

CITY OF HOBBS

ORDINANCE NO. 1130

AN ORDINANCE AMENDING HOBBS MUNICIPAL CODE
CHAPTER 8.12 FIREWORKS

WHEREAS, pursuant to NMSA § 60-2C-7 of the Fireworks Licensing and Safety Act, a municipality may adopt an ordinance regulating certain types of fireworks; and

WHEREAS, the City has adopted Chapter 8.12 Fireworks which was last revised in 2001 to comply with the State's Fireworks Licensing and Safety Act; and

WHEREAS, the City wishes to amend Chapter 8.12 to comply with certain changes implemented to the Fireworks Licensing and Safety Act enacted by the New Mexico Legislature in 2007, as well as certain changes to address concerns that are unique to local conditions in Hobbs, New Mexico; and

WHEREAS, the amendments contemplated herein will allow the City of Hobbs to address fireworks use and misuse within the municipal boundaries of Hobbs, New Mexico, in a more effective and efficient manner thus protecting the health, safety, and welfare of the general public; and

NOW, THEREFORE, BE IT ORDAINED by the governing body of the City of Hobbs that the Hobbs Municipal Code Chapter 8.12 be amended as follows:

Chapter 8.12 - FIREWORKS

8.12.010 - Title for citation and Purpose.

This chapter shall be known and cited as the "Hobbs fireworks ordinance."

The purpose of this Chapter is to regulate the sale, distribution, and use of illegal fireworks in the interest of protecting and preserving lives and property pursuant to NMSA 1978, Section 60-2C-7 of the Fireworks Licensing Safety Act. This Chapter should be read in conjunction with the Fireworks Licensing and Safety Act [NMSA 1978, Sections 60-2C-1 NMSA, et seq.]

(Prior code § 10A-1)

8.12.020 - Definitions.

As used in this chapter:

"1.3G Explosives" means those items formerly known as Class B special fireworks. Items classified as 1.3G explosives are display fireworks.

"1.4G Explosives" means those items formerly known as Class C common fireworks. Items classified as 1.4G explosives are consumer fireworks intended for use by the general public.

"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 aerial shell.

"Aerial shell" means a cylindrical or spherical cartridge containing a lift charge, burst charge and effect composition. Upon firing from a reloadable tube, the lift charge is consumed and the cartridge is expelled into the air.

"Aerial shell kit-reloadable tube" means a package or kit containing a cardboard, high-density polyethylene or equivalent launching tube and not more than twelve small aerial shells. Each aerial shell is limited to a maximum of sixty grams of total chemical composition, including lift charges, and the maximum diameter of each shell shall not exceed one and three-fourths inches.

"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.

"City Commission" means the Hobbs City Commission.

"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.

"Consumer fireworks" also known as 1.4G fireworks, are defined as any small firework device designed to produce visible effects by combustion and which must comply with the construction, chemical composition and labeling regulations of the U.S. Consumer Product Safety Commission. Consumer fireworks are generally marked with brightly colored and decorated paper and include, in part, a trade name and manufacturing information. The Department of Transportation classifies consumer fireworks as UN0336, UN0337.

"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 special 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 retailers for resale.

"Fire Chief" means the Chief of the Hobbs Fire Department.

"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", but does not include novelties or theatrical pyrotechnics articles.

"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 audible device" means a fireworks device intended to function on the ground that produces an audible effect.

"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 a 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.

"Hobbs" means the City of Hobbs, New Mexico.

"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 sixty grams of total chemical composition, including lift charges, 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, must be a dense-packed collection of mine or shell tubes and the total chemical composition, including lift charges, 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.

"Multiple tube devices" means a device that contains more than one cardboard tube and the ignition of one external fuse that causes all of the tubes to function in - sequence. The tubes are individually attached to a wood or plastic base or are dense packed and are held together by glue, wire, string or other means that securely hold the tubes together during operation. A maximum total weight of five hundred grams of pyrotechnic composition shall be permitted; provided that the tubes are securely attached to a wood or plastic base and are separated from each other on the base by a distance of at least one-half inch. The connecting fuses on multiple tube devices shall be fused in sequence so that the tubes fire sequentially rather than all at once.

"Non-Permissible fireworks" means fireworks not legal for sale and use in Hobbs under the provisions of the Hobbs fireworks ordinance.

Non-permissible fireworks are:

(1) aerial devices:

(a) aerial shell kit-reloadable tubes;

(b) aerial spinners;

(c) helicopters;

(d) mines;

(e) missile-type rockets;

(f) multiple tube devices;

(g) roman candles;

(h) shells; and

(i) stick-type rockets

(2) ground audible devices:

(a) chasers; and

(b) firecrackers.

"Novelties" means devices containing small amounts of pyrotechnic or explosive composition that produce limited visible or audible effects, including party poppers, snappers, toy smoke devices, snakes, glowworms, sparklers or toy caps, and devices intended to produce unique visual or audible 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.

"Permissible fireworks" or "consumer fireworks" means fireworks legal for sale and use in Hobbs under the provisions of the Hobbs fireworks ordinance.

Permissible fireworks are:

(1) ground and hand-held sparkling devices:

(a) cone fountains;

(b) crackling devices;

(c) cylindrical fountains;

(d) flitter sparklers;

(e) ground spinners;

(f) illuminating torches; and

(g) wheels.

"Possession" means the possession of a non-permissible firework when, on the occasion in question, the person knows that the firework is a non-permissible firework, knows the non-permissible firework is on their person or in their presence, and exercises control over the non-permissible firework. Two or more people can have possession of a non-permissible firework at the same time. A person's presence in the vicinity of the non-permissible firework or the person's knowledge of the existence or the location of the non-permissible firework is not, by itself, possession. Additionally, possession is not the act of transporting the non-permissible firework to and from a

designated "Safe Zone," as defined in this Chapter, or transporting the non-permissible firework to and from a licensed firework retail establishment to the person's residence.

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

"Specialty retailer" means any person, firm or corporation purchasing permissible fireworks for year-round resale in permanent retail stores whose primary business is tourism.

"Theatrical pyrotechnics articles" means a pyrotechnic device for professional use in the entertainment industry similar to permissible fireworks or consumer fireworks in chemical composition and construction but not intended and labeled for consumer use.

"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 two hundred grams total pyrotechnic composition.

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

(Ord. 874 (part), 2001; prior code § 10A-2)

8.12.030 - Permit required—Fee and issuance.

- A. No person may sell, hold for sale, import, distribute or offer for sale, as manufacturer, distributor, wholesaler or retailer, any fireworks in the City unless such person has first obtained the appropriate license or permit.
- B. The Fire Chief or designee shall enforce the Fireworks Licensing and Safety Act [60-2C-1 NMSA 1978]. The Fire Chief or designee shall enforce the Hobbs 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 and submitted for approval to the office of the Fire Chief or designee. Upon receipt of an approved application, the City Clerk shall issue a permit.
- C. An applicant for a permit under the Hobbs fireworks ordinance shall pay to the City Clerk a fee of twenty-five dollars (\$25.00) which shall not be refundable or transferable.
- D. All permits shall be issued for one (1) year beginning on April 1st of each year. All permits shall be issued within thirty (30) days from the date of receipt of an approved application.
- E. Permits issued under the Hobbs fireworks ordinance shall not be restricted in number or limited to any person without cause.
- F. Any violation of the Hobbs fireworks ordinance may result in a revocation of any previously issued permit. Upon receipt of a notice of revocation of any previously issued permit, the permittee may appeal the revocation to the City Commission. The

decision of the City Commission will be final. Upon a finding from the City Commission that the permittee violated the Hobbs fireworks ordinance, the permittee shall not be eligible to obtain a permit under the Hobbs fireworks ordinance until the April 1st immediately following the decision of the City Commission.

(Ord. 874 (part), 2001; prior code § 10A-3)

8.12.040 - Unauthorized/Illegal fireworks—Possession, sale or use unlawful.

No individual, property owner, or responsible party of listed property/event, firm, partnership, corporation or association shall possess for retail sale in Hobbs, sell or offer for sale at retail or use or possess any fireworks, including ground audible devices and aerial devices, other than permissible fireworks. A recognized exception to this section exists pursuant to Section 8.12.080 herein.

(Ord. 874 (part), 2001; prior code § 10A-4)

8.12.050 - Permissible fireworks.

"Permissible fireworks" for sale to the general public, as that term is used in the Hobbs fireworks ordinance, shall be understood to mean consumer fireworks legal for sale and use in New Mexico under the provisions of the Fireworks Licensing and Safety Act [60-2C-1 NMSA 1978], as amended, with the exception of ground audible devices and aerial devices, which are prohibited pursuant to Section 8.12.040 of this chapter.

(Prior code § 10A-5)

8.12.060 - Retail sales and storage.

- A. No fireworks may be sold at retail without a retail permit. The permit shall be at the location where the retail sale takes place.
- B. It is unlawful to offer for sale or to sell any fireworks to children under the age of sixteen (16) years or to an intoxicated person.
- C. All places where fireworks are stored, sold or displayed shall be in compliance with the code of safety standards published by the national fire protection association for the manufacture, transportation, storage and retail sales of fireworks and pyrotechnics articles.
- D. At all places where fireworks are stored, sold or displayed, the words "**NO SMOKING**" shall be posted in letters at least four (4) inches in height. Smoking, open flames and any ignition source are prohibited within twenty-five (25) feet of any fireworks stock.
- E. No fireworks shall be stored, kept, sold or discharged within fifty (50) feet of a gasoline pump or gasoline bulk station or a building in which gasoline or volatile liquids are sold in quantities in excess of one (1) gallon, except in stores where cleaners, paints and oils are handled in sealed containers only.

- F. All fireworks permittees and licensees shall keep and maintain upon the premises a fire extinguisher bearing an Underwriters Laboratories Inc. rated capacity of at least five (5) pound ABC per five hundred (500) square feet of space used for fireworks sales or storage.
- G. Sales clerks and ancillary personnel employed or volunteering at temporary retail locations where fireworks are sold shall be at least sixteen (16) years of age. A sales clerk shall be on duty to serve consumers at the time of purchase or delivery. Permissible fireworks may be offered for sale only at state-permitted or state-licensed retail locations in Hobbs.
- H. No fireworks shall be discharged within one hundred fifty (150) feet of any fireworks retail sales location.
- I. 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.
- J. 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.
- K. Permissible fireworks may be sold at retail between June 20th and July 6th of each year, six (6) days preceding and including new year's day, three (3) 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.

(Ord. 874 (part), 2001; prior code § 10A-6)

8.12.070 - Public display requirements.

- 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. 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 States Department of the Treasury.
- B. The Fire Chief or designee may adopt reasonable rules and regulations for the use of fireworks in public displays.

(Prior code § 10A-7)

8.12.080 - Safe Zones established.

The City of Hobbs may designate "Safe Zones" and times for unauthorized/illegal firework displays. At least ten calendar days prior to the dates outlined in Section 8.12.060(K), the City of Hobbs shall furnish to the public the location of the designated Safe Zones. Unauthorized/Illegal fireworks are not permitted within the municipal boundaries of Hobbs, New Mexico, unless said unauthorized/illegal fireworks are possessed and displayed in City of Hobbs designated Safe Zones. If unauthorized/illegal fireworks are possessed and or displayed in places other than the designated Safe Zones, the individual, property owner, or responsible party of listed property/event, firm, partnership or corporation is in violation of the Hobbs fireworks Ordinance and are subject to the penalties set forth in Section 8.12.090 and Section 8.12.100. This provision is subject to any mandate from the State of New Mexico or the United States forest service declaring extreme or severe drought conditions as contemplated by NMSA 1978, § 60-2C-8.1.

8.12.090 - Violation—Penalty—Criminal Petty Misdemeanor.

Any individual, property owner, or responsible party of listed property/event, firm, partnership or corporation that violates any provision of the Hobbs fireworks ordinance shall be given the opportunity to surrender their illegal fireworks for destruction in lieu of a citation. If any individual, property owner, or responsible party of listed property/event, firm, partnership or corporation refuses to surrender the illegal fireworks, they will be issued a citation for violation of the Hobbs fireworks ordinance. Upon conviction, the offender shall be punished by a fine of not more than five hundred dollars (\$500.00) or by imprisonment for not more than ninety (90) days, or by both such fine and imprisonment.

(Prior code § 10A-8)

8.12.100 - Violations—Penalty—Civil.

- A. Addresses that have been identified as locations where illegal fireworks are used will be issued a Cease and Desist order by certified mail. A Cease and Desist Order is a document that serves as official notice that the owner and/or occupant (responsible party of listed property/event) has been found to be in violation the Hobbs fireworks Ordinance. Any Cease and Desist Order issued within a given calendar year may be used as evidence in any subsequent criminal prosecution and may serve as prima facie evidence against the issuance of any future permits under the Hobbs fireworks ordinance.
- B. If an individual, property owner, or responsible party of listed property/event is found guilty of violating any of the provisions of the Hobbs fireworks ordinance, that person's permit may be revoked or suspended by the Fire Chief, his or her deputies or designee as contemplated by Section 8.12.030(F) above.
- C. No individual, firm, corporation or partnership shall possess any fireworks for sale within the city limits of Hobbs, New Mexico other than those authorized in the Hobbs

fireworks ordinance. The Fire Chief, his or her deputies or designee may at reasonable hours enter and inspect the permittee's premises to determine compliance with the Hobbs fireworks ordinance. If any retailer has in his or her possession any fireworks in violation of that ordinance, his or her permit shall be revoked and all such fireworks seized, and the fireworks shall be kept to be used as evidence. If any person has in his or her possession any fireworks in violation of that ordinance, a warrant may be issued for the seizure of fireworks and the fireworks shall be safely kept to be used as evidence. Upon conviction of the offender, the 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.

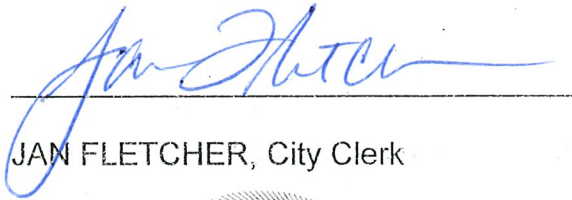
(Prior code § 10A-9)

PASSED, ADOPTED AND APPROVED this 16th day of February, 2021.



SAM D. COBB, Mayor

ATTEST:



JAN FLETCHER, City Clerk

