

ORDINANCE NO. C2013-10

**AN ORDINANCE REPEALING THE CITY OF GALLUP'S
CURRENT FIREWORKS ORDINANCE IN ITS ENTIRETY AND ENACTING A NEW
FIREWORKS ORDINANCE**

WHEREAS, the present fireworks ordinance was adopted June 9, 2009; and,

WHEREAS, amendments of these certain sections are necessary to revise language in order to provide consistent interpretation and enforcement of the City Code.

NOW, THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF GALLUP THAT:

The present Fireworks Ordinance adopted June 9, 2009, is repealed and the following is enacted:

4-8-1: FINDINGS AND PURPOSE:

- A. The use of illegal fireworks and misuse of permissible fireworks has resulted in the disturbance of city residents, injury to animals and persons, damage to or the destruction of personal and real property, caused increased expenditure of city funds and use of city resources, and increased fire insurance rates and claims for private and public entities, and generally are a public nuisance.
- B. The sale, possession and use of fireworks within the city shall be prohibited and made illegal, except as provided herein and in keeping with state law at section 60-2C-1 et seq., New Mexico Statutes Annotated, 1978 compilation (as revised), the state fireworks licensing and safety act, and the provisions of the federal regulations adopted by the consumer product safety commission and department of transportation.

4-8-2: DEFINITIONS:

- A. The definitions of terms as set forth in section 60-2C-2 New Mexico Statutes Annotated, 1978 compilation (as revised), are incorporated herein by reference, as they now exist, or as they may be amended in the future by the New Mexico legislature. Attached to the ordinance codified herein as an appendix are the current state statutes applicable to this chapter.

4-8-3: PERMISSIBLE FIREWORKS:

- A. Permissible fireworks within the city shall be limited to those items set forth in section 60-2C-7 New Mexico Statutes Annotated, 1978 compilation (as revised) including aerial devices.

4-8-4: MISUSE OF FIREWORKS:

- A. Misuse of permissible fireworks is the use of the same contrary to the manufacturer's use instructions, and by using illegal or permissible fireworks by directing the discharge of the same at any animal, person, structure, dwelling, vehicle, personal property, vegetation or tree, in a negligent, reckless or intentional manner that causes injury, damage to or loss of property due to ignition or burning caused by fireworks.

- B. Any person in possession of illegal fireworks within the city shall be cited into the municipal court. Conviction of possession of illegal fireworks shall carry a penalty of a fine, no less than two hundred fifty dollars (\$250.00) and no more than five hundred dollars (\$500.00), plus the imposition by the court of up to sixteen (16) hours of community service, or both. A person convicted under this section may be placed on probation by the court for a period not to exceed ninety (90) days on such conditions and terms the court deems appropriate. The court may not substitute community service for the fine enumerated herein and a mandatory minimum fine of two hundred fifty dollars (\$250.00) shall be imposed for violation of this ordinance.

- C. Any person, who's negligent, reckless, or intentional misuse of permissible fireworks or the use of illegal fireworks that causes personal injury to another person or damage to or loss of the personal or real property of another person shall be cited into municipal court. Conviction under this section shall carry a penalty of a fine, no less than two hundred fifty dollars (\$250.00) and no more than five hundred dollars (\$500.00), plus the imposition of eighty (80) hours of community service, and imposition of a period of probation of ninety (90) days. A person convicted under this section, in addition to the aforesaid penalties, may be ordered by the court to pay restitution to an injured party for medical expenses and property damage upon satisfactory proof to the court documenting said financial loss, for the actual amount of the loss, no less than two hundred fifty dollars (\$250.00) and no more than five hundred dollars (\$500.00). The court may not substitute community service for the fine enumerated herein and a mandatory minimum fine of two hundred fifty dollars (\$250.00) shall be imposed for violation of this ordinance.

4-8-5: SEIZURE AND DISPOSITION OF CONTRABAND FIREWORKS:

- A. Illegal fireworks and misused permissible fireworks are deemed to be contraband subject to immediate confiscation by officers of the city police and fire departments. A person so cited may only contest the legality or misuse of the seized fireworks by filing a written notice within ten (10) days of being cited with the municipal court requesting a hearing to determine those issues. A hearing shall be held by the court within ninety (90) days of the filing of the notice. If the court determines the subject fireworks to be legal or that no misuse occurred, then said fireworks shall be forthwith returned to the cited person. If the court determines that the subject fireworks were illegal or were misused, then said fireworks shall be promptly destroyed.

4-8-6: DECLARATION OF DROUGHT OR OTHER EMERGENCY:

- A. Should the city determine that conditions exist as set forth in section 60-2C-8.1 New Mexico Statutes Annotated, 1978 compilation (as revised), it may effect the limitations allowed by state law under section 60-2C-8.1 on the possession, use, and sale of all fireworks within the city, until and unless said conditions abate to the extent that said ban should be rescinded. Upon rescission of any ban the usual provisions of this chapter governing the possession, use, and sale of fireworks shall be reinstated.

4-8-7: PUBLIC DISPLAYS:

- A. Public displays of fireworks shall comply with all provisions of sections 60-2C-9 and 60-2C-9.1 New Mexico Statutes Annotated, 1978 compilation (as revised). In addition to the terms of the aforesaid statutes and entity desiring to conduct a public fireworks display shall apply for and be issued a permit by the city fire chief or his designee and pay a fee of one hundred dollars (\$100.00) to the city clerk. The city fire chief may establish regulations and procedures for the issuance of permits and the conduct of public fireworks displays in accordance with this chapter. Any entity wishing to conduct a public fireworks display shall provide to the city fire chief and city clerk a certificate of general liability insurance coverage in an amount of one million dollars (\$1,000,000.00) designating the city as a named insured in addition to the entity staging the public display.
- B. The entity staging or conducting a public fireworks display shall make suitable advance arrangements for the presence of city fire department personnel and equipment during any such display. The city may impose a reasonable fee for the actual cost of said standby firefighting service, not to exceed two thousand five hundred dollars (\$2,500.00). Said fee may be waived for civic or charitable organizations under the express written authority of the city manager.
- C. Any fireworks which are not fired off during the public display shall either be disposed of in a safe manner by city authorities or returned to the display organizer in the discretion of the city fire chief.

4-8-8: SALES AND STORAGE OF FIREWORKS:

- A. All fireworks shall be sold and stored in accordance with section 60-2C-8 New Mexico Statutes Annotated, 1978 compilation (as revised). All federal and state law and regulations governing the sale and storage of fireworks must be strictly complied with and violations of those laws or regulations shall subject those fireworks which are not in compliance with those provisions to be seized and destroyed as provided by section 4-8-5 of this chapter.

4-8-9: PERMIT REQUIRED FOR DISPLAY AND SALE:

A. Any person intending to sell, offer to sell or store for sale any safe and sane fireworks shall first obtain a permit by:

(1) Filing a written application on a form approved by the fire department which shall include the name and address of the wholesaler or jobber selling the fireworks and by paying a fee to the city clerk in the following amounts:

(a) Wholesalers, twenty-five dollars (\$25.00); and

(b) Retailers, twenty-five dollars (\$25.00);

(2) Demonstrating to the satisfaction of the fire department that the items to be handled under the permit comply with the terms and intent of this section; and

(3) Certifying that no person under the age of sixteen (16) years shall be permitted by the applicant to sell or offer to sell any fireworks.

B. Any permit granted under this subsection to any person, wholesaler or jobber shall be for a period of one (1) year.

C. Any permit granted under this subsection to any person other than a wholesaler or jobber shall authorize the possession of safe and sane fireworks for the period of June 10 through July 15 of each year and the sale and display of such fireworks for the period of June 20 through July 6 of each year, and during other periods allowed by 60-2C-8L, NMSA 1978 Comp.

D. Any permit granted hereunder shall be valid only for the calendar in which issued and only for the premises or location for which issued. No permit shall be transferable, assignable or automatically renewable.

E. It is unlawful to sell, offer to sell or give any fireworks to any person under sixteen (16) years unless he is accompanied by a parent or guardian.

4-8-10: PERMIT REQUIRED FOR DISCHARGE/DETONATION:

A. Any person or entity who desires to shoot permissible fireworks in the city limits of City of Gallup is required to obtain a permit from the City of Gallup for the discharge/launching of fireworks. The Gallup City Council shall set the costs of such permits by resolution after consultation with the Gallup Fire Department.

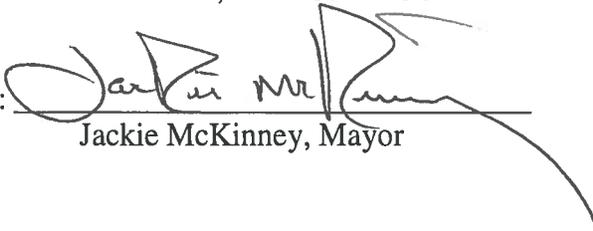
B. Any person who detonates fireworks within the City of Gallup in violation of this section shall be fined no less than two hundred fifty dollars (\$250.00) and no more than five hundred dollars (\$500.00).

4-8-11: USE OF PERMISSIBLE FIREWORKS:

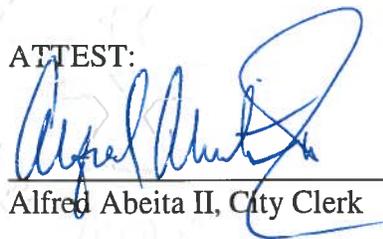
The use of any permissible fireworks not prohibited by this article should be confined to areas that are paved or barren or that have a readily accessible source of water for use by the homeowner or the general public.

PASSED, ADOPTED, AND APPROVED THIS 10TH DAY OF DECEMBER, 2013.

CITY OF GALLUP, NEW MEXICO

By: 
Jackie McKinney, Mayor

ATTEST:


Alfred Abeita II, City Clerk