BILL NO. 1443 **ORDINANCE NO. 20178**

AN ORDINANCE REPEALING AND REPLACING ORDINANCE NO. 561 REGULATING THE SALE OF FIREWORKS WITHIN THE CITY LIMITS OF WOOD HEIGHTS, MISSOURI; AMENDING THE SCHEDULE OF FEES; ADDING A PERMIT AND FEE ALLOWING FOR OUT OF SEASON FIREWORK DISPLAYS; SETTING AN EFFECTIVE DATE FOR THIS ORDINANCE; SETTING A PENALTY FOR VIOLATION OF THIS ORDINANCE; AND REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HEREWITH.

WHEREAS, the Board of Aldermen of the City of Wood Heights, Missouri ("City") have determined that it is in the best interests of the public to allow seasonal sale of consumer fireworks in the City, subject to appropriate regulation developed by City staff, and

WHEREAS, the Board of Aldermen of the City has determined the need for residents to obtain an Out Of Season Permit to be able to set off fireworks, other than the Fourth of July, to accommodate other holidays and special occasions.

NOW, THEREFORE, BE IT ORDAINED by the Board of Aldermen of the City of Wood Heights, Missouri, as follows:

Section 1. That Ordinance No. 561 is hereby repealed in its entirety.

Section 2. That the following is hereby enacted to regulate the sale of fireworks within the City of Wood Heights, Missouri:

Article 1. Sale of Fireworks. The sale of fireworks within the City limits of the City of Wood Heights, Missouri, is hereby prohibited except during the following periods of each year, to-wit: from 9:00 a.m. to 9:00 p.m. from June 26th to and including July 3rd; and from 9:00 a.m. to 11:00 p.m. on July 4th.

Article 2. Fireworks Occupational Licenses. No person, firm, partnership, or corporation shall sell fireworks within the City of Wood Heights, Missouri, without first obtaining a permit from the City of Wood Heights, Missouri. All permits may be obtained at the office of the City Clerk at Wood Heights City Hall during normal business hours. A fee of $1,250 for each permit shall be paid by each person, firm, partnership or corporation before any such permit shall be issued.

Article 3. Shooting of Fireworks. Fireworks may only be used, ignited and/or discharged on private property with the permission of the landowner. Fireworks may only be used, ignited and/or discharged by persons sixteen (16) year of age or older, unless the person is accompanied by a parent or legal guardian. It shall be unlawful to shoot or discharge fireworks within the City limits of Wood Heights, Missouri, except during the hours of 1:00 p.m. to 10:00 p.m. from June 26th to and including July 3rd; and from 9:00 a.m. to midnight on July 4th of each year.

Article 4. Out Of Season Permit. Persons wishing to set off fireworks, other than the times and dates listed in Article 3, must obtain an Out Of Season Permit for each event from the City Clerk at Wood Heights City Hall during normal business hours for a fee of $10.00 per event. Any person(s) shooting off fireworks without obtaining an Out Of Season Permit will be subject to Section 18. Fines.

Article 5. Definitions. For the purpose of this Section, the following words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words used in the plural number include the singular number, and words used in the singular number include the plural number. The word *"shall"* is always mandatory and not merely precatory.

Bottle Rocket – A type of firework that is attached to a stick and is designed to ascend in to the air with:

1. A casing size of less than three-eights (3/8) of an inch for the outside diameter and less than two and one-half (2-1/2) inches in length; and

2. An overall length of less than fourteen (14) inches, including stick.

Distributor – Any person engaged in the business of selling fireworks to wholesalers, jobbers, seasonal retailers, other persons or governmental bodies, including any person that imports any fireworks of any kind in any manner into the State of Missouri.

Fireworks – Explosive devices designed primarily to produce visible or audible effects by combustion, including aerial devices and ground devices, all of which are classified as fireworks, UNO336, 1.4G by regulation of the United States Department of Transportation, as amended from time to time, and which were formerly classified as Class C common fireworks by regulation of the United States Department of Transportation.

Fireworks Season – The period beginning on the twenty-sixth (26th) day of June and continuing through the fourth (4th) day of July in the same year which shall be the only period of time that seasonal retailers may be permitted to sell fireworks.

Jobber – Any person engaged in the business of making sales of fireworks at wholesale or retail within the State of Missouri to non-licensed buyers for use and distribution outside the State of Missouri during a calendar year from the first (1st) day of January through the thirty-first (31st) day of December.

Manufacturer – Any person engage in the making, manufacture, assembly or construction of fireworks of any kind within the State of Missouri.

Permanent Structure – Buildings and structures other than tents, mobile homes, temporary stands and trailers.

Person – Any person, partnership, firm, association or corporation.

Seasonal Retailer – Any person within the State of Missouri engaged in the business of selling fireworks in Missouri during fireworks season, as defined in this Section, and holding a valid seasonal retailer license issued by the Missouri State Fire Marshall.

Sell or Sale – The act of selling, attempting to sell and offering for sale and shall include exchange, barter and giving away for no consideration.

Sky Lantern – Miniature, unmanned sack or air balloon that relies on an open flame as a heat source to heat the air inside the lantern with the intention of causing it to lift into the atmosphere.

Stand – Any non-permanent structure or tent which is used solely for the purpose of selling fireworks.

Wholesaler – Any person engaged in the business of making sales of fireworks to any other person engaged in the business of making sales of fireworks at retail with the State of Missouri.

Article 6. License Required. It shall be unlawful for any person to manufacture, sell or distribute any fireworks within the City limits or to ship or cause to be shipped into the City, except as herein provided, any item of fireworks unless such person shall have first obtained from the City Clerk the required applicable occupational license as a wholesale or seasonal retailer for the sale of such fireworks and shall have paid to the City Clerk the fee prescribed herein. No wholesale, jobber, distributor or manufacturer licenses shall be issued by the City.

Article 7. License Term. All business licenses, except for seasonal retailers, shall be for the calendar year or any fraction thereof and shall expire on the fifteenth (15) day of March of each year. The term of licenses for seasonal retailers shall constitute the following time periods, this shall commence at 9:00 a.m. to 9:00 p.m. from June 26th to and including July 3rd; and from 9:00 a.m. to 11:00 p.m. on July 4th. It shall be unlawful to sell fireworks at retail in the City at any time except during the term provided for seasonal retail licenses.

Article 8. Seasonal Retailer Licensing Requirements and Procedure.

1. *Application Period.* The City will begin accepting applications on April first (1st) of each year. For each license requested, a complete application, all necessary supporting documents, and the license fee for the license must be received by the City on or before June fifteenth (15th).

2. *Separate License Required.* Each seasonal retailer must obtain a separate occupational license for each physical sale location.

3. *Application Made by Both Seasonal Retailer and Landowner.* Both the seasonal retailer and the landowner (if different persons) must execute the license application for each sale location. To verify ownership of the property to be licensed, a license application must include a copy of the paid real estate tax receipt for the proposed sale location property for the prior year. If the property has been transferred since the date of the tax receipt, a certified copy of the deed of conveyance must also be submitted.

4. *Proof of Insurance Required.* The seasonal retailer and landowner must submit proof of hazard insurance in the amount of at least one million dollars ($1,000,000.00) per occurrence and a two million dollar ($2,000,000.00) aggregate limit, naming the City as an additional insured and covering occurrences during the term of the insurance. The amount of insurance shall not be subject to possible reduction below the minimum under an aggregate limit which includes occurrences at locations not operated by the seasonal retailer. The seasonal retailer and landowner must also execute an indemnity, on the form provided by the City, indemnifying the City and its employees from all claims and losses.

5. *Tent Fabric Certificate.* The seasonal retailer must submit a certificate or other evidence of acceptance by an organization or laboratory of recognized standing or manufacturer verification that any tent fabric material has been treated with a flame resistant material.

6. *Proposed Parking Plan Required.* A parking plan specifying how the seasonal retailer will comply with the requirements of Section 16. Off Street Parking, must be submitted with the license application.

7. *Safety of Utilities.* The seasonal retailer must submit approval from One-Call that no utilities will be adversely affected by placement of stands or tent stakes prior to actual set up.

8. *Inspection.* Prior to commencing sales, each seasonal retailer shall request and obtain an inspection by the City and District Fire Chief for each location. The fee for each inspection shall be one hundred and fifty dollars ($150.00) for the City and one hundred fifty dollars ($150.00) for the Wood Heights Fire Protection District for a total of three hundred dollars ($300.00). Application for a license shall constitute consent to the initial inspection and any subsequent inspections deemed necessary to by the City and/or District Fire Chief.

9. *Seasonal Retailer License Fee.* The fee for a seasonal retailer license shall be one thousand two hundred fifty dollars ($1,250.00) per license.

10. *Out Of Season Permit.* The fee for an Out of Season Permit shall be ten dollars ($10.00) per permit.

Article 9. Compliance with Laws and Ordinances Required.

1. It shall be unlawful for any person to sell any fireworks at any location within a district zoned or dedicated for residential or agricultural use, including any residential planned districts, or within any commercial or manufacturing districts except districts C-1 and C-3.

2. It shall be unlawful for any person to sell any fireworks without a valid sales tax number.

3. It shall be unlawful to manufacture or sell any fireworks or to ship or cause to be shipped into the City, except as herein provided, any item of fireworks without complying with all applicable Ordinances of the City, laws and regulations of the State of Missouri, and laws and regulations of the United States.

Article 10. Unlawful Sale.

1. It shall be unlawful for any person to sell any explosive devices designed primarily to produce visible or audible effects by combustion, deflagration or detonation that are not classified as fireworks, UNO336, 1.4G by regulation of the United States Department of Transportation, as amended from time to time.

2. It shall be unlawful for any person to engage in the business of making sales of fireworks to non-licensed buyers, regardless of where such fireworks are to be used, except for retail sales by a licensed seasonal retailer during the fireworks season.

3. It shall be unlawful for any person to sell, give away or otherwise distribute fireworks to any person who is less than fourteen (14) years of age except when such child is in the presence of a parent or legal guardian.

4. It is unlawful for any person under the age of sixteen (16) to sell, give away or otherwise distribute fireworks or work in a facility where fireworks are stored, sold, distributed or offered for sale unless supervised by an adult.

5. It shall be unlawful for any person to sell at retail or give away the type of fireworks commonly called "bottle rockets" or "sky lanterns" as defined in Section III. Definitions.

Article 11. Sales Structures Limited. It is unlawful for any person to sell fireworks from a permanent structure, car or truck or in any other manner except from a tent, stand or trailer duly licensed to sell fireworks.

Article 12. Storage, Sale and Display of Fireworks. Storage of fireworks at any time of year shall be in compliance with this Section, the International Fire Code as

adopted by the City, and the laws and regulations of the State of Missouri including, but not limited to, identification and labeling of and accessibility to storage facilities.

1. It is unlawful to expose fireworks to direct sunlight through glass to the merchandise displayed, except where the fireworks are in the original package.

2. All fireworks which the public may examine shall be kept for sale in original packages, except where an attendant is on duty at all times where such fireworks are offered for sale. Fireworks shall be kept in showcases out of reach of the public when an attendant is not on duty.

3. One (1) or more signs reading "Fireworks – No Smoking" shall be displayed at all places where fireworks are stored or sold in letters not less than four (4) inches in height and one or more signs stating the times and places Fireworks may be used, ignited or discharged following Section 13. Restrictions on Sale or Use of Fireworks.

4. Fireworks shall not be manufactured, stored, kept or sold within fifty (50) feet of any motor vehicle fuel dispensing station dispenser, retail propane dispensing station dispenser, compressed natural gas dispensing station dispenser, gasoline or propane bulk station, or any building in which gasoline or volatile liquids are sold in quantities in excess of one (1) gallon. The provisions of this Subparagraph shall not apply to store where cleaners, paints, and oils are sold in the original containers to consumers.

5. It shall be unlawful to permit the presence of lighted cigars, cigarettes, pipes, or any other open flame within fifty (50) feet of where fireworks are stored, kept, or offered for sale.

6. Storage, display and sale locations shall comply with the provisions of 11 C.S.R. 40-3.010(6) and (7) of Missouri State Regulations.

Article 13. Restriction on Sale or Use of Fireworks. No person shall within the City sell, offer for sale, expose for sale, use, possess, discharge or explode any form of fireworks except as follows:

1. It shall be unlawful for any person to use or discharge any "bottle rockets" or "sky lanterns" as defined in Section III. Definitions, within any part of the City.

2. It shall be unlawful for any person to use, ignite or discharge any fireworks within any part of the City when the Wood Heights Fire District has determined that open burning is prohibited due to atmospheric conditions or local circumstances.

3. It shall be unlawful for any person to use, ignite or discharge any fireworks within any of the following areas in the City:

a. Within twenty-five (25) feet of any building or structure.

b. Within six hundred (600) feet of any church, hospital, medical facility, asylum, public school, library or day care facility or within three hundred (300) feet of a structure, stand or tent where fireworks are stored, sold or offered for sale.

c. Within or throw the same from a motor vehicle, or place or throw the same into or at a motor vehicle, or at or near any person or group of people.

d. Within three hundred (300) feet of any gasoline pump, gasoline filling station or any non-permanent structure where fireworks are stored, sold or offered for sale; or within three hundred (300) feet of any structure which is marked according to the National Fire Protection Association's Hazardous Material Identification System as "flammable" or "water reactive".

Article 14. Removal of Stands.

1. *Bond Required.* All temporarily licensed stands and signs shall be completely removed, and the site where such stand was erected, including the parking area and adjacent street, shall be cleared of all debris and trash within three (3) days after expiration of the term for retail sales of fireworks. All applicants for a license who intended to sell fireworks from such a stand shall furnish a cash performance bond with their application to the City Clerk. Such bond shall be payable to the City and in the face amount of one thousand dollars ($1,000.00).

2. *Forfeiture of Bond.* If any person who obtains a license to sell fireworks at retail shall fail to comply with any provision of this Section, then the cash bond provided for in this Subsection hereof shall be forfeited to the City.

Article 15. Advertising Sign Limits. Sign advertising the sale of fireworks shall be located on the property where the sale shall occur; shall not be erected until a business license has been obtained; shall only be displayed during the dates of the sale; and shall comply with the City's sign ordinance. Attention-attracting devices, including, but not limited to, pennants, streamers, wind-operated mechanisms, inflatable devices, flashing lights, beacon lights, strobe lights and mobile sign, are not permitted.

Article 16. Off-Street Parking.

1. Every seasonal retailer selling fireworks within the City shall provide a minimum of twenty (20) parking spaces per location which shall be contiguous to the stand and shall be hard surface pavement.

2. If one (1) or more required parking spaces proposed in a seasonal retailer license application are to be on an adjoining tract of land, the owner(s) of that tract must also join in the license application.

3. Parking surfaces and access areas shall be maintained to prevent mud, dirt, sticky substances or foreign matters of any kind from being carried onto or deposited on any street, alley or other public place.

4. Parking shall comply with the requirements of 11 C.S.R. 40-3.010(7)(B)2 and 3 of Missouri State Regulations.

Article 17. Revocation of License – When – Manner.

1. The City (to also include its designee), may issue a notice of intent to revoke a license issued under this Chapter of any person for cause. Such notice of intent shall specify the reasons for the intended revocation and provide for a hearing (stating the hearing's date, time, and place) for the licensee to be heard. Such hearing will be scheduled as reasonably promptly as circumstances allow, taking into account the brevity of the fireworks season. Upon conclusion of the hearing, the City may issue a revocation order if it determines that there is cause, or it may rescind the notice of intent to revoke if it determines that there is not cause. If a revocation order is issued, it shall become effective upon service to the licensee or his or her agents or employees working at the licensee's stand. Alternatively, a revocation order may provide for a delayed effective date or time and may provide the conditions under which reinstatement of the license may be obtained or upon which the revocation order may be rescinded.

2. At the hearing, testimony of witnesses and other evidence pertinent to the inquiry may be taken, and all proceedings in such hearing shall be recorded, provided that all witnesses shall be sworn.

3. The City shall issue a final written decision, which may be appealed to the Ray County Circuit Court according to law.

4. Within twenty-four (24) hours of the City's revocation order, the license holder shall remove all fireworks product from the stand. Within seventy-two (72) hours of the City's revocation order, the license holder shall remove the stand.

5. A license may be revoked for any of the following reasons:

   a. Violating any of the provisions of either this Chapter, the Revised Statutes of Missouri, Missouri Code of State Regulations, the International Fire Code as adopted by the City, or any other ordinance of the City;

   b. The License held by such person was obtained through materially false statements in the application for such license, or renewal thereof.

Article 18. Fines. For violations of this Ordinance committed within a twelve (12) month period beginning with the first violation: two hundred dollars ($200.00) for the

first municipal ordinance violation: two hundred seventy-five dollars ($275.00) for the second municipal ordinance violation, three hundred fifty dollars ($350.00) for the third municipal ordinance violation, and four hundred fifty dollars ($450.00) for the fourth and any subsequent municipal ordinance violations. Each instance of unlawful use or discharge shall constitute a separate offense and shall be punishable as such hereunder.

Section 3. All Ordinances or parts of Ordinances in conflict herewith are hereby repealed.

Section 4. This Ordinance shall be in full force and effect from and after the date of its passage and approval.

INTRODUCED, READ TWO TIMES, PASSED AND ADOPTED BY THE BOARD OF ALDERMEN AND APPROVED BY THE MAYOR OF THE CITY OF WOOD HEIGHTS, MISSOURI, this 17th day of April, 2017.

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Mayor, Robert Pettegrew

ATTEST:

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Sondra A. Kasserman, City Clerk, CMC/MRCC

SEAL