

CHAPTER 36

Sale and Possession of Fireworks

Section 36.1 DEFINITIONS

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

(A) "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:

- (1) Fuel and lubricant;
- (2) A firearm cartridge or shotgun shell;
- (3) A flare used or possessed or sold for use as a signal in an emergency or in the operation of a railway, aircraft, watercraft, or motor vehicle;
- (4) A match, cigarette lighter, stove, furnace, candle, lantern or space heater;
- (5) A toy snake which contains no mercury;
- (6) A model rocket engine;
- (7) Tobacco and tobacco products;
- (8) 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.
- (9) A sparkler on a wire or wood stick not exceeding 36 inches in length or 0.25 inches in outside diameter which does not contain magnesium, chlorate or perchlorate;
- (10) A device designed to spray out paper confetti or streamers and which contains less than one-quarter grain of explosive mixture;
- (11) 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; or
- (12) A device which emits smoke with no external flame and does not leave the

ground.

(B) “Indian Land” means any land in which title thereto is held in trust by the United States for the benefit of the Tribe or a Tribal member, and any land owned by the Tribe or a Tribal member.

(C) “Tribe” means the Stockbridge-Munsee Community.

(D) “Tribal Court” means the Stockbridge-Munsee Community Tribal Court.

Section 36.2 PURPOSE

(A) 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.

Section 36.3 AUTHORITY

This ordinance is adopted pursuant to Article VII of the Tribal Constitution.

Section 36.4 EFFECTIVE DATE

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

Section 36.5 SEVERABILITY AND NON-LIABILITY

(A) 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 not be effected thereby.

(B) The Tribe declares that there is not 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.

Section 36.6 IMPLIED CONSENT

(A) 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.

1. 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 Stockbridge-Munsee Tribal Council, or its designated agent.

2. FIREWORK SALE PERMIT. Any person who desires to engage in the sale of

fireworks on Indian Land shall apply to the Stockbridge-Munsee Tribal Council for a permit to do so, utilizing the form provided for said purposes, which shall specify the following:

- (a) The identity of the applicant and all employees, agents, or representatives who shall engage in sale activities under the applicant's permit;
- (b) The location of the sale of activities and, if different, the location of any storage facility of fireworks under the applicant's control;
- (c) The type and class of fireworks for which sale is contemplated; and
- (d) A permit processing fee of Ten Dollar (\$10.00).

3. TERM OF PERMIT. No permit issued under this ordinance shall be valid for a period of longer than 60 days.

4. 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.

5. SALE RESTRICTIONS. No person shall sell or possess with intent to sell fireworks if:

- (a) The type or class of fireworks is subject to regulation and permitting under 18 U.S.C. s.841, et seq.; or
- (b) The purchase of any fireworks is sought by a person under the age of 18 years.
- (c) The sale location is in a building or other structure which is not used solely for commercial purposes.

6. STORAGE OF FIREWORKS FOR SALE. No person who sells or possesses fireworks with the intent to sell shall store them in a building occupied for residential purposes or in any structure located within 300 ft. of a residential premises.

Section 36.7 USE OF FIREWORKS

Any and all classes and types of fireworks may be purchased, possessed and used by any of the following provided the permitting process has been followed:

(A) The Tribe or any subdivision thereof authorized to use fireworks by the Stockbridge-Munsee Tribal Council;

- (B) A public authority;
- (C) A fair association;
- (D) An amusement park;
- (E) A park board;
- (F) A civic organization;
- (G) A group of individuals.

Section 36.8 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. The permit processing fee is \$5.00.

Section 36.9 DISPLAY PERMIT AND APPLICATION

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

1. The full name of the applicant, and the 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.

Section 36.10 RESTRICTIONS ON USE OF FIREWORKS

No person under the age of 18 years shall purchase or use any Class C fireworks on Indian Land.

Section 36.11 NOTICE TO NON-RESIDENTS

Any individual authorized to sell fireworks pursuant to Section 201 and 202 shall display a written warning to non-residents of the Stockbridge Munsee Community that purchase and off-reservation possession of certain types of fireworks without local government permits may be in violation of Wisconsin State Statutes.

Section 36.12 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.

Section 36.13 PENALTIES FOR NON-COMPLIANCE

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

- A. Fireworks stored, sold, possessed or used in violation of this ordinance shall be seized. The fireworks shall be destroyed after conviction for a violation, and otherwise returned to the owner.
- B. A civil remedial money forfeiture may be imposed by the Tribal Court for any violation of this ordinance; minimum penalty for any such violation shall be \$15.00.
- C. Any person who sells or possesses fireworks with the intent of sale without obtaining the required permit shall be subject to a minimum forfeiture upon conviction therefor in the amount of \$150.00.
- D. Any person or organization who uses fireworks without the required permit shall be subject to a minimum forfeiture in the amount of \$75.00.

Section 36.14 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 of the State of Wisconsin concerning curfew, public disturbances, and damage to persons or property.

Section 36.15 COURT CODES

Any person adjudicated by the Tribal Court as have violated this ordinance shall be liable for court costs in the amount of \$10.00.

Section 36.16 PARTIES TO A VIOLATION

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 has not been convicted of a violation. 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; or

C. Is a party to a conspiracy with another to commit is or advises, hires, or counsel or otherwise procures another to commit it.

Section 36.17 ENFORCEMENT OFFICERS

Any tribal law enforcement officer or Shawano Co. Deputy, consistent with the Tribal Law Enforcement agreement may enforce the provisions of this ordinance.

Section 36.18 JURISDICTION

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

LEGISLATIVE HISTORY:

1. Approved by the Tribal Council by Resolution #226-98 on June 2, 1998.