

FIREWORKS SAFETY CODE OF 2012
Ordinance #12-400-06

Article I. Purpose; Findings

1.01. *Purpose.* It is the purpose of this ordinance to set forth requirements and restrictions regarding the sale of fireworks to the public, fireworks displays and storage of fireworks all of which are occurring within the jurisdiction of the Little River Band of Ottawa Indians.

1.02. *Findings.* The Tribal Council of the Little River Band of Ottawa Indians finds that:

a. Article IV, Section 7 of the Constitution of the Little River Band of Ottawa Indians delegates to the Tribal Council the responsibility to exercise the inherent powers of the Little River Band by establishing laws through the enactment of ordinances and adoption of resolutions not inconsistent with this Constitution:

1. to govern the conduct of members of the Little River Band and other persons within its jurisdiction; and
2. to promote, protect and provide for public health, peace, morals, education and general welfare of the Little River Band and its members.

b. the Tribal Council is delegated the authority, under Article IV, Section 7(a)(4) to manage the properties of the Tribe and authorizes uses thereof;

c. the sale of fireworks to the public should be regulated to prohibit the sale of unduly dangerous fireworks;

d. the display of fireworks to the general public should be regulated to provide a safe display to the surrounding area which avoids unnecessary fire hazards and injury to persons and property by identifying appropriate safe areas and safety personnel; and

e. fireworks transportation and storage should be conducted in a manner which lessens the dangers to the product owners, general public and public and private property in and around the transported or stored fireworks.

Article II. Adoption; Amendment; Repeal; Severability

2.01. *Adoption.* This Ordinance is adopted by resolution # 12-1219-335.

2.02 *Repeal of Existing Legislation.* Upon adoption of this ordinance, the Fireworks - Public Sale, Displays and Storage - Code of 2005 is hereby repealed.

2.03 *Repeal of Prior Resolutions.* Upon adoption of this ordinance, the following resolutions are hereby repealed: # 05-1005-492, # 06-0621-433, # 07-0509-252, # 07-0620-332, # 12-0516-132, and #12-0620-168.

2.04. *Amendment.* This Ordinance may be amended by the Tribal Council in accordance with the Constitution and any rules set forth governing amendment of laws of the Little River Band of Ottawa Indians.

2.05. *Severability Clause.* If any provision of this Ordinance or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are severable.

2.06 *Repeal.* This Ordinance may be repealed in accordance with the provisions set forth in the Administrative Procedures Act.

Article III. Definitions.

3.01. *Definitions.* For purposes of this Ordinance, certain terms are defined in this Article. The word "shall" is always mandatory and not merely advisory.

3.02 *Alcoholic Liquor*. For purposes of this Ordinance, alcoholic liquor means any liquid or compound, whether or not medicated, proprietary, patented, and by whatever name called, containing any amount of alcohol including any liquid or compound described in section 105(2) of the Michigan Liquor Control Code of 1998, 1998 PA 58, MCL 436.1105.

3.03. *APA Standard 87-1* means *Standard for Construction and Approval for Transportation of Fireworks, Novelties and Theatrical Pyrotechnics*, published by the American Pyrotechnics Association (APA) of Bethesda, Maryland

3.04. *Consumer Fireworks (Formally known as Class C, Common Fireworks) Defined*. For purposes of this Article, consumer fireworks (U.S. Classification: 1.4G fireworks) means small firework devices containing restricted amounts of pyrotechnic composition designed primarily to produce visible or audible effects by combustion, that are required to comply with the construction, chemical composition, and labeling regulations promulgated by the United States Consumer Product Safety Commission as set forth in CPSC 16 CFR; Parts 1500 and 1507, and that are listed in APA standard 87-1, 3.1.2, 3.1.3, or 3.05. Consumer fireworks does not include low-impact fireworks.

3.05 *Controlled Substance*. For purposes of this Ordinance, controlled substance means a controlled substance or controlled substance analogue as defined in section 7104 of the Michigan Public Health Code, Act No. 368 of the Public Acts of 1978, being section 333.7104 of the Michigan Compiled Laws.

3.06. *Department of Public Safety* means the Department of Public Safety of the Little River Band of Ottawa Indians.

3.07. *Display Fireworks (Formally known as Class B, Special Fireworks) Defined*. For purposes of this Article, display fireworks (U.S. Classification: 1.3G fireworks) means large firework devices, that are explosive materials, intended for use in fireworks displays and designed to produce audible or visible effects by combustion, deflagration or detonation as provided in 27 CFR 555.11, 49 CFR 172, and APA standard 87-1, 4.1.

3.08 *Low-Impact Fireworks Defined*. For purposes of this Article, low-impact fireworks means ground and handheld sparkling devices as listed under APA standard 87-1, 3.1, 3.1.1, 3.1.1.1, 3.1.1.2, 3.1.1.3, 3.1.1.4, 3.1.1.5, 3.1.1.6, 3.1.1.7, 3.1.1.8 and 3.5.

3.09 *Minor*. means an individual who is less than 18 years of age. An individual can demonstrate that he/she is not a minor by producing any of the following documentation that establishes the identity and age of the individual:

- a. Little River Band of Ottawa Indians Identification Card
- b. Identification Card issued by any other Federally Recognized Tribe
- c. Driver's license or state identification card issued by the State of Michigan or any other state.
- d. A military identification card.
- e. A passport.
- f. Any other bona fide photograph identification that establishes the identity and age of the individual.

3.10. *NFPA 1123*. means the *Code for Fireworks Display*, 2010 edition, developed by the National Fire Protection Association (NFPA). *Authority having jurisdiction* as used in the NFPA Code 1123 means the Little River Band of Ottawa Indians, and where referencing authority to issue permits, means the Department of Public Safety.

3.11. *NFPA 1124*. means the *Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles*, 2006 edition, developed by the National Fire Protection Association (NFPA).

3.12. *Novelty Fireworks Defined*. For purposes of this Article, novelty fireworks shall mean small devices containing limited amounts of pyrotechnic explosive or composition that produce a visible or audible effect as

defined under APA standard 87-1, 3.2, 3.2.1, 3.2.2, 3.2.3, 3.2.4 and 3.2.5. These devices include, but are not limited to, the following:

- a. Flat paper caps containing not more than .25 of a grain of explosive content per cap, in packages labeled to indicate the maximum explosive content per cap.
- b. Toy pistols, toy cannons, toy canes, toy trick noise makers, and toy guns in which paper caps as described in subsection (a) are used and which are so constructed that the hand cannot come in contact with the cap when in place for the explosion, and that are not designed to break apart or be separated so as to form a missile by the explosion.
- c. Flitter sparklers in paper tubes not exceeding 1/8 inch in diameter.
- d. Toy snakes not containing mercury, if packed in cardboard boxes with not more than 12 pieces per box for retail sale and if the manufacturer's name and the quantity contained in each box are printed on the box; and toy smoke devices.

3.13 *Person* means an individual, agent, association, charitable organization, company, limited liability company, corporation, labor organization, legal representative, partnership, unincorporated organization, or any other legal or commercial entity.

3.14. *Public Safety Department* shall mean the Little River Band Public Safety Department.

3.15. *Prosecutor* shall mean the Little River Band Tribal Prosecutor.

3.16 *Retailer* means a person who sells consumer fireworks for resale to an individual for ultimate use.

3.17 *Retail Location* means a permanent or temporary building, tent, stand, canopy or membrane structure that is used primarily for the retail sale of consumer fireworks. Such facility must be in accordance with NFPA 1124, 7.1.2.

3.18 *Tribe*. means the Little River Band of Ottawa Indians.

Article IV. General

4.01. *NFPA Codes; Adoption by Reference.* This ordinance shall adopt, by reference, the NFPA Code 1123, *Code for Fireworks Display*, 2010 ed., and formal opinions; and the NFPA Code 1124, *Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic*, 2006 ed., and formal opinions. Such codes, and their references standards shall be incorporated into this ordinance as if set out at length herein.

4.02 *Correction to NFPA Code.* Section 1.2.3 of NFPA Code 1123 is amended to delete "state" and insert "Tribal."

4.03. *APA Standard; Adoption by Reference.* This ordinance shall adopt, by reference the APA Standard 87-1, *Standard for Construction and Approval for Transportation of Fireworks, Novelties and Theatrical Pyrotechnics*, published by the American Pyrotechnics Association of Bethesda, Maryland.

4.04. *Effective Date.* The effective date of this ordinance shall be upon the date of adoption and shall apply to the sales, storage or display of all fireworks or pyrotechnic related activities.

Article V. Permits For the Storage and Sale of Consumer Fireworks.

5.01. *Permits.* A person shall be required to obtain a permit for the storage and sale of consumer fireworks from the Department of Public Safety.

5.02 *Application for Permit.* A person requesting a permit for the sale of consumer fireworks must fill out an application that includes, but is not limited to, the following information.

- a. The application shall list the name, address and phone number of the person requesting the permit.
- b. The application shall list each storage area and retail location from which consumer fireworks are to be sold.
- c. The application shall list the name of the registered agent, if any, with a statement that the

applicant, upon receipt of a permit issued under this ordinance, accepts and agrees to the jurisdiction of the Tribe and the Little River Band of Ottawa Indians Tribal Court.

5.03 *Additional Information Required.* In addition to a completed application, a person applying for a permit for the sale of consumer fireworks must submit the following information.

- a. Federal permit issued under the Safe Explosive Act or other applicable federal law or regulation.
- b. Insurance certificate in the amount of \$1,000,000 coverage, or other level identified by the Tribal Council, which shall be effective during the duration of an authorized permit.
- c. Copies of prior permits and authorizations, or other documents, which demonstrates the applicant's competency in handling fireworks and pyrotechnic devices, storage and sales, if applicable.
- d. Copy of the applicant's current sales tax license issued by the Little River Band of Ottawa Indians Tax Department for each retail location where consumer fireworks are to be sold by the applicant.

5.04 *Tribal Lands Eligible for Permit.* Permits can be issued by the Department of Public Safety only for storage or retail locations on trust and/or fee lands that are clearly under the jurisdiction of the Little River Band of Ottawa Indians, subject to the limitations in Section 6.01.

5.05 *Ineligibility to be Issued a Permit.* The Department of Public Safety shall not issue a consumer fireworks permit to:

- a. any person who has been convicted of a felony involving theft, fraud or arson. The applicant shall be responsible for all costs associated with obtaining this information
- b. a minor as defined in Section 3.09.

5.06. *Permits - Duration.* Permits shall identify a beginning date and ending date and shall not be valid for longer than sixty consecutive days

5.07. *Permits - Location.* Permits shall identify the location for sale or storage of fireworks or pyrotechnic devices.

5.08. *Form of Permit.* The permit shall be in the form of a certificate issued by the Public Safety Department and contain the name of the firework retailer, the duration of the permit, and the location of the storage or retail location. A permit will be issued for each approved location. The permit shall be signed by the Public Safety Director, and shall be displayed in a manner which can be viewed by public officials or consumers at retail locations or storage locations,

5.09. *Notification by Public Safety Department.* Once a permit for the storage and/or sale of consumer fireworks has been legally issued, the Public Safety Department shall:

- a. notify local law enforcement jurisdictions of the location of each retail location and the duration of the authorized permit; and
- b. notify local fire protection and emergency ambulance services to assure that they are able to provide services during the permit period.

5.10. *Timely Notification of Permit Application.* Not more than 30 days after an application has been submitted to the Department of Public Safety as outlined in Article V, the Department of Public Safety shall issue or deny issuance of a consumer fireworks permit to the applicant and, if issuance is denied, shall indicate in writing to the applicant the reason for denial.

5.11 *Sale of Low-Impact Fireworks.* Any retailer who has a valid permit to sell consumer fireworks may also sell low-impact fireworks at each retail location authorized under each permit.

Article VI. Prohibited Conduct in the Sale and Use of Consumer Fireworks and Low-Impact Fireworks.

6.01 *Tribal Lands Where Sales and Use of Consumer Fireworks and Low-Impact Fireworks is Prohibited.* A person shall not sell, ignite, discharge or use consumer fireworks and/or low-impact fireworks on the following tribal public property:

- a. all land within the Tribal Gathering (Pow-Wow) grounds, including all designated and undesignated camping areas and adjacent land; and
- b. property containing any Tribal Government Building.

Use of consumer fireworks and/or low-impact fireworks are also prohibited on any tribal lands that have been specifically identified by Tribal Ordinance or Tribal Council Resolution.

6.02 *Sales to Minors Prohibited.* Consumer fireworks shall not be sold to a minor as defined in Section 3.09.

6.03 *Prohibited Use of Consumer Fireworks and Low-Impact Fireworks.* An individual shall not use consumer fireworks or low-impact fireworks while under the influence of alcoholic liquor, a controlled substance or a combination of alcoholic liquor and a controlled substance.

6.04 *Smoking Prohibited at Retail Locations.* Smoking is prohibited inside or within 50 feet of a consumer fireworks retail location. It is the responsibility of the consumer fireworks retailer to post a sign at each entrance of the location stating the smoking prohibition contained in this section.

Article VII. Permits for Storage and Use of Display Fireworks

7.01 *Permits.* A person shall be required to obtain a permit for the storage and use of display fireworks from the Department of Public Safety. A display fireworks permit can only be issued when there is an identified event sponsored or co-sponsored by the Little River Band of Ottawa Indians or Little River Casino Resort, and authorization for the fireworks display has been provided by Tribal Council Resolution. A Resolution authorizing a fireworks display shall not be construed as a determination that the applicant has met all requirements of this Ordinance.

7.02 *Application for Permit.* A person requesting a permit for an approved fireworks display must fill out an application that includes, but is not limited to, the following information.

- a. The application shall list the name, address and phone number of the person requesting the permit.
- b. The application shall list the time and location where the fireworks display event is being held. This would be documented by a copy of the authorizing Tribal Council Resolution.
- c. The application shall list the name of the registered agent, with a statement that the applicant, upon receipt of a permit issued under this ordinance, accepts and agrees to the jurisdiction of the Tribe and the Little River Band of Ottawa Indians Tribal Court.

7.03 *Additional Information Required.* In addition to a completed application, a person applying for a permit for an approved fireworks display must submit the following information.

- a. Federal permit issued under the Safe Explosive Act or other applicable federal law or regulation.
- b. Insurance certificate in the amount of \$5,000,000 coverage, or other level identified by the Tribal Council, which shall be effective during the duration of an authorized permit.
- c. Copies of prior permits and authorizations, or other documents, which demonstrates the applicant's competency in handling fireworks and pyrotechnic devices, storage and display, if applicable.

7.04 *Ineligibility to be Issued a Permit.* The Department of Public Safety shall not issue a display fireworks permit to:

- a. any person who has been convicted of a felony involving theft, fraud or arson. The applicant shall be responsible for all costs associated with obtaining this information.
- b. a minor as defined in Section 3.09.

7.05. *Permits - Duration.* Permits shall identify the date and time of the fireworks display.

7.06. *Permits - Location.* Permits shall identify the location of the fireworks display and storage.

7.07. *Form of Permit.* The permit shall be in the form of a certificate issued by the Public Safety Department and contain the name of the individual or agent conducting the fireworks display, and the date, time and location of the display. The permit shall be signed by the Public Safety Director.

Article VIII. Novelty Fireworks Exception

8.01 Exceptions. A permit is not required for the storage, sale or display of any "Novelty Fireworks" as defined in Section 3.12.

Article IX. Violation

9.01. *Violation.* Any person who shall violate any provision of this ordinance, or fail to comply with the requirements set forth herein, or shall fail to comply with any permit issued in accordance with this ordinance, shall be guilty of a civil ordinance violation and subject to a fine up to, and including, \$2000.00 per violation.

9.02. *Each Occurrence.* Each prohibited firework or pyrotechnic device shall be considered a separate violation, and each day a prohibited act occurs is considered a separate violation. Provided that, persons shall be given a reasonable time in which to correct violation, of which, firing or otherwise exploding a firework or pyrotechnic device shall not be considered a correction.

9.03. *Prosecution of Violation.* Violators shall be issued a citation through the Public Safety Department, and prosecuted by the Prosecutor.

9.04. *Confiscation of Devices.* The Public Safety Department shall have the authority to confiscate fireworks or pyrotechnic devices which violate the restrictions in this ordinance. Provided that, the Public Safety Department is authorized to engage, on an emergency basis, vendors or other public officials necessary to confiscate and destroy fireworks and pyrotechnic devices. In the event such devices require special handling, the owner of the prohibited devices shall be charged the costs of those services for disposal.

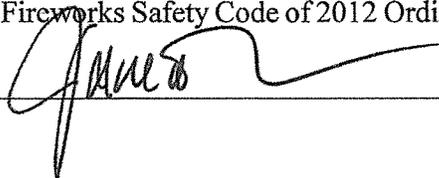
X. Regulations

10.01 *Regulations Promulgated by the Public Safety Department.* The Public Safety Department shall promulgate rules to administer this code, including, but not limited to, all of the following:

- a. Create uniform applications and other forms for department use and dissemination as necessary.
- b. Processing permit applications and issuing of fireworks permits
- c. Enforcement of regulatory duties.
- d. Enforcement of age limitations and restrictions.
- e. Enforcement of any prohibitions imposed by this Ordinance, any other Tribal Ordinance or Tribal Council Resolution.

CERTIFICATION

I, Janine M. Sam, Tribal Council Recorder, do hereby certify that this is a true and correct copy of the Fireworks Safety Code of 2012 Ordinance adopted by the Tribal Council on December 19, 2012.



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