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TITLE 20

NOOKSACK CRIMINAL CODE

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TITLE 20

NOOKSACK CRIMINAL CODE

20.00 GENERAL PROVISIONS

20.00.010 Title, Severability and Repealer:

- a) This title shall be known and may be cited as the Nooksack Criminal Code.
- b) If any provision of this code, or its application to any person or circumstance is held invalid, the remainder of the code, or the application of the provision to other persons or circumstances is not affected and to this end the provisions of this code are declared to be severable.

20.00.020 Authority: This title is enacted under the authority of Article VI, Section 1(h) and Article VI, Section 2 (a) (2) of the Constitution of the Nooksack Indian Tribe and confers upon the Nooksack Tribal Court the power to hear, adjudicate and impose the penalties provided herein for the crimes enumerated under this title.

20.00.030 Jurisdiction: The Nooksack Tribal Court shall have subject matter jurisdiction over all matters under this title. The territorial and personal jurisdiction of the Nooksack Tribal Court shall be limited only by the Constitution and Bylaws of the Nooksack Indian Tribe of Washington.

20.00.040 Non-waiver of Sovereign Immunity: Nothing in this title shall be deemed to constitute a waiver by the Nooksack Tribe of its sovereignty, rights, powers, privileges, or sovereign immunity.

20.00.050 Custom/Other Law:

- (a) Where helpful to the fair and equitable disposition of criminal matters, the Tribal Court may inquire into the tribal customs and usages of the Nooksack Tribe.
- (b) As to any matters which are not covered by the codes, ordinances and resolutions of the Tribe, or by the traditional customs and usages of the Tribe, the Tribal Court may be guided by statutes and case law developed by other tribes, by the states, or the federal government.

20.00.060 Terms: Where a term is not defined herein, it shall be given its ordinary meaning. Any reference to “he”, “him” or other masculine terms shall include male and female persons. Any reference to a singular term includes the plural.

20.00.070 Capacity: Children under the age of thirteen (13) years are incapable of committing a crime.

20.00.080 Definitions:

- (a) “Access Device” means any card, plate, code, account number, or other means of account access that can be used alone or in conjunction with another access device to obtain money, goods, services, or anything else of value, or that can be used to initiate a transfer of funds, other than a transfer originated solely by paper instrument.
- (b) “Bodily injury” or “bodily harm” means physical pain or injury or illness, or an impairment of physical condition.
- (c) “Child” means any person under the age of 18 years and not emancipated.
- (d) “Deadly weapon” means any explosive or firearm, and shall include any other weapon, device, instrument, article or substance, including a “vehicle” as defined in this section, which under the circumstances in which it is used, attempted to be used, or threatened to be used, is readily capable of causing death or substantial bodily injury.
- (e) “Dwelling” means any building or structure, though movable or temporary, or a portion thereof, which is used or ordinarily used by a person for lodging.
- (f) “Frail elder or vulnerable adult” means a person 55 years of age or older who has the functional, mental, or physical inability to care for himself or herself. “Frail elder or vulnerable adult” also includes a person found incapacitated, a person over eighteen years of age who has a developmental disability, a person admitted to long-term care, and a person receiving services from a home health, hospice, or home care provider.
- (g) “Knowingly” or “with knowledge” means being aware of a fact, facts, or circumstances or result described by a statute defining an

offense; or having information which would lead a reasonable person in the same situation to believe that facts exist which are described by a statute defining an offense.

- (h) “Law enforcement officer” means any duly appointed or authorized tribal or local government law enforcement officer.
- (i) “Lewd matter” is synonymous with “obscene matter” and means any matter:
 - (1) Which the average person, applying contemporary community standards, would find when considered as a whole, appeals to the prurient interest; and
 - (2) Which depicts or describes patently offensive representations or descriptions of:
 - (i) Ultimate sexual acts, normal or perverted, actual or simulated; or
 - (ii) Masturbation, excretory functions, or lewd exhibition of the genitals or genital area.

Nothing in this definition is intended to include or proscribe any matter which, when considered as a whole, and in the context in which it is used, possesses serious literary, artistic, political, or scientific value.

- (j) “Live performance” means any play, show, skit, dance, or other exhibition performed or presented to or before an audience of one or more, in person or by electronic transmission, with or without consideration.
- (k) “Motion picture or film” shall include any:
 - (1) Film or plate negative;
 - (2) Film or plate positive;
 - (3) Film designed to be projected on a screen for exhibition;
 - (4) Films, glass slides, or transparencies, either in negative or positive form, designed for exhibition by projection on a screen.

- (5) Video tape or any other medium used to electronically reproduce images on a screen.
- (l) “Negligently” means failure to be aware of a substantial risk that a wrongful act may occur and the failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable person would exercise in the same or similar situation.
- (m) “Maliciously” means a desire to cause annoyance or harm of any kind.
- (n) “Person”, “he”, “she” or “actor” means any natural person and, where relevant, a corporation, joint stock association, an unincorporated association, or any other legal entity.
- (o) “Place” includes, but is not limited to, any building, structure, or places, or any separate part or portion thereof, whether permanent or not, or the ground itself.
- (p) “Position of trust or authority” means, but is not limited to, the special authoritative or confidential relationships relating to the provision of education, health care, any kind of counseling, coaching, religious advise, public safety services or other professional services.
- (q) “Public official” means any officer, employee, or representative of any tribal or other governmental organization or agency, including a tribal or other court, or any person acting in an official capacity for or on behalf of any tribal or other government organization, whether that official is paid to perform their official duties or not, and whether that official has a temporary or permanent position.
- (r) “Publication” shall include any book, magazine, article, pamphlet, writing, printing, illustration, picture, sound recording, or a motion picture film, which is offered for sale or exhibited in a coin-operated machine
- (s) “Quick Child” an unborn child that has a reasonable likelihood of sustained survival outside the womb, with or without artificial life-support.
- (t) “Recklessly” means knowing of and disregarding a substantial risk that a wrongful act may occur and the disregard of such substantial

risk is a gross deviation from conduct that a reasonable person would exercise in the same situation.

- (u) “Sale” means a passing of title or right of possession from a seller to a buyer for valuable consideration, and shall include, but is not limited to, any lease or rental arrangement or other transaction wherein or whereby any valuable consideration is received for the use of, or transfer of possession.
- (v) “Serious” or substantial bodily injury” means bodily injury which causes serious or substantial disfigurement (temporary or permanent) or which causes a serious or substantial loss or impairment (temporary or permanent) of the function of any bodily part or organ.
- (w) “Tribe” means the Nooksack Indian Tribe of the State of Washington.
- (x) “Threat/Threaten” means to communicate, directly or indirectly, the intent immediately to use force against any person who is present at the time; or to communicate, directly or indirectly the intent: to cause bodily injury in the future to the person threatened or to any other person, or to cause physical damage to the property of a person other than the actor, or to subject the person threatened or any other person to physical confinement or restraint.
- (y) “Unlawful force” means force that is without lawful authority.
- (z) “Vehicle” means and includes every device capable of being moved upon a roadway and in, upon, or by which any persons or property is or may be transported or drawn upon a roadway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks.
- (aa) “Willfully” or “intentionally” means with the purpose of achieving a result that constitutes a crime.
- (bb) “Without lawful authority” means that no legitimate defense justifies the conduct in question. Legitimate defenses include, but are not limited to: reasonable force and/or detention by an enforcement officer; reasonable discipline by a parent; force reasonably used in self-defense, defense of another or to prevent the commission of a crime; retrieving property when a person knows he has the right to it; doing an act pursuant to a lawfully

issued permit or government agency, authority or court order; implied invitation by a business and by public organization for members of the public with legitimate business to be on the premises during normal working hours; exercising a protected legal or civil right. The absence of lawful authority can be inferred in appropriate circumstances unless the defendant asserts a legitimate defense.

20.00.090 Civil Enforcement of Criminal Provisions: The Tribe hereby declares all violations of this Title to threaten the political integrity, economic security, and/or health or welfare of the Tribe and its members. Therefore, if any person allegedly violates a provision of this Title, the Tribe may file a civil cause of action against such person alleging the violation of this Title. Such cause shall be tried pursuant to the Civil Rules of the Nooksack Indian Tribe. If the person is found to have committed the provision of this Title, the Court may impose a fine of not more than \$1,000.00 for a Class C offense; not more than \$2,500.00 for a Class B offense; and not more than \$5,000.00 for a Class A offense. The actions identified herein, and the penalties imposed therefrom, shall be cumulative in nature. Further, the Tribe may exercise the powers herein in addition to any other action permitted by law.

20.01 ANTICIPATORY CRIMES

20.01.010 Aiding and Abetting – Accomplice Liability: Any person who intentionally assists in or encourages the commission of an offense is guilty of commission of that offense. Adults who assist minors in the commission of an offense commit a separate offense defined in section 20.02.100, below.

20.01.020 Attempting to Commit a Crime: Any person, intending to commit a crime enumerated in this Code, who does an act, which is a substantial step toward the commission of that crime, but does not complete the commission of the crime, shall be guilty of Attempting to Commit a Crime. Attempting to Commit a Crime is classified at the same level of offense attempted.

20.01.030 Conspiracy: Any person who agrees with one or more persons to engage in or cause the performance of any act that would constitute a crime if performed, and if he or his conspirators take a substantial step in pursuance of such agreement is guilty of Conspiracy. Conspiracy is classified at the same level of offense as the offense that is the subject of the agreement.

It shall not be a defense to criminal conspiracy that the person or persons with whom the accused is alleged to have conspired:

- a) Has not been prosecuted or convicted; or
- b) Has been convicted of a different crime; or
- c) Is not the subject to the jurisdiction of the Tribal Court; or
- d) Lacked capacity to commit a crime.

20.01.040 Solicitation of an Offense: Any person who intentionally offers to pay or otherwise give a thing of value to another to encourage the commission of a crime or attempt to commit a crime commits the offense of solicitation of an offense. Solicitation is classified at the same level of offense as the offense that is the subject of the solicitation.

20.02 CRIMES INVOLVING PERSONS

20.02.010 Abuse of a Vulnerable Adult: It shall be unlawful for any person:

- a) to willfully inflict physical or mental pain or injury on an elder or vulnerable adult or threaten to do the same;
- b) to willfully misuse the funds, property, or resources of an elder or vulnerable adult for profit or advantage.

In addition to any other penalty imposed for a violation of this Section, the Tribal Court may grant any other civil or equitable remedy.

Abuse of a Vulnerable Adult is a Class B offense.

20.02.020 Aggravated Assault: Any person who uses a deadly weapon to commit an assault shall be guilty of Aggravated Assault. Aggravated Assault is a Class B offense.

20.02.030 Aiding or Abetting Suicide Attempt: Any person, who knowingly causes, aids or encourages another person to commit or attempt to commit suicide, shall be guilty of Aiding or Abetting Suicide Attempt. Aiding or Abetting Suicide Attempt is a Class B offense.

20.02.040 Attempted Suicide: Any person who attempts to take his own life shall be guilty of Attempted Suicide. Attempted suicide is a Class B offense.

20.02.050 Battery: Any person who willfully strikes another person or otherwise inflicts bodily harm, or who by offering violence causes another to harm himself shall be guilty of a Class B offense.

- a) Using a firearm or any deadly weapon in committing battery shall be a Class A offense.
- b) Intentionally and without lawful authority causing substantial bodily harm to an unborn quick child by intentionally and without lawful authority inflicting any injury upon the mother of such child shall be a Class A offense.

20.02.060 Coercion: Any person who, by means of a threat or assault, compels another to do an act, or to refrain from doing an act, against the latter's will, shall be guilty of Coercion. Coercion is a Class B offense.

20.02.070 Criminal Impersonation: Any person who

- (a) Falsely identifies himself, or who uses the name or identifying materials of another person, with the intent to wrongfully deceive another for the purpose of gaining money, property, services, or other gain or advantage shall be guilty of Criminal Impersonation. Criminal Impersonation is a Class B offense; or
- (b) Pretends to be the representative of some person or organization and does an act in his pretended capacity with intent to defraud another or for any unlawful purpose shall be guilty of Criminal Impersonation.
- (c) Identifying materials include but are not limited to:
 - 1) Drivers Licenses;
 - 2) Social Security Cards;
 - 3) Official Documents;
 - 4) Access Devices as defined in Section 20.01.080 of this Code.

Criminal Impersonation is a Class C offense.

20.02.080 **Defamation:** Any person who with actual malice, communicates to any other person by any means whatsoever any information which he knows to be false or if the person is recklessly indifferent to the question of truth or falsity and knows that the information impeaches the honesty and integrity or reputation of a third person and thereby expose him to public hatred, contempt, or ridicule shall be guilty of Defamation.

There shall be no defenses of justification, fair comment or other common law defenses.

There shall be an absolute privilege for communications made in executive, judicial or legislative proceedings.

Defamation is a Class C offense.

20.02.090 **Harassment:** A person is guilty of harassment if:

- (a) Without lawful authority, the person knowingly threatens to cause bodily injury immediately or in the future to the person threatened or to any other person; or to cause physical damage to the property of a person other than the actor; or to subject the person threatened or any other person to physical confinement or restraint; or maliciously to do any other act which is intended to substantially harm the person threatened or another with respect to his physical or mental health or safety; and
- (b) The person by words or conduct places the person threatened in reasonable fear that the threat will be carried out. "Words or conduct" includes, in addition to other forms of communication or conduct, the sending of electronic communication.
- (c) Every person who, with intent to harass, intimidate, torment or embarrass any other person, shall make a telephone call to such other person:
 - a. Using any lewd, lascivious, profane, indecent, or obscene words or language, or suggesting the commission of any lewd or lascivious act; or
 - b. Anonymously or repeatedly or at an extremely inconvenient hour, whether or not conversation ensues.

Harassment is a Class A offense.

- 20.02.100 Homicide:
- (a) Any person who knowingly, or recklessly, or negligently causes the death of another by act, omission or procurement;
 - (b) Any person who intentionally and unlawfully kills an unborn quick child by inflicting any injury upon the mother of such child; shall be guilty of a Class A offense.
- 20.02.110 Kidnapping: Any person who:
- (a) Restrains another by use of threat of deadly force; or
 - (b) Who secretes or holds another in a place where he or she is not likely to be found, with intent:
 - 1) To hold him or her for ransom, as a shield, or as a hostage; or
 - 2) To inflict bodily injury on him or her; or
 - 3) To inflict extreme mental distress on him or her or a third person; shall be guilty of a Class A offense.
- 20.02.120 Malicious Harassment: Any person who without lawful authority threatens to physically injure, confine, or restrain another, or to cause damage to property, or to take any action intended to threaten the physical or mental health of a person and who by words or conduct places the person threatened in reasonable fear that the threat will be carried out, shall be guilty of Malicious Harassment.
- Malicious Harassment is a Class A offense.
- 20.02.130 Manslaughter: Any person, who causes the homicide of another through recklessness negligence or indifference to the safety of others, shall be guilty of Manslaughter.
- Manslaughter is a Class B offense.
- 20.02.140 Obscenity: Any person who sells, delivers, or provides any obscene writing, picture, record or other representation that his obscene, or represents an obscene place, dance, live or recorded performance, or exhibition, shall be guilty of Obscenity.

Obscenity is a Class B offense.

20.02.150 Reckless Endangerment: Any person who recklessly engages in conduct which creates substantial risk of death or serious bodily injury to another shall be guilty of a Class B offense.

20.02.160 Robbery I: Any person who by force or violence or fear or intimidation takes from a person or presence of another anything of value, and:

- (a) Is armed with a deadly weapon; or
- (b) Displays what appears to be a firearm or other deadly weapon; or
- (c) Inflicts bodily injury.

Robbery I is a Class A offense.

20.02.170 Robbery II: Any person who by force or violence or fear or intimidation takes from a person or presence of another anything of value.

Robbery II is a Class B offense.

20.02.180 Rendering Criminal Assistance: Any person who with intent to prevent, hinder, or delay the apprehension or prosecution of another person who he knows has committed a crime or is being sought by law enforcement officials for the commission of a crime, or has escaped from a detention facility:

- (a) Harbors or conceals such person; or
- (b) Warns such person of impending discovery or apprehension; or
- (c) Provides such person with money, transportation, disguise, or other means of avoiding discovery or apprehension; or
- (d) Prevents or obstructs, by use of force, deception, or threat, anyone from performing an act that might aid in the discovery or apprehension of such person; or
- (e) Conceals, alters, or destroys any physical evidence that might aid in the discovery or apprehension of such person; or
- (f) Provides such person with a weapon is guilty of a Class B offense.

20.02.190 Stalking: A person commits the crime of stalking if, without lawful authority and under circumstances:

- (a) He intentionally and repeatedly harasses or repeatedly follows another person; and
- (b) The person being harassed is placed in fear that the actor intends to injure the person, another person, or property of the person or of another person. The feeling of fear must be one that a reasonable person in the same or similar circumstances would experience; and
- (c) The actor either (i) intends to frighten, intimidate, or harass the person; or (ii) knows or reasonably should know that the person is afraid, intimidated, or harassed even if the actor did not intend to place the person in fear or intimidate or harass the person.

Stalking is a Class A offense.

As used in this section:

“Contact” includes, in addition to any other form of contact or communication, the sending of an electronic communication to the person.

“Follows” means deliberately maintaining visual or physical proximity to a specific person over a period of time. A finding that the alleged stalker repeatedly and deliberately appears at the person’s home, school, place of employment, business, or any other location to maintain visual or physical proximity to the person is sufficient to find that the alleged stalker follows the person. It is not necessary to establish that the alleged stalker follows the person while in transit from one location to another.

"Unlawful harassment" means the repeated invasions of a person by acts and threats, which show a pattern of harassment designed to coerce, intimidate, or humiliate the victim.

“Protective order” means any temporary or permanent court order prohibiting or limiting violence against, harassment of, contact or communication with, or physical proximity to another person.

“Repeatedly” means on two or more occasions.

Non-defenses/Defenses:

- (a) It is not a defense to the crime of stalking that the actor was not given actual notice that the person did not want the actor to contact or follow the person; and
- (b) It is not a defense to the crime of stalking that the actor did not intend to frighten, intimidate, or harass the person.
- (c) It shall be a defense to the crime of stalking that the defendant is a licensed private investigator acting within the capacity of his license.

20.02.200 Unlawful Imprisonment: Any person who knowingly restrains another person without lawful authority is guilty of a Class B offense.

20.02.210 Menacing: Any person who, by any threat or physical action, knowingly places or attempts to place another person in fear or imminent bodily injury shall be guilty of a Class B offense.

Non-defenses:

- (a) It is not a defense the defendant did not intend to frighten, intimidate, or harass the person; or
- (b) It is not a defense that any property damaged was the property of the defendant; or
- (c) It is not necessary to prove actual fear on the part of the victim.

20.02.220 Cyberstalking: Any person who:

- (a) with intent to harass, intimidate, torment, or embarrass any other person, makes an electronic communication to such other person or a third party:
 - (1) Using any lewd, lascivious, indecent, or obscene words, images, or language, or suggesting the commission of any lewd or lascivious act; or
 - (2) Anonymously or repeatedly whether or not conversation occurs; or
 - (3) Threatening to inflict injury on the person or property of the person called or any member of his or her family or household, is guilty of cyberstalking.

- (b) Cyberstalking is a Class A offense.
- (c) Any offense committed under this section may be deemed to have been committed either at the place from which the communication was made or at the place where the communication was received.
- (d) For purposes of this section, "electronic communication" means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. "Electronic communication" includes, but is not limited to, electronic mail, internet-based communications, pager service, and electronic text messaging.

20.03 CRIMES INVOLVING MINORS & OTHER DEPENDENT PERSONS

20.03.010 Definitions:

- (a) "Abandons" means leaving a child or other dependent person without the means or ability to obtain one or more means of the basic necessities of life.
- (b) "Basic Necessities of Life" means food, water, shelter, clothing, and medically necessary health care, including but not limited to health-related treatment or activities, hygiene, oxygen, and medication.
- (c) "Bodily Injury" means physical pain or injury, illness, or an impairment of physical condition
 - (1) "Substantial Bodily Harm" means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss, or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part.
 - (2) "Great Bodily Harm" means bodily injury which creates a high probability of death, or which causes serious permanent disfigurement, or which causes a permanent or protracted loss or impairment, of the function of any bodily part.
- (d) "Child" means a person under eighteen years of age.
- (e) "Dependent Person" means a person who, because of physical or mental disability, or other cause, is dependent upon another person to provide the basic necessities of life. A resident of a nursing home, a resident of an adult family home, and a frail elder or vulnerable adult is presumed to be a dependent person for the purpose of this chapter.

- (f) “Employed” means hired by a dependent person, another person acting on behalf of a dependent person, or by an organization or governmental entity, to provide to a dependent person any of the basic necessities of life. A person may be “employed” regardless of whether the person is paid for the services or, if paid, regardless of who pays for the person’s services.
- (g) “Parent” has its ordinary meaning and also includes a guardian and the authorized agent of a parent or guardian.

20.03.020 Special Considerations for Crimes Involving Minors: If the defendant is a minor, the Nooksack Family Code should be referred to for other applicable penalties and procedures. Dependency proceedings and other proceedings for temporary or permanent removal and custody of the minor may be concurrent to any proceedings involving crimes under this Chapter.

20.03.030 Assault of a Child in the First Degree: A person eighteen year of age or older is guilty of the crime of assault of a child in the second degree if the child is under the age of eighteen and the person:

- (a) Commits the crime of aggravated assault against the child; or
- (b) Intentionally assaults the child and either
 - (1) Recklessly inflicts great bodily harm; or
 - (2) Causes substantial bodily harm and the person has previously engaged in a pattern or practice either (i) assaulting the child which resulted in bodily harm that is greater than transient physical pain or minor temporary marks or (ii) causing the child physical agony that is equivalent to that produced by torture.

Assault of a Child in the First Degree is a Class A offense.

20.03.040 Assault of a Child in the Second Degree: A person eighteen year of age or older is guilty of the crime of assault of a child in the first degree if the child is under the age of eighteen and the person:

- (a) Commits the crime of assault against the child; or
- (b) Intentionally assaults the child and causes bodily harm that is greater than transient physical pain or minor temporary marks and the person has previously engaged in a pattern or practice of either (i) assaulting the child which has resulted in bodily harm that is greater than transient pain or minor temporary marks, or (ii) causing the child physical agony that is equivalent to that produced by torture.

Assault of a Child in the Second Degree is a Class B offense.

- 20.03.050 Breaking Curfew: Any person who is a parent, legal guardian or custodian of a minor who has violated curfew two or more times in a school year and such person knew, or in the exercise of parental responsibility should have known, that the minor was committing each curfew offense and did not take appropriate steps to prevent the offenses, shall be guilty of Breaking Curfew. Breaking Curfew is a Class C offense.
- 20.03.060 Child Abuse: Any person, who shall commit an act of violence or abuse against another person under the age of eighteen (18), shall be guilty of Child Abuse. Child Abuse is a Class B offense.
- 20.03.070 Climbing on Rooftops: Any person who is a parent, custodian or legal guardian and fails to take reasonable steps to prevent any minor children in their lawful custody and care from climbing upon the roof of any tribal building shall be guilty of Climbing on Rooftops. Climbing on Rooftops is a Class B offense.
- 20.03.080 Contributing to the Criminal Act of a Minor: Any person, who by act or omission, knowingly or negligently encourages, causes, or contributes to the criminal act of a person under eighteen (18) years of age who is not married or emancipated, shall be guilty of a Class B offense, unless the criminal act of the minor was a Class A offense, in which case Contributing to the Criminal act of a Minor is a Class A offense.
- 20.03.090 Criminal Mistreatment in the First Degree: A parent of a child, the person entrusted with the physical custody of a child or dependent person, or a person employed to provide to the child or dependent person the basic necessities of life is guilty of criminal mistreatment in the first degree if he recklessly causes great bodily harm to a child or dependent person by withholding any of the basic necessities of life. Criminal Mistreatment in the First Degree is a Class A offense.
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- 20.03.100 Criminal Mistreatment in the Second Degree: A parent of a child, the person entrusted with the physical custody of a child or dependent person, or a person employed to provide to the child or dependent person the basic necessities of life is guilty of criminal mistreatment in the second degree if he recklessly either (a) creates an imminent and substantial risk of death or great bodily harm, or (b) causes substantial bodily harm by withholding any of the basic necessities of life. Criminal Mistreatment in the Second Degree is a Class B offense.
- 20.03.110 Criminal Mistreatment in the Third Degree: A parent of a child, the person entrusted with the physical custody of a child or dependent person, or a person employed to provide to the child or dependent person the basic

necessities of life is guilty of criminal mistreatment in the third degree if he either:

- (a) With criminal negligence, creates and imminent and substantial risk of substantial bodily injury to a child or dependent person by withholding any of the basic necessities of life; or
- (b) With criminal negligence, causes substantial bodily harm to a child or dependent person by withholding any of the basic necessities of life.

Criminal Mistreatment in the Third Degree is a Class C offense.

20.03.120 Desertion, Neglect and Nonsupport of Children: Any person who deserts, willfully neglects or refuses to provide for the maintenance or support of his child, or of his child, or of a child in his lawful custody, when financially able to do so is guilty of Desertion, Neglect and Nonsupport of Children. Desertion, Neglect and Nonsupport of Children is a Class B Offense.

20.03.130 Endangering the Welfare of a Child: Any person who knowingly endangers the welfare of a child by violating a duty of care, protection or support, or by intentionally leaving the child without care or by otherwise neglecting to care for the child in any manner which threatens serious harm to the physical or emotional well being of the child, shall be guilty of a Class C offense, unless the neglect causes serious injury or illness, in which case it is a Class B offense, or unless the neglect is life threatening, in which case a Class A offense is committed.

20.03.140 Failure to Send Children to School: Any person who, without good cause, fails to send his or her child or any child under his or her care to school, and such child has not reached his or her sixteenth (16th) birthday or has not completed the tenth (10th) grade, whichever comes first, shall be guilty of a Class C offense.

The Nooksack Tribal Court shall have the authority to fashion an alternative to regular high school attendance, including but not limited to, acquisition of a Washington certificate of educational competence as awarded by the Washington state superintendent of public instruction or an official report of equivalent acceptable scores of the general educational development test (G.E.D.).

20.03.150 Failure to Support Dependent Persons: Any person who, without reasonable excuse, refuses or neglects to furnish food, shelter, or care to those dependent upon him or her under the laws of customs and usages of the Nooksack Tribe, or if he or she fails to make proper use of funds or

property of a dependent person for the benefit of the dependent, is guilty of a Class C offense.

20.03.160 Interference with Custody: Any person who knowingly takes or entices a minor or incompetent person from the legal custody of a person, agency, or institution or who fails to return a minor or incompetent person to another's legal custody as required by the terms of a valid court order is guilty of a Class B offense. If physical injury results or is risked, or if a threat of injury or deadly force is used, then a Class A offense is committed. A threat to commit custodial interference is a Class C offense.

The Court shall take into consideration the duration of the interference and the level of trauma resulting to the minor or incompetent person, in sentencing a person for this offense.

20.03.170 Unattended Children in Car: Any person who leaves a child under the age of ten (10) unattended in a car, when that person has permanent or temporary custody of such child, shall be guilty of Leaving Unattended Children in Car. Leaving Unattended Children in Car is a Class B offense.

20.04 SEXUAL OFFENSES

20.04.010 Definitions: As used in this chapter:

- (a) "Abuse of a supervisory position" means a direct or indirect threat or promise to use authority to the detriment or benefit of a minor.
- (b) "Consent" means that at the time of the act of sexual intercourse or sexual contact there are actual words or conduct indicating freely given agreement to have sexual intercourse or sexual contact.
- (c) "Developmentally disabled" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation which has continued or can be expected to continue indefinitely and which constitutes a substantial handicap to the individual.
- (d) "Force or threat" means physical force which overcomes resistance, or a threat, express or implied, that places a person in fear of death or physical injury to herself or himself or another person, or in fear that she or he or another person will be kidnapped.

- (e) “Health care provider” in this section means a person who is, holds himself or herself out to be, or provides services as if he or she were
 - (1) A member of a health care profession; or
 - (2) Registered or certified to be a health care provider regardless of whether the health care provider is licensed, certified, or registered.
- (f) “Married” means one who is legally married to another, but does not include a person who is living separate and apart from his or her spouse and how has filed in an appropriate court for legal separation or for dissolution of his or her marriage.
- (g) “Mentally disordered person” in this section, means a person with an organic, mental, or emotional impairment, which has substantial adverse effects on an individual’s cognitive or volitional functions.
- (h) “Mental incapacity” is a condition existing at the time of the offense which prevents a person from understanding the nature or consequences of the act of sexual intercourse whether that condition is produced by illness, defect, the influence of a substance or from some other cause.”
- (i) “Person with supervisory authority” for this section means anyone who directly supervises developmentally disabled, mentally disordered, or chemically dependent persons.
- (j) “Physically helpless” means a person who is unconscious or for any other reason is physically unable to communicate willingness or unwillingness to an act.
- (k) “Sexual intercourse” (a) has its ordinary meaning and occurs upon any penetration, however slight, and (b) also means any penetration of the vagina or anus however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes, and (c) also means any act of sexual contact between persons involving the sex organs of one person and the mouth or anus of another whether such persons are of the same or opposite sex.

- (l) “Sexual contact” “Sexual touching” means any touching of the sexual or other intimate parts of a person done for the purpose of arousing or gratifying the sexual desire of any person or for the purpose of abusing, humiliating, harassing, or degrading another person.
- (m) “Sexual explicit conduct and/or sexual activity” means any act defined under (a) and/or (b) of this section.
- (n) “Significant relationship” means a situation in which the perpetrator is:
 - (1) A person who undertakes responsibility, professionally or voluntarily, to provide education, health, welfare, or organized recreational activities; or
 - (2) A person who is in the course of his or her employment supervises minor; or
 - (3) A person who provides, welfare, health or residential assistance, personal care services, including a provider, employee, temporary employee, volunteer, or independent contractor but not including a consensual sexual partner.
- (o) “Treatment” for this section means the active delivery of professional services by a health care provider which the health care provider holds himself or herself out be qualified to provide.

20.04.020 Child Molestation in the First Degree: A person is guilty of child molestation in the first degree when the person who has, or knowingly causes another person to have sexual contact with another who is less than twelve years old and the perpetrator is at least thirty-six months older than the victim.

Child Molestation in the First Degree is a Class A offense.

20.04.030 Child Molestation in the Second Degree: A person is guilty of child molestation in the second degree when the person has, or knowingly causes another person to have sexual contact with another who is at least twelve years old but less than fourteen years old and the perpetrator is at least thirty-six months older than the victim.

Child Molestation in the Second Degree is a Class B felony.

20.04.040 Child Molestation in the Third Degree: A person is guilty of child molestation in the third degree when the person has, or knowingly causes

another person, to have sexual contact with another who is at least fourteen years of age but less than sixteen years old and not married to the perpetrator and the perpetrator is at least forty-eight months older than the victim.

Child Molestation in the Third Degree is a Class C offense.

20.04.050 Indecent Liberties: A person is guilty of indecent liberties when he knowingly causes another person who is not his spouse to have sexual contact with him or another:

- (1) By threat or force;
- (2) When the other person is incapable of consent by reason of being mentally defective, mentally incapacitated, or physically helpless.
- (3) When the victim is developmentally disabled and the perpetrator is a person who is not married to the victim and who has supervisory authority over the victim.
- (4) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual contact occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by preponderance of the evidence that the client or patient consented to the sexual contact with the knowledge that the sexual contact was not for the purpose of treatment.
- (5) When the victim is a resident of a facility for mentally disordered or chemically dependent persons and the perpetrator is a person who is not married to the victim and has supervisory authority over the victim; or
- (6) When the victim is a frail elder or vulnerable adult and the perpetrator is a person who is not married to the victim and who has a significant relationship with the victim.

Indecent Liberties is a Class B offense.

20.04.060 Rape in the First Degree: Any person who engages in sexual intercourse with another person by force or threat is guilty of rape in the first degree, where the perpetrator or an accessory:

- (1) Uses or threatens to use a deadly weapon or what appears to be a deadly weapon; or
 - (a) Kidnaps the victim; or

- (b) Inflicts serious physical injury, including but not limited to physical injury which renders the victim unconscious; or
- (c) Unlawfully enters into the building or vehicle where the victim is situated.

Rape in the First Degree is a Class A offense.

20.04.070 Rape in the Second Degree: Any is guilty of rape in the second degree when, under circumstances not amounting to rape in the first degree, such person engages in sexual intercourse with another person:

- (1) By force or threat;
- (2) When the victim is incapable of consent by reason of being physically helpless or mentally incapacitated;
- (3) When the victim is developmentally disabled and the perpetrator is a person who is not married to the victim and who has supervisory authority over the victim;
- (4) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual intercourse occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by preponderance of the evidence that the client or patient consented to the sexual intercourse with the knowledge that the sexual intercourse was not for the purpose of treatment.
- (5) When the victim is a resident of a facility for mentally disordered or chemically dependent persons and the perpetrator is a person who is not married to the victim and has supervisory authority over the victim; or
- (6) When the victim is a frail elder or vulnerable adult and the perpetrator is a person who is not married to the victim and who has a significant relationship with the victim.

Rape in the Second Degree is a Class A offense.

20.04.080 Rape in the Third Degree: A person is guilty of rape in the third degree when, under circumstances not amounting to rape in the first or second degrees, such person engages in sexual intercourse with another person, not married to the perpetrator:

- (1) Where the victim did not consent to sexual intercourse with the perpetrator and the lack of consent was clearly expressed by the victims words or conduct; or

- (2) Where there is a threat of substantial harm to the victim's property.

Rape in the Third Degree is a Class C offense.

20.04.090 Rape of a Child: A person is guilty of rape of a child in the first degree when the person, regardless of consent, has sexual intercourse with another who is less than 16 years old and not married to the perpetrator and the perpetrator is at least forty-eight (48) months older than the victim.

Rape of a Child is a Class A offense.

20.04.100 Sexual Exploitation of Children: Any person who:

- (1) Causes, performs or knowingly permits the photographing or filming of a minor under the age of 18 (or just a minor) to engaged in a prohibited sexual act or in the simulation of such act; or
- (2) Knowingly sells, lends, displays, exhibits, distributes, or possesses any book, magazine, pamphlet, slide, photograph, or film depicting a minor under the age of 18 (or just a minor) engaging in a prohibited sexual act or in the simulation of such act; is guilty of sexual exploitation of children.

Sexual Exploitation of a Child is a Class A offense. An exception to this section exists to the selling, lending, distributing, exhibiting, showing, possessing, or making of films, photographs, or other materials involving only nudity, is such material is made for and has an obvious serious medical, scientific, education, literary, or artistic value.

20.04.110 Sexual Misconduct with a Minor in the First Degree: A person is guilty of sexual misconduct of a minor in the first degree when the person has, or knowingly causes another person, to have sexual intercourse with another person who is at least sixteen years old but less than eighteen years old and not married to the perpetrator, if the perpetrator is at least 18 months older than the victim or abuses a supervisory position within the relationship in order to engage in or cause another person to engage in sexual intercourse with the victim.

Sexual Misconduct with a Minor in the First Degree is a Class B offense.

20.04.120 Sexual Misconduct with a Minor in the Second Degree: A person is guilty of sexual misconduct of a minor in the first degree when the person has, or knowingly causes another person, to have sexual intercourse with another person who is at least sixteen years old but less than eighteen years old and not married to the perpetrator, if the perpetrator is at least 18 months older than the victim, or is in a significant relationship to the victim, or abuses a supervisory position within the relationship in order to engage in or cause another person to engage in sexual intercourse with the victim.

Sexual Misconduct with a Minor in the Second Degree is a Class C offense

20.04.130 Sexually Violating Human Remains: Any person who has sexual intercourse or sexual contact with a dead body is guilty of sexually violating human remains. Sexually Violating Human Remains is a Class A offense.

20.04.140 Voyeurism: A person commits the crime of voyeurism if, for the purpose of arousing or gratifying the sexual desire of any person, he or she, knowingly views, photographs, or films another person, without that person's knowledge and consent, while the person being viewed, photographed, or filmed is in a place where he or she would have a reasonable expectation of privacy. This section does not apply to viewing, photographing, or filming by personnel of a correctional facility for security purposes or during a lawful investigation of alleged misconduct by a person in the custody of a correctional facility.

As used in this section:

- (1) "Photographs" or "films" means the making of a photograph, motion picture film, videotape, or any other recording or transmission of the image of a person:
- (2) "Place where he or she would have a reasonable expectation of privacy means:
 - (a) A place where a reasonable person would believe that he or she could disrobe in privacy, without being concerned that his or her undressing was being photographed or filmed by another; or
 - (b) A place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance;

- (3) “Surveillance” means secret observation of the activities of another person for the purpose of spying upon and invading the privacy of the person;
- (4) “Views” means the intentional looking upon of another person for more than a brief period of time, in other than a casual or cursory manner, with the unaided eye or with a device designed or intended to improve visual acuteness.

Voyeurism is a Class C offense.

20.04.150 Incest: Any person who engages in sexual intercourse or engages in or causes sexual touching with a person whom he knows to be related to him, either legitimately or illegitimately, as an ancestor, descendent, brother, sister, aunt, uncle, niece, nephew, of either the whole or the half blood, is guilty of a Class B offense. As used in this section, “descendent” includes stepchildren and adopted children under the age of eighteen (18) years. For purposes of this section, sexual touching is defined under section 20.03.030 (b).

Any person who engages in Incest with a child under the age of sixteen (16) is guilty of a Class A offense, if the perpetrator is at least forty-eight (48) months older than the victim.

20.04.160 Prostitution: Any person who shall offer or agree to engage in any sexual activity with another for a fee, exchange of property, drugs or service or who shall procure a prostitute for another or who shall knowingly receive any portion of the fee shall be deemed guilty of a Class C offense.

Any person who encourages a child under the age of eighteen (18) years to engage in prostitution is guilty of a Class A offense.

20.04.170 Public Indecency: Any person who makes open and obscene exposure of his person or the person of another, knowing that such conduct is likely to cause reasonable affront or alarm in another person, is guilty of public indecency.

Public Indecency is a Class C offense, unless the victim is under the age of (16) in which case it is a Class B offense.

20.05 PROPERTY RELATED OFFENSES

20.05.010 Assigning Value of Property: If a dollar value cannot be assigned to property because it is an artifact, is irreplaceable, or has significant sentimental, ceremonial or spiritual value to the owner, the Court shall

estimate the dollar value. In estimating the dollar value of the property, the Court shall consider the sworn testimony of the person or party claiming the property has special value in addition to any other evidence the Court deems relevant.

- 20.05.020 Arson: Any person who:
- (a) Knowingly causes a fire or explosion and thereby places any person in danger or causes death or injury to another person including fire fighters; or
 - (b) Willfully causes a fire or explosion with intent to damage property, without lawful authority; shall be guilty of a Class A offense.
- 20.05.030 Burglary: Any person who enters or remains unlawfully in any building, structure, or vehicle with intent to commit an offense there shall be guilty of a Class A offense. In any prosecution for burglary, intent to commit an offense may be inferred from entering or remaining unless it can be explained by sufficient evidence to the trier of fact to have been made without criminal intent.
- 20.05.040 Cutting Timber Without a Permit: Any person who cuts timber, standing or fallen, on tribal property without the authorization of the Tribal Council or who cuts timber, standing or fallen, on the property of another person without first obtaining the owner's permission, is guilty of a Class C offense.
- 20.05.050 Damage to Private Property: Any person who intentionally injures, destroys or defaces any building or other property belonging to any person when such property is located in the Tribe's jurisdiction, shall be guilty of Destruction of Private Property. Destruction of Private Property is a Class B offense.
- 20.05.060 Damage of Public Property: Any person who, without lawful authority, destroys, damages, defaces or otherwise causes injury to any property of the Nooksack Indian Tribe or other government, shall be guilty of Damage to Public Property. Damage to Public Property is a Class B offense.
- 20.05.070 Defacing Official Signs: Any person who shall, without proper authorization remove, alter, or deface any sign of the Nooksack Tribe, or any sign of the state or federal government, shall be guilty of Defacing Official Signs. Defacing Official Signs is a Class B offense.

- 20.05.080 Desecration: Any person who, without Tribal Council approval, excavates or removes artifacts or other items excavated from any traditional, sacred, or religious areas of the Nooksack Indian Tribe, or willfully defaces, damages, pollutes, physically mistreats or otherwise desecrates, in any fashion, any such grounds, public monument, building structure, or place of worship or burial shall be guilty of Desecration. Desecration is a Class A offense.
- 20.05.090 Embezzlement: Any person who, while having lawful custody or control of another's property, appropriates such property to his own use with the intent to deprive the owner of it, shall be guilty of Embezzlement. Embezzlement is a Class B offense.
- 20.05.100 Extortion: Any person who knowingly obtains or attempts to obtain property or services of another by threat shall be guilty of a Class B offense.
- 20.05.110 Forgery or Counterfeiting: Any person who signs, executes, alters or falsifies any written documents, checks, currency or written instrument with intent to defraud shall be guilty of a Class B offense.
- 20.05.120 Fraud: Any person who obtains money or other property or any benefit or privilege, by deceit, willful misrepresentation or false statement shall be guilty of a Class C offense.
- 20.05.130 Malicious Mischief: Any person who knowingly and maliciously:
- (a) Causes physical damage to public property or to the property of another; or
 - (b) Creates a substantial risk or interruption or impairment of service rendered to the public, by physical damaging or tampering with an emergency vehicle or property of the Nooksack Indian Tribe, the federal government, the state, a political subdivision thereof, or a public utility or mode or public transportation, power or communication; shall be guilty of a Class C offense, unless the amount of damage caused is over \$500, in which case it is a Class B offense.
- 20.05.140 Misbranding: Any person, who intentionally misbrands, alters or defaces any brand or mark intended to designate ownership of timber, livestock or other property, shall be guilty of Misbranding. Misbranding is a Class B offense.

- 20.05.150 Obscuring the Identity of a Machine: Any person who knowingly obscures the manufacturer's serial number or any other distinguishing identification number or mark upon any vehicle, machine, boat, engine, apparatus, appliance, or other device with intent to render it unidentifiable; or possesses a vehicle, machine, engine, apparatus, appliance, or other device held for sale knowing that the serial number or other identification number or mark has been obscured, is guilty of a Class C offense. "Obscure" means to remove, deface, cover, alter, destroy, or otherwise render unidentifiable.
- 20.05.160 Obtaining a Signature by Deception or Coercion: Any person who causes another person to sign or execute written instrument by employing deception or coercion and with intent to defraud and deprive, is guilty of a Class B offense. The word "coercion" as used herein means that a person by use of a threat compels or induces another person to engage in conduct, which the latter has a legal right to abstain from, or to abstain from conduct, which he has a legal right to engage in.
- 20.05.170 Possession of Stolen Property I: Any person who receives, possesses, conceals, or aids in receiving or concealing property that is stolen property, and who knows or has reason to know such property is stolen and:
- (a) When the property is a firearm;
 - (b) When the value of the property is in excess of \$1,000; or
 - (c) When the property has cultural or religious significance to the victim or to the Nooksack Indian Tribe;
- shall be guilty of Receiving or Possessing Stolen Property. Receiving or Possessing Stolen Property I is a Class A offense.
- 20.05.180 Possession of Stolen Property II: Any person who receives, possesses, conceals, or aids in receiving or concealing property that is stolen property, and who knows or has reason to know such property is stolen and:
- (a) When the value of the property is in excess of \$100 but does not exceed \$1,000;
 - (b) When the property is public records;
 - (c) When the property is an access device; or

(d) When the property is a motor vehicle with a value, which does not exceed \$1,000, shall be guilty of a Class B offense.

20.05.190 Possession of Stolen Property III: Any person who receives, possesses, conceals, or aids in receiving or concealing property that is stolen property, and who knows or has reason to know such property is stolen and when the value of the property does not exceed \$100, shall be guilty of a Class C offense.

20.05.200 Reckless Burning: Any person who knowingly causes a fire or explosion and thereby damages any property or places any property in danger of damage, without lawful authority, is guilty of a Class B offense.

20.05.210 Removal of Landmarks or Navigational Markers: Any person who removes, alters, or destroys any landmarker or navigational marker put in place by either the Nooksack Indian Tribe or the United States, shall be guilty of Removal of Landmarks or Navigational Markers. Removal of Landmarks or Navigational Markers is a Class B offense.

20.05.220 Robbery: Any person who, in the course of committing a theft, inflicts serious bodily injury upon another, or threatens another with, or purposely puts another in fear of immediate serious bodily injury, shall be guilty of Robbery. Robbery is a Class A offense.

20.05.230 Taking Motor Vehicle Without Permission and Joyriding: Any person who, without the permission of the owner or person entitled to the possession thereof, intentionally takes or drives away any automobile or motor vehicle shall be deemed guilty of Taking a motor vehicle without permission. Taking Motor Vehicle Without Permission is a Class B offense.

(1) Joyriding: Every person voluntarily riding in or upon said automobile or motor vehicle with knowledge of the fact that the same was unlawfully taken shall be guilty along with the person taking or driving said automobile or motor vehicle and shall be deemed guilty of Joyriding. Joyriding is a Class C offense.

20.05.240 Theft I: Any person who takes the property of another with, without the owners consent, and with the intent to deprive the other person of the property or obtains services which he knows are available only for compensation in a manner designed to avoid payment:

(a) When the property is a firearm;

(b) When the value of the property is in excess of \$1,000; or

- (c) When the property has cultural or religious significance to the victim or to the Nooksack Indian Tribe; shall be guilty of a Class A offense.

20.05.250 Theft II: Any person who takes the property of another with, without the owners consent, and with the intent to deprive the other person of the property or obtains services which he knows are available only for compensation in a manner designed to avoid payment:

- (a) When the value of the property is in excess of \$100 but does not exceed \$1,000;
- (b) When the property is public records;
- (c) When the property is an access device; or
- (d) When the property is a motor vehicle with a value which does not exceed \$1,000

Shall be guilty of a Class B offense.

20.05.260 Theft III: Any person who takes the property of another, without the owner's consent, and with the intent to deprive the other person of the property or obtains services which he knows are available only for compensation in a manner designed to avoid payment:

- (a) When the value of the property does not exceed \$100; shall be guilty of a Class C offense.

20.05.270 Trespass: Any person who enters the property of another person or the Tribe with the intent to interfere with the peaceful enjoyment of the property, or to interrupt the conduct of business, or to engage in any disruptive activity; or any person who knowingly enters or remains unlawfully in or upon premises of another or the Tribe; or any person who refuses to leave the property of another or the Tribe when requested to do so by the owner, or the owner's agent, shall be guilty of Trespass. Trespass is a Class C offense, unless the trespass is of a person's dwelling, in which case it is a Class B offense.

For purposes of this section, "premises" includes any building, dwelling, structure, or any real property.

20.05.280 Unlawful Issuance of Checks: Any person who, with intent to defraud, makes, draws, or delivers to another person any check, or draft, for the

payment of money, knowing at the time of such drawing, or delivery, that he has not sufficient funds in, or credit, to meet the check or draft, in full upon its presentation, shall be guilty of unlawful issuance of bank check.

The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank or other depository for the payment of a check or draft.

The uttering or delivering of such a check or draft to another person without adequate funds or credit shall be prima facie evidence of an intent to defraud.

Unlawful issuance of checks is a Class A offense if the face value of the check or draft exceeds \$1,000.

Unlawful issuance of checks is a Class B offense if the face value of the check or draft exceeds \$100 but does not exceed \$1,000.

Unlawful issuance of checks is a Class C offense if the face value of the check or draft does not exceed \$100.

20.05.290 Unauthorized Use of Tribal Identification Card: Any person who loans his tribal identification card, permit, tags, license, registration, or any other tribal identification to another or who borrows the tribal identification of another is guilty of a Class C offense.

20.05.300 Unauthorized Use of Tribal Property: Any person who, without permission from a tribal official or employee authorized to give such permission, uses any property, including vehicles, owned by or in the possession of the Nooksack Indian Tribe or any subordinate tribal agency shall be guilty of Unauthorized Use of Tribal Property. Unauthorized Use of Tribal Property is a Class B offense.

20.06 DRUG RELATED OFFENSES

20.06.010 Drug Abuse: Any person, under the jurisdiction of the Nooksack Indian Tribe, who violates any of the following subsections shall be guilty of committing the offense of Drug Abuse and upon conviction shall be sentenced according to the penalties herein described.

20.06.020 Definitions:
As used in this section:

- (a) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means, to the body.

- (b) "Controlled substance" means a drug, substance, or immediate precursor in Schedules I and II.
- (c) "Delivery" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.
- (d) "Distribute" means to deliver other than by administering or dispensing a controlled substance.
- (e) "Drug" means (1) substances recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or Official National Formulary, or any supplement of any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals; (3) substances (other than food) intended to affect the structure of any function of the body of man or animals; (4) substances intended for use as a component of any article specified in clause (1), (2), or (3) of this subsection. It does not include devices or their components, parts, or accessories.
- (f) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, either directly or indirectly by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or re-labeling of its container, except that this term does not include the preparation or compounding of a controlled substance by:
 - (1) a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice, or
 - (2) a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.
- (g) "Marijuana" means all parts of the plant of the genus Cannabis L., whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other

compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

- (h) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
- (1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.
 - (2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause 1, but not including the isoquinoline alkaloids of opium.
 - (3) Opium poppy and poppy straw.
 - (4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.
- (i) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

20.06.030 Drug Paraphernalia: Definitions

Drug paraphernalia means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. It includes, but is not limited to:

- (a) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of

plant which is a controlled substance or from which a controlled substance can be derived;

- (b) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;
- (c) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant, which is a controlled substance;
- (d) Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances;
- (e) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
- (f) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;
- (g) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
- (h) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;
- (i) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
- (j) Containers and other objects used, intended for use, or designed for use in storing and concealing controlled substances;
- (k) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;
- (l) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish oil

into the human body, such as:

- (i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
 - (ii) Water pipes;
 - (iii) Carburetion tubes and devices;
 - (iv) Smoking and carburetion masks;
 - (v) Roach clips: Meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
 - (vi) Miniature cocaine spoons, and cocaine vials;
 - (vii) Chamber pipes;
 - (viii) Carburetor pipes;
 - (ix) Electric pipes;
 - (x) Air-driven pipes;
 - (xi) Chillums;
 - (xii) Bongs; and
 - (xiii) Ice pipes, or chillers.
- (a) In determining whether an object is drug paraphernalia under this section, a court or other authority should consider, in addition to all other logically relevant facts, the following:
 - (1) Statements by an owner or by anyone in control of the object concerning its use;

- (2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state, federal or tribal law relating to any controlled substance;
- (3) The proximity of the object, in time and space, to a direct violation of this chapter;
- (4) The proximity of the object to controlled substances;
- (5) The existence of any residue of controlled substances on the object;
- (6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended or designed for use as drug paraphernalia;
- (7) Instructions, oral or written, provided with the object concerning its use;
- (8) Descriptive materials accompanying the object, which explain or depict its use;
- (9) National and local advertising concerning its use;
- (10) The manner in which the object is displayed for sale;
- (11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
- (12) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
- (13) The existence and scope of legitimate uses for the object in the community; and

(14) Expert testimony concerning its use.

- 20.06.040 (a) Prohibited Acts - Manufacture, Cultivate, Deliver - Penalties
Except as authorized by this section, it is unlawful for any person to manufacture, cultivate, deliver, or possess with intent to manufacture or deliver, a controlled substance. Any person who violates this subsection is guilty of a Class A crime.
- (b) Possession of marijuana (cannabis) in accordance with the following restrictions and limitations shall not constitute a violation of subsection (a) above, this chapter, or any other provision of Nooksack Tribal law.
- (1) Any person 21 years of age or older cannot possess more than one ounce of usable marijuana, 16 ounces of marijuana-infused products in solid form, 72 ounces of marijuana-infused products in liquid form, or seven grams of marijuana concentrate. Any person who possesses marijuana, marijuana-infused products or concentrates in excess of the foregoing limits, or any person under the age of 21 years who possesses marijuana or marijuana-infused products or concentrates in any amount, may be prosecuted in accordance with Section 20.06.050 below.
 - (2) Any person who manufactures, cultivates, delivers, processes, or possesses with the intent to deliver marijuana or marijuana-infused solids or liquids or concentrate may be prosecuted in accordance with this section.
 - (3) It is unlawful for any person to consume marijuana in any form in any public place or possess marijuana in any form in public view. "Public place" is defined as any place where the general public may have access, including but not limited to, schools, public parks, Tribal governmental offices, Tribal vehicles, parking lots, Tribal businesses and enterprises, and Tribal health clinics. Violation of this subsection shall be a Class B crime.
 - (4) It is unlawful for any person to possess or use marijuana or marijuana-infused solids or liquids or concentrate in the passenger compartment of any motor vehicle. Violation of this subsection shall be a Class B crime.

- (5) Possession of drug paraphernalia as defined in section 20.06.030 shall not constitute a violation of section 20.06.060, this chapter or any other provision of Nooksack Tribal law so long as it is used solely to consume marijuana or marijuana-infused solids or liquids or concentrate in accordance with the terms of this section.

20.06.050 Prohibited Acts - Possession - Penalties: Except as authorized by this section, it is unlawful for any person to knowingly possess a controlled substance. Any person who violates this subsection is guilty of a Class A crime.

20.06.060 Prohibited Acts - Possession - Penalties
Except as authorized by this section, it is unlawful for any person to possess any drug paraphernalia. Any person who violates this subsection is guilty of a Class A crime.

20.06.070 Inhaling Toxic Fumes: Any person who intentionally smells or inhales the fumes of any type of substance containing a solvent having the property of releasing toxic vapors or fumes, or induces any other person to do so, for the purpose of causing a condition of, or inducing symptoms of intoxication, elation, euphoria, dizziness, excitement, irrational behavior, exhilaration, paralysis, stupefaction, or dulling of the senses of the central nervous system, or for the purpose of, in any manner, changing, distorting, or disturbing the audio, visual, or mental processes shall be guilty of a Class C offense.

“Substance containing a solvent having the property of releasing toxic vapors or fumes” means any substance containing one or more of the following chemical compounds: Acetone; Amyl acetate; Benzol or benzene; Butyl acetate; Butyl alcohol; Carbon tetrachloride; Chloroform; Cyclohexanone; Ethanol or ethyl alcohol; Ethyl acetate; Hexane; Isopropanol or isopropyl alcohol; Isopropyl acetate; Methyl “cellosolve acetate; Methyl ethyl ketone; Methyl isobutyl ketone; Toluol or toluene; Trichloroethylene; Tricresyl phosphate; Xylol or xylene; or any other solvent, material substance, chemical, or combination thereof, having the property of releasing toxic vapors.

20.06.080 Defenses: Any person lawfully involved in the possession, distribution, manufacture or delivery of any controlled substance listed in the Schedule passed by the Tribal Council shall not be in violation of this section.

20.07 ALCOHOL RELATED OFFENSES

20.07.010 Delivery of Alcohol to Person Under Twenty-One Years of Age: Any person who gives, sells, or trades any alcoholic beverage to a person under the age of twenty-one (21) shall be guilty of a Class C offense.

20.07.020 Intoxication: Any person who, under circumstances not amounting to disorderly conduct, is under the influence of an intoxicating beverage, drug, or other controlled substance, or a substance dangerous to himself or another, in a public place, shall be guilty of Intoxication. Intoxication is a Class C offense.

20.07.030 Liquor Violations: Any person who possesses, trades, transports, or manufactures any alcoholic beverage for sale within the territorial jurisdiction of the Nooksack Reservation without authorization from the Tribe shall be guilty of a Class C offense.

20.07.040 Minor Under the Influence of Alcohol: Any person under the age of twenty-one (21) found to be under the influence of any intoxicating beverage shall be guilty of a Class C offense.

20.07.050 Minor in Possession of Alcohol: Any person under the age of twenty-one (21) who shall possess, purchase, consume, obtain or sell any alcoholic beverage shall be guilty of a Class C offense.

“Consume” means the act of consuming liquor, the condition of having consumed liquor, and the condition of being under the influence of liquor.

20.07.060 Use or Possession of Alcoholic Beverages - Prohibited Tribal Properties or Community:

The use or possession of alcoholic beverages on the premises of any tribal property or community centers is prohibited. Any person who shall use or possess alcoholic beverages on the premises of any tribal property or community center shall be guilty of Use or Possession of Alcoholic Beverages at Tribal Properties or Community Centers. Violation of this subsection is a Class C offense.

20.08 TRAFFIC OFFENSES and CRIMES INVOLVING VEHICLES:

20.08.010 **Attempting to Elude Pursuing Police Vehicle:** Any driver of any vehicle who willfully fails or refuses to immediately bring his vehicle to a stop after being given a visual or audible signal to bring the vehicle to a stop by an enforcement officer is guilty of a Class B offense.

The signal given by the enforcement officer may be by emergency light or siren.

20.08.020 **Drive-by Shooting:** A person is guilty of drive-by shooting when:

- (a) He recklessly discharges a firearm in a manner, which creates a substantial risk of death or serious physical injury to another person, and the discharge is either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm, or both, to the scene of the discharge.
- (b) A person who unlawfully discharges a firearm from a moving vehicle may be inferred to have engaged in reckless conduct, unless the discharge is shown by evidence satisfactory to the trier of fact to have been made without such recklessness.

Drive-by shooting is a Class B offense.

20.08.030 **Driving While Under the Influence:** A person is guilty of driving while under the influence if he or she drives a vehicle or operates heavy machinery while:

- (a) He or she is under the influence of, or affected by, intoxicating liquor, any drug, or any substance containing a solvent having the property of releasing toxic vapors or fumes; or
- (b) He or she has 0.08 grams or more of alcohol per two hundred ten liters of breath, as shown by analysis of his breath, blood, or other body substance; or
- (c) He or she is under the combined influence of, or affected by a combination of, intoxicating liquor, any drug, or any substance containing a solvent having the property of releasing toxic vapors or fumes.

Driving while under the influence is a Class B offense.

The fact that any person charged with a violation of this section is lawfully using such drug shall not constitute a defense against any charge of violating this section.

20.08.040 Physical Control: A person is guilty of being in physical control of a motor vehicle while under the influence if he or she has physical control of a vehicle while:

- (a) He or she is under the influence of, or affected by, intoxicating liquor, any drug, or any substance containing a solvent having the property of releasing toxic vapor or fumes; or
- (b) He has 0.10 grams or more of alcohol per two hundred ten liters of breath, as shown by analysis of his breath, blood, or other bodily substance; or
- (c) He is under the combined influence of or affected by intoxicating liquor, any drug, or any substance containing a solvent having the property of releasing toxic vapor or fumes.

Physical control is a Class C offense.

For purpose of this section, “Physical Control” shall mean that a person is in physical control of a vehicle when that person has the authority to manage a vehicle, which is operable or reasonably capable of being made operable, or that person is in a position to regulate the movement of such vehicle.

20.08.050 Obedience to Enforcement Officers: Any person who refuses or fails to comply with any lawful order, signal, or direction of any tribal enforcement officer, or any flagger, or firefighter, who has authority to direct, control, or regulate traffic is guilty of a Class C offense.

A signal under this section includes signals by hand, voice siren, or emergency light.

20.08.060 Reckless Driving: Any person who operates any motor vehicle within the territorial jurisdiction of the Nooksack Indian Tribe in a manner, which causes damage to any person or property, or in a manner, which endangers or is likely to endanger any person or property shall be guilty of a Class B offense.

20.08.070 Refusal to Give Identification: It shall be unlawful for any person, who is operating or in charge of a vehicle, to refuse a request by a law enforcement officer to give his or her name and address, and the name and

address of the owner of the vehicle, or for such person to give false name and address. It shall be unlawful for any person to refuse a request of such law enforcement officer to produce 1) his certificate of license registration for the vehicle, and 2) his vehicle operator's license, and 3) his proof of insurance.

It shall be unlawful to refuse to permit the officer to take any such license, certificate, or card for the purpose of examination thereof, or to refuse to permit the examination of any equipment of the vehicle or the weighing of the vehicle.

Refusal to give identification is a Class C offense.

20.08.080 Vehicular Assault: Any person who causes serious bodily injury to another by operating a vehicle:

- (a) In a reckless manner; or
- (b) While under the influence of or affected by intoxicating liquor, drugs, glue or other like substance; shall be guilty of a Class A offense.

20.08.090 Vehicular Homicide: Any person who causes the death of another or who causes injury to another, which results in death within three years, by operation of a vehicle:

- (a) While under the influence of or affected by intoxicating liquor, drugs, glue, prescription medication, or other like substances; or
- (b) In a reckless manner; or
- (c) With disregard for the safety of other: shall be guilty of a Class A offense.

20.09 WEAPONS OFFENSES

20.09.010 Carrying a Concealed Firearm: Any person who knowingly conceals a firearm upon his person or who carries a firearm within the passenger compartment of any vehicle, without a valid permit to carry a firearm granted by the Nooksack Indian Tribe, shall be guilty of a Class C offense.

20.09.020 Loaded Firearm in Vehicle: A person is guilty of unlawful possession of a loaded firearm in a motor vehicle if:

- (a) The person carries, transports, conveys, possesses, or controls a loaded firearm (which includes rifles and/or shotguns) in or on a motor vehicle; and
 - (1) The firearm, rifle, or shotgun contains shells or cartridges in the magazine or chamber;
 - (2) or is a muzzle-loading firearm that is loaded and capped or primed.
- (b) A person is guilty of unlawful use of a loaded firearm if the person negligently shoots a firearm from, across, or along the maintained portion of a public highway.
- (c) Unlawful possession of a loaded firearm in a motor vehicle or unlawful use of a loaded firearm is a Class B offense.
- (d) This section does not apply to:
 - (1) Marshals, sheriffs, prison or jail wardens or their deputies, policemen or other law enforcement officers; or
 - (2) To members of the army, navy or marine corps of the United States or of the national guard or organized reserves when on duty; or
 - (3) To persons who have a license to carry a concealed firearm, and the firearm is on the licensee's person, or the licensee is within the vehicle at all times that the firearm is there, or the licensee is away from the vehicle and the firearm is locked within the vehicle and concealed from view from outside the vehicle.
- (e) For purposes of this section, a firearm shall not be considered loaded if the detachable clip or magazine is not inserted in or attached to the firearm and the chamber is empty.

20.09.030 Possession of a Loaded Firearm in Public: Any person who shall possess a loaded firearm within the reservation community and outside of a dwelling shall be guilty of Possession of a Loaded Firearm in Public. Possession of a Loaded Firearm in Public is a Class B offense.

- 20.09.040 Possession of a Weapon While Under the Influence of Alcohol or a Controlled Substance: Any person, whether he or she has a concealed weapons permit or not, who carries a firearm on his or her person while under the influence of alcohol or a controlled substance, shall be guilty of Possession of a Firearm While Under the Influence of Alcohol or a controlled substance. Possession of a Firearm While Under the Influence of Alcohol or a controlled substance is a Class A offense.
- 20.09.050 Possession of a Weapon in Tribal Court: Any person who shall possess any weapon while at the Tribal Court shall be guilty of Possession of a Weapon in Tribal Court. Possession of a Weapon in Tribal Court is a Class A offense.
- 20.09.060 Willful Aiming or Discharging of Firearm: Any person who shall willfully aim any firearm towards another, regardless of whether such firearm is loaded, or who shall discharge any firearm or who shall cause a projectile to be discharged from a firearm across reservation or tribal lands, regardless of whether such person is located off of reservation or tribal lands at the time of discharge, shall be guilty of Willful Aiming or Discharging of Firearm. Willful Aiming or Discharging of Firearm is a Class A offense.

20.10 OFFENSES AGAINST THE COMMUNITY PEACE, MORALS, SAFETY, WELFARE

- 20.10.010 Abandoning Refrigeration Equipment: Any person who has on his premises or discards or abandons any refrigerator, icebox, deep-freeze locker, or other container which has not had the door removed or secured to prevent opening or a portion of the latch mechanism removed to prevent latching or locking of the door, is guilty of a Class C offense.
- 20.10.020 Adulteration: Any person who knowingly or with reckless disregard manufactures, sells, gives, offers for sale, or intentionally keeps any food, drug, or drink which is adulterated with a harmful substance, or which, because of a defect in its manufacturing process, is harmful when ingested, is guilty of a Class C offense.
- 20.10.030 Cruelty to Animals: Any person who abandons, neglects, tortures, needlessly annoys, or cruelly mistreats any animal shall be guilty of a Class C offense.
- 20.10.040 Disorderly Conduct: Any person who:
- a) Engages in fighting or violent behavior in a public place;

- b) Uses abusive language and thereby intentionally creates a risk of a battery; or
- c) Intentionally disrupts any lawful assembly or meeting of persons without lawful authority; or
- d) Intentionally obstructs vehicular or pedestrian traffic without lawful authority, is guilty of a Class C offense.

20.10.050 Disorderly House: Any lessee, resident, manager, or proprietor of any room, house, building, structure, or premises who knowingly collects or permits to be collected therein persons who are engaging in any unlawful act, or who knowingly makes, causes, permits, or suffers to be made therein any loud or improper noise to the annoyance or disturbance of any other person or neighborhood shall be guilty of a Class C offense. For the purposes of this section, the term “disorderly house” shall mean to be any room, home, house, building, structure or premises, where unlawful or illegal acts are being committed.

20.10.060 Inmate of Disorderly House. Any person who is an inmate of or visits or frequents any disorderly house as declared in Section 20.10.050 with knowledge of, and participation in, the illegal activities occurring therein shall be guilty of a Class C offense.

20.10.070 Disturbing the Peace: Any person who, by means of a loud noise or disruptive act, endangers or disrupts the peace, tranquility, health, or welfare of any person or natural wildlife community, is guilty of a Class C offense.

20.10.080 Failure to Disperse: Any person who congregates with a group of three or more other persons and there are acts of conduct within that group which create a substantial risk of causing injury to any person, or substantial harm to property; and who refuses or fails to disperse when ordered to do so by a law enforcement officer is guilty of a Class C offense.

20.10.090 Failure to Report or Control a Fire: Any person who knows, or has reason to believe, that a fire is endangering life or property and fails to make a prompt report to the person or organization responsible for responding to fires, or any person who is under a legal or contractual duty to prevent or combat fire who breaches that duty, shall be guilty of Failure to Report a Fire. Failure to Report a Fire is a Class B offense.

20.10.100 False Reporting: Any person who, with knowledge that the information reported, conveyed or circulated is false, initiates or circulates a false report or warning of an alleged occurrence or impending occurrence of a

fire, explosion, crime, catastrophe, or emergency, or who sets off an alarm without a legitimate reason, knowing that such false report or alarm is likely to cause evacuation of a building, place or assembly, or transportation facility, or to cause public inconvenience or alarm, shall be guilty of a Class C offense.

- 20.10.110 Interruption of Public Services: Any person who tampers, damages or otherwise interferes with any emergency vehicle or equipment or any other public or private property in a manner that creates a substantial risk of interruption or impairment of the delivery of public services including, but not limited to, water, sewer, power, communications, transportation, fire protection or emergency services, shall be guilty of Interruption of Public Services. Interruption of Public Services is a Class B offense.
- 20.10.120 Interference with Community Gatherings: Any person who intentionally interferes with the participation or enjoyment of another at any funeral, religious gathering, sporting event, bingo or other tribal business activity, or other community gathering, shall be guilty of a Class C offense.
- 20.10.130 Interference with Tribal Business or Governmental Operations: Any person who knowingly interferes with the operation of tribal business or governmental operations, and who refuses or fails to stop such interference when ordered to do so by a law enforcement officer or enterprise personnel is guilty of a major crime. Prohibited types of interference under this section include: blocking of entrances to parking areas used by patrons of the business of governmental operation, and of entrances to the buildings of the business or governmental structures; harassment of patrons, visitors or employees of the business or governmental operation; and entering the business or governmental operation with intent to disrupt the activities of the enterprise.
- 20.10.140 Littering: Any person, who disposes of any garbage, waste or other litter anywhere on Tribal Lands except in public waste disposal grounds designated by the Tribal Council, or who, without lawful permission, stores or allows to accumulate any wrecked, junked, or unserviceable vehicles, appliances, or implements anywhere on Tribal Lands is guilty of illegal Littering or Dumping. Illegal Littering or Dumping is a Class C offense.
- 20.10.150 Loitering: Any person who congregates in a public area with a group of three or more other persons, and there are acts of conduct within that group which create a substantial risk of causing injury to any person, or substantial harm to property; and who refuses or fails to disperse when

ordered to do so by a law enforcement officer shall be guilty of Loitering. Loitering is an infraction.

20.10.160 Public Nuisance: Any person who, without proper authority, commits an act or fails to perform any duty and the act or omission unreasonably annoys, injures or endangers the comfort, repose, health, property or safety of any person, or which offends public decency, is guilty of Public Nuisance. Public Nuisance is a Class C offense.

20.10.170 Prohibited Outdoor Burning: any person, partnership, company or corporation who burns trash, rubbish, garbage, rubber, tar, or plastic outdoors anywhere on Tribal lands owned by the Nooksack Indian Tribe and/or Nooksack Housing Sites is guilty of Prohibited Outdoor Burning. Prohibited Outdoor Burning is a Class C offense. This section shall not prohibit the use of an outdoor fire for cooking or for recreation or for cultural ceremony.

20.10.180 Spreading Venereal Disease: Any person who, knowingly or having reason to believe that he has a venereal disease, infects another person(s) with venereal disease is guilty of Spreading Venereal Disease. Spreading Venereal Disease is a Class C offense.

20.10.190 Unlawful Public Gathering: Any person, corporation, or group of individuals who holds, sponsors, or organizes any gathering of persons which requires a Special Events Permit without first obtaining the Special Events Permit, shall be guilty to Unlawful Public Gathering. Unlawful and Unregulated Public Gathering is a Class C offense.

(a) Policy and Purpose: The Tribe enacts these provisions in order to ensure that adequate police, fire, sanitary, and parking facilities for gatherings on Nooksack lands.

(b) Permit Requirement. A Special Events Permit is required for public or private event activity on public or private property within the jurisdiction of the Nooksack Indian Tribe that has impact to surrounding neighborhood or requires substantial public services, including:

1. Any event planned to be held in a Nooksack public place that meets all three of the following criteria:

a. The activity is reasonably expected to cause or result in more than twenty (20) people gathering in a public place; *and*

- b. reasonably expected to have a substantial impact on the public place; *and*
 - c. requires the provision of substantial public services; OR
2. Any event planned to be held on private property that meets all three of the following criteria:
- a. Is reasonably expected to cause or result in more than fifty (50) people gathering; *and*
 - b. Is reasonably expected to have a substantial impact on public or neighbors; *and*
 - c. Is reasonably expected to require the provision of substantial public services; OR
3. Any other planned event in a public place, or private property if the event organizer requests the Tribe to provide any public services in addition to those that would normally be provided by the Tribe in the absence of the event.

(d) Processing Applications for Special Events Permit. Persons seeking to obtain a Special Events Permit shall make a written request to the General Manager of the Nooksack Indian Tribe. The General Manager shall forward the application to the Tribal Council for review and consideration. Tribal Council may request the applicant appear for the Tribal Council review in order to facilitate proper consideration of the request.

(e) Exceptions. The Tribe, any political subdivision thereof, and tribal businesses are exempt from the permit requirement.

20.10.200 Unlawful Petitioning: No person, while circulating a petition or collecting signatures for a petition, shall: (a) coerce a person to sign or not sign a petition; (b) misrepresent the contents of a petition or refuse to let signers read the petition; (c) circulate a petition in part, but not in its entirety; (d) forge names (or other required information) on the petition; (e) permit a person to sign for another person; (f) offer, seek or receive payment to abandon, sell or destroy a petition or (g) use a petition to extort or blackmail another person. Unlawful Petitioning is a Class C offense.

20.11 OBSTRUCTION OF JUSTICE

- 20.11.010 Assault/Battery of a Law Enforcement Officer: Any person who uses force or violence against, or who threatens, a law enforcement officer shall be guilty of a Class A offense.
- 20.11.020 Contempt of Court: Any person who willfully disobeys any court order, subpoena, summons, or command duly issued by the tribal court or any authorized officer thereof, shall be guilty of a Class B offense.
- 20.11.030 Escape: Any person in lawful custody for any offense who escapes, attempts escape, or assists another to escape from lawful custody shall be guilty of a Class B offense.
- 20.11.040 Flight to Avoid Prosecution: Any person who willfully and knowingly flees from the jurisdiction of the Nooksack Indian Reservation to avoid prosecution in any case pending before the Tribal Court, is guilty of a Class B offense.
- 20.11.050 Intimidating a Witness: Any person who, by use of a threat, attempts:
- a) to influence the testimony of a witness in any official proceeding; or
 - b) to induce the witness to be absent from the proceeding; shall be guilty of a Class B offense.
- 20.11.060 Intimidating a Juror: Any person who, by use of a threat, attempts:
- a) to influence the opinion, decision or vote of a juror in the Court; or
 - b) induces the juror to be absent from the proceeding; shall be guilty of a Class B offense.
- 20.11.070 Perjury: Any person who falsely testifies in any judicial proceeding, or who knowingly make a false statement in an affidavit or deposition is guilty of Perjury. Perjury is a Class C offense.
- 20.11.080 Refusing to Aid Officer: Any person who fails to respond to a request for assistance by a law enforcement officer, ambulance attendant, firefighter, or emergency medical technician, is guilty of a Class B offense.
- 20.11.090 Resisting a Lawful Order: Any person, who fails to abide by a lawful order of a law enforcement officer, whether such order is verbal or written, shall be guilty of Resisting a Lawful Order. Resisting a Lawful Order is a Class C offense.
- 20.11.110 Resisting Arrest: Any person who intentionally prevents or attempts to prevent an enforcement officer from lawfully arresting him, or who

intentionally flees from an enforcement officer with intent to prevent a lawful arrest or detention, shall be guilty of Resisting Arrest. Resisting Arrest is a Class B offense.

20.11.120 Tampering with an Official Proceeding: Any person who, believing that an official proceeding or investigation is pending or about to be instituted, causes himself or another person to testify or inform falsely or to withhold, destroy or conceal any information, document, or thing or its authenticity or availability, or to elude legal process summoning him to testify or supply evidence or who attempts to influence by any means the vote or decision of a jury member is guilty of Tampering with an Official Proceeding. Tampering with an Official Proceeding is a Class B offense.

20.10.130 Tampering with Physical Evidence: A person is guilty of tampering with physical evidence if, having reason to believe that an official proceeding is pending or about to be instituted, and acting without legal right or authority, he or she:

- (a) Destroys, mutilates, conceals, removes, or alters physical evidence with intent to impair its appearance, character, or availability in such pending or protective official proceeding; or
- (b) Knowingly presents or offers any false physical evidence.

Tampering with physical evidence is a Class B offense.

20.12 OFFENSES RELATED TO ADMINISTRATION OF TRIBAL GOVERNMENT:

20.12.010 Bribery: Any person who gives, or offers to give money, property, services or other gain or advantage to any elected or appointed official, or employee of the Nooksack Indian Reservation with the intent to influence his decision in the discharge of his public duties or conduct, is guilty of Bribery.

Any elected or appointed official or employee of the Nooksack Indian Reservation who requests, accepts or agrees to accept anything of monetary value based on the understanding that a decision on an official matter shall be influenced is guilty of Bribery.

The crime of Bribery shall pertain to any official act, including the functions of tribal officials, employees, police officers and other public officials and to the testimony of witnesses.

It is no defense to a bribery prosecution that the person to be influenced lacked the capacity or authority to perform the intended act.

Bribery is a Class B offense.

- 20.12.020 False Suits: Every person who shall bring on his own behalf, or instigate, incite or encourage another to bring, any false suit in, with intent thereby to distress or harass a defendant; and every person who shall serve or send any paper or document purporting to be or resembling a judicial process, not in fact a judicial process shall be guilty of a Class C offense.
- 20.12.030 Misuse of Funds: Any person who appropriates property or funds not his own, including tribal funds, for his own use or the use of another or who otherwise handles the funds in a manner not authorized by law shall be guilty of a Class B offense.
- 20.12.040 Impersonating a Public Servant: Any person who falsely pretends to hold a position of public office or employment with the purpose of inducing another to submit to such pretended official authority, shall be guilty of Impersonating a Public Servant. Impersonating a Public Servant is a Class B offense.
- 20.12.050 Intimidation of a Public Officer: Any person who, directly or indirectly, uses unjustified force or violence, or threaten the use of force or violence, to a public officer with the intent to influence or interfere with the performance of an official function, shall be guilty of Intimidation of a Public Officer. Intimidation of a Public Officer is a Class B offense.
- 20.12.060 Obstructing a Public Official: Any person who:
- (a) Without lawful excuse shall refuse or knowingly fail to make or furnish any statement, report, or information lawfully required of him by public official, or
 - (b) In any such statement or report shall make any knowingly untrue statement to a public official or;
 - (c) Shall knowingly hinder, delay, or obstruct any public official in the discharge of his official powers or duties; is guilty of a Class C offense.
- 20.12.070 Obstructing a Governmental Function: Any person who, directly or indirectly, uses unjustified force or violence, or threaten the use of force or violence or engages in any other unlawful act with the intent to influence or interfere with performance of an official duty by a public officer shall be guilty of Obstructing a Governmental Function. Obstructing a Governmental Function is a Class B offense.

20.12.080 Official Misconduct: A public official is guilty of official misconduct if, with intent to obtain a benefit or to deprive another person of a lawful right or privilege:

- (a) He or she intentionally commits an unauthorized act under color of law; or
- (b) He or she intentionally refrains from performing a duty imposed upon him or her by law.

Official misconduct shall be a Class B offense.

20.12.090 Sworn Falsification: Any person who, with intent to mislead a public officer in the performance of an official function, makes a false written statement which he does not believe to be true or submits or invites reliance on any writing which he knows to be forged, false, altered or otherwise lacking authenticity shall be guilty of a Sworn Falsification. A Sworn Falsification is a Class C offense.

20.13 SENTENCING, SENTENCING GUIDELINES, AND BAIL SCHEDULE.

20.13.010 Sentencing: It is the policy of the Nooksack Indian Tribe that penalties for convictions under Title 20, Crimes, under the Nooksack Law and Order Code should be based on a restitution program under which the criminal offender is required to repay, as a condition of his sentence, the victim and community in money or services.

To this end, fines and jail time, community service and other sentencing alternatives, such as alcohol-abuse counseling, should be balanced to insure that convicted offenders will receive just and adequate sentences that will require them to assume the maximum amount of responsibility for all of the consequences of their criminal acts.

20.13.020 Sentencing Guidelines: Factors that the court shall take into consideration when determining the character and duration of a convicted offender's sentence are: whether the offender has previously appeared before the court as a criminal defendant, and if so, whether the offender appears to the court to be establishing a pattern of criminal conduct; whether the immediate offense was of a willful or malicious nature; whether the offender has attempted to make amends, and if so, the extent of the offender's resources and the needs of his or her dependents, if any, and the needs of any victims.

The penalties set forth below are maximum penalties for each class of offense, and are intended to be imposed only in extreme cases.

CLASS "A": 6 months jail time and/or \$5,000.00 fine and/or community service.

CLASS "B": 6 months jail time and/or \$2,500.00 fine and/or community service.

CLASS "C": 30 days jail time and/or \$1,000.00 fine and/or community service.

Restitution to be paid through the payment of money damages, the surrender of property, or the performance of any other act for the benefit of the injured party, may be ordered by the court and shall be considered to be in addition to any other penalty based on the class of offense committed and handed down by the court.

No party to a civil or criminal case may elect a trial by jury.

20.13.030 Bail Schedule: Pursuant to Article VI, Section 1 H., and J., of the Constitution and Bylaws of the Nooksack Indian Tribe of Washington, and Section 10.06.150 of Title 10, Tribal Court System and Court Rules, of the Nooksack Code of Laws, the Nooksack Tribal Council has the power to prepare and approve a bail schedule for setting the amount of cash bail required for defendant's release in all but exceptional cases.

Drug Schedule I:

- (a) The controlled substances listed in this section, by whatever official name, common or unusual name, chemical name, or brand name, are included in Schedule I.

- (b) Opiates. Unless specifically excepted or unless listed in another schedule, any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and esters, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:
 - (1) Acethylmethadol;
 - (2) Allylprodine;
 - (3) Alphacethylmethadol;
 - (4) Alphameprodine;
 - (5) Alphamethadol;
 - (6) Benzathidine;
 - (7) Betacethylmethadol;
 - (8) Betameprodine;
 - (9) Betamethadol;
 - (10) Betaprodine;
 - (11) Clonitazene;
 - (12) Dextromoramide;
 - (13) Diampromide;
 - (14) Diethylthiabutene;

- (15) Difenoxin;
- (16) Dimenoxadol;
- (17) Dimepheptanol;
- (18) Dimethylthiambutene;
- (19) Dioxaphetyl butyrate;
- (20) Dipipanone;
- (21) Ethylmethylthiambutene;
- (22) Etonitazene;
- (23) Etoxeridine;
- (24) Furethidine;
- (25) Hydroxypethidine;
- (26) Ketobemidone;
- (27) Levomoramide;
- (28) Levophenacilmorphan;
- (29) Morpheridine;
- (30) Noracymethadol;
- (31) Norlevorphanol;
- (32) Normethadone;
- (33) Norpipanone;

- (34) Phenadoxone;
- (35) Phenampromide;
- (36) Phenomorphan;
- (37) Phenoperidine;
- (38) Piritramide;
- (39) Propheptazine;
- (40) Properidine;
- (41) Propiram;
- (42) Racemoramide;
- (43) Trimeperidine.

(c) **Opium derivative. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, their salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation**

- (1) Acetorphine;
- (2) Acetyldihydrocodeine
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cypernorphine;
- (7) Desomorphine;

- (8) Dihydromorphine;
 - (9) Drotebanol;
 - (10) Etorphine (except hydrochloride salt);
 - (11) Heroin;
 - (12) Hydromorphinol;
 - (13) Methyldesorphine;
 - (14) Methyldihydromorphine;
 - (15) Morphine methylbromide;
 - (16) Morphine methylsulfonate;
 - (17) Morphine-N-Oxide;
 - (18) Myrophine;
 - (19) Nicocodeine;
 - (20) Nicormorphine;
 - (21) Normorphine;
 - (22) Phoclodine;
 - (23) Thebacon.
- (d) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, or which contains any of these salts, isomers, and salts of isomers, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific

chemical designation. (For purposes of paragraph (d) of this section, only the term "isomer" includes the optical, position, and geometric isomers.):

- (1) 3,4-methylenedioxy amphetamine;
- (2) 5-methoxy-3,4-methylenedioxy amphetamine;
- (3) 3,4,5- trimethoxy amphetamine;
- (4) 4-bromo-2,5-dimethoxyamphetamine;
- (5) 2,5-dimethoxyamphetamine;
- (6) 4-methoxyamphetamine;
- (7) 4-methyl-2,5-dimethoxyamphetamine;
- (8) Bufotenine;
- (9) Diethyltryptamine;
- (10) Dimethyltryptamine;
- (11) Ibogaine;
- (12) Lysergic acid diethylamide;
- (13) Marijuana;
- (14) Mescaline;
- (15) Peyote, meaning all parts of the plant presently classified botanically as *Lophophora Williamsii* Lemaire whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture or preparation of such plant, its seeds, or extracts;
- (16) N-ethyl-3-piperidyl benzilate;

(17) N-methyl-3-piperidyl benzilate;

(18) Psilocybin;

(19) Psilocyn;

(20) Tetrahydrocannabinols, synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, specifically, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

(i) Delta 1-cis-or trans tetrahydrocannabinol, and their optical isomers;

(ii) Delta 6-cis-or trans tetrahydrocannabinol, and their optical isomers;

(iii) Delta 3.4-cis-or trans tetrahydrocannabinol, and its optical isomers;

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered, are all included).

(21) Ethylamine analog of phencyclidine;

(22) Pyrrolidine analog of phencyclidine;

(23) Thiopene analog of phencyclidine.

(e) Depressant. Unless specifically excepted or unless listed in another schedule, any material compound, mixture, or preparation which contains any quantity of mecloqualone having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

Drug Schedule II

- (a) The drugs and other substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name designated, are included in Schedule II.
- (b) Substances. (Vegetable origin or chemical synthesis.) Unless specifically excepted, any of the following substances, except those listed in other schedules whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:
 - (1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, naloxone, and naltrexone, and their respective salts, but including the following:
 - (i) Raw opium;
 - (ii) Opium extracts;
 - (iii) Opium fluid extracts;
 - (iv) Powdered opium;
 - (v) Granulated opium;
 - (vi) Tincture of opium;
 - (vii) Codeine;
 - (viii) Ethylmorphine;
 - (ix) Etorphine hydrochloride;
 - (x) Hydrocodone;
 - (xi) Hydromorphone;
 - (xii) Metopon;

(xiii) Morphine;

(xiv) Oxycodone;

(xv) Oxymorphone; and

(xvi) Thebaine.

(2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (b) (1) of this section, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocanized coca leaves or extractions which do not contain cocaine or ecgonine.

(5) Concentrate of poppy straw. (The crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy.)

(c) Opiates. Unless specifically excepted or unless in another schedule, any of the following opiates, including their isomers, esters, ethers, salts and salts of isomers, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrophan excepted:

(1) Alphaprodine;

(2) Anileridine;

(3) Bezitramide;

- (4) Dihydrocodeine;
- (5) Diphenozylate;
- (6) Fentanyl;
- (7) Isomethadone;
- (8) Levomethorphan;
- (9) Levorphanol;
- (10) Metazocine;
- (11) Methadone;
- (12) Methadone-Intermediate, 4-cyano-2-dimethylamino-4,4-diphenylbutane;
- (13) Moramide-intermediate, 2-methyl-3-morpholino-1,1-diphenylpropane-carboxylic acid;
- (14) Pethidine (meperidene);
- (15) Pethidine-Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (16) Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (17) Pethidine-Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (18) Phenazocine;
- (19) Piminodine;
- (20) Racemethorphan;

(21) Racemorphan.

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(2) methamphetamine, its salts, isomers, and salts of its isomers;

(3) Phenmetrazine and its salts;

(4) Methylphenidate

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital;

(2) Methaqualone;

(3) Pentobarbital;

(4) Phencyclidine;

(5) Phencyclidine immediate precursors;

(i) 1-phenylcyclohexylamine;

(ii) 1-piperidinocyclohexanecarbonitrile (PPC);

(6) Secobarbital.

20.14 TERRORISM

20.14.010 Definitions: As used in this article, the following terms shall mean and include:

1. "Act Of Terrorism": For purposes of this code means an act or acts constituting a specified offense as defined this section for which a person may be convicted in the tribal court of this tribe, or an act or acts constituting an offense in any other jurisdiction within or outside the territorial boundaries of the Nooksack Indian Tribe which contains all of the essential elements of a specified offense, that is intended to:
 - a. Intimidate or coerce the civilian population;
 - b. Influence the policy of a unit of government by intimidation or coercion; or
 - c. Affect the conduct of a unit of government by murder, assassination or kidnapping;
2. "Material Support Or Resources" means currency or other financial securities, financial services, lodging, training, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.
3. "Renders Criminal Assistance" means a person who, with intent to prevent the apprehension or obstruct the prosecution or defense of any person, knowingly does any of the following acts:
 - a. Destroys, alters, conceals, or disguises physical evidence which would be admissible in the trial of another for an offense, or makes available false evidence or furnishes false information with the intent that it be used in the trial of that case.
 - b. Induces a witness having knowledge material to the subject at issue to leave the jurisdiction or hide, or to fail to appear when subpoenaed.
 - c. Provides concealment or warns of impending apprehension

to any person being sought for the subject at issue.

- d. Provides a weapon, disguise, transportation, or money to any person being sought for the subject at issue
- e. Prevents or obstructs, by means of force, intimidation, or deception, another person from performing an act which might aid in the apprehension or prosecution or defense of any person.

20.14.020 Soliciting Or Providing Support For An Act Of Terrorism: A persons commits soliciting or providing support for an act of terrorism when, with intent that material support or resources will be used, in whole or in part, to plan, prepare, carry out or aid in either an act of terrorism or the concealment of, or an escape from, an act of terrorism, he or she raises, solicits, collects or provides material support or resources.

Soliciting Or Providing Support For An Act Of Terrorism is a Class A offense.

20.14.030 Making A Terrorist Threat: a person is guilty of making a terrorist threat when with intent to intimidate or coerce the tribal population, influence the policy of the tribal government by intimidation or coercion, or affect the conduct of the tribal government by murder, assassination or kidnapping, he or she threatens to commit or cause to be committed an offense and thereby causes a reasonable expectation or fear of the imminent commission of such offense.

It shall be no defense to a prosecution pursuant to this section that the defendant did not have the intent or capability of the offense or that the threat was not made to a person who was a subject thereof.

Making A Terrorist Threat is a Class A offense.

20.14.040 Crime Of Terrorism: a person is guilty of a crime of terrorism when, with intent to intimidate or coerce the tribal population, influence the policy of the tribal government by intimidation or coercion, or affect the conduct of the tribal government by murder, assassination or kidnapping, he or she commits a specified offense.

The Crime of Terrorism is a Class A offense.

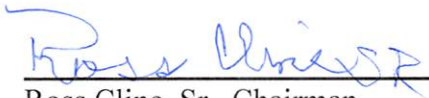
20.14.050 Hindering Prosecution of Terrorism: a person is guilty of hindering prosecution of terrorism in the when he or she renders criminal assistance to a person who has committed an act of terrorism, knowing or believing that such person engaged in conduct constituting an act of terrorism.

Hindering Prosecution Of Terrorism is a Class A offense.

CERTIFICATION

I, the undersigned, as Chairman of the Nooksack Tribal Council, do hereby certify: that the Nooksack Tribal Council is composed of eight members, of which 8 () were present, constituting a quorum, at a duly called meeting thereof, duly and regularly called, noticed, convened, and held this 4 day of May, 2021; that Title 20, the Nooksack Criminal Code was adopted by resolution # 21- 85 at said meeting by a vote of 7 for; 0 against; 0 abstentions; and that since its adoption this Ordinance has not been altered, rescinded, or amended in any way.

Dated this 4 day of May, 2021.



Ross Cline, Sr., Chairman
Nooksack Tribal Council

ATTEST:



Frank Leyva, Secretary
Nooksack Tribal Council