

ORDINANCE NO. 139, SERIES 2011

AN ORDINANCE REGULATING THE PURCHASE, POSSESSION AND RETAIL SALE OF FIREWORKS WITHIN LOUISVILLE METRO GOVERNMENT. (AMENDED BY SUBSTITUTION AS AMENDED)

Sponsored By: Councilman Peden

WHEREAS, the State of Kentucky has amended Kentucky Revised Statute (“KRS”) Section 227.700 *et. seq.*, regarding the sale, retail sell, use, possession, explosion and storage of fireworks; and

WHEREAS, KRS Section 227.750(4) provides that local governments within the Commonwealth shall retain the authority to enact ordinances that affect the sale, use and possession of fireworks within the local government’s jurisdiction; and

WHEREAS, Louisville Metro Government is desirous of regulating the sale, use and possession of fireworks within the Metro jurisdiction to prevent property damage and/or bodily injury to persons by the use of fireworks; wherefore

BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

SECTION I: Definition of Terms

- A) Consumer Fireworks: Fireworks that are suitable for use by the public which are designed primarily to produce visible and audible effects by combustion, deflagration, detonation or ignition, and contain fifty (50) milligrams (“mg.”) or less of explosive composition, and if an aerial device, contains one-hundred thirty (130) mg. or less of explosive composition which comply with the construction, chemical composition, and labeling regulations of the United States Consumer

Product Safety Commission. Such fireworks include, but are not limited to the following:

1) Ground and Hand-Held Sparkling Devices:

- a) Dipped Stick-Sparkler or Wire Sparkler: Consists of a metal wire or wood dowel that has been coated with pyrotechnic composition, which upon ignition, produces a shower of sparks. 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 Department of Transportation regulations;

- b) Cylindrical Fountain: Cylindrical tube containing not more than seventy-five (75) grams of pyrotechnic composition, where upon ignition a shower of and sometimes a whistling or smoking effect, 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 pyrotechnic 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 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. Upon ignition, "stars", components producing reports containing up to one-hundred thirty (130) mg. 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 (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.

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) mg. 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;

B) Display Fireworks: Large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, detonation or ignition. 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." Such definition meets the United States Department of Transportation classification for display fireworks in UN0333, UN0334, UN033516 at 49 C.F.R. 172.101. This term also includes fused set pieces containing components which together exceed fifty (50) mg. of salute power.

- C) Fireworks Retailer: Any person, firm, co-partnership, sole proprietor, business entity, not-for-profit organization, limited liability company ("LLC"), or corporation intending to sell Consumer Fireworks as the primary source of business at all times during the year.

- D) Seasonal Retailer: Any person, firm, co-partnership, sole proprietor, business entity, not-for-profit organization, limited liability company ("LLC"), retailer or corporation intending to sell Consumer Fireworks between June 10th and July 7th of each year, and shall include permanent businesses, temporary businesses, stores, stands, or tents.

- E) Smoke Devices: Tube or sphere containing pyrotechnic composition that, upon ignition, produces white or colored smoke as the primary effect.

- F) Snakes/Glow Worms: Pressed pellet of pyrotechnic composition that produces a large, snake-like ash upon burning. The ash expands in length as the pellet burns. Such devices may NOT contain mercuric thiocyanate.

G) Trick Noisemakers: Item that produces a small report intended to surprise the user. These devices include:

- 1) 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.
- 2) 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.
- 3) 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.
- 4) 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.

5) 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.

6) 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.

H) 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.

SECTION II: General Provisions

A. It shall be unlawful for any person, firm, co-partnership, sole proprietor, business entity, not-for-profit organization, limited liability company ("LLC"), corporation, retail facility, Seasonal Retailer or Fireworks Retailer to offer for sale, expose for sale, sell at retail, keep with the intent to sell, possess with the intent to sell, any Display Fireworks within the jurisdiction of Metro Louisville.

B. It shall be unlawful for any person, firm, co-partnership, sole proprietor, business entity, not-for-profit organization, limited liability company ("LLC"), corporation, retail facility, Seasonal Retailer or Fireworks Retailer to use, explode or ignite any Display Fireworks, within the consolidated city limits of Louisville Metro, unless such devices falls within one of the exceptions listed in this section.

1) Exceptions:

- a) Pyrotechnic devices and distress signals for marine, aviation and highway use in emergency situations.
- b) Blank cartridges used in a show or theatre or for use as a signal or ceremonial purpose in athletics or sports.
- c) Pyrotechnic devices authorized for use under the supervision of a military organization.
- d) Pyrotechnic devices for use in training by fire service, law enforcement, or similar governmental agencies.
- e) Fireworks for agricultural purposed under the direct supervision of the United States Department of the Interior or any equivalent or local agency.

C. A person, firm, co-partnership, sole proprietor, business entity, not-for-profit organization, limited liability company ("LLC"), corporation, retail facility, Seasonal Retailer or Fireworks Retailer may offer for sale, expose for sale, sell at retail, keep

with the intent to sell, possess with the intent to sell Consumer Fireworks, as defined by this Ordinance, within the consolidated city limits of Louisville Metro, as long as all of the provisions governing the sales, permit requirements and usage of Consumer Fireworks under this Ordinance have been met.

D. Consumer Fireworks may be used, ignited or exploded by persons, as long as such usage, ignition or explosion does not occur within two-hundred (200) feet of any structure, other persons, animals or vehicles. The usage of Consumer Fireworks shall not at any time pose a hazard to property, other persons, animals or vehicles.

E. All sales of consumer fireworks authorized by this ordinance shall be sold only in permanent structures which are in compliance 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). The sale of consumer fireworks from tents, stands or any other temporary structures shall be expressly prohibited.

~~E.~~ F. A person may not possess, use, ignite or explode Consumer Fireworks, within the consolidated city limits of Louisville Metro, unless he or she is at least eighteen (18) years of age.

~~F.~~ G. No person, firm, co-partnership, sole proprietor, business entity, not-for-profit organization, limited liability company ("LLC"), corporation, retail facility, Seasonal Retailer or Fireworks Retailer shall give, offer for sale, or sell any Consumer Fireworks or Display Fireworks to any person who is under eighteen (18) years of age, within the consolidated city limits of Louisville Metro.

~~G.~~ H. Persons under the age of eighteen (18) may not sell or possess with the intent to sell, Consumer Fireworks or Display Fireworks. No person, firm, co-partnership, sole proprietor, business entity, not-for-profit organization, limited liability company ("LLC"), corporation, retail facility, Seasonal Retailer or Fireworks Retailer that is legally authorized sell any Consumer Fireworks, shall permit or allow any person under the age of eighteen (18) to sell any Consumer Fireworks within the consolidated city limits of Louisville Metro.

~~H.~~ I. Any person, firm, co-partnership, sole proprietor, business entity, not-for-profit organization, limited liability company ("LLC"), corporation, retail facility, Seasonal Retailer or Fireworks Retailer that offers for sale Consumer Fireworks, as defined in this Ordinance, shall comply with all current and applicable provisions of the International Building Code with Kentucky Amendments, and the National Fire Protection Association ("NFPA") 1124 Code for the Manufacture, Transportation, Storage and Retail Sale of Fireworks and Pyrotechnic Articles.

~~I.~~ J. It shall not be a violation of this ordinance for any person, firm, co-partnership, sole proprietor, business entity, not-for-profit organization, limited liability company (“LLC”), corporation, retail facility, Seasonal Retailer or Fireworks Retailer to transport Display Fireworks or Consumer Fireworks that are not legally permitted within the boundaries of Louisville Metro, as long as such banned items are being transported through Louisville Metro to an otherwise legal location where such items can be sold, stored or used. Commercial transportation of Display Fireworks or Consumer Fireworks must be done in accordance with state and Federal regulations regarding explosive materials.

~~J.~~ K. Nothing in this ordinance shall prevent public fireworks displays or the use of pyrotechnics before an audience as long as such events or performances are conducted pursuant to the permit requirements under Louisville Metro Code section 94.31 *et. seq.*

SECTION III: Permit Requirements

A. Any person, firm, co-partnership, sole proprietor, business entity, not-for-profit organization, limited liability company (“LLC”), corporation, retail facility or Seasonal Retailer or Fireworks Retailer intending to lawfully sell, offer for sell, expose for sell or sale at retail any Consumer Fireworks, as permitted under this Ordinance, shall register annually with the Louisville Metro Department of Codes and Regulations, and shall receive a permit from the Inspections, Permits and Licenses (“IPL”) Division of the Louisville Metro Department of Codes and Regulations. Any person,

firm, co-partnership, sole proprietor, business entity, not-for-profit organization, limited liability company ("LLC"), corporation, retail facility, Seasonal Retailer or Fireworks Retailer intending to lawfully sell, offer for sell, expose for sell or sale at retail any Consumer Fireworks shall be required to obtain a permit for each site location at which Consumer Fireworks shall be sold. This registration and permit requirement is in addition to the state registration requirements under KRS 227.715.

B. Any Seasonal Retailer, as defined under this Ordinance, shall be assessed a fee of ~~Two Hundred and Fifty Dollars (\$250)~~ One Thousand Dollars (\$1000) for each permit that is issued. Seasonal Retailers shall be required to obtain a permit for each site location at which Consumer Fireworks shall be sold.

C. Any Fireworks Retailer, as defined under this Ordinance, shall be assessed a fee of ~~One~~ Two Thousand Dollars (~~\$1,000~~) (\$2000) for each permit that is issued. Fireworks Retailers shall be required to obtain a permit for each site location at which Consumer Fireworks shall be sold.

D. Any person, firm, co-partnership, sole proprietor, business entity, not-for-profit organization, limited liability company ("LLC"), corporation, or retail facility that is open year round and in which the sale of Consumer Fireworks is ancillary to the primary course of business, shall be assessed a fee of ~~Two Hundred and Fifty Dollars (\$250)~~ Two Thousand Five Hundred Dollars (\$2,500) for each permit that is issued. Any person, firm, co-partnership, sole proprietor, business entity, not-for-

profit organization, limited liability company ("LLC"), corporation, or retail facility, shall be required to obtain a permit for each site location at which Consumer Fireworks shall be sold.

E. Any person, firm, co-partnership, sole proprietor, business entity, not-for-profit organization, limited liability company ("LLC"), corporation, retail facility, Seasonal Retailer or Fireworks Retailer that has been issued a permit under this Ordinance, shall at all times openly display any such permits that have been issued under this Ordinance.

F. Permits that are issued as is required under this Ordinance shall be non-transferable.

G. Any person, firm, co-partnership, sole proprietor, business entity, not-for-profit organization, limited liability company ("LLC"), corporation, retail facility, Seasonal Retailer or Fireworks Retailer that is accused of violating any section of this Ordinance shall be subject to having any permit(s) awarded under this section revoked. Revocation of any permit(s) issued under this Ordinance, shall be heard by the Code Enforcement Board, pursuant to the code enforcement procedure of Louisville Metro Code section 32.283 *et. seq.*

~~H. Fifty Percent (50%) of any permit fee that is collected under this Ordinance, and or any penalties collected shall be distributed to the local fire authority having~~

~~jurisdiction where the person, firm, co-partnership, sole proprietor, business entity, not-for-profit organization, limited liability company ("LLC"), corporation, retail facility, Seasonal Retailer or Fireworks Retailer purchasing the permit is located. Such funds shall be used for fire training, education and enforcement.~~

† H. Aerial Devices, as defined in Section I, Part A (2) and Audible Ground Devices as defined in Section I, Part A (3), are prohibited from being sold by any person, firm, co-partnership, sole proprietor, business entity, not-for-profit organization, limited liability company ("LLC"), corporation, retail facility, Seasonal Retailer or Fireworks Retailer unless said devices are sold from a free-standing structure dedicated solely for the purpose of selling Consumer Fireworks.

I. Every fireworks retailer, seasonal or otherwise, shall:

(1) provide to each purchaser of fireworks a safety pamphlet in a form approved by the Director of the Metro Department Inspections, Permits, and Licenses; and

(2) require each purchaser of fireworks to sign an information and liability acknowledgment in a form approved by the Director of the Metro Department Inspections, Permits, and Licenses ; and

(3) require each purchaser of fireworks to provide the seller with a valid identification card or document proving that the purchaser is over eighteen (18) years of age.

SECTION IV: Enforcement Authority

- A) The Fire Chief (or designees), police officers, Code Enforcement Officers or any other city official authorized to enforce any provision of the Louisville Metro Code, shall have the authority to enforce any provision of this Ordinance.

- B) Violations of his Ordinance shall be enforced through the Code Enforcement Board, pursuant to the enforcement procedure as outlined in Louisville Metro Code section 32.283 *et. seq.*

- C) If a person, firm, co-partnership, sole proprietor, business entity, not-for-profit organization, limited liability company (“LLC”), corporation, retail facility, Seasonal Retailer or Fireworks Retailer is accused of using, igniting, exploding, offering for sale, exposing for sale, selling at retail, keeping with the intent to sell, or possessing with the intent to sell any illegal Display Fireworks or any Consumer Fireworks in violation of any provision of this Ordinance, the appropriate enforcement authority shall immediately confiscate any such devices that are believed to be in violation of this ordinance.

- D) An appeal from any final order of the Code Enforcement Board may be made to the Jefferson County District Court within thirty (30) days of the date the order is issued, pursuant to Louisville Metro Code section 32.286 *et. seq.* If no appeal is

made within this time period, then the Board's determination will be deemed final for all intents and purposes.

- E) After any person, firm, co-partnership, sole proprietor, business entity, not-for-profit organization, limited liability company ("LLC"), corporation, retail facility, Seasonal Retailer or Fireworks Retailer is found to be in violation of any part of this Ordinance after a proper hearing with the Code Enforcement Board, any Display Fireworks or Consumer Fireworks that have been confiscated under this Ordinance, shall be destroyed by the appropriate enforcement authority.

SECTION V: Penalties and Fines

- A) Any person, firm, co-partnership, sole proprietor, business entity, not-for-profit organization, limited liability company ("LLC"), corporation, retail facility, Seasonal Retailer or Fireworks Retailer found to be in violation of Section II(A) or Section II(B) of this Ordinance, shall receive a fine not to exceed ~~Five Hundred Dollars (\$500)~~ One Thousand Dollars (\$1000).
- B) Any person found to be in violation of Section II(D) or Section II(E) of this Ordinance, shall receive a fine not to exceed ~~Two Hundred and Fifty Dollars (\$250)~~ One Thousand Dollars (\$1000).
- C) Any person, firm, co-partnership, sole proprietor, business entity, not-for-profit organization, limited liability company ("LLC"), corporation, business, retail

facility, Seasonal Retailer or Fireworks Retailer that gives, offers for sale, or sells any Consumer Fireworks or Display Fireworks to any person who is under eighteen (18) years of age, in violation of Section II(F) of this Ordinance, shall receive a fine not to exceed ~~Five Hundred Dollars (\$500)~~ One Thousand Dollars (\$1000).

D) Any person, firm, co-partnership, sole proprietor, business entity, not-for-profit organization, limited liability company ("LLC"), corporation, retail facility, Seasonal Retailer or Fireworks Retailer that offers for sell any Consumer Fireworks or Display Fireworks, that permits or allows any person under the age of eighteen (18) to sell any Fireworks, Consumer Fireworks, or Display Fireworks, in violation of Section II(G) of this Ordinance, shall receive a fine not to exceed ~~Five Hundred Dollars (\$500)~~ . One Thousand Dollars (\$1000).

E) Any firm, co-partnership, sole proprietor, business entity, not-for-profit organization, limited liability company ("LLC"), corporation, retail facility, Seasonal Retailer or Fireworks Retailer found to be in violation of Section III(A), Section III(E) or Section III (I) of this Ordinance, shall receive a fine not to exceed ~~Five Hundred Dollars (\$500)~~. One Thousand Dollars (\$1000).

F) A fter any person, firm, co-partnership, sole proprietor, business entity, not-for-profit organization, limited liability company ("LLC"), corporation, retail facility, Seasonal Retailer or Fireworks Retailer is found to be in violation of any part of

this Ordinance after a proper hearing, any permit(s) obtained under this Ordinance shall be revoked, and the guilty party shall not be allowed to apply for another permit under this Ordinance for one (1) full year after the date of the guilty finding.

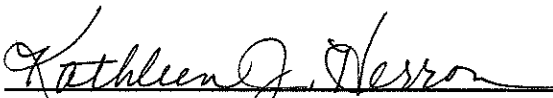
G) For purposes of enforcing fines and penalties under this Ordinance, each violation of this Ordinance shall be considered a separate offense, and any fines levied against any guilty party under this Ordinance, shall be levied against the guilty party for each separate offense.

SECTION VI: ~~This Ordinance shall take effect upon its passage and approval.~~
Effective dates; Expiration

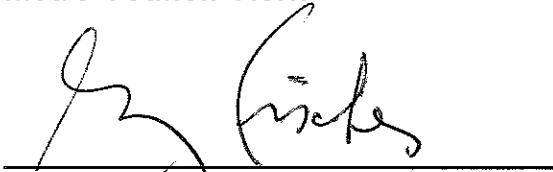
A) Section II (E) of this ordinance shall be effective on July 10, 2011

B) All other sections of this ordinance shall be effective upon passage and approval.

C) This ordinance shall expire in its entirety on November 1, 2011.


Kathleen J. Herron
Metro Council Clerk


Jim King
President of the Council


Greg Fischer
Mayor

6/24/11
Approval Date

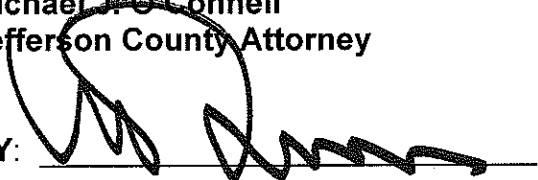


APPROVED AS TO FORM AND LEGALITY:



Michael J. O'Connell
Jefferson County Attorney

BY:



Fireworks Ordinance April 2011 Revised June 13 2011
Fireworks - Committee substitute as amended at Council - 22 June 2011 - roc/wtw