b) The minimum fine for convictions under sections 9A-4(a) through (e) or 9A-4(g) shall be as follows:
 - (1) one hundred dollars (\$100.00) for the first offense within any twelve (12) month period of time;
 - (2) two hundred fifty dollars (\$250.00) for the second offense within any twelve (12) month period of time; and
 - (3) five hundred dollars (\$500.00) for the third or greater offense within any twelve (12) month period of time.

Section 10 - If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unlawful by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 11 - That this Ordinance shall become effective on January 1, 2012.

PASSED URBAN COUNTY COUNCIL: November 3, 2011


MAYOR

ATTEST:


CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: November 10, 2011-1t
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