

AN ORDINANCE RELATING TO FIRE PROTECTION AND TO THE REGULATION OF THE STORAGE AND SALE OF FIREWORKS.

BE IT ORDAINED by the governing body, that is the County Commission of the County of Roosevelt, State of New Mexico:

SECTION 1.

RECITALS: The Roosevelt County Commission being concerned about the safety and welfare of the inhabitants of the County and being further concerned about the protection and preservation of real and personal property in the County desires to adopt a Fireworks Ordinance which adequately addresses the legitimate safety concerns associated with the use and sale of fireworks while at the same time recognizing the rights of the public to sell and use certain types of fireworks.

SECTION 2.

ADOPTION OF ORDINANCE PROVISIONS RELATING TO POSSESSION, SALE, USE, MANUFACTURE AND STORAGE OF FIREWORKS WITHIN THE COUNTY

OF ROOSEVELT: The Ordinance governing the possession, sale, use, manufacture and storage of fireworks within the County of Roosevelt is hereby adopted as follows:

A. DEFINITIONS: As used in this Ordinance:

1. "Common fireworks" means any fireworks device suitable for use by the public that complies with the construction, performance, composition, and labeling requirements promulgated by the United States Consumer Product Safety Commission in Title 16, C.F.R. and that is classified as a class C explosive by the United States Department of Transportation;
2. "County Commission" is the Roosevelt County, New Mexico County Commission;
3. "Sheriff" is the duly elected Sheriff of Roosevelt County, New Mexico;
4. "Distributor" means any person, firm, or corporation selling fireworks to wholesalers and retailers for resale;
5. "Firework" means any composition or device for the purpose of producing a visible or audible effect by combustion, deflagration or detonation. Fireworks are further classified in the County of Roosevelt Fireworks Ordinance as common fireworks and special fireworks, as defined by the United States Department of Transportation, C.F.R. Title 49, transportation, parts 173. 88(d) and 173.100(r);
6. "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;

7. "Aerial Device" includes the following:
 - a) Sky Rocket. Tube not exceeding $\frac{1}{2}$ in. (12.5mm) inside diameter that may contain up to 20 g of pyrotechnic composition. Sky rockets contain a wooden stick for guidance and stability and rise into the air upon ignition. A burst of color or noise or both is produced at the height of flight.
 - b) Missile-type Rocket. A device similar to sky rocket in size, composition, and effect that uses fins rather than a stick for guidance and stability;
8. "Display Distributor" means any person, firm, or corporation selling special fireworks;
9. "Manufacturer" means any person, firm, or corporation engaged in the manufacture of fireworks;
10. "Permissible Fireworks" means fireworks legal for sale and use in the County of Roosevelt under the provisions of the County of Roosevelt Fireworks Ordinance;
11. "Retailer" means any person, firm, or corporation purchasing fireworks for resale to consumers;
12. "Special Fireworks" means fireworks devices primarily intended for commercial displays which are designed to produce visible or audible effects by combustion, deflagration or detonation including salutes containing more than one hundred thirty (130) milligrams (two grains) of explosive composition, aerial shells containing more than forty (40) grams of chemical composition exclusive of lift charge and other exhibition display items that exceed the limits contained in the County of Roosevelt Fireworks Ordinance for common fireworks;
13. "Specialty Retailer" means any person, firm, or corporation purchasing fireworks for year-round resale in permanent retail stores whose primary business is tourism; and
14. "Wholesaler" means any person, firm, or corporation purchasing fireworks for resale to retailers.

B. 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 the County of Roosevelt unless such person has first obtained the appropriate license or permit;
2. The Sheriff shall enforce the County of Roosevelt Fireworks Ordinance. All license applications shall be submitted to the Office of the County Clerk. All retailers shall be required to purchase a retail fireworks permit for each retail location;
3. An applicant for a license or permit under the County of Roosevelt Fireworks Ordinance shall pay to the County of Roosevelt the following fees, which shall not be refundable:
 - a) specialty retailer license \$25.00
 - b) retailer permit. \$10.00;
4. All licenses and permits shall be issued for one (1) year beginning on May 1 of each year. All licenses and permits shall be issued within thirty (30) days from the date of receipt of application.
5. Licenses issued under the County of Roosevelt Fireworks Ordinance shall not be restricted in number or limited to any person without cause.

C. POSSESSION, SALE OR USE OF UNAUTHORIZED FIREWORKS UNLAWFUL: No individual, firm, partnership, corporation, or association shall possess for retail sale in the County of Roosevelt, sell or offer for sale at retail or use or possess any fireworks other than permissible fireworks.

D. EXPORTATION OF FIREWORKS FROM THE COUNTY: Nothing in the County of Roosevelt 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.

E. PERMISSIBLE FIREWORKS: Permissible fireworks for sale to the general public as that term is used in the County of Roosevelt Fireworks Ordinance shall be understood to mean common fireworks legal for sale and use in New Mexico under the provisions of the Fireworks Safety and Licensing Act, 60-2C-1 et seq., N.M.S.A., 1978 Compilation, as amended, with the exception of aerial devices, which are prohibited.

F. 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 twelve (12) 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 (4) inches in height. Smoking is prohibited within twenty-five (25) feet of any fireworks stock.
4. No fireworks shall be stored, kept, sold, or discharged within fifty (50) feet 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 permittees and licensees shall keep and maintain upon the premises a fire extinguisher bearing an Underwriters Laboratories, Inc. rated capacity of at least five (5) pounds ABC per five hundred (500) 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 the County of Roosevelt 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 (150) feet of any fireworks retail sales location, nor within three hundred (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 2, (A), (6). 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 three hundred (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 (3) 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.
- G. PUBLIC DISPLAY OF FIREWORKS:**
1. Nothing in the County of Roosevelt 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 County Clerk and the fireworks shall be purchased from a distributor or display distributor licensed by the State Fire Marshall and the Bureau of Alcohol, Tobacco, and Firearms at the United States Department of the Treasury.
 2. The Sheriff may adopt reasonable rules and regulations for the use of special fireworks in public displays.

H. PENALTY-CRIMINAL:

1. Any individual, firm, partnership, or corporation that violates any provision of the County of Roosevelt Fireworks Ordinance is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than **THREE HUNDRED (\$300) DOLLARS** or imprisonment for not more than ninety (90) days, or both.
2. Nothing in the County of Roosevelt Fireworks Ordinance shall apply to or prohibit any employees of the Department of Game and Fish or the United States Fish and Wildlife Service from possessing 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.

I. PENALTY-CIVIL:

1. If a person is found guilty of violating any of the provisions of the County of Roosevelt Fireworks Ordinance, that person's license or permit may be revoked or suspended by the Sheriff, his deputies, or designees.
2. No individual, firm, corporation, or partnership shall possess any fireworks for sale within the County of Roosevelt other than those authorized in the County of Roosevelt Fireworks Ordinance. The Sheriff, his deputies, or designees 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 County of Roosevelt Fireworks Ordinance. If any retailer has in his possession any fireworks in violation of that Ordinance, his permit shall be revoked and all such fireworks seized, and the fireworks shall be kept to be used as evidence. If any person has in his possession any fireworks in violation of that Ordinance, 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 County of Roosevelt Fireworks Ordinance applies to the transportation of fireworks by regulated carriers.

J. SEVERABILITY: 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 County Commission of the County of Roosevelt 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.

ADOPTED by the governing body of the County of Roosevelt this 28th day of May, 1993.

THE COUNTY OF ROOSEVELT, NEW MEXICO

BY: Blonnie Rea
Blonnie Rea, Chairman
Roosevelt County Commission



Maudene Haragan
Maudene Haragan, County Clerk
Roosevelt County

ROOSEVELT CO. NM

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MAUDENE HARAGAN-CLERK

BY Maudene Haragan

