

Flandreau Santee Sioux Tribe

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RESOLUTION NO. 13-40

WHEREAS, the Flandreau Santee Sioux Tribe is a recognized Indian Tribe organized pursuant to a Constitution and By-laws approved by the Secretary of Interior and Commissioner of Indian Affairs on April 24, 1936, amended February 7, 1941, further amended November 16, 1967, further amended November 14, 1984, and further amended May 17, 1997; and

WHEREAS, Article III of the Tribe's Constitution and By-laws provides that the governing body of the Tribe shall be the Executive Committee; and

WHEREAS, Article VIII Section 1(e) of the Constitution vests the Executive Committee with the power to acquire, lease, or otherwise manage all lands or other assets, either real or personal, for the benefit of the Tribe as authorized by law except that where lands or assets are under the jurisdiction of the Federal government; and

WHEREAS, Article VIII Section 1(f) of the Constitution vests the Executive Committee with the power to promulgate and enforce ordinances governing and regulating the conduct of all persons on the reservation; and

WHEREAS, Article VIII Section 1(h) of the Constitution vests the Executive Committee with the power to shall have the power to adopt resolutions consistent with such Constitution and By-laws, regulating the procedure of the Executive Committee itself and of other tribal agencies, tribal officials or tribal organizations of the Tribe; and

WHEREAS, the Flandreau Santee Sioux Tribe Executive Committee passed the Title 14, the "Fireworks Ordinance" to establish a basis of law for the safe distribution, sale, and use of fireworks on Tribal Lands; and

WHEREAS, the Fireworks Ordinance is now being replaced to allow for updates to the types of fireworks available for sale, the times and place of sale, the method of sale, and the type of use; and

WHEREAS, the Executive Committee values the safety of people and property on the Tribe's Land, and passes an updated Title 10 replacing all inconsistent titles, yet continuing to promote economic development and celebration of national and tribal events; and

NOW THEREFORE BE IT RESOLVED that the Flandreau Santee Sioux Tribe repeals the former Title 14, and enacts the updated Title 14 entitled "Fireworks Ordinance" to promote the safe distribution, sale, and use of fireworks on the Flandreau Santee Sioux Tribe Reservation.

CERTIFICATION

The foregoing Resolution was duly enacted and adopted on this 3rd day of July, 2013 by the Executive Committee of the Flandreau Santee Sioux Tribe during a duly called meeting with a quorum was present of 5 In Favor, 0 Opposed, 0 Abstaining, and 1 Not Voting, as follows: *1 absent*

Vice President, Cynthia J. Weddell:	<u>YES</u>	NO	ABSTAIN	NOT PRESENT
Secretary, Leah Fyten:	YES	NO	ABSTAIN	<u>NOT PRESENT</u>
Trustee I, Marsha Schlueter:	<u>YES</u>	NO	ABSTAIN	NOT PRESENT
Trustee II, Roxee Johnson:	<u>YES</u>	NO	ABSTAIN	NOT PRESENT
Trustee III, Andrew Weston:	<u>YES</u>	NO	ABSTAIN	NOT PRESENT
Trustee IV, Kenny Weston:	<u>YES</u>	NO	ABSTAIN	NOT PRESENT
President, Anthony Reider (<i>If Required</i>):	YES	NO	ABSTAIN	NOT PRESENT

Cynthia J. Weddell
Leah Fyten, Tribal Secretary *Pro-Tem*

Anthony Reider
Anthony Reider, Tribal President

**TITLE 14
FIREWORKS ORDINANCE**

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CHAPTER 1 – SCOPE, PURPOSE, AND DEFINITIONS

Section 14-1-1 Scope.

This Title shall apply to the sale and use of fireworks on the lands of the Flandreau Santee Sioux Tribe, and No person, firm, or corporation shall possess, offer for sale, expose for sale, sell at retail, or use or explode any fireworks, except as herein provided.

Section 14-1-2 Purpose.

The purpose of this Ordinance is to establish uniform policies and procedures for the sale and use of fireworks within the lands of the Flandreau Santee Sioux Tribe.

Section 14-1-3 Definitions.

As used in this Chapter, unless the context otherwise requires:

- (a) “Fireworks,” means Any composition or device for the purpose of producing a visible or an audible effect by combustion, deflagration, or detonation, and which meets the definition of "consumer (Explosive’s 1.4G)", “theatrical and novelty (Explosives 1.4S)” or "display (Explosive’s 1.3G)" fireworks as set forth in the U.S. Department of Transportation's (DOT) Hazardous Materials Regulation, Title 49, Code of Federal Regulations (CFR), Parts 171-180. The term "fireworks" shall not include toy pistols, toy guns, in which paper caps containing 25/100 grains or less of explosive compound are used and toy pistol caps which contain less than 20/100 grains of explosive mixture. The term also does not include wire or wood sparklers of not more than 100 grams of mixture per item, other sparkling items which are non-explosive and non-aerial and contain 75 grams or less of chemical mixture per tube or a total of 500 grams or less for multiple tubes, snakes and glow worms, smoke devices, or trick noisemakers which include paper streamers, party poppers, string poppers, snappers, and drop pops, each consisting of not more than twenty-five hundredths grains of explosive mixture.
- (b) “Retailer,” includes every person engaged in the business of making sales of fireworks at retail.
- (c) “Retail sale,” means the sale of fireworks to any person not licensed to sell fireworks or for any purpose other than for resale.
- (d) “Sale,” means any transfer, exchange, or barter, conditional or otherwise, in any manner or by any means whatsoever, for a consideration.
- (e) “Wholesaler,” means any person engaged in the business of making sales of fireworks to retailers for resale to consumers.

CHAPTER 2 –LICENSING & SALE

Section 14-2-1 License required for sale of fireworks – application – fee – duration display.

No person may sell, hold for sale, or offer for sale, as a wholesaler or retailer any fireworks on the Flandreau Santee Sioux Tribal Reservation unless such person has first obtained a license as a wholesaler or retailer. Application for a license as wholesaler or retailer shall be made to the Tribal Secretary on forms to be prescribed by it. Each application shall be accompanied by the required fee, which shall be five hundred dollars for a wholesaler's license, and twenty-five dollars for a retailer's license. The license expires on the fourteenth day of June annually and is renewable annually. The license shall at all times be displayed at the place of business of the holder thereof. If the Tribe is operating a business selling fireworks, that business will not need to pay the licensing fee, but must still obtain a license.

Section 14-2-2 Minimum age for sale or dispensing of fireworks.

No person under the age of eighteen (18) years shall be licensed under this Chapter and no licensee shall employ or permit any individual under the age of eighteen (18) to sell, dispense, or offer for sale, within the boundaries of the Flandreau Santee Sioux Tribal Reservation, any permissible fireworks enumerated in this Chapter.

Section 14-2-3 Prohibited firecrackers – manufacture or use as misdemeanor.

Any person who manufactures, uses, or disposes to another, with or without consideration, so as to endanger the safety of others, any firecrackers made wholly or in part of dynamite, nitroglycerin, or giant powder, is guilty of a Class 1 Misdemeanor.

Section 14-2-4 Possession, sale or use of unauthorized fireworks unlawful.

No person shall possess, sell, offer for sale, bring onto the Flandreau Santee Sioux Tribal Reservation, or discharge any pyrotechnics commonly known as fireworks, other than permissible fireworks.

Section 14-2-5 Permissible fireworks enumerated and described.

Permissible fireworks includes:

- (a) Roman candles, not exceeding ten balls spaced uniformly in the tube, total pyrotechnic composition not to exceed twenty grams each in weight, the inside diameter may not exceed three eighths (3/8) inch.

- (b) Skyrockets with sticks, total pyrotechnic composition not to exceed twenty (20) grams each in weight. The inside tube diameter may not exceed one half (1/2) inch. The rocket sticks shall be securely fastened to the tubes.
- (c) Helicopter type rockets, total pyrotechnic composition not to exceed twenty (20) grams each in weight. The tube diameter shall not exceed one half (1/2) inch.
- (d) Cylindrical fountains, total pyrotechnic composition not to exceed seventy five (75) grams each in weight. The inside tube diameter may not exceed three fourths (3/4) inch.
- (e) Cone fountains, total pyrotechnic composition not to exceed fifty (50) grams each in weight.
- (f) Wheels, total pyrotechnic composition not to exceed sixty (60) grams for each driver unit or two hundred and forty (240) grams for each complete wheel. The inside tube diameter of driver units may not exceed one half (1/2) inch.
- (g) Illuminating torches and colored fire, in any form, except items in subdivision (12 below), total pyrotechnic composition not to exceed one hundred grams each in weight.
- (h) Sparklers and dipped sticks, total pyrotechnic composition not to exceed one hundred (100) grams each in weight. Pyrotechnic composition containing any chlorate or perchlorate may not exceed five (5) grams.
- (i) Mines and shells of which the mortar is an integral part, total pyrotechnic composition not to exceed fifty (50) grams each in weight.
- (j) Firecrackers and salutes with casings, the external dimensions of which do not exceed one and one half (1-1/2) inches in length and one quarter (1/4) inch in diameter, total pyrotechnic composition not to exceed two grains in weight.
- (k) Combinations consisting of two or more devices enumerated in this section.
- (l) Novelties and trick noisemakers, to include glow worm snakes, trick matches, and cigarette loads.
- (m) All Class C (common) fireworks unless specifically prohibited by this Chapter.

Section 14-2-6 Exemptions from Chapter.

Nothing in this Chapter shall be construed as applying to toy paper caps containing not more than twenty five hundredths of a grain of explosive composition per cap, nor applying to the military forces of the United States or employees of this Tribe, or to peace Officers, nor as prohibiting the sale or use of blank cartridges for ceremonial, or theatrical or athletic events.

Section 14-2-7 Importation by unlicensed persons prohibited retailer to purchase from licensed wholesaler.

No person who is unlicensed as a wholesaler or retailer shall bring any fireworks onto the Flandreau Santee Sioux Tribal Reservation. No retailer shall sell any fireworks which have not been purchased from a wholesaler licensed under the provisions of this Chapter.

Section 14-2-8 Period and times during which retail sales permitted.

No person, firm, or corporation may offer fireworks for sale to individuals at retail before the first (1st) day of June and after the eleventh (11th) day of July. Sales may also occur from December twenty-eighth (28th) until December thirty-first (31st) for lighting on New Year's Eve. However, any person obtaining a special three hundred sixty five (365) day retail license may sell fireworks to non-tribal members for the periods of time so specified. Retail sales are not permitted after twelve o'clock (12:00) a.m. or prior to seven o'clock (7:00) a.m. (CST).

Section 14-2-9 Sale from vehicle prohibited.

No retailer shall sell fireworks from any motor vehicle on the Flandreau Santee Sioux Tribal Reservation.

Section 14-2-10 Exits from structures where fireworks sold.

All buildings or structures wherein fireworks are sold at retail shall have at least two (2) separate door exits.

Section 14-2-11 "NO SMOKING" signs where fireworks sold.

Signs must be prominently posted on all displays of fireworks offered for sale at retail, which shall read in red letters not less than three (3) inches in height. "NO SMOKING WITHIN TWENTY-FIVE FEET".

CHAPTER 3 – IGNITING OF FIREWORKS

Section 14-3-1 Minimum distance for igniting of fireworks.

In all buildings or structures wherein fireworks are being offered for sale the license shall have a sign prominently posted stating that no fireworks can be ignited or discharged within one hundred fifty (150) feet of the licensee's premises. The Tribe may designate areas that fireworks may be ignited, so long as it is clearly marked.

Section 14-3-2 Open flame prohibited where fireworks sold – fire extinguisher required.

No licensed may have on his premises any device, apparatus, receptacle, or burner from which an open flame is emitted including, but not limited to any type of outdoor grill. Each licensee shall in the conduct of his/her business of selling fireworks, keep and maintain upon the premises a fire extinguisher bearing an Underwriter Laboratories, Inc. rated capacity of at least 2-A.

Section 14-3-3 Public display of fireworks.

Nothing in this Chapter may prohibit the use of public display of fireworks at any time. However, any individual, group of individuals, association, firm, partnership, or corporation, before making such public display of fireworks shall secure a written permit from the Executive Committee, and shall have purchased fireworks for the display from a licensed wholesaler under this Chapter.

Section 14-3-4 Violation of Chapter as misdemeanor.

Except where a punishment is specifically provided, a violation of the provisions of this Chapter is a Class 1 Misdemeanor.

Section 14-3-5 Subsequent conviction as ground for revocation of suspension of license.

If a person is found guilty of violating any of the provisions of this Chapter at subsequent time, such violation may constitute cause for revocation or suspension of the license held by that person and for refusal to renew license upon expiration thereof.

Section 14-3-6 Possession of unauthorized fireworks unlawful – seizure and destruction.

No person shall possess any fireworks, other than those enumerated in Section 14-01-06 of this Chapter. If any person shall have in his possession any fireworks in violation of said section, a warrant may be issued for the seizure of such fireworks, and such fireworks shall be safely kept to be used as evidence. Upon conviction of the offender, the fireworks shall be destroyed, but if the offender is discharged, the fireworks shall be returned to the person in whose possession they

were found, provided, however, that nothing in this Chapter shall apply to the transportation of fireworks by regulated carriers.

Section 14-3-7 Period during which discharge of fireworks permitted – violation as misdemeanor.

Except as otherwise provided in this Chapter, it is unlawful for a person to discharge fireworks on the Flandreau Santee Sioux Tribal Reservation after the seventh (7th) day of July or prior to the twenty-seventh (27th) day of June, except New Years Eve. Fireworks may also be ignited on the Friday and Saturday of the Tribe's Annual Pow-wow in accordance with this ordinance. It is also unlawful to discharge fireworks on the Reservation prior to the hour of ten o'clock (10:00) a.m. and after the hour of ten o'clock (10:00) p.m., except for July 4th, which shall be 12:00 o'clock midnight. A violation of this section is a Class 2 Misdemeanor and fireworks of the violator(s) will be confiscated by law enforcement officers.

Section 14-3-8 Enforcement by the Tribe and law enforcement officers.

The Tribe, together with all law enforcement officers of this Tribe, shall be charged with the enforcement of the provisions of this Chapter.

Section 14-3-9 Punishments and fine.

Except as otherwise provided in this Chapter, a person(s) found guilty of violating any section of this Chapter will subject to the following:

- (a) Class I Misdemeanor violation – six (6) months in jail, \$500.00 fine, or both.
- (b) Class 2 Misdemeanor violation – thirty (30) days in jail, \$100.00 fine, or both; and
- (c) All fireworks found at the crime scene will be confiscated.

CHAPTER 4 – MISCELLANEOUS SECTIONS

Section 14-4-1 Repeal of Inconsistent Legislation.

All legislation or parts of legislation inconsistent with this Title are repealed to the extent of such inconsistency.

Section 14-4-2 Sovereign Immunity.

This ordinance does not waive the Tribe's sovereign immunity rights in any State or Federal Court. The Tribe does waive its sovereign immunity rights in the Flandreau Santee Sioux Tribe Tribal Court for the purpose of damages for breach of the agreement, or for specific performance of an agreement, as deemed necessary by the Court. The Tribe waives its sovereign immunity for no other purpose.

Section 14-4-3 Severability.

If any provision of this Title, or the application of it to any person or circumstance, is held invalid, the remainder of this Title and the application to other persons or circumstances are not affected.

This Ordinance was passed by the Executive Committee on the 3rd day of July, 2013 by Resolution No. 13-40.
