

SISSETON-WAHPETON SIOUX TRIBE

CHAPTER 46

FIREWORKS ORDINANCE

S. W. S. I. CODE

Amendment

New Adoption

Judicial Approved

06-06-84

Council Adopted

06-06-84

46-01-01 TITLE

This ordinance shall be known as the Sisseton-Wahpeton Sioux Tribe Fireworks Ordinance.

46-02-01 PURPOSE

This ordinance is enacted in order to provide for the safe and orderly use of fireworks within the Lake Traverse Reservation, and in other areas served by Tribal Businesses offering fireworks for sale, and in order to regulate the sale of fireworks for the welfare of all members of the Sisseton-Wahpeton Sioux Tribe.

46-03-01 DEFINITIONS

46-03-02 Fireworks - shall mean any device containing any combustible or explosive substance for the purpose of producing a visible or audible display of combustion, explosion, deflagration or detonation, but not including any firearms.

46-03-03 Fireworks Stand - shall mean an establishment at which fireworks are offered for retail sale.

46-03-04 License - shall mean the authorization issued by the Sisseton-Wahpeton Sioux Tribe under this ordinance to engage in the transport, possession, discharge or sale of fireworks.

46-03-05 Licensee - shall mean the person to whom a license has been issued under this ordinance.

46-03-06 Tribal Court - shall mean the Tribal Court or Court of Indian Offenses having civil jurisdiction on the Lake Traverse Reservation.

46-04-01 GENERAL PROHIBITION

It shall be unlawful for any person to transport, possess, discharge, sell, or offer for sale any fireworks within any area under the jurisdiction of the Sisseton-Wahpeton Sioux Tribe except as provided in this ordinance.

46-05-01 LICENSING

The sale, offer for sale, transport, or transfer of fireworks shall be unlawful when done by any person unless the person has a valid Tribal fireworks license.

- 46-05-02 Any person wishing to receive a Tribal Fireworks License shall apply to the Sisseton-Wahpeton Sioux Tribal Council. The application shall provide at least the following information.
1. Name
 2. Address
 3. Telephone number
 4. Where fireworks will be sold
 5. A complete inventory of fireworks to be sold
- 46-05-03 Licenses shall be issued by and at the sole discretion of the Tribal Council. Any person whose application is denied shall be notified of such action with a statement of the reasons for the denial.
- 46-05-04 A person whose application has been approved shall be issued a license upon the payment of the license fee of one hundred dollars (\$100.00).
- 46-05-05 No license shall be issued to any person unless he or she is an enrolled member of the Sisseton-Wahpeton Sioux Tribe and is at least eighteen (18) years of age.
- 46-05-06 This ordinance will permit any employees or agents of the licensee to sell fireworks for that license provided that licensee is responsible for all actions of his employees or agents.
- 46-06-01 **CONDITIONS OF THE LICENSE**
Licenses issued under this ordinance shall be effective for a one hundred and twenty (120) day period from the date of issuance and shall not create any vested rights in the licensee. Licenses may or may not be renewed at the sole discretion of the Tribal Council. Licenses shall not be transferable to any other person.
- 46-06-02 Failure of the licensee to abide by the requirements of this ordinance and any additional requirement imposed by the Tribal Council will constitute grounds for revocation of the licensee's Tribal Fireworks License.
- 46-07-01 **CERTAIN FIREWORKS TOTALLY PROHIBITED**
It shall be unlawful for anyone under the jurisdiction of the Sisseton-Wahpeton Sioux Tribe to transport, possess, discharge or offer for sale any of the following:
1. All fireworks devices, other than firecrackers, including kits and components intended to produce such fireworks not otherwise banned under the Act that do not comply with the applicable requirements of Section 46-08-01 of this ordinance except fireworks devices which meet all the following conditions:

- (a) The fireworks devices are distributed to farmers, ranchers, or growers through a wildlife management program administered by the U.S. Department of the Interior (or by equivalent State or Local government agencies); and,
 - (b) Such distribution is in response to a written application describing the wildlife management problem that requires use of such devices, is of a quantity no greater than required to control the problem described, and is where other means of control is unavailable or inadequate.
2. Firecrackers designed to produce audible effects, if the audible effect is produced by a charge of more than 50 milligrams (.772 grains) of pyrotechnic composition (not including firecrackers included as components or a rocket), aerial bombs, and devices that may be confused with candy or other foods such as "dragon eggs" and "cracker balls" (also known as ball-type caps). and including kits and components intended to produce such fireworks except such devices which meet all of the following conditions:
- (a) The fireworks devices are distributed to farmers, ranchers, or growers through a wildlife management program administered by the U.S. Department of the Interior (or equivalent State or Local Governmental Agencies); and,
 - (b) Such distribution is in response to a written application describing the wildlife management problem that requires use of such devices, is of a quantity no greater than required to control the problem described, and is where other means of control is unavailable or inadequate.

46-08-01 REQUIREMENTS FOR PERMITTED FIREWORKS

It shall be unlawful for anyone under the jurisdiction of the Sisseton-Wahpeton Sioux Tribe to transport, possess, discharge or offer for sale any fireworks which do not comply with each of the following requirements where applicable:

- 1. Fireworks devices shall not contain any of the following chemicals.
 - (a) Arsenic sulfide, arsenates, or arsenites.
 - (b) Boron
 - (c) Chlorates, except:
 - (1) In colored smoke mixture in which an equal amount of sodium bicarbonate is included.

- (2) In caps and party poppers
- (3) In those small items (such as ground spinners) wherein the total powder content does not exceed 4 grams of which not greater than 15 percent (or 600 milligrams is potassium, sodium, or barium chlorate:
- (d) Gallates or gallic acid
- (e) Magnesium (magnesium aluminum alloys, called magnalium, are permitted)
- (f) Mercury salts
- (g) Phosphorus (red and white), except that red phosphorous is permissible in caps and party poppers
- (h) Picrates or picric acid
- (i) Thiocyanates
- (j) Titanium, except in particle size greater than 100 mesh
- (k) Zirconium

2. Fuses

- (a) Fireworks devices that require a fuse shall:
 - (1) Utilize only a fuse that has been treated or coated in such a manner as to reduce the possibility of side ignition. Devices such as ground spinners that require a restricted orifice for proper thrust and contain less than 6 grams of pyrotechnic composition are exempted from Section 46-08-01, 2.
 - (2) The fuse shall be securely attached so that it will support either the weight of the fireworks device plus 8 ounces of dead weight or double the weight of the device, without separation from the fireworks device.

3. Bases - The base or bottom of fireworks devices that are operated in a standing upright position shall have the minimum horizontal dimension or the diameter of the base equal to at least one-third of the height of the device including any base or cap affixed thereto.

4. Pyrotechnic leakage - The pyrotechnic chamber in fireworks devices shall be sealed in a manner that prevents leakage of the pyrotechnic composition during shipping, handling, and normal operation.
5. Burnout and blowout - The pyrotechnic chamber in fireworks devices shall be constructed in a manner to allow functioning in a normal manner without burnout or blowout.
6. Handles and spikes
 - (a) Fireworks devices which are intended to be hand-held and are so labeled shall incorporate a handle at least 4 inches in length (see Section 46-08-02. Handles shall remain firmly attached during transportation, handling and full operation of the device, or shall consist of an integral section of the device at least four inches below the pyrotechnic chamber.
 - (b) Spikes provided with fireworks devices shall protrude at least 2 inches from the base of the device and shall have a blunt tip not less than 1/8-inch in diameter or 1/8-inch square.
7. Wheel devices - Drivers in fireworks devices commonly known as "wheels" shall be securely attached to the device so that they will not come loose in transportation, handling, and normal operation. Wheel devices intended to operate in a fixed location shall be designed in such manner that the axle remains attached to the device during normal operation.
8. Toy smoke devices and flitter devices
 - (a) Toy smoke devices shall be so constructed that they will neither burst nor produce external flame (excluding the fuse and firstfire upon ignition) during normal operation.
 - (b) Toy smoke devices and flitter devices shall not be of such color and configuration so as to be confused with banned fireworks such as; m-80 salutes, silver salutes, or cherry bombs.
 - (c) Toy smoke devices shall not incorporate plastic as an exterior material in the pyrotechnic composition comes in direct contact with the plastic.
9. Rockets with sticks - Rockets with sticks (including skyrockets and bottle rockets) shall utilize a straight and rigid stick to provide a directed and stable flight.

10. Party Poppers - Party poppers (also known by other names such as "Champagne Party Poppers," and "Party Surprise Poppers") shall not contain more than 0.25 grains of pyrotechnic composition. Such devices may contain soft paper or cloth inserts provided any such inserts do not ignite during normal operation.

46-08-02. It shall be unlawful for anyone under the jurisdiction of the Sisseton-Wahpeton Sioux Tribe to transport, possess, discharge or offer for sale any fireworks which are not labeled in the following manner:

1. Fountains. Warning (or Caution) Flammable (or emits showers of sparks, if more descriptive). Use only under [close] adult supervision. (Use of the word close is optional). For outdoor use only. Place on level surface. Light fuse and get away.
2. California Candles. Warning (or Caution) Emits showers of sparks. Use under [close] adult supervision. (Use of the word close is optional). For outdoor use only. Hold in hand at bottom of tube. Point away from body so that neither end points toward body.
3. Spike and handle cylindrical fountains
 - (a) Spike Fountains. Warning (or Caution) Emits showers or sparks. Use under [close] adult supervision. (Use of the word close is optional). For outdoor use only. Stick firmly in ground in an upright position. Do not hold in hand. Light fuse and get away.
 - (b) Handle Fountains. Warning (or Caution) Emits showers of sparks. Use only under [close] adult supervision. (Use of the word close is optional). For outdoor use only. Hold in hand-point away from body. Light fuse.
4. Roman Candles. Warning (or Caution) Shoots flaming balls. Use under [close] adult supervision. (Use of the word close is optional). For outdoor use only. Stick butt end in ground. Do not hold in hand. Light fuse and get away.
5. Rockets with Sticks. Warning (or Caution) Use only under [close] adult supervision. (Use of the word close is optional). For outdoor use only. Place in wooden trough or iron pipe at a 75 degree angle, pointing away from people or flammable material. Do not hold in hand. Light fuse and get away.

6. Wheels. Warning (or Caution) Flammable (or emits showers of sparks, if more descriptive. Use only under [close] adult supervision. (Use of the word close is optional). For outdoor use only. Attach securely by means of a nail through the hole (or place on hard flat surface, for ground spinners). Light fuse and get away.
7. Illuminating-Torches. Warning (or Caution) Flammable (or emits showers of sparks, if more descriptive.) Use only under [close] adult supervision. (Use of the word close is optional). For outdoor use only. Hold in hand-point away from body, clothing, or other flammable material (or place upright on level ground. Do not hold in hand, if more descriptive).
8. Sparklers. Warning (or Caution) Flammable. Use only under [close] adult supervision. (Use of the word close is optional). For outdoor use only. Do not touch glowing wire (or do not touch hot plastic, wood, etc., if more descriptive). Hold in hand with arm extended away from body. Keep burning end or sparks away from wearing apparel or other flammable material.
9. Mines and Shells. Warning (or Caution) Emits showers of sparks (or shoots flaming balls, if more descriptive). Use only under [close] adult supervision. (Use of the word close is optional). For outdoor use only. Place on hard smooth surface (or place upright on level ground, if more descriptive). Do not hold in hand. Light fuse and get away.
10. Whistles without report. Warning (or Caution) Flammable. Shoots while in the air (if applicable). Use only under [close] adult supervision. (Use of the word close is optional). For outdoor use only. Do not hold in hand. Light fuse and get away.
11. Toy Smoke devices and flitter devices. Warning (or Caution) Flammable (or emits showers of sparks, if more descriptive). Use only under [close] adult supervision. (Use of the word close is optional). For outdoor use only. Do not hold in hand. Light fuse and get away.
12. Helicopter-type rockets. Warning (or Caution) Flammable (or emits showers of sparks, if more descriptive). Use only under [close] adult supervision. (Use of the word close is optional). For outdoor use only. Place on hard open surface. Light fuse and get away.
13. Party poppers. Warning (or Caution) Flammable. use only under [close] adult supervision. (Use of the word close is optional). Do not point either end toward face or other person. Hold in hand-jerk string.

14. Missile-type rockets. Warning (or Caution) Flammable (or emits showers or sparks, if more descriptive). Use only under [close] adult supervision. (Use of the word close is optional). For outdoor use only. Place on hand, open surface. Light fuse and get away.

46-08-03 Labeling - General any fireworks device not required to have a specific label as indicated in Section 46-08-02 shall carry a warning label indicating the user where and how item is to be used and necessary safety precautions to be observed. All labels required under this Section shall comply with the requirements of 16 C.F.R. 1500. 121 of the Federal Hazardous Substances Act Regulations.

46-09-01 **RULES AND REGULATIONS CONTROLLING SUCH SALES**
Notwithstanding any other portion of this ordinance concerning the sale of fireworks within the Lake Traverse Reservation, the following rules and regulations shall apply where applicable.

46-09-02 There shall be no sales to children under 12 years of age, unless accompanied by a parent or written parental permission.

46-09-03 No fireworks shall be used within 150 feet of the fireworks sales stand.

46-09-04 There shall be a fire extinguisher of minimum 10 lb. size placed on the side of the stand and visible at all times.

46-09-05 There shall be no use of fireworks which are explosive or noise making in residential areas of near residences between the hours of 10:00 p.m. and 6:00 a.m..

46-09-06 Fireworks shall not be thrown at or in the direction of any person or groups of persons or passing cars.

46-09-07 No fireworks shall be exploded or used within any building nor adjacent to any community building nor in the parking lot or any other recreational or play area of the Lake Traverse Reservation nor where there is a group of people congregated.

46-09-08 Fireworks will not be used in any area where the use would constitute a fire hazard, nor in any area on any land over which the Tribe has jurisdiction where the use would constitute a fire hazard.

46-09-09 No fireworks may be sold or used which have been banned as hazardous substances by the United States Consumer Product Safety Commission.

46-09-10 No firecrackers may be sold or used which are over 1 1/2 inches, such as M-80's, M-100's, Silver Salutes, and Cherry Bombs.

- 46-09-11 All Tribal Ordinances regarding the Public Health and Welfare will be in effect and will be enforceable in Tribal Court, in addition to those regulations specified in this ordinance.
- 46-09-12 In designated parking areas.
- 46-09-13 Nothing in this resolution shall be construed as an obligation of the Tribal Council of the Tribal Community to assist in the defense or to be accountable for any legal claims or charges brought against any person resulting from the sale or use of fireworks on the Lake Traverse Reservation.
- 46-09-14 Non-Indians violating this ordinance may be excluded from the Lake Traverse Reservation and all other lands over which the Sisseton-Wahpeton Sioux Tribe has jurisdiction.
- 46-09-15 Fireworks which are explosive or noise making may be used in residential areas through June 27th to July 4th, between the hours of 6:00 a.m. to 10:00 p.m.
- 46-10-01 **PENALTIES AND ENFORCEMENT**
If any person is found to have violated any provision of this ordinance shall be guilty of a special class misdemeanor.
- 46-10-02 The Tribal Court may, in addition to other remedies in this ordinance, grant to the Tribe such other relief as is necessary and proper for the enforcement of this ordinance, including but, not limited to injunctive relief against acts in violations of this ordinance.
- 46-10-03 Any violation of these sections by a minor child (12) years of age and under shall be a special class misdemeanor for which parent, guardian or custodian shall be liable.
- 46-11-01 **CONTRABAND - SEIZURE FORFEITURE**
All fireworks within the reservation held, owned, or possessed by any person in violation of this ordinance are hereby declared to be contraband subject to forfeiture to the Tribe. Upon application of the Council, the Tribal Judge shall issue an order directing the Tribal Law Enforcement officer to seize contraband fireworks within this reservation. A copy of the court order shall be delivered to the person from whom the property was seized or shall be posted at the place where the property was seized.
- 46-12-01 **FORFEITURE PROCEDURE - SEIZURES - NOTICE - COURT PROCEEDING**
Within two weeks following the seizure of contraband under Section 46-11-01 a hearing shall be held in Tribal Court at which time the operator or owner of the contraband shall be given an opportunity to present evidence in defense of his or her activities.

46-12-02 Adequate notice of the hearing shall be given to the person from whom the property was seized if known. If the person is unknown, notice of the hearing shall be posted at the place where contraband was seized and at some other public place. The notice shall describe the property seized and the time, place, and cause of seizure and give the name and place of residence, if known, of the person from whom the property was seized.

46-12-03 The seizure of contraband under Section 46-11-01 may be in addition to or separate from any other remedy in this ordinance available to the Tribe for violations of this ordinance.

46-13-01 **AMENDMENTS**

This ordinance may be amended only by a 3/4 vote of the Tribal Council.

46-13-02 Any change in the Federal Rules shall be considered the same change in this ordinance.

46-14-01 **SEVERABILITY**

If any clause, sentence, paragraph, section, or part of this code shall, for any reason be adjudicated by any Court competent jurisdiction, to be invalid or unconstitutional, such judgement shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section, or part thereof directly involved in the controversy in which the judgement shall have been rendered.

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 Amendment
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