ORDINANCE NO. 573

AN ORDINANCE OF THE CITY OF LOVINGTON, NEW MEXICO AMENDING AMEND TITLE 8, CHAPTER 8.20 – FIREWORKS AND EXPLOSIVES OF THE LOVINGTON MUNICIPAL CODE

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF LOVINGTON, NEW MEXICO THAT TITLE 8, CHAPTER 8.20 – FIREWORKS AND EXPLOSIVES OF THE LOVINGTON MUNICIPAL CODE BE AND HEREBY IS AMENDED AS FOLLOWS

8.20.020 Definitions

"Aerial device" means a fireworks device that upon ignition propels itself or an insert a significant distance into the air, but does not include a firework that produces a shower of sparks. Aerial device includes ~~sky rocket and bottle rocket, missile-type rocket, helicopter, aerial spinner, Roman candle, mine and shell~~ aerial shell kit-reloadable tubes, aerial spinners, helicopters, mines, missile-type rockets, multiple tube devices, roman candles, shells, stick type rockets, or other aerial devices as defined in the current version New Mexico Fireworks Licensing and Safety Act.

"City commission" is the Lovington, New Mexico ~~city commission~~ City Commission.

"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.

"Display distributor" means any person, firm or corporation selling special fireworks.

"Distributor" means any person, firm or corporation selling fireworks to wholesalers and retailers for resale.

"Fire chief is the ~~chief~~ Chief of the Lovington ~~fire department~~ Fire Department.

"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 this chapter 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(f).

"Ground audible device" means a fireworks device intended to function on the ground that produces an audible effect, to include chasers and firecrackers as specified in the current version of the New Mexico Fireworks Licensing and Safety Act.

"Lovington" is the ~~city~~ City of Lovington, New Mexico.

"Manufacturer" means any person, firm or corporation engaged in the manufacture of fireworks.

"Permissible fireworks" means fireworks that are legal for sale ~~and use in Lovington under the provision of the Lovington fireworks ordinance~~ to and use in New Mexico and the City of Lovington by the general public under the provisions of the City of Lovington fireworks ordinance. These fireworks must 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.

"Retailer" means any person, firm or corporation purchasing fireworks for resale to consumers.

"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 milligrams (two grains) 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 contained in the Lovington fireworks ordinance for common fireworks.

"Specialty retailer" means any person, firm or corporation purchasing fireworks for year-round resale in permanent retail stores.

"Wholesaler" means any person, firm or corporation purchasing fireworks for resale to retailer.

“Wildlands” means lands within the City that are covered wholly or in part by timber, brush, or native grass.

8.20.030 Permit required

A. ~~No person may sell, hold for sale, import, distribute or offer for sale, as specialty retailer or retailer, any aerial devices or ground audible devices in the city unless such person has first obtained the appropriate permit~~. No person may sell, hold for sale, import, distribute, or offer for sale, as a manufacturer, distributor, wholesaler or retailers, any firework in the City unless such person has first obtained the appropriate permit from the State of New Mexico and the Lovington Fire Chief.

B. The ~~fire chief~~ Fire Chief or designee(s) shall enforce the Lovington fireworks ordinance. All retailers shall be required to purchase a retail fireworks permit for each retail location. Permit applications shall be obtained from the ~~city clerk~~ City Clerk and submitted for approval to the office of the ~~fire chief~~ Fire Chief. Upon receipt of an approved application, the city clerk shall issue a permit.

C. An applicant for a permit under the Lovington fireworks ordinance shall pay to the ~~city clerk~~ City Clerk a fee of twenty-five dollars which shall not be refundable or transferable.

8.20.040 Possession, sale or use of unauthorized fireworks unlawful.

~~No individual, firm, partnership, corporation or association shall possess for retail sale, sell or offer for sale at retail, or use or possess any aerial devices and ground audible devices other than permissible fireworks. (Ord. 425 § 4, 2000)~~ No individual, firm, partnership, corporation or association shall possess for retail sale, sell or offer for sale at retail, or use or possess any fireworks other than permissible fireworks in Lovington.

8.20.055 Times authorized for use of fireworks.

It is illegal to use fireworks within the city limits except under the following conditions:

A. Fireworks shall only be used at times and places and on those holidays authorized by this chapter or by state law; and

~~B. Fireworks shall be used only on days with special events in which the use of fireworks are preapproved by the chief Chief of the fire department Fire Department, or at other authorized times, and shall be used only on the following holidays for periods allowed by stale state statute between the hours of seven a.m. and eleven p.m.:~~

~~1. Independence Day, July 4;~~
~~2. Chinese New Year;~~
~~3. September 16;~~
~~4. May 5; and~~
~~5. On New Year's between the hours of seven a.m. on December 31 st and one a.m. on January 1st.~~

~~C. Fireworks shall be used only in nonrestricted areas. Restricted areas shall include areas in proximity of:~~

~~1. Churches;~~
~~2. Hospitals;~~
~~3. Nursing homes;~~
~~4. Residential areas;~~
~~5. Manufacturing or storage areas having a high risk for fire; and~~
~~6. Other areas in proximity to areas or facilities declared as fire hazardous. (Ord. 436, 2001; Ord.432, 2001)~~

B. Fireworks shall be used only on the following holidays between the hours of seven a.m. and eleven p.m.

1. Independence Day, July 4;

2. Chinese New Year;
3. September 16;
4. May 5

C. Fireworks shall be used only between the hours of seven a.m. on December 31st and one a.m. on January 1st for the New Year celebration.

D. Fireworks shall be used only during times of sale as allowed in the New Mexico Fireworks Safety and Licensing Act, as amended, between the hours of 7 a.m. and 9 p.m.

E. Fireworks shall be used only on days with special events or at other times in which the use of fireworks are preapproved by the Fire Chief.

F. Fireworks shall be used only in nonrestricted areas. Restricted areas shall include areas in proximity of:

1. Churches;
2. Hospitals;
3. Nursing homes;
4. Wildland areas;
5. Government properties
6. Manufacturing or storage areas having a high risk for fire; and
7. Other areas in proximity to areas or facilities declared as fire hazardous.

8.20.60 Retail sales or storage of fireworks—Regulated activities.

E. A sales clerk who is at least sixteen years of age shall be on duty to serve consumers at the time of purchase or ~~deliveiy~~ delivery. All fireworks sold and shipped to consumers within Lovington shall be sold and shipped only by an individual firm, partnership or corporation holding the proper state fireworks license or permit.

I. Fireworks may be sold at retail between June 20th and July 6th of each year and ~~three~~ six days preceding and including New Year's Day, and three days preceding Chinese New Year, the sixteenth of September, and Cinco de Mayo of each year.

8.20.070 Public display of fireworks.

A. Any public display of fireworks shall require the individual, association, partnership, corporation, or organization desiring to have such a display to secure a written permit from the office of the ~~fire chief~~ Fire Chief. The fireworks for such display 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 Slates Department of the Treasury.

B. The ~~fire chief~~ Fire Chief may adopt reasonable rules and regulations for the use of special fireworks in public displays.

8.20.090 Penalty—Civil.

A. If a person is found guilty of violating any of the provisions of the Lovington fireworks ordinance, that person's permit may be revoked or suspended by the fire chief, his deputies or designee.
B. No individual, firm, corporation or partnership shall possess any fireworks for sale within Lovington, other than those authorized in the Lovington fireworks ordinance. The ~~fire chief~~ Fire Chief~~, his deputies~~ or designee may at reasonable hours enter and inspect the premises of permittee to determine compliance with the Lovington fireworks ordinance. If any retailer has in ~~his~~ their possession any fireworks in violation of said ordinance, ~~his~~ their permit shall be revoked and all such fireworks seized and kept to be used as evidence. If any person has in ~~his~~ their possession any fireworks in violation of said ordinance, a warrant may be issued for the seizure of said fireworks and said fireworks shall be safely kept to be used as evidence. Upon conviction of the offender, said unauthorized 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.

Article II. Fireworks in Periods of Drought

8.20.120 Jurisdiction.

~~The 1999 amendments to the~~ The Fireworks Licensing and Safety Act, NMSA 1978 Section 60-2C-7 through 60-2C-11, as amended, authorize governing bodies of municipalities to limit and restrict the sale and use of fireworks within the municipal boundaries of the municipality in times of extreme or severe drought. The ordinance codified in this article is enacted pursuant to authority granted to the governing body by NMSA 1978 Section 60-2C-8.1.

8.20.180 Use of fireworks in wildlands prohibited.

The governing body, having consulted with the state forester declares that ~~Ihe~~ the use of all fireworks in areas designated by the governing body as "wildlands" (i.e., lands covered wholly or in part by timber, brush or native grass) is prohibited.

Article III. Explosives

8.20.200 Explosives.

No person shall bring into or keep within the city any nitroglycerine, dynamite or other high

explosives, except by consent of the ~~building inspector~~ Fire Chief who may, in his discretion, require adequate bond to insure the proper handling thereof.

PASSED, ADOPTED, AND APPROVED this _____ day of _____, 2019.

_____
DAVID TRUJILLO, MAYOR

ATTEST:

_____
SHANNON LESTER, CITY CLERK