ORDINANCE NO. 2010 - 02

AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE TOWN OF GUADALUPE, ARIZONA, AMENDING CHAPTER 12 OF THE TOWN CODE OF GUADALUPE AND ADDING NEW REGULATIONS FOR THE USE OF FIREWORKS AND DECLARING AN EMERGENCY.

WHEREAS, the Mayor and Council are responsible for the health, safety and welfare of the Town of Guadalupe and its residents, and

WHEREAS, the Town of Guadalupe is located in an area with a dry climate where there is a danger of fire with the use of fireworks which could pose a significant risk of harm to the Town and its residents.

NOW, THEEFORE, BE IT ORDAINED by the Council of the Town of Guadalupe as follows:

1. Section 12-1-4 of Article 12-1 of Chapter 12 entitled *Explosives* is hereby amended as follows:

   The word "fireworks" shall be deleted and the reference to the "Chief of Police" shall be changed to "Fire Chief or his Designee". Section 12-1-4 *Explosives* shall now read as follows:

   Section 12-1-4 Explosives
   It is unlawful for any person within the limits of the Town to blast or use gunpowder or other explosives without a permit from the Fire Chief in writing.

2. Chapter 12 is hereby amended to add a new Article 12-6 as set forth hereafter.

   ARTICLE 12–6

   Section 12-6-1 – Definitions.

   (A) The following words, terms and phrases, when used in this article, have the meanings ascribed to them in this section, except where the context clearly indicates a difference meaning:

   (1) *Consumer firework* means those fireworks defined by Arizona Revised Statutes Section 36-1601.

   (2) *Display firework* means those fireworks defined by Arizona Revised Statutes Section 36-1601.

   (3) *Novelty items* means federally deregulated novelty items that are known as snappers, snap caps, party poppers, glow works, snakes, toy smoke devices, sparklers, and certain toys as defined in Arizona Revised Statutes Section 36-1601.

(4) *Permissible consumer fireworks* means those fireworks as defined by Arizona Revised Statute Section 36-1601 that may be sold within the Town even though the use of those items within Town limits has been prohibited.

(5) *Supervised public display* means a monitored performance of display fireworks open to the public and authorized by permit by the Fire Chief or his designee.

Section 12-6-2 – Fireworks Prohibited; exceptions

(A) The use, discharge, or ignition of fireworks within the Town limits of Guadalupe is prohibited.

(B) Nothing in this Section shall be construed to prohibit the use, discharge or ignition of novelty items as defined by the Arizona Revised Statutes Section 36-1601.

(C) The Guadalupe Fire Chief or his designee upon proper application may issue a permit to allow a properly supervised public display of fireworks. In order to grant such a permit, the Fire Chief or his designee must impose all conditions required by the Arizona Revised Statutes including but not limited to Section 36-1603(B) and 36-1604. Every such public display of fireworks shall be of such character and so located, discharged, or fired only after proper inspection and in a manner that does not endanger persons, animals, or property. A permit shall not be issued, and may be revoked, during times of high winds or other hazardous conditions.

(D) Any person, organization, or group receiving a permit authorized by Subsection C above shall be responsible for any and all expenses and the costs of any emergency response that is required as the result of such use, discharge or ignition of fireworks.

Section 12-6-3 – Sale of Fireworks

(A) No person shall sell or permit or authorize the sale of permissible consumer fireworks to a person under sixteen years of age as prohibited by Arizona Revised Statute 36-1609(B).

(B) No person shall sell, permit or authorize the sale or transfer of consumer fireworks in violation of Arizona law.

(C) Anyone violating any of the provisions of this article is guilty of a Class 3 Misdemeanor as set forth in Arizona Revised Statute 36-1608.

(D) At the time of sentencing of anyone convicted of violating this article, the Court shall order the Defendant to make restitution to any victim for any injury, loss or property damage directly resulting from the violation of this article. For the purposes of this article, the word "victim" includes the Town of Guadalupe, and the Court may order the Defendant to pay restitution to the Town of Guadalupe for the cost of any emergency response caused by a violation of this article.

(E) For the purposes of this article:

(1) "Expenses of an emergency response" means reasonable costs directly incurred by public agencies, for-profit entities or not-for-profit entities that make an appropriate emergency response to an incident.
(2) "Reasonable Costs" may include the costs of providing police, fire fighting, rescue and emergency medical services at the scene of an incident and the salaries of the persons who respond to the incident.
(3) The Court shall consider the requirements of Arizona Revised Statutes §§13-804 *et seq.* when determining the amount of any restitution the Defendant is ordered to pay.

3. Any Town police officer, deputy, marshal or the Town Attorney may issue criminal complaints to enforce this article.

4. Should any provision in this Ordinance be ruled invalid by any Court of Competent Jurisdiction, it is the intention of the Town Council that the balance of the Ordinance not found to be invalid be given full force and effect.

5. This measure being necessary for the immediate protection of the peace, health and safety of the Town of Guadalupe, an emergency is declared to exist and this measure shall be immediately effective upon its passage by an affirmative vote of at least six (6) of the seven (7) members of the Guadalupe Town Council. If this matter is approved by a majority of less than six Councilmembers, it shall not take effect immediately but instead shall become operative within the time set by A.R.S.§19-142(B).

PASSED and ADOPTED by 6 members of the Guadalupe Town Council, of which 6 were in attendance, this 10 day of November, 2010.

X The Emergency Clause is in effect.

_____ The Emergency Clause is not in effect.

Town of Guadalupe,
an Arizona Municipal Corporation

ATTEST:

Town Clerk

Mayor

APPROVED AS TO FORM:

Town Attorney