

ORDINANCE NO. 2017 – 01

AN ORDINANCE RELATING TO FIRE PROTECTION, REGULATING THE STORAGE AND SALE OF FIREWORKS, AND REPEALING EXISTING FIREWORKS ORDINANCE 93-2.

BE IT ORDAINED by the County Commission of the County of Curry, State of New Mexico that the following Ordinance is adopted for Curry County.

WHEREAS, Curry County Ordinance 93-2, "An Ordinance Relating to Fire Protection, Regulating the Storage and Sale of Fireworks, and Repealing Existing Fireworks Ordinance" heretofore adopted on May 18, 1993 is hereby repealed in its entirety; and

WHEREAS the following is adopted.

SECTION 1. Definitions. As used in this Ordinance:

1. "County Commission" is the Curry County Board of County Commission;
2. "Display Distributor: mean ay person, firm, or corporation selling display fireworks;
3. "Distributor" means any person, firm, or corporation selling fireworks to wholesalers and retailers for resale;
4. "Display Fireworks" means devises 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 (130mg) of explosive composition; aerial shells containing more than forty grams (40g) of chemical composition exclusive of lift charge, and other exhibition display items that exceed the limits for "Permissible Fireworks."
5. "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.
6. "Firecracker" means a small, paper-wrapped or cardboard tube containing no more than fifty milligrams (50 mg) 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 (130 mg) of explosive composition per report;

7. "Manufacturer" means any person, firm, or corporation engaged in the manufacture of fireworks;
8. "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;
9. "Residential Dwelling" means a building or portion thereof, a vehicle or other enclosed space which is used or intended for use as a human habitation, home or residence;
10. "Retailer" means any person, firm, or corporation purchasing fireworks for resale to consumers;
11. "Sheriff" is the duly elected Sheriff of Curry County, New Mexico;
12. "Specialty Retailer" means any person, firm, or corporation purchasing fireworks for year-round resale in permanent retail stores whose primary business is tourism;
13. "Wholesaler" means any person, firm, or corporation purchasing fireworks for resale to retailers.
14. All other definitions set forth in the New Mexico fireworks licensing and safety act, §60-2C-1 through §60-2C-11 NMSA 2016, as amended, are incorporated herein as though set forth in full.

SECTION 2. License or Permit Required:

1. No person may sell, hold for sale, import, distribute, or offer for sale, as specialty retailer, or retailer, any fireworks in Curry County unless such person has first obtained the appropriate license or permit;
2. All persons applying for licenses or permits to sell fireworks must also comply with New Mexico Statutes as well as New Mexico Administrative Code including but not limited to §10.25.6.8, 6.9, 6.10, and 6.11 and New Mexico Statutes §60-2C-1 through §60-2C-11.

3. The Sheriff shall enforce this Curry County Fireworks Ordinance. All license applications shall be submitted to the Office of the Curry County Clerk. All retailers shall be required to purchase a retail fireworks permit for each retail location;
4. An applicant for a license or permit under the Curry County Fireworks Ordinance shall pay to the Curry County Clerk the following fees, which shall not be refundable:
 - (a) Specialty retailer license \$50.00 per location
 - (b) Retailer permit \$25.00 per location
5. All licenses and permits shall be issued for one year beginning on May 1 of each year. All licenses and permits shall be issued within thirty days from the date of receipt of application.
6. Licenses issued under the Curry County Fireworks Ordinance shall not be restricted in number or limited to any person, without cause.

SECTION 3. Possession, Sale or Use of Unauthorized Fireworks Unlawful: No individual, firm, partnership, corporation, or association shall possess for retail sale in Curry County, sell or offer for sale at retail or use or possess any fireworks other than permissible fireworks.

SECTION 4. Permissible Fireworks: Permissible fireworks for sale to the general public as that term is used in the Curry County Fireworks Ordinance shall be understood to mean common fireworks legal for sale and use in New Mexico by the general public

1. Permissible fireworks are:
 - (A) ground and hand-held sparkling devices:
 - (1) cone fountains;
 - (2) crackling devices;
 - (3) cylindrical fountains;
 - (4) flitter sparklers;
 - (5) ground spinners;
 - (6) illuminating torches; and
 - (7) wheels;
 - (B) aerial devices:
 - (1) aerial shell kit-reloadable tubes;
 - (2) aerial spinners;

- (3) helicopters;
 - (4) mines;
 - (5) missile-type rockets;
 - (6) multiple tube devices;
 - (7) roman candles;
 - (8) shells; and
 - (9) stick-type rockets, except as provided in Subsection 2 of this section;
and
- (C) Ground audible devices:
- (1) chasers; and
 - (2) firecrackers.

2. The following types of fireworks are NOT permissible fireworks:

- (A) stick-type rockets having a tube less than five-eighths inch ($5/8$ ") outside diameter and less than three and one-half inches ($3 \frac{1}{2}$ ") in length; and
- (B) fireworks intended for sale to the public that produce an audible effect, other than a whistle, by a charge of more than one hundred thirty milligrams of explosive composition per report.

SECTION 5. Exportation of Fireworks from the County: Nothing in the Curry County Fireworks Ordinance shall prohibit wholesalers, distributors, importers, specialty retailers, or manufacturers from storing, selling, shipping, or otherwise transporting fireworks as defined by the United States Department of Transportation to any person or entity outside the County.

SECTION 6. Retail Sales or Storage of Fireworks; Regulated Activities:

1. No fireworks may be sold at retail without a retail permit. The permit shall be at the location where the retail sale takes place.
2. It is unlawful to offer for sale or to sell any fireworks to children under the age of sixteen (16) years or to any intoxicated person.
3. At all places where fireworks are stored, sold, or displayed, the words "NO SMOKING" shall be posted in letters at least four inches (4") in height. Smoking is prohibited within twenty-five feet (25') of any fireworks stock.
4. No fireworks shall be stored, kept, sold, or discharged within fifty feet (50') of any gasoline pump or gasoline bulk station or any building in which gasoline or volatile

liquids are sold in quantities in excess of one (1) gallon, except in stores where cleaners, paints, and oils are handled in sealed containers only.

5. All fireworks permits and licenses shall keep and maintain upon the premises a fire extinguisher bearing an Underwriters Laboratories, Inc. rated capacity of at least 5 lbs. ABC per five hundred square feet of space used for fireworks sales or storage.
6. 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. All fireworks sold and shipped to consumers within Curry County shall be sold and shipped only by an individual firm, partnership, or corporation holding the proper State of New Mexico fireworks license or permit.
7. No fireworks shall be discharged within one hundred fifty feet (150') of any fireworks retail sales location, nor within 300 yards of any residential dwelling which is not owned or occupied by the individual(s) discharging the fireworks as that is defined in Section 3, (A), (8). Nothing in this Ordinance shall be construed to prohibit the discharge of fireworks by persons at or near their own residential dwelling, but only within 300 yards of a third persons dwelling.
8. No person shall ignite any fireworks within a motor vehicle or throw fireworks from 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.
9. 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 a 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 a safety fuse, then the entire fuse shall be covered.
10. Fireworks may be sold at retail between June 20 and July 6 of each year and three days preceding and including New Year's Day, Chinese New Year, and Cinco de Mayo of each year except that fireworks may be sold all year in permanent retail stores whose primary business is tourism.

SECTION 7. Extreme or Severe Drought Conditions; restricted sales and use:

The Board of County Commissioners at Curry County may, at any time throughout the year, hold a hearing to determine if fireworks restrictions should be imposed within the unincorporated portion of Curry County which is affected by extreme or severe drought conditions. Finding of extreme or severe conditions by the Curry County Board of Commissioners shall be based on current drought indices published by the National

Weather Service and any other relevant information supplied by the United States Forrest Service. As a result of any hearing, the Board of County Commissioners of Curry County may issue a proclamation declaring extreme or severe drought conditions within the unincorporated portions of Curry County if it determines that such conditions exist. Any such Proclamation issued by the Curry County Board of Commissioners shall:

- 1) Ban the sale and use of missile type rockets, helicopters, areal spinners, stick-type rockets, and ground audible devices within the affected drought area; and
- 2) Give the Curry County Board of Commissioners the power to:
 - a) Limit the use in Curry County of any fireworks not listed in section (1) above, to areas that are paved, or barren, or that have and readily accessible source of water for use by the homeowner or the general public;
 - b) Ban or restrict the sale or use of display fireworks.

Any Proclamation issued by the Curry County Board of Commissioners of severe drought conditions shall be issued no less than 20 days prior to a holiday for which fireworks may be sold. Said proclamation shall explain all restrictions on the sale or use of fireworks and permitted sale or use of fireworks in Curry County, if any.

Any Proclamation issued by the Curry County Board of Commissioners of severe drought conditions shall be effective for thirty (30) days, and the Curry County Board of Commissioners may issue succeeding proclamations if extreme or severe drought conditions warrant. Any such Proclamation may be modified or rescinded within said thirty-day (30) period the Board of County Commissioners upon conducting an emergency hearing to determine if weather conditions have improved.

SECTION 8. Public Display of Fireworks:

1. Nothing in the Curry County Fireworks Ordinance shall prohibit the public display of fireworks except that any individual, association, partnership, corporation, or organization shall secure a written permit from the office of the Curry County Clerk and the fireworks shall be purchased from a distributor or display distributor licensed by the State Fire Marshal and the Bureau of Alcohol, Tobacco, and Firearms at the United States Department of the Treasury.

SECTION 9. Penalty-Criminal:

1. Any individual, firm, partnership, or corporation that violates any provision of the

Curry County Fireworks Ordinance is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than ONE THOUSAND DOLLARS (\$1,000.00) or imprisonment for not more than ninety (90) days, or both.

2. Nothing in the Curry County Fireworks Ordinance shall apply to or prohibit any employee of the Department of Game and Fish or the United States Fish and Wildlife Service from processing fireworks for control of game birds and animals or to prohibit any law enforcement officer from possessing fireworks in the performance of his duties or to prohibit any organization therein from sponsoring and conducting in connection with any public celebration, an officially supervised and controlled fireworks display.

SECTION 10. Penalty-Civil:

1. If a person is found guilty of violating any of the provisions of the Curry County Fireworks Ordinance, that person's license or permit may be revoked or suspended by the Sheriff, his deputies, or designee.
2. No individual, firm, corporation, or partnership shall possess any fireworks for sale within Curry County, other than those authorized in the Curry County Fireworks Ordinance. The Sheriff, his/her deputies, designee, or the Curry County Fire Marshal may at reasonable hours enter and inspect the permittee's premises, building, mobile or motor vehicle, or temporary or permanent structure to determine compliance with the Curry County Fireworks Ordinance. If any retailer has in his possession any fireworks in violation of that act, his permit shall be revoked and all such fireworks seized, and the fireworks shall be safely kept to be used as evidence. If any person has in his possession and fireworks in violation of that act, a warrant may be issued for the seizure of fireworks and the fireworks shall be safely kept to be used as evidence. Upon conviction of the offender, the fireworks shall be destroyed, but if the offender is discharged, the permissible fireworks shall be returned to the person in whose possession they were found; provided, however, that nothing in the Curry County Fireworks Ordinance applies to the transportation of fireworks by regulated carriers.

SECTION 11. Severability:

1. If any section, subsection, clause, word, or phrase of this Ordinance is for any reason held to be unconstitutional or otherwise invalid by any Court of competent jurisdiction, such decision shall not affect the validity of the remaining portion of this Ordinance. The Curry County Board of County Commission hereby declares that it would have passed this Ordinance and each section, sentence, clause, word, and

phrase thereof, irrespective of any one or more sections, subsections, sentence, clause, word, or phrases being declared unconstitutional or otherwise invalid.

SECTION 12. State Statutes:

1. Fireworks in the State of New Mexico are regulated by State Law. The New Mexico Fireworks Licensing and Safety Act, §60-2C-1 through §60-2C-11 NMSA 2016, controls and regulates the use, sale, and possession of fireworks in the State of New Mexico. As such, any and all changes, corrections or modifications made to the New Mexico Fireworks Licensing and Safety Act shall be adopted and shall modify the terms of this Ordinance."

SECTION 13. Effective Date:

1. This Ordinance shall take effect on August 1, 2017.

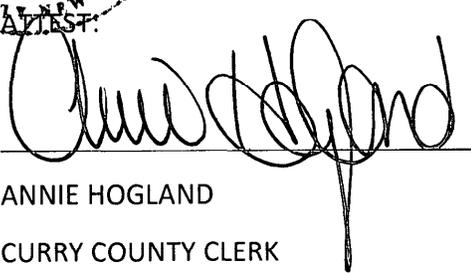
Adopted by the governing body of Curry County this 27th day of July, 2017.

CURRY COUNTY BOARD OF COUNTY COMMISSIONERS

BY:


BEN MCDANIEL, CHAIR.




ANNIE HOGLAND

CURRY COUNTY CLERK