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Title 46

Motor Vehicle Impoundment

TITLE 46

MOTOR VEHICLE IMPOUNDMENT

Chapter 46.01 Motor Vehicle Impoundment - Generally and Definitions

46.01.01 Purpose.

The Nooksack Tribe, as an exercise of its civil jurisdiction, hereby authorizes impoundment and/or forfeiture of motor vehicles, for the purpose of protecting the health, welfare and safety of the Nooksack Tribal Community. The following impoundment and forfeiture procedures are compensatory and remedial and not penal or prohibitory and do not serve as punishment but instead constitute civil proceedings against offending property, against which property are assessed damages, costs, fees and civil fines.

46.01.02 Sections Incorporated by Reference.

The following section of Title 10 of the Nooksack Tribe's Code of Laws is incorporated by reference and is part of this code: 10.01.020 Jurisdiction.

46.01.03 Impoundment.

"Impoundment", as used herein, shall mean to seize a "vehicle" and take it into the custody of the Nooksack Tribe.

46.01.04 Forfeiture.

"Forfeiture", as used herein, shall mean that the owner of an impounded "vehicle", due to certain circumstances, as provided below, has lost his or her right to ownership of the "vehicle" and thus, the Nooksack Tribe is authorized and ordered to sell the "vehicle".

46.01.05 Vehicle.

"Vehicle", as used herein, shall mean all motorized vehicles that are either presently licensed by the State of Washington or subject to licensing by the State of Washington. Vehicles not amenable to State of Washington licensing, including but not limited to, certain types of vessels, motorcycles and recreational vehicles, are for purposes of

impoundment and forfeiture, subject to the General Impoundment Code of the Nooksack Code of Laws, as of such time as it is adopted by resolution of the Nooksack Tribal Council.

46.01.06 Abandoned Vehicle.

For purposes of this Title, an "abandoned vehicle" means any vehicle which meets either of the following criteria:

- a) A vehicle parked within the boundaries of the Nooksack Reservation, or other property held in trust for the benefit of the tribe, without authorization for more than twenty-four (24) hours; or
- b) A vehicle parked within the boundaries of the Nooksack Reservation, or other property held in trust for the benefit of the tribe, without movement for more than two (2) months.

46.01.07 Law Enforcement Officials.

For purposes of this title, "law enforcement official" means any person acting under the authority of, and at the direction of, the Nooksack tribe

Chapter 46.02 Vehicles Abandoned on Tribal Property

46.02.01 Law Enforcement Official's Duty.

A Nooksack Law Enforcement Official discovering an apparently abandoned vehicle, as defined in sections 46.01.06(a) and (b), shall attach to the vehicle a conspicuous notice giving the following information:

- a) The date and time the notice was attached;
- b) The identity of the Official;
- c) A statement that if the vehicle is not removed within 24 hours from the time the notice was attached, the vehicle may be taken into custody and stored at the owner's expense; and
- d) The address and telephone number where additional information is available.

46.02.02 Authority to Remove or Impound Abandoned Vehicles.

- a) Law Enforcement Officials - If the vehicle has not been removed

within twenty-four (24) hours from the time notice is given under Section 46.02.01, a law enforcement official may take custody of the vehicle and remove the vehicle or cause it to be removed to a place of reasonable safety. "A place of reasonable safety" shall include the business location of a tow truck operator licensed by the State of Washington or the parking area adjacent to the Nooksack Tribal Center.

- b) Other persons - Only law enforcement officials, or a tow truck operator licensed by the State of Washington, shall have the authority to remove vehicles. Private parties who feel a vehicle is "abandoned", and thus, subject to impoundment, shall either notify law enforcement and ask that they investigate, or file a complaint with the Clerk of the Nooksack Tribal Court seeking a court order authorizing impoundment. Complaint forms shall be made available by the Court Clerk and shall ask the complainant to state any information the complainant has as to the identity and whereabouts of the owner of the vehicle and what efforts, if any, the complainant has made to have the owner remove the vehicle. A Judge of the Tribal Court shall issue an impoundment order, if the Judge finds that the Court has jurisdiction and that the complaint is supported by probable cause to believe that the object is subject to impoundment. Pursuant to the Tribal Court's order authorizing impoundment, the object shall be removed by a law enforcement official, or a tow truck operator licensed by the State of Washington, to a "place of reasonable safety", as provided for above in subsection 46.02.02 a).

Chapter 46.03 Immediate Removal of Certain Vehicles

46.03.01 Removal of Certain Vehicles for Safety and Other Reasons.

A law enforcement official may take immediate custody of a vehicle and provide for its removal to a place of reasonable safety whenever:

- a) Any unattended vehicle obstructs traffic or the access of any Nooksack Community member to their residence or jeopardizes public safety by, including but not limited to, potentially obstructing or hindering access by any emergency response vehicle;
- b) A law enforcement official discovers a vehicle he or she reasonably believes is stolen;
- c) The driver of a vehicle involved in an accident is physically or mentally incapable of deciding upon steps to be taken to protect his

or her vehicle or fails to do so;

- d) The driver of a vehicle is arrested and taken into custody and is not physically or mentally capable of deciding upon steps to be taken to protect his or her vehicle or fails to do so;
- e) Any vehicle is driven outside of designated public roads without the consent of the Nooksack Community member who has authority over the land in which the vehicle is being driven over;
- f) The vehicle is the instrument which causes damage to property;
- g) The vehicle is seized as evidence in a criminal investigation; or
- h) The Nooksack Tribal Court has issued an order of impoundment.

A law enforcement official has discretion to decide whether to allow another person to take custody of the vehicle under subsections c) and d).

Chapter 46.04 Registration, Notice and Hearing

46.04.01 Registration with Court.

Within 24 hours after impoundment, the impounding tribal law enforcement official shall register the impounded object(s) with the Court Clerk of the Nooksack Tribal Court. If impoundment occurs on a week-end or holiday, the tribal law enforcement official shall register the impounded object(s) on the first working day following impoundment. The registration shall be on a form provided and designed by the Nooksack Tribal Council.

46.04.02 Notice.

Upon registration with the Clerk of the Nooksack Tribal Court, the Clerk, on behalf of the Court, shall cause a notice of hearing to be served as hereinafter provided, upon the owner of the object impounded.

46.04.03 Service of Notice.

- a) Known Owners - If the owner of the object impounded is known, the notice of hearing may be personally served or sent by certified mail to the owner's last known, reasonably ascertainable, address. Service or mailing of the notice shall occur within 7 days of registration of the impounded object.

- b) Unknown Owners - If the owner of the object is unknown and his identity not reasonably ascertainable, the notice shall be served by posting notice in at least two public places on the Reservation and two consecutive issues of a newspaper of general circulation in the Reservation area, or other property held in trust for the benefit of the tribe, within 7 days of the registration of the impounded object.

46.04.04 Contents of Notice.

The notice of hearing shall be on a form provided and designed by the Nooksack Tribal Council, and shall state that the object has been impounded by a law enforcement official with the Tribe, the reason for the impoundment, a general description of the place where the violation occurred, the present location of the object impounded, the fact that damages, fees, costs of impoundment and a civil fine may be assessed and information concerning the hearing.

46.04.05 Time of Hearing.

- a) Following an Impoundment

Where the owner is known, the hearing shall be at a time and place indicated in the notice, not less than 10 days nor more than 60 days after service or mailing of the notice as provided herein, whichever is later, unless the owner requests and is granted an earlier hearing date. If the owner is unknown, the hearing shall be at a time and place indicated in the notice, not less than 10 days nor more than 60 days after posting and publication of the notice as provided herein. Requests for an earlier hearing date shall be in writing, directed to the Court Clerk and shall be granted if the Court is scheduled to be in session on an earlier date and the Clerk determines that the Court will have sufficient time to conduct the hearing on such date.

- b) Following a Civil Infraction Hearing or Criminal Conviction

In cases where impoundment of a vehicle is ordered following the finding that a civil infraction was committed, as provided for under Section 16.02.11 of the Civil Infraction Code, a hearing as to the validity of such an impoundment may be held immediately following the civil infraction hearing, prior to actual seizure, if the owner of the object was given notice and the hearing is not less than 10 days after service or mailing of the notice, whichever is later. If the Court fails to provide notice to an owner of a vehicle subject to impoundment, that a hearing on the validity of

impoundment might take place immediately following the civil infraction hearing, the hearing on impoundment shall take place on a later date, in accordance with subsection 46.04.02 a) above.

46.04.06 Hearing - Procedure and Outcome.

a) Generally

The Tribe and owner may both be represented by counsel at the hearing. If the owner appears at the hearing, the Court shall determine whether the complainant has proven by a preponderance of the evidence that the vehicle was subject to impoundment as set forth under this Title. If the validity of the impoundment or an ordered impoundment is not proven, the vehicle shall be released to the owner upon proof of ownership. If the impoundment has not yet taken place, the order to impound shall be immediately withdrawn. If a finding of valid impoundment is made, the Court shall deem the vehicle forfeited and order the vehicle sold no less than fourteen (14) days nor more than three (3) months from the date of the hearing, to pay all damages to the Tribe or private persons caused by the impounded vehicle, to pay all costs arising from impoundment and to pay all civil or criminal penalties that may have been levied against the owner or user of the vehicle due to the use of the vehicle in connection with a violation of the Tribe's code or regulations. The vehicle shall be released to the owner if he or she appears prior to the sale date, proves ownership and pays all such damages, costs and civil penalties accrued to date.

"Costs" shall include, but not be limited to costs of the hearing, law enforcement costs, court fees, attorney fees and costs associated with the impoundment.

b) Release Subject to Additional Conditions

The court, as part of the resolution of a civil or criminal hearing, may order impoundment of a vehicle involved in the commission of a civil or criminal offense and stipulate that its release is subject to the owner not committing certain civil or criminal offenses for a period of up to three (3) months. This remedy may be imposed in addition to imposing jail time, payment of civil or criminal fines, payment of costs, or payment of restitution. An owner's failure to meet conditions for the release of a vehicle shall deem the vehicle forfeited, regardless of an owner's willingness to pay fines, costs or

restitution.

c) Release Under No Condition - Forfeiture

The Court, as part of the resolution of a civil, criminal or impoundment hearing, may deem a vehicle forfeited and not to be released under any condition when the Court determines that unconditional forfeiture is necessary to protect the health, welfare and/or safety of the Tribe or individual members of the Tribal Community. In order to implement this subsection, the Court, as part of the impound hearing, must make a special finding that forfeiture is necessary in order to protect the health, welfare and/or safety of the Tribal community or individual members of the Tribal community.

46.04.07 Failure to Appear.

Following service of notice as provided above, failure of the owner to appear at the hearing, or failure of the owner to request in writing and obtain a continuance of the hearing prior to the hearing, shall be deemed an admission to all material allegations in the notice and the admission of the validity of the impoundment.

46.04.08 The Sale.

- a) Procedure - The Tribe shall sell the vehicle to the highest bidder by means of a sale which solicits sealed bids and requires such bids to be mailed to the Court Clerk and postmarked on or before a particular date. If two or more bidders submit identical bids, the Court Clerk shall randomly choose one of the high bidders by means of a drawing regulated by the Tribal Council. The sale shall be publicized by posting notice in at least two public places on the Reservation, or other property held in trust for the benefit of the tribe, and two consecutive issues of a newspaper of general circulation in the Nooksack Reservation area. Sales shall be made in the form of cash and be final. The Tribe shall have the option of refusing all bids and either extending or postponing the sale if all of the submitted bids fall short of what the Tribe determined to be the fair market value of the vehicle.
- b) Proceeds - Proceeds from the sale of an impounded vehicle shall be disbursed by the Tribal Council in the following order:
 - (i) Reimbursement to the Tribe for all costs it incurred due to the impoundment;

- (ii) Restitution to the Tribe for damages suffered in connection with the impounded vehicle;
- (iii) Restitution to private parties for damages suffered in connection with the impounded vehicle;
- (iv) Payment to the Tribe for all civil or criminal penalties levied against the user of the vehicle due to use of the vehicle in connection with a violation of the Tribe's code or regulations;
- (v) The balance, if any, to the owner of the vehicle.

Chapter 46.05 Sovereign Immunity, Severability

46.05.01 Sovereign Immunity Preserved.

The sovereign immunity of the Nooksack Indian Tribe shall in no manner be waived by this Title. The Tribal Council, Court personnel, employees and Tribal Representatives are cloaked with the sovereign immunity of the Nooksack Indian Tribe and thus shall not be subject to liability due to any incidents or facts arising under this Title.

46.05.02 Severability.

If any provision of this Title or its application to any person or legal entity or circumstances, is held invalid the remainder of this Title or the application of its provision to other persons or legal entities or circumstances shall not be affected.

Chapter 46.06 Appeal

46.06.01 Appeal - Generally.

Any person aggrieved by the decision of the Tribal Court shall have the right to appeal such decision as prescribed in Title 10 of the Nooksack Tribal Code of Laws.

IN THE NOOKSACK TRIBAL COURT
NOOKSACK INDIAN RESERVATION
DEMING, WASHINGTON

NO. _____

NOTICE OF IMPOUNDED
VEHICLE

TO:

1. The vehicle described in the attached Impoundment Registration was impounded on _____
19____, by () Nooksack Law Enforcement () order of this Court.

2. The vehicle was impounded because it was:

- () an object used in violation of the Nooksack Tribal Code or in violation of any valid regulation of the Tribe, or used in any manner to facilitate a violation of the Code or a violation of any valid regulation of the Tribe;
- () parked within the boundaries of the Nooksack Reservation, or other property held in trust for the benefit of the tribe, without authorization for more than 24 hours;
- () parked within the boundaries of the Nooksack Reservation, or other property held in trust for the benefit of the tribe, without movement for more than 2 months;
- () unattended and obstructing traffic;
- () unattended and obstructing access of a Nooksack Community member to their residence;
- () unattended and jeopardizing public safety ;
- () discovered by a law enforcement official who reasonable believed it to be stolen;
- () involved in an accident;
- () driven by a person who was arrested;
- () the instrument which caused damage to real or personal

property or to any person;

() seized as evidence in a criminal investigation; or

() other.

3. The vehicle was located in the following place when it was impounded;
4. The vehicle was removed to the following location:
5. You are entitled to a hearing before the Nooksack Court regarding the validity of the impoundment. You may be represented at the hearing by a spokesperson or attorney, at your own expense.
6. Your hearing is scheduled for the ___ day of _____, 19___, at _____ a.m./p.m. You may request an earlier hearing date by calling the Clerk of the Court.

YOU MUST APPEAR AT THE HEARING UNLESS THE COURT HAS GRANTED A CONTINUANCE. You may request a continuance of the hearing date by contacting IN WRITING:

7. You may produce any relevant evidence at the hearing to show that the impoundment was not valid, or that any fees, costs, damages, or penalties assessed are not proper. You may also request release of the impounded vehicle under Section 46.04.06(b) of the Tribal Code.
8. FAILURE TO APPEAR AT THE HEARING SHALL BE DEEMED AN ADMISSION TO ALL MATERIAL ALLEGATIONS IN THIS NOTICE AND TO THE VALIDITY OF THE IMPOUNDMENT. Following failure to appear, an impounded vehicle will be sold 14 days after the hearing date noted above, to satisfy all damages, costs, fees, or civil or criminal penalties accrued to the date of sale unless redeemed by you prior to the date of sale by payment of all damages, costs, fees and civil or criminal penalties accrued.

DONE this _____ day of _____, 19_____.

CLERK, Nooksack Tribal Court

IN THE NOOKSACK TRIBAL COURT
NOOKSACK INDIAN RESERVATION
DEMING, WASHINGTON

NO. _____

COMPLAINT FOR
IMPOUNDMENT OF
ABANDONED VEHICLE

1. I, _____ (complainant) reside at:

2. I believe the vehicle described in Part 3 of this Complaint is: subject to impoundment under Title 46 of the Nooksack Tribal Code. The grounds for impoundment are:

an abandoned vehicle

parked within the boundaries of the Nooksack Reservation, or other property held in trust for the benefit of the tribe, without authorization for more than 24 hours; or

parked within the boundaries of the Nooksack Reservation, or other property held in trust for the benefit of the tribe, without movement for more than 2 months.

3. A brief description of the vehicle follows.

Make:

Model:

Color:

License number/state:

Vehicle I.D. number:

4. The vehicle owner's name and address are:

I do not know who the owner of the vehicle is.

5. I have made the following efforts to have the owner (if known) remove the vehicle: _____

6. I respectfully request the Court to order the object/vehicle described in this Complaint to be impounded and to authorize a towing operator to remove the vehicle to a place of reasonable safety, if applicable.

7. I have read this Complaint or have had it read to me and believe it to be true.

Date

Signature of Complainant