

Diane Lawless, Chair

Doug Martin, Vice Chair

Chuck Ellinger

Chris Ford

Julian Beard

Bill Farmer

Kevin Stinnett

K.C. Crosbie

Jay McChord

Peggy Henson

Staff:

Jenifer Benningfield

AGENDA

Public Safety Committee

August 21st, 2012

1:00pm

- | | | |
|--------------------------------------|---------|---------|
| 1. Approval of July 10, 2012 Summary | | (1-4) |
| 2. Fireworks | Blues | (5-16) |
| 3. Examine Quarry Ordinance | | |
| To Ensure Revenue Neutral | PS Link | (17-19) |
| 4. Items Referred to Committee | | (20) |

Future Committee Meetings

September 11

October 9

November 13

December 4

“Public Safety Committee, to which shall be referred matters relating to the Department of Public Safety and its related Divisions.” Council Rules and Procedures, Section 2.102 (1)

Public Safety Committee
July 10th, 2012
Summary and Motions

Chair CM Diane Lawless called the meeting to order at 12:55pm. Council Members present were CM Ellinger, CM Ford, CM Beard, CM Farmer, CM Stinnett, CM Crosbie, CM McChord, CM Henson, and CM Martin.

Public Safety Disability Claims

Martin introduced Patrick Johnston, the Director of the Division of Risk Management. Martin asked Johnston what LFUCG can do to reduce the disability rate (currently at 38%). Johnston told the committee members that neither the Division of Police nor the Division of Fire and EMS require annual physical or agility testing. Johnston said that the police and fire employees do have required physicals. The police physicals are every other year and the fire physicals are yearly.

Johnston said that shoulder injury claims are the most common, with knee injuries ranking second. Johnston told committee members that ergonomics and training are very important for injury prevention. He also mentioned using a managed care system to rehab injured employees.

Beard asked Johnston which division has the most injuries. Johnston said that they are both very physical jobs and have similar claim numbers (fire 194 and police 199). He went on to say that the compensation costs are higher for police than fire. He said that most of the claims are strains and sprains.

Martin asked Johnston about annual physical fitness training. Johnston said that as a person ages they are more susceptible to injuries, but regardless, there are no mandatory physical fitness tests administered. Public Safety Commissioner Clay Mason came to the podium and said that physical fitness testing is not legal. He said that the testing must be aligned with the core duties of their position. Beard said that he finds it to be ironic that physical fitness testing is mandatory for applicants but not for current employees.

McChord said that our disability process is unreasonable. He noted that there are laws that say you cannot conduct physical fitness and agility tests but there are also laws that allow the employees to go to the doctor and if they are 1% disabled, can get a full disability retirement. He went on to say that police and fire should be leading the way with physical fitness.

Martin read 67A.360 (16):

“Total disability shall mean a disability which substantially precludes a person from performing with reasonable regularity the substantial and material parts of any gainful work or occupation in the service of the department that he would be competent to perform were it not for the fact that the impairment is founded upon conditions which render it reasonably certain that it will continue indefinitely.”

Gardner said that the interpretation of the statute is that they would be disabled from doing the most strenuous job in the department. Gardner told committee members that a court could interpret the statute for them. Gardner went on to remind the committee members that state statute mandates that the Commissioner of Law serve on the Pension Board. He said that LFUCG’s Law Department represents the Pension Board and said that the council or a private citizen would have to hire their own lawyer to review this. He said that it would be a conflict of interest for LFUCG’s Law Department. Gardner said that both the Police and Fire Administrations believe that they need a force that can do all jobs. Martin said that we need a force with employees that can do their own job.

Martin asked Lawless to keep the item in committee.

Henson said that she understand the complexities of the topic and would support the hiring of outside legal counsel. Henson asked for the rationale behind tax free disability pensions.

Stinnett asked Gardner what percentage of the 38% would be able to leave the force on regular retirement. He asked if LFUCG could adopt an ordinance that says that the employee must be at least 10% disabled that could lie on top of state statute. Mason said that this would cause a number of logistical issues. He said that there have been 390 disability claims over the past 10 years, which is approximately 19 people per year. Mason expressed concerns about where LFUCG would put them and he asked the committee members where the line would be drawn, knowing they cannot have an entire department of light duty personnel. He said that all police and fire employees must be able to perform in certain instances. He said that both the Police and Fire Chiefs are working to see if there is a middle ground that could be reached. Since 1990 there have been 252 disability retirements. 87 of those employees had 20 or more years of service.

Beard questioned why the employees get hazardous duty pay when they are no longer working.

Henson asked Gardner if they could put something in place that would require a firefighter or police officer to retire after 20 years instead of taking a disability requirement.

Martin said that 24.44% of police and fire employees that retire are not of service age. This number is still 3 times the state rate. Martin reminded committee members that the Pension Task Force is not looking at internal policies. Their focus is Frankfort.

Lawless said that they will not have Public Safety Disability Claims on the next agenda, but they will keep the item in committee.

Chronic Nuisance Ordinance

Mason came to the podium and told committee members that he had met with the Division of Police and Code Enforcement to discuss the properties in Fayette County that would be potential chronic nuisance properties. He had two examples of properties that could fall under the broad spectrum of violations that would be in the proposed Chronic Nuisance Ordinance.

He said that address 'A' had 36 contacts by police from July 2010 to June 2012 for a variety of violations. Address 'B' had 52 contacts by police from July 2010 to July 2012. He said that they are both single family residences.

McChord asked how many other properties would fall within the parameters of the proposed ordinance. Mason said it would be very labor intensive to go through and analyze properties to come up with specific numbers. He also said that if the ordinance is implemented, it will be very labor intensive to enforce. McChord said that the list is not extensive and he said that he would like a list of properties and what LFUCG can do in a column. He also said that LFUCG needs to make the fine worthwhile. He asked to sit down with our public safety divisions to identify the properties that need to be addressed.

Farmer told Committee members that the committee should be done with the issue. He said that the ordinance failed in a previous meeting for lack of a second. McChord said that he is not supportive of the ordinance because there are only a few properties that are chronic nuisances.

Henson said that the issue is not totally law enforcement. Henson said that she is fighting for improvements in our high crime and low income areas. She said that citizens that live in Fayette County have a right to a high quality of life. She said that our current laws do not go far enough to stop the cycle. She said that citizens of Fayette County must be respectful to their neighbors. She told committee members that she has met and will continue to meet with the Greater Lexington Apartment Association (GLAA).

Crosbie reiterated McChord's position on the issue. She cited examples in her district of nuisance properties and said that it takes persistence to utilize the current ordinances to abate the nuisances.

Lawless said that the chronic nuisance properties are an economic development issue. She said that it is handful of properties that are zapping LFUCG resources. Lawless went on to say that she believes it is a quality of life issue and is very important.

Kay said that it is quite simple. He stressed that the north side of Lexington is subject to rogue landlords and houses. He said that people that live on the blocks with rogue homes are often intimidated. He said that the nuisance properties are causing people to want to vacate the area. Kay wants a simplified ordinance to be presented to the committee and wants the issue to stay in committee.

Martin said that he has problems with the current draft. He said that Henson cares deeply for the disadvantaged but thinks that the draft would have unintended consequences. He said that under the current draft, a commercial property that has three calls would be considered a chronic nuisance property. He said that public safety issues need to be fixed so they can afford additional officers to enforce our current ordinances. His feeling is that this is a short-cut designed to address a serious and substantial problem. He said that we need more code enforcement officials and stressed that serious penalties are going to be important.

Submitted by Jenifer Benningfield, Council Administrative Specialist.

227.702 Consumer fireworks defined.

As used in KRS 227.700 to 227.750, "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.

Effective: March 16, 2011

History: Amended 2011 Ky. Acts ch. 66, sec. 3, effective March 16, 2011. -- Created 1982 Ky. Acts ch. 436, sec. 2, effective July 15, 1982.

ORDINANCE NO. ____-2012

AN ORDINANCE AMENDING CHAPTER 9A TO PROHIBIT THE SALE AND USE OF FIREWORKS IN FAYETTE COUNTY EFFECTIVE ON JANUARY 1, 2013.

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

Section 1 - That Section 9A-2 of the Code of Ordinances be and hereby is amended 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) "Display fireworks" shall have the same meaning as in KRS 227.706.
- ~~(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 2 - That Section 9A-3 of the Code of Ordinances be and hereby is amended 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 and display fireworks, is prohibited except as set forth herein. The term “use” includes igniting, firing, or exploding or possessing with the intent of use. The term “sale” includes the sale, offering or exposing for sale, or keeping or possessing with the intent to sell.
- (b) This prohibition shall not apply to consumer fireworks as defined in KRS 227.702(1). The sale of such fireworks shall be regulated pursuant to Section 9A-4 of the code.
- (c) The use of display fireworks is permitted with the [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 other 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 3 - That Sections 9A-4 through 9A-7 of the Code of Ordinances be and are hereby revoked in their entirety.

[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.~~

~~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;~~
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- ~~(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

~~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.~~

~~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 4 - That Section 9A-8 of the Code of Ordinances be and hereby is renumbered as Section 9A-4 of the Code.

Sec. 9A-4. — 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 5 - That Section 9A-9 of the Code of Ordinances be and hereby is renumbered as Section 9A-5 of the Code and be and hereby is amended to read as follows.

Sec. 9A-59. 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 five hundred dollars (\$500.00) if a person, and not more than the greater of two thousand dollars (\$2,000.00) or double the amount of the violator's gain from the commission of the offense, if a corporation; [one thousand dollars (\$1,000.00), or imprisonment for a period of time not to six (6) months [exceed thirty (30) days], or both. Each day a violation occurs shall constitute a separate offense.

- (a) The minimum fine for a conviction involving the sale of prohibited fireworks [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 a conviction involving the use of prohibited fireworks [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 6 - 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 7 - That this Ordinance shall become effective on January 1, 2013.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL

PUBLISHED:

00355012

§ 94.85 PENALTY.

(A) *Criminal penalties.* Any person, firm or corporation violating any of the provisions of this subchapter, or neglecting to comply with any order issued pursuant to any section hereof, shall be guilty of a misdemeanor, and shall be fined not less than \$25 nor more than \$1,000, or shall be imprisoned for not more than 60 days, or both. Each day's violation shall constitute a separate offense.

(B) *Civil penalties.* Any person, firm or corporation violating any of the provisions of this subchapter, shall be subject to a civil penalty of not less than \$100, nor more than \$1,000. Each day's violation shall constitute a separate offense.

ORDINANCE NO. ____-2012

AN ORDINANCE AMENDING CHAPTER 9A OF THE CODE OF ORDINANCES OF THE LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT TO PROHIBIT THE SALE AND USE OF FIREWORKS IN FAYETTE COUNTY EFFECTIVE ON JANUARY 1, 2013.

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

Section 1 - That Section 9A-2 of the Code of Ordinances be and hereby is amended 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) "Display fireworks" shall have the same meaning as in KRS 227.706.

Section 2 - That Section 9A-3 of the Code of Ordinances be and hereby is amended 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 and display fireworks, is prohibited except as set forth herein. The term "use" includes igniting,

firing, or exploding or possessing with the intent of use. The term “sale” includes the sale, offering or exposing for sale, or keeping or possessing with the intent to sell.

- (b) This prohibition shall not apply to consumer fireworks as defined in KRS 227.702(1). The sale of such fireworks shall be regulated pursuant to Section 9A-4 of the code.
- (c) The use of display fireworks is permitted with the written approval of the Commissioner of Public Safety or his designee and all other necessary permits. 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 3 - That Sections 9A-4 through 9A-7 of the Code of Ordinances be and are hereby revoked in their entirety.

Section 4 - That Section 9A-8 of the Code of Ordinances be and hereby is renumbered as Section 9A-4 of the Code.

Sec. 9A-4. 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 5 - That Section 9A-9 of the Code of Ordinances be and hereby is renumbered as Section 9A-5 of the Code and be and hereby is amended to read as follows.

Sec. 9A-59. 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 five hundred dollars (\$500.00) if a person,

and not more than the greater of two thousand dollars (\$2,000.00) or double the amount of the violator's gain from the commission of the offense, if a corporation; or imprisonment for a period of time not to exceed six (6) months, or both. Each day a violation occurs shall constitute a separate offense.

- (a) The minimum fine for a conviction involving the sale of prohibited fireworks shall be five hundred dollars (\$500.00).
- (b) The minimum fine for a conviction involving the use of prohibited fireworks 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 6 - 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 7 - That this Ordinance shall become effective on January 1, 2013.

PASSED URBAN COUNTY COUNCIL:

MAYOR

ATTEST:

CLERK OF URBAN COUNTY COUNCIL

PUBLISHED:

00355050

Section 8-4(4)(a) of the Code of Ordinances (Mining/Quarrying Permit Fees)

Option 1

Current Draft

The division of engineering shall issue a nontransferable mining/quarrying permit following the approval of the application and written confirmation that the bond has been posted as defined in section 8-5. Board approval shall be required for new or expanded uses. The division of engineering shall procure payment for a permit fee of twenty-four dollars (\$24.00) per acre for land to be affected or a renewal fee by the operator of eighteen dollars (\$18.00) per acre for land to be affected by the total operation in the next ensuing year. All fees must be in the form of cash, cashier's check, certified check, or company check.

Option No. 1(a) – Add COLA provision and/or ability to assess additional costs

The fees shall be adjustable each July 1 beginning on July 1, 2013, by an amount based upon the Consumer Price Index for All Urban Consumers, the U.S. City Average ("CPI-u") published monthly by the Bureau of Labor Statistics. These rates shall be adjusted up if so indicated by a factor determined by averaging the monthly CPI-u published for the twelve-month period ending, and including, April of the year before the July 1 adjustment.

In the event that the actual costs incurred by the government in performing inspections exceeds the above fee, the operator shall be responsible for payment of the difference in cost upon presentation of an invoice or bill by the government. If the actual costs incurred by the government in performing the inspections is less than the above fee, the government shall remit the difference in cost to the operator.

Option No . 2

The division of engineering shall issue a nontransferable mining/quarrying permit following the approval of the application and written confirmation that the bond has been posted as defined in section 8-5. Board approval shall be required for new or expanded uses. The division of engineering shall procure payment for a permit fee of fifty dollars (\$50.00). In addition, the operator shall provide at its cost, an inspection performed within the last thirty (30) days which fully complies with the requirements of section 8-9 and which has been performed by an

engineer or other person qualified to perform such an inspection pursuant to section 8-9(6) who is independent from and not an employee of the operator. The inspection report shall be submitted under oath, certified and witnessed by a notary public. [twenty-four dollars (\$24.00) per acre for land to be affected or a renewal fee by the operator of eighteen dollars (\$18.00) per acre for land to be affected by the total operation in the next ensuing year.] All fees must be in the form of cash, cashier's check, certified check, or company check.

Option No . 3

The division of engineering shall issue a nontransferable mining/quarrying permit following the approval of the application and written confirmation that the bond has been posted as defined in section 8-5. Board approval shall be required for new or expanded uses. Beginning on January 1, 2013, the division of engineering shall procure payment for a permit fee [of twenty-four dollars (\$24.00) per acre for land to be affected or a renewal fee by the operator of eighteen dollars (\$18.00) per acre for land to be affected by the total operation in the next ensuing year. All fees must be in the form of cash, cashier's check, certified check, or company check.] based upon the total of the costs incurred by the urban county government in performing the annual inspections required in section 8-9 the previous year. The fee shall be assessed on a per acre basis for the land to be affected in the next ensuing year. Such fees shall include the costs of retaining any necessary consultants by the government. The annual fee schedule including the calculation shall be made available to the operator upon request. All fees must be in the form of cash, cashier's check, certified check, or company check. In the event that the actual costs incurred by the government in performing inspections exceeds the above fee, the operator shall be responsible for payment of the difference in cost upon presentation of an invoice or bill by the government. If the actual costs incurred by the government in performing the inspections is less than the above fee, the government shall remit the difference in cost to the operator.

Additional Provision for consideration

The fees shall be adjustable each July 1 beginning on July 1, 2013, by an amount based upon the Consumer Price Index for All Urban Consumers, the U.S. City Average ("CPI-u") published monthly by the Bureau of Labor Statistics. These rates shall be adjusted up if so indicated by a factor determined by averaging the monthly CPI-u published for the twelve-month period ending, and including, April of the year before the July 1 adjustment.

From: Connie Underwood [mailto:c.underwood@windstream.net]
Sent: Tuesday, August 14, 2012 11:49 PM
To: Elizabeth Chatterton
Subject: Mining and Quarrying Ordinance

The ordinance was originally put in place to ensure that the mine operations had only extended to those areas that were reported by the mining operators. I believe there had been concerns by residents in the mine areas that the mining operations had extended much further than was being reported. The inspection gives everyone some assurance that everything is going as reported and the fees were to cover the costs.

Any of these options would be better than the current system since it does not ensure that the fees keep up with the costs of the inspections. Each of the three options you outlined has its points.

Building Inspection's original proposal to raise the cost to \$18 and \$24 per acre which would cover the actual cost for an estimated three years.

This option, as written, would require that Council re-address this issue in three years.

The wording that I received from Law added that beginning in 2014 the rates per acre would be calculated based on the cost of the inspection. This would keep Council for addressing the issue every three years.

I am not sure of the timing of the inspections versus the payment of the permit fees and how this would work.

I am not sure how the costs for active versus inactive acres would be handled

Businesses seeking a permit would contract a certified individual to perform the inspection and then submit the certified paperwork to the Division of Engineering.

This option allows the businesses to choose their own inspector and pushes responsibility to someone other than the UCG.

I would assume that it would be better to have the same inspectors for all mines would allow for more comparable inspections.

Could there be issues with the businesses choosing inspectors that they have close relationships with?

This option would not require the Council to re-address this issue.

Develop a formula that would be recalculated each year and be based upon the cost of these inspections and charged to each company by acreage.

I believe that this is what the committee had originally decided to do.

The calculation would be based on the most recent inspection costs and the rates could be posted whenever the inspections were finalized.

The current rate differentiation between active and non-active acres would be included in the calculation.

This option would not require the Council to re-address this issue.

Public Safety Committee Referrals

Item	Referred By	Date	Status
Public Safety Disability Claims	Martin	3-Feb-11	Agenda for 7-10-12
Paramedic Training:EMAB	Gorton/Lawless	11-Mar-11	Agenda for 5-1-12
Community Corrections Best System of Management	Myers/Kay	7-Jun-11	
Examine Quarry Ordinance (UCG 8-4) to ensure revenue Neutral	PS Link	17-Jun-11	Agenda for 8-21-12
ROW Signage	PS Link	17-Jun-11	
Examine Nuisance Abatement Process	PS Link	17-Jun-11	
Examine Nuisance Ordinance (UCG 12-1) to Ensure Appropriate Revenue	PS Link	17-Jun-11	
Emergency Management Long Range Strategic Plan	PS Link	17-Jun-11	
E-911 Routing Non-Emergency Calls	PS Link	17-Jun-11	
Community Corrections: Explore Receiving Federal/State Inmate	PS Link	17-Jun-11	
Electronic Monitoring Utilization: Work With Judicial	PS Link	17-Jun-11	
Best Practice for Firefighter and Paramedic Staffing	PS Link	17-Jun-11	Agenda for 5-1-12
Off Premises Signage	PS Link	17-Jun-11	
Chronic Nuisance Ordinance	Henson	13-Aug-11	Agenda for 7-10-12
Fleet Management Services	Myers	4-Aug-11	
Horses Running at Large	Stinnett	7-Mar-12	Agenda for 5-1-12
Compiling a List of Safe Places People can go in Times of Weather or Emergency Needs	Farmer	17-Mar-12	
Abandoned Housing	Myers	10-Apr-12	
Creation of a policy for systematically replacing and maintaining vehicles, appartuses and other recurring costs that are critical to public safety divisions	PS Link	17-May-12	
Fireworks	Blues	05-Jul-12	Agenda for 8-21-12