

## **ORDINANCE 2011-19**

**AN ORDINANCE AMENDING THE ORDINANCE REGULATING FIREWORKS (ORDINANCE NO. 2011-09) OF THE CITY OF ANTHONY, NEW MEXICO DATED JUNE 8, 2011 FOR THE FOLLOWING PURPOSES: (1) TO PERMIT PERSONS (OTHER THAN SPECIALTY RETAILERS) TO SELL, AT RETAIL, PERMISSIBLE FIREWORKS FROM OR OUT OF CERTAIN PERMISSIBLE TEMPORARY BUILDINGS, TEMPORARY STRUCTURES OR TEMPORARY CLOSED-AIR STANDS AND TO REQUIRE SUCH PERSONS TO REMOVE SAME WITHIN A CERTAIN PERIOD OF TIME AFTER THE EXPIRATION OF ISSUED PERMIT, (2) TO REQUIRE THAT ALL RETAILERS, INCLUDING SPECIALTY RETAILERS, TO COLLECT AND PAY OVER TO THE CITY OF ANTHONY ALL POSSESSION PERMIT FEES COLLECTED IN A CALENDAR QUARTER WITHIN TEN (10) CALENDAR DAYS FROM THE END OF EACH CALENDAR QUARTER FOR SPECIALTY RETAILERS AND WITHIN TEN (10) CALENDAR DAYS FROM THE END OF THE PERMITTED SALES PERIOD FOR ALL OTHER RETAILERS, (3) TO PERMIT ALL RETAILERS, NOT ONLY SPECIALTY RETAILERS, TO SELL AERIAL AND GROUND AUDIBLE DEVICES, (4) TO RESTRICT THE DISCHARGE OF ALL PERMISSIBLE FIREWORKS, NOT ONLY CERTAIN FIREWORKS, TO CERTAIN TIMES OF THE DAY, AND (5) TO RESTRICT THE SALE OF PERMISSIBLE FIREWORKS TO CERTAIN TIMES OF THE DAY DURING THE PERMITTED PERIODS.**

**WHEREAS**, staff for the GOVERNING BODY did duly publish notice of this ordinance amendment in accordance with law; and

**WHEREAS**, the GOVERNING BODY did hold a duly noticed Public Meeting; and

**WHEREAS**, the GOVERNING BODY did consider testimony from staff and the public before reaching its decision; and

**WHEREAS**, the GOVERNING BODY does make the following finding:

1. That it is in the best interest of the public at large that Ordinance No. 2011-09 be amended for the following purposes: (1) to permit the retail sale of permissible fireworks (other than as a specialty retailer) from or out of certain permissible temporary buildings, temporary structures or temporary closed-air stands and to require the removal of same within a certain period of time after the expiration of the issued permit, and (2) to require that all retailers, including specialty retailers, to collect and pay over to the City of Anthony all possession permit fees collected in a calendar quarter within ten (10) calendar days from the end of each calendar quarter for specialty retailers and within ten (10) calendar days from the end of the permitted sales period for all other retailers, (3) to permits all retailers, not only specialty retailers, to sell aerial and ground audible devices, (4) to restrict the discharge of all permissible fireworks, not only



certain fireworks, to certain times of the day, and (5) to restrict the sale of permissible fireworks to certain times of the day during the permitted periods.

**BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF ANTHONY, DOÑA ANA COUNTY, NEW MEXICO:** that in consideration of the aforementioned findings and testimony, it hereby ordains that it does hereby approve that certain amendments be made to Ordinance No. 2011-09 for the following purposes: (1) to permit the retail sale of permissible fireworks (other than as a specialty retailer) from or out of certain permissible temporary buildings, temporary structures or temporary closed-air stands and to require the removal of same within a certain period of time after the expiration of the issued permit, and (2) to require that all retailers, including specialty retailers, to collect and pay over to the City of Anthony all possession permit fees collected in a calendar quarter within ten (10) calendar days from the end of each calendar quarter for specialty retailers and within ten (10) calendar days from the end of the permitted sales period for all other retailers, (3) to permits all retailers, not only specialty retailers, to sell aerial and ground audible devices, (4) to restrict the discharge of all permissible fireworks, not only certain fireworks, to certain times of the day, and (5) to restrict the sale of permissible fireworks to certain times of the day during the permitted periods:

#### **Section 1. AUTHORITY AND PURPOSE.**

**AUTHORITY:** This Ordinance is adopted pursuant to the enabling provisions of Section 3-17-1, NMSA, 1978, and the Fireworks Licensing And Safety Act, Section 60-2C-1, NMSA, 1978, *et seq.*

**PURPOSE:** The purpose of this ordinance is to amend Ordinance No. 2011-09 for the purpose of making certain revisions to Ordinance No. 2011-09 as follows: (1) to permit the retail sale of permissible fireworks (other than as a specialty retailer) from or out of certain permissible temporary buildings, temporary structures or temporary closed-air stands and to require the removal of same within a certain period of time after the expiration of the issued permit, and (2) to require that all retailers, including specialty retailers, to collect and pay over to the City of Anthony all possession permit fees collected in a calendar quarter within ten (10) calendar days from the end of each calendar quarter for specialty retailers and within ten (10) calendar days from the end of the permitted sales period for all other retailers, (3) to permits all retailers, not only specialty retailers, to sell aerial and ground audible devices, (4) to restrict the discharge of all permissible fireworks, not only certain fireworks, to certain times of the day, and (5) to restrict the sale of permissible fireworks to certain times of the day during the permitted periods.

#### **Section 2. AMENDMENTS OF CITY OF ANTHONY, NEW MEXICO ORDINANCE NO. 2011-09.**

Section 5, Subsection B, Subpart e of City of Anthony, New Mexico Ordinance No. 2011-09 which currently reads as follows:

- “e. No person shall sell at retail, or offer for sale to the general public, any firework from any motor vehicle, trailer, open-air stand, temporary building or any other moveable or portable structure. This provision is cumulative of and supplemental to all other existing ordinances of the City of Anthony.”

**is hereby AMENDED to read as follows:**

- “e. No person shall sell at retail, or offer for sale to the general public, any firework from any motor vehicle or open-air stand.”
- “f. A person (other than a specialty retailer), provided the person first obtains a Retail Fireworks Permit in compliance with this Section 5, shall be allowed to sell at retail or offer for sale at retail to the general public permissible fireworks from or out of temporary buildings, temporary structures or temporary closed-air stands that comply 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 and any other applicable federal, state, and local law, regulation or rule.”
- “g. A person (other than a specialty retailer) who sells at retail or offers for sale at retail to the general public permissible fireworks from or out of temporary buildings, temporary structures or temporary closed-air stands in compliance with this ordinance shall be required to remove from the permitted location such temporary buildings, temporary structures or temporary closed-air stands no later than five (5) calendar days after the expiration of the Retail Fireworks Permit and leave the location in a clean and orderly condition satisfactory to the City Fire Chief, his deputies or designees.”

Section 5, Subsection C and D (a) of City of Anthony, New Mexico Ordinance No. 2011-09 which currently read as follows:

- “C. Specialty retailers may sell aerial and ground audible devices with a possession permit. The form of the application and permit shall be approved by the City of Anthony Fire Chief. At a minimum, the permit application shall include the name and address of the permittee, the numbers and types of such devices sold, and the date of the sale. The specialty retailer shall collect \$3.00 per possession permit issued, to be paid to the City of Anthony from time to time,



as established by written policies to be issued by the City of Anthony.

- D. Permissible fireworks may only be stored, sold, and used within the City of Anthony consistent with the requirements and restrictions in this Ordinance.
  - a. Aerial shell, aerial kit-reloadable tube, mines, multiple tube devices, roman candles, and shells shall only be discharged during the approved sales periods in which retail sales are allowed in Section 4(D) of this ordinance and shall be discharged only between the hours of 10:00 a.m. and 9:00 p.m., with the exception that they may be discharged until 11:00 p.m. on July 4<sup>th</sup> and 12:30 a.m. on January 1<sup>st</sup> of each year.”

**are hereby AMENDED to read as follows:**

- “C. All retailers, including specialty retailers, may sell aerial and ground audible devices with a possession permit. The form of the application and permit shall be approved by the City of Anthony Fire Chief. At a minimum, the permit application shall include the name and address of the permittee, the numbers and types of such devices sold, and the date of the sale. The specialty retailer shall collect \$3.00 per possession permit issued, to be paid to the City of Anthony within ten (10) calendar days from the end of each calendar quarter. All other retailers shall collect \$3.00 per possession permit issued, to be paid to the City of Anthony within ten (10) calendar days from the end of the periods set forth in Section 4(D). All such payments are to be made to the City Treasurer or his/her designee(s).
- D. Permissible fireworks may only be stored, sold, and used within the City of Anthony consistent with the requirements and restrictions in this Ordinance.
  - a. All permissible fireworks as enumerated in Section 4 (B) and Section 4 (C) shall only be discharged during the approved sales periods in which retail sales are allowed in Section 4(D) of this ordinance and shall be discharged only between the hours of 10:00 a.m. and 9:00 p.m., with the exception that they may be discharged until 11:00 p.m. on July 4<sup>th</sup> and 12:30 a.m. on January 1<sup>st</sup> of each year.”

Section 4, Subsection C and D of City of Anthony, New Mexico Ordinance No. 2011-09 which currently read as follows:

- “C. Within the City of Anthony, permissible fireworks also include the following, if sold by a specialty retailer at any time with a possession permit, and used within the City of Anthony during the periods set forth in 4(D) below for retail sales other than by specialty retailers:
1. All aerial devices including:
    - 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, other than those having a tube less than five-eighths inch outside diameter and less than three and one-half inches in length.
  2. All ground audible devices, including:
    - a. Chasers; and
    - b. Firecrackers.
- D. Permissible fireworks may be sold at retail in the City of Anthony between June 20 and July 6 of each year, six days preceding and including New Year's Day, three days preceding and including Chinese New Year, September 16<sup>th</sup>, and Cinco de Mayo of each year, except that permissible fireworks may be sold all year by specialty retailers.”

**are hereby AMENDED to read as follows:**

- “C. Within the City of Anthony, permissible fireworks also include the following:
1. All aerial devices including:
    - 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, other than those having a tube less than five-eighths inch outside diameter and less than three and one-half inches in length.
- 2. All ground audible devices, including:
  - a. Chasers; and
  - b. Firecrackers.”
- D. Permissible fireworks may be sold at retail in the City of Anthony between June 20 and July 6 of each year, six days preceding and including New Year’s Day, three days preceding and including Chinese New Year, September 16<sup>th</sup>, and Cinco de Mayo of each year, except that permissible fireworks may be sold all year by specialty retailers with a possession permit.
- E. Permissible fireworks sold at retail in the City of Anthony during the periods set forth in Section 4 (D) above may only be sold during the hours of 8:00 a.m. through 9:00 p.m. with the exception that they may be sold at retail until 11:00 p.m. on July 4<sup>th</sup> and December 31<sup>st</sup> of each year.”

### **Section 3. SEVERABILITY.**

Should any section, paragraph, clause or provision of this Ordinance for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

### **Section 4. REPEALER.**

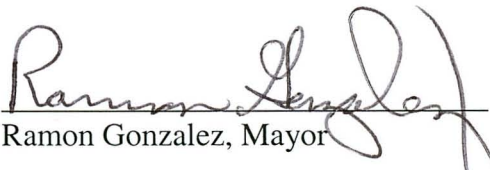
All ordinances or resolutions or parts thereof, inconsistent with the provisions of this Ordinance are hereby repealed to the extent only of such inconsistency or conflict. This repealer shall not be construed to revive any ordinance or resolution or part thereof, heretofore repealed.

### **Section 5. EFFECTIVE DATE.**

This ordinance shall be in full force and effect after its adoption, approval, and publication as provided by law.

**PASSED, ADOPTED AND APPROVED THIS 2ND DAY OF NOVEMBER, 2011.**

**APPROVED:**

  
Ramon Gonzalez, Mayor

**ATTEST:**

  
Gloria Irigoyen, City Clerk

{SEAL}

**ROLL CALL VOTE:**

**Mayor Pro-Tem James Scott** Yes

**Trustee Betty Gonzalez** Yes

**Trustee Diana Murillo** Yes

**Trustee Juan Acevedo** Yes

First publication approval: 8/26/11

First publication: 9/12/11

Final publication approval: 10/31/11

Final publication: 11/8/11