

**CHAPTER 6-3
FIREWORKS ORDINANCE**

§6-4-1 Title

This Ordinance may be cited or referred to as “The Fireworks Regulatory Act.”

§6-4-2 Purpose

The purpose of this ordinance is to regulate the sale of fireworks upon the Nez Perce Reservation and provide for the safety of persons and property by such regulation.

§6-4-3 Jurisdiction

This Ordinance applies to all Indians within the exterior boundaries of the Nez Perce Reservation.

§6-4-4 Definitions

(a) “Common Fireworks” is defined as devices designed to produce a visible or audible effect by combustion, deflagration, explosion, or detonation.

(b) “Fireworks outlet” means each individual fireworks stand operated on trust and Indian-owned property within the exterior boundaries of the Nez Perce Reservation.

(c) “Indian-Owned Lands” shall mean Nez Perce Indian-owned property, both tribal and individual.

(d) “License” is a permit issued by the Nez Perce Tribe to each fireworks outlet authorizing the sale of fireworks on trust and Indian-owned property within the exterior boundaries of the Nez Perce Reservation.

(e) “NPTEC” shall mean the Nez Perce Tribal Executive Committee.

(f) “Permit” is a permit issued by the Nez Perce Tribe to each fireworks outlet authorizing the sale of fireworks on trust and Indian-owned property within the exterior boundaries of the Nez Perce Reservation, and to each wholesale operator authorizing transport and sale of fireworks for the purpose of resale. (amended by NPTEC 12/8/15)

(g) “Person” includes any individual, firm, partnership, joint venture, association, concern, corporation, estate, trust, business, receiver, syndicate, or any groups or combination acting as a unit.

(h) “Operator” is the person responsible for a fireworks business whether the operation is on the wholesale or retail level.

(i) “Quitclaim Deed” is a deed that passes on to the buyer all those rights or as much of a title as a seller actually has. A quitclaim deed does not warrant (promise) that the seller actually has full title pass on.

(j) “Safe and Sane Fireworks” shall mean any nonaerial common fireworks such as ground spinners, fountains, sparklers, smoke devices or snakes designed to remain on or near the

ground and not to travel outside a fifteen (15) foot diameter circle or emit sparks or other burning material which land outside a twenty (20) foot diameter circle or above a height of twenty (20) feet. Nonaerial common fireworks do not include firecrackers, jumping jacks, or similar products. (NPTEC authorized correction of a clerical error in last sentence 6/25/02).

(k) “Trust Property” shall mean all real property held in trust by the United States for the Nez Perce Tribe or its individual members.

(l) “Wholesaler” is a person or business that transports fireworks to the Nez Perce reservation for sale to retailers for re-sale. (amended by NPTEC 12/8/15)

§6-4-5 Wholesale Permit

(a) No person shall transport or sell on the reservation for the purposes of resale on the reservation or sell on the reservation any fireworks of any nature unless they are a valid holder of a wholesale permit. The fee for the wholesale permit shall be \$500.00. Wholesale permit applications must be submitted by the first Friday of June of the year the permit is requested.

(b) The wholesale permit is valid from the date of issuance and shall expire at the close of the fireworks season, as established heretofore, in the same calendar year, except that the wholesaler can sell fireworks seven (7) days prior to the established fireworks selling period of the retailers.

(c) No sales of fireworks shall be made pursuant to a wholesale permit, except to a holder of a valid Nez Perce Tribal Fireworks retail permit.

(d) Any person holding a wholesale permit shall display the same upon request to any Tribal or BIA Law Enforcement officer and/ or tribal safety officer and shall allow such officers to examine and inspect all merchandise transported for or offered for sale to ascertain conformance with this ordinance.

(e) Any individual making application for a wholesale permit who has had a previous permit revoked or suspended may be denied a permit absent written, documented and verifiable assurances that he/she can demonstrate legal responsibility and protect the safety of the public.

§6-4-6 Firework Retail Permit

No person shall sell fireworks without applying for a permit to sell fireworks at a fireworks outlet on trust property or Indian owned lands within the exterior boundaries of the Nez Perce Reservation. Applicants must be Nez Perce Tribal members and at least 18 years of age. Each fireworks outlet must be separately permitted. A firework permit will not be issued for property conveyed through quitclaim deeds.

§6-4-7 Right to Deny Permit

The Nez Perce Tribe reserves the right to deny applications for permits for any reason.

§6-4-8 Right to Close Fireworks Season

(a) The Nez Perce Tribe reserves the right to close the season at any time for safety purposes. The fireworks season shall automatically close when the firework sales cease as set out

in §6-3-13 (a) and (b). The discharge of fireworks will not be permitted after permits are suspended for sales at the end of each season. (NPTEC authorized amendment 10/23/12)

§6-4-9 Application

An application shall be accompanied by a permit fee of \$200.00 for the first firework outlet, and \$100.00 for each additional outlet. Temporary permits for single days or short periods not exceeding five (5) days shall be issued for \$50.00 for each application.

§6-4-10 Application Form

- (a) Full name
- (b) Enrollment number
- (c) Address
- (d) Telephone number
- (e) Location of the fireworks outlet including the allotment or unit number.
- (f) A list of the types of fireworks to be sold.

(g) Proof of ownership, or a valid lease agreement in accordance with federal law if fireworks outlet is located on property other than that of applicant. Application will require the Superintendent of the BIA-NIA to certify that such agreement has been negotiated and that such agreement meets the requirements of the BIA.

§6-4-11 Permit Suspension or Revocation

Any wholesale or retail permit issued shall be subject to revocation and/or suspension by the Nez Perce Tribe for any violation of the ordinance in addition to the civil infractions set forth herein or any criminal penalties that may apply. Wholesalers and Retailers may also be deemed ineligible for a fireworks permit in subsequent years.

§6-4-12 Permit Non-Transferrable

All fireworks permits issued to an enrolled member of the Nez Perce Tribe, retail or wholesale, shall be non-transferrable between Nez Perce Tribal members and between fireworks outlets. The permit cannot be sold, assigned, leased or transferred in any manner whatsoever.

§6-4-13 Duration of Permit (amended by NPTEC 12/8/15)

(a) A retail permit shall permit the sale of fireworks to the general public no sooner than June 9th and no later than July 9th of that calendar year. Furthermore, the operator shall remove all unsold fireworks from his or her shop or store premises not later than July 9th of the calendar year.

(b) A retail permit shall permit the sale of fireworks to the general public for a New Year's Eve fireworks season from December 24th, of that calendar year, to January 2nd of the following year.

§6-4-14 Operator

The specific Tribal member so authorized and permitted as provided for above, must be the owner, operator, and beneficiary of said business. The operator shall be held jointly responsible for the payment of any fines resulting from violations of this ordinance by any of his employees.

§6-4-15 Employees of Operator

All fireworks operators shall use good faith efforts to hire tribal members and other Indians. Any person under the age of 18 years employed for the sale of fireworks pursuant to the fireworks permit shall be supervised by an adult.

§6-4-16 Sale to Minors

It shall be unlawful to sell fireworks to anyone under the age of eighteen (18) unless such fireworks are of a nature that has been designated as "safe and sane" fireworks as defined herein. "Safe and sane" fireworks may be sold regardless of age.

§6-4-17 Intoxication

It shall be unlawful to sell fireworks to any intoxicated person, or for any operator or employee to sell, discharge or distribute fireworks while under the influence of alcohol or drugs while engaged in the distribution or sale of fireworks.

§6-4-18 Permitted Fireworks - Conformity with Federal Law

An operator shall conform in all respects, to the laws of the United States, pertaining to the sale of fireworks. The operator shall not stock or sell any fireworks which are in violation of the Hazardous Substance Act of the United States Code, 15 U.S. Code 1261 et seq. and regulations promulgated thereunder.

§6-4-19 Discharge of Fireworks in Selling Area

It shall be unlawful for an operator to discharge or to allow his employee or customers to discharge fireworks within one hundred (100) feet of a fireworks outlet.

§6-4-20 Fire Safety

(a) All operators shall have at least two (2) ten (10) pound ABC Type approved (inspected within one year) fire extinguishers in the selling area.

(b) All operators shall construct and maintain a fire line around the perimeter of the fireworks outlet.

§6-4-21 Notice

Each operator shall display at a prominent place in each fireworks outlet a notice listing those acts declared unlawful by this Ordinance. (amended by NPTEC 12/8/15)

§6-4-22 Repeal

This ordinance repeals prior ordinances concerning fireworks.

§6-4-23 Non-Liability

The issuing of fireworks permits by the Tribe shall not be construed as a waiver of sovereign immunity or as the assumption of any liability on the part of the Tribe.

§6-4-24 Severability

In the event that any provision of this act shall be found or declared invalid, the remaining provision of this act shall be unaffected thereby and shall remain in full force and effect.

§6-4-25 Requirements for Retail Operators (amended by NPTEC 12/8/15)

All retail operators must:

- (a) Remove all temporary structures within five (5) days of the end of the fireworks season. If retail operator owns the property on which his outlet is located and can demonstrate absence of fire hazard, he may be granted an exemption of this requirement.
- (b) Remove and cleanup of signs on and off the retail site, and debris and waste resulting from retailer's use of retail site within five (5) days of the fireworks season. If retail operator owns the property on which his outlet is located and can demonstrate absence of a fire hazard, he may be granted an exemption from this requirement, except for off-site signs.
- (c) Provide a designated area for fireworks displays at least 100 feet away from the fireworks outlet or retail structure or existing buildings.
- (d) Utilize not more than four (4) signs not to exceed 32 square feet to advertise their business, so long as such signs do not violate applicable billboard or zoning ordinances, do not create a safety hazard, as determined by the Safety Officer; and that the operator obtain permission of the owner on where property the sign is located.
 - (1) Retail Operator's Permit Number must be affixed to all signs used to advertise or identify a Fireworks Retail Outlet.
- (e) The operator shall be held responsible in the event of fire, personal or physical injury as a result of negligent acts of the operator or their employees.

§6-4-26 Violations/Sanctions

- (a) Any violation of this Ordinance shall be considered a civil infraction under §4-3-72 and may subject the offender to a fine.
- (b) In addition to any fine ordered under §4-3-72, Tribal Law Enforcement may close any offending business and seize all illegal fireworks and or proceeds from same.
- (c) This section does not preclude any other civil or criminal remedies which may apply to activities governed by this Ordinance, including immediate police action necessary to

protect the health and safety of the community.