



**McKINLEY COUNTY  
FIREWORKS PERMIT AND SAFETY  
ORDINANCE**

**NO. SEP-98-078**

AN ORDINANCE CONCERNING FIREWORKS; PROHIBITING SOME AERIAL FIREWORKS; PROHIBITING SALES OF FIREWORKS TO CHILDREN UNDER THE AGE OF SIXTEEN (16) YEARS OF AGE OUTSIDE THE PHYSICAL PRESENCE OF A PARENT OR ADULT GUARDIAN; PROVIDING FOR CERTAIN EXCEPTIONS FOR PUBLIC DISPLAYS OF DISPLAY FIREWORKS; SETTING REQUIREMENTS FOR STORAGE, USE, DISPLAY AND SALE OF FIREWORKS; SETTING A PERMIT REQUIREMENT FROM McKINLEY COUNTY; SETTING PENALTIES FOR VIOLATIONS; AND, DECLARING AN EMERGENCY

**SECTION 1. DEFINITIONS**

As used in the Fireworks Licensing and Safety Act (N.M.S.A. 1978 §§60-2C-1 through 60-2C-11 (1997 Rep. Pam.)); and, when used in this Ordinance, the following terms shall mean:

**“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 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;

**“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; and when more than one cone is mounted on a common base, total pyrotechnic composition shall not exceed two hundred grams;

**“crackling device”** means a sphere or paper tube containing 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;

281973 B-13 P-1698 10/08/98 05:00P PG 1 OF 10  
CAROL K. SLOAN MCKINLEY COUNTY CLERK'S OFFICE

REC 0.00  
DOC 0.00

**“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 cardboard handle to be hand held; and 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;

**“distributor”** means any person, firm or corporation selling fireworks to wholesalers and retailers 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 “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 colors; “ground spinner” is similar in operation to wheel, but is intended to be placed flat on the ground and ignited;

281973 B-13 P-1699 10/08/98 05:00P PG 2 OF 10



**“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; and 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 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 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;

**“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;

281973 B-13 P-1700 10/08/98 05:00P PG 3 OF 10

Page -3-

DOCH 281973

10/08/1998 05:00 PM Page: 3 of 10  
OR R: \$0.00 J. C. Sloan, McKinley County



**“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 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;

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

**“intoxicated person”** means a person is intoxicated when they are impaired to the slightest degree in their ability either mentally or physically or to exercise a steady hand;

**“adult guardian”** means a person not the parent of a child under the age of twelve (12) years of age, but who has parental authority over the child under the age of twelve (12) years of age by Court Decree or Order;

**“fireworks in Commerce”** means devices in the possession of a common carrier engaged in their transportation in their original packages, and also means devices in the private possession of non-residents enclosed in luggage, in car trunks, or secured in closed containers as to render them unavailable for immediate use;



## SECTION 2. PERMITS; REGULATED AND PROHIBITED ACTIVITIES.

A. No fireworks may be sold at wholesale/retail without a permit issued by McKinley County. Request for a permit shall be made to the McKinley County Commission, office of the Manager. The permit shall be issued by the County Clerk after approval by the County Commission. 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. 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.

B. No person shall sell or distribute fireworks allowed herein without a payment of a non-refundable \$50.00 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 of display fireworks as allowed herein without first paying to McKinley County a non-refundable \$50.00 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 3.

D. Aerial fireworks are permitted as listed in N.M.S.A. 1978 §60-2C-7(A)(2), except stick type rockets as listed in this section of this Ordinance. No person shall possess, use, discharge light, ignite, throw, eject, launch, sell, trade, or barter stick type rockets having an inside tube diameter one-quarter ( $\frac{1}{4}$ ) inch or less. This prohibition against some aerial fireworks shall not apply to fireworks in commerce. The prohibition contained in this Ordinance is allowed under N.M.S.A. 1978 §60-2C-7(C).

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 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.

G. No fire works shall be stored, kept, sold or discharged within fifty 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.

281973 B-13 P-1702 10/08/98 05:00P PG 5 OF 10

Page -5-

DOCH 281973

10/08/1998 05:00 PM Page: 5 of 10  
OR R:\$0.00 J. C. Sloan, McKinley County



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 fire works sales or storage.

I. A sales clerk who is at least sixteen 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 or State licensed retail locations.

J. No fireworks shall be discharged within one hundred fifty 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 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.

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 a safety fuse, then the entire fuse shall be covered.

N. Permissible fireworks as allowed in this 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 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 3. DISPLAY FIREWORKS

Except as provided in SECTION 9 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 from the Board of County Commissioners and pay the permit fee as listed in Section 2 Paragraph C above, and follow the requirements of N.M.S.A. 1978 §60-2C-9 (1997 Rep. Pam.).

A. Any permit 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 4. 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 5. 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 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 fire works sales or storage.

#### **SECTION 6. 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.

281973    B-13    P-1705    10/08/98    05:00P    PG 8    OF 10

Page -8-

DOC# 281973

10/08/1998 05:00 PM Page: 8 of 10  
OR R:\$0.00 J. C. Sloan, McKinley County



## **SECTION 7. 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 prohibited fireworks mentioned in §2(D) of this Ordinance, except 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 8. 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: \$300.00 fine or thirty (30) days in jail, or both;
- B. For possession, sale, or use of aerial fireworks prohibited in §2(D) of this Ordinance: \$300.00 fine or thirty (30) days in jail, or both;
- C. For failure to keep, retain, or produce records required by this Ordinance: \$100.00 fine or ten (10) days in jail, or both;
- D. For selling, bartering, trading, or transferring fireworks before June 20 or after July 6, and 3 days preceding and including New Year's Day, Chinese New Year, and Cinco de Mayo: \$300.00 fine or thirty (30) days in jail, or both;
- E. Failure to have fireworks so packaged or displayed as will readily allow visual inspection: \$100.00 fine or ten (10) days in jail, or both;
- F. For any other violation: \$50.00 fine or five (5) days in jail, or both.

**SECTION 9. EXTREME DROUGHT CONDITIONS" RESTRICTED SALE AND USE.**

The State Fire Board has the power pursuant to N.M.S.A. 1978 §60-2C-8.1 (1997 Rep. Pam.) to determine if fireworks restrictions should be imposed in all or a portion of the state, including McKinley County. If and when, the State Fire Board determines such conditions exist and issues a proclamation which includes McKinley County or any area therein, The County Commission will exercise those powers granted with the proclamation as allowed by law. Those powers include; (a) the power to limit the use of any fireworks 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; and, (b) ban or restrict the sale or use of display fireworks. The action of the County Commission shall be done by Resolution.

**SECTION 10. REPEAL OF PRIOR ORDINANCES.**

This Ordinance shall operate to repeal any and all prior Ordinances governing the use, possession, and sale of fireworks. Specifically, this Ordinance repeals "Ordinance No. MAR-98-071" and continues the repeal of "Ordinance No. 06-93-052" and the Amendment thereto "Ordinance No. 6-94-056".

**SECTION 11. EMERGENCY.**

The Board of County Commissioners hereby finds and declares; that, it is necessary for the public peace, and in the best interest of the public health and safety that this Ordinance take effect immediately upon adoption and filing for record with the County Clerk.

**PASSED, ADOPTED AND ORDAINED this 8<sup>th</sup> day of October 1998.**

**BOARD OF COMMISSIONERS OF MCKINLEY COUNTY**

*Earnest Becenti Sr.*  
Earnest Becenti Sr., Chairperson

*Ben Shelly*  
Ben Shelly, Commissioner

*Harry Mendoza*  
Harry Mendoza, Commissioner

DOC# 281973

10/08/1998 05:00 PM Page: 10 of 10  
OR R:\$0.00 J. C. Sloan, McKinley County



ATTEST:

*Carol K. Sloan*  
Carol K. Sloan, County Clerk



**AMENDMENT  
TO THE  
MCKINLEY COUNTY  
FIREWORKS PERMIT AND SAFETY  
ORDINANCE**

**AMENDMENT NO. Three TO ORDINANCE SEP-98-078:**

AN AMENDMENT TO ORDINANCE NO. SEP-98-078 CONCERNING  
FIREWORKS: RELATING TO FIREWORK SAFETY; AND, REPEALING  
AMENDMENT NO. TWO WHICH PROHIBITED AERIAL DEVICES.

**BE IT ORDAINED** by the McKinley County Board of County Commissioners to amend Ordinance No. SEP-98-078, McKinley County Fireworks Permit and Safety Ordinance; Amendment No. One thereto (adopted on May 10, 1999); and, Amendment No. Two thereto (adopted on June 27, 2000), as follows:

***Amendment No. Two to the McKinley County Fireworks Permit  
and Safety Ordinance, No. SEP-98-078 is hereby repealed.***

- *The following Articles pertain to this Amendment and are included here and added to Ordinance SEP-98-078, Amendment No. One and, Amendment No. Two thereto by reference.*

**ARTICLE I: AMENDMENT OF ORDINANCE SEP-98-078, AMENDMENT No. ONE,  
AND REPEAL OF AMENDMENT No. TWO THERETO.**

This Amendment No. Three, shall operate to repeal only those provisions of Amendment No. Two to Ordinance No SEP-98-078. Those provisions of Ordinance No. SEP-98-078, and Amendment No. One thereto, which were affected by Amendment No. Two, are now the controlling provisions and are by this repeal, restored to full force and effect.

Page -1-



295599 05/29/2001 11:07A OR  
1of2 B16 P7393 R 0.00 D 0.00  
McKinley County, Carol K. Sloan - County Clerk

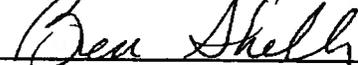
**ARTICLE II: EFFECTIVE DATE.**

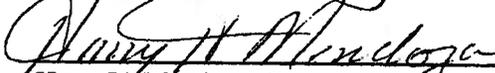
The Board of County Commissioner does not find an emergency in the passage of this Amendment No. Three, and therefore, the effective date of this Ordinance shall be thirty (30) days after adoption and filing for record with the County Clerk.

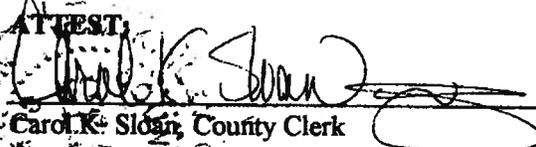
Passed, Adopted, and Ordained, this 29th day of May, 2001.

**BOARD OF COUNTY COMMISSIONERS**

  
\_\_\_\_\_  
Earnest C. Becenti, Sr., Chairperson

  
\_\_\_\_\_  
Ben Shelly, Commissioner

  
\_\_\_\_\_  
Harry H. Mendoza, Commissioner

**ATTEST:**  
  
\_\_\_\_\_  
Carol K. Sloan, County Clerk


  
295599 05/29/2001 11:07A OR  
2of2 B16 P7394 R 0.00 D 0.00  
McKinley County, Carol K. Sloan - County Clerk