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NOOKSACK TRIBE

TITLE 70

EXCLUSION OF NON-MEMBERS

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TITLE 70

EXCLUSION OF NON-MEMBERS

70.01 AUTHORITY, PURPOSE, JURISDICTION

70.01.010 Authority: This title is enacted by the Tribal Council under the authority of Article VI, Section 1.(n) of the Constitution and By-laws of the Nooksack Indian Tribe of Washington.

70.01.020 Purpose: This title is enacted to provide a process for exercising the Tribal Council's power to remove and exclude, from the territory of the Tribe, persons who are not members of the Nooksack Indian Tribe whose presence may be injurious to the peace, health, or welfare of the Tribe.

70.01.030 Jurisdiction: The Nooksack Tribal Court shall have jurisdiction over all matters arising under this title. All means necessary to exercise that jurisdiction are delegated to the Tribal Court. In the exercise of jurisdiction under this title, if the course of proceeding is not specified, any suitable process may be adopted by the Tribal Court, in keeping with the spirit of the laws of the Tribe.

70.091.040 Who May Be Excluded: Any person who is not a member of the Nooksack Indian Tribe may be removed and excluded from the territorial jurisdiction of the Tribe.

70.02 DEFINITIONS

70.02.010 Definitions: The following terms when used in this title shall have the meaning set forth in this section.

(a) Child - means any person under the age of eighteen (18)

years who is the biological, foster, or adoptive child of a member of the Nooksack Tribe.

- (b) Court, Tribal Court, Nooksack Tribal Court - mean the Nooksack Tribal Court established under the laws of the Nooksack Tribe.
- (c) Exclusion - means an order denying entry onto property which is under the jurisdiction of the Nooksack Indian Tribe.
- (d) Natural Resources - includes but is not limited to fish, wildlife, shellfish, timber, water, and minerals.
- (e) Nooksack Law Enforcement - means any person or agency authorized by the Nooksack Tribal Council to enforce this title.
- (f) Nooksack Tribal Community - means enrolled members of the Nooksack Indian Tribe, residents of the Nooksack Indian Reservation and residents of land owned in trust by the Nooksack Indian Tribe.
- (g) Person - includes individuals, organizations, and business entities.
- (h) Proper authority - means 1) a court order recognized as valid by the Nooksack Tribal Court or Nooksack Tribal Council; or 2) permission to remove the child, granted by a parent or other person who has lawful authority to give permission to remove.
- (i) Removal - means an order for the physical removal of a person from the territorial jurisdiction of the Nooksack Indian Tribe.
- (j) Territorial Jurisdiction - means that jurisdiction defined under the Constitution and Bylaws of the Nooksack Indian Tribe of Washington.
- (k) Tribal Council - means the Nooksack Indian Tribal Council.
- (l) Tribe - means the Nooksack Indian Tribe.
- (m) Usury - means the usury rates prevailing in the State of Washington at the time of the loan.

70.03 GROUNDS FOR REMOVAL AND EXCLUSION

70.03.010 Grounds for Removal and Exclusion: Any person

subject to this title may be removed and excluded from the territorial jurisdiction of the Nooksack Indian Tribe for any of the following reasons:

- (a) Committing an act which violates the criminal or civil laws of the Nooksack Indian Tribe, whether or not the Tribe has jurisdiction to prosecute the person for the act.
- (b) Any act which violates the criminal laws of the State of Washington or of the United States of America, whether or not the person may be prosecuted by the State or United States.
- (c) Evading arrest or prosecution for an offense committed in another jurisdiction.
- (d) Failure to comply with any legal process, notice, subpoena, order, or other decree issued by the Nooksack Tribal Court, Tribal Council, or any tribal administrative procedure panel.
- (e) Removing or attempting to remove any child of a member of the Nooksack Indian Tribe without proper authority.
- (f) Any act causing physical loss or damage to property not his own.
- (g) Disturbing or destroying grave sites, artifacts, or other sites and objects of historical or anthropological value without authorization from the Tribal Council.
- (h) Unauthorized possession of, taking, or injury to natural resources within the territorial jurisdiction of the Nooksack Indian Tribe.
- (i) Hunting, fishing, woodcutting, driving livestock, or dumping without authorization from the Nooksack Indian Tribe.
- (j) Repeated violation of tribal, county, or state traffic regulations.
- (k) Interference or threats to interfere with the business activities of the Nooksack Indian Tribe.
- (l) Failure to pay tribal taxes, assessments or user fees.
- (m) Inducing any member of the Nooksack Indian Tribe to enter into a grossly unreasonable contract of any nature.
- (n) Committing usury against any tribal member.

- (o) Defrauding any member of the Nooksack Indian Tribe of just compensation for labor or service done at the request of the non-member.
- (p) Repeated harassment of members of the Nooksack Indian Tribe, tribal officials, or tribal employees.
- (q) Photographing, tape recording, or interfering with any ceremony without permission of the participants.
- (r) Failure to comply with any tribal law, policy, or contractual obligation regarding employment practices.
- (s) Repeated breaches of the peace including but not limited to those breaches of the peace committed while under the influence of alcohol or drugs.
- (t) Unauthorized removal or attempt to remove tribal property or property of members.
- (u) Presence within the jurisdiction of the Nooksack Indian Tribe during a time when that person is legally required to be in school. This applies only to persons under the age of eighteen years who are not members of the Nooksack Tribal Community.

70.04 EXCLUSION HEARINGS, NOTICE

70.04.010 Petition for Exclusion - Who May File: The Nooksack Tribal Council or its representative or any Nooksack Tribal Law Enforcement officer may file a written petition in the Nooksack Tribal Court requesting the removal or exclusion of any person who is subject to this ordinance.

70.04.020 Petition - Contents: A petition shall include:

- (a) The name of the person to be removed or excluded;
- (b) The specific grounds, under Chapter 70.03, for the removal or exclusion;
- (c) The factual basis for the request; and
- (d) The signature of the petitioner.

70.04.030 Notice of Hearing: If the Court finds that the petition meets the requirements of section 70.04.020, it shall cause a notice of hearing to be served on the respondent. Service of the notice shall be made by Tribal Law Enforcement or by any person at least eighteen years old and not a party to the case. If personal service fails, the order may be served by certified mail, return receipt requested, to the respondent's last known address. If this fails, service may be made by posting the notice on the person's last known residence or any method authorized by the Court. If the respondent is not a resident, the order may be served by certified mail, return receipt requested, to the respondent's last known address. The process server shall return an affidavit of service to the Court.

The notice shall include:

- (a) The date, time and place of the hearing,
- (b) A statement that the respondent may be represented by counsel, at his own expense,
- (c) A statement that the person may present testimony of witnesses and other evidence on his behalf,
- (d) A copy of the petition, and
- (e) A statement that failure to attend the hearing may result in an order of permanent exclusion or removal.

70.04.040 Defective Petition: If the Court finds that the petition does not meet the requirements of 70.04.020 it shall dismiss the petition without prejudice and shall cause notice to be served on the petitioner stating the manner in which the petition was defective.

70.04.050 Time of Hearing: The hearing shall be held not less than 5 working days and not more than 30 calendar days after personal service or mailing of the notice.

70.04.060 Conduct of Hearing: The petitioner and respondent shall have an opportunity to present witnesses and

other evidence. All evidence which is necessary and relevant to decide the case is admissible. Witnesses may be subpoenaed for either party upon request. Failure of the Court's subpoena power to obtain a witness' presence shall not be cause to dismiss the petition. The parties may be represented by counsel, at their own expense.

70.04.070 Standard for Decision: The Tribal Court may enter an order for removal or exclusion if, based on the evidence presented, the Court is reasonably certain that:

- (a) The individual or entity committed an act or omission which falls within one or more grounds for exclusion; and
- (b) That removal or exclusion is necessary to protect the health, safety, or welfare of the community.

70.04.080 Order of Exclusion. The Court may orally advise the parties of its decision at the hearing or may issue an opinion no later than five working days from the date of the hearing. In either case, the Court shall prepare a written order and cause it to be served on both parties. Written orders for exclusion shall include:

- (a) The grounds for the decision;
- (b) The date and time the individual or entity must remove himself;
- (c) The duration the order is to be in effect;
- (d) Any circumstances under which the individual or entity may be permitted to return. For example, payments of restitution, evidence of rehabilitation, visitation of children, visitation during certain times only, and a limited time to return to pick up belongings.
- (e) A date by which the Tribal Court will review the order and circumstances or conditions attached, if the individual or entity requests a review.

70.04.090 Order of Exclusion - Service: An order for exclusion shall be personally served on the respondent if the

respondent resides within the jurisdiction of the Nooksack Indian Tribe. Service shall be made in the manner specified in section 70.04.030.

70.04.100 Continuance, Failure to Appear. The Court may, in its discretion, grant a continuance of the hearing upon respondent's request. If the respondent fails to appear at the time set for a hearing, after proper notice of the hearing has been given, the Court may enter an order of exclusion. The order shall be served on the parties and shall contain the information required under section 70.04.090. A respondent excluded after his or her failure to appear may request a hearing to explain the reasons for the failure to appear. If the Court finds the respondent's failure to appear was for good cause, it shall reschedule a full hearing on the matter of exclusion.

70.04.110 Order of Exclusion - Enforcement: The Court may request Tribal Law Enforcement to supervise the removal of the respondent. Tribal Law Enforcement, in its discretion and under its supervision, may allow the person to gather any necessary belongings from the jurisdiction of the Nooksack Indian Tribe, prior to removal. If the respondent fails to voluntarily remove himself within the time limit stated in the order, Tribal Law Enforcement may physically remove him. Tribal Law Enforcement shall use only so much force as is reasonable to accomplish the removal.

70.05 EMERGENCY REMOVAL

70.05.010 Emergency Removals - Grounds: Tribal Law Enforcement may remove from the jurisdiction of the Nooksack Indian Tribe any person subject to removal under this ordinance if Tribal Law Enforcement observes that an immediate danger to health, safety or property exists and delay would result in irreparable harm. Tribal Law Enforcement, in its discretion and under its supervision, may allow the person to gather any necessary belongings from the jurisdiction of the Tribe, prior to removal.

70.05.020 Notice of Opportunity to Request Hearing: The Nooksack Indian Tribe shall cause a notice of the opportunity to request a hearing to be sent to the person removed, by certified mail, return receipt requested. The notice shall state:

- (a) The reason for the removal.
- (b) A statement that the person or entity may request a hearing before the Nooksack Tribal Court within five (5) working days of service of the notice. The hearing shall be scheduled no later than fourteen (14) working days from the date the person requests a hearing.
- (c) A statement that failure to request a hearing within the time limits prescribed may result in a permanent order for exclusion being entered by the Tribal Court.

70.05.030 Hearings on Emergency Removals: Hearings following an emergency removal shall be conducted consistent with sections 70.04.060 (Conduct of Hearings), 70.04.070 (Standard for Decision), 70.04.080 (Order of Exclusion), 70.04.100 (Continuance, Failure to Appear), and 70.04.110 (Order of Exclusion-Enforcement).

70.06 APPEAL

70.06.010 Who May Appeal: Any aggrieved party to an exclusion or removal action may appeal the final order of the Tribal Court.

70.06.020 Rules for Appeal: Appeals under this title shall be governed by Title 80 of the Nooksack Tribal Code.

70.07 SEVERABILITY

70.07.010 Severability: If any portion of this ordinance or its application to any person or circumstance is held invalid, the remainder of this ordinance or its application to other persons or circumstances is not affected.

NOOKSACK INDIAN TRIBE
NOOKSACK RESERVATION

NOOKSACK INDIAN TRIBE,)
 PETITIONER,)
) NO.)
))
) vs.) OPPORTUNITY TO REQUEST)
)) HEARING ON REMOVAL/EXCLUSION)
_____,)
 RESPONDENT.)
_____)

This notice for the Opportunity to Request a Hearing before the Nooksack Tribal Court is presented to the above named Respondent.

I.

Reason(s) for the emergency removal of Respondent: _____

II.

You may request a hearing before the Nooksack Tribal Court within five (5) working days after receiving this notice.

III.

FAILURE TO REQUEST A HEARING WITHIN THE FIVE (5) WORKING DAYS TIME LIMIT MAY RESULT IN A PERMANENT ORDER FOR EXCLUSION BEING ENTERED BY THE TRIBAL COURT AGAINST YOU.

DATE

COURT CLERK

RETURN OF SERVICE

THIS NOTICE FOR THE OPPORTUNITY TO REQUEST A HEARING
BEFORE THE NOOKSACK TRIBAL COURT WAS SERVED UPON _____
_____.

THIS NOTICE WAS SERVED IN THE FOLLOWING MANNER _____

DATE

PROCESS SERVER/LAW ENFORCEMENT

NOOKSACK INDIAN TRIBE
NOOKSACK RESERVATION

NOOKSACK INDIAN TRIBE,)
PETITIONER,)
)
vs.)
)
)

RESPONDENT.)
_____)

NO.
PETITION FOR
EXCLUSION OR REMOVAL

I, _____, a member of the Nooksack Tribal Council or a representative of the Nooksack Indian Tribal Council or Tribal Law Enforcement file this complaint for the removal/exclusion of _____ from the jurisdiction of the Nooksack Indian Tribe.

I.

The respondent is not a member of the Nooksack Indian Tribe.

II.

The respondent should be removed/excluded because _____

III.

The facts stated above are grounds for exclusion/removal
under the Nooksack Code, Section 70.03.010 _____.
(a-u)

I have read this complaint and believe it to be true.

DATE

SIGNATURE OF PETITIONER

NOOKSACK INDIAN TRIBE
NOOKSACK RESERVATION

NOOKSACK INDIAN TRIBE,)
PETITIONER,)
)
vs.)
)
)
RESPONDENT.)
)

NO.
NOTICE OF
EXCLUSION HEARING

NOTICE OF HEARING IS GIVEN TO _____.

I.

TIME: _____

DATE: _____

PLACE: NOOKSACK TRIBAL COURT, NOOKSACK TRIBAL CENTER,
DEMING, WASHINGTON.

II.

Reason(s) for the hearing: _____

III.

You may be represented by counsel at your own expense.

IV.

You may present testimony of witnesses and other evidence on your behalf.

V.

FAILURE TO ATTEND THE HEARING MAY RESULT IN THE TRIBAL COURT ENTERING A PERMANENT ORDER OF EXCLUSION OR REMOVAL FROM THE TERRITORIAL JURISDICTION OF THE NOOKSACK TRIBE.

DATE

COURT CLERK

RETURN OF SERVICE

THIS NOTICE OF HEARING BEFORE THE NOOKSACK TRIBAL COURT
WAS SERVED UPON _____.

THIS NOTICE WAS SERVED IN THE FOLLOWING MANNER _____

DATE _____

PROCESS SERVER/LAW ENFORCEMENT

NOOKSACK INDIAN TRIBE
NOOKSACK RESERVATION

NOOKSACK INDIAN TRIBE,)
PETITIONER,)
)
vs.)
)
_____)
RESPONDENT.)
_____)

NO.
NOTICE OF DISMISSAL OF
PETITION FOR EXCLUSION

This notice is given to the Petitioner, that the petition for Removal/Exclusion which was filed has been dismissed without prejudice.

The Court bases this dismissal on the failure of the petition to meet all the requirements of Section 70.04.020 of the Nooksack Code, specifically: _____

DATE _____

JUDGE _____

NOOKSACK INDIAN TRIBE
NOOKSACK RESERVATION

NOOKSACK INDIAN TRIBE,)
PETITIONER,)
)
vs.)
)
)
RESPONDENT.)
)
)

NO.
ORDER OF EXCLUSION

IT IS HEREBY ORDERED THAT _____
IS EXCLUDED FROM THE JURISDICTION OF THE NOOKSACK INDIAN TRIBE.

I.

REASONS FOR EXCLUSION: _____

II.

THE RESPONDENT, _____ IS
HEREBY ORDERED TO LEAVE THE JURISDICTION OF THE NOOKSACK INDIAN
TRIBE AT THIS APPOINTED TIME: _____ AND AT THIS APPOINTED
DATE: _____.

III.

THIS ORDER SHALL BE IN EFFECT UNTIL _____.

IV.

CIRCUMSTANCES UNDER WHICH THE RESPONDENT MAY BE PERMITTED
TO RETURN: _____

V.

THE RESPONDENT MAY REQUEST A REVIEW OF THIS ORDER NO SOONER
THAN _____.

DATE

JUDGE

RETURN OF SERVICE

THIS NOTICE OF HEARING BEFORE THE NOOKSACK INDIAN TRIBAL
COURT WAS SERVED UPON _____.

THIS NOTICE WAS SERVED IN THE FOLLOWING MANNER _____
_____.

DATE

PROCESS SERVER/LAW ENFORCEMENT