

# **TOWN OF PERALTA**

## **FIREWORKS ORDINANCE**

**Number 2013 – 01, Amendment 5**

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### **5-5-1 TITLE**

This ordinance shall be known and cited as the Town of Peralta Fireworks Ordinance.

### **5-5-2 PURPOSE**

The purpose of this ordinance is to assist in protecting the public health, welfare, and safety of the people of the Town of Peralta by regulating the use and the retail sales of fireworks. This ordinance shall not supersede Fireworks Licensing and Safety Act, NMSA 1978, § 60-2C-1, et seq., except as provided by law.

### 5-5-3 DEFINITIONS

*“Applicant”* The person, vendor, or legal entity issued a Fireworks permit to sell fireworks in the Town of Peralta that is legally responsible to the Town of Peralta as provided for in this ordinance.

*“Clerk”* The Municipal or Town Clerk of the Town of Peralta

*“Council”* The governing body of the Town of Peralta

*“Code Enforcement Officer”* Town representative who is designated by the Mayor and Council to inspect retail firework stands for compliance

*“Fire Chief”* The Peralta Fire Chief or his designated representative

*“Fireworks”* As used in this ordinance, *“Fireworks”* are any combustible or explosive composition or any substance or combination of substances, or device prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation in which explosives are used; Firecrackers, torpedoes, sky rockets, roman candles, daygo bombs, sparklers, artillery shells, crackling devices, or other devices of like construction and any devices containing any explosive or flammable compound, or any tablet or other device containing an explosive substance.

The term *“fireworks”* shall not include any auto flares, paper caps, containing not in excess of an average of 25/100 twenty-five one- hundredths, of a grain of explosive content per cap, toy pistols, toy canes, toy guns or other devices for the use of such caps; the sale and use of which shall be permitted at all times.

*“Fireworks Stand”* The location identified in the permit at which fireworks are sold in the Town of Peralta by the applicant

*“Licensed Business”* A business that has a current business license issued by the Town of Peralta as provided by the Town ordinance

*“Permit”* A permit is a document issued by the Town of Peralta granting express authority to a vender, applicant, person, or business entity to sell approved fireworks at the location expressly stated in the permit.

*“Permitted Fireworks and/or Devices”* These are fireworks as described in Section 5-5-10.

*“Portable Buildings”* Any structure, which is of temporary nature or design, which has been approved for the retail sale of fireworks to the general public

*“Person”* Person means every natural person, firm, partnership, association, corporation or other legal entity.

*“Responsible Party”* The applicant and holder of the Fireworks permit who assumes legal responsibility to ensure the Fireworks stand is in compliance with this ordinance.

*“Retail Sales”* The sale of fireworks to the general public excluding the wholesale business of sales between merchants

*“Signs”* Any outdoor advertising device

*“Town of Peralta”* The geographic area within the boundaries of the Town of Peralta

*“Vendor”* Any person or business engaged in the retail sale of fireworks to the general public.

#### **5-5-4 APPLICATION AND PERMIT**

##### **1. APPLICATIONS:**

Applications will be accepted between May 1 and May 10 of each year. Local and other New Mexico Vendors who sell fireworks shall pay twenty-five dollars (\$25.00) to the Town of Peralta for the permit. Any retail business operating within the Town of Peralta, including fireworks stands or other temporary business structures, is required to have a current Peralta Business License. Vendors from out-of-state are required to pay a one hundred dollars (\$100) transient fee which is necessary to verify out-of-state applications."

Applications for permits of retail sales of fireworks at fireworks stands may be obtained at Peralta's Town Hall at 90A Molina. Only one permit will be issued for each fireworks stand at one location for the sale of fireworks or devices.

Each applicant for a permit shall complete a Town of Peralta Business Registration application. Each application shall require the following:

- a) Name and address of applicant: The applicant's legal status as a business; partnership or corporation; profit, nonprofit, charitable, religious or association
- b) Proposed location where the applicant will sell fireworks
- c) State of NM Taxation & Revenue Registration Certificate w/ CRS ID#
- d) A copy of the rental or lease agreement for the property proposed to be used for the sale of fireworks;
- e) A plot plan showing the exact location of all permanent and/or temporary structures within the property and parking to be provided
- f) Copy of State Fire Marshal's; Fireworks Licensing and Safety License
- g) An accurate and complete list of all fireworks proposed to be sold in the Town of Peralta. Only approved fireworks that are listed will be allowed to be sold at the permitted location. A sample of each item offered for sale, if requested, shall be provided to verify compliance with this ordinance.
- h) \$35.00 for Business License
- i) \$25.00 for Sale of Fireworks Permit
- j) \$250.00 Inspection Fee

- k) Proof of Inspection by Code Enforcement Officer, Fire Chief or other designated representative of the Town of Peralta
- l) Certificate of Liability Insurance clearly stating the responsible party as the certificate holder and named insured or co-insured; beneficiary and/or payee; policy of a minimum of one (1) million dollar's coverage.

Applications must be complete and approved by the Town Clerk and Code Enforcement Officer before a permit will be issued. The Code Enforcement Officer, Fire Chief, or designated representative shall inspect the fireworks stand, required documents and/or place of business for compliance with this ordinance.

## **2. PERMITS:**

- a) Permits will be limited to one (1) per Vendor. The first four (4) permits will be reserved for local (Valencia County) Vendors and additional permits will be awarded by drawing. The drawing will be held on the first Tuesday following the closing date of the application acceptance deadline.
- b) The responsible party must be present at the time of application for permit
- c) The number of permits issued each year shall be restricted to one permit for every six-hundred (600) person population of the Town of Peralta based on the most recent federal census.
- d) Permits shall not be approved or issued by the Town of Peralta unless the applicant strictly complies with this Ordinance
- e) Permits issued shall be valid for sale of fireworks from June 20th through July 6th and six days preceding New Year's Day in the year of issue and New Year's Day, and three (3) days preceding and including Chinese New Year, the sixteenth (16) of September and Cinco de Mayo of each year.
- f) An inspection fee of two hundred-fifty dollars (\$250.00) shall be paid by permit applicants with the submission of each application for the inspection of the fireworks stand. If the fireworks stand fails the initial inspection, the permit will be disapproved and any re-inspection will require an additional fee of one hundred dollars (\$100.00)
- g) All permits and licenses must be prominently displayed at each place where fireworks are sold at all times.
- h) Fireworks permits issued by the Town of Peralta shall only be valid through January 31st of the year following the year of issue.

### **5-5-5 FIREWORKS AND FIREWORKS STANDS**

1. The sale of fireworks shall be only from an approved fireworks stand permitted by the Town of Peralta.
2. Fireworks shall only be sold between June 20th and July 6th of each year and six (6) days preceding and including New Year's Day, and three (3) days preceding and including Chinese New Year, the sixteenth (16) of September and Cinco de Mayo of each year. Fireworks can be sold only between the hours of 8:00 AM and 10:00 PM each and every day, with the exception of July 3rd. 11:00 PM and the actual holiday 12:00 AM.
3. The fireworks stand must strictly comply with all State and local Fire Regulations at all times.
4. Fireworks stands shall be located at least two hundred feet (200ft.) from any other fireworks stand at all times, measured from the nearest boundary property lines within the property a stand is located to the nearest property line in which the nearest fireworks stand is located. Individual exceptions will be considered only when Fireworks stands are separated by a roadway or other right-of-way.
5. Fireworks stands shall not be housed in any non-commercial permanent structure or existing non-commercial building.
6. Fireworks stands shall be setback thirty feet (30ft.) from any existing permanent building or structure.
7. Fireworks stands shall not be located or approved in any zone except in a Commercial Use zone.
8. Portable building or structure must have a minimum setback of 30 feet from the property line. No more than one portable building or structure per permit will be allowed and shall contain no more than 4800 square-feet in size. Portable buildings or structures must be removed within 48 hours after permitted sales. If not removed by that timeframe a \$25.00 fee per day may be imposed on the vendor.
9. A vendor must provide a minimum of four (4) designated parking spaces on the premises; such spaces shall not obstruct public right of way.
10. No fireworks shall be stored, kept, or displayed within 50 feet from any gasoline pump, refilling station, or any building in which gasoline or volatile liquids are stored or sold.
11. Two (2) 6x12 foot signs and (2) 4x8 foot signs will be allowed for each vendor permit, placed at a reasonable distance from the roadway and shall not obstruct the public right of way.
12. At all times where fireworks are sold or displayed, the words "No Smoking" must be printed in letters at least 4 (four) inches in height and placed at a minimum of 4 (four) conspicuous and clearly visible locations within the fireworks stand

13. All Structures where permitted devices are sold shall be protected by at least four (4) 5-gallon buckets of water and at least four (4) approved fire extinguishers with at least a 5-pound ABC classification.

14. All waste, boxes, etc. must be disposed of properly and shall not be allowed to be stored outside and within 30 feet of the stand or building.

### **5-5-6 PUBLIC DISPLAY**

Nothing herein shall prohibit the public display of fireworks, except that any individual association, partnership, corporation, organization, county or municipality, shall secure a written permit from the governing body of the municipality where the public display is to be fired.

### **5-5-7 EXTREME DROUGHT CONDITIONS**

If the Town of Peralta governing body issues a proclamation declaring a condition of extreme or severe drought, the procedures established in Chapter NMSA, 1978, §60-2C-8.1 shall be followed and the proclamation shall supersede this ordinance.

### **5-5-8 USE OF FIREWORKS: RESTRICTIONS**

1. No private individual shall transport, store, detonate, or purchase any devices within the boundaries of the Town of Peralta other than permitted devices specified in Section 5-5-10 of this ordinance.
2. All personnel involved in sales or dispensing of fireworks shall be 16 years of age or older.
3. No person under the age of sixteen (16) or any person under the influence of drugs or alcohol shall be allowed to purchase fireworks. Proof of buyer's age shall be required by the seller.
4. All persons under the age of sixteen (16) shall be supervised by a parent or guardian over the age of eighteen (18) when permitted devices are being properly detonated.
5. Detonation or ignition of fireworks from a moving or stationary vehicle is prohibited.
6. All persons using fireworks of any kind shall be liable for any personal injury or any loss of property resulting from the use of fireworks.
7. Fireworks may only be discharged within the town limits between the hours of 8:00 A.M. and 10:00 P.M. with the exception of the eve of the holiday which hours have been extended until 11:00 PM and the actual holiday which hours have been extended until midnight (12:00 A.M.). Fireworks may be restricted, at any time, upon notice of extreme drought conditions.

### **5-5-9 INSPECTION**

The Town of Peralta Code Enforcement Officer, Fire Chief, designated representative, and/or any certified law enforcement officer may, at any reasonable hour, enter and inspect the premises, building or any structure temporarily or permanently located at the site designated for the sale, as well as packaging and handling of permitted devices.

### **5-5-10. PERMITTED FIREWORKS**

Permissible items shall include:

1. All Class C Rated Fireworks, with exceptions noted in Section 5-5-11 Impermissible Fireworks.
2. Ground and hand-held sparkling devices:
  - a) Snakes; total pyrotechnic composition not to exceed twenty (20) grams each in weight.
  - b) Smoke devices and spray balls; total pyrotechnic composition not to exceed fifteen (15) grams in weight
  - c) Cone shaped and cylindrical fountains; total pyrotechnic composition not to exceed seventy-five (75) grams each in weight. The inside tube diameter of cylindrical fountains shall not exceed three-quarters (3/4) inch.
  - d) Crackling devices; a sphere or paper tube that contain no more than twenty (20) grams of pyrotechnic composition that produces a flash of light and a mild, audible crackling effect upon ignition which is not considered to be an explosion. Crackling devices are not subject to the fifty-milligram limit of firecrackers.
  - e) Flitter sparklers; narrow paper tube attached to a stick or wire and filled with no more than five (5) 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.
  - f) Sparklers and dipped sticks; pyrotechnic composition not to exceed one-hundred (100) grams each in weight. Pyrotechnic composition containing any chlorate or perchlorate shall not exceed five (5) grams.
  - g) Ground spinners; a small, rapidly spinning device containing no more than twenty (20) 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. A ground spinner is similar in operation to a wheel, but is intended to be placed flat on the ground and ignited.
  - h) Illuminating torches and colored fire in any form; total pyrotechnic composition of illumination torches not to exceed one-hundred (100) grams each in weight
  - i) Wheels; 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 (60) grams of

pyrotechnic composition and the total wheel contains no more than two hundred (200) grams total pyrotechnic composition.

3. Aerial Devices:

- a) Aerial shell kit-reloadable tubes; 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 (60) grams of total chemical composition, including lift charges, and the maximum diameter of each shell shall not exceed one and three-fourths inches.
- b) Mines or shells; heavy cardboard or paper tube usually attached to a wooden or plastic base and containing no more than sixty (60) 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 of 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 (200) grams.
- c) Multiple tube devices; 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 (500) 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.
- d) Roman candles; a heavy paper or cardboard tube containing no more than twenty (20) grams of chemical composition that individually expels pellets of pressed pyrotechnic composition that burn with bright color in a star effect.
- e) Multi-aerial cake; this term is used widely to mean multi-shot repeating aerial display; the kind that have all the tubes fused internally and all you have to do is light the one external fuse, and you get 16, 25, 36 or any number of aerial shots fired sequentially and/or in groups.

4. Ground Audible Devices:

- a) Chasers; a paper or cardboard tube venting out the fuse end of the tube that contains no more than 20 (20) grams of chemical composition and travels along the ground often producing a whistling effect or other noise; an explosive composition not to exceed fifty (50) milligrams may be included to produce a report.
- b) Firecrackers, small paper wrapped or cardboard tube containing no more than fifty (50) 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 (130) milligrams of explosive composition per report.

- c) Railway fuses, highway flares, distress signals, smoke pots are permitted for emergency use only.

#### **5-5-11 IMPERMISSIBLE FIREWORKS**

The following types of fireworks are not permissible fireworks in the Town of Peralta:

1. All stick-type rockets and helicopters
2. Fireworks intended for sale to the public that produce an audible effect, other than a whistle, by a charge of more than one hundred thirty milligrams of explosive composition per report.

#### **5-5-12 SEIZURE OF FIREWORKS AND REVOCATION OF PERMITS**

- a) The Code Enforcement Officer, Fire Chief, a designated representative, or law enforcement officer shall inspect the firework stands for compliance with this ordinance.

The Code Enforcement Officer, Fire Chief, a designated representative, and or law enforcement officer shall have the authority to enforce, seize, take over, or cause to be removed, at the expense of the permit holder, all stocks of fireworks offered or exposed for sale, stored or held in violation of this ordinance. NMSA 1978, §60-2C-11.

- b) Any vendor convicted of violating this ordinance will not be issued a new permit for a period of 2 years from the date of revocation of the previous permit.

#### **5-5-13 CRIMINAL VIOLATION**

Any person found guilty of violating any provisions of this ordinance shall be found guilty of a misdemeanor and be fined not more than five hundred dollars (\$500.00) or imprisoned for a period of not more than ninety (90) days, or both fine and imprisonment.

#### **5-5-14 SEVERABILITY**

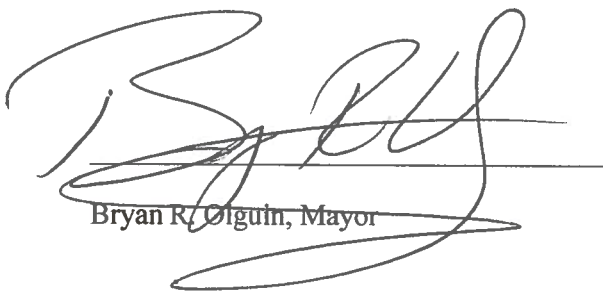
If any action, sub-section, paragraph, phrase, or other portion of this ordinance shall be declared invalid for any reason whatsoever by a court of competent jurisdiction, then such decision shall affect the validity or enforceability of the remaining portions of this ordinance.

**5-5-15 REPEAL OF PRIOR ORDINANCES**

To the extent there are regulations, ordinances or resolutions existing prior to the effective date of this Ordinance regarding fireworks, such regulations, ordinances and resolutions are hereby repealed and superseded by this Ordinance.

APPROVED, PASSED AND ADOPTED THIS 23<sup>rd</sup> DAY OF March 2016.

Town of Peralta Governing Body:

  
Bryan R. Olguin, Mayor


  
Michael Leon Otero, Councilor Mayor Pro-tem

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Claudio Moya Jr. Councilor

  
Joseph Romero, Councilor

  
Randy Smith, Councilor

ATTEST:

  
Julie Pluemer, Town Clerk

3/23/16  
Date