

TITLE 20. FIREWORKS CODE

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20.1 Title. This chapter shall be known as the “Hoh Fireworks Ordinance.”

20.2 Definitions. As used in this chapter, the following words and phrases shall each have the designated meaning unless a different meaning is expressly provided or is clearly indicated by the context.

- A. “Tribe” shall mean Hoh Tribe of the Hoh Indian Reservation.
- B. “Council” shall mean Hoh Tribal Business Committee.
- C. “Fireworks” shall mean blank cartridges, toy pistols, toy cannons, toy canes, or toy guns in which explosives are used; fire balloons (balloons of a type which have burning material of any kind attached thereto or which require fire underneath to propel them); firecrackers, torpedoes, skyrockets, rockets, Roman candles, day go bombs, or other fireworks of like construction; and any fireworks containing any

combustible or explosive substance for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation; but does not include toy pistols, toy canes, toy guns, or other similar devices in which paper caps containing not more than twenty-five hundredths (.25) grain of explosive compound per cap are used. Nothing herein shall be deemed to prohibit the use of any explosive or flammable compound, blasting caps, or similar items used for industrial or agriculture purposes.

- D. "Outlet" shall mean a facility or place where the business of selling fireworks at wholesale or retail is conducted.
 - E. "Taxable event" shall mean the sale, consumption, handling, use, possession, or distribution of fireworks.
 - F. "Retail selling price" shall mean the ordinary, customary, or usual price paid by the consumer for each fireworks product, less any tax levied pursuant to this chapter.
 - G. "Operator" shall mean a person licensed by the Tribe to manage a fireworks outlet.
- 20.3 Federal Regulations as to Fireworks. No fireworks shall be sold on the Hoh Reservation or any land the Hoh Tribe owns except as permitted under the regulations of the Federal Consumer Products Safety Commission found in Title 16 of the Code of Federal Regulations, Parts 1500 and 1507, as they may be amended from time to time, which regulations are incorporated herein by reference as tribal law. The provisions of this chapter shall be construed so as not to conflict with such federal regulations. In case of conflict between this chapter and those regulations, the federal regulations shall govern.
- 20.4 Fireworks Outlet License Required. No person on the Hoh Reservation or any land the Tribe owns shall sell any fireworks or possess fireworks with intent to sell without an appropriate tribal license and in compliance with the terms thereof. Wholesale distributors located outside the Hoh Reservation who make deliveries to on-reservation or outlets on tribally owned land and who do not store such fireworks on the reservation or land the Tribe owns shall not be required to have an outlet license.
- 20.5 Restrictions on Fireworks Outlets. The HTBC at its discretion may direct that the number, location, size, type, and operation of fireworks outlets within the Hoh Reservation or land the Tribe owns be restricted as it deems appropriate to protect public health and safety and to promote the welfare of the Hoh people.
- 20.6 Establishment of Season for Sale. The HTBC shall establish the season(s) of sale during which fireworks outlets on the Hoh Reservation and lands owned by the Hoh Tribe may be open.
- 20.7 Application for Fireworks Outlets License. Any Hoh Tribal Member who is a minimum of twenty one (21) years of age may apply upon an application form provided by the HTBC designee for a fireworks outlet license. The application shall contain the following:
- (a) The applicant's name and any business name

- (b) If the applicant is not a natural person, the name and address of an agent authorized to accept service of process
- (c) The name of a natural person who will be responsible for managing the outlet
- (d) The applicant's current business address
- (e) The location at which the outlet will be operated and if the outlet will be operated on land of which the applicant is not the owner, other than tribal trust land, evidence of permission from the owner to operate thereon
- (f) Whether the application is for a wholesale or retail outlet
- (g) The signature of the applicant or an authorized official thereof
- (h) The designation required by Section 20.3.14 of this chapter
- (i) Such other information as the HTBC designee may require in the administration of this chapter.

20.8 Issuance of Fireworks Outlet License. Upon approval of an application and compliance with all other parts of this chapter, the HTBC designee may issue an applicant a fireworks outlet license for all seasons of sale commencing during the current calendar year. The license shall entitle the operator to establish and maintain one (1) fireworks outlet on the Hoh Reservation. The license shall be nontransferable. No person shall be issued more than one (1) license. A copy of the license shall be posted at each fireworks outlet in a place where it is readily visible to the public.

20.9 Denial of License. If an application for a license under this chapter contains a material misrepresentation or the granting of any license would be contrary to this chapter or to any restriction made pursuant to Section 20.3.5 hereof, the application for the license may be denied.

20.10 Fireworks Outlet License Fee. After approval of an application for a fireworks outlet license, the applicant shall pay a license fee to the Hoh Tribe for the privilege of operating a tribal fireworks outlet. The amount of the fee shall be established by the HTBC. The fee must be paid promptly following the opening of the fireworks outlet. Any fee not paid by August 1 of each year shall accrue interest at the rate and be subject to such monetary penalty as the tribal council may prescribe.

20.11 Excise Tax. The HTBC may authorize the levying of a tax upon the sale, use, consumption, handling, possession, or distribution of all fireworks. The excise tax authorized hereunder shall be a tax upon distribution of fireworks; provided however, that failure to pay the tax at the time of such distribution shall not prevent tax liability from arising by reason of another taxable event. Any excise tax levied hereunder shall be added to the retail price of fireworks sold to the ultimate consumer.

20.12 Cleaning Deposit. As a condition to the issuance of a license under this chapter, each applicant shall first deposit with the tribe a cleaning deposit in an amount established by the HTBC. The cleaning deposit shall be returned at the end of the selling season if the outlet site is cleaned as required in Section 20.13.

- 20.13 Cleanup and Removal of Signs. It is the responsibility of each operator to ensure that at the close of each season the fireworks outlet site is cleaned of all wood, paper, and other refuse and that all signage used in the sale of fireworks or which in the past were used in the sale of fireworks that are not used in other businesses are removed from the site. All removal required by this section shall be completed within ten (10) days of the close of the selling season as established by the HTBC. The Hoh Tribe shall act to enforce this section if the operator fails to clean and remove all signs from the site within the ten-day period.
- 20.14 Tribe to Enforce Cleanup, Sign Removal. As a condition of the issuance of any license under this chapter, a fireworks outlet operator shall designate the Hoh Tribe as his/her agent to carry out the requirements of Section 20.13. The designation shall empower the Hoh Tribal Law Enforcement to enter and inspect the fireworks site, to take all action necessary or appropriate to clean and clear the site as provided in Section 20.13, and to remove any signage subject to removal under that section. The operator shall agree to bear all costs involved in the cleaning and removal and to reimburse the tribe for all expenses incurred in enforcing Section 20.13. The designation shall be in writing and shall be contained in every license application.
- 20.15 Other Business by Operator. An operator may conduct another business simultaneously with managing a fireworks outlet pursuant to this chapter. The operator shall keep a separate accounting of the transactions from business of the fireworks outlet. However, the other business may be conducted on the premises, and the operator shall not be required to maintain books of account for the other businesses.
- 20.16 Restricted Sales to Minors. An operator may not sell any fireworks to any person under sixteen (16) years of age nor permit any such person to work in the outlet.
- 20.17 Prohibited Places of Discharge. No person shall discharge any fireworks within any building, vehicle, or closed area; within one hundred and fifty (150) feet of any public fireworks display during such display; or within one hundred fifty (150) feet of any vehicle, structure, container, facility, or place in which fireworks, petroleum products, or other highly flammable or explosive substances are made, sold, or stored pending sale or commercial use. Violations of this Section shall be punished pursuant to 20.22 below.
- 20.18 Prohibited Activities in or Near Fireworks Outlet. It shall be a violation of this chapter to smoke, drink, or consume illegal substances in or within 50 feet of any Fireworks Outlet. Violations of this Section shall be punished pursuant to 20.22 below.
- 20.19 Restrictions on Wholesale Transactions. No wholesale fireworks licensee shall, within the Hoh Reservation, sell any fireworks at retail or to persons other than retail fireworks licensees. No retail fireworks licensee shall purchase fireworks at wholesale within the Hoh Reservation from any person other than a wholesale fireworks licensee.
- 20.20 Tribal Immunity – Liability. Nothing in this chapter or any regulation, restriction, license, or other act pursuant thereto shall limit or waive the sovereign immunity of the

tribe from suit nor create any liability on behalf of the tribe for damages arising from the sale or use of fireworks.

- 20.21 **Revocation of Fireworks Outlet License.** Failure of an operator to abide by this chapter and any additional requirement or restriction imposed pursuant thereto will constitute grounds for revocation of the operator's fireworks outlet license as well as enforcement of the remedies provided in Section 20.21.
- 20.22 **Violation – Remedies.** The tribal court shall have jurisdiction over any alleged violations of this chapter. Upon application by the tribe showing probable cause, the tribal judge shall issue an order directing the tribal law enforcement officer to seize all fireworks from wherever purchased and by whomever owned from any business being operated in violation of this chapter. Within three (3) days of such seizure, after adequate notice to the operator of such outlet, a hearing shall be held in tribal court at which time the operator of such outlet shall be given the opportunity to present evidence in defense of his activities. The time for such hearing may be extended at the request of the operator or for good cause. If the tribal court shall determine by a preponderance of evidence that any fireworks outlet was or is being operated in violation of this chapter or restrictions pursuant thereto, the tribal judge shall impose a civil penalty of not less than fifty dollars (\$50) nor more than two hundred fifty dollars (\$250) per violation in addition to the forfeiture of any fireworks seized as described above.
- 20.23 **Recovery of Taxes Owed.** The tribe shall have a cause of action in tribal court to recover any taxes or fees owed and not paid to the tribe in accordance with this chapter, together with interest and penalties.
- 20.24 **Authority to Inspect Premises and Records.** The Tribe, through Tribal Law Enforcement, shall have the power to inspect the premises and records of any fireworks outlet for the purpose of determining whether all of the requirements in this chapter and restrictions pursuant hereto are being met by the fireworks outlet and its operator. Notice of such inspection need to be given, and interference with or obstruction of such an inspection by a fireworks outlet operator and his/her agent or employee shall be grounds for revocation of the fireworks outlet license and shall be deemed a violation of this chapter.
- 20.25 **Administration.** Unless otherwise provided by this chapter or other tribal law and policy, the Director of Public Safety and Emergency Services shall administer this chapter.
- 20.26 **Severability.** If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of this chapter or the application of the provision to other persons or circumstances is not affected.
- 20.27 **The Hoh Tribe, its officers and employees shall not be liable for any injury or damage to persons or property for fireworks purchased or used under this code.**