

## Chapter 200. Fireworks

### § 200-5. Prohibited acts; permissible fireworks; prohibited fireworks; permissible dates for sale.

- A. Within the unincorporated areas of Doña Ana County, New Mexico, it shall be unlawful for any individual, firm, partnership, corporation, or association to sell or offer for sale at retail, or use any fireworks other than permissible fireworks, as defined and identified in the Fireworks Licensing and Safety Act, NMSA § 60-2C-1 et seq., as amended, and in this chapter.
- B. Within the unincorporated areas of Doña Ana County, permissible fireworks are ground and hand-held sparkling devices, including:
- (1) Cone fountains.
  - (2) Crackling devices.
  - (3) Cylindrical fountains.
  - (4) Flitter sparklers.
  - (5) Ground spinners.
  - (6) Illuminating torches.
  - (7) Wheels.
- C. The following types of fireworks are nonpermissible fireworks, and their use is prohibited within the unincorporated areas of Doña Ana County:
- (1) All fireworks prohibited under the New Mexico Fireworks Safety Act.
  - (2) 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.

(i) Stick-type rockets.

(3) All ground audible devices, including:

(a) Chasers.

(b) Firecrackers.

D. Possession and sale of aerial and ground audible devices by specialty retailers.

(1) Notwithstanding the prohibitions contained in § **200-5A, C and D**, aerial and ground audible devices may be possessed for retail sale, offered for sale at retail, and sold by specialty retailers to non-Doña Ana County residents in conformity with the requirements of this chapter; however, such aerial and ground audible devices may not be used by any individual, firm, partnership, corporation or other entity within the unincorporated areas of Doña Ana County. Additionally possession and sales of aerial and ground audible devices shall be limited to specialty retailers whose permanent retail location is located within 1/4 mile of a federal interstate highway access ramp and at least 1/4 of a mile from any other specialty retailer that existed at the time this chapter is adopted and at least 1,000 feet from any municipality.

(2) Purpose. The purpose of the subsection is to allow limited sales of certain fireworks by specialty retailers. Existing specialty retailers have invested in physical facilities specifically designed for the storage and sale of fireworks, including fireworks that are not permissible fireworks under this chapter, and are currently employing County residents and paying County taxes. Sales by specialty retailers located along federal interstate highways, whose primary business is tourism, to non-Doña Ana County residents of otherwise nonpermissible fireworks will have minimal negative impacts on the residents of Doña Ana County. Additional persons shall be allowed to become licensed as specialty retailers, having knowledge of the restrictions under this chapter, provided that they are at least 1/4 of a mile from an existing specialty retailer and 1,000 feet from any municipality as provided in Subsection **D(1)** of this section. The purpose of the distance requirement between specialty retailers and municipalities is to protect the health, safety and welfare of the residents of Doña Ana County in the event of an unforeseen incident at a specialty retailer involving the fireworks.

E. Permissible fireworks may be sold at retail in the unincorporated areas of Doña Ana County, New Mexico, 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, and Cinco de Mayo (May 5) of each year, except that permissible fireworks may be sold all year in permanent retail stores whose primary business is tourism. Specialty retailers may sell aerial and ground audible devices to non-Doña Ana County resident throughout the year in conformity with the requirements of this chapter.

F. Notwithstanding the prohibitions contained in § **200-5A and C**, aerial and ground audible devices may be possessed in the unincorporated areas of Doña Ana County by specialty retailers for the purpose of distributing such fireworks to one or more retail or specialty retailer locations not within the unincorporated areas of Doña Ana County.

[1] *NOTE: Ordinance No. 289-2017 prohibited the possession for sale all fireworks prohibited under the New Mexico Fireworks Safety Act, all aerial devices and ground audible devices. The Third Judicial District Court of New Mexico ruled in the Mr. W Fireworks, Inc. v. Board of Commissioners of Dona Ana County, New Mexico, Cause No. D-307-CV-201801434, that portions of § 200-5A and C prohibiting "possession" of ground audible and aerial devices conflicted with state law and therefore are null and void. Reference to "possession for sale" and "possession" in § 200-5A and C have therefore been removed.*