

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

BELLINO FIREWORKS, INC.,  Plaintiff,  v.  CITY OF ANKENY, IOWA CITY OF BOONE, IOWA, CITY OF JOHNSTON, IOWA, and CITY OF PLEASANT HILL, IOWA,  Defendants.	Case No. 4:17-cv-00212  COMPLAINT FOR DECLARATORY JUDGMENT, DAMAGES, AND INJUNCTIVE RELIEF
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INTRODUCTION

1. On May 9, 2017, the State of Iowa enacted a statute—known as Senate File 489 (“SF 489”)—regulating the possession, sale, transfer, purchase, and use of fireworks. Together with House File 295 (“HF 295”), enacted on March 30, 2017, and the Emergency Rules promulgated by the Iowa State Fire Marshal (“Emergency Rules”), effective May 31, 2017, the State of Iowa comprehensively regulates the sale of consumer fireworks within the State and expressly directs that cities within the State may not set standards or requirements regarding the retail sale of consumer fireworks that are different from, or in addition to, the requirements set by State law.

2. In accordance with SF 489, HF 295, and the Emergency Rules, Plaintiff Bellino Fireworks, Inc. (“Bellino Fireworks”) seeks to establish retail locations within the State of Iowa to sell consumer fireworks in accordance with State law.

3. Despite this, a number of communities within the State—including the four defendants to this lawsuit—have passed or maintain illegal ordinances regulating the sale of consumer fireworks that are contrary to SF 489, HF 295, and the Emergency Rules. These

ordinances are invalid and preempted by State law. As a direct result of these impermissible ordinances, Bellino Fireworks has suffered, and continues to suffer, monetary and non-monetary damages—including irreparable harm that can only be redressed by emergency relief.

4. Accordingly, Bellino Fireworks brings this Complaint against the Cities of Ankeny, Boone, Johnston, and Pleasant Hill. This Court has diversity jurisdiction under 28 U.S.C. § 1332, as set forth below. In addition to this Complaint, Bellino Fireworks plans to file a Motion for Temporary Restraining Order and Preliminary Injunction, seeking injunctive relief against the Defendants’ invalid ordinances.

5. This Complaint contains four counts. **Count I** brings a claim against Defendant City of Ankeny pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.* **Count II** brings a claim against Defendant City of Boone pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.* **Count III** brings a claim against Defendant City of Johnston pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.* **Count IV** brings a claim against Defendant City of Pleasant Hill pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201, *et seq.*

6. There are 14 exhibits attached and incorporated into this Complaint. **Exhibit 1** is a copy of SF 489. **Exhibit 2** is a copy of HF 295. **Exhibit 3** is a copy of the Emergency Rules. **Exhibit 4** is the Declaration of Donald Bellino, dated June 16, 2017. **Exhibit 5** is a copy of proposed amendment S-3177 to SF 489. **Exhibit 6** is a copy of excerpts from the Journal of the Senate, dated March 21, 2017, showing the defeat of proposed amendment S-3177. **Exhibit 7** is a copy of City of Ankeny Ordinance 1917. **Exhibit 8** includes copies of retail licenses from the State Fire Marshal obtained by Bellino Fireworks to sell consumer fireworks in the City of Ankeny. **Exhibit 9** is a copy of selected pages from the City of Boone Code of Ordinances,

including Boone Code §§ 41.12, 175.16–18, and 175.24. **Exhibit 10** is a copy of a retail license from the State Fire Marshal obtained by Bellino Fireworks to sell consumer fireworks in the City of Boone. **Exhibit 11** is a copy of City of Johnston Code 41.12. **Exhibit 12** is a copy of a retail license from the State Fire Marshal obtained by Bellino Fireworks to sell consumer fireworks in the City of Johnston. **Exhibit 13** is a copy of City of Pleasant Hill Ordinance 827. **Exhibit 14** is a copy of a retail license from the State Fire Marshal obtained by Bellino Fireworks to sell consumer fireworks in the City of Pleasant Hill.

### PARTIES

7. Plaintiff Bellino Fireworks is a Nebraska corporation, registered to do business in the State of Iowa. Bellino Fireworks's headquarters and principal place of business is in Papillion, Nebraska, a community in the Omaha, Nebraska, area near the Iowa border. (*See Ex. 4*, at ¶ 2–3.)

8. Defendant City of Ankeny, Iowa, is a municipal entity organized under the laws of the State of Iowa. The City of Ankeny is located in Polk County, Iowa.

9. Defendant City of Boone, Iowa, is a municipal entity organized under the laws of the State of Iowa. The City of Boone is located in Boone County, Iowa.

10. Defendant City of Johnston, Iowa, is a municipal entity organized under the laws of the State of Iowa. The City of Johnston is located in Polk County, Iowa.

11. Defendant City of Pleasant Hill, Iowa, is a municipal entity organized under the laws of the State of Iowa. The City of Pleasant Hill is located in Polk County, Iowa.

### JURISDICTION AND VENUE

12. This Court has diversity jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1). Bellino Fireworks is a citizen of the State of Nebraska. The defendants are citizens

of the State of Iowa. The amount in controversy exceeds \$75,000 against each Defendant. (*See Ex. 4*, at ¶¶ 17–19, 24, 29, 38.)

13. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) and § 1391(b)(2). Venue is proper under § 1391(b)(1) because all defendants are deemed to reside within this judicial district. Venue is proper under § 1391(b)(2) because a substantial part of the events or omissions giving rise to the claims occurred in this judicial district.

#### STATE REGULATION OF CONSUMER FIREWORKS

14. On March 30, 2017, Governor Terry E. Branstad signed into law HF 295. (*See Ex. 2*.) HF 295 amends Iowa Code § 364.3, regulating powers and duties of cities, by adding the following:

c. (1) A city shall not adopt an ordinance, motion, resolution, or amendment that sets standards or requirements regarding the sale or marketing of consumer merchandise that are different from, or in addition to, any requirement established by state law. For purposes of this paragraph:

(a) “Consumer merchandise” means merchandise offered for sale or lease, or provided with a sale or lease, primarily but not exclusively for personal, family, or household purposes, and includes any container used for consuming, carrying, or transporting such merchandise.

. . .

(2) An ordinance, motion, resolution, or amendment adopted prior to the effective date of this Act that violates this paragraph is void and unenforceable on and after the effective date of this Act.

. . .

(*See Ex. 2*, at § 3; provisions defining “container” and excepting solid waste or recycling collection are omitted.)

15. HF 295 took effect on March 30, 2017, upon enactment. (*See Ex. 2*, at § 5.)

16. The term “consumer merchandise” in HF 295 includes the consumer fireworks at issue in this action. (*See, e.g., Ex. 4*, at ¶ 10.)

17. On May 9, 2017, Governor Terry E. Branstad signed into law SF 489. (*See Ex. 1.*) SF 489 is a comprehensive statute legalizing the possession, sale, transfer, purchase, and use of fireworks in Iowa, providing penalties, and including effective date provisions. The sale of consumer fireworks is regulated through new Iowa Code § 100.19 and § 100.19A.

18. SF 489 expressly allows a retailer to sell consumer fireworks after receiving a license from the State Fire Marshal:

3. b. A license issued to a retailer or community group pursuant to paragraph “a”, subparagraph (1), (2), (3), or (4), shall allow the licensee to sell both first-class consumer fireworks and second-class consumer fireworks.

(*See Ex. 1*, at § 3.)

19. SF 489 amends Iowa Code § 364.2 by adding the following:

6. A city council may by ordinance or resolution prohibit or limit the use of consumer fireworks, display fireworks, or novelties, as described in section 727.2.

(*See Ex. 1*, at § 8; emphasis added.)

20. SF 489 does not grant similar authority to a city council to regulate the sale of consumer fireworks.

21. In fact, an amendment to SF 489 was offered—S-3177 (**Ex. 5**)—that would have given counties and cities the power to decide whether or not to allow the sale of consumer fireworks within their jurisdictions. That amendment was rejected. (*See Ex. 6.*)

22. Pursuant to SF 489, § 11, the Iowa State Fire Marshal promulgated Emergency Rules to regulate, among other things, the sale of consumer fireworks. (*See Ex. 3.*)

23. The Emergency Rules require a retailer selling consumer fireworks to comply with the National Fire Protection Association (NFPA) Standard 1124, published in the Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles, 2006 edition (“NFPA 1124”). (See **Ex. 3**, at 661–265.1, and at 661–265.10(4).)

24. Neither the Emergency Rules nor SF 489 impose safety requirements on retail sellers of consumer fireworks beyond those mandated by NFPA 1124. All Bellino retail locations adhere to the safety standards set in accordance with NFPA 1124. (See **Ex. 4**, at ¶ 6.)

25. The Emergency Rules provide a procedure for obtaining a state license through the Iowa State Fire Marshal. (See **Ex. 3**, at 661–265.20, *et seq.*)

26. The Emergency Rules provide for a retail license fee schedule. (See **Ex. 3**, at 661–265.22.) This fee schedule is set pursuant to SF 489. (See **Ex. 1**, at § 3, 3.a.)

27. The Emergency Rules provide that a retailer may sell consumer fireworks at permanent buildings between June 1 and July 8, and between December 10 and January 3, each year, all dates inclusive. (See **Ex. 3**, at 661–265.10(5)(a).)

28. The Emergency Rules provide that a retailer may sell consumer fireworks at a temporary structure between June 13 and July 8 each year, both dates inclusive. (See **Ex. 3**, at 661–265.10(5)(b).)

#### CITY OF ANKENY

##### A. The City of Ankeny’s Impermissible Regulation of Consumer Fireworks

29. On June 5, 2017, the City of Ankeny passed Ankeny Ordinance 1917. (See **Ex. 7**.)

30. Ankeny Ordinance 1917 exceeds the City of Ankeny’s legislative authority by impermissibly regulating the sale of consumer fireworks, imposing requirements and burdens on retail sellers of consumer fireworks beyond those required by state law.

31. Among other provisions, Ankeny Ordinance 1917 limits the retail sale of consumer fireworks to zone M-2—the “Heavy Industrial District”—within the City of Ankeny. (*Id.*) Ankeny Ordinance 1917 also requires retail sellers to obtain a special use permit before selling consumer fireworks within the City of Ankeny. (*Id.*) Ankeny Ordinance 1917 further imposes additional requirements and burdens beyond those required by state law.

32. Upon information and belief, there may be additional ordinances or laws in the City of Ankeny that impermissibly regulate the sale of consumer fireworks in contravention of Iowa law.

33. Ankeny Ordinance 1917 is preempted by Iowa law.

**B. Bellino Fireworks’s Proposed Locations in the City of Ankeny**

34. Bellino Fireworks seeks to operate three locations in the City of Ankeny, Iowa. Specifically, Bellino Fireworks has obtained retail licenses from the State of Iowa Fire Marshal for the retail sale of consumer fireworks in temporary structures at the following locations:

- a. 3205 N. Ankeny Blvd., Ankeny, Iowa.
- b. 109 SE Oralabor Road, Ankeny, Iowa.
- c. 509 N. Ankeny Blvd., Ankeny, Iowa.

(*See* **Ex. 4**, at ¶ 11; *see also* **Ex. 8**.)

35. Bellino Fireworks has already signed leases to sell consumer fireworks at the locations listed above. (*See* **Ex. 4**, at ¶ 12.)

36. Bellino Fireworks plans to sell consumer fireworks at these locations at least during the summer 2017 and summer 2018 seasons. (*See* **Ex. 4**, at ¶ 13.)

37. On June 5, 2017, the City of Ankeny passed Ankeny Ordinance 1917. Among other things, this ordinance limits the sale of consumer fireworks to zone M-2 within the City of

Ankeny. The three City of Ankeny locations for which Bellino Fireworks has obtained a state retail license are outside zone M-2. (*See* **Ex. 4**, at ¶ 14.)

38. The City of Ankeny's prohibition of sales outside zone M-2 is harmful in several ways. First, Bellino Fireworks does not have a retail license from the State Fire Marshal to sell consumer fireworks within zone M-2. Bellino Fireworks would incur additional lost time and expense to obtain such a license. (*See* **Ex. 4**, at ¶ 15.) Second, Bellino Fireworks does not have a lease to sell consumer fireworks within zone M-2. It is not certain Bellino Fireworks would be able to locate within zone M-2. Even if Bellino Fireworks were to find a location within zone M-2, the logistics of finding a location and signing a lease impose additional lost time and expense on Bellino Fireworks. (*Id.*) Third, zone M-2 is less desirable than the three locations for which Bellino already has leases and licenses. There is less traffic by potential customers in zone M-2. A location within zone M-2 may have up to 60–70% less business than any of the three locations for which Bellino Fireworks has already obtained leases and licenses. (*Id.*)

39. Ankeny Ordinance 1917 also requires retail sellers of consumer fireworks to obtain a special use permit before selling consumer fireworks. This results in additional cost and lost time to Bellino Fireworks. (*See* **Ex. 4**, at ¶ 16.)

40. If the City of Ankeny prevents Bellino Fireworks from selling consumer fireworks at the 3205 N. Ankeny Blvd. location, Bellino Fireworks estimates its net losses will be greater than \$55,000 for the 2017 summer season, and greater than \$60,000 for the 2018 summer season. (*See* **Ex. 4**, at ¶ 17.) In addition, Bellino Fireworks will lose customer goodwill and incur other intangible losses if the City of Ankeny prevents Bellino Fireworks from selling consumer fireworks at this location. (*Id.*)



41. If the City of Ankeny prevents Bellino Fireworks from selling consumer fireworks at the 109 SE Oralabor Road location, Bellino Fireworks estimates its net losses will be greater than \$60,000 for the 2017 summer season, and greater than \$65,000 for the 2018 summer season. (See **Ex. 4**, at ¶ 18.) In addition, Bellino Fireworks will lose customer goodwill and incur other intangible losses if the City of Ankeny prevents Bellino Fireworks from selling consumer fireworks at this location. (*Id.*)

42. If the City of Ankeny prevents Bellino Fireworks from selling consumer fireworks at the 509 N. Ankeny Blvd. location, Bellino Fireworks estimates its net losses will be greater than \$30,000 for the 2017 summer season, and greater than \$35,000 for the 2018 summer season. (See **Ex. 4**, at ¶ 19.) In addition, Bellino Fireworks will lose customer goodwill and incur other intangible losses if the City of Ankeny prevents Bellino Fireworks from selling consumer fireworks at this location. (*Id.*)

#### CITY OF BOONE

A. The City of Boone's Impermissible Regulation of Consumer Fireworks

43. The City of Boone regulates the sale of consumer fireworks through several code provisions, including Boone Code §§ 41.12, 175.16–18, and 175.24. (See **Ex. 9**.)

44. Boone Code § 41.12 exceeds the City of Boone's legislative authority by impermissibly banning the sale of consumer fireworks.

45. Boone Code §§ 175.16–18 and 175.24 exceed the City of Boone's legislative authority by impermissibly regulating the sale of consumer fireworks, imposing requirements and burdens on retail sellers of consumer fireworks beyond those required by state law.

46. Among other provisions, Boone ordinances require fully enclosed retail structures, prohibiting temporary structures expressly permitted by Iowa state law. (See **Ex. 9**.)

47. According to a news article, dated June 5, 2017, and posted on the website for AM 1590 KWBG, the Boone City Attorney Jim Robbins opined that the sale of consumer fireworks from tents [*i.e.*, temporary structures] is prohibited under the City of Boone's current zoning code.

48. Upon information and belief, there may be additional ordinances or laws in the City of Boone that impermissibly regulate the sale of consumer fireworks in contravention of Iowa law.

49. Boone Code § 41.12 is preempted by Iowa law. Boone Code §§ 175.16–18 and 175.24 are preempted by Iowa law to the extent these code sections apply to the sale of consumer fireworks.

B. Bellino Fireworks's Proposed Location in the City of Boone

50. Bellino Fireworks seeks to operate one location in the City of Boone, Iowa. Specifically, Bellino has obtained a retail license from the State of Iowa Fire Marshal for the retail sale of consumer fireworks in a temporary structure located at 1111 8th Street, Boone, Iowa. (*See* **Ex. 4**, at ¶ 20; *see also* **Ex. 10**.)

51. Bellino Fireworks has already signed a lease to sell consumer fireworks at this location in Boone, Iowa. (*See* **Ex. 4**, at ¶ 21.)

52. Bellino Fireworks plans to sell consumer fireworks in Boone, Iowa, at least during the summer 2017, winter 2017, and summer 2018 seasons. (*See* **Ex. 4**, at ¶ 22.)

53. City of Boone Code § 41.12 bans the sale of consumer fireworks within the City of Boone. City of Boone Code §§ 175.16–18 and 175.24 prohibit the sale of consumer fireworks at temporary structures, such as the temporary structure in Boone, Iowa, for which Bellino Fireworks has obtained a state retail license and signed a lease. (*See* **Ex. 4**, at ¶ 23.)

54. If the City of Boone prevents Bellino Fireworks from selling consumer fireworks within Boone, Bellino Fireworks estimates its net losses will be greater than \$40,000 for the summer 2017 season, greater than \$12,000 for the winter 2017 season, and greater than \$44,000 for the summer 2018 season. (*See Ex. 4*, at ¶ 24.) In addition, Bellino Fireworks will lose customer goodwill and incur other intangible losses if the City of Boone prevents Bellino Fireworks from selling consumer fireworks within Boone. (*Id.*)

#### CITY OF JOHNSTON

A. The City of Johnston's Impermissible Regulation of Consumer Fireworks

55. The City of Johnston regulates the sale of consumer fireworks through Johnston Code § 41.12. (*See Ex. 11.*)

56. Johnston Code § 41.12 exceeds the City of Johnston's legislative authority by impermissibly banning the sale of consumer fireworks.

57. Upon information and belief, there may be additional ordinances or laws in the City of Johnston that impermissibly regulate the sale of consumer fireworks in contravention of Iowa law.

58. Johnston Code § 41.12 is preempted by Iowa law.

B. Bellino Fireworks's Proposed Location in the City of Johnston

59. Bellino Fireworks seeks to operate one location in the City of Johnston, Iowa. Specifically, Bellino Fireworks has obtained a retail license from the State of Iowa Fire Marshal for the retail sale of consumer fireworks in a temporary structure located at 6005 Merle Hay Road, Johnston, Iowa. (*See Ex. 4*, at ¶ 25; *see also Ex. 12.*)

60. Bellino Fireworks has already signed a lease to sell consumer fireworks at this location in Johnston, Iowa. (*See Ex. 4*, at ¶ 26.)

61. Bellino Fireworks plans to sell consumer fireworks in Johnston, Iowa, at least during the summer 2017, winter 2017, and summer 2018 seasons. (*See Ex. 4*, at ¶ 27.)

62. Johnston City Code § 41.12 bans the sale of consumer fireworks within the City of Johnston.

63. If the City of Johnston prevents Bellino Fireworks from selling consumer fireworks within Johnston, Bellino Fireworks estimates its net losses will be greater than \$55,000 for the summer 2017 season, greater than \$20,000 for the winter 2017 season, and greater than \$65,000 for the summer 2018 season. (*See Ex. 4*, at ¶ 28.) In addition, Bellino Fireworks will lose customer goodwill and incur other intangible losses if the City of Johnston prevents Bellino from selling consumer fireworks within Johnston. (*Id.*)

#### CITY OF PLEASANT HILL

A. The City of Pleasant Hill's Impermissible Regulation of Consumer Fireworks

64. On May 23, 2017, the City of Pleasant Hill passed Pleasant Hill Ordinance 827. (*See Ex. 13.*)

65. Pleasant Hill Ordinance 827 exceeds the City of Pleasant Hill's legislative authority by impermissibly regulating the sale of consumer fireworks, imposing requirements and burdens on retail sellers of consumer fireworks beyond those required by state law.

66. Among other provisions, Pleasant Hill Ordinance 827 amends Pleasant Hill Code § 41.11 by amending or adding new paragraph 4 that requires the following:

- a. Subsection A requires a special sales permit—in addition to the state retail license—as provided by Pleasant Hill Code Ch. 122.
- b. Subsection A requires evidence of insurance in the amounts not less than \$2 million per occurrence and \$5 million in the

aggregate—well above the state requirements of \$1 million per occurrence and \$2 million in the aggregate, provided by Emergency Rule 661–265.21(4)(e).

- c. Subsection B requires sales of consumer fireworks to occur only within permanent structures, prohibiting temporary structures expressly permitted by Iowa law.
- d. Subsection B limits the sale of consumer fireworks to the I-1, I-2, and I-3 zoning districts, and provides additional limitations.

(See **Ex. 13.**)

67. Upon information and belief, there may be additional ordinances or laws in the City of Pleasant Hill that impermissibly regulate the sale of consumer fireworks in contravention of Iowa law.

68. Pleasant Hill Ordinance 827 is preempted by Iowa law.

**B. Bellino Fireworks’s Proposed Location in the City of Pleasant Hill**

69. Bellino Fireworks seeks to operate one location in the City of Pleasant Hill, Iowa. Specifically, Bellino Fireworks has obtained a retail license from the State of Iowa Fire Marshal for the retail sale of consumer fireworks in a temporary structure located at 5500 E. University Ave., Pleasant Hill, Iowa. (See **Ex. 4**, at ¶ 30; *see also* **Ex. 14.**)

70. Bellino Fireworks has already signed a lease to sell consumer fireworks at this location in Pleasant Hill, Iowa. (See **Ex. 4**, at ¶ 31.)

71. Bellino Fireworks plans to sell consumer fireworks in Pleasant Hill, Iowa, at least during the summer 2017, winter 2017, and summer 2018 seasons. (See **Ex. 4**, at ¶ 32.)

72. Pleasant Hill Ordinance 827 requires that a retailer obtain a special sales permit to sell consumer fireworks, in addition to the state retail license. This requirement imposes damages on Bellino Fireworks in the form of additional cost and lost time. (*See Ex. 4*, at ¶ 33.)

73. Pleasant Hill Ordinance 827 requires evidence of insurance in the amounts not less than \$2 million per occurrence and \$5 million in the aggregate, which are larger than the State of Iowa requirements. If forced to comply with this requirement, Bellino would incur additional damages. (*See Ex. 4*, at ¶ 34.)

74. Pleasant Hill Ordinance 827 requires that sales of consumer fireworks occur only within permanent structures, prohibiting the sale of consumer fireworks in temporary structures, such as the temporary structure in Pleasant Hill, Iowa, for which Bellino Fireworks has obtained a state retail license and signed a lease. (*See Ex. 4*, at ¶ 35.)

75. Pleasant Hill Ordinance 827 limits the sale of consumer fireworks to the I-1, I-2, and I-3 zoning districts. The location for which Bellino Fireworks has obtained a state retail license and signed a lease is outside these districts. (*See Ex. 4*, at ¶ 36.)

76. The City of Pleasant Hill's prohibition of sales outside zones I-1, I-2, and I-3 is harmful in several ways. First, Bellino does not have a retail license from the State Fire Marshal to sell consumer fireworks within these zones. Bellino would incur additional lost time and expense to obtain such a license. (*See Ex. 4*, at ¶ 37.) Second, Bellino does not have a lease to sell consumer fireworks within these zones. It is not certain Bellino would be able to locate within these zones. Even if Bellino were to find a location within these zones, the logistics of finding a location and signing a lease impose additional lost time and expense on Bellino. (*Id.*) Third, these zones are less desirable than the location for which Bellino already has a lease and license. There is less traffic by potential customers in these zones. A location within one of these

zones may have up to 60–70% less business than the location for which Bellino has already obtained a lease and license. (*Id.*)

77. If the City of Pleasant Hill prevents Bellino Fireworks from selling consumer fireworks within Pleasant Hill, Bellino Fireworks estimates its losses will be greater than \$40,000 for the summer 2017 season, greater than \$12,000 for the winter 2017 season, and greater than \$45,000 for the summer 2018 season. (*See* **Ex. 4**, at ¶ 38.) In addition, Bellino Fireworks will lose customer goodwill and incur other intangible losses if the City of Pleasant Hill prevents Bellino from selling consumer fireworks within Pleasant Hill. (*Id.*)

### COUNT I

#### DECLARATORY JUDGMENT ACTION Against Defendant City of Ankeny

78. Bellino Fireworks adopts and incorporates the allegations in Paragraphs 1–77 as though stated herein.

79. The State of Iowa has enacted a comprehensive set of laws and rules regulating the sale of consumer fireworks. *See, e.g.*, SF 489 (**Ex. 1**) and the Emergency Rules (**Ex. 3**).

80. The State of Iowa expressly directs that cities within the State of Iowa may not set standards or requirements regarding the retail sale of consumer merchandise that are different from, or in addition to, the requirements set by state law. *See* HF 295 (**Ex. 2**).

81. Defendant City of Ankeny impermissibly regulates the sale of consumer fireworks through Ankeny Ordinance 1917 and/or other municipal law, rules, or regulations.

82. Any and all regulation of the sale of consumer fireworks by the City of Ankeny is preempted by SF 489, HF 295, and the Emergency Rules. Together, the applicable state law preempts the City of Ankeny’s regulation of consumer fireworks through express preemption, implied preemption, conflict preemption, and/or field preemption.

83. Specifically, Ankeny Ordinance 1917 is preempted by Iowa state law.

84. Bellino Fireworks has suffered, and continues to suffer, monetary and non-monetary damages as a result of Defendant City of Ankeny's impermissible regulation of consumer fireworks. Damages to Bellino Fireworks include, but are not limited to, loss of consumer goodwill and other irreparable harm that warrants relief under Federal Rule of Civil Procedure 65.

85. Bellino Fireworks is entitled to a declaratory judgment under 28 U.S.C. § 2201, *et seq.*, as specified below, injunctive relief, including a temporary restraining order (TRO) and preliminary injunction, and other damages as permitted by law.

WHEREFORE, Plaintiff Bellino Fireworks, Inc. prays for the following relief against Defendant City of Ankeny:

- A. Entry of judgment on this count in favor of Plaintiff Bellino Fireworks, Inc., and against Defendant City of Ankeny;
- B. Entry of a declaratory judgment pursuant to 28 U.S.C. § 2201, *et seq.*, stating or otherwise to the effect that:
  - 1. The City of Ankeny may not impose any requirements or regulations on Bellino Fireworks related to the sale of consumer fireworks.
  - 2. Ankeny Ordinance 1917 is preempted by Iowa state law.
  - 3. Any and all other law, rule, regulation, or ordinance in effect in the City of Ankeny, or purported to be in effect in the City of Ankeny, is preempted by Iowa state law to the extent it regulates the sale of consumer fireworks;
- C. Entry of a temporary restraining order, preliminary injunction, and permanent injunction prohibiting the City of Ankeny from enforcing Ankeny Ordinance 1917 or from otherwise attempting to ban or regulate the sale of consumer fireworks;
- D. Other damages, including but not limited to court costs, to the extent authorized by law; and
- E. Any further relief the Court deems just.



COUNT II

DECLARATORY JUDGMENT ACTION  
Against Defendant City of Boone

86. Bellino Fireworks adopts and incorporates the allegations in Paragraphs 1–77 as though stated herein.

87. The State of Iowa has enacted a comprehensive set of laws and rules regulating the sale of consumer fireworks. *See, e.g.*, SF 489 (**Ex. 1**) and the Emergency Rules (**Ex. 3**).

88. The State of Iowa expressly directs that cities within the State of Iowa may not set standards or requirements regarding the retail sale of consumer merchandise that are different from, or in addition to, the requirements set by state law. *See* HF 295 (**Ex. 2**).

89. Defendant City of Boone impermissibly regulates the sale of consumer fireworks through Boone Code §§ 41.12, 175.16–18, and 175.24, and/or other municipal law, rules, or regulations.

90. Any and all regulation of the sale of consumer fireworks by the City of Boone is preempted by SF 489, HF 295, and the Emergency Rules. Together, the applicable state law preempts the City of Boone’s regulation of consumer fireworks through express preemption, implied preemption, conflict preemption, and/or field preemption.

91. Specifically, Boone Code § 41.12 is preempted by Iowa state law. Boone Code §§ 175.16–18 and 175.24 are preempted by Iowa state law to the extent they are applied to the sale of consumer fireworks.

92. Bellino Fireworks has suffered, and continues to suffer, monetary and non-monetary damages as a result of Defendant City of Boone’s impermissible regulation of consumer fireworks. Damages to Bellino Fireworks include, but are not limited to, loss of

consumer goodwill and other irreparable harm that warrants relief under Federal Rule of Civil Procedure 65.

93. As a result, Bellino Fireworks is entitled to a declaratory judgment under 28 U.S.C. § 2201, *et seq.*, as specified below, injunctive relief, including a temporary restraining order (TRO) and preliminary injunction, and other damages as permitted by law.

WHEREFORE, Plaintiff Bellino Fireworks, Inc. prays for the following relief against Defendant City of Boone:

- A. Entry of judgment on this count in favor of Plaintiff Bellino Fireworks, Inc., and against Defendant City of Boone;
- B. Entry of a declaratory judgment pursuant to 28 U.S.C. § 2201, *et seq.*, stating or otherwise to the effect that:
  - 1. The City of Boone may not impose any requirements or regulations on Bellino Fireworks related to the sale of consumer fireworks.
  - 2. Boone Code § 41.12 is preempted by Iowa state law.
  - 3. Boone Code §§ 175.16–18 and 175.24 are preempted by Iowa state law to the extent they regulate the sale of consumer fireworks
  - 4. Any and all other law, rule, regulation, or ordinance in effect in the City of Boone, or purported to be in effect in the City of Boone, are preempted by Iowa state law to the extent it regulates the sale of consumer fireworks;
- C. Entry of a temporary restraining order, preliminary injunction, and permanent injunction prohibiting the City of Boone from enforcing Boone Code §§ 41.12, 175.16–18, and 175.24 with respect to the sale of consumer fireworks, or from otherwise attempting to ban or regulate the sale of consumer fireworks;
- D. Other damages, including but not limited to court costs, to the extent authorized by law; and
- E. Any further relief the Court deems just.

COUNT III

DECLARATORY JUDGMENT ACTION  
Against Defendant City of Johnston

94. Bellino Fireworks adopts and incorporates the allegations in Paragraphs 1–77 as though stated herein.

95. The State of Iowa has enacted a comprehensive set of laws and rules regulating the sale of consumer fireworks. *See, e.g.*, SF 489 (**Ex. 1**) and the Emergency Rules (**Ex. 3**).

96. The State of Iowa expressly directs that cities within the State of Iowa may not set standards or requirements regarding the retail sale of consumer merchandise that are different from, or in addition to, the requirements set by state law. *See* HF 295 (**Ex. 2**).

97. Defendant City of Johnston impermissibly regulates the sale of consumer fireworks through Johnston Code § 41.12 and/or other municipal law, rules, or regulations.

98. Any and all regulation of the sale of consumer fireworks by the City of Johnston is preempted by SF 489, HF 295, and the Emergency Rules. Together, the applicable state law preempts the City of Johnston’s regulation of consumer fireworks through express preemption, implied preemption, conflict preemption, and/or field preemption.

99. Specifically, Johnston Code § 41.12 is preempted by Iowa state law.

100. Bellino Fireworks has suffered, and continues to suffer, monetary and non-monetary damages as a result of Defendant City of Johnston’s impermissible regulation of consumer fireworks. Damages to Bellino Fireworks include, but are not limited to, loss of consumer goodwill and other irreparable harm that warrants relief under Federal Rule of Civil Procedure 65.

101. As a result, Bellino Fireworks is entitled to a declaratory judgment under 28 U.S.C. § 2201, *et seq.*, as specified below, injunctive relief, including a temporary restraining order (TRO) and preliminary injunction, and other damages as permitted by law.

WHEREFORE, Plaintiff Bellino Fireworks, Inc. prays for the following relief against Defendant City of Johnston:

- A. Entry of judgment on this count in favor of Plaintiff Bellino Fireworks, Inc., and against Defendant City of Johnston;
- B. Entry of a declaratory judgment pursuant to 28 U.S.C. § 2201, *et seq.*, stating or otherwise to the effect that:
  - 1. The City of Johnston may not impose any requirements or regulations on Bellino Fireworks related to the sale of consumer fireworks.
  - 2. Johnston Code § 41.12 is preempted by Iowa state law.
  - 3. Any and all other law, rule, regulation, or ordinance in effect in the City of Johnston, or purported to be in effect in the City of Johnston, is preempted by Iowa state law to the extent it regulates the sale of consumer fireworks;
- C. Entry of a temporary restraining order, preliminary injunction, and permanent injunction prohibiting the City of Johnston from enforcing Johnston Code § 41.12 or from otherwise attempting to ban or regulate the sale of consumer fireworks;
- D. Other damages, including but not limited to court costs, to the extent authorized by law; and
- E. Any further relief the Court deems just.

#### COUNT IV

#### DECLARATORY JUDGMENT ACTION Against Defendant City of Pleasant Hill

102. Bellino Fireworks adopts and incorporates the allegations in Paragraphs 1–77 as though stated herein.

103. The State of Iowa has enacted a comprehensive set of laws and rules regulating the sale of consumer fireworks. *See, e.g.*, SF 489 (**Ex. 1**) and the Emergency Rules (**Ex. 3**).

104. The State of Iowa expressly directs that cities within the State of Iowa may not set standards or requirements regarding the retail sale of consumer merchandise that are different from, or in addition to, the requirements set by state law. *See* HF 295 (**Ex. 2**).

105. Defendant City of Pleasant Hill impermissibly regulates the sale of consumer fireworks through Pleasant Hill Ordinance 827 and/or other municipal law, rules, or regulations.

106. Any and all regulation of the sale of consumer fireworks by the City of Pleasant Hill is preempted by SF 489, HF 295, and the Emergency Rules. Together, the applicable state law preempts the City of Pleasant Hill's regulation of consumer fireworks through express preemption, implied preemption, conflict preemption, and/or field preemption.

107. Specifically, Pleasant Hill Ordinance 827 is preempted by Iowa state law.

108. Bellino Fireworks has suffered, and continues to suffer, monetary and non-monetary damages as a result of Defendant City of Pleasant Hill's impermissible regulation of consumer fireworks. Damages to Bellino Fireworks include, but are not limited to, loss of consumer goodwill and other irreparable harm that warrants relief under Federal Rule of Civil Procedure 65.

109. As a result, Bellino Fireworks is entitled to a declaratory judgment under 28 U.S.C. § 2201, *et seq.*, as specified below, injunctive relief, including a temporary restraining order (TRO) and preliminary injunction, and other damages as permitted by law.

WHEREFORE, Plaintiff Bellino Fireworks, Inc. prays for the following relief against Defendant City of Pleasant Hill:

- A. Entry of judgment on this count in favor of Plaintiff Bellino Fireworks, Inc., and against Defendant City of Pleasant Hill;
- B. Entry of a declaratory judgment pursuant to 28 U.S.C. § 2201, *et seq.*, stating or otherwise to the effect that:

1. The City of Pleasant Hill may not impose any requirements or regulations on Bellino Fireworks related to the sale of consumer fireworks.
  2. Pleasant Hill Ordinance 827 is preempted by Iowa state law.
  3. Any and all other law, rule, regulation, or ordinance in effect in the City of Pleasant Hill, or purported to be in effect in the City of Pleasant Hill, is preempted by Iowa state law to the extent it regulates the sale of consumer fireworks;
- C. Entry of a temporary restraining order, preliminary injunction, and permanent injunction prohibiting the City of Pleasant Hill from enforcing Pleasant Hill Ordinance 827 or from otherwise attempting to ban or regulate the sale of consumer fireworks;
- D. Other damages, including but not limited to court costs, to the extent authorized by law; and
- E. Any further relief the Court deems just.

Dated: June 16, 2017

/s/ Timothy J. Hill

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