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## **Title 55**

### **Fireworks Control**

## TABLE OF CONTENTS

|  |  |    |
|--|--|----|
| Chapter 55.01 – General                                  |  |    |
| 55.01.010  | Short Title .....                                      | 3  |
| 55.01.020  | Purpose.....   | 3  |
| 55.01.030  | Construction.....                                      | 3  |
| 55.01.040  | Definitions.....                                       | 3  |
| 55.01.050  | Applicability .....                                    | 4  |
| 55.01.060  | Jurisdiction.....                                      | 4  |
| Chapter 55.02 – Authority                                |  |    |
| 55.02.010  | General Manager.....                                   | 5  |
| 55.02.020  | Accounting Department .....                            | 5  |
| 55.02.030  | Risk Management Department .....                       | 5  |
| 55.02.040  | Law Enforcement.....                                   | 5  |
| Chapter 55.03 – Distribution, Sales and Use of Fireworks |  |    |
| 55.03.010  | Firework Sales Prohibited Unless Authorized.....       | 6  |
| 55.03.020  | Designated Firework Stand Site Area.....               | 6  |
| 55.03.030  | Firework Wholesaler Business License Requirement ..... | 6  |
| 55.03.040  | Applications for Firework Vendor Permit .....          | 6  |
| 55.03.050  | Permit Approval Process.....                           | 8  |
| 55.03.060  | Firework Stand Restrictions.....                       | 9  |
| 55.03.070  | Firework Sales Restrictions .....                      | 10 |
| 55.03.080  | Firework Use Restrictions.....                         | 11 |
| Chapter 55.04 – Use and Discharge of Fireworks           |  |    |
| 55.04.010  | Election of Remedies .....                             | 13 |
| 55.04.020  | Assumption of Risk.....                                | 13 |
| 55.04.030  | Severability .....                                     | 13 |
| 55.04.040  | Repeal .....   | 13 |
| 55.04.050  | No Property Interest.....                              | 13 |
| 55.04.060  | Sovereign Immunity.....                                | 13 |
| LEGISLATIVE HISTORY                                      |  | 14 |
| CERTIFICATION  |  | 15 |

## **Chapter 1 General**

### **55.01.010 Short Title.**

This Ordinance shall be known as the Nooksack Fireworks Control Title.

### **55.01.020 Purpose.**

The Nooksack Indian Tribal Council finds it to be in the best interest of the Nooksack Indian Tribe to offer economic opportunities to tribal members and their families, and to provide for the health, safety, and welfare of the general public during times fireworks are distributed, sold, and discharged.

This Ordinance is enacted pursuant to Art. VI, § 1 of the Constitution and Bylaws of the Nooksack Indian Tribe of Washington.

### **55.01.030 Construction.**

This Ordinance shall be liberally construed to give full effect of the objectives and purposes for which it was enacted.

### **55.01.040 Definitions.**

Closed Season means any time of the year other than Open Season.

Deposit means a monetary amount, as established by law, placed with the Nooksack Indian Tribe as security to ensure compliance with all obligations under this Ordinance.

Eligible Employee/Helper means a person over the age of sixteen (16) who is a family member, a domestic partner of the permittee, or who is a Nooksack tribal member; or any of the previously identified persons who has not reached the age of sixteen (16) but is accompanied by a person over the age of eighteen (18).

Family member means a permittee's spouse, mother/father, child, sister/brother, step-mother/father, step-sister/brother, grandmother/grandfather, aunt/uncle, grandchild, niece/nephew, as well as, the permittee spouse's mother/father, sister, brother, brother/sister In-law, child, grandmother/grandfather, grandchild, aunt/uncle, and niece/nephew.

Good standing means that the applicant, permittee, or licensee has not had any tribal, state, federal or local license or permit suspended, revoked, or otherwise sanctioned at any time in the past three (3) calendar years.

Open Season means the period of time when Fireworks may be sold in accordance with the calendar of events established by the Tribal Council.

Restricted Areas means all areas marked “Restricted”, as established by the Tribal Council.

Tribal Fireworks Board or TFB means the board of Nooksack-licensed fireworks vendors as identified herein.

Unlawful Firework means (1) any firework that does not conform to the safety regulations issued by the U.S. Consumer Product Safety Commission as set forth in 16 C.F.R. § 1507 et. seq.; (2) any firework identified as a banned hazardous substance as set forth in 16 C.F.R. §1500.17; (3) any firework that does not conform to the labeling requirements set forth in 16 C.F.R. §§1500.14, 1500.83, and 1500.121; and (4) any other firework prohibited by other applicable federal law.

**55.01.050 Applicability.**

This Ordinance shall govern all activities occurring within the jurisdiction of the Nooksack Indian Tribe to the fullest extent permitted by federal law.

**55.01.060 Jurisdiction.**

The Nooksack Tribal Court shall have such jurisdiction as necessary to carry out the provisions within this Title, including original jurisdiction over violations of the use restrictions and wholesaler violations herein, and appellate jurisdiction of appeals from the Tribal Fireworks Vendor permittees as identified herein.

## **Chapter 2 Authority**

### **55.02.010 General Manager**

The Nooksack Indian Tribe General Manager shall have such powers as are necessary to give this Ordinance full effect.

### **55.02.020 Accounting Department**

The Nooksack Indian Tribe Accounting Department (hereinafter "Accounting Department") shall have the authority to accept and retain Fees, Deposits and Fines, issue receipts for the same, provide proof of the same upon request to TFB, refund Deposits, and keep records of the same in accordance with this Ordinance.

### **55.02.030 Law Enforcement**

The Nooksack Indian Tribe Law Enforcement Department (hereinafter "Law Enforcement") shall have the authority to enforce and administer this Ordinance as provided herein in order to protect the public safety, specifically including the sole authority to issue a Notice of Violation/Citation and/or Notice of Temporary Closure.

### **52.02.040 Tribal Fireworks Board**

The Tribal Council hereby establishes a Tribal Fireworks Board.

- A. Composition.** The TFB shall be composed of all Tribal Firework Vendor Permittees in "good standing".
- B. Roles, Responsibilities, and Duties.** The TFB shall have the following roles, responsibilities, and duties:
  - 1. Serve as the primary point of contact between Applicants, Permittees and Nooksack Indian Tribal departments mentioned in this Title.
  - 2. Maintain records of payments, licenses, and inspections of each Permittee, and furnish the same to the Tribal General Manager (or his or her designee).
  - 3. Serve as an initial hearings board for all contested violations by Tribal Firework Vendor Permittees.
  - 4. Provide a fair and safe method of offering fireworks sales to the public.
  - 5. Maintain a high standard of business practices.

**Chapter 3**  
**Distribution, Sales, and Use of Fireworks**

**55.03.010 Fireworks Sales Prohibited Unless Authorized**

Distribution, sales, exchange, use and/or discharge of fireworks shall be unlawful unless in accordance with this Ordinance.

**55.03.020 Designated Firework Stand Site Area**

There shall be up to twenty-five (25) stand site locations reserved within the Designated Firework Stand Site Area. The Designated Firework Stand Site Area shall be as established by the Tribal Council after taking into consideration the overall area needed for safe stand site operations, pedestrian traffic, stand site visibility, and other factors in furtherance of the purpose of this Ordinance.

**55.03.030 Firework Wholesaler Business License Requirement**

Any person, age eighteen (18) years of age or older, who desires to engage in business activities related to the wholesale of Fireworks while on Nooksack Tribal lands shall obtain a Nooksack business license in advance of such activities. REFER TO TITLE 54.

Firework wholesalers shall only sell fireworks to named Tribal Firework permittees. Violations shall subject the firework wholesale licensee to citation and a fine of five hundred dollars (\$500.00) per violation and revocation of his or her business license.

**55.03.040 Applications for Fireworks Vendor Permit**

- A. **Notice.** Annually, a notice shall be placed in the Snee-Nee-Chum or other newspaper for the Nooksack Indian Tribe and on tribal buildings notifying all interested and eligible persons of the Mandatory Vendor Application and End-of-Season Meetings, the Open Season, and other necessary matters. The TFB shall ensure such notice is given in advance of the meeting so as to permit all eligible persons sufficient notice to attend the Mandatory Vendor Application Meeting.
  
- B. **Application Forms.** All persons desiring a fireworks vendor permit shall complete an application available at the Tribal Administration Building or from the TFB . At a minimum, applications shall require the following information:
  - 1. Full legal name;
  - 2. Date of birth;
  - 3. Current Nooksack tribal membership number;
  - 4. Physical and mailing address;
  - 5. Telephone number;
  - 6. Names ages, and relationship of all potential employees and/or helpers; whether they will actively sell fireworks; and proof of residency for each identified

employee and/or helper. Applicants can add/remove employees and helpers throughout the Open Season by providing advance written notice to the TFB;

7. Emergency contact information (name, address, phone number, relationship); and
8. Certification that all the information contained within the application is true and correct.

All applications shall be accompanied with a copy of the Nooksack Tribal Member's identification card, a copy of the applicant's business license (or proof of payment), proof of payment of Permit Fees, and proof of payment of the Refundable Permit Deposit. Applications shall be made available no later than April 1<sup>st</sup> of each year or as soon thereafter as possible.

- C. **Eligibility for Permit.** Any Nooksack Tribal Member, age eighteen (18) years of age or older, who has paid all licensing and permitting fees, who has paid all deposits, and who has kept all tribal, federal, and state license(s) and/or permit(s) in good standing is eligible for a firework vendor permit.

For the purposes of this section, a license and/or permit is in "good standing" if it has not been suspended and/or revoked in the past three calendar years.

No more than one (1) permit shall issue for each household. For purposes of this Ordinance, the applicant's address shall be determined by the applicant's address as shown by the official records of the Enrollment Office. In the event that the TFB receives multiple applications meeting all of the eligibility requirements from one household, the TFB shall randomly select the applicant who shall receive the permit.

- D. **Refundable Permit Deposits.** All applicants shall submit with his or her application, a Stand Clean Up deposit in the amount of two hundred and fifty U.S. dollars (\$250.00) unless increased, decreased, or waived by Tribal Council resolution. All deposits shall be made in "Good Funds." Cash, cashier's check, certified checks or money order are acceptable forms of payment; no personal checks will be accepted. The Deposit shall be refundable as stated herein.

- E. **Permit Fees.** All applicants shall submit with his or her application, a Permit Fee in the amount of five hundred and fifty U.S. dollars (\$550.00) to offset the costs of liability insurance, garbage and other sanitary services, and electricity. All fees shall be made in "Good Funds." Cash, cashier's check, certified checks or money order are acceptable forms of payment; no personal checks will be accepted.

- F. **Stand Owner Declaration.** Prior to receiving a permit to operate a fireworks stand, each prospective permittee shall sign a declaration, in substantially the same form as **Appendix A**, stating that he or she has read and understood this ordinance as well as any Rules and Regulations. Only the permittee (or one representative of the permittee) may attend TFB meetings.

## 55.03.050 Permit Approval Process

- A. **Applicant Approval.** No sooner than the day provided in the Initial Notice identified in 55.03.040(A), the TFB shall hold a Mandatory Vendor Application Meeting at the Nooksack Tribal Administration building. At that time, applications, deposits, and business license and vendor permit fees are due in full. All eligible applications will be approved. In the event that more than twenty-five (25) applications are submitted that meet all the eligibility criteria for a permit, the TFB shall issue permits through a lottery system.
- B. **Site Locations.** Once all applications are processed, stand site locations will be issued through a lottery system. Applicants do not need to be present during selections of stand site locations. Site locations shall include sufficient space to safely allow permittee to park RV or other temporary lodging adjacent to (or near) stand-site.
- C. **Limited Permit/Consent to Search.** Issuance of a permit is not a general grant or rights or unlimited privilege. By receipt of a permit, Permittees are limited to selling only those fireworks defined herein at the locations and dates identified herein. The permits shall be valid for the distribution and sales of fireworks during the Open Season consistent with this Ordinance. Further, by receipt and acceptance of a permit, all permittees consent to entry and search of the Fireworks Stand by Law Enforcement personnel during Open Season.
- D. **Stand Construction.** The permit shall allow the permittee to erect the stand in accordance with the Notice identified in section 55.03.040(A). Stands shall be prefabricated; no onsite construction or painting shall be allowed. The permittee is responsible for contacting Law Enforcement to schedule an initial (or follow up) inspection. **Permittees are encouraged to contact Law Enforcement early in order to ensure staff availability for inspections.** The Firework Liaison will be responsible for coordinating with Law Enforcement to establish preferred dates of inspections.
- E. **Initial Inspection Reports.** Law Enforcement shall conduct initial inspections and issue initial inspection reports following said inspections. The report shall certify that the firework stand is, or is not, in compliance with the requirements of 55.03.060 (Firework Stand Restrictions), and shall specifically identify any issues of non-compliance. If the firework stand is in compliance with the requirements of 55.03.060, Law Enforcement shall issue a Certificate of Compliance and the permittee may sell fireworks in accordance with this Ordinance. The permittee shall ensure the firework stand is in compliance with this Ordinance during the duration of firework season.

If at any time following the issuance of a Certificate of Compliance, the TFB finds that a firework stand is no longer in compliance with this Ordinance, the TFB shall notify Law Enforcement who shall investigate, conduct a search (as necessary) as permitted herein, and may issue a Notice of Violation or Temporary Closure. In the event that a Notice of Temporary Closure is issued, said closure will remain in effect until the violation is corrected.

- F. **Stand Clean Up.** The permit shall require the permittee to have the fireworks stand torn down, all materials removed at the permittees own expense, and the stand site location returned to its original condition no later than the date established in the Notice provided in section 55.03.040(A). On-site dumpsters shall not be utilized for stand clean up and tear down or any building materials. Failure to comply with this provision shall result in forfeiture of the deposit and Notice of Violation, and may result in cleanup of a stand-site; destruction and/or loss of any material used for construction; destruction and/or loss of any items stored inside the stand or within the stand-site location, and charges for any additional cleanup costs incurred by the Tribe.
- G. **Mandatory End-of-Season Meeting.** The TFB shall conduct a Mandatory End-of-Season Meeting with all Permittees no later than July 11<sup>th</sup>. At that time, the TFB shall issue Certificates of Completion to all permittees who properly returned the stand-site location. The TFB shall provide the Accounting Department notice of the same, and the Accounting Department shall issue refunds of deposits in the ordinary course of business.

#### **55.03.060 Firework Stand Restrictions**

- A. The following restrictions apply to all firework stands:
1. Firework stands may be up to eight feet (8') in depth by twelve feet (12') in width by ten feet (10') feet in height.
  2. Fireworks stands shall be temporary in nature, built of wooden or tin construction.
  3. The stands may be on a trailer allowing an additional four feet (4') for the trailer tongue.
  4. Fireworks stands must have a clear walkway and at least one unobstructed entrance/exit during hours of operation.
  5. Open flames are prohibited within a firework stand.
  6. Alcohol and/or drugs are prohibited within a firework stand.
  7. If electrical power is supplied by an extension cord, the size of the cord, the length of the cord, and the amperage and the voltage supplied shall be in compliance with the requirements of the most recent edition of the National Electrical Ordinance, and the cord shall be protected as necessary from physical damage.
  8. If heating unit(s) are used, the unit(s) must be used in accordance with manufacturer specifications and have a "tip-over" and temperature overheat protection. Open flame devices are prohibited.
  9. Firework stands must have posted in a clear and conspicuous manner on each exterior side of the stand "NO SMOKING" and "NO DISCHARGE OF FIREWORKS WITHIN 100 FEET."
  10. Firework stands must have readily available and near the entrance of the stand, a fire extinguisher of a minimum size of ten pounds (10 lbs.) in good working order. Fire extinguishers must be inspected by a tribally or state licensed fire extinguisher service provider once per year and with an attached record of such inspection. The TFB shall label all extinguishers by Permittee or stand site number and year inspected by Law Enforcement.

11. At least one permittee, employee, or helper shall be present at all times in the firework stand, when the stand is unsecured. Firework stands must be secured when unoccupied if fireworks are kept in the stand during these times.
12. All pedestrian routes must remain free and clear; Fireworks and/or any other property of a Permittee cannot extend more than two feet from the structure of the stand.
13. The use of generators is prohibited.

B. Failure to comply with any provision of the above shall result in denial of a Certificate of Compliance following the initial inspection.

#### **55.03.070 Firework Sales Restrictions**

Fireworks shall only be distributed and/or sold in accordance with this Ordinance. Fireworks distribution and sales not in accordance with this Ordinance shall constitute Unlawful Distribution and/or Sales of Fireworks.

- A. **Violations.** The following acts or omissions are hereby declared violations and shall subject the violator to a Notice of Violation/Citation and fine of \$500.00 per incident.
1. Selling or offering for sale, fireworks at wholesale without first obtaining a business license.
  2. Selling or offering for sale, fireworks at retail without first obtaining a Firework Vendor Permit.
  3. Selling or offering for sale, fireworks without a Nooksack business license.
  4. Selling or offering for sale, fireworks during a Closed Season.
  5. Selling or offering for sale, fireworks after receiving a Notice of Temporary Closure.
  6. Selling or offering for sale, fireworks unless he or she is the Permittee, an Eligible Employee, an Eligible Helper, or any of the foregoing for another firework vendor permitted by the Tribe.
  7. Selling or offering for sale, fireworks to a person under the age of twelve (12), unless accompanied by a parent.
  8. Being under the influence of alcohol and/or drugs while within a firework stand or actively selling or offering for sale, fireworks.
  9. Selling or offering for sale, fireworks to a person under the influence of alcohol and/or drugs.
  10. Refusing Law Enforcement entry into the firework stand in order to conduct an inspection.
  11. Selling or offering for sale, fireworks otherwise in violation of his or her permit.
  12. Selling or offering for sale an Unlawful Firework.
- B. **Repeat and Serious Violations.** For repeated offenses, or for first or subsequent violations of subsections (A)(6)-(A)(12), Law Enforcement shall have the authority to issue a Notice of Temporary Closure in addition to any Notice of Violation/Citation.
- C. **Vicarious Liability.** Permittees shall be vicariously liable for all violations by his or her Eligible Employee or Helper or any other person that occur within the firework stand.

- D. **Filing and Notice of Citations.** All original Notice of Violation/Citations shall be filed with the Executive Committee (or its designee) within two (2) business days with a copy to the Office of Prosecuting Attorney and the Defendant.
- E. **Hearings of Violations.** Upon filing a Notice of Citation, the TFB shall schedule a hearing within two (2) calendar days and provide notice of the same to the Defendant. At the hearing, the Defendant may pay the fine, attempt to mitigate the violation and lessen the fine, or contest the violation. In the event the violation is contested, the following rules apply to a hearing:
1. The proceeding shall be heard by the TFB;
  2. The Tribe and the Defendant may both be represented by counsel;
  3. The burden of proof is on the Tribe to establish the commission of the violation by a preponderance of the evidence;
  4. The Tribe and the Defendant have the right to present evidence and examine witnesses;
  5. After consideration of the evidence and argument, the TFB shall determine whether the infraction was committed. Where it has not been established, the violation shall be dismissed.
  6. Any appeal of the decision of the TFB shall be governed pursuant to Title 80, the Appellate Rules of the Nooksack Indian Tribe, with the Tribal Court sitting as the Court of Appeals. No appeal may be had therefrom.
- F. **Stay of Closure Order.** A Notice of Temporary Closure shall be automatically stayed if the Permittee posts a bond with the Accounting Department in the amount of five hundred dollars (\$500.00) pending the hearing on the underlying violation. In the event that the Permittee is found to have committed the violation, the bond shall serve to satisfy (or partially satisfy) the amount of any civil judgment. In the event that the Permittee is found to have not committed the violation, the Accounting Department, upon receipt of the Committee's order, shall refund the bond to the Permittee in the ordinary course of business.

**55.03.080 Firework Use Restrictions.**

Fireworks shall only be used, discharged, or possessed in accordance with this Ordinance. Use, discharge, or possession of fireworks not in accordance with this Ordinance shall constitute Unlawful Use and/or Possession of Fireworks.

- A. **Violations.** The following acts or omissions are hereby declared Unlawful Use and/or Possession of Fireworks and shall subject the violator to a Notice of Violation/Citation and fine of five-hundred dollars (\$500.00) per incident.
1. Igniting a firework at or in the direction of any person(s) or vehicle(s);
  2. Igniting a firework within two hundred fifty feet (250') of any tribally-owned building or other tribal facility;
  3. Possessing a firework in a Restricted Area;

4. Igniting a firework in any area where the use or discharge creates a significant risk of secondary fire or explosion;
5. Altering or modifying the composition, form, or packaging of any firework held for sale from the composition, form, or packaging in which such firework was acquired from the wholesaler, distributor, or vendor;
6. Failing to use or store a firework in conformity with the labeled warnings and/or instructions;
7. Igniting a firework in any other manner whereby the use or discharge of a firework creates a risk of harm to person or property;
8. Use, discharge, or possession of an Unlawful Firework.

**B. Filing of Citations.** All original citations shall be filed with the Tribal Court Clerk within two (2) business days with a copy to the Office of Prosecuting Attorney and the Defendant.

**C. Hearings of Violations.** Hearings and appeals regarding citations for violations issued pursuant to this Ordinance shall be governed by Title 10 of the Nooksack Tribal Ordinance, and as may be amended from time to time.

**Chapter 4**  
**Miscellaneous**

**55.04.010 Election of Remedies.**

A violation of this Ordinance shall not bar a party, including the Nooksack Indian Tribe, from pursuing any other relief available in law.

**55.04.030 Assumption of Risk.**

The Nooksack Indian Tribe assumes no responsibility for damages caused from the sale, theft, use, possession or other discharge of any firework, or any secondary fire or explosion stemming from the sale, theft, use, possession, or other discharge of any firework. Each person engaging in activity authorized by this Ordinance does so at his or her own risk.

**55.04.030 Severability.**

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

**55.04.040 Repealer.**

All prior enactments pertaining to the subject matter of this Ordinance are hereby repealed.

**55.04.050 No Property Interest.**

The issuance of any permit hereunder shall not be construed as granting a vested right in any of the privileges so conferred, and a misrepresentation of fact found to have been made by the applicant or a permittee shall be deemed a lack of good faith and shall constitute good and sufficient cause for the disapproval of an application or the revocation or suspension of said permit.

**55.04.060 Sovereign Immunity.**

Nothing in this Ordinance shall be construed as to abrogate, waive, diminish or otherwise impair the sovereign immunity of the Nooksack Indian Tribe, its subdivisions, officers, agents or employees.

## LEGISLATIVE HISTORY

Adopted by Resolution No. 81-370 (missing), dated May 14, 1981

Recodified by Resolution No. 82-433 (missing), dated Oct. 05, 1982

Amended by Resolution No. 88-036, dated June 14, 1988

Amended by Resolution No. 89-36, dated June 6, 1989

Amended by Resolution No. 93-31, dated June 8, 1993

Amended by Resolution No. 96-24, dated April 9, 1996

Amended by Resolution No. 97-49, dated June 25, 1997

Amended by Resolution 98-15, dated May 12, 1998

Amended by Resolution No. 98-26, dated Sept. 8, 1998

Amended by Resolution No. 99-26, dated May 25, 1999

Amended by Resolution No. 00-22, dated June 6, 2000

Amended by Resolution No. 01-15, dated June 22, 2001

Amended by Resolution No. 04-47, dated June 10, 2004

Amended by Resolution No. 05-37, dated May 24, 2005

Amended by Resolution No. 06-48, dated June 6, 2006

Amended by Resolution No. 07-65, dated June 12, 2007

Amended by Resolution No. 07-28, dated June 26, 2007

Amended by Resolution No. 08-64, dated June 5, 2008

Amended by Resolution No. 08-69, dated July 2, 2008

Amended by Resolution No. 10-55, dated June 8, 2010

Amended by Resolution No. 12-59, dated May 30, 2012

Suspended by Resolution No. 13-80, dated May 30, 2013

Suspension lifted; Amended by Resolution No. 18-39, dated May 29, 2018

Title 55 - Fireworks Control

Amended by Reso #21-157, dated August 3, 2021

Page 14 of 15