

ORDINANCE NO. 2016-05

AN ORDINANCE OF THE CITY OF PIONEER VILLAGE, KENTUCKY, ESTABLISHING THE REQUIREMENTS TO OBTAIN A LICENSE TO SELL FIREWORKS WITHIN THE MUNICIPAL BOUNDARIES OF THE CITY OF PIONEER VILLAGE.

WHEREAS, the City of Pioneer Village is a home rule municipality as that term is defined in KRS 81.005(1)(b) and possesses all of the powers and rights that designation bestows, and

WHEREAS, the City of Pioneer Village has not previously addressed the issue of retail and/or wholesale sales of fireworks as this product was previously illegal in Kentucky, and

WHEREAS, the City of Pioneer Village has previously enacted a business license ordinance being No. 2015-01 which did not include this type of business, and

WHEREAS, the City of Pioneer Village has previously enacted an occupational tax ordinance being 2015-03 which did not specifically include this type of business when operated on a seasonal/temporary basis, and

WHEREAS, the proper storage and/or sale of fireworks is necessary to protect the public safety and welfare of the residents of the City of Pioneer Village, and

WHEREAS, the City Council of the City of Pioneer Village has determined that the public health, safety and welfare of the citizens of the City of Pioneer Village would be protected by creation of regulations and licensing requirements for this type of business, now therefore,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF PIONEER VILLAGE as follows:

SECTION 1. Fireworks defined Exceptions

As used in this Ordinance, "fireworks" means any composition or device for the purpose of producing a visible or an audible effect by combustion, deflagration, or detonation, and which meets the definition of "consumer fireworks" as defined in Section 2 hereinafter or "display" fireworks as defined in Section 5 hereinafter and as set forth in the United States Department of Transportation's (DOT) hazardous materials regulations. "Fireworks" does not include:

- (1) Exception number 1: Toy pistols, toy canes, toy guns or other devices in which paper or plastic caps manufactured in accordance with DOT regulations, and packed and shipped according to said regulations, are not considered to be fireworks and shall be allowed to be used and sold at all times.
- (2) Exception number 2: Model rockets and model rocket motors designed, sold, and used for the purpose of propelling recoverable aero models are not considered to be fireworks.

- (3) Exception number 3: Propelling or expelling charges consisting of a mixture of sulfur, charcoal, and saltpeter are not considered as being designed for producing audible effects.

SECTION 2. Consumer fireworks defined

As used in this Ordinance, "consumer fireworks" means fireworks that are suitable for use by the public, designed primarily to produce visible effects by combustion, and that comply with the construction, chemical composition, and labeling regulations of the United States Consumer Product Safety Commission. The types, sizes, and amount of pyrotechnic contents of these devices are limited as enumerated in this section. Some small devices designed to produce audible effects are included, such as whistling devices, ground devices containing fifty (50) mg. or less of explosive composition, and aerial devices containing one hundred thirty (130) mg. or less of explosive composition. Consumer fireworks are further defined by the Consumer Product Safety Commission in CPSC, 16 C.F.R. pts. 1500 and 1507, are classified as Division 1.4G explosives by the United States Department of Transportation, and include the following:

(1) Ground and hand-held sparkling devices.

- (a) Dipped stick-sparkler or wire sparkler. These devices consist of a metal wire or wood dowel that has been coated with pyrotechnic composition. Upon ignition of the tip of the device, a shower of sparks is produced. Sparklers may contain up to one hundred (100) grams of pyrotechnic composition per item. Those devices containing any perchlorate or chlorate salts may not exceed five (5) grams of pyrotechnic composition per item. Wire sparklers which contain no magnesium and which contain less than one hundred (100) grams of composition per item are not included in this category, in accordance with DOT regulations;
- (b) Cylindrical fountain. Cylindrical tube containing not more than seventy-five (75) grams of pyrotechnic composition. Upon ignition, a shower of colored sparks, and sometimes a whistling effect or smoke, is produced. This device may be provided with a spike for insertion into the ground (spike fountain), a wood or plastic base for placing on the ground (base fountain), or a wood or cardboard handle, if intended to be hand-held (handle fountain). When more than one (1) tube is mounted on a common base, total pyrotechnic composition may not exceed two hundred (200) grams, or five hundred (500) grams if the tubes are separated from each other on the base by a distance of at least one-half (1/2) inch;
- (c) Cone fountain. Cardboard or heavy paper cone containing up to fifty (50) grams of pyrotechnic composition. The effect is the same as that of a cylindrical fountain. When more than one (1) cone is mounted on a common base, the total pyrotechnic composition may not exceed two hundred (200) grams, or five hundred (500) grams if the tubes are separated from each other on the base by a distance of at least one-half (1/2) inch;

- (d) Illuminating torch. Cylindrical tube containing up to one hundred (100) grams of pyrotechnic composition. Upon ignition, colored fire is produced. May be spike, base or hand-held. When more than one (1) tube is mounted on a common base, total pyrotechnic composition may not exceed two hundred (200) grams, or five hundred (500) grams if the tubes are separated from each other on the base by a distance of at least one-half (1/2) inch;
- (e) Wheel. A device attached to a post or tree by means of a nail or string. A wheel may have one (1) or more drivers, each of which may contain not more than sixty (60) grams of pyrotechnic composition. No wheel may contain more than two hundred (200) grams total pyrotechnic composition. Upon ignition, the wheel revolves, producing a shower of color and sparks and, sometimes, a whistling effect;
- (f) Ground spinner. Small device containing not more than twenty (20) grams of pyrotechnic composition, similar in operation to a wheel but intended to be placed on the ground and ignited. A shower of sparks and color is produced by the rapidly spinning device;
- (g) Flitter sparkler. Narrow paper tube attached to a stick or wire and filled with not more than one hundred (100) grams of pyrotechnic composition that produces color and sparks upon ignition. The paper at one (1) end of the tube is ignited to make the device function; and
- (h) Toy smoke device. Small plastic or paper item containing not more than one hundred (100) grams of pyrotechnic composition that, upon ignition, produces white or colored smoke as the primary effect;

(2) Aerial devices.

- (a) Sky rockets and bottle rockets. Cylindrical tube containing not more than twenty (20) grams of pyrotechnic composition. Sky rockets contain a wooden stick for guidance and stability and rise into the air upon ignition. A burst of color or noise or both is produced at the height of flight;
- (b) Missile-type rocket. A device similar to a sky rocket in size, composition, and effect that uses fins rather than a stick for guidance and stability;
- (c) Helicopter, aerial spinner. A tube containing up to twenty (20) grams of pyrotechnic composition. A propeller or blade is attached, which, upon ignition, lifts the rapidly spinning device into the air. A visible or audible effect is produced at the height of flight;
- (d) Roman candles. Heavy paper or cardboard tube containing up to twenty (20) grams of pyrotechnic composition. Upon ignition, up to ten (10) "stars" (pellets of pressed pyrotechnic composition that burn with bright color) are individually expelled at several second intervals;

- (e) Mine, shell. Heavy cardboard or paper tube usually attached to a wood or plastic base and containing up to sixty (60) grams of total chemical composition (lift charge, burst charge, and visible or audible effect composition). Upon ignition, "stars," components producing reports containing up to one hundred thirty (130) milligrams of explosive composition per report, or other devices are propelled into the air. The term "mine" refers to a device with no internal components containing a bursting charge, and the term "shell" refers to a device that propels a component that subsequently bursts open in the air. A mine or shell device may contain more than one (1) tube provided the tubes fire in sequence upon ignition of one (1) external fuse. The term "cake" refers to a dense-packed collection of mine or shell tubes. Total chemical composition including lift charges of any multiple tube devices may not exceed two hundred (200) grams. The maximum quantity of lift charge in any one (1) tube of a mine or shell device shall not exceed twenty (20) grams, and the maximum quantity of break or bursting charge in any component shall not exceed twenty-five percent (25%) of the total weight of chemical composition in the component. The tube remains on the ground; and

- (f) Aerial shell kit, reloadable tube. A package kit containing a cardboard, high-density polyethylene (HDPE), or equivalent launching tube with multiple-shot aerial shells. Each aerial shell is limited to a maximum of sixty (60) grams of total chemical composition (lift charge, burst charge, and visible or audible effect composition), and the maximum diameter of each shell shall not exceed one and three-fourths (1-3/4) inches. In addition, the maximum quantity of lift charge in any shell shall not exceed twenty (20) grams, and the maximum quantity of break or bursting charge in any shell shall not exceed twenty-five percent (25%) of the total weight of chemical composition in the shell. The total chemical composition of all the shells in a kit, including lift charge, shall not exceed four hundred (400) grams. The user lowers a shell into the launching tube, at the time of firing, with the fuse extending out of the top of the tube. After the firing, the tube is then reloaded with another shell for the next firing. All launching tubes shall be capable of firing twice the number of shells in the kit without failure of the tube. Each package of multiple-shot aerial shells must comply with all warning label requirements of the Consumer Product Safety Commission; and

(3) Audible ground devices.

- (a) Firecrackers, salutes. Small paper-wrapped or cardboard tube containing not more than fifty (50) mg. of pyrotechnic composition. Those used in aerial devices may contain not more than one hundred thirty (130) milligrams of explosive composition per report. Upon ignition, noise and a flash of light is produced; and

- (b) Chaser. Small paper or cardboard tube that travels along the ground upon ignition. A whistling effect, or other noise, is often produced. The explosive composition used to create the noise may not exceed fifty (50) mg.

SECTION 3. Novelties and Trick Noisemakers defined:

Items listed in this section are classified as novelties and trick noisemakers and are not classified as consumer fireworks by the United States Department of Transportation, and their transportation, storage, retail sale, possession, sale, and use shall be allowed throughout the City at all times.

- (1) Snake, glow worm. Pressed pellet of pyrotechnic composition that produces a large, snake-like ash upon burning. The ash expands in length as the pellet burns. These devices may not contain mercuric thiocyanate.
- (2) Smoke device. Tube or sphere containing pyrotechnic composition that, upon ignition, produces white or colored smoke as the primary effect.
- (3) Wire sparkler. Wire coated with pyrotechnic composition that produces a shower of sparks upon ignition. These items may not contain magnesium and must not exceed one hundred (100) grams of pyrotechnic composition per item. Devices containing any chlorate or perchlorate salts may not exceed five (5) grams of pyrotechnic composition per item.
- (4) Trick noisemaker. Item that produces a small report intended to surprise the user. These devices include:
 - (a) Party popper. Small plastic or paper item containing not more than sixteen (16) mg. of explosive composition that is friction sensitive. A string protruding from the device is pulled to ignite it, expelling paper streamers and producing a small report.
 - (b) Booby trap. Small tube with string protruding from both ends, similar to a party popper in design. The ends of the string are pulled to ignite the friction sensitive composition, producing a small report.
 - (c) Snapper. Small, paper-wrapped item containing a minute quantity of explosive composition coated on small bits of sand. When dropped, the device explodes producing a small report.
 - (d) Trick match. Kitchen or book match that has been coated with a small quantity of explosive or pyrotechnic composition. Upon ignition of the match a small report or a shower of sparks is produced.
 - (e) Cigarette load. Small wooden peg that has been coated with a small quantity of explosive composition. Upon ignition of a cigarette containing one (1) of the pegs, a small report is produced.
 - (f) Auto burglar alarm. Tube which contains pyrotechnic composition that produces a loud whistle or smoke, or both, when ignited. A small quantity of explosive, not

exceeding fifty (50) mg. may also be used to produce a small report. A squib is used to ignite the device.

SECTION 4. Legality of Items:

- (1) Items described in Section 2 Consumer Fireworks are legal for retail sale provided all applicable federal and state requirements with respect thereto are met.
- (2) Items described in Section 5 Display Fireworks are not legal for retail sale but are legal under permits granted pursuant to KRS 227.710 for the purposes specified in that chapter for public displays and may be sold at wholesale as provided in KRS 227.700 et seq.
- (3) Items described in Section 3 Novelties and Trick Noisemakers are legal for retail sale provided all applicable federal and state requirements with respect thereto are met.

SECTION 5. Display fireworks defined

As used in this Ordinance, "display fireworks" means pyrotechnic devices or large fireworks designed primarily to produce visible or audible effects by combustion, deflagration or detonation. This term includes, but is not limited to, firecrackers containing more than two (2) grains (130 mg) of explosive composition, aerial shells containing more than forty (40) grams of pyrotechnic composition, and other display pieces which exceed the limits for classification as "consumer fireworks." Display fireworks are defined by the Consumer Product Safety Commission in CPSC, 16 C.F.R. pts. 1500 and 1507, and are classified as Class B explosives by the United States Department of Transportation.

SECTION 6. Sale or Use of display fireworks prohibited, exceptions

No person, firm, copartnership, or corporation shall offer for sale, expose for sale, sell at retail, keep with intent to sell, possess, use, or explode any display fireworks, except as follows:

- (1) (a) The chief of the Zoneton fire district may grant permits for supervised public displays of fireworks by municipalities, fair associations, amusement parks, and other organizations or groups of individuals.
- (b) Every display shall be handled by a competent display operator to be approved by the public official by whom the permit is granted, and shall be of such character, and so located, discharged or fired as in the opinion of the official, after proper inspection, to not be hazardous to property or endanger any person.
- (c) "Competent display operator" shall be defined as the person with overall responsibility for the operation and safety of a fireworks display. The competent display operator shall have a Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) License and have participated as an assistant in firing at least five (5) public displays. A "competent display operator" is also an employee

possessor. A permit under paragraph (a) of this subsection shall be issued only to a competent display operator holding an ATF license.

- (d) At least one (1) competent display operator shall be on site during display set-up and firing. This competent display operator shall maintain a copy of the permit application, as signed by the local authority having jurisdiction as identified in this section, on site and at all times the display is in place, and shall be presented on demand of the state fire marshal or local fire chief. All public displays that require issuance of a permit shall be conducted in accordance with the provisions of National Fire Protection Association (NFPA) 1123 "Code for Fireworks Display (adopted edition).
 - (e) Permits shall be filed with the state fire marshal at least fifteen (15) days in advance of the date of the display. After the privilege is granted, sales, possession, use, and distribution of fireworks for the display shall be lawful for that purpose only. No permit granted under this subsection shall be transferable. For the purposes of this subsection, "public display of fireworks" shall include the use of pyrotechnic devices or pyrotechnic materials before a proximate audience, whether indoors or outdoors.
 - (f) Any person remaining within the display area shall be identified as licensed by the ATF, or an employee thereof, or be an assistant in training to become a competent display operator. All persons remaining within the display area shall be at least eighteen (18) years of age.
 - (g) The commissioner of the Department of Housing, Buildings and Construction with recommendation from the state fire marshal shall promulgate administrative regulations in accordance with KRS Chapter 13A to administer the provisions of this subsection. The regulations shall address the process by which permits are issued and any other procedures that are reasonably necessary to effectuate this subsection.
- (2) The sale, at wholesale, of any display fireworks for permitted displays by any resident manufacturer, wholesaler, dealer, or jobber, in accordance with regulations of the United States Bureau of Alcohol, Tobacco, Firearms and Explosives if the sale is to the person holding a display permit as outlined in subsection (1) of this section. The permit holder shall present the permit along with other verifiable identification at the time of sale.
 - (3) The sale of display fireworks in accordance with a license issued by the United States Bureau of Alcohol, Tobacco, Firearms and Explosives.
 - (4) The sale and use in emergency situations of pyrotechnic signaling devices and distress signals for marine, aviation, and highway use.
 - (5) The use of fuses and railway torpedoes by railroads.

- (6) The sale and use of blank cartridges for use in a show or theater or for signal or ceremonial purpose in athletics or sports.
- (7) The use of any pyrotechnic device by military organizations.
- (8) The use of fireworks for agricultural purposes under the direct supervision of the United States Department of the Interior or any equivalent or local agency.
- (9) Nothing in this section shall prohibit a person, firm, co-partnership, nonprofit, or corporation from offering for sale, exposing for sale, selling at retail, keeping with intent to sell, possessing or using consumer fireworks as defined in Section 2 hereinbefore and as permitted pursuant to Section 7 hereinafter.

SECTION 7. Requirements for sale of certain consumer fireworks

Except as provided in Section 6 hereinbefore, the consumer fireworks described in Section 2 hereinbefore may be offered for sale, sold at retail, or kept with the intent to sell, only if the following requirements are met:

- (1) Any person, firm, co-partnership, nonprofit, or business intending to sell consumer fireworks described in section 2 hereinbefore shall register annually with the state fire marshal, who may assess a fee of no more than twenty-five dollars (\$25) for each site at which fireworks shall be sold. The registration requirement under this section shall not apply to permanent business establishments which are open year round and in which the sale of fireworks is ancillary to the primary course of business. Each location shall be required to charge sales tax at the current rate imposed on retailers in KRS 139.200. This state registration shall be produced before a City of Pioneer Village license is issued;
- (2) Permanent business establishments open year-round and in which the sale of consumer fireworks is ancillary to the primary course of business shall only be permitted to sell those consumer fireworks described in Section 2 hereinbefore, or shall meet the criteria for "seasonal retailer" described in subsection (3) of this section;
- (3) "Seasonal retailers" shall be defined as any person, firm, co-partnership, nonprofit, or corporation intending to sell "consumer fireworks" between June 10 and July 7, or December 26 and January 4 of each year or both, and shall include permanent businesses, temporary businesses, stores, stands, or tents. A seasonal retailer shall register with the state fire marshal, who may assess a fee of no more than two hundred fifty dollars (\$250) for each site at which fireworks shall be sold. Each location shall be required to charge sales tax at the current rate imposed on retailers in KRS 139.200. This state registration shall be produced before a City of Pioneer Village license is issued;
- (4) Any person, firm, co-partnership, nonprofit, or corporation intending to sell consumer fireworks, as defined in Section 2 (2) and (3) hereinbefore as the primary source of

- business, that is not a seasonal retailer as defined in subsection (3) of this section, shall register with the state fire marshal, who may assess a fee of no more than five hundred dollars (\$500) for each site at which fireworks will be sold. Each location shall be required to charge sales tax at the current rate imposed on retailers in KRS 139.200. This state registration shall be produced before a City of Pioneer Village license is issued;
- (5) The annual registration required by this section shall be received by the state fire marshal at least fifteen (15) days prior to offering fireworks for sale at the site for which the registration is intended. Evidence that a sales and use tax permit has been obtained from the Department of Revenue shall be presented to the state fire marshal as a condition of registration. If the registration is received less than fifteen (15) days prior to offering fireworks for sale at the site for which registration is intended, an additional assessment of one hundred dollars (\$100) shall be added to the initial fee;
 - (6) Each site at which fireworks are offered for sale shall have its registration certificate displayed in a conspicuous location at the site and the license issued by the City of Pioneer Village shall be displayed in a conspicuous location at the site;
 - (7) Each site at which fireworks are offered for sale shall comply with all applicable provisions of the International Building Code, with Kentucky Amendments (adopted edition), and NFPA 1124 (National Fire Protection Association) " Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles (adopted edition);
 - (8) No person or business shall give, offer for sale, or sell any consumer fireworks listed in Section 2 hereinbefore to any person under eighteen (18) years of age;
 - (9) No person under eighteen (18) years of age may be employed by a fireworks distribution facility or manufacturing facility. No person under eighteen (18) years of age shall sell consumer fireworks at a consumer fireworks retail sales facility registered and licensed under this section unless the individual is supervised by a parent or guardian;
 - (10) The state fire marshal and/or City of Pioneer Village may revoke the registration of any site which is in violation of a requirement of this section, or any other requirement provided pursuant to this ordinance. If the violation renders any property especially susceptible to fire loss, and there is present such hazard to human life or limb that the public safety imperatively requires emergency action, the state fire marshal and/or City of Pioneer Village may take that action, as provided in KRS 227.330(6); and
 - (11) A person lawfully possessing consumer fireworks, as defined in Section 2 (2) and (3) hereinbefore may use those items if:
 - (a) He or she is at least eighteen (18) years of age;

- (b) Fireworks are not ignited within two hundred (200) feet of any structure, vehicle, or any other person; and
- (c) Use of the fireworks does not place him or her in violation of this or any other ordinance of the City of Pioneer Village.

SECTION 8. The license fee payable to the City of Pioneer Village for a permanent sales facility shall be Five Hundred Dollars (\$500.00) per year. The license fee payable to the City of Pioneer Village for a temporary/seasonal sales facility shall be One Thousand Dollars (\$1,000.00) per season.

SECTION 9. Whomever violates any provision of this Ordinance shall be fined not more than \$500.00 for each offense. Each day shall constitute a separate offense.

SECTION 10. This Ordinance shall take effect upon publication.

SECTION 11. Should any section, clause, line, paragraph, or part of this Ordinance be held unconstitutional or invalid for any reason, the same shall not affect the remainder of this Ordinance.

SECTION 12. All ordinances or parts of ordinances in conflict with this Ordinance or any part of this Ordinance are repealed.


Given first reading at a special meeting of the City Council of the City of Pioneer Village, Bullitt County, Kentucky, on the 17th day of May, 2016. Given second reading, voted upon and passed at a regular meeting of the City Council of the City of Pioneer Village, Bullitt County, Kentucky, on the 24th day of May, 2016.

VOTES FOR 6; VOTES AGAINST 0; NOT VOTING 0.



GARY HATCHER, MAYOR

ATTESTED BY:



RECKA DANIELS, CITY CLERK