

**CITY OF ESPAÑOLA  
RESOLUTION NO. 2018-13**

**A RESOLUTION RECOGNIZING THE EXISTENCE OF SEVERE, EXTREME AND EXCEPTIONAL DROUGHT CONDITIONS IN THE CITY OF ESPANOLA; PROHIBITING THE SALE OR USE OF CERTAIN FIREWORKS WITHIN THE CITY DURING THE CONTINUATION OF DROUGHT CONDITIONS; PROHIBITING THE POSSESSION OR USE OF FIREWORKS IN THE ESPANOLA BOSQUE AREA AND ON LANDS OWNED BY THE CITY; AND AUTHORIZING OFFICERS OF THE CITY TO ENFORCE THE PROHIBITION ON SALE OR USE OF FIREWORKS BY APPROPRIATE ACTION.**

**WHEREAS**, the statutes of the State of New Mexico, and specifically Sections 60-2C-8.1(A) through (D), NMSA 1978, provide that a municipality may impose restrictions upon the sale and use of fireworks if the municipality determines that extreme or severe drought conditions exist, and may extend such restrictions for so long as the said conditions exist; and

**WHEREAS**, the City Council, the Governing Body of the City of Española (the "Governing Body" of the "City") by its Resolution No. 2018-10, adopted on April 30, 2018, has determined that **SEVERE, EXTREME AND EXCEPTIONAL DROUGHT** conditions exist within the City and are likely to continue; and

**WHEREAS**, the use of fireworks of all kinds presents a serious possibility for the ignition of fires which, under present drought conditions, may spread rapidly and become a serious threat to the health, safety and security of the inhabitants of the City; and

**WHEREAS**, the Governing Body finds that it is incumbent upon the City to impose restrictions upon the sale and use of fireworks in the City, to the maximum extent permitted by law, in order to reduce the risk of fires which pose an imminent threat to the health and safety of the residents of the City of Española and a threat of severe damage to structures, crops, animals, and natural vegetation in the City; and

**WHEREAS**, the Governing Body by this resolution, prohibits the sale and use of aerial devices and ground audible devices in the City, and has further authorized the imposition of additional restrictions on the sale, possession and use of fireworks as provided herein.

**NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF ESPANOLA THAT:**

1. The sale or use of aerial devices and ground audible devices, including but not limited to aerial shell kit-reloadable tubes, aerial spinners, helicopters, mines, missile-type rockets, multiple tube devices, roman candles, shells, stick-type rockets, chasers and firecrackers, as those terms are defined in Section 60-2C-2, NMSA 1978, is hereby **PROHIBITED** on all lands, public or private, within the City.

2. The use of ground and hand-held sparkling devices, including cone fountains, crackling devices, cylindrical fountains, flitter sparklers, ground spinners, illuminating torches and wheels, as those terms are defined in Section 60-2C-2, NMSA 1978, is **PERMITTED ONLY IF:**

(a) the use is within a space having an area of at least four hundred (400) square feet, which space is paved or entirely barren of vegetation, and the ground or hand-held sparkling device is used or placed at least five (5) feet from the perimeter of the paved or barren area; **AND**

(b) there is an operable garden hose or similar device within reach of the area where the fireworks are used, capable of providing water at a rate of at least four (4) gallons per minute for a continuous period of at least ten (10) minutes.

3. The use of display fireworks, as defined in Section 60-2D-2, NMSA 1978, is **PROHIBITED**.

4. The possession of fireworks of all kinds, including ground and hand-held sparkling devices, whether or not legally acquired and whether or not intended for immediate use, is **PROHIBITED** within the Española Bosque area and on all lands owned by the City, except only for the transport of legally acquired fireworks within enclosed vehicles on public roads of the City.

5. Violation of any provision of this Resolution shall be deemed a violation of Chapter 16, Article III of the Code of Ordinances, and shall be punishable in accordance with Sections 16-58 and 1-6 of that Code. The officers of the City, including but not limited to police officers and fire officials, shall have authority to enforce the terms of this Resolution and to take any and all actions necessary to ensure compliance with it, including, without limitation, the confiscation and destruction of any fireworks found in the possession of any individual or entity in violation of this Resolution, or being used by any individual or entity in violation of this Resolution, and the charging of any such individual or entity for imposition of criminal penalties, if appropriate, in accordance with the Code of Ordinances of the City.

6. This Resolution and the terms hereof shall be effective **IMMEDIATELY** upon the adoption of this Resolution by the Governing Body and its posting on the City website, and shall remain in effect until September 30,

2018, unless terminated by affirmative action of the Governing Body determining that the conditions giving rise to the need for restrictions on the sale and use of fireworks.

**SEVERABILITY CLAUSE:** Should any section, paragraph, clause or provision of this Resolution be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution. The Governing Body of the City of Española hereby declares that it would have passed this Resolution and each section, subsection, sentence, clause, word or phrase thereof irrespective of any one or more sections, subsections, sentences, clauses, words or phrases being declared unconstitutional or otherwise invalid.

**PASSED APPROVED AND ADOPTED BY THE GOVERNING BODY OF THE CITY OF ESPAÑOLA, NEW MEXICO DURING ITS PUBLIC MEETING, THIS 29<sup>TH</sup> DAY OF MAY 2018.**

  
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Javier E. Sanchez, Mayor

Attest:

  
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Melissa Velasquez, Interim City Clerk

