

Title 15 – Business Regulations

Chapter 2 - Fireworks

Sec.

15-02.010	Title
15-02.020	Purpose and Scope
15-02.030	Authority
15-02.040	Senate Findings
15-02.050	Definitions
15-02.060	Fireworks Committee
15-02.065	Fireworks Permitted
15-02.070	Fireworks Sales Periods
15-02.080	Retail Sale by Permit
15-02.090	Wholesale Sales by Permit
15-02.100	Indemnification by Permittee
15-02.110	Valid Permit
15-02.120	Permit Fees
15-02.130	General Sales Provisions
15-02.135	General Use Provisions
15-02.140	Approved Sales Locations
15-02.150	Prohibited Sales Locations
15-02.160	Stand Operation
15-02.170	Sale of Food Items
15-02.180	Permittees' Responsibility
15-02.190	Stand Construction
15-02.200	Permit Display
15-02.210	Health
15-02.220	Fireworks Stand Removal
15-02.235	Sponsored Fireworks Displays
15-02.240	Enforcement
15-02.250	Civil Penalties
15-02.255	Duties and Civil Liabilities of a Permittee
15-02.260	Criminal Violations
15-02.270	Tribal Disclaimer
15-02.280	Repealer
15-02.290	Severability

Legislative History

Enacted:

Ordinance 428 Amending STC Title 15, Chapter 2 (5/17/22).
Ordinance 368 Amending STC Title 15, Chapter 2 (5/2/17), BIA (5/16/17).
Ordinance 338 Amending STC Title 15, Chapter 2 and Ordinance No. 256:
Swinomish Fireworks Code, (6/3/14), BIA (6/10/14).
Ordinance 287 Amending STC Title 15, Chapter 2 of Ordinance No. 256: Swinomish
Fireworks Code, (4/13/11), BIA (5/3/2011).

Ordinance 274 Amending Title 15, Chapter 2 of Ordinance No. 256: Swinomish Fireworks Code, (5/11/10), BIA (5/21/10).

Ordinance 256 Amending Swinomish Tribal Code Title 15 - Business Regulations, Chapter 2 – Fireworks, (4/10/07), BIA (4/23/07).

Repealed or Superseded:

Fireworks Ordinance, Ord. 174 (9/5/03), BIA (9/12/03); Fireworks Ordinance, Ord. 80 (5/16/91), Enacting Res. 91-5-53, BIA (8/19/91) (repealing Ord. 71).

Amending Ordinance 80, Ord. 95 (5/5/92), BIA (6/15/92).

Regulating the Sale and Use of Fireworks, Ord. 71 (5/10/90), Enacting Res. 90-5-34. Res. 89-5-27 (5/12/89).

Res. 88-5-23 (5/5/88).

Res. 87-7-68 (no date) (amending Res. 87-5-49).

Res. 87-6-58 (6/2/87) (amending Res. 87-5-49).

Res. 87-5-49 (5/5/87).

Res. 86-5-32 (5/20/86).

Res. 85-5-40 (5/20/85).

Res. 84-5-38 (5/23/84).

Res. 83-5-46 (5/20/83).

Res. 82-6-932 (6/1/82).

Res. 81-6-834 (6/2/81) (amending Res. 80-6-721).

Res. 80-6-721 (6/3/80).

Res. 79-6-632 (6/22/79).

Res. 78-6-523 (6/13/78).

Res. 275 (6/9/72).

Res. 126 (6/5/62).

Res. 123-A (6/5/62).

15-02.010 Title.

This Chapter shall be referred to as the “Swinomish Fireworks Code”.

[History] Ord. 256 (4/10/07); Ord. 174 (9/5/03); Ord. 80 (5/16/91).

15-02.020 Purpose and Scope.

The purpose of this Chapter is to regulate the sale and use of fireworks on the Reservation, to protect the safety of all residents and other persons within the exterior boundaries of the Reservation, and to safeguard and promote the peace, safety, morals and general welfare of the Reservation.

[History] Ord. 256 (4/10/07); Ord. 174 (9/5/03); Ord. 80 (5/16/91).

15-02.030 Authority.

This Chapter is enacted pursuant to authority provided by the following provisions of the Swinomish Constitution and By-Laws: Article VI, Sections 1(h), 1(k), and 1(l) of the Swinomish Constitution.

[History] Ord. 256 (4/10/07); Ord. 174 (9/5/03); Ord. 80 (5/16/91).

15-02.040 Senate Findings.

[Reserved]

[History] Ord. 256 (4/10/07); Ord. 174 (9/5/03); Ord. 80 (5/16/91).

15-02.050 Definitions.

For purposes of this Chapter, unless otherwise expressly provided, the following definitions shall apply:

- (A) **“Committee”** means the Fireworks Committee, which is appointed by the Senate.
- (B) **“Consumer Fireworks”** (formerly known as “Class C”) means any small firework device designed to produce visible effects by combustion and which must comply with the construction, chemical composition, and labeling regulations of the U.S. Consumer Product Safety Commission. Some small devices designed to produce audible effects are included, such as whistling devices, ground devices containing 50 mg or less of explosive materials, and aerial devices containing 130 mg or less of explosive materials.
- (C) **“Firecracker”** means a small cylindrical tube filled with powder that explodes after lighting a fuse.
- (D) **“Fireworks”** means items that are commonly used to produce chemically-induced displays of color or explosions, including but not limited to firecrackers or devices commonly known as noisemakers.
- (E) **“Permit”** means a permit to sell fireworks on the Reservation, which is issued by the Tribe.
- (F) **“Permittee”** means an individual who has been issued, by the Tribe, a permit to sell fireworks.
- (G) **“Reservation”** means all lands and waters within the exterior boundaries of the Swinomish Indian Reservation.

- (H) **“Senate”** means the Swinomish Indian Senate, the governing body of the Swinomish Indian Tribal Community.
- (I) **“Special Fireworks”** means fireworks that exceed the limits of explosive materials for classification as Consumer Fireworks and includes but is not limited to, firecrackers that are not classified as Class “C”.
- (J) **“Stand”** means a structure or facility for the retail sale of fireworks.
- (K) **“Tribe”** or **“Tribal”** means or refers to the Swinomish Indian Tribal Community, a federally recognized Indian tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934, which is composed of members tracing their ancestry to the aboriginal Swinomish, Samish, Kikialus, and Lower Skagit bands of Indians.

[History] Ord. 368 (5/2/17); Ord. 256 (4/10/07); Ord. 174 (9/5/03).

15-02.060 Fireworks Committee.

The Fireworks Committee, appointed by the Senate, is hereby authorized to adopt regulations to implement the provisions of this Chapter. The Fireworks Committee shall have the powers and duties specified in this Chapter, or incidental or necessary in order to carry out the specified powers and duties. The Fireworks Committee may change any of the dates set forth in this Chapter by regulation.

[History] Ord. 256 (4/10/07); Ord. 174 (9/5/03); Ord. 80 (5/16/91).

15-02.065 Fireworks Permitted.

Consumer Fireworks may be possessed, bought, sold, and used on the Reservation, provided those activities are conducted in compliance with this Chapter. Special Fireworks may not lawfully be bought or sold on the Reservation and may only be used as part of a Sponsored Fireworks Display, pursuant to STC 15-02.235.

[History] Ord. 368 (5/2/17).

15-02.070 Fireworks Sales Periods.

- (A) Sale of fireworks on the Reservation shall be permitted solely during two periods: a summer period of approximately a month commencing in early June and ending shortly after July 4, and a winter period commencing in December and ending in January of the following year.

- (B) The Fireworks Committee shall adopt a schedule for fireworks sales during each sales period. The schedule shall establish a calendar for permit sales, public drawing for stand locations (if necessary), stand construction, sales, and stand removal.
- (C) The schedule for each sales period shall be adopted and disseminated by email to the tribal staff and by ordinary mail to the permit holders for the previous year at least one week prior to the beginning of permit sales.
- (D) The schedule may provide for the commencement of wholesale sales a few days prior to the beginning of retail sales.
- (E) No Permittee shall sell or allow the sale of any fireworks at any time except during a fireworks sales period set by this Section for which the Permittee has a valid permit.

[History] Ord. 368 (5/2/17); Ord. 256 (4/10/07).

15-02.080 Retail Sale by Permit.

No fireworks shall be sold at retail within the exterior boundaries of the Reservation except pursuant to a lawfully issued and current retail fireworks permit issued by the Tribe and upon the following terms, conditions and regulations:

- (A) Any member of the Tribe who is twenty-one (21) years or older may apply for a permit to sell fireworks at retail. No person may sell fireworks on the Reservation at retail without such permit. Permits shall be limited to one permit per nuclear family and no person shall be allowed more than one (1) permit per fireworks sales period.
- (B) Applications for a permit shall be made to the accounting office of the Tribe on forms prescribed by the Fireworks Committee. Permit sales for each fireworks sales period shall occur only during the period set forth in the schedule for that period adopted under Section 15-02.070. **NO PERMITS SHALL BE SOLD AFTER THE LAST DAY OF SCHEDULED PERMIT SALES.**
- (C) Each applicant shall purchase through the Tribe occurrence-based bodily and personal injury and property damage liability insurance coverage naming the applicant and the Tribe as insureds and providing for coverages of at least one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) aggregate, a five hundred dollar (\$500.00) deductible, and such other coverage, and terms or conditions as the Fireworks Committee may require. The Fireworks Committee may increase the required coverage limits.
- (D) Each applicant shall pay the Tribe for the insurance coverage required by Subsection (C) at the same time the applicant pays the permit fees to the Tribe.

- (E) Each retail Permittee shall maintain in force the liability insurance required by Subsection (C) throughout the effective period of the permit. Failure to maintain the required insurance shall result in the automatic forfeiture of the deposit and the revocation and cancellation of the permit as of the date on which insurance coverage is terminated.

[History] Ord. 368 (5/2/17); Ord. 256 (4/10/07); Ord. 174 (9/5/03); Ord. 80 (5/16/91).

15-02.090 Wholesale Sales by Permit.

No fireworks shall be sold at wholesale within the exterior boundaries of the Reservation except pursuant to a lawfully issued and current wholesale fireworks permit issued by the Tribe and upon the following terms, conditions and regulations:

- (A) Any person twenty-one (21) years or older may apply for a permit to sell fireworks at wholesale. No person may sell fireworks on the Reservation at wholesale without such a permit. No person shall be allowed more than one (1) permit per fireworks sales period.
- (B) Applications for a permit shall be made to the accounting office of the Tribe on forms prescribed by the Fireworks Committee. Permit sales for each fireworks sales period shall occur only during the period set forth in the schedule for that period adopted under Section 15-02.070. **NO PERMITS SHALL BE SOLD AFTER THE LAST DAY OF SCHEDULED PERMIT SALES.**
- (C) Each applicant shall purchase occurrence-based bodily and personal injury and property damage liability insurance naming the applicant and the Tribe as insureds and providing for coverages of at least one million dollars (\$1,000,000) per occurrence, two million dollars (\$2,000,000) aggregate, with a one thousand dollar (\$1,000) deductible, and such other coverage, and terms or conditions as the Fireworks Committee may require. If the applicant's insurance policy has a deductible of over one thousand dollars (\$1,000), that applicant may comply with the deductible requirement by posting a cash deposit with the Tribe's accounting department for the difference between the deductible limit and the policy deductible. The Fireworks Committee may increase the required coverage limits.
- (D) Each applicant shall provide satisfactory proof of insurance required by Subsection (C) to the Tribe's accounting department prior to moving any fireworks on to the Reservation and at least 48 hours before wholesale fireworks sales are scheduled to begin.

- (E) Each wholesale Permittee shall maintain in force the liability insurance required by Subsection (C) throughout the effective period of the permit. Failure to maintain the required insurance shall result in the automatic forfeiture of the deposit and the revocation and cancellation of the permit as of the date on which insurance coverage is terminated.

[History] Ord. 256 (4/10/07).

15-02.100 Indemnification by Permittee.

To the fullest extent of the law, a Permittee shall indemnify, defend and hold harmless the Tribe, its officers, employees and agents, from and against any and all claims for injury or death arising or resulting from Permittee's sales activities under the permit or in any way relating to the permit. "Claim," as used in this Section, means any financial loss, claim, suit, action, judgment, damage or expense, including but not limited to attorneys' fees, attributable to bodily injury, sickness, disease or death or injury to or destruction of tangible property, including resulting loss of use of such property. Permittee's obligations under this Section include without limitation any claim by the Tribe or its officials, employees or agents. Permittee shall consent to this provision as a condition of and in consideration of the issuance of a permit by the Tribe.

[History] Ord. 256 (4/10/07).

15-02.110 Valid Permit.

No permit shall be valid unless and until:

- (A) the Tribe has issued a written permit that has been signed by the Chair of the Senate or a duly authorized representative of the Chair of the Senate;
- (B) it is issued in compliance with all provisions of this Chapter;
- (C) the Permittee has provided proof of insurance; and
- (D) all fees have been paid.

[History] Ord. 256 (4/10/07); Ord. 174 (9/5/03); Ord. 80 (5/16/91).

15-02.120 Permit Fees.

The following fees shall be charged for fireworks permits:

- (A) **Retail permit.** Before any applicant may receive a retail sales permit, the applicant shall pay to the Tribe's accounting department an amount established for the year by the Committee, which shall include a permit fee and a refundable deposit, and may include charges for sani-cans, dumpsters and/or marketing.

- (B) **Wholesale permit.** Before any applicant may receive a wholesale sales permit, the applicant shall pay to the Tribe's accounting department an amount established for the year by the Committee, which shall include a permit fee a refundable deposit and an additional fee for each fireworks container moved onto the Reservation.
- (C) **North End Improvement Fee.** In addition to the above fees, applicants shall pay a North End improvement fee as follows: (1) for a retail permit for the North End, the applicant shall pay a one-time fee of one hundred dollars (\$100.00). Retail permit applicants who have paid the one-time fee prior to the enactment of this provision shall be exempt from this requirement. (2) Wholesale permit applicants shall pay an annual fee of one hundred dollars (\$100.00).
- (D) The Fireworks Committee may add a new fee or component of a fee, or delete a fee or component of a fee. The amount of the fees and deposits shall be adopted and disseminated by email to the Tribal staff and by ordinary mail to the permit holders for the previous year at least one week prior to the beginning of permit sales.

[History] Ord. 368 (5/2/17); Ord. 256 (4/10/07); Ord. 174 (9/5/03); Ord. 95 (5/5/92); Ord. 80 (5/16/91).

15-02.130 General Sales Provisions.

The following rules shall apply to the retail and wholesale sale of fireworks:

- (A) Under no circumstances shall there be a retail sale of fireworks to children under fourteen (14) years of age, or a wholesale sale of fireworks to a person under eighteen (18) years of age.
- (B) There shall be no sale of fireworks on the Reservation between the hours of 11:00 p.m. and 8:00 a.m., except that for the period from June 27 through July 4 there shall be no sale between the hours of midnight and 6:00 a.m.
- (C) No firecrackers may be sold that are not classified as Class C, "Consumer Fireworks".
- (D) No fireworks may be sold that have been banned as hazardous substances by the United States Consumer Products Safety Commission. All stands shall be open for inspection by the U.S. Consumer Product Safety Commission pursuant to applicable United States Federal laws.
- (E) There shall be a certified, operable, and filled, Type "A" fire extinguisher on the premises of each stand of a minimum ten (10) pound size placed on the side of each stand and affixed to or within reach of a wholesale fireworks container and visible at all times. "No Smoking" and "No alcohol allowed" signs shall be displayed.

- (1) The Swinomish Police Department shall make reasonable efforts to lend spare fire extinguishers for up to 48 hours to any stand that has used its fire extinguisher, in order to permit time for refilling of the stand fire extinguisher.
- (F) There shall be no sale or consumption of alcoholic beverages by any Permittee or worker while operating their stands or wholesale operations, or in and around the stands or wholesale sales area.
- (G) Permittees shall be permitted to sell soft drinks out of their stands. No food items may be sold at any stand.
- (H) All burning of trash or other open flame or smoking or vaping is strictly prohibited at any fireworks stands or sales areas or sales area parking lots. Smoking or vaping is only allowed in designated smoking areas.
- (I) All products being sold will be displayed inside the stand or on the porch of the stand. For both safety and health reasons, no customers will be allowed inside the stand. A sales counter will be maintained between customers and Permittees or stand workers. No person shall enter the area behind stands for any reason unless they are a Permittee or a stand worker who is under supervision of a Permittee.
- (J) Wholesale sales shall be made only to:
 - (1) Permittees who hold valid retail permits issued by the Tribe; or
 - (2) Persons who purchase for retail sale off the Reservation and are permitted or authorized to sell fireworks by the jurisdiction in which their retail sales operations is located, including without limitation the reservation of another tribe.

[History] Ord. 368 (5/2/17); Ord. 274 (5/11/10); Ord. 256 (4/10/07); Ord. 174 (9/5/03); Ord. 95 (5/5/92); Ord. 80 (5/16/91).

15-02.135 General Use Provisions.

- (A) No fireworks shall be used within fifty (50) feet of any fireworks sales stands, within the North End sales area parking lot, or on the south side of Highway 20 within three hundred (300) feet of the wholesale sales area.
- (B) There shall be no use of fireworks that are explosive (e.g., rockets, night displays, etc.) or noisemakers on the Reservation between the hours of 11:00 p.m., and 8:00 a.m., except on the 4th of July and New Year's Eve.
- (C) Fireworks shall not be thrown at, or in the direction of, any person or groups of persons or passing cars or any building or homes, or in any way be used to create a hazardous situation to life or property.

- (D) No fireworks shall be exploded or used within any building or adjacent to any community building, including churches and businesses on the Reservation, or in the ball park or any other recreational or play area of the Reservation or where there is any group of people congregated who are not involved in the use and enjoyment of fireworks, or within three hundred (300) feet of any Tribal building or Tribal business, including the Swinomish Casino. No fireworks are to be lit off within the horseshoe area of the North End fireworks stands.
- (E) Fireworks shall not be used in any area where their use would create a fire hazard.
- (F) No firecrackers shall be used that are not classified as Class C, “Consumer Fireworks”.
- (G) No fireworks may be used that have been banned as hazardous substances by the United States Consumer Products Safety Commission.

[History] Ord. 368 (5/2/17); Ord 274 (5/11/10); Ord. 256 (4/10/07); Ord. 174 (9/5/03); Ord. 95 (5/5/92); Ord. 80 (5/16/91).

15-02.140 Approved Sales Locations.

- (A) **Retail sales.** There are two (2) approved locations on the Reservation for the retail sale of fireworks, which are as follows:
 - (1) **Village Area.** Individual stands may be located in the Village Area on lots upon which an occupied house is located, if the Permittee is the owner of the house or has permission of the owner of the house; provided, that the lot is owned by the United States of America in trust for the Tribe (“tribal land”). There shall be a minimum of six (6) feet between fireworks stands. The Fireworks Committee may further define the Village Area by regulation.
 - (2) **North End.** A location north of Highway 20 shall be open. The stands shall form a “horseshoe” shape with parking limited to the existing parking area on the right of way along North Casino Drive north and west of the Swinomish Casino property. The Fireworks Committee shall further define the limits of the North End area. The Fireworks Committee may relocate the existing horseshoe area if circumstances warrant.
 - (3) **Drawing for stand locations.** The Fireworks Committee shall determine locations for individual stands within the North End area. Assignment of individual locations of the stands at the North End shall be determined through a public drawing in the Tribal Administration Building, and conducted by the Fireworks Committee at the date and time specified in the schedule for that fireworks sales period. Each Permittee shall draw a number for a particular space in the North End area. There shall be no preference to

location based on who was there during previous years. The Committee shall stake out the approved locations thereafter and construction may begin on the date specified in the schedule. All construction of stands shall be completed and in place by the date specified in the schedule. No stands shall be constructed on the grounds prior to the date specified in the schedule. Permittees unable to attend the drawing will be assigned a location based on a first-come, first-served basis. Permits must be obtained in order for a site to be designated. There shall be a minimum of six (6) feet between stands or less if necessary, at the discretion of the Fireworks Committee Chair.

- (B) **Wholesale sales.** Wholesale sales shall occur at one designated site located east of the North End retail sales location. After due consideration of safety and applicable Tribal or Federal laws or regulations, additional wholesale site(s) may be designated by the Fireworks Committee, provided no such sites are designated in any location within any of the following zoning classifications under STC 20-03 for Forest, Rural Residential, Suburban Residential, and Urban Residential. Wholesale operations, including the storage of fireworks at wholesale, are prohibited at any non-designated site within the Reservation.

[History] Ord. 428 (5/17/22); Ord. 368 (5/2/17); Ord. 256 (4/10/07); Ord. 174 (9/5/03); Ord. 80 (5/16/91).

15-02.150 Prohibited Sales Locations.

No Permittee shall set up a stand or sell fireworks in any Tribal recreation area including the ballpark and playground; nor shall any Permittee set up any stand or sell any fireworks in or within three hundred (300) feet of any Tribal building or business.

[History] Ord. 256 (4/10/07); Ord. 174 (9/5/03); Ord. 80 (5/16/91).

15-02.160 Stand Operation.

No one under the age of seventeen (17) years shall be allowed to sell fireworks without adult supervision. In no event shall any non-member be permitted to participate in the lease, ownership, or partial ownership, including partnership, of any fireworks stand; provided, non-members are permitted to be employed as “workers.”

[History] Ord. 287 (4/13/11); Ord. 256 (4/10/07); Ord. 174 (9/5/03); Ord. 80 (5/16/91).

15-02.170 Sale of Food Items.

The sale of food items in association with the sale of fireworks is permitted as provided in this section:

- (A) The Fireworks Committee shall designate an area adjacent or proximate to the North End retail sales area at which the sale of food products is permitted.

- (B) Any person who wishes to sell food items in the area designated in this Section during a fireworks sales period must apply for and obtain a special food sales permit to do so from the Tribe's accounting department. The applicant shall pay a permit fee of one hundred dollars (\$100.00).
- (C) A person shall not be issued a food sales permit under this Section unless the person has obtained a food service permit under Swinomish Tribal Code Section 10-02.050. Any person who cooks or prepares food for the Permittee shall also obtain a food service permit.
- (D) A food sales permittee shall comply with all standards governing food preparation and sales contained in Swinomish Tribal Code Section 10-02.050 through 10-02.110, and all other applicable laws.
- (E) Facilities for the sale of food shall be located at least fifty (50) feet from any fireworks stand. Food sales permittees shall not heat food or locate heat sources for cooking or preparation of food within one hundred (100) feet of any fireworks stand.
- (F) Retail sales Permittees may obtain a food sales permit under this Section as long as the food sales are conducted at a separate facility and comply with the provisions of this Section.
- (G) There shall be a certified, operable, and filled, Class K fire extinguisher on the premises of each stand, located at the side of the stand and visible at all times.

[History] Ord. 368 (5/2/17); Ord 274 (5/11/10); Ord. 256 (4/10/07).

15-02.180 Permittees' Responsibility.

The Permittee shall not allow any unauthorized person to operate a fireworks stand or wholesale sales facility, and he or she shall be responsible for the safety of those employed by him or her.

[History] Ord. 256 (4/10/07); Ord. 174 (9/5/03); Ord. 80 (5/16/91).

15-02.190 Stand Construction.

Stands shall be constructed in accordance with this Section.

- (A) No stand shall be constructed in a stand space prior to the issuance of a valid permit.
- (B) A stand shall be located on and within the boundaries of the numbered space assigned to the Permittee; provided, that the Permittee may attach a porch or other canopy protected area that extends no further than the length of the stand, does not extend to the sides beyond the length of the stand, and extends for no more than five (5) feet

from the front of the stand. No fireworks for display or sale shall be located outside of the stand or porch.

- (C) Fireworks stands shall be limited to sixteen (16) feet in length.
- (D) There shall be a minimum distance of six (6) feet between each stand; provided, that if necessary a lesser space may be authorized at the discretion of the Committee Chair.
- (E) At the conclusion of the stand construction period, and before retail sales have begun, the Committee shall cause an inspection to be made of the stands in the North End sales area. If any stand is constructed or located so as to extend outside the boundaries of the space assigned to a Permittee, the Committee shall cause the stand to be moved so that it is within the assigned space, at the owner's expense. No retail sales shall be made by the Permittee until the stand has been relocated.

[History] Ord. 368 (5/2/17); Ord. 287 (4/13/11); Ord. 256 (4/10/07); Ord. 174 (9/5/03); Ord. 80 (5/16/91).

15-02.200 Permit Display.

The Permittee must prominently display in clear view of the public and enforcement officers, the permit and a copy of the rules and regulations governing the use of the fireworks and must inform purchasers of the restrictions on use.

[History] Ord. 256 (4/10/07); Ord. 174 (9/5/03); Ord. 80 (5/16/91).

15-02.210 Health.

In compliance with the Swinomish Public Health and Welfare Title, a total of ten (10) sanicans shall be provided for workers and the general public adjacent to the selling areas.

[History] Ord. 256 (4/10/07); Ord. 174 (9/5/03); Ord. 80 (5/16/91).

15-02.220 Fireworks Stand Removal.

All retail Permittees shall remove their stands on or before the date specified in the schedule adopted under Section 15-02-070. If the Permittee is in compliance, the one hundred dollar (\$100.00) deposit will be refunded. In the event the stands are not removed by that date, the one hundred dollar (\$100.00) deposit and the stand shall become the property of the Tribe. The Fireworks Committee Chair may authorize the refunding of deposits after inspection. No deposits will be refunded until at least one (1) day after that date.

[History] Ord. 368 (5/2/17); Ord. 256 (4/10/07); Ord. 174 (9/5/03); Ord. 80 (5/16/91).

15-02.235 Sponsored Fireworks Displays.

- (A) **Public Displays.** Sponsored public fireworks displays shall be allowed as authorized by this Subsection (A).
- (1) Public fireworks displays within the Reservation shall be approved in advance by the Fireworks Committee and shall be subject to the requirements of a special use permit issued by the Swinomish Planning Department.
 - (2) An applicant for a special use permit shall submit the following:
 - (a) a site plan showing the proposed location for staging the display, conforming to the setbacks from buildings required by this Chapter, with a safety buffer zone surrounding the staging area and access for emergency vehicles;
 - (b) a Certificate of Liability Insurance meeting the requirements applicable to wholesalers under this Chapter and naming the Tribe as an additional insured;
 - (c) a safety plan, including availability of fire control equipment on the site and notice to the applicable fire department and to the Swinomish Police Department; and
 - (d) a site control and cleanup plan, including provisions for restricting public access to the safety buffer zone and for cleaning up the staging site when the display is over.
 - (3) The display shall be staged by a properly certified fireworks operator.
 - (4) An application for the special use permit and all documentation required by Subsection (A)(2), above, shall be submitted to the Swinomish Planning Department no less than fifteen (15) days prior to the scheduled display event. The sponsor or operator shall be allowed to use special fireworks of the classes appropriate to the public display and that are allowed under the certification of the fireworks operator.
- (B) **Private Displays.** Sponsored private fireworks displays shall be allowed as provided in Subsection (A), above. In addition, private sponsors shall also submit a description of the proposed event at which the display will occur, along with a description of the class of fireworks proposed for the display and the proposed operator of the display, whose certification shall allow operation of the class of fireworks proposed for the display.

[History] Ord. 338 (6/3/14).

15-02.240 Enforcement.

- (A) The Swinomish Tribal Police Department shall enforce the provisions of this Chapter, and shall patrol the fireworks sales areas on a regular basis to insure compliance and general safety conditions during and beyond the normal hours of business.
- (B) The Police Department has the authority to issue a notice of civil fireworks infraction, in addition to relief provided by any other provision of this Chapter or the Swinomish Tribal Code, to any person who has violated or is violating any provision of this Chapter:
 - (1) When the violation occurs in the Police Officer's presence; or
 - (2) When a Police Officer patrolling the fireworks sales area has reasonable cause to believe a civil fireworks infraction has been committed.
- (C) The Police Department shall make reasonable attempts to issue a warning to a Permittee, stand worker or fireworks user for a first violation, unless the violation is egregious and/or endangers the safety of others. Police Officers have the authority to trespass and immediately escort any person out of the fireworks sales area and surroundings if the person ignores a warning and/or endangers others.
- (D) The Police Department may immediately suspend sales and temporarily suspend a permit upon issuance of a civil or criminal citation. The temporary suspension shall remain in effect until such a time as the Fireworks Committee, or its designee, reviews the incident and in its sole discretion decides to either reinstate or revoke the permit. If there is no practical opportunity for the Fireworks Committee to meet formally to consider a temporary permit suspension, then the Chair of the Fireworks Committee may confer individually with available Committee members in person, by telephone or by email to determine the wishes of the Committee. If the permit is not reinstated by the Fireworks Committee, then the suspension shall be reviewed by the Tribal Court when adjudicating the accompanying civil or criminal citation. Any determination by the Fireworks Committee, or its designee, shall not be taken into consideration by the Tribal Court when adjudicating the accompanying civil or criminal citation. All Permittees shall cooperate to the fullest degree with Police Officers who are carrying out their responsibilities in the enforcement of this Chapter. Any Permittee found selling illegal fireworks shall have all fireworks inventory in the stand confiscated and subject to forfeiture.

[History] Ord. 368 (5/2/17); Ord 274 (5/11/10); Ord. 256 (4/10/07); Ord. 174 (9/5/03); Ord. 80 (5/16/91).

15-02.250 Civil Penalties.

In addition to any other civil or criminal penalty that may be provided in any other section of the Swinomish Tribal Code, any person found by the Tribal Court to have violated any Section of this Chapter may be subject any or all of the following civil penalties:

- (A) A fine imposed by the Tribal Court in an amount not less than one hundred dollars (\$100.00) or more than two hundred and fifty dollars (\$250.00), per violation;
- (B) Temporarily or permanently trespassed from fireworks sales areas;
- (C) Suspension or revocation of their permit;
- (D) Denial of future permits;
- (E) Confiscation and forfeiture of a fireworks stand, fireworks inventory, and/or all fireworks in a person's possession.

[History] Ord. 368 (5/2/17); Ord. 256 (4/10/07); Ord. 174 (9/5/03); Ord. 80 (5/16/91).

15-02.255 Duties and Civil Liabilities of a Permittee.

- (A) Each Permittee shall comply, and shall assure that all persons employed at the Permittee's stand comply, at all times with all provisions of this Chapter.
- (B) Each Permittee is responsible for any violation of, or noncompliance with, any provision of this Chapter by the Permittee and/or by any person employed at the Permittee's stand, and is jointly and severally liable for any civil fine, forfeiture or other penalty imposed as a result of any such violation or noncompliance by the Permittee or by any person employed at the Permittee's stand.

[History] Ord. 368 (5/2/17).

15-02.260 Criminal Violations.

- (A) **Unlawful Possession or Sale.** It shall be unlawful for a person who is subject to the criminal jurisdiction of the Tribe to knowingly possess, sell, offer for sale, agree to sell or transfer, or transfer any special fireworks.
- (B) **Unlawful Discharge or Use of Fireworks.** It is unlawful for any person to discharge or use fireworks in a reckless manner which creates a substantial risk of death or serious physical injury to another person or damage to the property of another.
- (C) **Penalties.** A person found in violation of this Section shall be guilty of a Class B offense punishable in accordance with STC 4-12.020 and, in addition, shall be ordered by the Tribal Court to make financial restitution to any injured party, including but not limited to the Tribe, as compensation for any damage caused by

such action. Furthermore, a Permittee found in violation of this Section shall have all fireworks in the stand confiscated and subject to forfeiture, his or her fireworks stand shall be closed down for the remaining days of current fireworks sales season, and shall not be allowed to purchase a permit to sell fireworks for at least two (2) consecutive years.

[History] Ord. 368 (5/2/17); Ord. 256 (4/10/07); Ord. 174 (9/5/03); Ord. 80 (5/16/91).

15-02.270 Tribal Disclaimer.

Nothing in this Chapter shall be construed as an obligation of the Tribe 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 Reservation. The Tribe disclaims any liability or responsibility arising from the activities of the Permittees and does not waive and specifically reserves its sovereign immunity, including but not limited to its sovereign immunity from any claim that may arise from such activities.

[History] Ord. 368 (5/2/17); Ord. 256 (4/10/07); Ord. 174 (9/5/03); Ord. 80 (5/16/91).

15-02.280 Repealer.

Ordinance Nos. 80 and 95 are hereby repealed.

[History] Ord. 256 (4/10/07); Ord. 174 (9/5/03).

15-02.290 Severability.

A judicial declaration of invalidity to any provision or portion of the applicability of this Chapter shall not affect any other provisions of this Chapter or their applicability.

[History] Ord. 256 (4/10/07); Ord. 174 (9/5/03); Ord. 80 (5/16/91).