

TITLE 19
LUMMI NATION CODE OF LAWS
FIREWORKS CODE

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**TITLE 19
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FIREWORKS CODE**

Chapter 19.01 Statement of Purpose

19.01.010 Purpose

In order to provide for the safe and orderly use and handling of fireworks within the Lummi Reservation and in other areas served by Tribal businesses, and in order to regulate the sale of fireworks for the health, welfare, and safety of all residents of the Lummi Reservation, this Code is enacted to be the Lummi Fireworks Code.

Chapter 19.02 Definitions

For the purposes of this title, unless otherwise provided in this title:

19.02.010 Assignment

Assignment means the process by which stands located on Tribal Property are assigned.

19.02.020 Fireworks -- Class "C" Fireworks

Fireworks means Any device containing a combustible or explosive substance used for the purpose of producing a visible or audible display of combustion, explosion, deflagration, or detonation, but not including any firearms or any explosives outside the definition of Class "C" fireworks under federal law as enumerated in 49 CFR 173.100(r), as now in effect, or as amended to wit:

(a) Class "C" Fireworks authorized for sale under this Code: Class "C" fireworks are common fireworks devices suitable for use by the public and designed primarily to produce visible effects by combustion. Some small devices designed to produce audible effects are also included in this class. The types, sizes, and amount of pyrotechnic contents of these devices are limited as set forth in this paragraph. No component, or any device listed in this paragraph, which produces or is intended to produce an audible effect shall contain pyrotechnic composition in excess of 2 grains in weight; nor shall such device or component, upon functioning, project or disperse any metal, glass, or brittle plastic fragments. (Propelling or

expelling charges consisting of a mixture of sulfur, charcoal, and saltpeter are not considered as designed to produce audible effects.) Any new device, not covered by this paragraph, must be approved by the Lummi Indian Business Council before being offered for sale. Common fireworks must be in a finished state exclusive of mere ornamentation as supplied to the retail trade and must be so constructed and packaged that loose pyrotechnic composition will not be present in packages in transportation. Fireworks, other than common fireworks as defined in this paragraph, are classed as Special Fireworks and must have specific approval of the Lummi Indian Business Council pursuant to either a separate Code, a duly approved amendment to this Code, or regulations adopted pursuant to this Code.

19.02.030 Fireworks Committee

The Fireworks Committee shall consist of those persons who are currently licensed retailers and wish to participate at the Fireworks Committee Annual Meeting or any subsequent meeting. The Committee may recommend amendments to this Title and to other procedures associate with the regulation of firework sales.

19.02.040 Fireworks Committee Annual Meeting

The Fireworks Annual Meeting will be called by the LIBC or its designee during the first week in June each year.

19.02.050 Fireworks License

License means the written authorization issued by the LIBC or its designee under this Code to engage in the transfer, possession, discharge, or sale of fireworks, either retail or wholesale.

19.02.060 Fireworks Season

Fireworks Season means June 1 through May 31 of the following year.

19.02.070 Fireworks Stand

Fireworks Stand means the establishment at which fireworks are offered for retail sale.

19.02.080 Licensee

Licensee means the Lummi Tribal Member to whom a Fireworks License has been issued under this Code.

19.02.090 Retail Sale

Retail Sale means the sale of items to the ultimate consumer.

19.2.100 Wholesaler

Wholesaler means a person or company licensed by the Lummi Nation to sell fireworks to retail fireworks businesses licensed by the Lummi Nation. Owners of licensed retail fireworks businesses may also purchase fireworks from wholesalers not located on the Lummi Reservation or licensed by the Lummi Nation.

Chapter 19.04 Licensing

19.04.010 Unlawful to Sell Fireworks without Fireworks License

It is unlawful for any person to offer fireworks for sale without having a valid Fireworks License. LIBC or its designee will prepare the business license applications and make them available by May 15th of each year, issue the necessary business licenses, verify a licensee’s eligibility, collect the required fees and assign sites on Tribal Property

19.04.020 Retail Fireworks Licenses--Application Fees

Each Retail Fireworks License application form shall be accompanied by a \$150.00 fee per location to cover administrative handling, processing, issuance of a license, fire and police safety, and maintenance of site areas. The clean up deposit provisions of section 24.02.020 of Title 24 of the Lummi Code of Laws do not apply to Fireworks Licenses.

19.04.030 Licenses--Eligibility

Retail Fireworks Licenses shall only be issued to enrolled members of the Lummi Nation who are age 18 or over. Persons found responsible for violating this ordinance shall not be eligible for a license the following year.

19.04.040 Licenses--Dates Effective

A license issued under this Code shall be

effective from June 1st, or the date of issuance if after June 1st, until May 31st of the following year. A License issued for tribal property is valid from June 1st until July 11th at 5:00 pm.

19.04.050 Transferability of Licenses

Licenses are personal to the licensee and may not be transferred to another person. Licenses issued for tribal property sites may be transferred to another location, after July 11th, so long as the Licensee notifies the proper LIBC Department and the new location passes inspection.

19.04.060 Licensee Responsibility for Customer Use of Fireworks

Licensees shall not allow fireworks to be ignited within a radius of one hundred (100) feet of their fireworks stand.

19.04.070 Wholesale Licenses

Fireworks Wholesalers, whether in a fixed location or mobile, who sell on the Lummi Reservation must be licensed pursuant to this section. Each Wholesale License application must be accompanied by a \$250 application fee, and, if applicable, a deposit as required by the Temporary Business requirements of Section 24.02.020 of Title 24 of the Lummi Code of Laws. Wholesalers with a fixed place of business on the Lummi Reservation must also obtain a Conditional Use permit issued by the Planning Department, pursuant to Title 15 of the Lummi Code of Laws.

Fireworks wholesalers in a fixed location must be at least 200 feet away from the nearest retail stand. Wholesalers are permitted to sell only to persons licensed to sell fireworks under this Title. Wholesalers shall not make retail sales.

Chapter 19.05 Operation of Fireworks Businesses

19.05.010 Retail Licensees Responsible for Safe and Lawful Sales

Retail licensees are responsible for insuring that all of their fireworks sales are conducted in a safe and lawful manner.

19.05.020 Person at Least 18 Required in Stand

There shall be a person at least eighteen (18) years of age present in each fireworks stand at all times during operation.

19.05.030 Fireworks Stands--Mandatory Displays

Each retail licensee shall display in his/her Fireworks stand a copy of his/her license, this Code, any regulations promulgated pursuant to this Code, and (in a prominent place) the following warning:

NOTICE: IT IS UNLAWFUL TO DISCHARGE FIREWORKS WITHIN 100 FEET OR SMOKE WITHIN 50 FEET OF THE SELLING AREA.

19.05.040 Fireworks Stands--Fire Extinguishers Required

Each Fireworks stand shall have two certified, operable fire extinguishers of a minimum of 10 pounds size, type "A-B-C" placed on the side and visible at all times.

19.05.050 Fireworks Stands--Distance Restrictions

No Fireworks stand shall be within twenty feet (20') of the edge of the public roadway. No stand shall be within one hundred feet (100') of any high voltage electrical facility which is within twenty (20') feet of ground level.

19.05.060 Fireworks Stands--Maximum Length--Distance to be Separated

No Fireworks stand on tribal property shall exceed twenty-four feet (24') in length. All stands on tribal property shall be separated by at least a three-foot (3') clear area.

19.05.070 Sales Out of Motor Vehicles Prohibited

No retail fireworks sales shall be made out of any motor vehicle.

19.05.080 Maintenance of Fireworks Stands--Fine for Non-Compliance

By 5:00 p.m. July 11th, all Fireworks stands on tribal property shall be completely cleaned up and the property returned to the same condition as before the stand was erected.

Those retailers on private property who elect not to continue in business for the remainder of the season shall remove all signs from other advertising locations. All stands must be maintained in a neat and orderly manner and free of any fire hazards. Any violation of this section may result in a fine of one-hundred fifty dollars (\$150.00).

19.05.090 Inspection of Fireworks Stands

Each stand shall be inspected by the Lummi Police Department or duly authorized person prior to receiving a license. The Lummi Police Department shall inspect the applicant's stand within twenty four (24) hours of receiving a written request.

At the request of the licensee, the Lummi Police Department will verify that the licensee's stand has been completely removed and the area cleaned up.

19.05.100 Authorization to Designate Fireworks Sites and Prohibited Areas

Each year the LIBC or its designee shall stake and map out sites on tribal properties. This map will be used for the assignment of sites. The LIBC or its delegate shall designate the tribal areas in which fireworks should not be ignited.

19.05.110 Tribal Property Site Assignments

Each retailer who wants to locate on Tribal Property must be assigned a site in a manner consistent with this section. No stands on tribal property shall be established at any place not assigned by the LIBC Designee. To recognize long-standing custom and usage in the assignment of sites, the licensee who was assigned to a site the previous year may specify that site when they purchase their license before May 31st, after which any remaining sites will be assigned on a first come first serve basis.

19.05.120 Assignment Restrictions

Only one site per family or head of household on Tribal Property is allowed.

Chapter 19.06 Prohibitions

19.06.010 Prohibited Fireworks

Fireworks which do not fall under the definition of "Fireworks--Class 'C' Fireworks" in section 19.02.030, above, are prohibited under this Ordinance, unless otherwise approved by the Lummi Indian Business Council pursuant to either a separate Code, a duly approved amendment to this Code, or regulations adopted pursuant to this Code. It is unlawful to possess, sell, or use any prohibited fireworks, and any prohibited fireworks may be confiscated and destroyed. Persons who possess, sell, or use any prohibited fireworks may be subjected to a civil penalty as set forth in Chapter 19.08, below.

19.06.020 Prohibited Uses

It shall be a violation of this section for any person to;

- (a) Use fireworks in a manner that results in damage to the person or property of another, whether intentional or not; or
- (b) Intentionally throw or launch fireworks in the direction of any other person without that person's permission; or
- (c) Throw or launch fireworks within 100 feet of a fireworks stand; or
- (d) For an adult to permit a juvenile, age 11 or under, in his or her care to commit a violation of this section. This section does not limit the application of parental liability under Title 8 of the Lummi Code of Laws.

Violations of this section are punishable pursuant to Section 19.08.010. Nothing in this section precludes a criminal prosecution in addition to a civil penalty if a crime has also been committed.

19.06.030 Wholesalers Prohibited From Selling Retail

To protect the economic opportunities of Tribal members licensed to sell Fireworks, Wholesalers are prohibited from selling to retail customers.

- (a) A first offense under this section is punishable by a fine of \$500 to \$1,000 and a

1-year of suspension of the Licensee's eligibility for a Fireworks License.

- (b) A second offense under this section, within a 3-year period, is punishable by a \$1,000 fine and a 1-year to 2-year suspension of the licensee's eligibility for a Fireworks License.

19.06.040 No Smoking Within 50 Feet of Fireworks Stands

It shall be a violation of this section for any person to smoke within 50 feet of a Fireworks Stand. A Licensee shall not allow a sales person from his or her stand to smoke within 50 feet of the licensee's stand. A violation of this Section is punishable by a fine of up to \$100 per offense. A Licensee who is convicted of violating this section shall have their right to be licensed for fireworks sales suspended for one year, by the Court.

19.06.050 Prohibited Times

Use of fireworks shall be prohibited between the hours of 1:00 AM and 8:00 AM, except days between June 27 and July 11 each year. This section shall only be enforced if in response to a complaint from a community member.

Chapter 19.08 Civil Penalties

19.08.010 Civil Penalties for Violating Ordinance -- Purpose -- Amount -- Repeated Violations

(a) The purpose of this section is to provide for the imposition of civil penalties for violations of this ordinance, or regulations enacted pursuant to this Code. Penalties for violations are to be monetary fines only. Such fines are imposed for purposes of discouraging sales of illegal fireworks and to compensate the Lummi Nation for the costs associated with regulating the sale of fireworks.

- (b) Violations of this Code, or regulations enacted pursuant to this Code, shall be punishable by a fine not to exceed one-thousand dollars (\$1,000.00) per violation. In imposing a fine, the court shall take into account the severity of an offense, based on the likelihood that the violation may have resulted in serious harm to any individual or property, and the

severity of the harm the violation may have reasonably caused, but may not consider whether or not the violator acted with an intent to violate the Code, or regulations enacted pursuant to it.

(c) When a violator is issued a citation for a violation of this Code or regulations enacted pursuant to this Code, the violator may pay the fine in lieu of appearing in court, provided that the fine is paid prior to a scheduled court date. Where the citation or this Code does not specify the amount of the fine for the violation, the violator must appear in court on the scheduled court date.

(d) When a person licensed to sell fireworks pursuant to this Code, or regulations enacted pursuant to this Code, is cited for a third time in any one year, that licensee's license may be administratively revoked. The Lummi Police shall send a notice to the licensing entity informing it that a person has received a third citation within the same year.

19.08.020 Civil Penalty for Vandalizing Fireworks Signs--Defined

(a) Any person who shall be found responsible by the Lummi Tribal Court to have vandalized any Fireworks sign of another person shall pay a fine of one-hundred and fifty dollars (\$150.00).

(b) For purposes of this section, "vandalize" shall mean to deface or destroy with reckless and wanton disregard of the rights of others.

Chapter 19.09 Amendments

19.09.010 Incorporation of Other Laws

It is the intent of the LIBC to include as part of this Code the requirements established by the Interstate Commerce Commission or the Federal Products Safety Commission or other federal agency governing certain fireworks. This Code is to be deemed amended to conform with any changes in the regulations of those federal agencies governing fireworks, effective upon issuance of such regulations, and this Code shall be amended and updated from time to time to reflect changes in federal standards unless the LIBC by resolution or ordinance shall direct otherwise. In order to assure proper notice to the retailers, amendments to this Code

will not change between June 1st and July 11th.

19.09.020 Committee to Recommend Amendments

The Fireworks Committee will meet at least annually and may recommend amendments to this Code. The Annual Meeting shall be held during the first week in June, as arranged by the LIBC designee. The Committee may hold additional meetings as necessary.

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