

ORDINANCE NO. 2014-04

AN ORDINANCE CONCERNING FIREWORKS; CERTAIN RESTRICTIONS ON THE SALE OR USE OF CERTAIN FIREWORKS TO CHILDREN UNDER THE AGE OF SIXTEEN OUTSIDE THE PHYSICAL PRESENCE OF A PARENT OR ADULT GUARDIAN; PROVIDING CERTAIN EXCEPTIONS FOR PUBLIC DISPLAYS OF DISPLAY FIREWORKS; SETTING REQUIREMENTS FOR STORAGE, USE, DISPLAY AND SALE OF FIREWORKS; SETTING PERMIT REQUIREMENTS FROM ROOSEVELT COUNTY; SETTING PENALTIES FOR VIOLATIONS AND SETTING GUIDELINES FOR DECLARING EMERGENCIES WITH REGARD TO PURCHASING AND USE OF FIREWORKS.

BE IT ORDAINED BY THE GOVERNING BODY OF ROOSEVELT COUNTY, WHICH IS THE COUNTY COMMISSION OF THE COUNTY OF ROOSEVELT, NEW MEXICO

Section 1. Short Title

This Ordinance may be cited as the “FIREWORKS PERMIT AND SAFETY ORDINANCE”.

Section 2. Purpose

The purpose of this Ordinance is restrict the sale and use of certain fireworks, in an effort to eliminate the harm to health and property within Roosevelt County and is designed to safeguard the health, safety, and welfare of the citizens of this county and to protect their property.

Section 3. Conflicts

In the event of conflicts with other County of Roosevelt Ordinances, the provisions of this ordinance shall supersede other previously enacted ordinances.

It is the intention of the Commission in enacting this Ordinance to harmonize this Ordinance with existing State law and State regulations.

Section 4. Definitions

As used in this Ordinance the following words, terms, phrases shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning:

- A. “Aerial device” means a fireworks device that upon ignition propels itself or an insert a significant distance into the air, but does not include a firework that produces or emits a shower of sparks but, includes sky rocket and bottle rocket, missile-type rocket, stick-type rocket, helicopter, aerial spinner, roman candle, and mine shell, but does not include model rockets of the type(s) normally sold at or through hobby stores;

- B. "aerial shell" means a cylindrical or spherical cartridge containing a lift charge, burst charge and effect composition. Upon firing from a reloadable tube, the lift charge is consumed and the cartridge is expelled into the air;
- C. "aerial shell kit-reloadable tube" means a package or kit containing a cardboard, high-density polyethylene or equivalent launching tube and not more than twelve small aerial shells. Each aerial shell is limited to a maximum of sixty grams of total chemical composition, including lift charges, and the maximum diameter of each shell shall not exceed one and three-fourths inches;
- D. "bosque" means a cottonwood corridor adjacent to a river;
- E. "chaser" means a paper or cardboard tube venting out the fuse end of the tube that contains no more than twenty grams of chemical composition and travels along the ground, often producing a whistling effect or other noise; an explosive composition not to exceed fifty milligrams may be included to produce a report;
- F. "chemical composition" includes all pyrotechnic and explosive composition contained in a fireworks device, but does not include inert materials such as clay used for plugs or organic matter such as rice hulls used for density control;
- G. "cone fountain" means a cardboard or heavy paper cone containing no more than fifty grams of pyrotechnic composition that has the same effect as a cylindrical fountain. When more than one cone is mounted on a common base, total pyrotechnic composition shall not exceed two hundred grams;
- H. "County Commission" is the duly elected Board of the Roosevelt County Commission, acting as a body in public meetings;
- I. "crackling device" means a sphere or paper tube that contains no more than twenty grams of pyrotechnic composition that produces a flash of light and a mild, audible crackling effect upon ignition, which effect is not considered to be an explosion. Crackling devices are not subject to the fifty-milligram limit of firecrackers;
- J. "cylindrical fountain" means a cylindrical tube containing not more than seventy-five grams of pyrotechnic composition that produces a shower of colored sparks and sometimes a whistling effect or smoke. The device may be provided with a spike for insertion into the ground or a wood or plastic base for placing on the ground or a wood or cardboard handle to be hand held. When more than one tube is mounted on a common base, total pyrotechnic composition shall not exceed two hundred grams;
- K. "display distributor" means a person, firm or corporation selling display fireworks;
- L. "display fireworks" means devices primarily intended for commercial displays that are designed to produce visible or audible effects by combustion, deflagration or detonation, including salutes containing more than one hundred thirty milligrams of explosive

composition; aerial shells containing more than forty grams of chemical composition exclusive of lift charge; and other exhibition display items that exceed the limits for permissible fireworks;

- M. "distributor" means a person, firm or corporation selling fireworks to wholesalers and retailers for resale;
- N. "explosive composition" means a chemical compound or mixture, the primary purpose of which is to function by explosion, producing an audible effect in a fireworks device;
- O. "firecracker" means a small, paper-wrapped or cardboard tube containing no more than fifty milligrams of explosive composition that produces noise and a flash of light; provided that firecrackers used in aerial devices may contain up to one hundred thirty milligrams of explosive composition per report;
- P. "fireworks" means devices intended to produce a visible or audible effect by combustion, deflagration or detonation and are categorized as "permissible fireworks" or "display fireworks", but does not include novelties or theatrical pyrotechnics articles;
- Q. "flitter sparkler" means a narrow paper tube attached to a stick or wire and filled with no more than five grams of pyrotechnic composition that produces color and sparks upon ignition and the paper at one end of the tube is ignited to make the device function;
- R. "ground spinner" means a small, rapidly spinning device containing no more than twenty grams of pyrotechnic composition venting out an orifice usually on the side of the tube that when ignited produces a shower of sparks and color. "Ground spinner" is similar in operation to a wheel, but is intended to be placed flat on the ground and ignited;
- S. "helicopter" or "aerial spinner" means a tube containing no more than twenty grams of chemical composition with a propeller or blade attached that spins rapidly as it rises into the air with a visible or audible effect sometimes produced at or near the height of flight;
- T. "illuminating torch" means a cylindrical tube containing no more than one hundred grams of pyrotechnic composition that produces a colored flame upon ignition and may be spiked, based or hand held. When more than one tube is mounted on a common base, total pyrotechnic composition shall not exceed two hundred grams;
- U. "manufacturer" means a person, firm or corporation engaged in the manufacture of fireworks;

- V. "mine" or "shell" means a heavy cardboard or paper tube usually attached to a wooden or plastic base and containing no more than sixty grams of total chemical composition, including lift charges, per tube that individually expels pellets of pressed pyrotechnic composition that burn with bright color in a star effect, or other devices propelled into the air, and that contains components producing reports containing a maximum one hundred thirty milligrams of explosive composition per report. A mine may contain more than one tube, but the tubes must fire in sequence upon ignition of one external fuse, must be a dense-packed collection of mine or shell tubes and the total chemical composition, including lift charges, shall not exceed two hundred grams;
- W. "missile-type rocket" means a device similar to a stick-type rocket in size, composition and effect that uses fins rather than a stick for guidance and stability and that contains no more than twenty grams of chemical composition;
- X. "multiple tube devices" means a device that contains more than one cardboard tube and the ignition of one external fuse that causes all of the tubes to function in sequence. The tubes are individually attached to a wood or plastic base or are dense-packed and are held together by glue, wire, string or other means that securely hold the tubes together during operation. A maximum total weight of five hundred grams of pyrotechnic composition shall be permitted; provided that the tubes are securely attached to a wood or plastic base and are separated from each other on the base by a distance of at least one-half inch. The connecting fuses on multiple tube devices shall be fused in sequence so that the tubes fire sequentially rather than all at once;
- Y. "novelties" means devices containing small amounts of pyrotechnic or explosive composition that produce limited visible or audible effects, including party poppers, snappers, toy smoke devices, snakes, glowworms, sparklers or toy caps, and devices intended to produce unique visual or audible effects that contain sixteen milligrams or less of explosive composition and limited amounts of other pyrotechnic composition, including cigarette loads, trick matches, explosive auto alarms and other trick noisemakers;
- Z. "permissible fireworks" or "consumer fireworks" means fireworks legal for sale to and use in New Mexico by the general public that comply with the latest construction, performance, composition and labeling requirements established by the United States consumer product safety commission and the United States department of transportation;
- AA. "pyrotechnic composition" means a chemical mixture that on burning and without explosion produces visible or brilliant displays or bright lights or whistles or motion;
- BB. "retailer" means a person, firm or corporation purchasing fireworks for resale to consumers;

- CC. "roman candle" means a heavy paper or cardboard tube containing no more than twenty grams of chemical composition that individually expels pellets of pressed pyrotechnic composition that burn with bright color in a star effect;
- DD. "Sheriff" is the Sheriff of the County of Roosevelt.
- EE. "specialty retailer" means a person, firm or corporation purchasing permissible fireworks for year-round resale in permanent retail stores whose primary business is tourism;
- FF. "stick-type rocket" means a cylindrical tube containing no more than twenty grams of chemical composition with a wooden stick attached for guidance and stability that rises into the air upon ignition and produces a burst of color or sound at or near the height of flight;
- GG. "theatrical pyrotechnics articles" means a pyrotechnic device for professional use in the entertainment industry similar to permissible fireworks or consumer fireworks in chemical composition and construction but not intended and labeled for consumer use;
- HH. "toy smoke device" means a small plastic or paper item containing no more than one hundred grams of pyrotechnic composition that produces white or colored smoke as the primary effect;
- II. "wheel" means a pyrotechnic device that is made to attach to a post or other surface and that revolves, producing a shower of color and sparks and sometimes a whistling effect, and that may have one or more drivers, each of which contains no more than sixty grams of pyrotechnic composition and the total wheel contains no more than two hundred grams total pyrotechnic composition;
- JJ. "wholesaler" means a person, firm or corporation purchasing fireworks for resale to retailers; and
- KK. "wildlands" means lands owned by the governing body of a county or municipality that are designated for public recreational purposes and that are covered wholly or in part by timber, brush or native grass.

Section 5. Permits; Regulated And Prohibited Activities

A. No fireworks may be sold at wholesale/retail without a permit issued by Roosevelt County. Request for a permit shall be made to Roosevelt County; and the permit shall be issued by the County Clerk. The permit shall be prominently displayed at each location where retail sales take place. The permit shall not be issued except upon presentation of a State of New Mexico gross receipts or other relevant New Mexico tax number; and a license or permit issued by the State Fire Marshal's office (N.M.S.A. §60-2C-4(A)). Nothing herein shall excuse the failure of a person to obtain or display any other permit or license required by State law or any other Ordinance. This includes contacting the local authority with jurisdiction (Portales Fire Marshal, or State Fire Marshal Inspector) to inspect the stand location prior to any fireworks being sold to public.

B. No person shall sell or distribute fireworks allowed herein without a payment of a non-refundable \$25.00 permit fee. (N.M.S.A. §60-2C-4(C)). This fee shall be in addition to any business registration fee or license fee required for conducting business.

C. No person shall conduct a supervised public display or display fireworks as allowed herein without first paying to Roosevelt County a non-refundable \$25.00 fee. This fee shall be in addition to any business registration or license fee required for the conduct of any other business, including the sale of fireworks. The procedure for obtaining a public display permit is outlined below in Section 7.

D. No person shall possess, use discharge light, ignite, throw, eject, launch, sell, trade, or barter aerial fireworks or ground audible fireworks; provided that the prohibition against possession of aerial fireworks and ground audible fireworks shall not apply to fireworks in commerce. This prohibition is allowed under N.M.S.A. 1978 §60-2C-7(C) (2010 Rep. Pam.), and shall prohibit all aerial fireworks and ground audible devices as listed in N.M.S.A. 1978 §60-2C-7(A)(2), (3), and (B)(1) and (2). (2010 Rep. Pam.), and any similar devices.

E. It is unlawful to offer for sale or to sell any fireworks to children under the age of sixteen (16) years of age or to any intoxicated person.

F. At places where fireworks are stored, sold or displayed, the words **“NO SMOKING”** shall be posted in letters at least four inches in height. Smoking, open flames and any ignition sources are prohibited within twenty-five (25) feet of any fireworks stock.

G. No fireworks shall be stored, kept, sold or discharged within fifty (50) feet of any gasoline bulk station or any building in which gasoline or volatile liquids are sold in quantities in excess of one gallon, except in stores where cleaners, paints and oils are handled in sealed containers only.

H. All fireworks permittees and licensees shall keep and maintain upon the premises a fire extinguisher bearing an underwriters laboratories incorporated rated capacity of at least five-pound ABC per five hundred square feet of space used for fireworks sales or storage.

I. A sales clerk who is at least sixteen (16) years of age shall be on duty to serve consumers at the time of purchase or delivery. Permissible fireworks may be offered for sale only at State/County permitted temporary stands or State licensed retail locations.

J. No fireworks shall be discharged with one hundred fifty (150) feet of any Fireworks retail sales location.

K. No fireworks shall be sold or used on state forest land.

L. No person shall ignite any fireworks within a motor vehicle or through fireworks form a motor vehicle, nor shall any person place or throw any ignited article of fireworks into or at a motor vehicle or at or near any person or group of people.

M. Any fireworks devices that are readily accessible to handling by consumers or purchasers in a retail sales location shall have their exposed fuses protected in a manner to protect against accidental ignition of an item by a spark, cigarette ash or other ignition source. If the fuse is thread-wrapped safety fuse which has been coated with a nonflammable coating, only the outside end of the safety fuse shall be covered. If the fuse is not safety fuse, then the entire fuse shall be covered.

N. Permissible fireworks as allowed in the Ordinance may be sold at retail between June 20 and July 6 of each year and six days preceding and including new year's day and three days preceding and including Chinese new year, the sixteenth (16) of September and Cinco de Mayo of each year, except that permissible fireworks may be sold all year in a permanent retail store whose primary business is tourism.

Section 6. Display Fireworks

Except as provided in Section 12 of this Ordinance, nothing in this Ordinance shall prohibit the public display of display fireworks, except that any individual, association, partnership, corporation, organization, county or municipality shall secure a written permit/letter from the Board of County Commissioners and pay the permit fee as listed in Section 2 Paragraph C above, and follow the requirements on N.M.S.A. 1978 §60-2C-9 (2010 Rep. Pam.).

- A. Any permit/letter granted by the Board of County Commissioners shall not exceed a period of seventy two (72) hours duration.
- B. The request for a permit for public display of display fireworks shall be submitted in writing and approved by the Board of County Commissioners at least five (5) days prior to the date of the public display.
- C. Any requesting party shall deliver to the Board of Commissioners a bond or insurance policy in an amount not less than \$500,000.00, insuring against any damage to property or injury to persons arising from the display or possession of display fireworks for the period of time applied for.
- D. The permit granted shall state the times for public display only; however, said permit for public display shall operate as permission for possession of display fireworks for the purpose of public display for a period of twenty (20) days prior to the first day of the permit period, and for a period of five (5) days subsequent to the last day of the permit.
- E. The Board of County Commissioners shall have no power to waive the conditions of the permit provided in this paragraph, and any permission issued in violation of these conditions shall be void.
- F. Permission granted under the terms of this paragraph shall constitute an affirmative defense. Purported permission void under the provisions of subparagraph "E" of this paragraph shall not constitute a defense.

Section 7. Novelties Not Fireworks

Novelties are not fireworks and are not subject to the provisions of this Ordinance. For the purpose of this section, "novelties" means devices containing small amounts of pyrotechnic

or explosive composition that produce limited visible or audible effects, including party poppers, snappers, snakes, glowworms, sparklers or toy caps and devices intended to produce unique visual effects that contain sixteen milligrams or less of explosive composition and limited amounts of other pyrotechnic composition, including cigarette loads, trick matches, explosive auto alarms and other trick noisemakers.

Section 8. Temporary Stands

No permits shall be issued for and no selling or bartering of fireworks at retail shall take place at any temporary stands unless all of the following requirements are met:

- A. The stand must be more than 100 feet from any stored gasoline or other flammable liquids;
- B. The stand must be more than 25 feet from any motor vehicle, and appropriately roped off or fenced off to physically prevent the approach of motor vehicles closer than 25 feet;
- C. The stand must be located at least 50 feet away from any weeds, debris, or other flammable material;
- D. At all places where fireworks are stored, sold or displayed, the words “**NO SMOKING**” shall be posted in letters at least four inches in height. Smoking, open flames and any ignition source, are prohibited within twenty-five feet of any fireworks stock.
- E. All fireworks permittees and licensees shall keep and maintain upon the premises a fire extinguisher bearing an underwriters laboratories incorporated rated capacity of at least five-pound ABC per five hundred square feet of space used for fireworks sales or storage.

Section 9. Inspection Of Packages

Fireworks offered for sale, trade, or barter shall be so packaged as to readily allow visual inspection of their contents, as by packaging in transparent plastic. In the alternative, samples, fully representative of other of their respective types shall be opened and so displayed in such a manner as will readily allow visual inspection.

Section 10. Seizure And Destruction Of Fireworks

- A. It shall be the duty of the County Sheriff to seize fireworks, as follows:
 - 1. In the possession of an intoxicated person, or a child under the age of sixteen (16) years of age not in the physical presence of their parent or adult legal guardian;
 - 2. Being stored, offered for sale, bartered, or trade, or sold at any location where the permit requirements of this Ordinance have not been met;
 - 3. In the immediate possession of any person who is violating any provision of this Ordinance in their use of fireworks;
 - 4. Any kind of fireworks not approved by the State Fire Marshal or this Ordinance;
 - 5. Any aerial fireworks, except aerial fireworks in commerce.
- B. Seized fireworks shall be destroyed in a safe manner by the Sheriff, as follows:
 - 1. Immediately if they are aerial fireworks or any kind not approved by the State

- Fire Marshal;
2. After ten (10) days from the date of seizure, unless an action for their return has been filed in the District Court.

Section 11. Penalties

Conviction for each violation of the provisions of this Ordinance shall be a petty misdemeanor and punishable by fine, jail sentence, or both as follows:

- A. For possession, sale or use of fireworks of any kind not approved by this Ordinance; up to a \$1,000.00 fine or up to three hundred sixty-four (364) days in jail, or both;
- B. For possession, sale, or use of aerial fireworks: up to a \$1,000.00 fine or up to three hundred sixty-four (364) days in jail, or both;
- C. For failure to keep, retain, or produce records required by this Ordinance: up to a \$1,000.00 fine or up to three hundred sixty-four (364) days in jail, or both;
- D. For selling, bartering, trading, or transferring fireworks before June 20 or July 6, and 3 days preceding and including New Year's Day, Chinese New Year, and Cinco de Mayo: up to a \$1,000.00 fine or up to three hundred sixty-four (364) days in jail, or both;
- E. Failure to have fireworks so packaged or displayed as will readily allow visual inspection: up to a \$100.00 fine or ten (10) days in jail, or both;
- F. For any other violation: up to a \$1,000.00 fine or up to three hundred sixty-four (364) days in jail, or both.

Section 12. Restrictions On the Sale and Use of Fireworks

If conditions warrant and subject to the discretion and majority vote of the sitting County Commission, the Commission may by Proclamation restrict the use, sale, or display of impermissible fireworks listed in subsection B(1) of this section within Roosevelt County and outside municipal or village limits for a prescribed period of time as provided in §60-2C-8.1, NMSA 1978, as amended.

A. The County Commission may hold a hearing to determine if fireworks restrictions should be imposed within the boundaries of the county affected by extreme or severe drought conditions. The findings of the governing body shall be based upon current drought indices published by the U.S. Drought Monitor Report and exceptional circumstances due to lack of precipitation, high winds, low humidity, abundance of wild land grass and dry, fine fuels in the unincorporated areas of Roosevelt County.

B. Pursuant to any hearing under Subsection A of this section, the County Commission shall issue a Resolution/Proclamation declaring extreme or severe drought conditions within the boundaries of the Roosevelt County The County Commission's proclamation:

(1) shall ban the sale and use of missile-type rockets, helicopters, aerial spinners, stick-type rockets and ground audible devices within the affected drought area; and

(2) shall give the governing body the power to:

(a) limit the use within its jurisdiction of any fireworks not listed in Paragraph B(1) of this subsection to areas that are paved or barren or that have a readily accessible source of water for use by the homeowner or the general public;

(b) ban the use of all fireworks within wildlands in its jurisdiction, after consultation with the state forester; and

(c) ban or restrict the sale or use of display fireworks.

C. The Roosevelt County Commission's proclamation declaring an extreme or severe drought condition shall be issued no less than twenty days prior to a holiday for which fireworks may be sold. The proclamation shall explain restrictions on the sale or use of fireworks and permitted sales or uses of fireworks.

D. Roosevelt County Commission's proclamation shall be effective for thirty days and the governing body may issue succeeding proclamations if extreme or severe drought conditions warrant. A proclamation may be modified or rescinded within its thirty-day period by the governing body upon conducting an emergency hearing to determine if weather conditions have improved.

Section 13. Repeal of Prior Ordinances

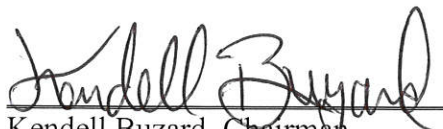
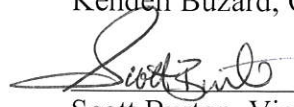
This Ordinance shall operate to repeal any and all prior Ordinances governing the use, possession, and sale of fireworks and nay amendments on any prior ordinances dealing with the same subject matter.

ADOPTED BY THE GOVERNING BODY OF ROOSEVELT COUNTY THIS 15th
DAY OF April, 2014.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
ROOSEVELT COUNTY, NEW MEXICO


DeAun Searl, County Clerk


Kendell Buzard, Chairman

Scott Burton, Vice-Chairman