

CITY OF RIO COMMUNITIES

ORDINANCE NUMBER 2013-13

DATE: 10-8-13

AN ORDINANCE OF THE CITY OF RIO COMMUNITIES CONCERNING THE SALE, USE AND POSSESSION OF FIREWORKS WITHIN THE CITY OF RIO COMMUNITIES

WHEREAS; The CITY of RIO COMMUNITIES is given the authority to adopt ordinances for the purpose of providing for the safety, preserving the health, promoting the prosperity and welfare of the CITY of RIO COMMUNITIES.

1. Title: This ordinance shall be cited as the CITY of RIO COMMUNITIES fireworks ordinance.
2. Purpose: To provide authorized local enforcement of the New Mexico Fireworks Licensing and Safety Act and to assist in protecting the public health, welfare, and safety of the residents of the CITY of RIO COMMUNITIES.
3. Definitions:
 - A. Applicant: The person issued a permit and the person responsible to the CITY of RIO COMMUNITIES as provided for in this ordinance.
 - B. 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;
 - C. Chaser: means a paper or cardboard tube venting out the fuse end of the tube that contains no more than twenty grams of chemical combustion 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.
 - D. 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 material such as rice hulls used for density control.
 - E. 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.
 - F. Council: The Council of the CITY of RIO COMMUNITIES.
 - G. 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;
 - H. 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; and when more than one tube is mounted on a common base, total pyrotechnic composition shall not exceed two hundred grams.
 - I. Display distributor: means any person, firm, or corporation selling display fireworks;

- J. 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;
- K. Distributor: means any person, firm, or corporation selling fireworks to wholesalers and retailers for resale;
- L. 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;
- M. 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;
- N. Fire Chief: The CITY of RIO COMMUNITIES/RIO GRANDE Fire Chief or his designated representative;
- O. Fireworks: means devices intended to produce a visible or audible effect by combustion, deflagration, or detonation and are categorized as “permissible fireworks”, “prohibited fireworks”, or “display fireworks”;
- P. 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;
- Q. Ground audible devices: means chasers and firecrackers;
- R. 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;
- S. Helicopter: 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;
- T. 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;
- U. Manufacturer: means any person, firm, or corporation engaged in the manufacture of fireworks;
- V. Mine: 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;

- W. 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;
- X. Permissible fireworks: means fireworks legal for sale to and use in New Mexico by the general public;
- Y. Portable buildings: means any structure, tent, trailer, or vehicle which is of temporary nature or design which is used separately or together for the retail sale of fireworks to the general public. Any tent intended for use as a sales location shall comply with rules adopted by the state fire marshal;
- Z. Prohibited fireworks: means fireworks which are not legal for sale or possession within the municipality;
- AA. Pyrotechnic composition: means a chemical mixture that on burning and without explosion produces visible or brilliant displays or bright lights or whistles or motion;
- BB. Retailer: means any person, firm, or corporation purchasing permissible fireworks for resale to consumers;
- CC. 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;
- DD. 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;
- EE. Specialty retailer: means any person, firm, or corporation purchasing permissible fireworks for year-round resale in permanent retail stores whose primary business is tourism;
- FF. Statute: For the purposes of this ordinance refers to the State of New Mexico Fireworks Licensing and Safety Act beginning with Section 60-2C-1, NMSA 1978.
- GG. 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;
- HH. 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;
- II. Vendor: Any person or business engaged in the retail sale of fireworks to the general public;
- JJ. 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;

KK. Wholesaler: means any person, firm, or corporation purchasing fireworks for resale to retailers.

4. Application and Permit

Businesses which at the time of application for a fireworks permit are licensed and have been continuously engaged in the conduct of the business for which they are licensed in the CITY for at least six months shall obtain a permit after the fire department inspects and certifies as safe the place of business for fireworks sales. All other vendors of fireworks within the CITY of RIO COMMUNITIES must obtain a local fireworks retail sales permit from the Fire Department of the CITY of RIO COMMUNITIES. Vendors must present, at the time of application for permit, a copy of a written agreement for use, rent or lease of land intended for the vendor's sales location, unless the vendor is located within a permanent structure. Such written agreements for use, rent or lease of land for use as a fireworks sales location shall be signed by the owner, property manager, or tenant having authority to execute such documents.

- A. Applications for retail sales permits may be obtained from the CITY of RIO COMMUNITIES, New Mexico. Each sales location within the CITY of RIO COMMUNITIES shall have a separate permit.
- B. Applications will be accepted up to June 10th of each year. Vendors and/or businesses shall provide a copy of the state issued license or permit for the sale of permissible fireworks with the application.
- C. Vendors who sell permissible fireworks shall pay twenty-five dollars (\$50.00) for their yearly city permit.
- D. Vendors are responsible for the applicable municipal gross receipts taxes.

5. Sale, distribution, and use

- A. No person shall sell, possess or use fireworks within the CITY, except as is permitted under this chapter.
- B. It is illegal to manufacture fireworks in the CITY.
- C. No person shall store for commercial purposes or sell within the CITY any firework without first obtaining a permit from the CITY. The permit shall be prominently displayed at the location where fireworks are sold.
- D. No person shall store, import, sell, possess, or use within the CITY any firework other than common fireworks as defined in this chapter, and not prohibited by this chapter.
- E. Permissible fireworks may be sold at retail between June 20th through July 6th 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 permanent retail stores whose primary business is tourism.
- F. Portable buildings must be set back a reasonable distance from the roadway and shall not obstruct the public right of way.
- G. At all places where fireworks are sold, the vendor shall post in a prominent place in letters at least two inches high the words: "PRIVATE USE OF LEGAL FIREWORKS IS LIMITED TO THE SIXTEEN-DAY PERIOD ENDING AT MIDNIGHT JULY 6TH."

- H. At all places where fireworks are sold, displayed, or commercially stored, the words "NO SMOKING" shall be displayed in letters at least four inches high.
 - I. Structures where fireworks are sold shall be protected with at least one five-pound class ABC dry chemical fire extinguisher and a five gallon container of water.
 - J. No person shall sell any fireworks to a child under the age of sixteen years or to any person who is intoxicated.
 - K. No fireworks shall be stored, kept, sold, or used within fifty feet of any gasoline pump, gasoline tank, gasoline bulk station, or any building in which gasoline or other volatile, flammable liquids are sold or stored in containers of more than one gallon, except in stores where cleaners, paints, and oils are handled in sealed containers only.
 - L. No fireworks shall be sold except in an established place of business or in a temporary building which has been approved for the sale of fireworks at the time the permit is issued. Temporary buildings shall be removed by midnight of July 7th of the same year. Portable buildings must be set back a reasonable distance from the roadway and shall not obstruct the public right of way.
 - M. Discharge of fireworks on property which the vendor is located on is prohibited.
 - N. 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.
 - O. 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.
6. Display Fireworks: Nothing herein shall prohibit the public display of fireworks, except that any individual association, partnership, corporation, organization, county, or municipality, shall secure a permit from the governing body of RIO COMMUNITIES where the public display is to be fired. The display fireworks shall be purchased from a distributor or display distributor licensed by the state fire marshal and the bureau of alcohol, tobacco, and firearms of the United States Department of the Treasury.
7. Inspection: The Fire Chief or his designee may at any reasonable hour enter and inspect the premises, portable building, or any structure temporarily or permanently located at the site designated for the sale, packaging or handling of permissible fireworks and may seize non-permitted fireworks.
8. Permissible Fireworks: The following are permissible fireworks within the municipality: 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.

9. Prohibited Fireworks: It is illegal to possess or to sell or offer to sell any firework prohibited by this ordinance. The following are prohibited fireworks within the municipality:

A. aerial devices:

i. aerial spinners;

ii. helicopters;

iii. mines;

iv. missile-type rockets;

v. roman candles;

vi. shells; and

vii. stick-type rockets.

B. ground audible devices:

i. chasers; and

ii. firecrackers.

10. Seizure of Fireworks: The Fire Chief or his designee may inspect the fireworks stands for conformance to Sections 8 and 9 of this ordinance.

A. The Fire Chief or his designee, and/or the CITY police department shall seize, take, remove, or cause to be removed at the expense of the permit holder all stocks of fireworks offered or exposed for sale in violation of Section 9 of this ordinance.

B. The Fire Chief or his designee, and/or the CITY police department shall seize, take, remove, or cause to be removed at the expense of the person in possession, all fireworks possessed by the person in violation of Section 9 of this ordinance.

11. Penalty:

A. Any individual, firm, partnership, or corporation that violates any provision of this ordinance is guilty of a petty misdemeanor and upon conviction shall be punished by a fine of not more than five hundred dollars (\$500) or imprisonment for a period of not more than ninety (90) days or both fine and imprisonment.

B. In addition to any other criminal penalties that may be imposed, any individual, firm, partnership, or corporation found guilty by a court of competent jurisdiction of violating this ordinance or the Fireworks Licensing and Safety Act shall, after notice and hearing, have its permit revoked for a period of one year.

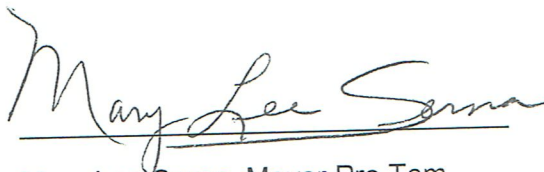
12. Severability: If any action, sub-section, paragraph, phrase, or other portion of this ordinance shall be declared invalid for any reason whatsoever by a court of competent jurisdiction, then such decision shall not affect the validity or enforceability of the remaining portions of this ordinance.

APPROVED, ADOPTED AND SIGNED this 8th day of October, 2013 by the Governing Body of the City of Rio Communities.



Mark Gwinn, Mayor
City of Rio Communities

ATTEST:



Mary Lee Serna, Mayor Pro Tem
City of Rio Communities