

**CITY OF OAK GROVE, KENTUCKY
ORDINANCE 2011-09**

**AN ORDINANCE RELATING TO FIREWORKS AND PYROTECHNICS WITHIN THE
INCORPORATED BOUNDARIES OF THE CITY OF OAK GROVE, KENTUCKY.**

WHEREAS, On March 16, 2011, the Kentucky Legislative Session legalized the sale and use of "consumer fireworks" (as defined in KRS 227.702), and;

WHEREAS, the City has determined that the sale and use of fireworks should be regulated on a controlled basis.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF OAK GROVE, KENTUCKY,
AS FOLLOWS:**

SECTION 1. DEFINITIONS

- A) **"Fireworks"** As used in KRS 227.700 to 227.750, 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 KRS 227.702 or "display" fireworks as defined in KRS 227.706 and as set forth in the United States Department of Transportation's (DOT) hazardous materials regulations.
- B) **"Mobile Retailer"** means a vendor operating from motor vehicles, trailers, bicycles, or motor bikes.
- C) **"Permit"** means the written authority of the City of Oak Grove issued under the authority of this section.
- D) **"Person"** means any individual, firm, partnership, or corporation.
- E) **"Retailer"** means any person engaged in the business of making retail sales of fireworks to the general public.
- F) **"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, and shall include permanent businesses, temporary businesses, stores, stands, or tents.;
- G) **"Sale"** means an exchange of articles of fireworks for money and also includes barter, exchange, gift, or offer thereof and each such transaction made by any person, whether as principal, proprietor, salesperson, agent, association, co-partnership, or one (1) or more individual(s).

Singular words and plural words used in the singular include the plural and the plural as singular.

SECTION 2 - REQUIREMENTS FOR SALE OF CERTAIN CONSUMER FIREWORKS

Consumer fireworks described in KRS 227.702 may be offered for sale, sold at retail, or kept with the intent to sell, only if the following requirements are met:

1. Any year-round person, firm, co-partnership, nonprofit, or business intending to sell consumer fireworks shall register annually with the City of Oak Grove. (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 not auxiliary to the primary course of business;)

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2. Any person, firm, co-partnership, nonprofit, or business intending to sell consumer fireworks seasonally, shall register seasonally with the City of Oak Grove. The registration requirement under this section shall apply to permanent business establishments which are open year round and in which the sale of fireworks is auxiliary to the primary course of business;
3. 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 KRS 227.702(A), or shall meet the criteria for "seasonal retailer" described in subsection (C) of this section;
4. Each site at which fireworks are offered for sale shall have all permits, licenses and certifications displayed in a conspicuous location at the site;
5. Each site at which fireworks are offered for sale shall comply with all applicable provisions of the Oak Grove Planning Department.
6. No person or business shall give, offer for sale, or sell any consumer fireworks to any person under eighteen (18) years of age;
7. 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 under this section unless the individual is supervised by a parent or guardian;
8. The City of Oak Grove may revoke the registration of any site which is in violation of a requirement of this section, or any other applicable requirement. 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 Oak Grove Fire Chief may take action, as provided in KRS 227.330(6); and

SECTION 3 - PERMITS AND PERMIT FEES

- A. It shall be unlawful for any person to sell, offer for sale, ship, or cause to be shipped, into the City of Oak Grove any item of fireworks without first having secured a State Fire Marshal Permit and a Permit issued for each site by the City of Oak Grove.
- B. Permits are not transferable.
- C. A "Seasonal Retailer" shall register with the City of Oak Grove. A Permit fee will be assessed of two-hundred seventy-five (275.00) Dollars for each site at which fireworks shall be sold (this fee does not include other applicable fees);
- D. A permit to sell fireworks in the City of Oak Grove must be obtained at least seven (7) days prior to the date on which the applicant desires to begin making sales. Each application shall contain the following:
 1. Name, address, email address and telephone number of applicant. The applicant must be the natural person who will operate or be responsible for sales. The applicant's name shall also be the same as the name on the Permit. The applicant shall be liable for all violations of this ordinance by persons under their supervision. A site plan must be submitted that includes the dimensions of the lot, size and location of structure, setback of structure from the right-of-way, location of adjacent structures that are occupied, location and number of parking places, location of any nearby residences, location of adjacent fuel outlets and location of other fireworks outlets if located within 750 feet of a retail fireworks structure.
 2. Mobile vendors are not permitted.
 3. Flashing signs are not permitted.
 4. Two (2) free standing temporary double-faced signs; along with one (1) structure mounted sign will be permitted for advertising purposes. Up to three (3) additional

- informational/directional signs, not exceeding four (4) square feet (2x2) will be allowed per site. No signage will be allowed off site or in the public right-of-way.
5. A sign permit application will need to be prepared and submitted with the appropriate fee of seventy-five dollars (75.00), one dollar per square foot/face/sign, or as defined in the Oak Grove sign ordinance, whichever is higher. No permit shall be issued under KRS 227.710 unless the applicant shall give bond or evidence of liability insurance deemed adequate by the official to whom application for the permit is made, in a sum not less than one million dollars (\$1,000,000). However, a larger amount may be required, conditioned for the payment of all damages which may be caused thereby either to a person or to property by reason of the permitted display, and arising from any acts of the licensee, his agents, employees or subcontractors.
 6. The location where the applicant will conduct the business of selling fireworks and the dates for which the right to do business is desired.
 7. After the application has been submitted and approved, a city codes inspector shall inspect the site for compliance.
- E. If the application is received less than seven (7) days prior to offering fireworks for sale at the site for which application is intended, an additional assessment of Fifty (50.00) dollars shall be added to the initial fee;

SECTION 4 - PERMIT REVOCATION

The Mayor of Oak Grove or his designee shall be authorized to revoke any permit upon failure of retailer to correct any of the following conditions within thirty six-eight (36) hours after written notice is given by the City of Oak Grove.

- A) In the event that the permittee or operator violates any lawful rule, regulation, or ordinance of the City of Oak Grove.
- B) In the event that the permittee's application contains any false or untrue statements.
- C) In the event the permittee fails to timely file and/or pay any report, tax, fee, fine, or charge.
- D) In the event the permittee or the permittee's operator violates any fireworks ordinance or statute.
- E) In the event the permittee fails to obtain a certificate of occupancy by the Kentucky State Electrical Inspector.

SECTION 5 - PERMISSIBLE FIREWORKS

It is unlawful for any individual, firm, partnership, or corporation to possess, sell, or use within the City of Oak Grove or ship into the city, except as provided in Chapter 227 of the Kentucky Revised Statute;

- A) Items described in KRS 227.702 are legal for retail sale provided all applicable federal and state requirements with respect thereto are met.
- B) Items described in KRS 227.706 are not legal for retail sale but are legal under permits granted pursuant to KRS 227.710 for the purposes specified in this chapter for public displays and may be sold at wholesale as provided in this chapter.
- C) Items described in KRS 227.704 are legal for retail sale provided all applicable federal and state requirements with respect thereto are met.

SECTION 6 - STORING AND STRUCTURES

- A) No person shall smoke tobacco products within a structure or within fifty (50) feet of structure.

- B) At all places where fireworks are stored or sold, there must at least one (1) sign posted at each entrance or within ten (10) feet of every isle that reads "Fireworks - No Smoking" in letters not less than four (4) inches high.
- C) At least one (1) sign shall be conspicuously posted on the exterior the facility that reads (in 4" letters) "NO FIREWORKS DISCHARGED WITHIN 300 FEET".
- D) No fewer than two (2) portable fire extinguishers with a minimum rating of 2A, at least one (1) of which shall be of the pressurized water type and must be present at each retail fireworks site (If facility is provided with electrical power, one fire extinguisher will be multi-purpose dry chemical type).
- E) An approved fire and safety evacuation plan shall be prepared in writing and maintained current at each permanent site.
- F) The minimum number of exits provided from the retail sales area shall not be less than three (3) or as determined in accordance with NFPA 101, whichever is greater.
- G) No permit will be issued until the following documents have been submitted to the City of Oak Grove:
 - 1) Registration from the Kentucky State Fire Marshall authorizing the sale of "Class C" fireworks.
 - 2) A copy of the Kentucky Department of Housing, Building and Construction, Division of Fire Protection, storage notification report (FM 32-03).
 - 3) For "Seasonal Retailers" utilizing tent structures, a certificate of flame resistance issued by the tent installer/supplier are required.
 - 4) For "Seasonal Retailers" utilizing tent structures of three thousand (3,000) square feet or greater, a notification from the Kentucky Department of Housing, Building and Construction is required.
 - 5) For "Seasonal Retailers" utilizing tent structures, a copy of the executed land lease will be required.
- H) Isles shall have a minimum clear width of forty-eight (48) inches.
- I) At the time of the zoning compliance inspection, the applicant will need to be in possession of a certificate of occupancy from a Kentucky State Electrical Inspector. If a tent structure is equal or greater than three-thousand (3,000) square feet, a certificate of occupancy issued by a Kentucky State Building Inspector must be displayed.
- J) The required width of isles shall be maintained unobstructed at all times the facility is occupied by the public.
- K) Exits shall be marked by approved exit sign. Signs shall be illuminated if open to the public after dusk.
- L) Height of sales displays shall not exceed six (6) foot inside the perimeter.
- M) A flame break shall be provided so that the maximum distance between flame breaks does not exceed sixteen (16) feet.
 - 1) Packaged merchandise or open space may be used as a flame break if it measures a minimum of eight (8) feet individually or in combination; as long as no run exceeds thirty two (32) feet between flame breaks.
 - 2) The Flame break shall extend as follows:
 - (i) From the display surface to not less than six (6) inches above the full height of the displayed merchandise or to the underside of the display surface directly above.
 - (ii) For the full depth of the displayed merchandise.
 - 3) Not less than fifty (50) percent of the available floor area within the retail sales area shall be open space that is unoccupied by retail displays and used only for aisles and cross aisles.

- N) Records shall be maintained on available inventory on site and made available upon request.
- O) Vacuum cleaners or similar mechanical devices shall not be used. Hand Brooms, Hand brushes and dustpans shall be used to sweep up any loose powder.
- P) Cooking equipment of any type shall not be permitted within twenty (20) feet of tents, canopies, or membrane structures used for storage or sale of consumer fireworks.
- Q) Fireworks are not permitted to be stored in residential districts, except for personal use.

SECTION 7 - LIMITATIONS ON STRUCTURES

- A) Tents meeting the current adopted Standard Building Code and Standard Fire Prevention Code (NFPA) may be used for the retail sale of fireworks.
- B) No temporary structure from which fireworks are sold shall exceed 4,800 square feet.
- C) Fireworks may not be stored in a permanent building unless the building has a sprinkler system and is constructed of non-flammable materials such as metal or concrete block.

SECTION 8 - LOCATION OF FIREWORKS OUTLETS

Fireworks sales structures shall be no closer than 60 feet from any occupied building. Fireworks sales are only permissible on commercial/industrial property as approved by the Planning Department and the sales structure must be located the minimum distance' from the right of way as allowed by the Oak Grove Zoning Ordinance. Any fireworks sales structure must be at least 150 feet from a residence. Fireworks sales are not allowed on any property where there is an existing retail business that is operated from a building in excess of 125,000 square feet.

SECTION 9 - PARKING FOR RETAIL FIREWORK SALES SITE

The site for a fireworks retailer shall be improved in accordance with all applicable Oak Grove Ordinances and shall provide one (1) parking space for every 300 square feet of retail space. No on street parking will be allowed. In addition, the retail fireworks site must provide for an on-site turn-around area so that backing of vehicles onto the street will not be necessary.

SECTION 10 - ADDITIONAL STANDARDS FOR FIREWORKS RETAILERS

- A) Any site for a fireworks retailer must be located so that all parts of the structure and fireworks inventory on the site are no closer than 50 feet to any fuel source.
- B) The parcel in which a fireworks retail use is required shall be a minimum of two hundred (200) feet from other similar uses. This distance shall be measured from structure to structure. Priority shall be given to the retailer who obtained a permit the previous year at the same location.

SECTION 11 - USE OF FIREWORKS

- A) A person lawfully possessing consumer fireworks, as defined in KRS 227.702(2) and (3) may use those items if:
 - (1) Fireworks are not ignited within two hundred (200) feet of any structure, vehicle, or any other person; and

- (2) Fireworks are not to be ignited within two hundred (200) feet of agricultural crops, wooded areas or heavily vegetated areas/fields.
- (3) Use of the fireworks does not place him or her in violation of any lawfully enacted ordinance, law or statute.

SECTION 12 - UNLAWFUL SALE AND USE OF FIREWORKS

- A) It shall be unlawful to offer for sale or to sell any fireworks to children under the age of Eighteen (18) years of age or to any intoxicated or seemingly irresponsible person.
- B) It shall be unlawful to explode or ignite fireworks within six hundred (600) feet of any church, assisted living facility, nursing home, hospital, funeral home, public or private school structure, or within two hundred (200) feet of where fireworks are stored, sold, or offered for sale.
- C) No person shall ignite or discharge any permissible articles of fireworks within or throw the same from within a motor vehicle, nor shall any person place or throw any ignited article of fireworks into or at such motor vehicle, or at or near any person or group of persons.
- D) A user of fireworks shall not ignite fireworks on another person's private property unless permission is obtained from the owner or occupant of the property.
- E) Fireworks shall not be launched or fired onto property of persons who have not given permission.
- F) Fireworks shall not be used at times, places, or in any manner, which adversely affect other persons.
- G) Fireworks shall not be used during a burn ban declared by the State of Kentucky, Christian County or the Oak Grove Fire Department.

SECTION 13 – EXCLUSIONS

Nothing in this chapter shall be construed to prohibit:

- (1) The sale of any kind of fireworks which are to be shipped directly out of the corporate limits of the city in accordance with the regulations of the United States Department of Transportation covering the transportation of explosives and other dangerous articles by motor, rail, and water.
- (2) The use of fireworks by railroads or other transportation agencies for signal purposes or illumination.
- (3) The sale or use of blank cartridges for theater or sporting events.
- (4) The use of fireworks for military operations of agencies of the state or federal government.
- (5) The use of fireworks for agricultural purposes under conditions approved by the fire chief or his designee.
- (6) Supervised displays of fireworks hereinafter provided.

SECTION 14 - PENALTY FOR VIOLATION

All individuals that violate any provision of this chapter shall be guilty of an offense and upon conviction shall be punished by a fine not to exceed one thousand (1,000.00) dollars plus costs. Each violation or transaction shall be considered a separate violation. Employers of fireworks vendors and permit holders shall also be guilty for violations by persons in their employment and persons under

their supervision.

SECTION 15 – EMERGENCY CLAUSE

On March 16, 2011, the Kentucky Legislative Session legalized the sale and use of "consumer fireworks" (as defined in KRS 227.702). Due to these changes, an emergency is hereby declared to exist and the provisions of this ordinance shall become effective immediately upon its adoption by a vote of two-thirds (2/3) or more of the legislative body and be retroactive to June 17, 2011 for any permits in effect since that time.

SECTION 16 - SEVERABILITY

If any section or portion of this ordinance is for any reason held to be invalid or unconstitutional by a decision of a court of competent jurisdiction, that section or portion shall be deemed severable and shall not affect the validity of the remaining sections of the ordinance.

This ordinance shall become effective upon passage and publication.

Approved on First Reading this 21st day of June, 2011.

APPROVED:



Dan Potter, Mayor
City of Oak Grove, Kentucky

ATTEST:




Evelyn McDaniel, CAO/City Clerk
City of Oak Grove, Kentucky

Published in full in the Kentucky New Era on the 29th day of June, 2011.

CERTIFICATION OF ORDINANCE 2011-09

I, Evelyn McDaniel, the duly qualified CAO/City Clerk of the City of Oak Grove, first being duly sworn, do hereby certify that the document attached hereto is a true, accurate and complete copy of Emergency Ordinance 2011-09 duly adopted by the City Council at a duly convened meeting held on June 21, 2011 (first reading), all as appears in the official records of said City.

Dated, this 24th day of August, 2011



Evelyn McDaniel, CMC
City of Oak Grove

STATE OF KENTUCKY)
)
COUNTY OF CHRISTIAN)

The foregoing Certification was signed, acknowledged and sworn to me by Evelyn McDaniel, Certified Municipal Clerk, City of Oak Grove, Kentucky, this 24th day of August, 2011.

My commission Expires: 9-24-2012



Notary Public