

City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 9 Ordinance/Resolution# 14-193

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of June 2, 2014
(Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL

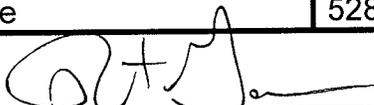
LEGISLATIVE

ADMINISTRATIVE

TITLE: A RESOLUTION AUTHORIZING THE ISSUANCE OF A PROCLAMATION DECLARING SEVERE OR EXTREME DROUGHT CONDITIONS AND IMPOSING RESTRICTIONS ON THE USE OF FIREWORKS WITHIN THE CITY LIMITS.

PURPOSE(S) OF ACTION:

Authorization to declare severe or extreme drought conditions and impose restrictions on the use of fireworks.

COUNCIL DISTRICT: ALL		
<u>Drafter/Staff Contact:</u> Ted Sweetser	<u>Department/Section:</u> Fire	<u>Phone:</u> 528-4150
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Southern New Mexico, to include the City of Las Cruces, is currently facing potential severe or extreme drought conditions. These conditions will create an increased risk of damage or loss of property due to fire. The unrestricted use of permissible fireworks during these drought conditions would magnify the potential fire risk, thereby creating an emergency and threat to the health, safety and welfare of residents of the City of Las Cruces if firework use is not further regulated.

NMSA 1978 60-2C-8.1 grants authority to municipalities to regulate the sale and use of fireworks during times of severe or extreme drought. In order to enact restrictions pursuant to the statute, the governing body must first conduct a public hearing to determine if drought conditions exist and if firework restrictions should be imposed. If it is determined there is a need for firework restrictions due to drought conditions, a proclamation must be issued.

The proclamation must be issued no less than 20 days prior to a holiday for which fireworks may be sold and shall explain the restrictions on the sale or use of fireworks. The proclamation is effective for 30 days and succeeding proclamations may be issued if conditions warrant. In the event drought conditions improve, and thereby reduce the risk associated with the sale and use of fireworks, the proclamation may be modified or rescinded within the 30 days through a meeting of the governing body.

(Continue on additional sheets as required)

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Proclamation.
3. Attachment "A", Las Cruces Municipal Code, Sec. 11-148.
4. Attachment "B", Governor's Letter.

SOURCE OF FUNDING:

Is this action already budgeted? N/A	Yes	<input type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from: _____
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
		<input type="checkbox"/>	Proposed funding is from fund balance in the Fund.
Does this action create any revenue? N/A	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: in the amount of \$ _____ for FY _____.
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will restrict the use of fireworks to areas that are paved, barren or that have a readily available water source.
2. Vote "No"; this will not restrict the use of fireworks beyond the current ordinance.
3. Vote to "Amend"; based on State law, it does not allow for much flexibility.
4. Vote to "Table"; this will delay taking any action until a future date, this could prevent implementation of restrictions based on State law timelines.

(Continue on additional sheets as required)

REFERENCE INFORMATION:

N/A

(Continue on additional sheets as required)

RESOLUTION NO. 14-193**A RESOLUTION AUTHORIZING THE ISSUANCE OF A PROCLAMATION DECLARING SEVERE OR EXTREME DROUGHT CONDITIONS AND IMPOSING RESTRICTIONS ON THE USE OF FIREWORKS WITHIN THE CITY LIMITS.**

The City Council is informed that:

WHEREAS, the Fire Department is responsible for fire protection within the City of Las Cruces; and

WHEREAS, southern New Mexico, to include the City of Las Cruces, is experiencing severe drought conditions, as issued by the National Weather Service; and

WHEREAS, these conditions have created an increased risk of damage or loss of property due to fire; and

WHEREAS, the unrestricted use of permissible fireworks during these drought conditions would magnify the potential fire risk, thereby creating an emergency and threat to the health, safety and welfare of residents of the City of Las Cruces; and

WHEREAS, NMSA 1978 60-2C-8.1 grants authority to municipalities to regulate the sale and use of fireworks during times of severe or extreme drought; and

WHEREAS, on June 2, 2014 City Council held a public hearing and determined that severe drought conditions do exist; and

WHEREAS, on June 2, 2014 City Council passed a resolution authorizing the issuance of a proclamation which imposed additional restrictions on the use of fireworks; and

WHEREAS, on July 2, 2014 the current proclamation will expire.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the proclamation as shown in Exhibit "A", attached hereto and made part of this resolution, be issued for a period of thirty (30) days from June 2, 2014, unless a subsequent proclamation is issued by the City Council.

(II)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this ____ day of _____, 20__.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:



City Attorney

VOTE:

Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Smith: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Levatino: _____

PROCLAMATION

WHEREAS, the City Council is the governing body of the City of Las Cruces; and

WHEREAS, the City Council has obtained information and forecasts from the National Weather Service concerning drought indices; and

WHEREAS, the City Council of the City of Las Cruces has obtained information and forecasts from the United States Forest Service concerning drought indices; and

WHEREAS, the City Council held a public hearing on June 2, 2014, to determine whether the City of Las Cruces is affected by severe or extreme drought conditions and whether fireworks restrictions should be imposed within the municipal boundaries of the City; and

WHEREAS, the City Council made certain findings of fact based upon information provided during the public hearing and said findings are included in the resolution passed at the hearing authorizing this Proclamation; and

WHEREAS, the findings of the City Council was that the City of Las Cruces is affected by extreme or severe drought conditions based upon current drought indices published by the National Weather Service and other information supplied by the United States Forest Service.

NOW, THEREFORE, be it Proclaimed by the Governing Body of the City of Las Cruces, New Mexico;

(I)

THAT severe or extreme drought conditions exist within the municipal boundaries of the City of Las Cruces.

(II)

THAT permissible fireworks are defined in Las Cruces Ordinance No. 2226 and do not include aerial devices, ground audible devices, stick type rockets.

(III)

THAT the Governing Body is authorized to limit the use of otherwise permissible fireworks, including ground and hand held sparkling devices, cone fountains, crackling devices, cylindrical fountains, flitter sparklers, ground spinner, illuminating torches, toy smoking devices and wheels, to areas within the municipal boundaries that are paved, barren, or areas that have a readily accessible source of water.

(IV)

THAT the Governing Body, having consulted with the state forester, is authorized to and

can ban the use of all fireworks within areas that are covered wholly or in part by timber, brush or native grass.

(V)

THAT this Proclamation is effective for a period for thirty days from this date unless a subsequent Proclamation is issued by the Governing Body.

APPROVED THIS 2nd DAY OF JUNE, 2014

Mayor

Date

ATTEST:

City Clerk

(SEAL)

Las Cruces, New Mexico, Code of Ordinances >> PART II - MUNICIPAL CODE >> Chapter 11 - FIRE PREVENTION AND PROTECTION >> ARTICLE III. FIREWORKS >>

Sec. 11-148. Drought conditions—Fireworks restrictions. 

(a)

If extreme or severe drought conditions exist or potentially exist, the city council may hold a hearing and pass a resolution to issue a proclamation that would impose fireworks restrictions within the city limits.

(b)

The findings of the city council, in passing the resolution, shall be based on current drought indices published by the National Weather Service and any other relevant information supplied by the United States Forest Service.

(c)

Pursuant to the hearing, the city council shall issue a proclamation declaring extreme or severe drought conditions exist within the city limits.

(d)

The proclamation shall be issued no less than 20 days prior to a holiday for which fireworks may be sold, shall be effective for 30 days, and said proclamation may be modified or rescinded within the 30-day period by the city council upon conducting an emergency hearing to determine if weather conditions have improved.



State of New Mexico

Susana Martinez
Governor

May 12, 2014

Dear Local Leader:

I am writing to you about an urgent matter. The possibility of high fire danger, drought conditions, high winds, and warm temperatures will likely lead to another summer of increased wildfire risk in many parts of New Mexico. In these conditions, we cannot afford to have even one careless, human-caused fire.

Today, I am urging municipalities and counties to hold meetings throughout the coming weeks to discuss and potentially vote on local restrictions or bans on the use of fireworks.

Through the Fireworks Licensing and Safety Act, local jurisdictions are provided with the ability to impose restrictions on the use of fireworks and ban of certain types of fireworks during times of extreme and severe drought. NMSA 1978, §60-2C-1 et seq. In order to do so, the law specifies that the local authority must hold a public hearing and issue a proclamation to ban the use of fireworks 20 days prior to a holiday for which fireworks may be sold. NMSA 1978, §60-2C-8.1. With the Fourth of July holiday approaching, the time for this important discussion is now.

Similar to my efforts since the 2011 Special Session, I will continue to push vigorously for legislation that establishes a mechanism by which municipalities, counties, and the state can tailor a temporary and localized ban on the sale and use of fireworks during dangerous fire conditions while still allowing for professional firework displays to be safely executed during festive holidays, such as the Fourth of July. I urge you and your respective representatives to join me in this effort.

Over the past three and a half years, I have travelled the state, and witnessed hundreds of homes and countless thousands of acres destroyed by wildfires in New Mexico. In

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order to take the necessary steps to consider restrictions on the use of fireworks, I urge you to please hold this emergency meeting no later than Friday, June 13th, and take appropriate action. Given the fire danger that may be present in and around your community, it is important not to miss this deadline. As leaders, it is our duty to do everything within our power to keep New Mexicans, and their families and homes, safe. I know we can work together to reduce human-caused fires during this time of increased fire danger.

Sincerely,

A handwritten signature in black ink that reads "Martinez". The signature is written in a cursive, flowing style.

Susana Martinez
Governor