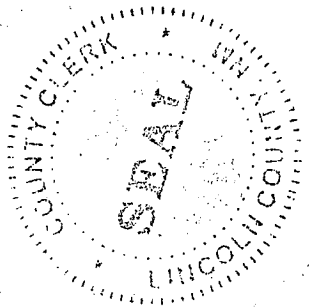


Tammie J. Maddox Lincoln County Clerk By: [Signature] Deputy Rec. # 200305493 Fees \$ 0.00

ORDINANCE 2003-06



AN ORDINANCE ESTABLISHING RESTRICTIONS ON THE SALE, POSSESSION, OR DISCHARGE OF FIREWORKS; ESTABLISHING FIREWORKS DESIGNATED AS PERMISSIBLE; ESTABLISHING REGULATIONS GOVERNING PUBLIC AND PRIVATE FIREWORKS DISPLAYS; PROVIDING LICENSING AND PERMITTING REQUIREMENTS AND FEES; REGULATING AND/OR PROHIBITING THE USE OF FIREWORKS DURING EXTREME OR SEVERE DROUGHT CONDITIONS; ESTABLISHING ENFORCEMENT AND PENALTY PROVISIONS; PROVIDING FOR THE SEVERABILITY OF PARTS HEREOF; AND PROVIDING AN EFFECTIVE DATE AND FOR THE REPEAL OF ORDINANCE NO. 1999-05.

WHEREAS, the health safety and general welfare of the residents of the County of Lincoln require the establishment of guidelines for the sale and use of fireworks, and, during extreme or severe drought conditions, the prohibition of aerial and ground audible devices in an effort to abate wildland fires; and

WHEREAS, NMSA 1978, §§ 4-37-1, et seq., (1975) provides that the Board of County Commissioners may adopt Ordinances to discharge those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morale, order, comfort and convenience of the County and its inhabitants; and

WHEREAS, NMSA 1978, §§ 60-2C-1, et seq., (1989) (hereinafter referred to as the "Fireworks Licensing and Safety Act") grants authority to the Board of County Commissioners to regulate and prohibit the sale or use of any aerial devices and ground audible devices during extreme drought conditions.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Lincoln County, New Mexico, as follows:

Section 1. Fireworks.

Definitions. As used in this section, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

“*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;

“*chemical composition*” includes all pyrotechnic and explosive compositions 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;

“*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;

“*County*” means the unincorporated areas of Lincoln County;

“*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;

“*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;

“*display distributor*” means any person, firm or corporation selling display fireworks;

“*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;

“*distributor*” means any person, firm or corporation selling fireworks to wholesalers and retailer for resale;

“*explosive composition*” means any chemical compound or mixture, the primary purpose of which is to function by explosion, producing an audible effect in a fireworks device;

“*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;

“*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”;

“*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;

“*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 wheel, but is intended to be placed flat on the ground and ignited;

“*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;

“*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;

“*manufacturer*” means any person, firm or corporation engaged in the manufacture of fireworks;

“*mine*” or “*shell*” means a heavy cardboard or paper tube usually attached to a wooden or plastic base and containing no more than forty grams of chemical composition plus not more than twenty grams of lift charge 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, and the total chemical composition, including lift charges, of a multiple tube device shall not exceed two hundred grams;

“*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;

“*permissible fireworks*” means fireworks legal for sale to and use in New Mexico by the general public;

“*pyrotechnic composition*” means a chemical mixture that on burning and without explosion produces visible or brilliant displays or bright lights or whistles or motion;

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“*retailer*” means any person, firm or corporation purchasing fireworks for resale to consumers;

“*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;

“*specialty retailer*” means any person, firm or corporation purchasing permissible fireworks for year-round resale in permanent retail stores whose primary business is tourism;

“*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;

“*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;

“*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 200 grams total pyrotechnic composition;

“*wholesaler*” means any person, firm or corporation purchasing fireworks for resale to retailers; and

“*wildlands*” means any lands covered wholly or in part by timber, brush or native grass.”

**Section 2.     *Permissible Fireworks.***

A.     It shall be unlawful for any person to sell, offer to sell, possess, transport or discharge any firecrackers or any type or form of explosives commonly known as fireworks within the County unless such item is included in the list of permissible fireworks below.

B.     It shall be unlawful for any person to sell permissible fireworks within the County without first obtaining a Lincoln County permit, which can be obtained at the Lincoln County Manager's office located at the 300 Central, Carrizozo, New Mexico.

C.     The County of Lincoln shall not by this Ordinance regulate and prohibit the sale or use of any permissible firework within the County, except, during extreme drought conditions, the use of aerial or ground audible devices.

D.     Pursuant to the Fireworks Licensing and Safety Act, permissible fireworks are as follows:

- (1)     Ground and hand-held sparkling and smoke devices:
  - (a)     cone fountains;

- (b) crackling devices
- (c) cylindrical fountains;
- (d) flitter sparklers
- (e) ground spinners
- (f) illuminating torches
- (g) toy smoke devices; and
- (h) wheels;
- (2) Aerial devices:
  - (a) aerial spinners;
  - (b) helicopters;
  - (c) mines;
  - (d) missile-type rockets; and
  - (e) roman candles
  - (f) shells; and
  - (g) stick-type rockets, except as provided above;
- (3) Ground audible devices:
  - (a) chasers; and
  - (b) firecrackers.

E. Stick-type rockets having a tube less than a one-quarter-inch inside diameter are not permissible fireworks.

**Section 3.     *Jurisdiction.***

This Ordinance shall apply to the County of Lincoln with the exception of incorporated municipalities.

**Section 4.     *Public/Private Displays.***

Civic or governmental organizations, public schools, amusement parks or any other recognized individual or organization may sponsor or conduct an officially supervised public and/or private fireworks display after securing a written permit from the County of Lincoln as outlined in Paragraph 5 below.

**Section 5.     *License or Permit.***

A. No person may sell, hold for sale, import, distribute or offer for sale, as manufacturer, distributor, wholesaler or retailer, any fireworks in the County unless such person has first obtained the appropriate permit.

B. An applicant for a Lincoln County permit to sell any fireworks other than aerial devices or ground audible devices or for a Lincoln County permit to conduct a pyrotechnic display in the parks or other open places shall complete an application in the form prescribed by the Board of County Commissioners of Lincoln County. The application form shall require an applicant to provide certain information including, but not limited to, State permits, if required, and tax

identification numbers. The failure of an applicant to fully and correctly complete the application form shall result in the denial or revocation of the Lincoln County permit.

C. The application shall be accompanied by evidence of the payment of the non-refundable Lincoln County permit fee as stated in Paragraph 6A below.

D. The applicant shall be required to agree, as a condition to the granting of the Lincoln County permit, to comply with the provisions of all the Fireworks Licensing and Safety Act, as may be amended from time to time, and all Lincoln County ordinances, including, but not limited to those relating to the licenses required for commercial solicitors and the payment of business registration fees. The failure of an applicant to comply with any provision of the Fireworks Licensing and Safety Act and Lincoln County ordinances shall result in the denial or revocation of the Lincoln County permit.

E. Lincoln County permits shall be issued for one (1) year, beginning on February 1 of each year.

F. Permits issued pursuant to this Section shall not be transferable.

G. The County of Lincoln shall be exempt from the application requirements of this section whenever it holds a public fireworks display on Lincoln County property.

**Section 6.     *Permit Fee.***

A. In addition to any fees imposed by the State of New Mexico, the County of Lincoln shall require a non-refundable license and permit fee in the amount of Twenty-five and No /100 Dollars (\$25.00).

B. The license and permit fee paid to the County of Lincoln shall be deposited into Lincoln County's General Fund.

**Section 7.     *Retail Sales or Storage of Fireworks.***

Retail sales and storage of fireworks shall be governed by the provisions of the Fireworks Licensing and Safety Act, NMSA 1978, § 60-2C-8 (1989). Permissible fireworks 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 of September and Cinco de Mayo of each year, except that permissible fireworks may be sold all year in retail stores who primary business is tourism.

**Section 8.     *Prohibitions and/or Restrictions During Extreme or Severe Drought Conditions.***

A. The Board of County Commissioners may hold a hearing to determine if fireworks restrictions should be imposed within the unincorporated portions of the County affected by extreme or severe drought conditions. The findings of the Board of County Commissioners shall be based

on current drought indices published by the National Weather Service and any other relevant information supplied by the United States Forest Service.

B. Pursuant to any hearing under subsection A of this section, the Board of County Commissioners shall issue a proclamation declaring extreme or severe drought conditions within the unincorporated portions of the County if the Board determines such conditions exist. The 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:
  - (a) limit the use within its jurisdiction of any fireworks not listed in Paragraph (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 Board of County Commissioners' proclamation declaring an extreme or severe drought condition shall be issued no less than twenty (20) 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. Except as otherwise provided in this subsection, a proclamation shall be effective for thirty (30) days, and the Board of County Commissioners may issue succeeding proclamations if extreme or severe drought conditions warrant. The Board of County Commissioners may modify or rescind its proclamation within its thirty-day period upon conducting an emergency hearing to determine if weather conditions have improved.

E. Pursuant to NMSA 1978, §§ 60-2C-10 (1989), any person convicted of any violation of the Fireworks Licensing and Safety Act shall be punished by a fine of not more than One Thousand and no/100 Dollars (\$1,000.00) or by imprisonment not to exceed one (1) year, or both.

### **Section 9.    *Enforcement and Penalties.***

A. This Ordinance can be enforced by any Lincoln County Sheriff's Deputy or any appropriate State or Federal certified law enforcement officer. The persons charged will be cited into any Magistrate or District Court within Lincoln County.

B. *Injunction of Public Nuisance of Threat of Irreparable Harm.* The County or any law enforcement agency, in addition to other remedies provided by law, may seek in a court of competent jurisdiction an injunction against any person or entity who uses fireworks in violation of this Ordinance. If the County prevails, it shall be entitled to recover reasonable attorney fees and court costs in addition to any other relief granted.

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**Section 10. Severability.**

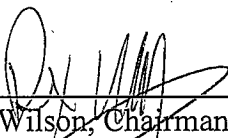
Should any paragraph, section, clause, sentence or portion of this Ordinance be held invalid or unconstitutional, such portion shall be severed from the remaining portions hereof and such invalidity or unconstitutionality shall not affect or impair any remaining provision, sentence, clause, section or portion of this Ordinance or its application to other persons or circumstances.

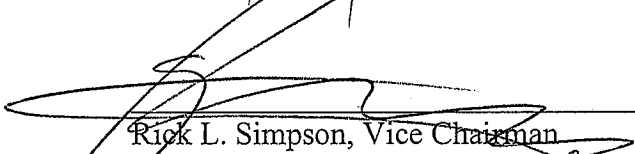
**Section 11. Effective Date and Repeal of Ordinance 1999-05.**

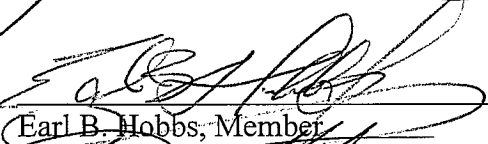
This Ordinance shall take effect immediately after it has been recorded in the book kept by the County for that purpose and authenticated by the signature of the County Clerk, pursuant to NMSA 1978, Section 4-37-9C (1975). At such time as this Ordinance becomes effective, Lincoln County Ordinance 1999-05 shall be repealed.


**ADOPTED** this 20<sup>th</sup> day of May, 2003.

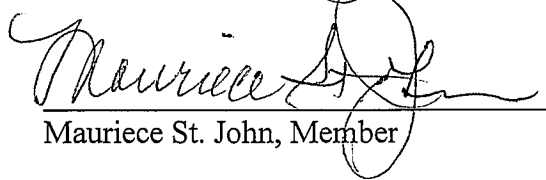
**BOARD OF COUNTY COMMISSIONERS  
OF LINCOLN COUNTY, NEW MEXICO**

  
\_\_\_\_\_  
Rex Wilson, Chairman

  
\_\_\_\_\_  
Rick L. Simpson, Vice Chairman

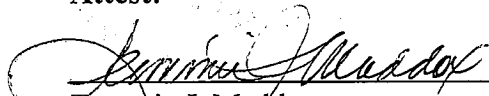
  
\_\_\_\_\_  
Earl B. Hobbs, Member

  
\_\_\_\_\_  
Leo Martinez, Member

  
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Mauriece St. John, Member



**Attest:**

  
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Tammie J. Maddox  
Lincoln County Clerk