

June 13, 2012
Agenda
1:30 P.M. Emergency Meeting
Valencia County Commission Chambers
444 Luna Avenue
Los Lunas, NM 87031

Board of County Commissioners
Georgia Otero-Kirkham, Chair District II
Mary J. Andersen, Vice-Chair District I
Lawrence R. Romero District III
Ron Gentry District IV
Donald E. Holliday District V

A M E N D E D (8:45 am, 8-16-11)

- 1) Call Meeting to Order
- 2) Pledge of Allegiance
- 3) Approval of Agenda

ACTION ITEM(S)

- 4) Valencia County Emergency Ordinance 2012-_____ and Proclamation Restricting the Sale and Use of Fireworks in the Unincorporated Areas of Valencia County: **Board of County Commissioners**

PUBLIC COMMENT:

Please sign up on the sheet located just outside the Commission chambers. The Board will allow each member of the public wishing to address the Board a full and complete opportunity to address the Commission

NEXT COMMISSION MEETING:

- ♦ June 15, 2012 - Canvassing Meeting @ **3:00 P.M.**
Valencia County Commission Board Room 444 Luna Ave. LL, NM

ADJOURN:

If you are an individual with a disability who is in need of a reader, amplifier, qualified sign language interpreter, or any other form of auxiliary aid or service to attend or participate in the hearing or meeting, please contact the Valencia County Manager's Office at the Valencia County Courthouse, Los Lunas, New Mexico, (505) 866-2014 at least one week prior to the meeting or as soon as possible. Public documents, including the agenda and minutes, can be provided in various accessible formats. Please contact the Valencia County Manager's Office at the old Valencia County Courthouse if a summary or other type of accessible format is needed.

VALENCIA COUNTY BOARD OF COMMISSIONERS

EMERGENCY MEETING

JUNE 13, 2012

PRESENT	ABSENT
Donald E. Holliday, Chairman	
Georgia Otero-Kirkham, Vice-Chair	
	Lawrence R. Romero, Member
	Ron Gentry, Member
Mary J. Andersen Member	
Bruce Swingle, County Manager	
Dave Pato, County Attorney	Adren Nance, County Attorney
Sally Perea, County Clerk	
Press and Public	

1) The meeting was called to order by Chairman Holliday at 1:52 P.M.

2) Chairman Holliday led the Pledge of Allegiance.

Chairman Holliday said because of the severe drought throughout the State of New Mexico, Governor Susana Martinez has requested that the commission hold this emergency meeting in order to establish an ordinance and proclamation restricting the sale and use of fireworks in the unincorporated areas of Valencia County.

3) Approval of Agenda

Commissioner Otero-Kirkham moved for approval of the agenda. Seconded by Commissioner Andersen. Motion carried unanimously.

ACTION ITEM(S)

4) Valencia County Emergency Ordinance 2012-01 and Proclamation Restricting the Sale and Use of Fireworks in the Unincorporated Areas of Valencia County –Board of County Commissioners.

Valencia County Fire Chief Charles Eaton said as per the correspondence received from the governor's office which reiterates the state of conditions throughout the State of New Mexico with the drought concerns in regards to the fires that developed in the southwestern and northern portions of New Mexico and the most recent in Ruidoso. Reports received by the National Weather Service indicates that if we don't receive any moisture in the next few weeks we are going to reach extreme drought conditions. This would warrant immediate action to protect the life, property and safety of the community and would hope that the commission would act on safety parameters of those particular elements to protect our community.

Commissioner Otero-Kirkham asked if in the past have fireworks been the cause of fires and Chief Eaton said yes. Commissioner Otero-Kirkham made a motion to approve the Ordinance. But before the ordinance is approved Attorney Dave Pato stated statute requires there be a Public Hearing and the public have an opportunity to comment on the draft ordinance.

Chairman Holliday asked if any member of the public wished to comment on this. There were no comments from the audience.

Attorney Dave Pato said the timing is really the key here; you have to impose a restriction at least twenty days prior to the holiday which would be tomorrow and it can only remain in effect for thirty days. This is a very small window in which you can pass the proclamation and have it remain in effect to cover the holiday and we are within that ten day period. That's why the timing is so important.

Commissioner Andersen asked if the drought continues will we have to do this again and is it only done for thirty days at a time? Attorney Pato said If after thirty days the Board determines that they would like to continue to ban fireworks and then yes, we will have to pass an additional proclamation. Pursuant to Section 62C 8.1, it can only be effective for thirty days and succeeding proclamations can be issued but it does have to be redone and another Public Hearing has to be held to do that.

Chairman Holliday said he would leave it open on the advice of the Fire Chief whether it needs to be redone or not within thirty days. Chairman Holliday asked if any permits have been issued this year in the unincorporated areas of Valencia County.

Chief Eaton said this is the fifth consecutive year that no permits have been issued in the unincorporated areas of Valencia County. The Village of Bosque Farms has no permits issued. The Village of Los Lunas has eight permits issued, six are interior permits and two

are exterior permits. Belen has four permits issued, two interior and two exterior. The Town of Peralta has three permits which are all exterior. Tonight the Town of Peralta will be considering the same proclamation that the county is considering at this time. The other three municipalities have ordinances that govern the action that the county is considering today. So if the Town of Peralta follows through tonight all the municipalities will be consistent on the ban throughout the county.

Mr. Pato said we also have an ordinance in this county relating to this; the problem is that the statutory scheme requires that these proclamations and these bans be done only for a period of thirty days. So there's a question as to whether or not the ordinance really is enforceable with respect to anyone who's going to violate that ordinance. So this proclamation ensures that anyone that violates this ordinance can be held accountable for that violation, whereas for the ordinance they might have a defense with a respect to that, that's why this was so important to do. The ordinance also prohibits from banning certain fireworks.

Chairman Holliday asked if a notification as to what can be sold will be advertised in the local paper as the public needs to be educated on this. Mr. Pato said it's up to the commission as to whether or not direct the county manager to advertise with the local paper as to what has been granted.

Chairman Holliday said he along with the other commissioners would direct the county manager to go ahead and get together with Chief Eaton to place an ad in the local paper to make the public aware as to what's allowed and what isn't as this is a safety issue that needs to be taken very seriously.

Chief Eaton said the Village of Los Lunas has made arrangements with the county to use the county facilities and will continue to have the professional fireworks display and are free to the public.

Commissioner Holliday determined that this is an emergency. There being no public comment Commissioner Otero-Kirkham made a motion to approve the Ordinance.

Seconded by Commissioner Andersen. Motion carried unanimously.

County Clerk Sally Perea announced Ordinance 2012-01. (See Exhibit A)

NEXT COMMISSION MEETING:

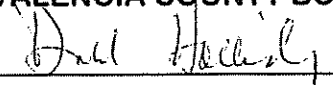
June 15, 2012 – Canvassing Meeting at 3:00 P.M., Valencia County Commission Board Room, 444 Luna Ave., Los Lunas, NM.

11) Adjournment


Commissioner Andersen moved for adjournment. Seconded by Commissioner Otero-Kirkham. Motion carried unanimously. TIME: 2:08 P.M.

NOTE: All proposals, documents, items, etc., pertaining to items on the agenda of the June 13, 2012 Emergency Meeting (presented to the Board of County Commissioners) are attached in consecutive order as stated in these minutes.


VALENCIA COUNTY BOARD OF COMMISSIONERS



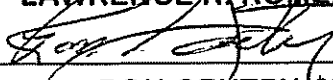
DONALD E. HOLLIDAY, CHAIRMAN




GEORGIA OTERO-KIRKHAM, VICE-CHAIR



LAWRENCE R. ROMERO, MEMBER



RON GENTRY, MEMBER



MARY J. ANDERSEN, MEMBER

ATTEST:



SALLY PEREA, COUNTY CLERK

6-27-2012

DATE

VALENCIA COUNTY
EMERGENCY ORDINANCE 2012-__01__ AND PROCLAMATION
RESTRICTING THE SALE AND USE OF FIREWORKS
IN THE UNINCORPORATED AREAS OF VALENCIA COUNTY

WHEREAS, pursuant to NMSA 1978, Section 60-2c-7 and Section 60-2c-8.1 (E) (1999) the Board of County Commissioners held a public hearing on June 13, 2012 at 1:30 p.m. in the Valencia County Administration Building located at 444 Luna Avenue, Los Lunas, New Mexico 87031, to consider imposing restrictions on the sale and use of fireworks; and,

WHEREAS, NMSA 1978, Section 3-18-1 (1972) provides that municipalities, and also counties pursuant to NMSA 1978, Section 4-37-1 (1995), 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 4-37-1 *et seq.* provides that counties may adopt ordinances, not inconsistent with statutory or constitutional limitations placed on counties, 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 county and its inhabitants; and,

WHEREAS, NMSA 1978, Section 4-37-7 (1975) eliminates the general ordinance publication requirement for ordinances “dealing with an emergency declared by the board of county commissioners to be an immediate danger to the public health, safety and welfare of the county,”

WHEREAS, the danger of brush fires, grass fires, forest fires and structure fires is extremely high in the State of New Mexico and especially Valencia County and the surrounding jurisdictions; and,

WHEREAS, current fire conditions such as relative humidity, weather and fuel content and conditions are extremely high in Valencia County; and,

WHEREAS, the probability of ignition of material and fire spread is extremely high in Valencia County; and,

WHEREAS, the Board of County Commissioners finds, based upon current drought indices published by the national weather service and other information supplied by the United States forest service and the New Mexico State Forestry, that severe drought conditions affect the unincorporated areas of Valencia County; and,

WHEREAS, the Board of County Commissioners finds that fireworks restrictions should be imposed within the unincorporated areas of Valencia County; and,

WHEREAS, the possibility of extreme fire situations will severely tax current local, state and federal resources; and,

WHEREAS, the Board of County Commissioners finds that there exists an immediate danger to the public health, safety, and welfare of Valencia County.

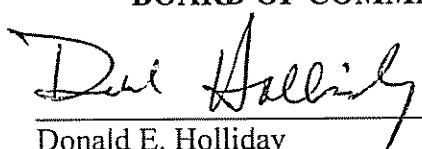
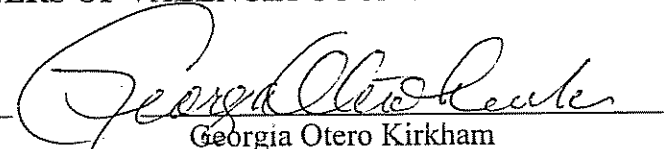
NOW THEREFORE, BE IT ORDAINED AND PROCLAIMED BY THE BOARD OF COUNTY COMMISSIONERS, THAT:

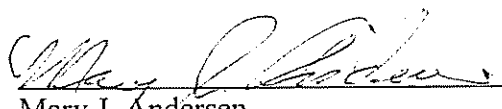
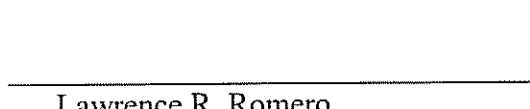
- Section 1. The Board of County Commissioners hereby declares that Valencia County is suffering from extremely or serious drought conditions and high fire hazards represent a significant immediately threat to the peace, safety, health and welfare of Valencia County.
- Section 2. For purposes of this Ordinance, 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 includes but is not limited to the definition of the “fireworks” provided in NMSA 1978, Section 60-2c-2 (2007)
- Section 3. Pursuant to NMSA 1978, Section 60-2C-7 (2007), the following types of fireworks are banned from sale and use within the unincorporated areas of Valencia County: aerial and ground audible devices.
- Section 4. Pursuant to NMSA 1978, Section 60-2C-8.1 (F)(2)(c)(1999), the Board of County Commissioners gives itself the power to and does hereby ban the sale or use of display fireworks. (“Display Fireworks” means devices primarily intended for commercial displays designed to produce visible or audible effects by combustion, deflagration or detonation, including salutes containing more than one hundred thirty milligrams of explosive composition; aerial shells containing more than forty grams of chemical composition exclusive of lift charge; and other exhibition display items that exceed the limits for permissible fireworks.)
- Section 5. Pursuant to NMSA 1978, Section 60-2C-8.1 (F)(2)(a)(1999), the Board of County Commissioners 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 unincorporated areas of Valencia County 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 6. Except as prohibited by this Ordinance, the use of all other fireworks of any kind or description are permitted within the unincorporated areas of Valencia County.

- Section 7. **EFFECTIVE DATE AND DURATION**
Pursuant to NMSA 1978, Section 4-37-9 (C) (1997), the Board of County Commissioners hereby declares it is necessary for the public peace, health, safety and welfare that this Ordinance take effect immediately after passage. This Ordinance shall be rescinded when favorable conditions exist. Accordingly, this Ordinance shall become effective immediately on its passage, recordation and authentication, as provided by NMSA 1978, Section 4-37-9 (C) (1997).
- Section 8. **ENFORCEMENT**
The Sheriff's Department of Valencia County and the Valencia County Fire Department, and any of their agents, shall have the authority to enforce this Ordinance.
- Section 9. **PENALTIES**
Any violation of this Ordinance shall be deemed a misdemeanor and punishable by a fine of not more than three hundred dollars (\$300) and/or up to 90 days in jail.

PROCLAIMED, ORDAINED, AND ADOPTED THIS 13th DAY OF JUNE, 2012.

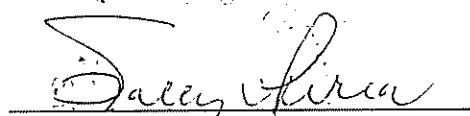
BOARD OF COMMISSIONERS OF VALENCIA COUNTY

	
Donald E. Holliday Chair, District V	Georgia Otero Kirkham Vice-Chair, District II

	
Mary J. Andersen Commissioner, District I	Lawrence R. Romero Commissioner, District III

Ron Gentry
Commissioner, District IV

Attest:


Sally Perea, County Clerk