

TRIBAL CODE

CHAPTER 51

AN ORDINANCE REGULATING THE SALE AND POSSESSION OF FIREWORKS

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HISTORY NOTES:

Current Ordinance

Adopted June 9 1996, Resolution No. 194(86). Effective as to members and tribal children on June 9, 1986. Effective as to nonmembers September 19, 1986.

Amendments

Resolution No. 212(86), amends Section 51.111(3) and Section 51.112 June 16, 1986.

Resolution No. 185(87), June 8, 1987, amends Section 51.114, Section 51.117, Section 51.118, and Section 51.119.

Resolution No. 218(96), June 10, 1996, amends Section 51.112.

Resolution No. 186(00), April 14, 2000, amends Section 51.108(4).

Resolution No. 123(07), June 5, 2007 added Section 51.108(5), Section 51.111(4), and Section 51.112(2).

Resolution No. 116(08), July 28, 2008 amends Section 51.101(2), Section 51.104, and Section 51.117(2).

TRIBAL CODE

CHAPTER 51

AN ORDINANCE REGULATING THE SALE AND POSSESSION OF
FIREWORKS

51.101 Definitions.

As used in this ordinance, the following terms shall have the meanings provided below:

(1) “Fireworks” means anything manufactured, processed or packaged for exploding, emitting sparks or combustion which does not have another common use, but does not include any of the following:

- (a) Fuel or lubricant;
- (b) A firearm cartridge or shotgun shell;
- (c) A flare used or possessed or sold for use as signal in an emergency or in the operation of a railway, aircraft, watercraft, or motor vehicle;
- (d) A match, cigarette lighter, stove, furnace, candle, lantern or space heater;
- (e) A toy snake which contains no mercury;
- (f) A model rocket engine;
- (g) Tobacco and tobacco product;
- (h) A cap containing not more than one-quarter grain of explosive mixture, if the cap is used or possessed or sold for use in a device which prevents direct bodily contact with a cap when it is in place for explosion;

(i) A sparkler on a wire or wood stick not exceeding 36 inches in length or 0.25 inch in outside diameter which does not contain magnesium, chlorate or perchlorate;

(j) A device designed to produce an audible confetti or streamers and which contains less than one-quarter grain of explosive mixture;

(k) A device designed to produce an audible sound but not explode, spark, move or emit an external flame after ignition and which does not exceed 3 grams in total weight;

(l) A device which emits smoke with no external flame and does not leave the ground;

(m) A cylindrical fountain not exceeding 100 grams in total weight with an inside tube diameter not exceeding 0.75 inch, designed to sit on the ground and emit only sparks and smoke;

(n) A cone fountain not exceeding 75 grams in total weight designed to sit on the ground and emit only sparks and smoke.

(2) “Indian land” means that which is described in Article 1, Section 1, of the Tribal Constitution; as follows: “The territory of the Lac du Flambeau Band of Lake Superior Chippewa Indians of Wisconsin shall be all the land and water within the original confines of the Lac du Flambeau Reservation as defined pursuant to the Treaty dated September 30, 1854 (10 Stat., 1109) and to such other lands and waters that have been added or may hereafter be added thereto under law of the United States, except as otherwise provided by federal law.”

(3) “Member” means person enrolled in the Tribe.

(4) “Reservation” means the area within the external boundaries of the Lac du Flambeau Indian Reservation.

(5) “Tribe” means the Lac du Flambeau Band of Lake Superior Chippewa Indians.

(6) “Tribal Child” means a person under the age of 18 who is either:

(a) an enrolled member of the Tribe; or

(b) eligible for enrollment in the Tribe as of right; or

(c) the biological child of an enrolled member of the Tribe who is eligible for membership by adoption.

(7) “Tribal Court” means the Lac du Flambeau Tribal Court.

51.102 Purpose.

The purpose of this ordinance is to provide for the safety and welfare of reservation residents by regulating the use, possession, and sale of fireworks on Indian land.

51.103 Authority.

This ordinance is adopted pursuant to Article VI, Section 1(a), (j), (n) and (u) of the Tribal Constitution.

51.104 Effective Date.

This ordinance shall take effect upon its adoption by resolution by the Tribal Council.

54.105 Severability and Non-Liability.

(1) If any section, provision, or portion of this ordinance is adjudged to be unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall be affected thereby.

(2) The Tribe declares that there is no liability on the part of the Tribe, its agencies, agents, or employees for any damages which may occur as a result of reliance upon or conformance with this ordinance. The Tribe by the adoption of this ordinance does not waive its sovereign immunity in any respect.

51.106 Implied Consent.

Entry upon Indian land without permission of the Tribe is prohibited. Such permission when given is expressly conditioned upon the consent of the person entering such land to the jurisdiction of the Tribe for purposes of enforcing this ordinance. Entry made in violation of the provisions of this ordinance is made without consent. Any person who enters upon Indian land shall be deemed to have given consent to the jurisdiction of the Tribe for purposes of enforcing this ordinance.

51.107 Sale of Fireworks.

No person may sell or possess with intent to sell fireworks on Indian land without having a permit for said purposes issued by the Lac du Flambeau Tribal Council, or its designated agent.

51.108 Firework Sale Permit.

Any person who desires to engage in the sale of fireworks on Indian land shall apply to the Lac du Flambeau Tribal Council for a permit to do so, utilizing the form provided for said purposes, which shall specify the following:

(1) The identity of the applicant and all employees, agents, or representatives who shall engage in the sale or activities under the applicant's permit;

(2) The location of the sale or activities and, if different, the location of any storage facility of fireworks under the applicant's control;

(3) The type and class of fireworks for which sale is contemplated; and

(4) A permit processing fee of Two Hundred Dollars (\$200.00).

(5) A policy of liability insurance for the payment of all claims that may arise by reason of injuries to person or property from the handling, use or discharge of fireworks under the permit.

51.109 Term of Permit.

No permit issued under this ordinance shall be valid for a period of longer than 120 days.

51.110 Display of Permit.

Any person issued a permit by the Tribe for the sale of any type or class of fireworks shall display said permit in a prominent location at the authorized place of sale.

51.111 Sale Restrictions.

No person shall sell or possess with intent to sell fireworks if:

(1) The type of class of fireworks is subject to regulation and permitting under 18 U.S.C. s. 841, et seq.; or

(2) The purchase of any fireworks is sought by a person under the age of 18 years.

(3) The sale location is in a building or other structure which is not used solely for commercial purposes.

(4) At the sale location there shall be a minimum of four (4) fire extinguishers placed in readily accessible locations within the sale building or structure.

51.112 Storage of Fireworks for Sale.

No person who sells or possesses fireworks with the intent to sell shall store them in any of the following manners:

(1) In a building occupied for residential purposes or in any structure located on the premises of a residence;

(2) Within 1000 yards of any building occupied for business or residential purposes; [section deleted by Resolution No. 123(07) on June 5, 2007]

(3) In amounts greater than what can be expected to be sold at that particular location during the period of the permit;

(4) At a location for which a permit has not been issued.

51.113 Use of Fireworks by Organizations.

Any and all classes and types of fireworks may be purchased, possessed and used by any of the following:

(1) The Tribe any subdivision thereof authorized to use fireworks by Lac du Flambeau Tribal Council;

(2) A public authority;

(3) A fair association;

(4) An amusement park;

(5) A park board;

(6) A civic organization;

(7) A group of individuals.

51.114 Use or Possession of Fireworks by Minors.

(1) No tribal child shall use or be in possession of any fireworks within the reservation.

(2) No person under the age of 18 who is not a tribal child shall use or be in possession of any fireworks on Indian land within the reservation.

51.115 Fireworks Display.

No entity shall advertise or undertake to engage in a display of fireworks open to members of the public without obtaining prior thereto, and at a minimum of 48 hours in advance thereof, a fireworks display permit issued by the Tribe.

51.116 Display Permit and Application.

Any entity for which a display permit is required under this ordinance shall make written application therefor to the Lac du Flambeau Tribal Council, on a form provided for said purposes, and shall specify:

(1) The full name of the applicant, and names of the persons who shall set up and set off any fireworks in a display;

(2) The date of the proposed display;

(3) The location of the display; and

(4) The amount, if any, of an admission charge to the display.

51.117 Fireworks Use in Downtown Area.

(1) No person shall discharge or release any firework in the downtown area of the reservation, unless such use is authorized by a display permit issued under Section 51.116.

(2) As used in this ordinance, the downtown area includes all commercial and governmental properties along Peace Pipe Road from the Flame property east to the intersection of Highway 47, the area north of Peace Pipe road to WaSwaGon Street between the Laundromat and the Post Office building, the area south of Peace Pipe Road extending to Lake Interlaken, and the area along Simpson Lane extending to the intersection of State Highway 47. Said area also includes Peace Pipe Road, Simpson Lane, WaSwaGon Street, the rights of way for said roads, and the public sidewalks and parking areas adjacent to said Roads.

51.118 Misuse of Fireworks.

No person shall use any fireworks in a manner which endangers, or is likely to endanger, the safety or property of any other person.

51.119 Parental Liability.

A parent or legal guardian of a tribal child who consents to the use of fireworks by said child is liable for damages caused by the child's use of fireworks.

51.120 Penalties.

Any person who violates the provisions of this ordinance shall be subject to the following penalties:

(1) For a violation of Section 51.107, a civil remedial money penalty of \$250 to \$500.

(2) For a violation of Section 51.108, a civil remedial money penalty of \$20 to \$500.

(3) For a violation of Section 51.113, a civil remedial money penalty of \$75 to \$500.

(4) Civil remedial forfeiture of any property used in the commission of a violation of this ordinance.

(5) Fireworks stored, sold, possessed or used in violation of this ordinance shall be seized. The fireworks shall be destroyed after conviction for a violation.

51.121 Other Penalties Authorized.

Use of fireworks by any person may also subject said person to liability or legal action for violation of the laws of the Tribe or of the State of Wisconsin concerning curfew, public disturbances, and damage to persons or property.

52.122 Court Costs.

Any person adjudicated by the Tribal Court as having violated this ordinance shall be liable for court costs in the amount of \$20.

51.123 Parties to a Violation.

(1) Whoever is concerned in the commission of a violation of this ordinance is a principal and may be charged with a violation although he or she did not directly commit it, and although the person who directly committed it has not been convicted of a violation.

(2) A person is concerned in the commission of a violation if the person:

- (a) Directly commits the violation;
- (b) Aids and abets the commission of it;
- (c) Is a party to a conspiracy with another to commit it or advises, hires, or counsels or otherwise procures another to commit it.

51.124 Enforcement Officers.

Any tribal law enforcement officer may enforce the provisions of this ordinance.

51.125 Jurisdiction.

Jurisdiction is hereby conferred upon the tribal court over all matters related to enforcement of this ordinance.

51.126 Enforcement Procedure.

(1) Proceedings involving nonmembers or members age 14 or older shall be conducted in accordance with Chapter IV of the Tribal Court Code, Tribal Code Ch. 80; provided, that citations issued thereunder may be served by ordinary mail.

(2) Proceedings involving tribal children under the age of 14 shall be conducted in accordance with Chapter III of the Child Welfare Code, Tribal Code Ch. 31.