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### COLFAX COUNTY ORDINANCE NO. 1999 - 3

AN ORDINANCE REGULATING THE MANUFACTURE, TRANSPORTATION, STORAGE,  
SALE AND USE OF FIREWORKS WITHIN THE COUNTY OF COLFAX, NEW MEXICO.

#### SECTION 1. PURPOSE

This Ordinance shall be known as the Colfax County Fireworks Act (hereinafter "Act"), which:

- Defines the types of fireworks, which may be manufactured, stored, sold, and used;
- Provides for licensing and fees;
- Establishes safety requirements for storage, sale, and use;
- Establishes periods for retail sale; and
- Establishes penalties for violations.

#### SECTION 2. DEFINITIONS

The following definitions shall apply where used in this Act:

Manufacturer - Person, firm, or corporation engaged in the manufacture of fireworks.

Distributor - Person, firm, or corporation selling fireworks to wholesale (Jobbers) and retailers for resale.

Wholesaler (Jobber) - Person, firm, or corporation purchasing fireworks for resale to retailers.

Retailer - Person, firm, or corporation purchasing fireworks for resale to consumers.  
Importers

1. Person, firm, or corporation importing fireworks from a foreign country; or
2. Person, firm, or corporation bringing fireworks or causing fireworks to be bought within the jurisdiction of this Act for subsequent sale.

Fireworks - Any composition or device for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation, or fireworks classified in the Act as Common fireworks and Special Fireworks as defined by the U.S. Department of Transportation (CFR Title 49 - Transportation, Parts 173.100(r).

1. Exception: The following items are not considered fireworks under the provisions of these regulations: Model rockets, toy pistol caps, emergency signal flares, and common matches.

Common Fireworks - Small fireworks, designed primarily to produce visible effects by combustion, that must comply with the construction, chemical composition, and labeling regulations promulgated by the U.S. Consumer Product Safety Commission (CFR Title 16- Commercial Practices, Part 1507). Some small devices designed to produce an audible explosive composition. Propelling or expelling charges consisting of a mixture of charcoal, sulfur, and

- b. Cylindrical Fountain - Cylindrical tube not exceeding 3/4 inch in inside diameter containing up to 75 grams of pyrotechnic composition. Fountains produce a shower of color and spark upon ignition, and sometimes a whistling effect. Cylindrical fountains may contain a spike to be inserted in the ground (spike fountain).
- c. Cone Fountain - Cardboard or heavy paper cone containing up to 50 grams of pyrotechnic composition. The effect is the same as that of a cylindrical fountain.
- d. Illuminating Torch - Cylindrical tube containing up to 100 grams of rotechnic composition. Upon ignition, colored fire is produced. These may be spike, base, or handle-type devices.
- e. Wheel - Pyrotechnic device attached to a post or tree by means of a nail or string. Wheel contains up to six "driver" units - tubes not to exceed 1/2 inch in inside diameter that may contain up to 60 grams of composition per driver unit. Upon ignition, the wheel revolves, producing a shower of color and sparks and sometimes a whistling effect.
- f. Ground Spinner - Small device similar to wheels in design and effect placed on the ground and ignited. The spinning device produces a shower of sparks and color.
- g. Flitter Sparkler - Narrow paper tube filled with pyrotechnic composition that produces color and sparks upon ignition. These devices do not use a fuse for ignition. The paper at one end of the tube is ignited to make the device function.

## 2. Aerial Devices (Prohibited)

- a. Stick - type Rocket - Tube not less than 1/4 inch inside diameter that may contain up to 20 grams of composition (propellant plus pyrotechnic effect). The inside diameter of the tube containing the propellant may not exceed 1/2 inch. Stick rockets contain a wooden stick for guidance and stability and rise in the air upon ignition.
- b. Missile - type Rocket - Device similar to a stick - type rocket in size, composition and effect that used fins rather than a stick for guidance and stability.
- c. Helicopter, Aerial Spinner - A tube not exceeding 1/2 inch inside diameter that may contain up to 20 grams of pyrotechnic composition. Some type of propeller or blade device is attached, and upon ignition the spinning device lifts into the air. A visible or audible effect may be produced at the height of flight.
- d. Starlight candle - heavy paper cardboard or tube with ground spike not exceeding 3/8 inch inside diameter that contains up to 200 grams of pyrotechnic composition. Upon ignition, up to ten "stars" (see straight candle) firecrackers (see "C. Ground Audible Devices"), whistles parachutes, or combinations of these effects are propelled into the air, with the tube remaining on the ground.

## 3. Ground Audible Devices (Prohibited)

- a. Firecracker - Small paper - wrapped or cardboard tube that may no contain more than 50mg. Of pyrotechnic composition and may not exceed 7/8 inch long by 1/6 inch diameter. Noise, accompanied by a flash of light, is produced upon ignition.
- b. Chaser - Small paper - wrapped or cardboard tube that travels along the ground upon ignition. A whistling effect is often produced, and a small noise may be produced. The explosive composition used to create the noise may not exceed 50 mg.

## 4. Combination Items (Prohibited)

Combination items consist of fireworks and/or devices containing combinations of two or more of the permissible effects described herein.

## 5. Novelties and Trick Noisemakers (Permitted)

The U.S. Department of Transportation does not classify items listed in this section as common fireworks:

- a. Snakes, Glow Worms - Pressed pellet of pyrotechnic composition that produces a snake - like ash upon burning. The ash expands in length as the petted burns. These devices may not contain mercuric thiocyanate.
- b. Smoke Device - Tube or sphere containing pyrotechnic composition that produces white or colored smoke upon ignition as the primary effect.
- c. Wire Sparkler - Wire coated with pyrotechnic composition that produces a shower of sparks upon ignition. These items may not contain magnesium and must not exceed 100 grams of composition per item. Devices containing any chlorate or per chlorate salts may not exceed 5 grams of composition per item.
- d. Trick Noisemaker - Item that produces a small report intended to surprise the user. These devices include:
  - (1). Party Popper - Small plastic or paper item containing not in excess of 16 mg. of explosive composition that is friction sensitive. A string protruding from the device is pulled to ignite it, expelling paper streamers and producing a small report (noise).
  - (2). Booby Trap, Pulling Fireworks - Small tube with string protruding from both ends, similar to a party popper in design. The ends of the string are pulled to ignite the friction sensitive composition, producing a small report.
  - (3). Snapper - Small paper - wrapped item containing a minute quantity of explosive composition coated on small bits of sand. When dropped, the device explodes producing a small report.
  - (4). Trick Match - Kitchen or book match that has been coated with a small quantity of explosive composition. Upon ignition of a cigarette containing one of the pegs, a small report is produced.
  - (5). Cigarette Load - Small wooden peg that has been coated with a small quantity of explosive composition. Upon ignition of a cigarette containing one of the pegs, a small report is produced.
  - (6). Auto burglar Alarm - Tube that contains pyrotechnic composition that produces a loud whistle and/or smoke when ignited. A small quantity of explosive, not exceeding 50 mg, may also be used to produce a small report. A Squibb is used to ignite the device.
- e. Special Fireworks - Larger fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation. This definition includes but is not limited to firecrackers containing more than 130 mg. of explosive composition, and other exhibition display items that exceed the limits for classification as common fireworks.
- f. Pyrotechnic composition - mixture of chemicals that produces a visible or audible effect by combustion rather than deflagration or detonation. Pyrotechnic compositions will not explode upon ignition unless severely confined.
- g. Explosive composition - Chemical or mixture of chemicals that produces an audible effect by deflagration or detonation when ignited.
- h. Permissible fireworks - Fireworks legal for sale and use in the County of Colfax, New Mexico under the provisions of this Act.

### Section 3.

#### PERMISSIBLE FIREWORKS

- 3.1. It shall be unlawful for any individual firm, partnership, or corporation, or association to possess for sale, sell or offer for sale at retail, possess or use, within the County of Colfax, New Mexico any fireworks other than the permissible fireworks enumerated herein.
- 3.2. Permissible fireworks, for sale to the general public as that term is used in this ordinance, shall be understood to mean the following:
  - A. Ground and Hand-held sparkling devices.
  - B. Novelties and trick noisemakers.

NOTE: Any fireworks that travel higher than ten feet in the air, or travel in one direction greater than ten feet from the point of ignition, or any ground device, shall not be permissible under this ordinance.

#### Section 4. FIREWORKS - PUBLIC DISPLAY

4.1. Any law enforcement official, as well as approved fire official, shall enforce the National Fire Protection Association. Standard NFPA 1123 (Current Edition), adopted herein by reference, in the granting of permits for supervised and controlled public displays of fireworks by the County or Municipality, any civic organization, amusement park or other organization or group of individuals approved by the County Sheriff.

4.2. Such permits shall be granted, on application to the County Sheriff, after a successful clearance of an N.C.I.C. background check performed by the Sheriff's Department, approved by the County, and filing of a bond or proof of liability insurance in an amount which will be acceptable to the County Attorney, by the applicant, as herein provided. Every such display shall be handled by a competent operator duly approved by the Fire Marshall or Sheriff and shall be of such composition, character and so located, discharged or fired, as to not be hazardous or endanger life or property.

4.3. Applications for permits shall be made, in writing, at least thirty (30) days in advance of the day of the display. After the permit has been granted, the sale, possession, use and distribution of fireworks for such display shall be lawful for that purpose and duration only.

4.4. No such permit granted shall be transferable.

4.5. Before any permit for fireworks display shall be issued, the applicant shall furnish proof of financial responsibility by either a) posting a bond, or b) providing proof of liability insurance specifically covering the display doing applied for, in an amount equal to the amount(s) under the N.M. Tort Clams Act, Sec. 41-4-19, NMSA 1978 (as amended) to satisfy any claims of damages of property or personal injuries arising out of any act or omission on part of the applicant or any agent or employee.

4.6. The applicant must provide adequate emergency medical personnel for the entirety of the public display, such as a stand-by crew with a means of immediate transportation to the local hospital. This shall be arranged with the County Emergency Services Department Director and shall be subject to approval of the County CEO. Any costs incurred in this arrangement shall be the responsibility of the applicant.

4.7 Any fireworks(s) that remain unfired, after an approved display is concluded, shall be immediately disposed of in a manner safe for the particular type of fireworks, approved by the County.

#### Section 5. ADMINISTRATION AND LICENSE FEES

5.1. Any law enforcement official, as well as approved fire official, is charged with the responsibility of enforcing this ordinance. All licenses shall be for one place of business and is not transferable. License fees shall be for the amount listed below:

|              |            |
|--------------|------------|
| Manufacturer | \$1,000.00 |
| Distributor  | \$ 250.00  |
| Wholesaler   | \$ 250.00  |
| Importer     | \$ 250.00  |

5.2. Retailer (i.e. vendor) shall obtain a business license from the County of Colfax, at the rates prevailing at the time such permit is applied for and granted and collected by County Clerk and remitted to County Treasurer

5.3. Any law enforcement official, as well as approved fire official may inspect any business manufacturing, storing, or selling fireworks for purposes of determining whether a license has been issued and posted, whether the manufacture, storage, or sale are otherwise being conducted in a safe manner. Refusal to permit such an inspection shall be ground for immediate revocation of the license. The inspector reserve the right to issue written directive as to safety measures that must be complied with above and beyond those listed in the ordinance.

5.4. If any law enforcement officer, as well as approved fire official, determines that an imminent danger exists to life or property as a result of unsafe practices related to the manufacture, storage for sale of fireworks, s/he may immediately suspend a license and order that the manufacturer, storage, or sale cease; provided that an administrative hearing is conducted within two (2) business days of the suspension.

#### Section 6. SAFETY REQUIREMENTS

6.1. No permissible fireworks may be sold without the securing of a retail license and the license must be on display at the location where the retail sale takes place.

6.2. Only permissible fireworks as defined in this Act shall be permitted to be sold.

6.3. There will be no smoking allowed in or around the area of sales extending out twenty-five (25) feet in any direction.

6.4. There shall be "NO SMOKING" signs, with letters on the signs being at least three (3) inches in height, posted on all sides of the stand or sales area.

6.5. There shall be at least one (1) 5#-ABC fire extinguisher on the premises and an additional backup consisting of at least a five (5) gallon pail full of water to serve as a "dunking" station for ignited fireworks in the area of the sales area.

6.6. There shall be a distance of no less than fifty (50) feet between the stand and any flammable liquid depot or storage area, e.g. Gas Station or Bulk Plant.

6.7. No vehicle shall be parked within twenty-five (25) feet from any non-permanent structure used for the sales of fireworks.

6.8. No person under the age of eighteen (18) years shall be permitted to purchase fireworks unless a responsible adult accompanies them.

6.9. No person under the age of eighteen (18) years shall be permitted to sell fireworks unless they are directly supervised by a responsible adult at all times during the times of sales.

6.10. Sales of permissible fireworks shall be limited to 8:00 AM., June 25, until 10:00 PM., July 5 of each year. Sale periods for other celebrations shall be set by the County, Chief Executive Officer as needed.

6.11. The discharging of fireworks within one hundred (100) feet of a place of business, fireworks sales locations, church, school, hospital, or rest home will not be permitted.

6.12. No person shall ignite or discharge any fireworks from within a vehicle or throw fireworks from a vehicle or into a vehicle, or at a person or in to a group of people.

6.13. A copy of their safety requirements shall be on display at the location for retail sales of fireworks in open view of the public.

#### Section 7. PROTECTED FUSES

In retail sales locations, any fireworks devices that are readily accessible to handling by consumers or purchasers must have their fuses protected in such a manner as to protect against accidental ignition of an item by a spark, cigarette ash, or other ignition source.

#### Section 8. REQUIREMENT OF BOND

Applicants for permits shall furnish a bond of not less than one thousand dollars (\$1,000.00) wherein the applicant agrees to comply with all aspects of the sale and handling of common fireworks as set forth in this Act. The applicant acknowledges that failure to comply with all aspects of this Act shall constitute a forfeiture of the bond in whole or in part so as to satisfy the penalty section of this Act. Governmental entities shall not be required to file a bond.

#### Section 9. DATES AND TIMES OF POSSESSION AND SALE

Any permit granted to a retailer under Section 2.0 of this Act shall authorize the possession of permissible fireworks for the period of June 20th through July 6th of each year. The sale of permissible fireworks shall be limited to the hours of 8:00 a.m. to 10:00 p.m. each business day of said period.

#### Section 10. PENALTIES

10.1. Any individual firm, partnership, or corporation who violates any provision of this Act shall be guilty of a petty misdemeanor, and upon conviction shall be punished by a fine of not more than \$999.00 or imprisonment for not more than 179 days, or both, for each violation. Each separate transaction shall constitute a separate violation and each day a violation exists shall constitute a separate offense.

10.2. The County Administrator/Manager is authorized to cancel or suspend any license where, after an administrative hearing, it is determined that a provision of this Act has been violated.

10.3. Any law enforcement officer, as well as approved fire official shall immediately seize, take, remove or cause to be removed at the expense of the owner, all stocks of fireworks which are not permissible fireworks, as outlined in this Act, offered or exposed for sale, stored or held if the owner of the fireworks is found to be in possession of any fireworks that are not permissible fireworks as outlined in this Act.

#### Section 11. REVENUES FROM FINES RECEIVED

All revenues generated and received from fines levied in this Act shall be placed in the County's General fund.

#### Section 12. CONFLICT OF AUTHORITY

12.1. If any portion of this Act is held unconstitutional or invalid, such holding shall not invalidate the remainder thereof.

12.2. Any other ordinance, in conflict herewith, is hereby repealed to the extent of the conflict.

12.3. If any other provision of law provides for penalties that are greater than those provided herein, such other provision shall apply.



## Section 13. Prohibition; Sunset

13.1. When emergency conditions exist, which have created an extreme fire danger, as determined by resolution of the Board of Colfax County Commissioners all possession, use and/or sale of fireworks, of any and all types enumerated herein, are prohibited.

13.3. Anyone found violating this temporary ban shall be guilty of a petty misdemeanor and upon conviction shall be punished by a fine of not more than \$999.00 or imprisonment for not more than 179 days, or both, for each violation. Each separate transaction shall constitute a separate violation and each day a violation exists shall constitute a separate offense.

13.4. This prohibition shall continue in effect until such time as the environmental conditions warrant a suspension of the prohibition by a resolution of the Colfax County Commission.

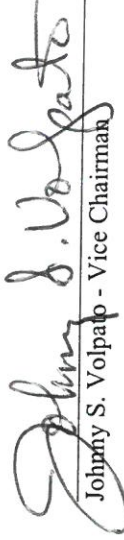
13.5. Colfax County shall declare such suspension of prohibition, when, in their determined opinion, conditions allow for the safe use of permitted fireworks.

13.6. This prohibition shall not apply to those local government sponsored Fourth of July public displays.

PASSED, ADOPTED and APPROVED by the Board of Colfax County Commissioners on this 6th day of April, 1999.

BOARD OF COUNTY COMMISSIONERS  
of Colfax County.

  
Marietta G. Shell - Chairman

  
Johnny S. Volpap - Vice Chairman

  
James B. Marchetti - Member

ATTEST:

  
Barbara Castillo - County Clerk

