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## **TITLE 54**

### **BUSINESS LICENSE**

**Business License Ordinance  
Amended by Res. No. 16-50, dated April 18, 2016**

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## **54.01 LEGISLATIVE FINDINGS, PURPOSE AND DEFINITIONS**

### **54.01.010 Sovereign Power to Regulate and License Business and Impose License Fees Therefore.**

The power to regulate business conducted within the Nooksack Indian Tribe on Tribal lands by all persons, Indian and non-Indian, and to impose license fees therefore, is an inherent and an essential part of the authority of tribal government. Business regulatory power is an aspect of retained sovereignty of the Nooksack Indian Tribe. The Tribe is a sovereign Indian tribe governed pursuant to its Constitution and Bylaws. Pursuant to the Constitution and Bylaws, the Nooksack Tribal Council is the governing body of the Tribe.

### **54.01.020 Purpose.**

The Tribal Council finds that the regulation of persons engaged in trade and business on Tribal lands is necessary to safeguard and promote the political integrity, economic security, peace, safety, morals, and general welfare of the Tribe. Accordingly, the Tribal Council declares that the Tribe has the sole and exclusive authority to grant, deny, or withdraw the privilege of doing business within Nooksack Tribal lands.

### **54.01.030 Definitions.**

The following terms, whenever used or referred to in this Title, shall have the following meanings, unless a different meaning clearly appears from the context:

- (A) **Agent.** "Agent" means the individual or individuals designated by any licensee to receive and accept Service of Process.
- (B) **Applicant.** "Applicant" means any person who submits an application to the Tribe for a business license and who has not yet received such license.
- (C) **Business.** "Business" means any regular, seasonal or temporary business activity engaged in by any person for the purpose of conducting a trade, profession or commercial activity involving the sale of any property or services; provided, however, that an isolated sale of property or services shall not be considered to be business under this Title.
- (D) **Company.** "Company" means any person or group of people engaged in business.
- (E) **Governmental Entity.** "Governmental entity" means the United States, the Nooksack Indian Tribe, a state or any political subdivision, agency, or any subordinate organization of the foregoing, including economic enterprises or other entities owned or controlled by the Tribe.
- (F) **Licensee.** "Licensee" means any person who is granted a business license by the Tribe.
- (G) **Notice.** "Notice" means actual notice by hand delivery or by certified mail. For time computations as provided for in this Title, which are to begin upon notice, such notice shall be at

delivery, except that where delivery is not possible after three consecutive postal days due to the inaction of the agent, notice shall be at the time of the first attempted delivery. Upon return of the forms of notice to the Tribal General Manager, the forms shall be mailed by regular mail.

**(H) Person.** "Person" shall mean any individual, receiver, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, corporation, association, society or group of individuals acting as a unit, nonprofit, or otherwise.

**(I) Sale.** "Sale" means all sales, barter, trades, exchanges, or other transfers of ownership for value of property from a retailer to any person.

**(J) Service of Process.** "Service of process" means the delivery of show-cause orders, cease and desist orders, summonses, complaints and other documents of the Tribal General Manager, Tribal Council or Nooksack Tribal Court.

**(K) Services.** "Services" means the performance of labor for the benefit of another for consideration. It excludes labor performed by an employee for the benefit of his or her employer.

**(L) Tribal lands.** "Tribal lands" means all land belonging to the Nooksack Indian Tribe whether held in trust by United State for the benefit of the Tribe or otherwise or which hereinafter may be so acquired.

**(M) Tribal Law.** "Tribal law" means the Tribal Constitution, and the Tribal Ordinances, as amended hereafter, the Tribal Common Law and any other law made applicable by order of the Nooksack Tribal Court.

**(N) Tribal Member or Member of the Tribe.** "Tribal member" or "member of the Tribe" means an enrolled member of the Tribe. A corporation, partnership or other entity shall be considered a tribal member, for purposes of this Title only, if 51% or more of the entity is owned by tribal members.

#### **54.01.040 Administration of Title.**

Because of the close interrelationship between the Tribe's inherent sovereign powers to regulate the conduct of business on Tribal lands and the Tribe's inherent sovereign powers to collect taxes from persons engaged in business on Tribal lands, the Tribal General Manager is hereby delegated the responsibility to administer the provisions of this Title. The Tribal General Manager is hereby delegated all powers which are specifically provided for in this Title, or impliedly necessary to implement its provisions.

**54.01.050 Administrative Action.**

The Tribal General Manager shall promulgate regulations pursuant to this Title, formulate revisions of or amendments to this Title, and take other actions necessary for the administration of the provisions of this Title subject to the approval of the Tribal Council.

**54.01.060 Agreements with Federal, State and Local Governments.**

In the event it is deemed appropriate to effectuate the provisions of this Title, the Tribal Council shall negotiate Memoranda of Agreement concerning this Title with federal, state and local governments.

**54.02 BUSINESS LICENSES**

**54.02.010 Applicability.**

This Title shall be applicable to any person engaged in business on Nooksack Tribal lands. No person shall engage in business on Nooksack Tribal lands without a valid business license issued by the Tribal General Manager, except as provided in Section 54.02.060.

**54.02.020 Application and Issuance.**

An application for a business license shall be submitted in writing to the Tribal General Manager on forms which it shall provide. Any person engaged in business at the time this Title is enacted shall have 30 days in which to obtain and submit to the Tribal General Manager an application for a license; provided, that a renewal application for an annual business license shall be made 30 days prior to expiration of such license. Each application shall include:

- (A) A description of the type of business;
- (B) The name and address of the owner or owners of the business;
- (C) The trade name, if any, to be used by the company;
- (D) The locations of Nooksack Tribal lands at which the business will be conducted;
- (E) A sworn statement that the applicant will comply with all Tribal law applicable to the applicant's business;
- (F) A statement that the applicant consents to the jurisdiction of the Nooksack Indian Tribe in matters arising from the conduct of business;
- (G) The name, address and signature of the agent who will accept Service of Process on behalf of the company.
- (H) The statement whether the applicant has ever been denied a business license in any jurisdiction.

The Tribal General Manager shall notify the applicant by regular mail within 14 days after receipt of the application whether a license shall be issued. If a license is issued, the licensee shall post the license in a conspicuous manner at its primary business location.

**54.02.030 Term of License.**

The term of each tribal business license shall be as follows:

(A) **Temporary Business License.** The term of a temporary tribal business license shall be four days.

(B) **Seasonal Business License.** The term of a seasonal tribal business license shall be three months.

(C) **Annual Business License.** The term of a permanent business license shall be for one calendar year.

**54.02.040 Denial of License and Appeal.**

If it is determined that:

(A) The application is incomplete in any way or the appropriate fee has not been paid, or

(B) The applicant has materially misrepresented facts contained in the application, or

(B) The applicant presently is in non-compliance with Tribal law, or has engaged in a fraudulent, deceptive, or dishonest practice, or

(C) The business will threaten the political integrity, economic security, peace, safety, morals, or general welfare of the Tribe,

The Tribal General Manager shall issue an order of denial to the applicant by certified mail, return receipt requested, within 14 days after receipt of the application. The order of denial shall set forth the reasons for such denial and shall state that the applicant has 30 days from receipt of the order of denial to file a request for reconsideration with the Tribal General Manager.

**54.02.50 Process for Reconsideration and Appeal**

(A) **Written Request for Reconsideration.** Any person who is denied a business license, pursuant to Section 54.02.040 of this Title, may file a notice for reconsideration as follows:

(1) The Request for Reconsideration shall be in writing, dated and signed by the aggrieved party;

(2) The Request for Reconsideration shall include a concise statement of relief requested and any new or previously unconsidered information that supports the relief; and

(3) The Notice of Request for Reconsideration shall be given to the Tribal General Manager.

**(B) Expedited Administrative Hearing.** Within seven (7) calendar days of receipt of the Request for Reconsideration, the Tribal General Manager shall set a date for hearing and shall notify the applicant.

(1) A closed hearing shall be held within thirty (30) calendar days of receipt of the Request for Reconsideration;

(2) At the closed hearing, the aggrieved party shall be given the opportunity to present any testimony, documents, or other evidence to support the request; and

(3) The Tribal Manager shall inform the aggrieved party of the final determination in writing within seven (7) calendar days of the hearing.

**(C) Appeal from Final Determination.** Any person who is aggrieved by a final determination of the Tribal General Manager, pursuant to sub-section **(B)** above, may appeal the decision to the Tribal Council.

(1) The aggrieved party shall file a written Notice of Appeal with the Tribal Council and shall be added to the agenda of the next regular Tribal Council meeting;

(2) The aggrieved party shall attach to the written Notice of Appeal, copies of the original Request for Reconsideration and supporting documentation presented at the hearing;

(3) Upon the filing of the Notice of Appeal, the Tribal General Manager shall provide any record of the expedited administrative hearing to the Tribal Council;

(4) The Tribal General Manager shall attend the Tribal Council meeting at which the appeal is to be heard;

(5) The appeal shall be heard in a closed session of the Tribal Council meeting;

(6) The Tribal Council shall reverse a final determination of the Tribal General Manager only upon a finding that it was arbitrary, capricious, or an abuse of discretion.

#### **54.02.060 Exemptions.**

(A) The following shall not be required to obtain a license under this Title:

(1) Governmental entities; or

(2) Tribal members engaged in the creation of traditional Indian art or handicrafts in their home; or

- (3) Tribal members engaged in the traditional practice of medicine; or
- (4) Tribal members selling product that is the result of his or her exercising Treaty fishing rights; or
- (5) Employees of any person as defined in 54.01.030 (H); or
- (6) Any church engaged in raising funds for religious or charitable purposes; or
- (7) Any school, club or athletic organization engaged in staging athletic events for which an admission fee is charged, provided such admission fees do not accrue to the personal benefit of any individual; or
- (8) Any accredited school, no part of the income of which accrues to the personal benefit of any individual.

**54.02.070 Classes of Licenses.**

(A) **Temporary Business License.** All persons engaged in business on Tribal lands for a period of four days or less shall have a temporary business license. The fee for a temporary business license is \$(10.00).

(B) **Seasonal Business License.** All persons engaged in business on Nooksack Tribal lands for a period of three months or less shall have a seasonal business license. The fee for a seasonal business license is \$(25.00).

(C) **Annual Business License.** All persons engaged in business on Nooksack Tribal lands for a period exceeding three months shall have an annual business license. The fee for an annual business license is \$100.00. A licensee holding an annual business license shall apply for renewal each year on an application form provided by the Tribal General Manager, but the licensee shall notify the Tribal General Manager of any change in the licensee's business activities. Renewal of an annual business license shall be made pursuant to the provisions in 54.02.020.

**54.02.080 Conditions of License.**

(A) Each licensee shall comply with all applicable Tribal laws. The Tribe may, but need not, notify each licensee by regular mail of any additional Tribal laws with which the licensee must comply as such laws are enacted by the Tribal Council.

(B) Each licensee consents to the jurisdiction of the Nooksack Tribal Court as to any cause of action arising in connection with the transaction of any business conducted on Tribal lands, or any tortuous acts committed in connection with the transaction of any business conducted on Tribal lands. Each licensee consents to the service of process of the Nooksack Tribal Court with

respect to all actions over which the Nooksack Tribal Court has subject matter jurisdiction, in accordance with this Title.

(C) Each licensee shall respond in a timely manner to requests by the Tribal General Manager in compliance with the terms of this Title.

### **54.03 SANCTIONS**

#### **54.03.010 Revocation of License; Failure to Obtain License; Show Cause Hearing.**

(A) Whenever it is brought to the attention of the Tribal General Manager that any person is in non-compliance with any condition of his license or has failed to obtain a license as required by this Title, the Tribal General Manager may serve upon such person or any agent of such person an order to show-cause why his license should not be revoked or why he should not be enjoined from doing business on Tribal lands without a license. Such notice shall state the reason for the order, the time and place for the show cause hearing before the Tribal General Manager, and that the person shall have an opportunity to present testimony and cross examine opposing witnesses and to present any other evidence which the person shall deem appropriate as to why a revocation order or an injunction should not be issued. The hearing shall be set for a time not exceeding thirty (30) days and not less than twenty (20) days from the date of the notice. The hearing shall be governed in all respects in accordance with Hearing Procedures approved by the Tribal Council.

(B) In the event it is determined that any person's non-compliance with this Title is a direct and immediate threat to the political integrity, economic security, peace, safety, morals, or general welfare of the Nooksack Indian Tribe, the Tribal General Manager shall issue a cease and desist order which shall be served upon the person or any agent of the person. The person shall cease and desist business immediately upon service of the order and may file a notice of appeal with the Tribal Council within thirty (30) days from receipt of the cease and desist order. All decisions of the Tribal Council made hereunder shall be final and not subject to review by the Nooksack Tribal Court.

#### **54.03.020 Civil Penalties and Restitution.**

(A) If it is determined that any person failed to comply with the conditions of his license or failed to secure a license within the time requirements of this Title, the Tribal General Manager shall submit a petition to the Nooksack Tribal Council for an order requiring the person to appear and show cause why a monetary penalty should not be imposed; provided, the amount of the penalty shall not exceed \$1,000.00 for each violation.

(B) The petition submitted by the Tribal General Manager for a suggested penalty amount, shall expressly address in writing each and all of the following criteria:

- (1) The good or bad faith of the violator;

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- (2) The injury to the public resulting from the violation;
- (3) The benefits derived by the violator from the violation;
- (4) The violator's ability to pay;
- (5) The administrative costs of completing the petition; and
- (6) The need to deter similar behavior by the violator and others and to vindicate the Tribe's authority and the integrity of the Tribal General Manager's orders.

The purpose of the penalty provided for herein shall be primarily to defray the costs of administration and enforcement of this Title, and secondarily, to deter continued violations of this Title by the violator or others; provided, however, that all funds collected by the Tribal Council under this section shall be subject to disposition by the Tribal Council.

**54.03.030 Removal and Exclusion of Non-Indians.**

In addition to the penalties and other remedies provided herein, the Tribal Council may order any person in violation of this Title excluded from Nooksack Tribal lands, and may direct the Tribal Police to remove such person from Nooksack Tribal land as a trespasser, notwithstanding the provisions of Title 70.

**54.03.040 Other Remedies.**

In addition to the penalties and other remedies provided herein, the Tribal General Manager may petition the Tribal Court for any remedy provided in this Title which is necessary to enforce the provisions of this Title, including but not limited to a temporary restraining order and a preliminary or permanent injunction. The Tribal General Manager may also petition a court of competent jurisdiction for a writ of execution to enforce an order, judgment or decree of the Tribal Court off of Tribal land. The order, judgment or decree must include findings showing:

- (A) The basis for the Tribal Court's jurisdiction over the subject matter and the parties;
- (B) The order, judgment or decree was not obtained fraudulently; and
- (C) The defendant was afforded due process.