HO-CHUNK NATION CODE (HCC)
TITLE 3 – HEALTH AND SAFETY CODE
SECTION 4 – FIREWORKS ORDINANCE

ENACTED BY LEGISLATURE: MAY 23, 2000

LAST AMENDED AND RESTATED: APRIL 18, 2001

CITE AS: 3 HCC § 4

This Ordinance supersedes the Ho-Chunk Nation Fireworks Ordinance enacted May 26, 1998 by Ho-Chunk Nation Legislative Resolution 05/26/98A.

Amended and restated by Ho-Chunk Nation Legislative Resolution 4/18/01B.

1. **Authority**.

a. Article V, Section 2(a) of the Constitution grants the Legislature the power to make laws, including codes, ordinances, resolutions, and statutes.

b. Article V, Section 2(e) of the Constitution grants the Legislature the power to raise revenue, including the power to levy and collect taxes and license fees.

c. Article V, Section 2(h) of the Constitution grants the Legislature the power to enact all laws prohibiting and regulating conduct and imposing penalties upon all persons within the jurisdiction of the Nation.

d. Article V, Section 2(r) of the Constitution grants the Legislature the power to protect and foster Ho-Chunk religious freedom, culture, language, and traditions.

e. Article V, Section 2(t) of the Constitution grants the Legislature the power to enact laws governing law enforcement on lands within the jurisdiction of the Nation.

f. Article V, Section 2(w) of the Constitution grants the Legislature the power to enact laws to regulate hunting, fishing, trapping, recreation and all other related activities on lands within the Nation's jurisdiction.

g. Ho-Chunk Nation Tribal Employment Rights Ordinance (TERO).

2. **Purpose**. The Ho-Chunk Nation recognizes the inherent risks to the safety and welfare of Tribal members and the general public posed by the use of fireworks. This Ordinance regulates the sale, possession, and use of fireworks on Ho-Chunk Nation trust lands.

3. **Declaration of Policy**.

a. The sale, possession, and use of fireworks on Nation trust land will be strictly regulated in accordance with the provisions of law herein.

b. The regulations addressing the storage and handling of fireworks shall be equivalent to or stricter than the codes or regulations adopted by the State of Wisconsin.

c. No person under the age of 18 years shall purchase or use fireworks on Ho-Chunk trust land.

d. The Nation's Tribal Employment Rights Ordinance (TERO) and applicable permit fees shall apply to all venders, suppliers, or businesses permitted to engage in the sale, possession, or use of fireworks as provided herein.

e. Permits for the sale, storage, or display of fireworks shall be issued only to a HCN tribal enterprise or tribal-affiliated organization that is properly chartered by the Nation as a charitable organization.

4. **Scope**. This Act applies to all tribal members, Nation employees, vendors, and others selling, possessing, or using fireworks on Ho-Chunk trust land.

5. **Definitions**. As used in this Ordinance, the following shall have the meaning provided here.

a. "Fireworks" means anything manufactured, processed, or packed for exploding, emitting sparks, or combustion, which does not have another common use, but does not include any of the following:

(1) Fuel or lubricant.

(2) A firearm cartridge or shotgun shell.

(3) A flare used, 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, 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 that is designed to produce audible and/or visible effects.

(10) A device designed to spray out paper confetti or streamers and which contains less than one-quarter grain of explosive mixture.

(11) A fuseless device that is designed to produce audible or visible effects and that contains less than one-quarter grain of explosive mixture.

(12) A device that is designed primarily to burn pyrotechnic smoke-producing mixtures at a controlled rate and that produces audible or visible effects.

b. "Inspector" means any employee of the Ho-Chunk Nation Department of Labor who is certified in safety codes and is an authorized enforcement official who conducts inspections and issues citations.

c. "Member" means a person duly enrolled in the Ho-Chunk Nation.

d. "Tribal Child" means a person under the age of 18 who is either an enrolled member of the Nation or is eligible for enrollment in the Nation as of right.

e. "Tribal Enterprise" means any enterprise funded by the Nation and operated by the Nation for profit.

f. "Tribal Court" means the Ho-Chunk Nation Trial Court.

6. **Implied Consent**.

a. Entry upon Ho-Chunk trust land without the permission of the Nation is prohibited.

b. When permission is given to enter Ho-Chunk trust land, it is expressly conditioned upon the consent of the person(s) entering such land to the jurisdiction of the Nation for purposes of enforcing this Ordinance.

c. Entry upon Ho-Chunk trust land made in violation of the provisions of this Ordinance is made without consent.

d. Any person who enters upon Ho-Chunk trust land shall be deemed to have given consent to the jurisdiction of the Nation for purposes of enforcing this Ordinance.

7. **Administration**. The Department of Labor, Division of Safety ("Department of Labor") shall be responsible for establishing consistent and fair rules and procedures to govern the sale, advertising, display, storage, and handling of fireworks.

8. **Sale of Fireworks.**

a. No person(s) or organization may sell or possess with the intent to sell fireworks on Ho-Chunk trust land without having a permit for said purposes issued by the Department of Labor by its designated agent.

b. Permits for the sale, advertising, storage, or display of fireworks shall be issued only to HCN tribal enterprise or tribal-affiliated organizations that are properly chartered by the Nation as a charitable organization.

c. Firework Sale Permit.

(1) Any Ho-Chunk enterprise, Ho-Chunk recognized charitable organization, or Ho-Chunk church/religion that desires to engage in the sale, advertising, or display of fireworks on trust land shall apply to the Department of Labor for a permit to do so. The Department of Labor shall provide a form for requesting said permit, which shall specify the following:

(a) Name, address, and telephone number of individual making application.

(b) The name of the tribal organization requesting the permit.

(c) The name and address of employees, agents, representatives, or vendors who shall engage in the sale activities under the applicants permit.

(d) The location(s) of the sale or activities and, if different, the location(s) of any storage facilities of fireworks under the applicant's control.

(e) The type and class of fireworks to be sold.

(f) The permit processing fee of $25.00.

(g) Notification of applicable TERO work permit fees.

(h) Proof of appropriate liability insurance.

(2) Term of Permit. No permit issued under this Ordinance shall be valid for a period longer than 120 days.

(3) Display of Permit. Any person(s) issued a permit shall display said permit in a prominent and conspicuous location at each authorized place of sale.

(4) Each non-profit organization shall be limited to one (1) site for the distribution and sale of fireworks.

d. Sale Restrictions. No person(s) shall sell or possess with intent to sell fireworks if:

(1) The type or class of fireworks is subject to regulation and permitting under 18 U.S.C. § 841, et seq.

(2) The purchase of any fireworks is sought by a person under the age of 18 years.

e. Vendor Contracts.

(1) Tribal charitable or non-profit organizations that sponsor the sale of fireworks on Nation trust land and engage a vendor for the sale shall enter into a written contract with the vendor specifying the terms of monetary benefit to the organization.

(2) Contract shall have an "acknowledgement of payment made clause" wherein the charitable or non-profit organization acknowledges the receipt of the monetary benefit in accordance with the specified terms in fulfillment of the contract.

(3) Vendors will maintain financial records for sales and make these records available to the sponsoring organization and the Department of Labor.

(4) A copy of the fulfilled contract with the acknowledgement of the charitable or non-profit organization that payment has been received will be provided to the Department of Labor within thirty (30) days of the expiration of the permit to sell the fireworks.

9. **Use and Display of Fireworks**. This paragraph applies to the use of fireworks by groups or entities engaged in an organized display of fireworks open to the public.

a. Fireworks Display Permit.

(1) 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 five (5) working days, a fireworks display permit issued by the Department of Labor.

(2) Permits for the display of fireworks shall be issued only to HCN tribal or tribal-affiliated organizations that are properly chartered by the Nation as a charitable organization.

(3) The application for permit will, at a minimum, contain the following information:

(a) Name, address, and telephone number of individual making application.

(b) The name of the tribal organization requesting the permit.

(c) The name and address of employees, agents, representatives, or vendors who shall engage in the sale activities under the applicants permit.

(d) The location of the display.

(e) The type and class of fireworks to be displayed.

(f) The permit processing fee of $25.00.

(g) The amount, if any, of an admission charge to the display.

(h) Proof of appropriate liability insurance.

10. **Parental Liability**. A parent or legal guardian of a tribal child who uses fireworks is liable for damages caused by the child's use of fireworks.

11. **Penalties**.

a. Penalties for Non-Compliance. Any person who violates the provisions of this Ordinance shall be subject to any one or more of the following penalties.

(1) The seizure of the fireworks by an inspector or agent of the Department of Labor. Seized fireworks shall be retained until completion of the adjudication process in Tribal courts. If the violation is upheld the fireworks shall be destroyed; or otherwise returned to the owner.

(2) A civil remedial money forfeiture may be imposed by the Tribal Court for any violation of this Ordinance in the minimum amount of $100.00.

(3) Any person who sells or possesses fireworks with the intent of sale without obtaining the required permit, under the provisions of paragraph 8, shall be subject to a minimum forfeiture, upon conviction thereof, in the amount of $150.00. The maximum forfeiture shall not exceed $5,000.00.

(4) Any person, organization, or business that uses fireworks under provisions of paragraph 9 shall be subject to a minimum forfeiture, upon conviction thereof, in the amount of $1,000.00. The maximum forfeiture shall not exceed $5,000.00.

b. Other Penalties. Use of fireworks by any person, organization, or business may also subject said person, organization, or business to liability or legal action for violation of the laws of the Nation or, when applicable, of the State of Wisconsin concerning curfew, public disturbances, nuisances, and damage to persons or property.

12. **Enforcement**.

a. 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 or entity who directly committed has not been convicted of a violation. A person or entity is concerned in the commission of a violation if the person or entity:

(1) Directly commits the violation;

(2) Aids and abets the commission of it; or

(3) Is a party to a conspiracy with another to commit it or advises, hires, or counsels or otherwise procures another to commit it.

b. Enforcement.

(1) The Ho-Chunk Nation Department of Justice may petition the Tribal Court for an order enjoining violations of this Ordinance.

(2) Such petitions shall be filed prior to or within one (1) year after the violation arises. The Tribal Court shall have the discretionary authority, upon good cause shown, to issue an appropriate order, injunction, or declaratory relief.

c. Jurisdiction. Jurisdiction is hereby conferred upon the Ho-Chunk Nation Trial Court over all matters related to enforcement of this Ordinance.

d. Court Costs. Any person or entity adjudicated by the Tribal Court as having violated this Ordinance shall be liable for court costs.

13. **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 affected thereby.

b. The Nation declares that there is no liability on the part of the Nation, its agencies, or employees for any damages, which may occur as a result of reliance upon or conformance with this Ordinance. The Nation, by the adoption of this Ordinance, does not waive its sovereign immunity in any respect.

Legislative History:

5/28/97	Introduced by Rep. Douglas Greengrass to the Veterans, Cultural and Public Affairs Committee.
5/28/97	Legislature refers draft ordinance to Education, Employment Relations, Labor, Public Safety and Human Resources Committee.
5/20/98	Fourth draft of the ordinance is referred to the full legislature by the Business, Corporate and Economic Development Committee.
5/26/98	Fifth draft adopted by Legislative Resolution 5/26/98A.

5/23/00	Ordinance superseded by 3 HCC §4 (2000) (Fireworks Ordinance) enacted by Legislative Resolution 5/23/00D.
4/18/01	Amended and restated by Legislative Resolution 4/18/01B.