



**VILLAGE OF MAGDALENA
EMERGENCY ORDINANCE No. 2022-01
&
PROCLAMATION
RESTRICTING THE SALE AND USE OF FIREWORKS
IN THE INCORPORATED AREAS OF THE VILLAGE OF MAGDALENA**

WHEREAS, NMSA 1978, Section 3-18-1 (1972) provides that municipalities, have the power to “protect generally the property of its municipality and its inhabitants” and to “preserve peace and order”; and,

WHEREAS, NMSA 1978, Section 3-17-1 *et seq.* provides that municipalities may adopt ordinances, not inconsistent with the laws of the State of New Mexico, to discharge those powers necessary and proper to provide for the safety, preserve the health, promote the prosperity and improve the morals, order, comfort and convenience of the municipality and its inhabitants; and,

WHEREAS, NMSA 1978, Section 43-17-3 eliminates the general ordinance publication requirement for ordinances “dealing with an emergency declared by the mayor to be an immediate danger to the public health, safety and welfare of the municipality;” and,

WHEREAS, the Board of Trustees finds that restrictions should be imposed upon the sale and use of fireworks within the Village; and,

WHEREAS, the Board of Trustees finds, pursuant to NMSA 1978, Section 60-2C-8.1, based upon current drought indices published by the national weather service and other information supplied by the United States Forest Service that exceptional drought conditions affect the Village of Magdalena; and,

WHEREAS, the Board of Trustees finds that restrictions should be imposed upon the sale and use of fireworks within the incorporated areas of the Village of Magdalena; and,

WHEREAS, the Board of Trustees finds that there exists an immediate danger to the public health, safety, and welfare of the Village.

NOW THEREFORE, BE IT ORDAINED & PROCLAIMED BY THE BOARD OF TRUSTEES, THAT:

- Section 1. For purposes of this Ordinance/Proclamation, the word “fireworks” means any device intended to produce a visible or audible effect by combustion, deflagration or detonation. The term fireworks is used in this Ordinance/Proclamation includes but is not limited to the definition of the “fireworks” provided in NMSA 1978, Section 60-2C-2K (1999).
- Section 2. Pursuant to NMSA 1978, Section 60-2C-8.1(B)(2)(a)(1999), the Board of Trustees does hereby allow the sale but limits the use of cone fountains, crackling devices, cylindrical fountains, flitter sparklers, ground spinners, illuminating torches, toy smoke devices, wheels and mines fireworks within the incorporated areas of the Village 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.
- Section 3. Pursuant to NMSA 1978, Section 60-2c-8.1(B)(1)(1999) the following types of fireworks are banned from sale and use within the incorporated areas of the Village: stick-type rockets, helicopters & aerial spinners, missile-type rockets, ground audible devices, firecrackers, and display fireworks.
- Section 4. Except as permitted by this Ordinance/Proclamation, the sale and use of all other fireworks of any kind or description are banned within the incorporated areas of the Village of Magdalena.
- Section 5. Regarding display fireworks, any individual, association, partnership, corporation, organization, county or municipality seeking to put on a public display shall secure a written permit from the governing body, which shall consider the safety of such a display given weather conditions, and 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 at the United States Department of the Treasury.
- Section 6. REPEAL OF PREVIOUS ORDINANCE(S)
- This Ordinance/Proclamation hereby replaces, repeals and supersedes any prior Ordinance or Proclamation concerning this subject.
- Section 7. EFFECTIVE DATE AND DURATION
- Pursuant to NMSA 1978, Section 60-2C-8.1 and Section 3-17-3(A), the Board of Trustees hereby declares it is necessary for the public peace, health, safety and welfare that this Ordinance/Proclamation take effect immediately after passage. This Ordinance/Proclamation shall be effective for thirty (30) days unless a succeeding Ordinance/Proclamation is issued or the Board of Trustees, after

conducting an emergency hearing, determines that weather conditions have improved.

Section 8. ENFORCEMENT

The Magdalena Marshal's Office and any other legally qualified law enforcement officer or any of their agents shall have the ability to enforce this Ordinance/Proclamation.

Section 9. PENALTIES

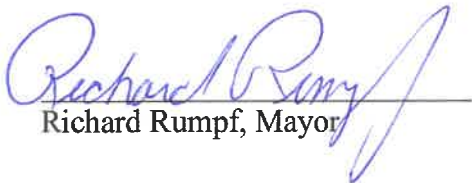
Any violation of this Ordinance/Proclamation shall be deemed a misdemeanor and punishable by a fine of not more than five hundred dollars (\$500) and/or up to 90 days in jail.

Section 10. SEVERABILITY

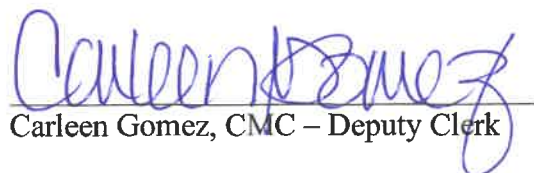
If any article, section, subsection, paragraph, sentence, clause, phrase, provision or portion of any article, section, subsection, paragraph, sentence, clause, phrase or provision in this Ordinance/Proclamation is, for any reason, held to be unconstitutional, invalid or void, the remaining portion shall not be affected since it is the express intention of the Board of Trustees to pass such article, section, subsection, paragraph, sentence, clause, phrase or provision and every part thereof separately and independently from every other part.

Approved, Adopted, and Ordained this 13th day of June, 2022.

VILLAGE OF MAGDALENA


Richard Rumpf, Mayor

Attest:


Carleen Gomez, CMC – Deputy Clerk

